

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

MEI-GSR HOLDINGS, LLC, AM-GSR
HOLDINGS, LLC, and GAGE VILLAGE
COMMERCIAL DEVELOPMENT, LLC,

Appellants,

v.

ALBERT THOMAS, et al.

Respondents.

No. 86985

Electronically Filed
Aug 11 2023 11:51 AM
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department OJ41
County Washoe Judge Senior Judge Elizabeth Gonzalez
District Ct. Case No. CV12-02222

2. Attorney filing this docketing statement:

Attorney Jordan T. Smith Telephone 702.214.2100
Firm Pisanelli Bice PLLC
Address 400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Client(s) See attachment

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Jarrad C. Miller Telephone 775.329.5600
Firm Robertson, Johnson, Miller & Williamsom
Address 550 West Liberty Street, Suite 600
Reno, Nevada 895101

Client(s) See attachment

Attorney Robert L. Eisenberg Telephone 775.786.6868
Firm Lemons, Grundy & Eisenberg
Address 6005 Plumas Street, Third Floor
Reno, Nevada 89519

Client(s) See attachment

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input checked="" type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

MEI-GSR Holdings, LLC v. Thomas, Docket No. 69184
Thomas v. MEI-GSR Holdings, LLC, Docket No. 70498
MEI-GSR Holdings, LLC v. Thomas, Docket No. 84143
MEI-GSR Holdings, LLC v. Thomas, Docket No. 85915
MEI-GSR Holdings, LLC v. Thomas, Docket No. 86092

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

This action involves an ongoing dispute about whether Plaintiffs, as unit owners within a hotel condominium arrangement, were damaged by certain conduct of the Defendants, including awarded and alleged continuing damages based upon loss of rental income and depreciation in the value of those units. The parties' rights and responsibilities are largely governed by a Unit Rental Agreement, Unit Maintenance Agreement and CC&Rs.

After entering a default, the district court conducted a prove-up hearing and entered Findings of Fact and Conclusions of Law and Judgment on October 9, 2015, which awarded \$8,318,215.54 in compensatory damages. After holding hearings on July 8 and 18, 2022, the district court awarded \$9,190,521.92 in punitive damages on January 17, 2023. The district court entered its Final Judgment on February 2, 2023. Subsequently, the district court twice amended the Final Judgment despite pending appeals. In addition to the prior awards, the most recent "corrected" judgment includes an additional \$4 million in fees and costs.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

See attachment.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Appellants' pending appeal in Docket No. 86092 involves the same issues as it is based on the same final judgment.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: The procedure, availability, abuses, calculation, and excessiveness of an award of compensatory and punitive damages in the default context implicate the United States and Nevada Constitutions as well as significant public policy concerns. Similarly, awarding a default judgment worth millions of dollars on the basis of an attorney's misconduct also implicates significant public policy concerns.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(11) and (12) because it raises multiple issues of first impression and significant statewide public importance.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from July 10, 2023

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order was served July 11, 2023

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed July 11, 2023

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: Plaintiffs' filed a notice of cross-appeal on July 28, 2023.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The order appealed from is a final judgment resolving all claims and defenses in this case.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

See attachment.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiffs sued Gran Sierra Resort Association for appointment of a receiver, money damages, equitable relief; MEI-GSR for money damages and equitable relief; and Gage Village Development for equitable relief.

Defendants filed counterclaims against all plaintiffs for damages, declaratory relief, and injunctive relief.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

N/A.

(b) Specify the parties remaining below:
N/A.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The order is independently appealable under NRAP 3A(b)(1). However, the district court needlessly certified the order as final without making any of the necessary findings despite the pending appeal of the final judgment in Docket No. 86092. All prior orders have merged into the final judgments. The recent orders regarding attorneys' fees and costs are independently appealable under NRAP 3A(b)(8).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

MEI-GSR Holdings, LLC et al.
Name of appellant

Jordan T. Smith
Name of counsel of record

August 11, 2023
Date

/s/ Jordan T. Smith
Signature of counsel of record

Clark, County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 11th day of August, 2023, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Jarrad C. Miller
Briana N. Collings
Robertson, Johnson, Miller & Williamson
and
Robert L. Eisenberg
Lemons, Grundy & Eisenberg
Attorneys for Respondent

See Attachment

Dated this 11th day of August, 2023

/s/ Shannon Dinkel
Signature

ATTACHMENT TO CERTIFICATE OF SERVICE

1. Jarrad C. Miller, Esq.
Briana N. Collings, Esq.
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Telephone: (775) 329-5600
Attorney for Respondent
2. Robert L. Eisenberg, Esq.
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Telephone: (775) 786-6868
Attorney for Respondent

Attachment to Question 2:

Clients:

1. MEI-GSR Holdings, LLC; Gage Village Commercial Development, LLC; and AM-GSR Holdings, LLC.

Attachment to Question 3:

1. Attorney(s) continued

Robert L. Eisenberg
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Telephone: 775.786.6868

2. Clients

Albert Thomas; Jane Dunlap; John Dunlap; Barry Hay; Marie-Anne Alexander, as Trustee of the Marie-Annie Alexander Living Trust; Melissa Vagujhelyi and George Vagujhelyi, as Trustees of the George Vagujhelyi and Melissa Vagujhelyi 2001 Family Trust Agreement, u/t/a April 13, 2001; D' Arcy Nunn; Henry Nunn; Madelyn Van Der Bokke; Lee Van Der Bokke; Donald Schreifels; Robert R. Pederson, individually and as Trustee of the Pederson 1990 Trust; Lou Ann Pederson, individually and as Trustee of the Pederson 1990 Trust; Lori Ordovery; William A. Henderson, individually; Christine E. Henderson; Loren D. Parker; Suzanne C. Parker; Michael Izady; Steven Takaki; Farad Torabkhan; Sahar Tavakol; M&Y Holdings, LLC; JL&YL Holdings, LLC; Sandi Raines; R. Raghuram; Usha Raghuram; Lori K. Tokutomi; Garret Tom; Anita Tom; Ramon Fadrilan; Faye Fadrilan; Peter K. Lee and Monica L. Lee, as Trustees of the Lee Family 2002 Revocable Trust; Dominic Yin; Elias Shamieh; Jeffrey Quinn; Barbara Rose Quinn; Kenneth Riche; Maxine Riche; Norman Chandler; Benton Wan; Timothy D. Kaplan; Silkscape Inc.; Peter Cheng; Elisa Cheng; Greg A. Cameron; TMI Property Group, LLC; Richard Lutz; Sandra Lutz; Mary A. Kossick; Melvin Cheah; Di Shen; Nadine's Real Estate Investments, LLC; Ajit Gupta; Seema Gupta; Fredrick Fish; Lisa Fish; Robert A. Williams; Jacquelin Pham; May Ann Hom, as Trustee of the May Ann Hom Trust; Michael Hurley; Dominic Yin; Duane Windhorst; Marilyn Windhorst; Vinod Bhan; Anne Bhan; Guy P. Browne; Garth A. Williams; Pamela Y. Aratani; Darlene Lindgren; Laverne Roberts; Doug Mecham; Chrisine Mecham; Kwangsoo Son; Soo Yeun Moon; Johnson Akindodunse; Irene Weiss, as Trustee of the Weiss Family Trust; Pravesh Chopra; Terry Pope; Nancy Pope; James Taylor; Ryan Taylor; Ki Ham; Young Ja Choi; Sang Dae Sohn; Kuk Hyung (Connie); Sang (Mike) Yoo; Brett Menmuir, as Trustee of the Cayenne Trust; William Miner, Jr.; Chanh Truong; Elizabeth Anders Mecua; Shepherd Mountain, LLC; Robert Brunner; Amy Brunner; Jeff Riopelle; Patricia M. Moll; and Daniel Moll.

Attachment to Question 9:

- (1) Whether the district court abused its discretion when it struck Appellants' answer and entered a default?
- (2) Whether the district court erred by refusing to dismiss the action under NRCP 41(e)?
- (3) Whether the district court's order awarding lump sum compensatory damages is supported by standing, applicable law, or substantial evidence?
- (4) Whether the punitive damages phase was conducted in accordance with all rights and procedures afforded under NRCP 55 and the State and Federal Constitutions?
- (5) Whether there was a sufficient evidentiary and legal basis to award compensatory and punitive damages under Nevada and federal law?
- (6) Whether the district court properly calculated the award of punitive damages?
- (7) Whether the district court erred by allowing Plaintiffs to pursue disgorgement?
- (8) Whether the district court erred in finding the 2011 Unit Rental Agreement unconscionable and reverting the parties to the terminated 2007 agreement?
- (9) Whether the district court erred by interpreting and/or amending and modifying the parties' contractual agreements contained in the Governing Documents?
- (10) Whether the district court can amend or modify, by court order, the statutory terms controlling the termination of a UOA and subsequent sale of Units under NRS Chapter 116?
- (11) Whether the district court erred when it refused to dismiss the action for failure to bring to trial within three years after remand under NRCP 41?
- (12) Whether the district court erred by appointing a receiver, conferring certain powers, and expanding its authority through procedurally and substantively improper means?
- (13) Whether the district court erred when it refused to terminate the receivership and continued ordering disbursements as a substitute for compensatory damages beyond those prayed for in the complaint and in violation of NRCP 54(c).
- (14) Whether the district court erred in awarding Plaintiffs' attorneys' fees, including under *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969)?
- (15) Whether the district court erred when it awarded costs and denied Defendants' motion to retax costs?
- (16) Whether the district court erred when the Chief Judge of the Second Judicial District Court disqualified all judicial offices of the Second Judicial District Court after the initial judge in this matter lost his election?

Attachment to Question 22:

1. Plaintiffs/Respondents:

Albert Thomas; Jane Dunlap; John Dunlap; Barry Hay; Marie-Anne Alexander, as Trustee of the Marie-Annie Alexander Living Trust; Melissa Vagujhelyi and George Vagujhelyi, as Trustees of the George Vagujhelyi and Melissa Vagujhelyi 2001 Family Trust Agreement, u/t/a April 13, 2001; D' Arcy Nunn; Henry Nunn; Madelyn Van Der Bokke; Lee Van Der Bokke; Donald Schreifels; Robert R. Pederson, individually and as Trustee of the Pederson 1990 Trust; Lou Ann Pederson, individually and as Trustee of the Pederson 1990 Trust; Lori Ordover; William A. Henderson, individually; Christine E. Henderson; Loren D. Parker; Suzanne C. Parker; Michael Izady; Steven Takaki; Farad Torabkhan; Sahar Tavakol; M&Y Holdings, LLC; JL&YL Holdings, LLC; Sandi Raines; R. Raghuram; Usha Raghuram; Lori K. Tokutomi; Garret Tom; Anita Tom; Ramon Fadrilan; Faye Fadrilan; Peter K. Lee and Monica L. Lee, as Trustees of the Lee Family 2002 Revocable Trust; Dominic Yin; Elias Shamieh; Jeffrey Quinn; Barbara Rose Quinn; Kenneth Riche; Maxine Riche; Norman Chandler; Benton Wan; Timothy D. Kaplan; Silkscape Inc.; Peter Cheng; Elisa Cheng; Greg A. Cameron; TMI Property Group, LLC; Richard Lutz; Sandra Lutz; Mary A. Kossick; Melvin Cheah; Di Shen; Nadine's Real Estate Investments, LLC; Ajit Gupta; Seema Gupta; Fredrick Fish; Lisa Fish; Robert A. Williams; Jacquelin Pham; May Ann Hom, as Trustee of the May Ann Hom Trust; Michael Hurley; Dominic Yin; Duane Windhorst; Marilyn Windhorst; Vinod Bhan; Anne Bhan; Guy P. Browne; Garth A. Williams; Pamela Y. Aratani; Darlene Lindgren; Laverne Roberts; Doug Mecham; Chrisine Mecham; Kwangsoo Son; Soo Yeun Moon; Johnson Akindodunse; Irene Weiss, as Trustee of the Weiss Family Trust; Pravesh Chopra; Terry Pope; Nancy Pope; James Taylor; Ryan Taylor; Ki Ham; Young Ja Choi; Sang Dae Sohn; Kuk Hyung (Connie); Sang (Mike) Yoo; Brett Menmuir, as Trustee of the Cayenne Trust; William Miner, Jr.; Chanh Truong; Elizabeth Anders Mecua; Shepherd Mountain, LLC; Robert Brunner; Amy Brunner; Jeff Riopelle; Patricia M. Moll; and Daniel Moll.

2. Defendants/Appellants:

MEI-GSR Holdings, LLC; Gage Village Commercial Development, LLC; and AM-GSR Holdings, LLC.

APPENDIX OF EXHIBITS
DOCKETING STATEMENT QUESTION 27

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>DATE FILED</u>
A	Amended Final Judgment	April 10, 2023
B	Order	March 27, 2023
C	Order	March 27, 2023
D	Order	March 27, 2023
E	Order	March 14, 2023
F	Order	March 14, 2023
G	Final Judgment	February 2, 2023
H	Order	January 26, 2023
I	Order	January 26, 2023
J	Order	January 26, 2023
K	Order	January 26, 2023
L	Order	January 17, 2023
M	Order	December 5, 2022
N	Order	November 18, 2022
O	Order Granting Receiver's Motion for Orders & Instructions	January 4, 2023
P	Order Granting Plaintiffs' Motion for Instructions to Receiver	January 4, 2022
Q	Order Granting Plaintiffs' Motion to Stay Special Assessment	January 4, 2022
R	Order Approving Receiver's Request to Approve Updated Fees	January 4, 2022
S	Order Denying Motion to Set Aside or Amend Judgment	October 2, 2019
T	Findings of Fact, Conclusions of Law and Judgment	October 9, 2015

U	Order Appointing Receiver and Directing Defendants' Compliance	January 7, 2015
V	Order Granting Plaintiffs' Motion for Case-Terminating Sanctions	October 3, 2014
W	Order Regarding Original Motion for Case Concluding Sanctions	December 18, 2013
X	Order Granting Plaintiffs' Supplemental Motion for Fees Pursuant to the Court's December 24, 2020 Order Granting Motion for Clarification and Sanctioning the Defendants	January 4, 2022
Y	Order Disqualifying all Judicial Officers of the Second Judicial District	January 21, 2021
Z	Order on Plaintiffs' Motion for Attorneys' Fees and Plaintiffs' Supplemental Motion for Attorneys' Fees	May 11, 2023
AA	Order re Defendants' Motions to Retax Costs	May 30, 2023
BB	Second Amended Final Monetary Judgment	June 29, 2023
CC	Corrected Second Amended Final Monetary Judgment	July 10, 2023
DD	Notice of Entry of Judgment	July 11, 2023
EE	Second Amended Complaint	March 26, 2013
FF	Answer to Second Amended Complaint and Counterclaim	May 23, 2013

EXHIBIT A

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

) AMENDED FINAL JUDGMENT

This matter having come before the Court for a default prove-up hearing from March 23, 2015 to March 25, 2015, with Findings of Fact and Conclusions of Law and Judgment entered October 9, 2015, and again before the Court on July 8, 2022 and July 18, 2022 on Plaintiffs' November 6, 2015 Motion in Support of Punitive Damages Award, with an Order entered on January 17, 2023,
IT IS HEREBY ORDERED AND ADJUDGED that judgment is entered in favor of Plaintiffs and against Defendants as follows:

1. Against MEI-GSR Holdings, LLC ("MEI-GSR") and AM-GSR Holdings, LLC ("AM-GSR") in the amount of \$442,591.83 for underpaid revenues to Unit owners;

2. Against MEI-GSR, AM-GSR, and Gage Village Development, LLC in the amount of \$4,152,669.13 for the rental of units of owners who had no rental agreement;

1 3. Against MEI-GSR and AM-GSR in the amount of \$1,399,630.44 for discounting owner's rooms
2 without credits;

3 4. Against MEI-GSR and AM-GSR in the amount of \$31,269.44 for discounted rooms with credits;

4 5. Against MEI-GSR and AM-GSR in the amount of \$96,084.96 for "comp'd" or free rooms;

5 6. Against MEI-GSR and AM-GSR in the amount of \$411,833.40 for damages associated with the
6 bad faith "preferential rotation system";

7 7. Against MEI-GSR and AM-GSR in the amount of \$1,706,798.04 for improperly calculated and
8 assessed contracted hotel fees;

9 8. Against MEI-GSR and AM-GSR in the amount of \$77,338.31 for improperly collected
10 assessments;

11 TOTAL COMPENSATORY DAMAGES \$8,318,215.54

12 IT IS FURTHER ORDERED AND ADJUDGED that Defendant AM-GSR Holdings, LLC is
13 jointly and severally liable with MEI-GSR, for these compensatory damages, only.

14 IT IS FURTHER ORDERED AND ADJUDGED that Defendant Gage Village Development is
15 jointly and severally liable with MEI-GSR for the sum of \$4,152,669.13 in compensatory damages,
16 only.

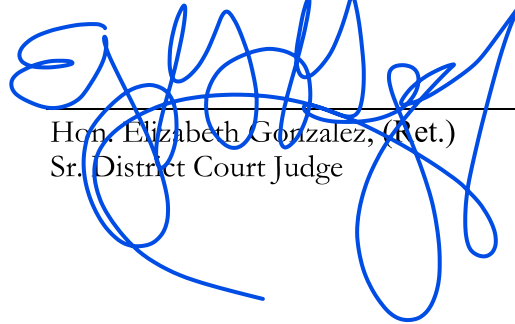
17 IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs be given and granted punitive
18 damages against Defendants MEI-GSR in the total amount of \$9,190,521.92.

19 This Judgment shall accrue pre- and post-judgment interest at the applicable legal rate as provided
20 by Nevada law until fully satisfied. No pre-judgment interest shall accrue on the punitive damages
21 award.

1 IT IS FURTHER ORDERED AND ADJUDGED that Defendants shall take nothing by way of
2 their counterclaims which were previously stricken by the Court.

3 Dated this 10th day April, 2023.

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Hon. Elizabeth Gonzalez, (Ret.)
Sr. District Court Judge

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DALE KOTCHKA-ALANES
DANIEL POLSENBERG, ESQ.
DAVID MCELHINNEY, ESQ.
BRIANA COLLINGS, ESQ.
ABRAN VIGIL, ESQ.
JONATHAN TEW, ESQ.
JARRAD MILLER, ESQ.
TODD ALEXANDER, ESQ.
F. DEARMOND SHARP, ESQ.
STEPHANIE SHARP, ESQ.
G. DAVID ROBERTSON, ESQ.
ROBERT EISENBERG, ESQ.
JENNIFER HOSTETLER, ESQ.
ANN HALL, ESQ.
JAMES PROCTOR, ESQ.
JORDAN SMITH, ESQ.

Holly W. Krige

EXHIBIT B

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

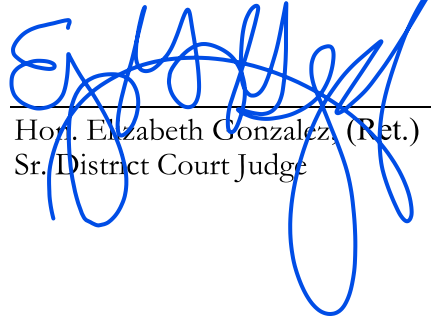
Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on Plaintiffs' Motion to Alter or Amend Judgment ("Motion").¹ After consideration of the briefing, the Court grants the Motion in part.

Consistent with the Order Granting in Part and Denying in Part Plaintiffs' Motion to Alter or Amend Judgment, filed March 7, 2019 the Final Judgment will be amended to recognize the joint liability of Defendants AM-GSR Holdings, LLC and Gage Village Development, LLC for compensatory damages, only.

¹ The court has also reviewed the Opposition filed March 1, 2023 and the Reply filed on March 8, 2023..

1 Plaintiffs' counsel to prepare and submit an amended judgment.

2 Dated this 27th day March, 2023.

3 A handwritten signature in blue ink, appearing to read 'Elizabeth Gonzalez', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke.

4
5 Hon. Elizabeth Gonzalez (Ret.)
6 Sr. District Court Judge
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CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 27th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

DALE KOTCHKA-ALANES
DANIEL POLSENBERG, ESQ.
DAVID MCELHINNEY, ESQ.
BRIANA COLLINGS, ESQ.
ABRAN VIGIL, ESQ.
JONATHAN TEW, ESQ.
JARRAD MILLER, ESQ.
TODD ALEXANDER, ESQ.
F. DEARMOND SHARP, ESQ.
STEPHANIE SHARP, ESQ.
G.DAVID ROBERTSON, ESQ.
ROBERT EISENBERG, ESQ.
JENNIFER HOSTETLER, ESQ.
ANN HALL, ESQ.
JAMES PROCTOR, ESQ.
JORDAN SMITH, ESQ.



EXHIBIT C

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on DEFENDANTS' OBJECTION TO RECEIVER'S CALCULATIONS CONTAINED IN EXHIBIT 1 ATTACHED TO RECEIVER'S OMNIBUS REPLY TO PARTIES OPPOSITIONS TO THE RECEIVER'S MOTION FOR ORDERS & INSTRUCTIONS ("Objection").¹ After consideration of the briefing, the Court overrules the objection.

While the Court appreciates the arguments that are made in the Objection, these are the arguments which have been rejected by the Court and in large part will be addressed as part of the contempt hearing beginning on April 3, 2023. Defendant shall comply with the Order entered on January 26,

¹ The court has also reviewed the Receiver's response filed on February 24, 2023.

2023, including the deposits as directed in that Order within five (5) judicial days of entry of this
Order.

Dated this 27th day March, 2023.



Hon. Elizabeth Gonzalez, (Ret.)
Sr. District Court Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 27th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

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ROBERT EISENBERG, ESQ.
JENNIFER HOSTETLER, ESQ.
ANN HALL, ESQ.
JAMES PROCTOR, ESQ.
JORDAN SMITH, ESQ.



EXHIBIT D

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on Defendants' Motion to Modify and Terminate Receivership ("Motion").¹

After consideration of the briefing, the Court denies the motion.

The Motion is premature given the status of Defendants compliance with the Court's prior order.

The Court has overruled the Objection by order of this date and Defendants are to deposit funds consistent with the Order entered on January 26, 2023. Once those funds are deposited, the


Receiver shall file a motion for payment of expenses including his fees and the fees of his attorney;

¹ The court has also reviewed the Opposition filed March 2, 2023, Notice of Errata filed March 3, 2023, and the Reply filed on March 10, 2023..

1 After payment of those funds, the Receiver shall provide accurate rental information² as well as the
2 recalculated fees. Once that information is provided to Plaintiffs' counsel, Plaintiffs' have 30 days to
3 provide their appraisal.

4 Defendants may file a subsequent motion once they have complied with the Court's prior orders.

6 Dated this 27th day March, 2023.

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8 _____
9 Hon. Elizabeth Gonzalez, (Ret.)
10 Sr. District Court Judge

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28 ² The Court notes that Defendants are in control of this information and there providing of this information to the
Receiver may expedite the process. If Defendants do not cooperate with the Receiver in providing this information, the
process may take much longer than necessary.

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 27th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

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ROBERT EISENBERG, ESQ.
JENNIFER HOSTETLER, ESQ.
ANN HALL, ESQ.
JAMES PROCTOR, ESQ.
JORDAN SMITH, ESQ.



EXHIBIT E

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

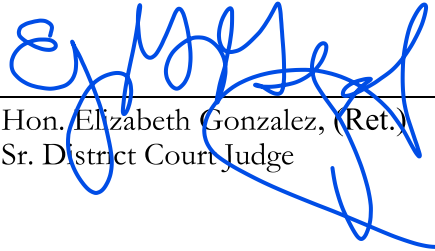
Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on MOTION FOR INSTRUCTIONS TO RECEIVER CONCERNING TERMINATION OF THE GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION AND RENTAL OF UNITS UNTIL TIME OF SALE filed on JANUARY 26, 2023 ("Motion for Instructions").¹ After consideration of the briefing, the Court grants the motion.

The limited definition of occupancy is not one the Court is inclined to adopt. Defendant's argument that the 670 former units of the GSRUOA can no longer be rented under the URA but only occupied would promote economic waste. The 670 former units represent about one third of the

¹ The court has also reviewed the, the Defendants' Opposition filed February 14, 2023 and the Reply filed on February, 24, 2023.

1 total units at the GSR and removing all of those units (including Defendant's) from availability for
2 rental is nonsensical. The Receiver is instructed to continue to rent the former units under the
3 URA.
4

5 Dated this 14th day March, 2023.

6 
7 _____
8 Hon. Elizabeth Gonzalez, (Ret.)
9 Sr. District Court Judge
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DALE KOTCHKA-ALANES
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ROBERT EISENBERG, ESQ.
JENNIFER HOSTETLER, ESQ.
ANN HALL, ESQ.
JAMES PROCTOR, ESQ.
JORDAN SMITH, ESQ.

Holly W. Krige

EXHIBIT F

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on Plaintiffs' Motion for Fees Pursuant to NRCP 37 filed November 2019 ("Rule 37 Motion for Fees").¹ After consideration of the briefing, the Court grants the motion. NRCP 37 permits the Court to award attorneys fees related to discovery motions. While Defendants argue that the positions taken were taken in good faith, the record related to this dispute does not support that position.

After reviewing the time entries in full, the Court finds the entries are adequate and provide the Court sufficient information to determine that the tasks undertaken by Plaintiffs' counsel were both

¹ The court has also reviewed the, the Defendants' Opposition filed December 5, 2019 and the Reply filed on December 23, 2019.

1 necessary and reasonable. The Court finds the number of hours expended by Plaintiffs' counsel on
2 those tasks for which Plaintiffs seek to recover attorneys' fees were reasonable. Plaintiffs have set
3 forth their counsels' hourly rate. The Court finds the hourly rates reasonable. The Court finds the
4 hours spent by Plaintiffs' counsel and their hourly rates are reasonable.

5
6 The Court must next consider the *Brunzell* factors to determine the appropriateness of the amount
7 requested. To determine whether any adjustments to the amount are necessary, the Court must
8 consider: (1) the qualities of the advocate: his ability, his training, education, experience, professional
9 standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance,
10 time and skill required, the responsibility imposed and the prominence and character of the parties
11 where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the
12 skill, time and attention given to the work; (4) the result: whether the attorney was successful and
13 what benefits were derived. Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31, 33
14 (1969). The Court finds all of these factors weigh against any adjustment to the amount and in favor
15 of awarding Plaintiffs the full amount.
16

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18 First, the Court is aware of the quality of Plaintiffs' counsel, and concludes this factor is in favor of
19 awarding Plaintiffs the entire amount. Second, the Court finds the character of the work to be done
20 to be important given the history of discovery abuse. Third, the work actually performed by
21 Plaintiffs' counsel is evidenced by the billing records submitted with the Motion. Each time entry
22 reflects work which was necessary and that the individual whose time is reflected dedicated ample
23 skill, time, and attention to the task at hand. Brunzell, 85 Nev. at 349, 455 P.2d at 33. This factor
24 thus also weighs in favor of awarding the full amount. Fourth, the Court must consider the result.
25 The Court finds this factor weighs in favor of awarding the entire amount as well. Plaintiffs have
26 obtained a successful result. This factor weighs in favor of granting the full amount to Plaintiffs. The
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1 *Brunzell* factors clearly indicate that the amount is appropriate and requires no adjustments. The
2 Court therefore finds an award of the entire amount requested, \$46571, is proper.

3 IT IS HEREBY ORDERED that Plaintiffs' Motion for Fees Pursuant to NRCP 37 filed
4 November 2019 is granted in full.
5

6 Dated this 14th day March, 2023.

7
8 A large, stylized handwritten signature in blue ink, written over a horizontal line. The signature is cursive and appears to read 'Elizabeth Gonzalez'.
9 Hon. Elizabeth Gonzalez, (Ret.)
10 Sr. District Court Judge
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JENNIFER HOSTETLER, ESQ.
ANN HALL, ESQ.
JAMES PROCTOR, ESQ.
JORDAN SMITH, ESQ.

Holly W. Krige

EXHIBIT G

Jordan T. Smith, Esq., Bar No. 12097

JTS@pisanellibice.com

PISANELLI BICE PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: 702.214.2100

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Ann Hall, Esq., Bar No. 5447

ann.hall@meruelogroup.com

David C. McElhinney, Esq., Bar No. 0033

david.mcelhinney@meruelogroup.com

MERUELO GROUP, LLC

Legal Services Department

5th Floor Executive Offices

2535 Las Vegas Boulevard South

Las Vegas, NV 89109

Tel: (562) 454-9786

Attorneys for Defendants

MEI-GSR Holdings, LLC;

Gage Village Commercial Development, LLC;

and AM-GSR Holdings, LLC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; JANE
DUNLAP, individually; JOHN DUNLAP,
individually; BARRY HAY, individually;
MARIE-ANNE ALEXANDER, as Trustee of
the MARIE-ANNIE ALEXANDER LIVING
TRUST; MELISSA VAGUJHELYI and
GEORGE VAGUJHELYI, as Trustees of the
GEORGE VAGUJHELYI AND MELISSA
VAGUJHELYI 2001 FAMILY TRUST
AGREEMENT, U/T/A APRIL 13, 2001; D'
ARCY NUNN, individually; HENRY NUNN,
individually; MADELYN VAN DER BOKKE,
individually; LEE VAN DER BOKKE,
individually; DONALD SCHREIFELS,
individually; ROBERT R. PEDERSON,
individually and as Trustee of the PEDERSON
1990 TRUST; LOU ANN PEDERSON,
individually and as Trustee of the PEDERSON
1990 TRUST; LORI ORDOVER, individually;
WILLIAM A. HENDERSON, individually;
CHRISTINE E. HENDERSON, individually;
LOREN D. PARKER, individually; SUZANNE
C. PARKER, individually; MICHAEL IZADY,
individually; STEVEN TAKAKI, individually;

Case No.: CV12-0222
Dept. No.: 10 (Senior Judge)

FINAL JUDGMENT

1 FARAD TORABKHAN, individually; SAHAR
2 TAVAKOL, individually; M&Y HOLDINGS,
3 LLC; JL&YL HOLDINGS, LLC; SANDI
4 RAINES, individually; R. RAGHURAM,
5 individually; USHA RAGHURAM,
6 individually; LORI K. TOKUTOMI,
7 individually; GARRET TOM, individually;
8 ANITA TOM, individually; RAMON
9 FADRILAN, individually; FAYE FADRILAN,
10 individually; PETER K. LEE and MONICA L.
11 LEE, as Trustees of the LEE FAMILY 2002
12 REVOCABLE TRUST; DOMINIC YIN,
13 individually; ELIAS SHAMIEH, individually;
14 JEFFREY QUINN individually; BARBARA
15 ROSE QUINN individually; KENNETH
16 RICHE, individually; MAXINE RICHE,
17 individually; NORMAN CHANDLER,
18 individually; BENTON WAN, individually;
19 TIMOTHY D. KAPLAN, individually;
20 SILKSCAPE INC.; PETER CHENG,
21 individually; ELISA CHENG, individually;
22 GREG A. CAMERON, individually; TMI
23 PROPERTY GROUP, LLC; RICHARD LUTZ,
24 individually; SANDRA LUTZ, individually;
25 MARY A. KOSSICK, individually; MELVIN
26 CHEAH, individually; DI SHEN, individually;
27 NADINE'S REAL ESTATE INVESTMENTS,
28 LLC; AJIT GUPTA, individually; SEEMA
GUPTA, individually; FREDRICK FISH,
individually; LISA FISH, individually;
ROBERT A. WILLIAMS, individually;
JACQUELIN PHAM, individually; MAY ANN
HOM, as Trustee of the MAY ANN HOM
TRUST; MICHAEL HURLEY, individually;
DOMINIC YIN, individually; DUANE
WINDHORST, individually; MARILYN
WINDHORST, individually; VINOD BHAN,
individually; ANNE BHAN, individually; GUY
P. BROWNE, individually; GARTH A.
WILLIAMS, individually; PAMELA Y.
ARATANI, individually; DARLENE
LINDGREN, individually; LAVERNE
ROBERTS, individually; DOUG MECHAM,
individually; CHRISINE MECHAM,
individually; KWANGSOO SON, individually;
SOO YEUN MOON, individually; JOHNSON
AKINDODUNSE, individually; IRENE
WEISS, as Trustee of the WEISS FAMILY
TRUST; PRAVESH CHOPRA, individually;
TERRY POPE, individually; NANCY POPE,
individually; JAMES TAYLOR, individually;
RYAN TAYLOR, individually; KI HAM,
individually; YOUNG JA CHOI, individually;
SANG DAE SOHN, individually; KUK
HYUNG (CONNIE), individually; SANG

(MIKE) YOO, individually; BRETT
MENMUIR, as Trustee of the CAYENNE
TRUST; WILLIAM MINER, JR., individually;
CHANH TRUONG, individually; ELIZABETH
ANDERS MECUA, individually; SHEPHERD
MOUNTAIN, LLC; ROBERT BRUNNER,
individually; AMY BRUNNER, individually;
JEFF RIOPELLE, individually; PATRICIA M.
MOLL, individually; DANIEL MOLL,
individually; and DOE PLAINTIFFS 1
THROUGH 10, inclusive ,

Plaintiff(s),

v.

MEI-GSR HOLDINGS, LLC, a Nevada
Limited Liability Company, AM-GSR
HOLDINGS, LLC, a Nevada Limited Liability
Company, GRAND SIERRA RESORT UNIT
OWNERS' ASSOCIATION, a Nevada
Nonprofit Corporation, GAGE VILLAGE
COMMERCIAL DEVELOPMENT, LLC., a
Nevada Limited Liability Company, and DOES
I-X inclusive,

Defendant(s).

This matter having come before the Court for a default prove-up hearing from March 23, 2015 to March 25, 2015, with Findings of Fact and Conclusions of Law and Judgment entered October 9, 2015, and again before the Court on July 8, 2022 and July 18, 2022 on Plaintiffs' November 6, 2015 Motion in Support of Punitive Damages Award, with an Order entered on January 17, 2023,

IT IS HEREBY ORDERED AND ADJUDGED that judgment is entered in favor of Plaintiffs and against Defendants as follows:

1. Against MEI-GSR in the amount of \$442,591.83 for underpaid revenues to Unit owners;
2. Against MEI-GSR in the amount of \$4,152,669.13 for the rental of units of owners who had no rental agreement;
3. Against MEI-GSR in the amount of \$1,399,630.44 for discounting owner's rooms without credits;
4. Against MEI-GSR in the amount of \$31,269.44 for discounted rooms with credits;
5. Against MEI-GSR in the amount of \$96,084.96 for "comp'd" or free rooms;

1 6. Against MEI-GSR in the amount of \$411,833.40 for damages associated with the bad
2 faith "preferential rotation system";

3 7. Against MEI-GSR in the amount of \$1,706,798.04 for improperly calculated and
4 assessed contracted hotel fees;

5 8. Against MEI-GSR in the amount of \$77,338.31 for improperly collected assessments;

6 **TOTAL COMPENSATORY DAMAGES.....\$8,318,215.54**

7 IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs be given and granted
8 punitive damages against Defendants in the total amount of **\$9,190,521.92**.

9 This Judgment shall accrue pre- and post-judgment at the applicable legal rate as provided
10 by Nevada law until fully satisfied. No pre-judgment interest shall accrue on the punitive damages
11 award.

12 IT IS FURTHER ORDERED AND ADJUDGED that Defendants shall take nothing by
13 way of their counterclaims which were previously stricken by the Court.

14
15 Dated this 2nd day of February, 2023

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17 
18 THE HONORABLE ELIZABETH G. GONZALEZ
(RET.)

19 Respectfully submitted by:

20 PISANELLI BICE PLLC

21
22 By: /s/ Jordan T. Smith
23 Jordan T. Smith, Esq., #12097
24 400 South 7th Street, Suite 300
25 Las Vegas, Nevada 89101

26 *Attorneys for Defendants/Appellants*
27 *MEI-GSR Holdings, LLC;*
28 *Gage Village Commercial Development, LLC;*
and AM-GSR Holdings, LLC

EXHIBIT H

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on the:

Defendants' Motion for Instructions Re Reimbursement of 2020 Capital Expenditures filed 6/24/21.¹ This motion is denied.

As the Court noted in the motion related to the prior request for the reimbursement of capital expenses, no one disputes Defendants have made substantial upgrades and improvements to the GSR property (“Property”) over the last five years. The issue at the heart of the motion is again

¹ The Court has also reviewed the Plaintiffs Opposition filed on 10/11/2021, and the Defendants Reply filed 11/10/2021.

1 whether the unit owners of GSRUOA are required by the CC&Rs to bear a portion of these
2 expenses.

3 Section 6.2 of the CC&Rs recognize that the unit owners of GSRUOA must share in certain
4 expenses related to "Common Elements". The Court finds that the requested expenses for 2020 do
5 not fall within the definition of "Common Elements".
6

7 The procedures required under section 6.10(a) were not followed prior to the 2020 expenses being
8 incurred. The Court declines to find the 2020 expenses are "extraordinary expenditures" which
9 would permit reimbursement under Section 6.10(b).
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11
12 Dated this 26th day January, 2023.

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15 Hon. Elizabeth Gonzalez, (Ret.)
16 Sr. District Court Judge
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ORDER - 2

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 26th day of January, 2023, I electronically filed the foregoing with the Clerk
of the Court system which will send a notice of electronic filing to the following:

DALE KOTCHKA-ALANES

DANIEL POLSENBERG, ESQ.

DAVID MCELHINNEY, ESQ.

BRIANA COLLINGS, ESQ.

ABRAN VIGIL, ESQ.

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STEPHANIE SHARP, ESQ.

G. DAVID ROBERTSON, ESQ.

ROBERT EISENBERG, ESQ.

JENNIFER HOSTETLER, ESQ.

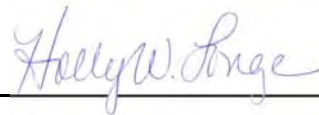


EXHIBIT I

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on the:

RECEIVER'S MOTION FOR ORDERS & INSTRUCTIONS filed 12/1/23.¹ This motion is granted.

The Order Appointing Receiver was entered on January 17, 2015 (the "Appointment Order"). The Appointment Order appointed the Receiver over Grand Sierra Resort Unit Owners Association ("GSRUOA") including units owned by Defendants. The units owned by Defendants are

¹ The Court has also reviewed the Defendants' Opposition filed on 12/14/2022, Plaintiffs' Opposition filed on 12/14/2022, and the Receiver's Omnibus Reply filed 12/19/2022.

specifically included in the definition of “the Property” and fall within the scope of the Receiver’s responsibilities. Appointment Order at page 1, line 27 to page 2, line 9.

The Appointment Order and its interpretation has been subject to motion practice as part of the tortured history of this matter. Pursuant to a Court order, the Receiver acts in place of the Board. Section 8a of the Appointment Order unambiguously provides the Receiver with the power to “pay and discharge out of the Property’s rents and/or GSRUOA monthly dues collections all the reasonable and necessary expenses of the receivership . . . including all of the Receiver’s and related fees”.

Central to answering the inquiries posed by the Receiver is the scope of the Receiver’s authority. Despite the arguments made by the Defendants, the Receiver is responsible over the entire GSRUOA. The GSRUOA includes not only units owned by Plaintiffs but also units owned by Defendants (collectively the “Parties”). While the Receiver is not to collect rent from the units of those who are not Parties to this action, the rent from the units owned by the Parties are to be paid to the Receiver and utilized for the purposes identified in the Appointment Order including payment of the Receiver’s expenses. These expenses can only be paid from the rents which are earned by the units owned by the Parties to the action, i.e. the Plaintiffs and the Defendants units.

As such the Court responds to the inquiries posed by the Receiver as follows:

The Receiver’s calculated Daily Use Fee (DUF), Shared Facilities Unit Expenses (SFUE), and Hotel Expense (HE) fees apply to both the Plaintiffs owned units and Defendants owned units. The rental income to be collected by the Receiver relates to units owned both by the Plaintiffs and Defendants. The Court confirms that, “in accordance with the Governing Documents”, including the “Findings of Fact, Conclusions of Law and Judgment, Filed October 9, 2015” that the Receiver has the authority to direct, audit, oversee, and implement the reserve study for all 670 condominium units.

1 Consistent with the Order entered on December 5, 2022 the Defendants are prevented from
2 foreclosing upon any other units owned by Plaintiffs until further order of the Court. Defendants
3 have indicated in their Opposition that they are in compliance with this Order.

4 The Receiver has not been paid. This is a result of the disagreements between the Parties as to the
5 allocation of expenses and the inability, without clarification, for the Receiver to calculate the
6 permissible expenses for Defendants to deduct from the revenue of the Parties units. The Court has
7 recognized this as an issue which must be resolved and has addressed it in the Order entered on
8 December 5, 2022.²

9
10 Attached as Exhibit 1 to the Receiver's Omnibus Reply is a spreadsheet with calculations based
11 upon the various orders of the Court. The Court notes these calculations appear to include only
12 units owned by Plaintiffs. If either Plaintiffs or Defendants object to the calculations contained in
13 Exhibit 1, a written objection shall be filed within 15 judicial days of entry of this Order. If an
14 objection is filed, the Receiver may file a response to the objection within 15 days of the filing of the
15 objection. If no objection is filed, the Defendants shall make the deposits of rent listed in the
16 column on the far right of each page of Exhibit 1 in the total amount of \$1,103,950.99 into the
17 Receiver's bank account within 25 judicial days of entry of this Order. Prior to making any
18 disbursements, the Receiver shall file a motion with the Court outlining the funds received and the
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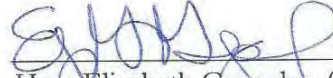
24 ² The language in the Order provides in part:

25 IT IS FURTHER ORDERED that prior to a sale of the Property as a whole, the Court shall enter an Order on motion
26 to terminate and or modify the Receivership that addresses the issues of payment to the Receiver and his counsel, the
27 scope of the wind up process of the GSRUOA to be overseen by the Receiver, as well as the responsibility for any
28 amounts which are awarded as a result of the pending Applications for OSC.

Order dated December 5, 2022, p. 7 at line 13-18.

1 proposed distributions for the Receiver's fees and expenses as well as amounts set aside for reserve
2 and any proposed distributions to the Parties.
3

4 Dated this 26th day January, 2023.

5 

6 Hon. Elizabeth Gonzalez, (Ret.)
7 Sr. District Court Judge
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CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 26th day of January, 2023, I electronically filed the foregoing with the Clerk
of the Court system which will send a notice of electronic filing to the following:

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BRIANA COLLINGS, ESQ.

ABRAN VIGIL, ESQ.

JONATHAN TEW, ESQ.

JARRAD MILLER, ESQ.

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F. SHARP, ESQ.

STEPHANIE SHARP, ESQ.

G. DAVID ROBERTSON, ESQ.

ROBERT EISENBERG, ESQ.

JENNIFER HOSTETLER, ESQ.



EXHIBIT J

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on the:

Defendants' Motion for Instructions to Receiver Re Reimbursement of Capital

Expenditures filed 5/21/20.¹ This motion is denied.

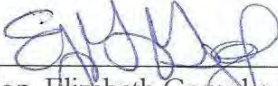
No one disputes Defendants have made substantial upgrades and improvements to the GSR property ("Property") over the last five years. The issue at the heart of the motion is whether the unit owners of GSRUOA are required by the CC&Rs to bear a portion of this remodeling expense.

¹ The Court has also reviewed the Plaintiffs Opposition filed on 6/18/2020, and the Defendants Reply filed 7/10/2020.

1 Section 6.2 of the CC&Rs recognize that the unit owners of GSRUOA must share in certain
2 expenses related to "Common Elements". The Court finds that the requested expenses for the
3 remodeling do not fall within the definition of "Common Elements".

4 The procedures required under section 6.10(a) were not followed prior to the remodeling expenses
5 being incurred. The Court declines to find the remodeling expenses are "extraordinary
6 expenditures" which would permit reimbursement under Section 6.10(b).

8 Dated this 26th day January, 2023.

9
10 
11 _____
12 Hon. Elizabeth Gonzalez, (Ret.)
13 Sr. District Court Judge
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ROBERT EISENBERG, ESQ.

JENNIFER HOSTETLER, ESQ.



EXHIBIT K

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' EMERGENCY
MOTION FOR INSTRUCTIONS TO RECEIVER TO NOT EXECUTE DOCUMENTS
TERMINATING THE GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION
WITHOUT NECESSARY REVISIONS TO THE SUBJECT DOCUMENTS

Plaintiffs' Ex Parte Motion for Order Shortening Time on Emergency Motion for Instructions to
Receiver to Not Execute Documents Terminating the Grand Sierra Resort Unit Owners'
Association Without Necessary Revisions to Subject Documents filed on January 13, 2023 ("Motion
for OST") was granted by the Court. The Court held oral argument on Plaintiffs' Emergency
Motion for Instructions to Receiver to Not Execute Documents Terminating the Grand Sierra
Resort Unit Owners' Association Without Necessary Revisions to the Subject Documents, filed
January 13, 2023 ("Motion") via videoconference on January 18, 2023.

1 The Motion requests the Court instruct the Receiver to not execute any documents related to the
2 termination of the Grand Sierra Resort Unit Owners' Association ("GSRUOA") until such
3 documents are revised to comply with applicable law. Namely, Plaintiffs argue that Defendants'
4 proposed Agreement to Terminate Condominium Hotel, Condominium Hotel Association, and
5 Declaration of Covenants, Conditions, Restrictions and Reservation of Easements ("Agreement to
6 Terminate") does not comply with NRS 116.2118(5).

7
8 The Agreement to Terminate states that "[a]t the Meeting, Hotel Unit Owner and 80% Units'
9 Owners authorized the Hotel Unit Owner, on behalf of the Units' Owners, to contract for the sale
10 of real estate owned by the Units' Owners in the Condominium Hotel," NRS 116.2118(5) states that
11 "[t]he association, on behalf of the units' owners, may contract for the sale of the real estate in a
12 common-interest community," (Motion at 2:12-23.) This conflict is the basis of Plaintiffs'
13 Motion.
14

15 The Court agrees with Plaintiffs' concern about this conflict. Pursuant to NRS 116.2118(5), only the
16 "association" – the GSRUOA – may hold title to the condominium units as trustee upon
17 termination and subsequently contract for sale of those condominium units. The Hotel Unit
18 Owner, Defendant MEI-GSR Holdings, LLC, may not do so. The Court-ordered receivership over
19 the GSRUOA will continue after the GSRUOA termination until further order of the Court in
20 accordance with this Courts' orders and NRS 116.2118(5).

21
22 Under NRS 116.2118(5), because the real estate of the association is to be sold following
23 termination, title to that real estate, upon termination, vests in the association as trustee for the
24 holders of all interests in the units. Thereafter, the association has all powers necessary and
25 appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof
26 distributed, the association continues in existence with all powers it had before termination. As long
27
28

1 as the association holds title to the real estate, each unit's owner and his or her successors in interest
2 have an exclusive right to occupancy of the portion of the real estate that formerly constituted the
3 unit. During the period of that occupancy, each unit's owner and his or her successors in interest
4 remain liable for all assessments and other obligations imposed on units' owners by this chapter or
5 the declaration.
6

7 Any sale of the GSRUOA units will be conducted in accordance with the Court's December 5, 2022
8 Order.

9 The Court declines to rule on any other matters because it would be unfair to the Defendants given
10 they had no opportunity to brief the issues.
11

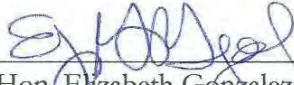
12 IT IS HEREBY ORDERED, that Plaintiffs' Motion is GRANTED in part and DENIED in part.

13 The Court affirms that the GSRUOA, through the Receiver, is to take title to the Plaintiffs' and
14 Defendants' condominium units ("property") as trustee upon termination of the association, and is
15 the only entity with authority to contract for the sale of the property. The GSRUOA shall continue
16 to operate under the receivership and the Receiver shall have the sole authority to act on behalf of
17 the association until the sale is concluded and further order from the Court. Any sale of the property
18 must be conducted in accordance with the Court's December 5, 2023.
19

20 IT IS FURTHER ORDERED, that the Receiver is instructed to not execute any documents relating
21 to the termination of the GSRUOA or subsequent sale of Plaintiffs' and Defendants' condominium
22 units which do not comply with this order. As discussed during the January 18, 2022 hearing, the
23 Defendants may submit to the Receiver an agreement to terminate that replaces the words "Hotel
24 Unit Owner" with "Association."
25
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1 IT IS FURTHER ORDERED, that the vote held on January 18, 2023 to terminate the GSRUOA is
2 not invalidated at this time. However, the Court reserves judgement on whether the vote was valid
3 in light of the Agreement to Terminate's deviation from NRS 116.2118.
4

5 Dated this 26th day January, 2023.

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7 _____
8 Hon. Elizabeth Gonzalez, (Ret.)
9 Sr. District Court Judge
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CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 26th day of January, 2023, I electronically filed the foregoing with the Clerk
of the Court system which will send a notice of electronic filing to the following:

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STEPHANIE SHARP, ESQ.

G. DAVID ROBERTSON, ESQ.

ROBERT EISENBERG, ESQ.

JENNIFER HOSTETLER, ESQ.



EXHIBIT L

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

ORDER

Case#: CV12-02222

Dept. 10 (Senior Judge)¹

Pursuant to WDCR 12(5) the Court after consideration of the Plaintiffs' November 6, 2015 Motion in Support of Punitive Damages Award ("Punitive Damages Motion"), the Defendants' December 1, 2020 opposition ("Opposition"), Plaintiffs' July 30, 2020 Reply in Support of Award of Punitive Damages ("Punitive Damages Reply"), Plaintiffs' July 6, 2022 Punitive Damages Summary, Defendants' July 6, 2022 Trial Summary, the oral argument and evidence submitted by the parties during the hearing on July 8 and 18, 2022, a review of the briefing, exhibits, testimony of the witness, transcripts of the proceedings as well as the evidence in the record, including but not

¹ On January 21, 2021, Chief District Court Judge Scott Freeman, entered an Order Disqualifying All Judicial Officers of the Second Judicial District Court. On September 19, 2022, the Nevada Supreme Court entered a Memorandum of Temporary Assignment, appointing the undersigned Senior Judge.

1 limited to, evidence submitted during the underlying hearing on compensatory damages, and being
2 fully informed rules on the Punitive Damages Motion²:

3 The Court conducted a prove up hearing on March 23-25, 2015³ after striking the Defendants
4 answer for discovery abuses and entering a default. This resulted in an admission as true all
5 allegations contained in the Second Amended Complaint. An order awarding damages and making
6 factual findings was entered on October 9, 2015. The Court at that time requested further briefing
7 on the issue of punitive damages and ordered the parties to contact chambers to schedule a hearing.
8 Defendants have argued the Unit Maintenance Agreement and Unit Rental Agreement prohibit an
9 award of punitive damages and limit an award of compensatory damages. These arguments were
10 already raised and rejected when the Court issued its October 9, 2015 Order.
11
12

13 The economic loss doctrine does not apply to limit Plaintiffs' recovery for intentional torts.⁴
14
15

16 ² Although no written order finding that punitive damages were warranted was entered after the July 8, 2022 hearing and
17 prior to the commencement of the July 18, 2022 hearing, it appears that all involved agreed that the July 18 hearing
18 would not be necessary if Senior Justice Saitta found that punitive damages should not be awarded. The motion was
19 granted orally during the July 18, 2022 hearing. 7/18/2022 Transcript, p. 10, l. 1-2. The findings stated on the record
20 were:

21 There were five tort claims set forth by the plaintiffs in an earlier hearing. Number 1, we have a tortious interference
22 with contract; we have fraud; we have conversion; we have deceptive trade practices -- it appears as if I'm missing one --
23 oh, tortious breach of the covenant of good faith and fair dealing; fraud and intentional misrepresentation -- let me be
24 clear on that one -- violation of the Deceptive Trade Practices Act. And I believe that that contains all the necessary
25 findings that need to be made for us to proceed in our hearing today.

26 7/18/2022 Transcript, p. 10; l. 8-18.

27 ³ Regardless of what an earlier Judge called the proceeding, the March 2015 evidentiary hearing was a bench trial. The
28 Court has determined that this is a bench trial based upon the USJR definitions.

According to the definitions in the data dictionary, a bench trial is held when a trial begins and evidence is taken or witnesses are sworn. Accordingly, if you have indicated that the bench trial was held, then a corresponding bench trial disposition should be used to dispose of the case.

See https://nvcourts.gov/AOC/Programs_and_Services/Research_and_Statistics/FAQs/#civil1. The length of time between the first portion of the trial and the conclusion of the trial is one which is unacceptable in the administration of justice in Nevada.

⁴ *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 402 fn. 2 (2013).

1 The Nevada Legislature has limited the recovery of punitive damages in NRS 42.005.⁵

2 The Court in the October 9, 2015 Order found that the Defendants had made intentional
3 misrepresentations(fraud), breached the covenant of good faith and fair dealing, and converted the
4 property of the Plaintiffs.

5
6 The Court is tasked, in part, with determining which causes of action support the punitive damages
7 claim and warrant the award of punitive damages, if any.

8 While it is unclear whether the breach of the implied covenant finding in the October 9, 2015 Order
9 is sufficient to support a punitive damages award, the conduct related to the conversion and
10 intentional misrepresentation/fraud claims clearly warrant consideration of such damages.

11 Defendants' officers, including Kent Vaughan, Defendants' Senior Vice President of Operations,
12 admitted to the tortious scheme.⁶

13
14
15 ⁵ That statute provides in pertinent part:

16 1. Except as otherwise provided in [NRS 42.007](#), in an action for the breach of an obligation not arising from
17 contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or
18 malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of
19 example and by way of punishing the defendant. Except as otherwise provided in this section or by specific statute, an
award of exemplary or punitive damages made pursuant to this section may not exceed:

(a) Three times the amount of compensatory damages awarded to the plaintiff if the amount of compensatory
damages is \$100,000 or more; or

20 * * *

21 3. If punitive damages are claimed pursuant to this section, the trier of fact shall make a finding of whether such
22 damages will be assessed. If such damages are to be assessed, a subsequent proceeding must be conducted before the
same trier of fact to determine the amount of such damages to be assessed. The trier of fact shall make a finding of the
amount to be assessed according to the provisions of this section...

23 ⁶ Vaughn testified in deposition on August 26, 2013. Relevant portions of the transcript show the conscious decision by
24 an officer of Defendants.

25 Q. How did you first come to know in July of 2011 that the Grand Sierra was taking in income for units that
were not in the unit rental program?

26 A. I authorized the front desk to use non-rental units due to demand, consumer demand.

27 Q. And when you authorized the front desk in was it July of 2011 –

A. Yes.

28 Q. -- to use units that were not in the unit rental program, did you or anyone else that you know of who
represents the Grand Sierra, contact the Grand Sierra Resort unit rental owners who were not in the program,
to advise them of this policy?

1 The Court finds the given the prior striking of Defendant's answer, Vaughn's testimony alone is
2 sufficient to meet the burden of proof of clear and convincing evidence to prove malice, oppression
3 or fraud related to the tortious scheme.

4 The damages awarded in the October 9, 2015 Order are based in part on contract claims. Damages
5 for the tort claims were based upon the same calculations and testimony provided by Plaintiffs' sole
6 witness. This crossover does not preclude an award of punitive damages related to the tort damages
7 but limits a double recovery.
8

9 A plaintiff may assert several claims for relief and be awarded damages on different theories.
10 It is not uncommon to see a plaintiff assert a contractual claim and also a cause of action
11 asserting fraud based on the facts surrounding the contract's execution and performance. See
12 Amoroso Constr. v. Lazovich and Lazovich, 107 Nev. 294, 810 P.2d 775 (1991). The
13 measure of damages on claims of fraud and contract are often the same. However, Marsh is
14 not permitted to recover more than her total loss plus any punitive damages assessed. She
15 can execute on the assets of any of the five parties to the extent of the judgments entered
16 against them until she recovers her full damages.

17 Topaz Mutual Co. v. Marsh, 108 Nev. 845, (1992) at pages 851- 852.

18 After review of all of the available evidence the Court concludes that two categories of damages
19 from the October 2015 Order warrant and support an award of punitive damages:
20

21 Damages awarded for underpaid revenues \$442,591.83 fall within the conversion claim⁷ and
22 intentional misrepresentation/fraud⁸;

23 A. No.

24 Q. Why?

25 A. I didn't have authorization to rent them.

Q. So it was a conscious decision to rent them without authorization?

A. Yes.

26 Vaughn Transcript, Ex. 1 to Reply, at p. 29 l. 3-21.

27 ⁷ October 9, 2015 Order, Conclusion of Law C, at p. 16 l. 16 to p. 17 l. 4.

28 ⁸ October 9, 2015 Order, Conclusion of Law I, at p. 18 l. 15 to l. 22.

1 Damages awarded for the rental of units of owners who had no rental agreements

2 \$4,152,669.13 falls within the conversion claim⁹ and intentional misrepresentation/fraud¹⁰;

3 The award of punitive damages on these claims would not act as a double recovery for Plaintiffs.

4 The Court finds that the remaining damages awarded in the October 9, 2015 Order are based on
5 contract claims rather than tort claims and not appropriate for consideration of punitive damages.

6 Given Defendants' tortious scheme and the intentional misconduct of Defendants, punitive
7 damages in this case are appropriate to set an example.

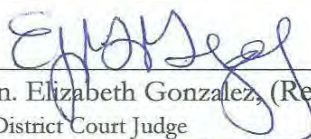
8 The amount of these damages serve to punish and will not destroy Defendants.¹¹

9 While the Court recognizes that there is a spectrum of percentages which have been awarded in
10 various Nevada punitive damages cases, given the nature of the conduct and procedural history of
11 this case, the Court concludes the appropriate multiplier in this matter is two (2) times the
12 compensatory award for the conversion claim and intentional misrepresentation/fraud claim.

13 Accordingly based on the compensatory damages for which punitive damages are appropriate
14 totaling \$4,595,260.96 the Court awards punitive damages in the total amount of \$9,190,521.92

15 Plaintiffs counsel is directed to submit a final judgment consistent with the October 9, 2015 Order
16 and this Order.

17 Dated this 17th day of January 2023.

18 
19 Hon. Elizabeth Gonzalez, (Ret.)
20 Sr. District Court Judge

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26 ⁹ October 9, 2015 Order, Conclusion of Law C, at p. 16 l. 16 to p. 17 l. 4.

27 ¹⁰ October 9, 2015 Order, Conclusion of Law I, at p. 18 l. 15 to l. 22.

28 ¹¹ See July 18, 2022 transcript (sealed), p. 100 l. 2 to p. 101 l. 5.

CERTIFICATE OF SERVICE

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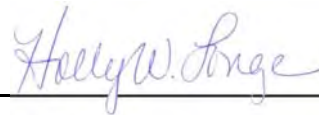


EXHIBIT M

ALBERT THOMAS, et. al.,

VS.

Defendant.

Dept. 10 (Senior Judge)

ORDER - 1

1 The Court notes that at a hearing on March 11, 2022, the Court granted a temporary restraining
2 order on the following:

3 ...The meeting is scheduled for next Monday. I don't know how long it will take for the
4 order to be prepared, reviewed by Mr. McElhinney, sent to you for a signing and everything,
5 but I just want to make sure I understand that *the meeting next Monday is off*.

6 THE COURT: That is correct, by virtue of court order. Yes.

7 Transcript of March 11, 2022, Hearing, page 42 lines 1-7. (Emphasis added.)

8 Although no written order was filed, a bond was posted by Plaintiffs in the amount of \$50,000 on
9 March 11, 2022.

10 At the preliminary injunction hearing on March 25, 2022, the parties stipulated to an extension of
11 the temporary restraining order pending resolution of the Injunctive Relief Motion. Transcript of
12 March 25, 2022, Hearing, page 125.

13 The condominium-hotel arrangement at the Grand Sierra Resort constitutes a common-interest
14 community.

15 The rights and obligations of all unit owners at the Grand Sierra Resort are defined in Nevada
16 Revised Statutes, Chapter 116.

17 Each unit owner's Deed and Title to their Units at the Grand Sierra Resort, is subject to the
18 covenants, conditions, restrictions and reservations included in the Seventh Amendment to
19 Condominium Declaration of Covenants, Conditions, Restrictions and Reservations of Easements,
20 ("7th Amended CC&Rs").

21 These covenants, conditions, restrictions and reservations limit the owner's property interest.

22 Section 9.1, appearing on pages 48 and 49 of the 7th Amended CC&Rs, provides as follows:

23 a. At a meeting duly called for such purpose and open to attendance by all Unit Owners, the
24 Unit Owners by affirmative vote of the Unit Owners who own eighty percent (80%) or
25 more in the aggregate of the entire percentage ownership interest in the Common Elements
26 may elect to sell the Property as a whole. Within ten (10) days after the date of the meeting at
27 which such sale is approved, the Board shall give written notice of such action to each First
28 Mortgagee. Such action shall be binding upon all Unit Owners, and it shall thereupon

1 become the duty of every Unit Owner to execute and deliver such instruments and to
2 perform all acts as in manner and form may be necessary to effect such sale.

3 Section 9.1 of the 7th Amended CC&Rs sets forth both a right and obligation of the unit owners
4 that has been a part of their Deed and Title to their Units since the date they purchased their units.
5 Defendants and its privies are currently the owner of over 80% of the units of GSRUOA.
6 The notice of the unit owners meeting at issue in these injunctive relief proceedings is Exhibit 3 to
7 the Injunctive Relief Motion. That notice complies with NRS 116 and Section 9.1 of the 7th
8 Amended CC&Rs.
9

10 The Court has previously made Findings that Defendants are systematically attempting to increase
11 the various fees in order to devalue the units. October 9, 2015 Order par. 142-143.
12

13 The Court has previously made Findings that Defendants breached the Unit Maintenance
14 Agreement and the Unit Rental Agreement. October 9, 2015 Order par. 146.

15 The findings made in the October 9, 2015 Order do not preclude the Defendants, as owners of
16 more than 80% of the units,² from proceeding under Section 9.1 of the 7th Amended CC&Rs.
17

18 The January 7, 2015 Order Appointing Receiver and Directing Defendants' Compliance provides:

19 Defendants, and their agents, servants and employees, and those acting in concert with
20 them, shall not engage in or perform directly or indirectly, any or all of the following acts: a.
21 Interfering with the Receiver, directly or indirectly, in the management and operation of the
22 Property . . . c. Doing any act which will, or which will tend to, impair, defeat, divert, prevent
or prejudice the preservation of the Property or the interest in the Plaintiffs in the Property

23 January 7, 2015 Order at page 8 lines 2-11. Defendants efforts under Section 9.1 of the 7th
24 Amended CC&Rs do not violate this provision of the January 7, 2015 Order.
25

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² See Paragraph 6 of Declaration of David C. McElhinney filed on March 17, 2022 as Exhibit 12 of the Opposition to
the Injunctive Relief Motion.

1 The Receiver's authority is governed by the January 7, 2015 Order which gives certain authority over
2 the management and operation of the GSRUOA but does not extend to oversight over ownership
3 of the units.

4 The CC&R's constitute deed restrictions that limit and define Plaintiffs' interest in their units.

5 The judgment entered October 9, 2015 does not include the depreciation or diminution in value of
6 the units. As with any type of sale, a unit owner may assign, retain or otherwise reserve such a claim
7 from a transfer. These claims may have been preserved and may be retained by a unit owner, in this
8 matter, at the time of any transfer.³

9 In deciding an injunctive relief motion the court is guided by NRCP 65 and NRS 33.010.

10 Under the statute, an injunction may be granted under the following circumstances:

- 11 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded,
12 and such relief or any part thereof consists in restraining the commission or continuance of
13 the act complained of, either for a limited period or perpetually.
- 14 2. When it shall appear by the complaint or affidavit that the commission or continuance of
15 some act, during the litigation, would produce great or irreparable injury to the plaintiff.
- 16 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is
17 about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's
18 rights respecting the subject of the action and tending to render the judgment ineffectual.

19 Injunctive relief is equitable in nature and allows a Court to fashion a remedy balancing the interests
20 of the parties that protects the right of the movant.

21 NRS 116.2118⁴ governs the termination of a common-interest community.

22 ³ To avoid confusion in this matter, a written notice of the intent to retain any of the claims must be made prior to the
23 sale.

24 ⁴ That statute provides:

- 25 1. Except in the case of a taking of all the units by eminent domain, in the case of foreclosure against an entire
26 cooperative of a security interest that has priority over the declaration, or in the circumstances described in NRS
27 116.2124, a common-interest community may be terminated only by agreement of units' owners to whom at least 80
28 percent of the votes in the association are allocated, or any larger percentage the declaration specifies, and with any other
approvals required by the declaration. The declaration may specify a smaller percentage only if all of the units are
restricted exclusively to nonresidential uses.
2. An agreement to terminate must be evidenced by the execution of an agreement to terminate, or ratifications
thereof, in the same manner as a deed, by the requisite number of units' owners. The agreement must specify a date after

1 NRS 116.2118(1), allows for the termination of a common-interest community by agreement of unit
2 owners to whom at least 80% of the votes in the association are allocated.

3 NRS 116.2118(2), provides that an agreement to terminate the common interest community must be
4 evidenced by the execution of an agreement to terminate, or ratifications thereof, in the same
5 manner as a deed, by the requisite number of unit owners.
6

7 NRS 116.2118 (1), dictates that the respective interests of unit owners are the fair market value of
8 their units.

9 Sale of the Plaintiffs' units will not operate to extinguish a unit owner's claims for damages which
10 exist at the time of the "transfer" and are retained by a unit owner.
11

12
13 which the agreement will be void unless it is recorded before that date. An agreement to terminate and all ratifications
14 thereof must be recorded in every county in which a portion of the common-interest community is situated and is
effective only upon recordation.

15 3. In the case of a condominium or planned community containing only units having horizontal boundaries described
16 in the declaration, an agreement to terminate may provide that all of the common elements and units of the common-
interest community must be sold following termination. If, pursuant to the agreement, any real estate in the common-
interest community is to be sold following termination, the agreement must set forth the minimum terms of the sale.

17 4. In the case of a condominium or planned community containing any units not having horizontal boundaries
described in the declaration, an agreement to terminate may provide for sale of the common elements, but it may not
18 require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or
all the units' owners consent to the sale.

19 5. The association, on behalf of the units' owners, may contract for the sale of real estate in a common-interest
community, but the contract is not binding on the units' owners until approved pursuant to subsections 1 and 2. If any
20 real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee
for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect
21 the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence
with all powers it had before termination. Proceeds of the sale must be distributed to units' owners and lienholders as
22 their interests may appear, in accordance with NRS 116.21183 and 116.21185. Unless otherwise specified in the
agreement to terminate, as long as the association holds title to the real estate, each unit's owner and his or her
23 successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the
unit. During the period of that occupancy, each unit's owner and his or her successors in interest remain liable for all
24 assessments and other obligations imposed on units' owners by this chapter or the declaration.

25 6. In a condominium or planned community, if the real estate constituting the common-interest community is not to
be sold following termination, title to the common elements and, in a common-interest community containing only units
26 having horizontal boundaries described in the declaration, title to all the real estate in the common-interest community,
vests in the units' owners upon termination as tenants in common in proportion to their respective interests as provided
27 in NRS 116.21185, and liens on the units shift accordingly. While the tenancy in common exists, each unit's owner and
his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly
constituted the unit.

28 7. Following termination of the common-interest community, the proceeds of a sale of real estate, together with the
assets of the association, are held by the association as trustee for units' owners and holders of liens on the units as their
interests may appear.

1 NRS 116.21185 provides for resolution of value of interests following termination.⁵

2 Plaintiffs have alleged that the appraisal done at the request of Defendants was not done by the
3 GSRUOA. The Court agrees. As a result, the Court will permit unit owners to contest the
4 appraisals and present their own appraisals setting forth their claimed fair market value.

5
6 Currently there are a number of Applications for Issuance of Orders to Show Cause related to
7 Defendants conduct with respect to the Receiver.⁶ These Applications for OSC will be decided
8 and, if cause is shown, hearings on these issues will proceed.

9 Currently the Receiver has not been paid as directed by the January 7, 2015 Order. As Defendants
10 are the 80% owners of the units at GSRUOA; are the owners noticing the meeting seeking
11 dissolution of GSRUOA, and sale under NRS 116.2118, Defendants must address this issue prior to
12 sale.
13

14
15
16 ⁵ NRS 116.21185 Respective interests of units' owners following termination. The respective interests of units'
owners referred to in subsections 5, 6 and 7 of NRS 116.2118 and in NRS 116.21183 are as follows:

17 1. Except as otherwise provided in subsection 2, the respective interests of units' owners are the fair market values
18 of their units, allocated interests, and any limited common elements immediately before the termination, as determined
19 by one or more independent appraisers selected by the association. The decision of the independent appraisers must be
20 distributed to the units' owners and becomes final unless disapproved within 30 days after distribution by units' owners
to whom 25 percent of the votes in the association are allocated. The proportion of interest of any unit's owner to that
of all units' owners is determined by dividing the fair market value of that unit and its allocated interests by the total fair
market values of all the units and their allocated interests.

21 2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value
thereto before destruction cannot be made, the interests of all units' owners are:

- 22 (a) In a condominium, their respective interests in the common elements immediately before the termination;
23 (b) In a cooperative, their respective ownerships immediately before the termination; and
(c) In a planned community, their respective liabilities for common expenses immediately before the termination..

24 ⁶ Those include:

25 Plaintiffs' 04/25/22 Motion for Order to Show Cause (Defendants' contempt for violations of Court's orders, including
01/04/22 orders)

26 Plaintiffs' 03/02/22 Motion for Order to Show Cause (Defendants' contempt for violations of Court's orders, including
01/04/22 orders)

27 Plaintiffs' 02/01/22 Motion for Order to Show Cause (Defendants' contempt for violations of Court's orders, including
01/04/22 orders)

28 Plaintiffs' 11/19/21 Motion for Order to Show Cause (Defendants' contempt for violating 01/17/15 Order) and,
12/23/21 Plaintiffs' 09/27/21 Motion for Order to Show Cause (Defendants' contempt for violating 01/17/15 Order)
Plaintiffs' 2/11/21 Motion for Order to Show Cause (Defendants' contempt for violating 12/24/22 order)

These are referred to collectively as the Applications for OSC.

1 The Court makes the following legal conclusions:

2 After balancing the interests of the parties and in evaluating the legal issues, the Court concludes
3 that Plaintiffs will suffer irreparable injury if no relief is granted. The Court has fashioned a remedy
4 that balances the rights of both parties in this matter.

5
6 The Court concludes the Plaintiffs will not suffer irreparable harm if the statutory process under
7 NRS 116.2118 et seq. along with Court supervision as outlined herein is followed.

8 The Court concludes Defendants property interest are protected by issuance of this relief.

9 Therefore, the Court issues the following Orders:

10 IT IS THEREFORE ORDERED, that the Grand Sierra unit owners are allowed to proceed with
11 their vote to terminate the GSRUOA and election to sell the Property as a whole.
12

13 IT IS FURTHER ORDERED that prior to a sale of the Property as a whole, the Court shall enter
14 an Order on motion to terminate and or modify the Receivership that addresses the issues of
15 payment to the Receiver and his counsel, the scope of the wind up process of the GSRUOA to be
16 overseen by the Receiver, as well as the responsibility for any amounts which are awarded as a result
17 of the pending Applications for OSC.
18

19 IT IS FURTHER ORDERED that no sale of the units at GSRUOA or the property rights related to
20 the GSRUOA and the units which currently compose GSRUOA shall occur until further order of
21 this Court which includes a process for the resolution of any retained claims by Plaintiffs and
22 procedure for the determination of fair market value of Plaintiffs' units under NRS 116.2118 et seq.
23

24 IT IS FURTHER ORDERED that this Court shall provide supervision of the appraisal process of
25 the units in order to assure that Plaintiffs are provided an opportunity to submit their own appraisal
26 of their respective units for consideration and determination of the fair market value of the units and
27 their allocated interests.
28

1 IT IS FURTHER ORDERED that Defendants and anyone acting on their behalf are restrained
2 from transferring, selling or otherwise alienating, the units at GSRUOA or the property rights
3 related to the GSRUOA and the units which currently compose GSRUOA pending further order of
4 the Court.

5
6 IT IS FURTHER ORDERED that the bond posted by Plaintiffs in the amount of \$50,0000,
7 following the Court's granting a Temporary Restraining Order on March 11, 2022, remain in place
8 as adequate security for this Preliminary Injunction.

9 IT IS FURTHER ORDERED that in all other respects the Injunctive Relief Motion is denied.
10
11

12 Dated this 5th day December, 2022.

13
14 
15 Hon. Elizabeth Gonzalez, (Ret.)
16 Sr. District Court Judge
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CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 5th day of December, 2022, I electronically filed the foregoing with the
Clerk of the Court system which will send a notice of electronic filing to the following:

DALE KOTCHKA-ALANES

DANIEL POLSENBERG, ESQ.

DAVID MCELHINNEY, ESQ.

BRIANA COLLINGS, ESQ.

ABRAN VIGIL, ESQ.

JONATHAN TEW, ESQ.

JARRAD MILLER, ESQ.

TODD ALEXANDER, ESQ.

F. SHARP, ESQ.

STEPHANIE SHARP, ESQ.

G. DAVID ROBERTSON, ESQ.

ROBERT EISENBERG, ESQ.

JENNIFER HOSTETLER, ESQ.

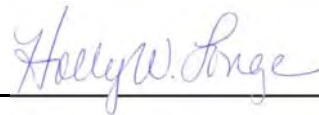


EXHIBIT N

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

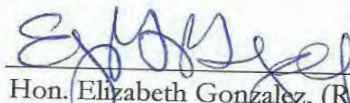
Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on the:

Defendant's Motion for Dismissal of Claims of Deceased Party Plaintiffs Due to Untimely Filing Notice or Suggestion of Death and Motion to Substitute Party filed 11/19/21. This motion is denied. The Motions to Substitute Party were unopposed. Defendants current motion seeks reconsideration of that prior decision. The Court declines to reconsider the ruling on that prior unopposed motion.

Defendant's Motion to Dismiss Pursuant to NRCP 41 filed 2/23/22. This motion is denied. The Court's three day compensatory damages prove-up hearing (at which a witness testified and was cross-examined) and entry of judgment, are sufficient to conclude that trial in this matter was

1 commenced and, therefore, has already been brought to "trial" as contemplated by Rule 41. The trial
2 has yet to be completed. NRS 42.005 dictates the procedure for determination of punitive
3 damages.¹ It is clear that in cases where punitive damages are sought the trial is to be conducted in
4 parts. The Nevada Supreme Court has recognized that the findings of fact and conclusions of law
5 issued after the prove up is not a final judgment. For this reason, neither of the time limitations in
6 NRCP 41 require dismissal despite the age and tortured history of this matter.
7

8
9
10 Dated this 18th day November, 2022.

11 
12 Hon. Elizabeth Gonzalez, (Ret.)
13 Sr. District Court Judge
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23 ¹ That statute provides in part:

24 1. Except as otherwise provided in NRS 42.0007, in an action for the breach of an obligation not arising
25 from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression,
26 fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the
27 sake of example and by way of punishing the defendant.
28 ***

3. If punitive damages are claimed pursuant to this section, the trier of fact shall make a finding of
whether such damages will be assessed. If such damages are to be assessed, a subsequent proceeding must be conducted
before the same trier of fact to determine the amount of such damages to be assessed. The trier of fact shall make a
finding of the amount to be assessed according to the provisions of this section. The findings required by this section, if
made by a jury, must be made by special verdict along with any other required findings. The jury must not be instructed,
or otherwise advised, of the limitations on the amount of an award of punitive damages prescribed in subsection 1.

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
3 that on the 18th day of November, 2022, I electronically filed the foregoing with the
4 Clerk of the Court system which will send a notice of electronic filing to the following:

5 DALE KOTCHKA-ALANES

6 DANIEL POLSENBERG, ESQ.

7 DAVID MCELHINNEY, ESQ.

8 BRIANA COLLINGS, ESQ.

9 ABRAN VIGIL, ESQ.

10 JONATHAN TEW, ESQ.

11 JARRAD MILLER, ESQ.

12 TODD ALEXANDER, ESQ.

13 F. SHARP, ESQ.

14 STEPHANIE SHARP, ESQ.

15 G. DAVID ROBERTSON, ESQ.

16 ROBERT EISENBERG, ESQ.

17 JENNIFER HOSTETLER, ESQ.

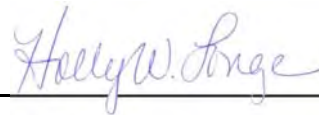
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EXHIBIT O

1 CODE: 3060
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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.
24
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28

ORDER GRANTING RECEIVER'S MOTION FOR ORDERS & INSTRUCTIONS

21 Presently before the Court is the Receiver's Motion for Orders & Instructions, filed
22 October 18, 2021 ("Motion"). Plaintiffs filed Plaintiffs' Joinder to Receiver's Motion for Orders
23 & Instructions on October 22, 2021 ("Plaintiff's Joinder"). Defendants filed Defendants'
24 Opposition to Receiver's Motion for Orders & Instructions on October 22, 2021 ("Defendants'
25 Opposition"). The Receiver then filed Receiver's Reply in Support of Motion for Orders &
26 Instructions on October 25, 2021 ("Receiver's Reply"). The Motion was submitted for
27 consideration on October 25, 2021.

1 Case-concluding sanctions were entered against the Defendants for abuse of discovery
2 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
3 Terminating Sanctions, filed October 3, 2014 at 12.) See Young v. Johnny Ribeiro Bldg., Inc.,
4 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
5 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. See
6 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.

7 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
8 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
9 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (See
10 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
11 implementing compliance, among all condominium units, including units owned by any
12 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
13 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
14 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
15 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
16 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

17 In 2021, the Defendants undertook to have a reserve study done by a third party, which
18 was then to be utilized by the Receiver to calculate those fees to be charged to Plaintiffs
19 (including the Daily Use Fees ("DUF"), Shared Facility Use Expenses ("SFUE"), and Hotel
20 Expenses ("HE")). The Receiver states that various orders of this Court, including the
21 Appointment Order, provide authority solely to Receiver to order and oversee any reserve studies
22 done. (Reply at 2:27-3:5.) Defendants argue that no such orders nor the Governing Documents
23 provide the Receiver with such authority. (Defendants' Opposition at 3:19-24.) Instead,
24 Defendants argue that any attempt by the Receiver to order or oversee the reserve study would be
25 an "impermissibl[e] expan[sion] of his authority." (Id. at 3:20.)

26 The Court issued its Findings of Fact, Conclusions of Law and Order granting in part
27 Defendants' Motion for Leave to File Motion for Reconsideration of December 24, 2020 Order
28 Granting Motion for Clarification and Request for Hearing, on September 29, 2021. Therein, the

1 Court struck the disgorgement order granted in the December 24, 2020 Order Granting
2 Clarification (“December 24, 2020 Order”). Whereas the Court originally instructed that “[u]ntil
3 the DUF, the [HE], and [SFUE] are recalculated by the Receiver, the fees calculated by the past
4 receiver shall be applied,” the revised order struck this reversion to the prior receiver’s
5 calculations. Thus, the Receiver states he is now without direction as to which calculations are
6 to be applied until he is able to redo his own calculations. (See December 24, 2020 Order at
7 3:23-4:10 (where the Court informs the Receiver his calculations for 2020 are incorrect and
8 invalid under the Governing Documents and they must be redone).) Defendants argue the
9 Receiver’s prior calculations, which were in place until the December 24, 2020 Order was
10 issued, should be utilized. Notably, this directly contradicts the Court’s December 24, 2020
11 Order, is inequitable, and thus is denied outright. (Id.)

12 The Appointment Order provides the Receiver authority to take control of “all accounts
13 receivable, payments, rents, including all statements and records of deposits, advances, and
14 prepaid contracts or rents” (Appointment Order at 3:15-18.) Defendants are also ordered to
15 cooperate with the Receiver and not “[i]nterfer[e] with the Receiver, directly or indirectly.” (Id.
16 at 8:2-15.) The Receiver has informed the parties of his intent to open a separate account into
17 which all rents and other proceeds from the units will be deposited, and now requests the Court’s
18 permission to open such an account. (Motion at 11:19; Motion to Stay Special Assessment, filed
19 August 20, 2021 at Ex. 2.) Defendants have refused to cooperate with the Receiver’s request to
20 turnover various proceeds, in violation of the Appointment Order, and now object to Receiver’s
21 authority to open a separate account. (Appointment Order at 8:2-15; Defendant’s Opposition at
22 6:14-7:21.)

23 Pursuant to the Governing Documents, Defendants have implemented a room rotation
24 program whereunder bookings for the units owned by Plaintiffs and Defendants should be
25 equally distributed such that Plaintiffs and Defendants, as individual unit owners, are earning
26 roughly equal revenue. The Receiver contends this room rotation program is flawed and has
27 resulted in a greater number of Defendants’ units being rented than Plaintiffs’ units during
28 various periods through August 2021. (Motion at 14:14-17.)

1 Among the Governing Documents with which the Receiver is ordered to implement
2 compliance is the Seventh Amendment to Condominium Declaration of Covenants, Conditions,
3 Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort,
4 recorded June 27, 2007 ("Seventh Amended CC&Rs"). Defendants, however, after representing
5 to the Court that the Seventh Amended CC&Rs needed to be amended in order to comply with
6 NRS 116B, unilaterally revised and recorded the Ninth Amendment to Condominium
7 Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for
8 Hotel-Condominiums at Grand Sierra Resort ("Ninth Amended CC&Rs") to overhaul the fee
9 structure and radically expand the fees chargeable to the Plaintiffs. The Ninth Amended
10 CC&Rs, according to Plaintiffs, substantially increase the expenses to be included in fees
11 charged to Plaintiffs – thus making ownership of the units unviable.

12 Finally, Defendants have communicated with Receiver *ex parte* through a variety of
13 individuals. The Receiver now requests that all communications be funneled through a single
14 individual: Reed Brady. (Motion at 17:4-8.)

15 The Motion requests the Court order (1) that the Notice of Special Assessments and the
16 Reserve Studies sent to the unit owners by Defendants on August 24, 2021 be immediately
17 withdrawn; (2) that the Defendants be ordered to send out a notice to all unit owners of said
18 withdrawal; and (3) that this Court confirm the Receiver's authority over the Reserve Studies.
19 (Motion at 3:11-14.) The Motion further requests the Court order that the Receiver is to
20 recalculate the charges for the DUF, SFUE, and HE for 2020 based upon the same methodology
21 as has been used in calculating the fee charges for 2021, once the Court approves that
22 methodology. (*Id.* at 8:10-13.) The Motion further requests the Court approve the opening of an
23 account for the Receivership, with the Receiver having sole signatory authority over the account,
24 and order that all rents received by Defendants currently and in the future, generated from either
25 all 670 condominium units or the Plaintiff-owned units, net of the total charges for the DUF,
26 SFUE, and HE fees and for reserves combined, are to be deposited into the account, that the
27 receiver be authorized to make the necessary disbursements to the relevant unit owners at three
28 (3) month intervals, that any disgorgement amounts owed by Defendants be deposited into the

1 Receivership account to be distributed by the Receiver, and that, if the Court orders the current
2 credit balances in the Plaintiffs' accounts are to be deposited in to the Receiver's bank account
3 then, to the extent that such credit balances are to be disgorged, Defendants will pay such credit
4 balances to the Receiver for deposit, and the Receiver will distribute such funds appropriately.
5 (Id. at 11:21-12:13.) The Motion further requests the Court order Defendants to provide the
6 Receiver with the information and documentation he has requested relating to the room rotation
7 program within ten (10) days of this Order. (Id. at 14:20-24.) The Motion further requests the
8 court expedite the determination of the Plaintiffs' Motion for Instructions, filed October 18, 2021
9 and submitted for consideration on October 25, 2021. (Id. at 17:1-3.) Finally, the Motion
10 requests the Court instruct Defendants to funnel all communications to the Receiver through a
11 single individual: Reed Brady. (Id. at 7:5-8.)

12 As this Court has stated previously, "[a] receiver is appointed to maintain the status quo
13 regarding the property in controversy and to safeguard said property from being dissipated while
14 the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement,
15 filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345
16 (Ohio Ct. App. 1994).) This Court reiterated this premise in another order, stating that "[o]ne of
17 the purposes of the [Appointment] Order was to preserve the status quo of the parties during the
18 pendency of the action. Another purpose was to enforce [the] agreements." (Order, filed
19 November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See
20 Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a
21 receiver is a "remedy used to preserve the value of assets pending outcome of the principal case"
22 and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC
23 Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113,
24 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve
25 the status quo).

26 Furthermore, upon the appointment of the Receiver, all authority to manage and control
27 the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers,
28 officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc.,

1 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct.
2 App. Sept. 19, 2019) (noting that “[u]pon the receiver’s appointment, [Defendant’s] corporate
3 officers and directors lost all authority to control the corporation”); First Sav. & Loan Ass’n v.
4 First Fed. Sav. Loan Ass’n, 531 F. Supp. 251, 255 (D. Haw. 1981) (“When a receiver is
5 appointed for a corporation, the corporation’s management loses the power to run its affairs and
6 the receiver obtains all of the corporation’s powers and assets.”). “Simply put, corporate
7 receivership is a court-mandated change in corporate management.” Francis, 487 P.3d 1089 at
8 1092-93.

9 Thus, upon appointment of the Receiver, the GSRUOA’s Board of Directors was
10 divested of the authority it has errantly exercised to issue that Notice of Special Assessment and
11 the Reserve Studies which was sent to all unit owners on August 24, 2021. Accordingly, such
12 Notice of Special Assessment and any actual imposition of special assessment is *void ab initio*
13 and therefore invalid. Only the Receiver can impose special assessments.

14 Next, the Findings of Fact, Conclusions of Law and Judgement issued on October 9,
15 2015 (“FFCLJ”), explicitly ordered the Receiver to calculate “a reasonable amount of FF&E,
16 shared facilities and hotel reserve fees” and other necessary fees to be assessed against Plaintiffs.
17 (FFCLJ at 22:25-27.) Accordingly, the Receiver is to calculate the DUF, SFUE, and HE for
18 2020. Such calculations should be based upon the same methodology as used for the 2021 fees,
19 once the Court has approved of such methodology.

20 The Appointment Order expressly allows for the Receiver to open an account for the
21 Receivership. (Appointment Order at 6:26 (the Receiver is allowed to “open and utilize bank
22 accounts for receivership funds”).) Indeed, the Appointment Order also expressly calls for the
23 Receiver to collect proceeds from the Property (defined as the 670 condominium units),
24 including, but not limited to, rent earned therefrom. (Id. at 5:17-19.) It logically follows then
25 that the Receiver may open a separate account for the Receivership in which it may hold all rents
26 from the Property, as defined in the Receivership Order.

27 The Appointment Order also expressly calls for Defendants to cooperate with the
28 Receiver and refrain from taking any actions which will interfere with the Receiver’s ability to

1 perform his duties. (Id. at 8:2-15.) Accordingly, Defendants should supply the Receiver with all
2 information, explanation, and documentation the Receiver may request regarding the room
3 rotation program and apparent inadequacy thereof.

4 The Receiver was specifically tasked with implementing compliance with the Governing
5 Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-2:3.)
6 Reading this obligation to implement compliance with the Seventh Amended CC&Rs with the
7 obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs cannot
8 be amended, repealed, nor replaced until the Receiver is relieved of his duties by the Court. The
9 continuance of this specific Governing Document will ensure the status quo, as is the purpose of
10 a receivership. Johnson, 100 Nev. at 183, 678 P.2d at 678; Dunphy, 50 Nev. 113, 252 P. at 944.
11 The automatic and immediate transfer of control over the GSRUOA to the Receiver therefore
12 divested the GSRUOA's Board of Directors from any authority it had to propose, enact, and
13 otherwise make effective the Ninth Amended CC&Rs. The Ninth Amended CC&Rs are thus
14 *void ab initio*, as they were enacted without proper authority. Accordingly, the Ninth Amended
15 CC&Rs are *void ab initio*, and even if they were not, the Ninth Amended CC&Rs would be
16 improper and thus subject to rescission or cancellation.

17 Finally, the Court finds it appropriate for Defendants to funnel all communication with
18 the Receiver through a single individual. For the time being, such individual shall be Reed
19 Brady. Mr. Brady may delegate tasks to others, however, only Mr. Brady should communicate
20 answers, conclusions, or other findings to the Receiver.

21 **IT IS HEREBY ORDERED** that Receiver's Motion is granted **in full**.

22 **IT IS FURTHER ORDERED** (i) that the Notice of Special Assessments and the
23 Reserve Studies sent to the unit owners by the Defendants on August 24, 2021 shall be
24 immediately withdrawn; (ii) that the Defendants shall send out a notice to all unit owners of said
25 withdrawal within ten (10) days of this Order; (iii) that any amounts paid by unit owners
26 pursuant to the Notice of Special Assessment shall be refunded within ten (10) days of this
27 Order; and (iv) that the Receiver has sole authority to order and oversee reserve studies related to
28 Defendants' property and under the Governing Documents.

1 **IT IS FURTHER ORDERED** that the Receiver shall recalculate the DUF, SFUE, and
2 HE based on the same methodology as has been used in calculating the fee charges for 2021,
3 subject to Court approval of such methodology. Those fees in place prior to the Court's
4 September 27, 2021 Order shall remain in place until the fees for 2020 are recalculated and
5 approved by this Court such that only a single account adjustment will be necessary.

6 **IT IS FURTHER ORDERED** that the Receiver shall open a separate account on which
7 Receiver has sole signatory authority, and into which all rents received by Defendants currently
8 for all 670 condominium units, net of total charges for DUF, SFUE, and HE fees and reserves,
9 are to be deposited. The Receiver shall disburse the revenue collected to the parties according to
10 the Governing Documents. In the event the Court requires a disgorgement by Defendants to
11 Plaintiffs, Receiver shall deposit such disgorgements into this separate account and disburse the
12 same to Plaintiffs appropriately.

13 **IT IS FURTHER ORDERED** that Defendants shall provide Receiver with any
14 information, explanation, and documentation he may request regarding the room rotation
15 program and any perceived discrepancies therewith, until Receiver is either satisfied with the
16 adequacy of the program or until Receiver deems it appropriate to seek judicial intervention.

17 **IT IS FURTHER ORDERED** that the Ninth CC&Rs are *void ab initio* and the Seventh
18 CC&Rs are to be resurrected as though they had not been withdrawn or superseded.

19 **IT IS FURTHER ORDERED** that Defendants shall funnel all communication with the
20 Receiver through Reed Brady. Defendants and Receiver may mutually agree to choose an
21 alternative representative through which communication shall be directed. Mr. Brady, and any
22 subsequent representative, may delegate requests, questions, or other tasks necessary to respond
23 to Receiver's communications, but any answers, conclusions, or other results shall be
24 communicated back to Receiver through only Mr. Brady and no other individual.

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IT IS SO ORDERED.

DATED 12.21.21.



SENIOR JUSTICE
Nancy Saitta

Submitted by:

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

/s/ Jarrad C. Miller
Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Plaintiffs

EXHIBIT P

1 CODE: 3060
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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
LLC, a Nevada limited liability company; and
DOE DEFENDANTS 1 THROUGH 10,
inclusive,

Defendants.

20 **ORDER GRANTING PLAINTIFFS' MOTION FOR INSTRUCTIONS TO RECEIVER**

21 Presently before the Court is Plaintiff's Motion for Instructions to Receiver, filed
22 September 28, 2021 ("Motion"). Defendants filed Defendants' Opposition to Plaintiffs' Motion
23 for Instructions to Receiver on October 12, 2021 ("Opposition"). Plaintiffs filed their Reply in
24 Support of Motion for Instructions to Receiver on October 25, 2021. The Motion was submitted
25 for consideration on October 25, 2021.

26 Case-concluding sanctions were entered against the Defendants for abuse of discovery
27 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
28 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.,

1 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
2 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
3 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

4 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
5 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
6 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"), the
7 rental and other revenues from the condominiums, as well as other property of the non-
8 GSRUOA Defendants. (See Appointment Order at 1:23-26.) The receivership was implemented
9 "for the purpose of implementing compliance, among all condominium units, including units
10 owned by any Defendant in this action . . . with the Covenants, Codes and Restrictions recorded
11 against the condominium units, the Unit Maintenance Agreements and the original Unit Rental
12 Agreements (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25,
13 2019, Richard Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order
14 Granting Motion to Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed
15 January 25, 2019.)

16 Among the Governing Documents with which the Receiver is ordered to implement
17 compliance is the Seventh Amendment to Condominium Declaration of Covenants, Conditions,
18 Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort,
19 recorded June 27, 2007 ("Seventh Amended CC&Rs"). Defendants, however, after representing
20 to the Court that the Seventh Amended CC&Rs needed to be amended in order to comply with
21 NRS 116B, unilaterally revised and recorded the Ninth Amendment to Condominium
22 Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for
23 Hotel-Condominiums at Grand Sierra Resort to overhaul the fees chargeable to the unit owners.
24 ("Ninth Amended CC&Rs"). The Ninth Amended CC&Rs, according to Plaintiffs, substantially
25 increase the expenses to be included in fees charged to Plaintiffs – thus making ownership of the
26 units unviable. (Reply at 7:17-21.)

27 Additionally, the Defendants undertook to have a reserve study done by a third party,
28 which was then to be utilized by the Receiver to calculate those fees to be charged to Plaintiffs.

1 Plaintiffs argue this reserve study was not only done without proper authority, but also that it was
2 patently erroneous in that it includes a variety of expenses which are not chargeable to the
3 Plaintiffs under the Seventh Amended CC&Rs. (Motion at 4:3-13.)

4 The Motion requests the Court instruct the Receiver to (1) determine that the amendment
5 process was invalid and void actions improperly taken by the GSRUOA Board of Directors, (2)
6 maintain the status quo by enforcing the Appointment Order and apply the Seventh Amended
7 CC&Rs, and (3) disqualify the 2021 reserve study and prepare a new reserve study completed
8 with the Receiver's direction and input. (Motion at 2:27-3:4, 4:12-13.)

9 As this Court has stated previously, "[a] receiver is appointed to maintain the status quo
10 regarding the property in controversy and to safeguard said property from being dissipated while
11 the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement,
12 filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345
13 (Ohio Ct. App. 1994).) This Court reiterated this premise in a subsequent order, stating that
14 "[o]ne of the purposes of the [Appointment] Order was to preserve the status quo of the parties
15 during the pendency of the action. Another purpose was to enforce [the] agreements." (Order,
16 filed November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See
17 Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a
18 receiver is a "remedy used to preserve the value of assets pending outcome of the principal case"
19 and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC
20 Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113,
21 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve
22 the status quo).

23 In this case, the Receiver was specifically tasked with implementing compliance with the
24 Governing Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-
25 2:3.) Reading this obligation to implement compliance with the Seventh Amended CC&Rs with
26 the obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs
27 cannot be amended, repealed, nor replaced until the Receiver is relieved of his duties by the
28 Court. The continuance of this specific Governing Document will ensure the status quo, as is the

1 purpose of a receivership and the Appointment Order. See Johnson, 100 Nev. at 183, 678 P.2d at
2 678; Dunphy, 50 Nev. 113, 252 P. at 944.

3 Furthermore, upon the appointment of the Receiver, all authority to manage and control
4 the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers,
5 officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc.,
6 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct.
7 App. Sept. 19, 2019) (noting that "[u]pon the receiver's appointment, [Defendant's] corporate
8 officers and directors lost all authority to control the corporation"); First Sav. & Loan Ass'n v.
9 First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a receiver is
10 appointed for a corporation, the corporation's management loses the power to run its affairs and
11 the receiver obtains all of the corporation's powers and assets."). "Simply put, corporate
12 receivership is a court-mandated change in corporate management." Francis, 487 P.3d 1089 at
13 1092-93.

14 This automatic and immediate transfer of control over the GSRUOA to the Receiver
15 therefore divested the GSRUOA's Board of Directors from any authority it had to propose,
16 enact, and otherwise make effective the Ninth Amended CC&Rs. The Ninth Amended CC&Rs
17 are thus *void ab initio*, as they were enacted without proper authority.

18 Accordingly, the Ninth Amended CC&Rs are *void ab initio*, and even if they were not,
19 the Ninth Amended CC&Rs would be improper and thus subject to rescission or cancellation.¹

20 Next, Plaintiffs have moved the Court to instruct the Receiver to reject the reserve study
21 completed by Defendants without any input from Receiver, and order and oversee a separate
22 reserve study. (Motion at 11:25-14:19.) The Court has explicitly found that the Receiver "will
23 determine a reasonable amount of FF&E, shared facilities and hotel reserve fees." (Findings of
24 Fact, Conclusions of Law and Judgement, Filed October 9, 2015 at 22:25-26.) This implies that

25
26 ¹ Defendants argue any challenge to the Ninth Amended CC&Rs must be brought pursuant to the ADR provision
27 therein. The Court rejects this argument *in toto* considering the Appointment Order, the purpose of the Appointment
28 Order, and binding Nevada law which all dictate the receivership is intended to maintain the status quo – not allow
for a key Governing Document to be unilaterally amended by Defendants. Further, the claim for a Receivership was
brought in the Second Amended Complaint and the Nevada Supreme Court has already found that the District Court
has subject matter jurisdiction over the action.

1 the Receiver will also be tasked with ordering and overseeing the reserve study – as that study
2 will dictate the FF&E, shared facilities, and hotel reserve fees. Thus, the Receiver alone has the
3 authority to direct and audit the reserve study, not the Defendants.

4 Moreover, the Defendants have acknowledged this reality to the Court:

5 Mr. McElhinney: Are you instructing the receiver to use the 2016
6 reserve study in rendering his calculation? The Court: I think he
7 can. Mr. McElhinney: Up to him? The Court: Yeah, it's up to
8 him. If there's some reason that Mr. Teichner believes that the
9 premise or the data that's collected therein is inappropriate, then
10 obviously he can just go back to the 2014 study, but if he wants to
11 use it and he believes that it's statistical or evidentiarily valid, then
12 he can use that in making those determinations.

13 (Motion at Ex. 3 at 141:24-142:11.)

14 Plaintiffs further object to the Defendants' reserve study because it has included expenses
15 which are clearly erroneous. (Motion at 4:6-13 (noting public pool expenses that were included
16 while the Governing Documents and Court orders exclude any revenue-generating expenses).)
17 The reserve study is to be limited as directed in previous Court orders and the Governing
18 Documents. The reserve study provided by Defendants clearly shows at least one basic,
19 elementary example of expenses which are included but should not be. (Id.) Accordingly, the
20 Court finds the Defendants' reserve study to be flawed and untrustworthy, and finds the Receiver
21 has the proper (and sole) authority to order, oversee, and implement a new reserve study.

22 **IT IS HEREBY ORDERED** that Plaintiffs' Motion is granted.

23 **IT IS FURTHER ORDERED** that the Ninth Amended CC&Rs shall be withdrawn and
24 the Seventh Amended CC&Rs shall be reinstated as though never superseded.

25 **IT IS FURTHER ORDERED** that Receiver shall not utilize the Defendants' reserve
26 study in calculating those fees which are to be assessed to Plaintiffs. Instead, the Receiver shall
27 order, oversee, and implement a new reserve study which is in accordance with the Governing
28 Documents.

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1 **IT IS SO ORDERED.**

2 DATED 12.21.21

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5 SENIOR JUSTICE
6 Nancy Saitta

7 Submitted by:

8 ROBERTSON, JOHNSON,
9 MILLER & WILLIAMSON

10 /s/ Jarrad C. Miller

11 Jarrad C. Miller, Esq.
12 Jonathan Joel Tew, Esq.
13 Attorneys for Plaintiffs

EXHIBIT Q

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.
24
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26 **ORDER GRANTING PLAINTIFFS' MOTION TO STAY SPECIAL ASSESSMENT**

27 Presently before the Court is Plaintiffs' Motion to Stay Special Assessment, filed August
28 20, 2021 ("Motion").¹ Defendants filed Defendants' Opposition to Motion to Stay Special
Assessment on September 3, 2021 ("Opposition"). Plaintiffs filed their Reply in Support of

¹ Plaintiffs filed an initial version of this motion on July 30, 2021. (Motion to Stay Special Assessment and Renewed Request to Replace Receiver, filed July 30, 2021.) Plaintiffs withdrew this motion without prejudice on August 17, 2021. (Notice of Withdrawal of Motion to Stay Special Assessment and Renewed Request to Replace Receiver, filed August 17, 2021.)

1 Motion to Stay Special Assessment on September 17, 2021. The Motion was submitted for
2 consideration on September 22, 2021.

3 Case-concluding sanctions were entered against the Defendants for abuse of discovery
4 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
5 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.,
6 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
7 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
8 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

9 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
10 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
11 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (See
12 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
13 implementing compliance, among all condominium units, including units owned by any
14 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
15 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
16 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
17 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
18 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

19 The Appointment Order provides that the Receiver and his agents are to be "pa[id] and
20 discharge[d] out of the Property's rents and/or GSRUOA monthly dues collections. . . ." (Appointment Order at 6:12-16.) It is thus clear that the Receiver's invoices are to be paid
21 through either (or collectively) the Property's rents collected or the GSRUOA monthly dues and
22 not from any other source of funds without approval of this Court.

23
24 On June 16, 2021, the Receiver provided notice to the Court that GSRUOA was insolvent
25 and requested a hearing to address this issue. (Motion at 1:2-4.) After the parties discussed
26 potential solutions to this issue, the Defendants, over Plaintiffs' objection, on July 12, 2021 voted
27 to impose a special assessment against all unit owners which would raise about \$100,000 to pay
28 the Receiver's invoices and other expenses ("Special Assessment"). (Opposition at 2:3-11.)

1 The Motion requests that the Court: (1) enforce the Appointment Order; (2) stay the
2 Special Assessment; (3) direct the Receiver to pay the expenses of the receivership through the
3 new receivership account; and (4) order the Defendants to stop interfering with the receivership
4 and the orders governing same. (Motion at 2:6-9.) The Opposition argues the Special
5 Assessment was appropriate under the Seventh Amendment to Condominium Declaration of
6 Covenants, Conditions, Restrictions and Reservations of Easements for hotel Condominiums at
7 Grand Sierra Resort ("CC&Rs") and necessary in order to both fund the Receiver's invoices as
8 well as the GSRUOA's operations through the remainder of 2021. (Opposition at 2:24-3:6.)

9 To begin, the appointment of a receiver terminates the authority of an entity's officers
10 and directors, and places all such authority in the receiver alone. Francis v. Camel Point Ranch,
11 Inc., 2019 COA 108M, ¶¶6-10, 487 P.3d 1089, 1092-9 (Colo. App. Sept. 19, 2019) (noting that
12 "[u]pon the receiver's appointment, [Defendant's] corporate officers and directors lost all
13 authority to control the corporation"); McDougal v. Huntingdon & Broad Top Mountain RR. &
14 Coal Co., 294 Pa. 108, 143 A.574, 577 (1928) (the receiver exercises the functions of the board
15 of directors, managers and officers, takes possession of corporate income, property, and assets,
16 directs not only in its operation, but, while in control, its policies on all lines"); see First Sav &
17 Loan Ass'n v. First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a
18 receiver is appointed for a corporation, the corporation's management loses the power to run its
19 affairs and the receiver obtains all of the corporation's powers and assets"); see also U.S. v.
20 Powell, 95 F.2d 752, 754 (4th Cir. 1938). Thus, when the Appointment Order was issued, all
21 authority vested in GSRUOA's Board of Directors, managers, the Declarant, and other decision
22 makers was transferred to the Receiver and the Board of Directors, managers, the Declarant, and
23 other decision makers were divested of such authority.

24 It follows then that any decision of GSRUOA's Board of Directors since the
25 Appointment Order, including the July 12, 2021 decision to impose the Special Assessment, is
26 void as GSRUOA's Board of Directors had no authority to make such a decision or impose such
27 an assessment. (Id.)

1 Defendants argue that because the Receiver apparently did not object to the GSRUOA's
2 Board of Directors' decision to impose the Special Assessment, the Special Assessment is
3 proper. (Opposition at 4:17-18 ("The Board voted unanimously to approve and implement the
4 Special Assessment and the Receiver agreed with the action.")) This argument falls flat,
5 however, in light of the Receiver's limited authority. Anes v. Crown P'ship, Inc., 113 Nev. 195,
6 201-02, 932 P.2d 1067, 1071 (1997) ("a receiver must not exceed the limits of the authority
7 granted by the court"). The Appointment Order specifically dictates the source of funds to pay
8 the Receiver's invoices: "the Property's rents and/or GSRUOA monthly dues." (Appointment
9 Order at 6:12-16.) The Appointment Order does not provide that the Receiver can be funded
10 from any special assessments imposed upon the unit owners. Accordingly, any such special
11 assessment imposed to fund the Receiver's invoices is improper and exceeds authority vested in
12 the Receiver alone. Anes, 113 Nev. at 201-02, 932 P.2d at 1071; Fullerton v. Second Jud. Dist.
13 Ct. in & for Cty. of Washoe, 111 Nev 391, 400, 892 P.2d 935, 941 (1995) ("a receiver must not
14 exceed the limits of the authority granted"); accord Clay Expl., Inc. v. Santa Rosa Operating,
15 LLC, 442 S.W.3d 795, 800 (Tex. App. 2014) (a receiver only has that authority conferred by the
16 Court's order appointing him); Price v. Howsen, 197 Iowa 324, 197 N.W. 62, 63 (1924) ("It is a
17 familiar rule that 'the extent of a receiver's authority is always to be measured by the order of
18 appointment'"); Citibank, N.A. v. Nyland (CF 8), Ltd., 839 F.2d 93, 98 (2d Cir. 1988)
19 ("[The receiver's] authority is wholly determined by the order of the appointment court"); In re
20 Lamplight Condo. Ass'n, Inc., No. 17-20078 (JJT), 2017 WL 184510, at *2 (Bankr. D. Conn.
21 May 5, 2017) ("The source of the Receiver's authority and the process by which it was bound
22 and governed is the Appointment Order, which, as a stipulation, is [] a . . . limitation of the
23 Receiver's power, authority and process.").

24 Moreover, the Receiver has now indicated that he intends to open a separate account to
25 collect rental revenues from the Property and distribute the same to the appropriate unit owners.
26 (Motion at Ex. 2 (email in which Receiver's counsel states "The Receiver is going to open a
27 separate account for the Receivership as soon as possible. . . . As of September 1st, all of the
28 revenue from the Summit Rooms (the units in the Hotel Condominium) will be deposited into

1 the account.”).) If the Receiver so opens this account to collect rental revenue, the Special
2 Assessment will become unnecessary to pay the Receiver’s invoices as Receiver will have access
3 to all rental revenue from the relevant units with which the Receiver may pay his invoices. The
4 Court finds this action by the Receiver is both necessary and allowed under the Appointment
5 Order. (See Appointment Order at 3:7-10, 3:15-18.)

6 Accordingly, the Court finds the Special Assessment exceeded the authority of the
7 GSRUOA’s Board of Directors as well as the authority of the Receiver. Thus, the Special
8 Assessment shall be rescinded and deemed void.

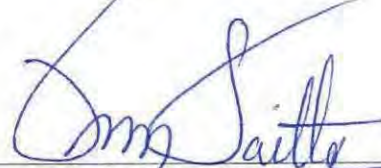
9 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion is granted.

10 **IT IS FURTHER ORDERED** that Defendants shall rescind the Special Assessment and
11 refund any unit owners who have paid the Special Assessment within twenty (20) days of this
12 Order.

13 **IT IS FURTHER ORDERED** that the Receiver shall open a separate account into
14 which all rental revenue from the units in the Hotel Condominium (as defined in the CC&Rs) is
15 deposited and may be utilized to pay the Receiver’s invoices and otherwise operate the
16 GSRUOA. The Defendants are ordered to comply with the Appointment Order’s direction to
17 cooperate with the Receiver to effect the dictates of this order.

18 **IT IS SO ORDERED.**

19 DATED 12-21-21.



SENIOR JUSTICE
Nancy Saitta

22 Submitted by:

23 ROBERTSON, JOHNSON,
24 MILLER & WILLIAMSON

25 /s/ Jarrad C. Miller

26 Jarrad C. Miller, Esq.
27 Jonathan Joel Tew, Esq.
28 Attorneys for Plaintiffs

EXHIBIT R

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 ALBERT THOMAS, individually; *et al.*,

10 Plaintiffs,

11 vs.

Case No. CV12-02222
Dept. No. OJ37

12 MEI-GSR Holdings, LLC, a Nevada limited
13 liability company, GRAND SIERRA
14 RESORT UNIT OWNERS'
15 ASSOCIATION, a Nevada nonprofit
16 corporation, GAGE VILLAGE
17 COMMERCIAL DEVELOPMENT, LLC, a
18 Nevada limited liability company; AM-GSR
HOLDINGS, LLC, a Nevada limited liability
company; and DOE DEFENDANTS 1
THROUGH 10, inclusive,

Defendants.

19 **ORDER APPROVING RECEIVER'S REQUEST TO APPROVE UPDATED FEES**

20 Before the Court is the Receiver's Receiver Analysis and Calculation of Daily Use Fee,
21 Shared Facilities Unit Expense Fee and Hotel Expense Fee with Request to Approve updated
22 Fees and for Court to Set Effective Date for New Fees, filed August 16, 2021 ("Receiver
23 Analysis"). Defendants filed Defendants' Objection to Receiver's Analysis and Calculation of
24 Daily Use Fee, Shared Facilities Unit Expense Fees and for Court to Set Effective Date for New
25 Fees on September 17, 2021. Plaintiffs filed Plaintiffs' Response to Receiver Analysis and
26 Calculation of Daily Use Fee, Shared Facilities Unit Expense Fee and Hotel Expense Fee with
27 Request to Approve Updated Fees and for Court to Set Effective Date for New Fees on
28

1 September 17, 2021. The Receiver Analysis was submitted for consideration on
2 September 22, 2021.

3 **IT IS HEREBY ORDERED** that (1) The Receiver's new fee calculations as submitted
4 to the Court should immediately be applied retroactive to January 2020 and going forward until a
5 subsequent order from the Court is issued; (2) the amounts owed to Plaintiffs under those fee
6 calculations should be paid to Plaintiffs within thirty (30) days in accordance with the Governing
7 Documents; (3) the Receiver should be permitted to calculate the 2020 fee calculation using the
8 same methodology – and once those calculations are completed, the Receiver can reconcile the
9 unit owner accounts to reflect the difference between the 2020 and 2021 fee calculations; and (4)
10 after Defendants produce to Plaintiffs all actual documents that support the Receiver's 2020 and
11 2021 calculations, and depositions are taken (limited in scope) to verify that the calculations are
12 based on actual expenses as provided for under the Governing Documents, the briefing on the
13 issue of the accuracy of the fees should recommence. Any adjustments to the fees as a result of
14 motion practice by the parties shall be credited or debited accordingly, but in the interim, rental
15 revenue shall be calculated based upon the Receiver's 2021 calculations.

16 **IT IS SO ORDERED.**

17 DATED 12-21-21.

18
19 

20 SENIOR JUSTICE
21 Nancy Saitta

22 Submitted by:

23 ROBERTSON, JOHNSON,
24 MILLER & WILLIAMSON

25 /s/ Jarrad C. Miller

26 Jarrad C. Miller, Esq.
27 Jonathan Joel Tew, Esq.
28 Attorneys for Plaintiffs

EXHIBIT S

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; et al.,

Plaintiffs,

Case No. CV12-02222

Dept. No. 10

vs.

MEI-GSR HOLDINGS, LLC, a Nevada limited
liability company, GRAND SIERRA RESORT
UNIT OWNERS' ASSOCIATION,
a Nevada nonprofit corporation, GAGE
VILLAGE COMMERCIAL DEVELOPMENT, LLC,
a Nevada limited liability company;
AM-GSR HOLDINGS, LLC, a Nevada limited
liability company; and DOES I through X, inclusive,

Defendants.

ORDER DENYING MOTION TO SET ASIDE OR AMEND JUDGMENT

Presently before the Court is DEFENDANTS' MOTION TO SET ASIDE JUDGMENT OR
IN THE ALTERNATIVE TO AMEND JUDGMENT ("the Motion") filed by Defendants MEI-
GSR HOLDINGS, LLC, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, GAGE
VILLAGE COMMERCIAL DEVELOPMENT, LLC and AM-GSR HOLDINGS, LLC
(collectively, "the Defendants") on March 13, 2019. Plaintiffs ALBERT THOMAS et al. ("the
Plaintiffs") filed the OPPOSITION TO DEFENDANTS' MOTION TO SET ASIDE JUDGMENT
OR IN THE ALTERNATIVE TO AMEND JUDGMENT ("the Opposition") on April 10, 2019.

1 The Defendants filed DEFENDANTS' REPLY IN SUPPORT OF MOTION TO SET ASIDE
2 JUDGMENT OR IN THE ALTERNATIVE TO AMEND JUDGMENT ("the Reply") on April 19,
3 2019. The Court held a hearing on July 25, 2019, and took the matter under advisement.

4 Case-concluding sanctions were entered against the Defendants for abuse of discovery and
5 disregard for the judicial process. See ORDER GRANTING PLAINTIFFS' MOTION FOR
6 CASE-TERMINATING SANCTIONS, p. 12 (Oct. 3, 2014) ("the October Order"). See also
7 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing
8 discovery sanctions). The Court held a three-day prove up hearing at which the Plaintiffs'
9 damages expert, Craig Greene ("Mr. Greene"), was the sole witness. The Court precluded the
10 Defendants from calling their own witnesses during the prove-up hearing, but permitted them to
11 cross-examine Mr. Greene extensively.¹ See ORDER 5:3-16 (Feb. 5, 2015) ("the February
12 Order"). The Court ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in
13 damages. See FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT (Oct. 9,
14 2015) ("the FFCLJ"). The parties have filed extensive post-judgment motion practice.²

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19 ¹ While the Defendants insist their cross-examination of Mr. Greene was limited, such a contention is belied by the
20 record of the prove-up hearing. The Defendants' cross-examination of Mr. Greene took up the entirety of the second day
21 of the prove-up hearing, in addition to some time on the first day.

22 ² On May 9, 2016, the Court entered the ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR LACK
23 OF SUBJECT MATTER JURISDICTION ("the Dismissal Order"). The Plaintiff appealed the Dismissal Order to the
24 Nevada Supreme Court on May 26, 2016. On February 26, 2018, the Nevada Supreme Court reversed the Dismissal
25 Order and remanded the case to the Court. The Nevada Supreme Court denied rehearing on June 1, 2018, and denied en
26 banc reconsideration on November 27, 2018. The case has been remanded to the Court and assumes the procedural
27 posture immediately preceding entry of the Dismissal Order.
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1 The Defendants argue the Court should revise or set aside the FFCLJ because they were
2 unfairly precluded from presenting witnesses or evidence in response to Mr. Greene's testimony,
3 which was riddled with fundamental defects.³ The Motion 2:11-23. The Defendants insist the
4 Court has the inherent power to revise the FFCLJ to correct these fundamental defects because
5 there is no final judgment, and a new prove-up hearing is necessary because the Plaintiffs received
6 windfall damages unsupported by substantial evidence. The Motion 4:3-17; 6:1-15; 19:23-28;
7 20:1-2. The Plaintiffs argue the Motion is procedurally defective because it is untimely and is a
8 disguised motion for reconsideration. The Opposition 1:3-17. The Plaintiffs contend the Motion is
9 substantively defective because it makes arguments previously raised and rejected by the Court,
10 and the Defendants failed to make offers of proof regarding the alleged fundamental defects during
11 the prove-up hearing, which would have allowed them to present relevant evidence.⁴ The
12 Opposition 1:7-17, 26-28; 2:1-2-20. The Defendants respond by arguing the Plaintiffs' offer of
13 proof argument is not grounded in any controlling authority, and the declarations submitted with
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19 ³ The Defendants argue Mr. Greene's calculations were flawed in the following manner: 1) Mr. Greene calculated
20 damages for underpaid revenue to unit owners without certain owners' statements and for units which were sold or
21 foreclosed upon; 2) Mr. Greene calculated damages for the rental of units without rental agreements without an
22 understanding of the IHAP rental program; 3) Mr. Greene calculated damages for discounting owners' rooms if a room
23 was rented for less than \$79.00 per night, without considering applicable nuances in the rental program; 4) Mr. Greene
24 inflated the damages for complimentary rooms because he failed to consider the Defendants' right to comp a unit five
25 times a year; 5) Mr. Greene's damage calculations for the preferential rotation system included Plaintiffs to whom the
26 Defendants had no further rental obligations and did not recognize nuances in the rotation system; and 6) Mr. Greene's
27 damage calculations for contracted fees and allocations ignores the Defendants' right to collect such money and
28 penalized them for merely placing the money in the wrong account. The Motion 6:16-23; 7:6-17; 8:1-8, 17-27; 9:3-13;
10:6-25, 11:9-25; 12:7-20. The Defendants also contend the Court erroneously awarded non-monetary relief as a matter
of law, erred in allowing Mr. Greene's testimony, and the FFCLJ does not identify the causes of action supporting the
damages award and the individual damage award for each of the Plaintiffs. The Motion 13:6-10, 26-28; 15:25-26; 16:1-
4, 25-27; 17:1-2.

⁴ The Plaintiffs also insist the declarations of Kent Vaughn and Sean Clarke were improperly provided to the Court. The
Court will not consider these declarations because the Defendants made no offers of proof regarding the necessity of
their testimony during the prove-up hearing.

1 the Motion are intended to be offers of proof.⁵ The Reply 5:24-28; 6:11-18. The Defendants also
2 contend the damages calculated by Mr. Greene were neither fair nor reasonable because of the
3 multitude of fundamental defects. The Reply 9:2-28; 10:1-15.

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5 NRCP 55(b)(2) permits a district court to hold a prove-up hearing to establish damages
6 where a default judgment has been entered. Where default judgment has been entered as a
7 discovery sanction, “the nonoffending party retains the burden of presenting sufficient evidence to
8 establish a prima facie case for each cause of action as well as demonstrating by substantial
9 evidence that damages are attributable to each claim.” *Foster v. Dingwall*, 126 Nev. 56, 60, 227
10 P.3d 1042, 1045 (2010). *See also Horgan v. Felton*, 123 Nev. 577, 581, 170 P.2d 982, 985 (2007)
11 (internal quotation marks omitted) (“Substantial evidence is evidence that a reasonable mind might
12 accept as adequate to support a conclusion.”). A district court may limit a defaulting party’s
13 presentation of evidence during a prove-up hearing; however, it is an abuse of discretion to
14 preclude a defaulting party from presenting evidence if the defaulting party has identified a
15 “fundamental defect in the nonoffending party’s case.” *Foster*, 126 Nev. at 68, 227 P.3d at 1050
16 (explaining nonoffending party is not entitled to “unlimited or unjustifiable damages”).

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19 NRCP 54(b) provides:

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21 **Judgment on Multiple Claims or Involving Multiple Parties.** When an action
22 presents more than one claim for relief--whether as a claim, counterclaim,
23 crossclaim, or third-party claim--or when multiple parties are involved, the court may
24 direct entry of a final judgment as to one or more, but fewer than all, claims or parties
25 only if the court expressly determines that there is no just reason for delay.
26 Otherwise, any order or other decision, however designated, that adjudicates fewer
27 than all the claims or the rights and liabilities of fewer than all the parties does not
28 end the action as to any of the claims or parties and may be revised at any time before
the entry of a judgment adjudicating all the claims and all the parties' rights and
liabilities.

⁵ The Reply is more than double the length permitted by the PRETRIAL ORDER, p. 8:10-18 (May 13, 2019). The Defendants are counseled to avoid exceeding the allotted page limits without permission from the Court.

1 WDCR 12(8) provides:

2 The rehearing of motions *must* be done in conformity with DCR 13, Section 7. A party
3 seeking reconsideration of a ruling of the court, other than an order which may be addressed
4 by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief
within 10 days after service of written notice of entry of the order or judgment

5 Emphasis added.

6 The Court will not revise the FFCLJ because it is not an interlocutory order subject to
7 revision. The FFCLJ adjudicated all of the Plaintiffs' claims and definitely held the Defendants
8 liable for \$8,318,215.55 in damages. *Contra Bower's v. Harrah's Laughlin, Inc.*, 125 Nev. 470,
9 479, 215 P.3d 709, 716 (2009) (holding district judge was permitted to reconsider summary
10 judgment motion regarding one plaintiff before final judgment regarding all parties was entered).
11 Simply because the FFCLJ did not address punitive damages does not render it interlocutory and
12 capable of revision. The Defendants cite no case law in support of the proposition that the lack of a
13 punitive damage award makes the FFCLJ an interlocutory order which can be amended more than
14 four years after its entry.

17 Even if the FFCLJ could be amended pursuant to NRCP 54(b), the Motion falls within the
18 confines of WDCR 12(8) and D.C.R. 13(7) and is thus untimely. As the language of WDCR 12(8)
19 demonstrates, all requests for reconsideration, except a motion pursuant to NRCP 50(b), 52(b), 59
20 or 60, are encompassed by WDCR 12(8). The Motion is subject to these local rules because it seeks
21 reconsideration of the Court's damages award in the FFCLJ. WDCR 12(8) requires such a motion
22 to be filed within ten days of service of the written notice of entry of the order or judgment. While
23 the Defendants insist the Motion does not seek reconsideration, the label assigned to a pleading does
24 not control. *Cf. Pangallo v. State*, 112 Nev. 1533, 1535-36, 930 P.2d 100, 102 (1996) *overruled on*
25 *other grounds by Griffin v. State*, 122 Nev. 737, 137 P.3d 1165 (2006) (holding improper labelling
26 does not preclude court from considering arguments made therein). Furthermore, the Defendants
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1 cannot and do not argue the Motion was filed within ten days of the notice of entry of the FFCLJ.
2 The Defendants chose to pursue relief other than reconsideration by filing DEFENDANTS'
3 MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION on December 1,
4 2015. Additionally, the fact the Defendants now have new representation does not excuse errors of
5 previous counsel.⁶ For all of these reasons, the FFCLJ is not an interlocutory order subject to
6 revision under NRCP 54(b).
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8 NRCP 59 governs motions to alter or amend a judgment. NRCP 59(e) provides:
9

10 **Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment
11 *must* be filed no later than 28 days after service of written notice of entry of
12 judgment.

13 Emphasis added. NRS 0.025(1)(c) provides:

14 “Must” expresses a requirement when:

15 (1) The subject is a thing, whether the verb is active or passive.

16 (2) The subject is a natural person and:

17 (I) The verb is in the passive voice; or

18 (II) Only a condition precedent and not a duty is imposed.

19 NRCP 59(f) explicitly states, “[t]he 28-day time periods specified in this rule cannot be extended
20 under Rule 6(b).” A motion to alter or amend must be in writing and state the grounds for relief
21 with particularity and identify the relief sought. *United Pac. Ins. Co. v. St. Denis*, 81 Nev. 103,
22 106, 399 P.2d 135, 137 (1956). *See also* NRCP 7(b). One ground for relief under a motion to
23 amend or alter the judgment is the correction of “manifest errors of law or fact.” *AA Primo*
24 *Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010) (explaining motions
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27 ⁶ Five attorneys have represented the Defendants before the Court. The Defendants were originally represented by Sean
28 Brohawn and subsequently by H. Stan Johnson, concurrently with Gayle Kern and Mark Wray. The Defendants are
currently represented by David McElhinney. On appeal, the Defendants were represented by Daniel Polsenberg, Joel
Henriod and Dale Kotchka-Alanes.

1 to alter or amend are not permitted to correct clerical errors). A district court has considerable
2 discretion in determining whether a motion to amend or alter should be granted. *Stevo Design, Inc.*
3 *v. SBR Mktg. Ltd.*, 919 F. Supp. 2d 1112, 1117 (D. Nev. 2013). *See also AA Primo*, 126 Nev. at
4 582, 245 P.3d at 1193 (explaining FRCP 59 may be consulted in interpreting NRCP 59).

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6 The Court will not alter or amend the FFLCJ because the Motion is procedurally defective
7 and substantively without merit. First, the Motion is procedurally defective because it was
8 untimely. The Motion was not filed until March 13, 2019, almost four years after the entry of the
9 FFCLJ. Had the Defendants wished to request reconsideration of the FFCLJ, they certainly could
10 have done so within the requisite twenty-eight day period. In fact, such a motion was filed by the
11 Plaintiffs within the requisite time period and was adjudicated by the Court following the remand of
12 this matter. *See ORDER GRANTING IN PART AND DENYING IN PART MOTION TO*
13 *ALTER OR AMEND JUDGMENT* (Mar. 7, 2019).

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15 Even though the Court could refuse to alter or amend the FFCLJ on procedural grounds
16 alone, the Motion is also substantively without merit.⁷ First, the Defendants contend they were
17 unfairly precluded from calling their own witnesses and presenting evidence during the prove-up
18 hearing. However, it is well-established that a district court may limit a defaulting party's
19 participation in a prove-up hearing. *See Hamlett v. Reynolds*, 114 Nev. 863, 866-67, 963 P.2d 457,
20 459 (1998) (explaining party participation in prove-up hearing is decision reserved for district
21 court). The Nevada Supreme Court has explicitly affirmed limiting a defaulting party's
22 participation to cross-examination where default has been entered as a discovery sanction. *See id.*
23 at 867, 963 P.2d at 459 ("Allowing Hamlett [defaulted party] to introduce evidence, which he
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28 ⁷ The Court will not consider the remaining arguments as the two arguments selected are dispositive of the Motion. *See generally Chaffee v. Smith*, 98 Nev. 222, 224, 645 P.2d 966, 967 (1982)

1 consistently refused to produce during discovery, would have been inequitable.”). The Defendants’
2 discovery violations were extensive: failure to respond to the first request for production of
3 documents, despite various extensions; failure to respond to the second request for production of
4 documents and interrogatories, despite various extensions; failure to make timely pretrial
5 disclosures; failure to obey rulings of the Discovery Commissioner and the Court’s corresponding
6 confirming orders; and a general tendency to turn over incomplete information in a belated fashion
7 with no legitimate explanation for the delay. *See* ORDER, p. 4-6 (Oct. 17, 2013) (striking
8 Defendants’ counterclaims). *See also* the October Order, p. 4-5 (striking Defendants’ Answer and
9 explaining Defendants’ conduct has “severely prejudiced” Plaintiffs’ case).

12 The Defendants’ repeated discovery violations demonstrate the extreme inequity of
13 allowing the Defendants to call their own witnesses during the prove-up hearing. *Cf. Foster*, 126
14 Nev. at 66, 227 P.3d at 1049 (“In light of appellants’ repeated and continued abuses, the policy of
15 adjudicating cases on the merits would not have been furthered in this case, and the ultimate
16 sanctions were necessary to demonstrate to future litigants that they are not free to act with
17 wayward disregard of a court’s orders.”). The Court would also note the Plaintiffs requested the
18 Defendants be almost entirely precluded from participating in the prove-up hearing, and the request
19 was denied by the Court. *See* PLAINTIFFS’ BRIEF PROPOSING PROCEDURES FOR
20 DAMAGES PROVE-UP HEARING 1:11-24; 3:11-16, 25-28; 4:1-2 (Dec. 15, 2014). *See also* the
21 February Order 5:3-8, 15-16. For these reasons, the Defendants were not unfairly precluded from
22 calling their own witnesses and presenting evidence during the prove-up hearing.

25 The Defendants also contend Mr. Greene incorrectly calculated damages for units without
26 rental agreements without an adequate understanding of the IHAP program. Mr. Greene generally
27 testified that the Defendants used units in the IHAP program without compensating the owners and
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1 attempted to drive IHAP out of business. Contrary to the Defendants' argument, Mr. Greene's
2 direct and cross examination testimony demonstrates that he had a thorough understanding of the
3 IHAP program.⁸ While the Defendants cross-examined Mr. Greene on this point, at no point did
4 they make an offer of proof regarding a fundamental defect in his calculation. *See* Tr. of Prove-Up
5 Hr'g Day 2, p. 324-347. Additionally, the Defendants never requested the opportunity to call a
6 witness to testify about the IHAP program. *Id.* Furthermore, the Defendants attempted to convince
7 the Court of these fundamental defects during closing argument. *See* Tr. of Prove-Up Hr'g Day 3,
8 p. 541-546. The unpersuasive nature of the argument does not create a fundamental defect where
9 none existed. For these reasons, the Court will not alter or amend the FFCLJ.
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12 The Court would conclude by noting the Plaintiffs did not receive "windfall damages"
13 unsupported by substantial evidence. This argument is premised on a misunderstanding of the
14 standard of the substantial evidence standard in the case of default. *See generally Foster*, 126 Nev.
15 at 60, 227 P.3d at 1045. Contrary to the Defendants' assertions, the Plaintiffs were not required to
16 prove their damages with mathematical certainty. Expecting mathematical certainty for damages in
17 the millions and where evidence was routinely withheld by the Defendants is highly impractical
18 and contradicts prevailing case law. *See generally Clark Cty. Sch. Dist. v. Richardson Const., Inc.*,
19 123 Nev. 382, 397, 168 P.3d 87, 97 (2007) ("[D]amages need not be proven with mathematical
20 certainty,"). Rather, the Plaintiffs were required to and did in fact provide adequate evidence of the
21 nature and the extent of their damages. The level of particularity provided by Mr. Greene
22 reasonably supported the amount of damages awarded to the Plaintiffs.
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28 ⁸ Mr. Greene's direct examination regarding IHAP can be found at pages 136-166 of the transcript for the first day of the
prove-up hearing.

1 **IT IS ORDERED** DEFENDANTS' MOTION TO SET ASIDE JUDGMENT OR IN THE
2 ALTERNATIVE TO AMEND JUDGMENT is hereby **DENIED**.

3 **DATED** this 2 day of October, 2019.
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7 ELLIOTT A. SATTLER
District Judge

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court
3 of the State of Nevada, County of Washoe; that on this ____ day of October, 2019, I deposited in the
4 County mailing system for postage and mailing with the United States Postal Service in Reno,
5 Nevada, a true copy of the attached document addressed to:
6

7 **CERTIFICATE OF ELECTRONIC SERVICE**

8 I hereby certify that I am an employee of the Second Judicial District Court of the State of
9 Nevada, in and for the County of Washoe; that on the 2nd day of October, 2019, I electronically
10 filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of
11 electronic filing to the following:
12

13 JARRAD C. MILLER, ESQ.

14 JONATHAN JOEL TEW, ESQ.

15 DAVID C. MCELHINNEY, ESQ.
16

17 *W. Merkouris for*
18 Sheila Mansfield
19 Judicial Assistant
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EXHIBIT T

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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
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8 ALBERT THOMAS, individually, et al,

9 Plaintiffs,

Case No: CV12-02222

10 vs.

Dept. No: 10

11 MEI-GSR Holdings, LLC, a Nevada Limited
12 Liability Company, et al,

13 Defendants.
14 _____ /

15 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

16 This action was commenced on August 27, 2012, with the filing of a COMPLAINT ("the
17 Complaint"). The Complaint alleged twelve causes of action: 1) Petition for Appointment of a
18 Receiver as to Defendant Grand Sierra Resort Unit-Owners' Association; 2) Intentional and/or
19 Negligent Misrepresentation as to Defendant MEI-GSR; 3) Breach of Contract as to Defendant
20 MEI-GSR; 4) Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR;
21 5) Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR;
22 6) Consumer Fraud/Nevada Deceptive Trade Practices Act Violations as to Defendant MEI-GSR; 7)
23 Declaratory Relief as to Defendant MEI-GSR; 8) Conversion as to Defendant MEI-GSR; 9) Demand
24 for an Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners Association;
25 10) Specific Performance Pursuant to NRS 116.122, Unconscionable Agreement; 11) Unjust
26 Enrichment/Quantum Meruit against Defendant Gage Village Development; 12) Tortious
27 Interference with Contract and/or Prospective Business Advantage against Defendants MEI-GSR
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1 and Gage Development. The Plaintiffs (as more fully described *infra*) were individuals or other
2 entities who had purchased condominiums in the Grand Sierra Resort ("GSR"). A FIRST
3 AMENDED COMPLAINT ("the First Amended Complaint") was filed on September 10, 2012.
4 The First Amended Complaint had the same causes of action as the Complaint.

5 The Defendants (as more fully described *infra*) filed an ANSWER AND COUNTERCLAIM
6 ("the Answer") on November 21, 2012. The Answer denied the twelve causes of action; asserted
7 eleven affirmative defenses; and alleged three Counterclaims. The Counterclaims were for: 1)
8 Breach of Contract; 2) Declaratory Relief; 3) Injunctive Relief.

9 The Plaintiffs filed a SECOND AMENDED COMPLAINT ("the Second Amended
10 Complaint") on March 26, 2013. The Second Amended Complaint had the same causes of action as
11 the Complaint and the First Amended Complaint. The Defendants filed an ANSWER TO SECOND
12 AMENDED COMPLAINT AND COUNTER CLAIM ("the Second Answer") on May 23, 2013.
13 The Second Answer generally denied the allegations in the Second Amended Complaint and
14 contained ten affirmative defenses. The Counterclaims mirrored the Counterclaims in the Answer.

15 The matter has been the subject of extensive motion practice. There were numerous
16 allegations of discovery abuses by the Defendants. The record speaks for itself regarding the
17 protracted nature of these proceedings and the systematic attempts at obfuscation and intentional
18 deception on the part of the Defendants. Further, the Court has repeatedly had to address the
19 lackadaisical and inappropriate approach the Defendants have exhibited toward the Nevada Rules of
20 Civil Procedure, the District Court Rules, the Washoe District Court Rules, and the Court's orders.
21 The Defendants have consistently, and repeatedly, chosen to follow their own course rather than
22 respect the need for orderly process in this case. NRCP 1 states that the rules of civil procedure
23 should be "construed and administered to secure the just, speedy, and inexpensive determination of
24 every action." The Defendants have turned this directive on its head and done everything possible to
25 make the proceedings unjust, dilatory, and costly.

26 The Court twice has addressed a request to impose case concluding sanctions against the
27 Defendants because of their repeated discovery abuses. The Court denied a request for case
28 concluding sanctions in its ORDER REGARDING ORIGINAL MOTION FOR CASE

1 CONCLUDING SANCTIONS filed December 18, 2013 ("the December Order"). The Court found
2 that case concluding sanctions were not appropriate; however, the Court felt that some sanctions
3 were warranted based on the Defendants' repeated discovery violations. The Court struck all of the
4 Defendants' Counterclaims in the December Order and required the Defendants to pay for the costs
5 of the Plaintiffs' representation in litigating that issue.

6 The parties continued to fight over discovery issues after the December Order. The Court
7 was again required to address the issue of case concluding sanctions in January of 2014. It became
8 clear that the Defendants were disingenuous with the Court and Plaintiffs' counsel when the first
9 decision regarding case concluding sanctions was argued and resolved. Further, the Defendants
10 continued to violate the rules of discovery and other court rules even after they had their
11 Counterclaims struck in the December Order. The Court conducted a two day hearing regarding the
12 renewed motion for case concluding sanctions. An ORDER GRANTING PLAINTIFFS' MOTION
13 FOR CASE-TERMINATING SANCTIONS was entered on October 3, 2014 ("the October Order").
14 The Defendants' Answer was stricken in the October Order. A DEFAULT was entered against the
15 Defendants on November 26, 2014.

16 The Court conducted a "prove-up hearing" regarding the issue of damages from March 23
17 through March 25, 2015. The Court entered an ORDER on February 5, 2015 ("the February Order")
18 establishing the framework of the prove-up hearing pursuant to *Foster v. Dingwall*, 126 Nev. Adv.
19 Op. 6, 227 P.3d 1042 (2010). The February Order limited, but did not totally eliminate, the
20 Defendants' ability to participate in the prove-up hearing. The Court heard expert testimony from
21 Craig L. Greene, CPA/CFF, CFE, CCEP, MAFF ("Greene") at the prove-up hearing. Greene
22 calculated the damages owed the Plaintiffs using information collected and provided by the
23 Defendants. The Court finds Greene to be very credible and his methodology to be sound. Further,
24 the Court notes that Greene attempted to be "conservative" in his calculations. Greene used
25 variables and factors that would eliminate highly suspect and/or unreliable data. The Court has also
26 received and reviewed supplemental information provided as a result of an inquiry made by the
27 Court during the prove-up hearing.

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1 The GSR is a high rise hotel/casino in Reno, Nevada. The GSR has approximately 2000
2 rooms. The Plaintiffs purchased individual rooms in the GSR as condominiums. It appears to the
3 Court that the primary purpose of purchasing a condominium in the GSR would be as an investment
4 and revenue generating proposition. The condominiums were the subject of statutory limitations on
5 the number of days the owners could occupy them during the course of a calendar year. The owners
6 would not be allowed to "live" in the condominium. When the owners were not in the rooms they
7 could either be rented out or they had to remain empty.

8 As noted, *supra*, the Court stripped all of the Defendants general and affirmative defenses in
9 the October Order. The Defendants stand before the Court having involuntarily conceded all of the
10 allegations contained in the Second Amended Complaint. The Court makes the following findings
11 of fact:

12 **I. FINDINGS OF FACT**

13 1. Plaintiff Albert Thomas is a competent adult and is a resident of the State of
14 California.

15 2. Plaintiff Jane Dunlap is a competent adult and is a resident of the State of California.

16 3. Plaintiff John Dunlap is a competent adult and is a resident of the State of California.

17 4. Plaintiff Barry Hay is a competent adult and is a resident of the State of California.

18 5. Plaintiff Marie-Annie Alexander, as Trustee of the Marie-Annie Alexander Living
19 Trust, is a competent adult and is a resident of the State of California.

20 6. Plaintiff Melissa Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa
21 Vagujheyli 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
22 resident of the State of Nevada.

23 7. Plaintiff George Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa
24 Vagujheyli 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
25 resident of the State of Nevada.

26 8. Plaintiff D'Arcy Nunn is a competent adult and is a resident of the State of California.

27 9. Plaintiff Henry Nunn is a competent adult and is a resident of the State of California.
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- 1 10. Plaintiff Lee Van Der Bokke is a competent adult and is a resident of the State of
2 California.
- 3 11. Plaintiff Madelyn Van Der Bokke is a competent adult and is a resident of the State of
4 California.
- 5 12. Plaintiff Donald Schreifels is a competent adult and is a resident of the State of
6 Minnesota.
- 7 13. Plaintiff Robert R. Pederson, individually and as Trustee of the Pederson 1990 Trust,
8 is a competent adult and is a resident of the State of California.
- 9 14. Plaintiff Lou Ann Pederson, individually and as Trustee of the Pederson 1990 Trust,
10 is a competent adult and is a resident of the State of California.
- 11 15. Plaintiff Lori Ordovery is a competent adult and is a resident of the State of
12 Connecticut.
- 13 16. Plaintiff William A. Henderson is a competent adult and is a resident of the State of
14 California.
- 15 17. Plaintiff Christine E. Henderson is a competent adult and is a resident of the State of
16 California.
- 17 18. Plaintiff Loren D. Parker is a competent adult and is a resident of the State of
18 Washington.
- 19 19. Plaintiff Suzanne C. Parker is a competent adult and is a resident of the State of
20 Washington.
- 21 20. Plaintiff Michael Izady is a competent adult and is a resident of the State of New
22 York.
- 23 21. Plaintiff Steven Takaki is a competent adult and is a resident of the State of
24 California.
- 25 22. Plaintiff Farad Torabkhan is a competent adult and is a resident of the State of New
26 York.
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- 1 23. Plaintiff Sahar Tavakol is a competent adult and is a resident of the State of New
2 York.
- 3 24. Plaintiff M&Y Holdings is a Nevada Limited Liability Company with its principal
4 place of business in Nevada.
- 5 25. Plaintiff JL&YL Holdings, LLC is a Nevada Limited Liability Company with its
6 principal place of business in Nevada.
- 7 26. Plaintiff Sandi Raines is a competent adult and is a resident of the State of Minnesota.
- 8 27. Plaintiff R. Raghuram is a competent adult and is a resident of the State of California.
- 9 28. Plaintiff Usha Raghuram is a competent adult and is a resident of the State of
10 California.
- 11 29. Plaintiff Lori K. Tokutomi is a competent adult and is a resident of the State of
12 California.
- 13 30. Plaintiff Garrett Tom is a competent adult and is a resident of the State of California.
- 14 31. Plaintiff Anita Tom is a competent adult and is a resident of the State of California.
- 15 32. Plaintiff Ramon Fadrilan is a competent adult and is a resident of the State of
16 California.
- 17 33. Plaintiff Faye Fadrilan is a competent adult and is a resident of the State of California.
- 18 34. Plaintiff Peter K. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a
19 competent adult and is a resident of the State of California.
- 20 35. Plaintiff Monica L. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a
21 competent adult and is a resident of the State of California.
- 22 36. Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.
- 23 37. Plaintiff Elias Shamieh is a competent adult and is a resident of the State of
24 California.
- 25 38. Plaintiff Nadine's Real Estate Investments, LLC, is a North Dakota Limited Liability
26 Company.
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- 1 39. Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of
2 Hawaii.
- 3 40. Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of
4 Hawaii.
- 5 41. Plaintiff Kenneth Riche is a competent adult and is a resident of the State of
6 Wisconsin.
- 7 42. Plaintiff Maxine Riche is a competent adult and is a resident of the State of
8 Wisconsin.
- 9 43. Plaintiff Norman Chandler is a competent adult and is a resident of the State of
10 Alabama.
- 11 44. Plaintiff Benton Wan is a competent adult and is a resident of the State of California.
- 12 45. Plaintiff Timothy Kaplan is a competent adult and is a resident of the State of
13 California.
- 14 46. Plaintiff Silkscape Inc. is a California Corporation.
- 15 47. Plaintiff Peter Cheng is a competent adult and is a resident of the State of California.
- 16 48. Plaintiff Elisa Cheng is a competent adult and is a resident of the State of California.
- 17 49. Plaintiff Greg A. Cameron is a competent adult and is a resident of the State of
18 California.
- 19 50. Plaintiff TMI Property Group, LLC is a California Limited Liability Company.
- 20 51. Plaintiff Richard Lutz is a competent adult and is a resident of the State of California.
- 21 52. Plaintiff Sandra Lutz is a competent adult and is a resident of the State of California.
- 22 53. Plaintiff Mary A. Kossick is a competent adult and is a resident of the State of
23 California.
- 24 54. Plaintiff Melvin H. Cheah is a competent adult and is a resident of the State of
25 California.
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- 1 55. Plaintiff Di Shen is a competent adult and is a resident of the State of Texas.
- 2 56. Plaintiff Ajit Gupta is a competent adult and is a resident of the State of California.
- 3 57. Plaintiff Seema Gupta is a competent adult and is a resident of the State of California.
- 4 58. Plaintiff Fredrick Fish is a competent adult and is a resident of the State of Minnesota.
- 5 59. Plaintiff Lisa Fish is a competent adult and is a resident of the State of Minnesota.
- 6 60. Plaintiff Robert A. Williams is a competent adult and is a resident of the State of
- 7 Minnesota.
- 8 61. Plaintiff Jacquelin Pham is a competent adult and is a resident of the State of
- 9 California.
- 10 62. Plaintiff May Ann Hom, as Trustee of the May Ann Hom Trust, is a competent adult
- 11 and is a resident of the State of California.
- 12 63. Plaintiff Michael Hurley is a competent adult and is a resident of the State of
- 13 Minnesota.
- 14 64. Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.
- 15 65. Plaintiff Duane Windhorst is a competent adult and is a resident of the State of
- 16 Minnesota.
- 17 66. Plaintiff Marilyn Windhorst is a competent adult and is a resident of the State of
- 18 Minnesota.
- 19 67. Plaintiff Vinod Bhan is a competent adult and is a resident of the State of California.
- 20 68. Plaintiff Anne Bhan is a competent adult and is a resident of the State of California.
- 21 69. Plaintiff Guy P. Browne is a competent adult and is a resident of the State of
- 22 California.
- 23 70. Plaintiff Garth Williams is a competent adult and is a resident of the State of
- 24 California.
- 25 71. Plaintiff Pamela Y. Aratani is a competent adult and is a resident of the State of
- 26 California.
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- 1 72. Plaintiff Darleen Lindgren is a competent adult and is a resident of the State of
2 Minnesota.
- 3 73. Plaintiff Laverne Roberts is a competent adult and is a resident of the State of
4 Nevada.
- 5 74. Plaintiff Doug Mecham is a competent adult and is a resident of the State of Nevada.
- 6 75. Plaintiff Chrisine Mecham is a competent adult and is a resident of the State of
7 Nevada.
- 8 76. Plaintiff Kwangsoo Son is a competent adult and is a resident of Vancouver, British
9 Columbia.
- 10 77. Plaintiff Soo Yeun Moon is a competent adult and is a resident of Vancouver, British
11 Columbia.
- 12 78. Plaintiff Johnson Akindodunse is a competent adult and is a resident of the State of
13 California.
- 14 79. Plaintiff Irene Weiss, as Trustee of the Weiss Family Trust, is a competent adult and
15 is a resident of the State of Texas.
- 16 80. Plaintiff Pravesh Chopra is a competent adult and is a resident of the State of
17 California.
- 18 81. Plaintiff Terry Pope is a competent adult and is a resident of the State of Nevada.
- 19 82. Plaintiff Nancy Pope is a competent adult and is a resident of the State of Nevada.
- 20 83. Plaintiff James Taylor is a competent adult and is a resident of the State of California.
- 21 84. Plaintiff Ryan Taylor is a competent adult and is a resident of the State of California.
- 22 85. Plaintiff Ki Ham is a competent adult and is a resident of Surry B.C.
- 23 86. Plaintiff Young Ja Choi is a competent adult and is a resident of Coquitlam, B.C.
- 24 87. Plaintiff Sang Dae Sohn is a competent adult and is a resident of Vancouver, B.C.
- 25 88. Plaintiff Kuk Hyung ("Connie") is a competent adult and is a resident of Coquitlam,
26 B.C.
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- 1 89. Plaintiff Sang ("Mike") Yoo is a competent adult and is a resident of Coquitlam, B.C.
- 2 90. Plaintiff Brett Menmuir, as Trustee of the Cayenne Trust, is a competent adult and is
- 3 a resident of the State of Nevada.
- 4 91. Plaintiff William Miner, Jr., is a competent adult and is a resident of the State of
- 5 California.
- 6 92. Plaintiff Chanh Truong is a competent adult and is a resident of the State of
- 7 California.
- 8 93. Plaintiff Elizabeth Anders Mecua is a competent adult and is a resident of the State of
- 9 California.
- 10 94. Plaintiff Shepherd Mountain, LLC is a Texas Limited Liability Company with its
- 11 principal place of business in Texas.
- 12 95. Plaintiff Robert Brunner is a competent adult and is a resident of the State of
- 13 Minnesota.
- 14 96. Plaintiff Amy Brunner is a competent adult and is a resident of the State of
- 15 Minnesota.
- 16 97. Plaintiff Jeff Riopelle is a competent adult and is a resident of the State of California.
- 17 98. Plaintiff Patricia M. Moll is a competent adult and is a resident of the State of Illinois.
- 18 99. Plaintiff Daniel Moll is a competent adult and is a resident of the State of Illinois.
- 19 100. The people and entities listed above represent their own individual interests. They are
- 20 not suing on behalf of any entity including the Grand Sierra Unit Home Owner's Association. The
- 21 people and entities listed above are jointly referred to herein as "the Plaintiffs".
- 22 101. Defendant MEI-GSR Holdings, LLC ("MEI-GSR") is a Nevada Limited Liability
- 23 Company with its principal place of business in Nevada.
- 24 102. Defendant Gage Village Commercial Development, LLC ("Gage Village") is a
- 25 Nevada Limited Liability Company with its principal place of business in Nevada.
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1 103. Gage Village is related to, controlled by, affiliated with, and/or a subsidiary of MEI-
2 GSR.

3 104. Defendant Grand Sierra Resort Unit Owners' Association ("the Unit Owners'
4 Association") is a Nevada nonprofit corporation with its principal place of business in Nevada.

5 105. MEI-GSR transferred interest in one hundred forty-five (145) condominium units to
6 AM-GSR Holdings, LLC ("AM-GSR") on December 22, 2014.

7 106. Defendants acknowledged to the Court on January 13, 2015, that AM-GSR would be
8 added to these proceedings and subject to the same procedural posture as MEI-GSR. Further, the
9 parties stipulated that AM-GSR would be added as a defendant in this action just as if AM-GSR was
10 a named defendant in the Second Amended Complaint. Said stipulation occurring and being ordered
11 on January 21, 2015.

12 107. MEI-GSR, Gage Village and the Unit Owner's Association are jointly referred to
13 herein as "the Defendants".

14 108. The Grand Sierra Resort Condominium Units ("GSR Condo Units") are part of the
15 Grand Sierra Unit Owners Association, which is an apartment style hotel condominium development
16 of 670 units in one 27-story building. The GSR Condo Units occupy floors 17 through 24 of the
17 Grand Sierra Resort and Casino, a large-scale hotel casino, located at 2500 East Second Street,
18 Reno, Nevada.

19 109. All of the Individual Unit Owners: hold an interest in, own, or have owned, one or
20 more GSR Condo Units.

21 110. Gage Village and MEI-GSR own multiple GSR Condo Units.

22 111. MEI-GSR owns the Grand Sierra Resort and Casino.

23 112. Under the Declaration of Covenants, Conditions, Restrictions and Reservations of
24 Easements for Hotel-Condominiums at Grand Sierra Resort ("CC&Rs"), there is one voting member
25 for each unit of ownership (thus, an owner with multiple units has multiple votes).
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1 113. Because MEI-GSR and Gage Village control more units of ownership than any other
2 person or entity, they effectively control the Unit Owners' Association by having the ability to elect
3 MEI-GSR's chosen representatives to the Board of Directors (the governing body over the GSR
4 Condo Units).

5 114. As a result of MEI-GSR and Gage Village controlling the Unit Owners' Association,
6 the Individual Unit Owners effectively have no input or control over the management of the Unit
7 Owners' Association.

8 115. MEI-GSR and Gage Village have used, and continue to use, their control over the
9 Unit Owners' Association to advance MEI-GSR and Gage Villages' economic objectives to the
10 detriment of the Individual Unit Owners.

11 116. MEI-GSR and Gage Villages' control of the Unit Owners' Association violates
12 Nevada law as it defeats the purpose of forming and maintaining a homeowners' association.

13 117. Further, the Nevada Division of Real Estate requires a developer to sell off the units
14 within 7 years, exit and turn over the control and management to the owners.

15 118. Under the CC&Rs, the Individual Unit Owners are required to enter into a "Unit
16 Maintenance Agreement" and participate in the "Hotel Unit Maintenance Program," wherein MEI-
17 GSR provides certain services (including, without limitation, reception desk staffing, in-room
18 services, guest processing services, housekeeping services, Hotel Unit inspection, repair and
19 maintenance services, and other services).

20 119. The Unit Owners' Association maintains capital reserve accounts that are funded by
21 the owners of GSR Condo Units. The Unit Owners' Association collects association dues of
22 approximately \$25 per month per unit, with some variation depending on a particular unit's square
23 footage.

24 120. The Individual Unit Owners pay for contracted "Hotel Fees," which include taxes,
25 deep cleaning, capital reserve for the room, capital reserve for the building, routine maintenance,
26 utilities, etc.
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28

1 121. MEI-GSR has systematically allocated and disproportionately charged capital reserve
2 contributions to the Individual Unit Owners, so as to force the Individual Unit Owners to pay capital
3 reserve contributions in excess of what should have been charged.

4 122. MEI-GSR and Gage Development have failed to pay proportionate capital reserve
5 contribution payments in connection with their Condo Units.

6 123. MEI-GSR has failed to properly account for, or provide an accurate accounting for
7 the collection and allocation of the collected capital reserve contributions.

8 124. The Individual Unit Owners also pay "Daily Use Fees" (a charge for each night a unit
9 is occupied by any guest for housekeeping services, etc.).

10 125. MEI-GSR and Gage Village have failed to pay proportionate Daily Use Fees for the
11 use of Defendants' GSR Condo Units.

12 126. MEI-GSR has failed to properly account for the contracted "Hotel Fees" and "Daily
13 Use Fees."

14 127. Further, the Hotel Fees and Daily Use Fees are not included in the Unit Owners'
15 Association's annual budget with other assessments that provide the Individual Unit Owners' the
16 ability to reject assessment increases and proposed budget ratification.

17 128. MEI-GSR has systematically endeavored to increase the various fees that are charged
18 in connection with the use of the GSR Condo Units in order to devalue the units owned by
19 Individual Unit Owners.

20 129. The Individual Unit Owners' are required to abide by the unilateral demands of MEI-
21 GSR, through its control of the Unit Owners' Association, or risk being considered in default under
22 Section 12 of the Agreement, which provides lien and foreclosure rights pursuant to Section 6.10(f)
23 of the CC&R's.

24 130. Defendants MEI-GSR and/or Gage Village have attempted to purchase, and
25 purchased, units devalued by their own actions, at nominal, distressed prices when Individual Unit
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1 Owners decide to, or are effectively forced to, sell their units because the units fail to generate
2 sufficient revenue to cover expenses.

3 131. MEI-GSR and/or Gage Village have, in late 2011 and 2012, purchased such devalued
4 units for \$30,000 less than the amount they purchased units for in March of 2011.

5 132. The Individual Unit Owners effectively pay association dues to fund the Unit
6 Owners' Association, which acts contrary to the best interests of the Individual Unit Owners.

7 133. MEI-GSR's interest in maximizing its profits is in conflict with the interest of the
8 Individual Unit Owners. Accordingly, Defendant MEI-GSR's control of the Unit Owners'
9 Association is a conflict of interest.

10 134. As part of MEI-GSR's Grand Sierra Resort and Casino business operations, it rents:
11 (1) hotel rooms owned by MEI-GSR that are not condominium units; (2) GSR Condo Units owned
12 by MEI-GSR and/or Gage Village; and (3) GSR Condo Units owned by the Individual Condo Unit
13 Owners.
14

15 135. MEI-GSR has entered into a Grand Sierra Resort Unit Rental Agreement with
16 Individual Unit Owners.

17 136. MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by MEI-GSR; (2)
18 GSR Condo Units owned by MEI-GSR and/or Gage Village; and (3) GSR Condo Units owned by
19 Individual Condo Unit Owners so as to maximize MEI-GSR's profits and devalue the GSR Condo
20 Units owned by the Individual Unit Owners.

21 137. MEI-GSR has rented the Individual Condo Units for as little as \$0.00 to \$25.00 a
22 night.

23 138. Yet, MEI-GSR has charged "Daily Use Fees" of approximately \$22.38, resulting in
24 revenue to the Individual Unit Owners as low as \$2.62 per night for the use of their GSR Condo Unit
25 (when the unit was rented for a fee as opposed to being given away).

26 139. By functionally, and in some instances actually, giving away the use of units owned
27 by the Individual Unit Owners, MEI-GSR has received a benefit because those who rent the
28

1 Individual Units frequently gamble and purchase food, beverages, merchandise, spa services and
2 entertainment access from MEI-GSR.

3 140. MEI-GSR has rented Individual Condo Units to third parties without providing
4 Individual Unit Owners with any notice or compensation for the use of their unit.

5 141. Further, MEI-GSR has systematically endeavored to place a priority on the rental of
6 MEI-GSR's hotel rooms, MEI-GSR's GSR Condo Units, and Gage Village's Condo Units.

7 142. Such prioritization effectively devalues the units owned by the Individual Unit
8 Owners.

9 143. MEI-GSR and Gage Village intend to purchase the devalued units at nominal,
10 distressed prices when Individual Unit Owners decide to, or are effectively forced to, sell their units
11 because the units fail to generate sufficient revenue to cover expenses and have no prospect of
12 selling their persistently loss-making units to any other buyer.

13 144. Some of the Individual Unit Owners have retained the services of a third party to
14 market and rent their GSR Condo Unit(s).

15 145. MEI-GSR has systematically thwarted the efforts of any third party to market and
16 rent the GSR Units owned by the Individual Unit Owners.

17 146. MEI-GSR has breached the Grand Sierra Resort Unit Rental Agreement with
18 Individual Condo Unit Owners by failing to follow its terms, including but not limited to, the failure
19 to implement an equitable Rotational System as referenced in the agreement.

20 147. MEI-GSR has failed to act in good faith in exercising its duties under the Grand
21 Sierra Resort Unit Rental Agreements with the Individual Unit Owners.

22 The Court is intimately familiar with all of the allegations in the twelve causes of action
23 contained in the Second Amended Complaint. The Court's familiarity is a result of reviewing all of
24 the pleadings and exhibits in this matter to include the various discovery disputes, the testimony at
25 the numerous hearings conducted to date, and the other documents and exhibits on file. The Court
26 finds that the facts articulated above support the twelve causes of action contained in the Second
27 Amended Complaint.
28

II. CONCLUSIONS OF LAW

- 1
- 2 A. The Court has jurisdiction over MEI-GSR, Gage Village, the Unit Owner's Association
- 3 and the Plaintiffs.
- 4 B. The appointment of a receiver is appropriate when: (1) the plaintiff has an interest in
- 5 the property; (2) there is potential harm to that interest in property; and (3) no other
- 6 adequate remedies exist to protect the interest. *See generally Bowler v. Leonard*, 70
- 7 Nev. 370, 269 P.2d 833 (1954). *See also* NRS 32.010. The Court appointed a receiver
- 8 to oversee the Unit Owner's Association on January 7, 2015. The Court concludes that
- 9 MEI-GSR and/or Gage Village have operated the Unit Owner's Association in a way
- 10 inconsistent with the best interests of all of the unit owners. The continued
- 11 management of the Unit Owner's Association by the receiver is appropriate under the
- 12 circumstances of this case and will remain in effect absent additional direction from the
- 13 Court.
- 14 C. Negligent misrepresentation is when "[o]ne who, in the course of his business,
- 15 profession or employment, or in any other action in which he has a pecuniary interest,
- 16 supplies false information for the guidance of others in their business transactions, is
- 17 subject to liability for pecuniary loss caused to them by their justifiable reliance upon
- 18 the information, if he fails to exercise reasonable care or competence in obtaining or
- 19 communicating the information." *Barmeltler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d
- 20 1382, 1387 (1998) (quoting *Restatement (Second) of Torts* § 552(1) (1976)). Intentional
- 21 misrepresentation is when "a false representation made with knowledge or belief that it
- 22 is false or without a sufficient basis of information, intent to induce reliance, and
- 23 damage resulting from the reliance. *Lubbe v. Barba*, 91 Nev. 596, 599, 540 P.2d 115,
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1 117 (1975).” *Collins v. Burns*, 103 Nev. 394, 397, 741 P.2d 819, 821 (1987). MEI-
2 GSR is liable for intentionally and/or negligent misrepresentation as alleged in the
3 Second Cause of Action.

4
5 D. An enforceable contract requires, “an offer and acceptance, meeting of the minds, and
6 consideration.” *Certified Fire Protection, Inc. v. Precision Construction, Inc.* 128 Nev.
7 Adv. Op. 35, 283 P.3d 250, 255 (2012)(citing *May v. Anderson*, 121 Nev. 668, 672, 119
8 P.3d 1254, 1257 (2005)). There was a contract between the Plaintiffs and MEI-GSR.
9 MEI-GSR has breached the contract and therefore MEI-GSR is liable for breach of
10 contract as alleged in the Third Cause of Action.

11
12 E. MEI-GSR is liable for Quasi-Contract/Equitable Contract/Detrimental Reliance as
13 alleged in the Fourth Cause of Action.

14
15 F. An implied covenant of good faith and fair dealing exists in every contract in Nevada.
16 *Hilton Hotels Corp. v. Butch Lewis Productions, Inc.*, 109 Nev. 1043, 1046, 862 P.2d
17 1207, 1209 (1993). “The duty not to act in bad faith or deal unfairly thus becomes part
18 of the contract, and, as with any other element of the contract, the remedy for its breach
19 generally is on the contract itself.” *Id.* (citing *Wagenseller v. Scottsdale Memorial*
20 *Hospital*, 147 Ariz. 370, 383, 710 P.2d 1025, 1038 (1985)). “It is well established that
21 in contracts cases, compensatory damages ‘are awarded to make the aggrieved party
22 whole and ... should place the plaintiff in the position he would have been in had the
23 contract not been breached.’ This includes awards for lost profits or expectancy
24 damages.” *Road & Highway Builders, LLC v. Northern Nevada Rebar, Inc.*, 128 Nev.
25 Adv. Op. 36, 284 P.3d 377, 382 (2012)(*internal citations omitted*). “When one party
26 performs a contract in a manner that is unfaithful to the purpose of the contract and the
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1 justified expectations of the other party are thus denied, damages may be awarded
2 against the party who does not act in good faith.” *Perry v. Jordan*, 111 Nev. 943, 948,
3 900 P.2d 335, 338 (1995)(*citation omitted*). “Reasonable expectations are to be
4 ‘determined by the various factors and special circumstances that shape these
5 expectations.’” *Id.* (citing *Butch Lewis*, 107 Nev. at 234, 808 P.2d at 923). MEI-GSR is
6 liable for breach of the covenant of good faith and fair dealing as set forth in the Fifth
7 Cause of Action.
8

9
10 G. MEI-GSR has violated NRS 41.600(1) and (2) and NRS 598.0915 through 598.0925,
11 inclusive and is therefore liable for the allegations contained in the Sixth Cause of
12 Action. Specifically, MEI-GSR violated NRS 598.0915(15) and NRS 598.0923(2).

13 H. The Plaintiffs are entitled to declaratory relief as more fully described below and
14 prayed for in the Seventh Cause of Action.

15 I. MEI-GSR wrongfully committed numerous acts of dominion and control over the
16 property of the Plaintiffs, including but not limited to renting their units at discounted
17 rates, renting their units for no value in contravention of written agreements between
18 the parties, failing to account for monies received by MEI-GSR attributable to specific
19 owners, and renting units of owners who were not even in the rental pool. All of said
20 activities were in derogation, exclusion or defiance of the title and/or rights of the
21 individual unit owners. Said acts constitute conversion as alleged in the Eighth Cause
22 of Action.

23 J. The demand for an accounting as requested in Ninth Cause of Action is moot pursuant
24 to the discovery conducted in these proceedings and the appointment of a receiver to
25 oversee the interaction between the parties.

26 K. The Unit Maintenance Agreement and Unit Rental Agreement proposed by MEI-GSR
27 and adopted by the Unit Owner’s Association are unconscionable. An unconscionable
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1 clause is one where the circumstances existing at the time of the execution of the
2 contract are so one-sided as to oppress or unfairly surprise an innocent party. *Bill*
3 *Stremmel Motors, Inc. v. IDS Leasing Corp.*, 89 Nev. 414, 418, 514 P.2d 654, 657
4 (1973). MEI-GSR controls the Unit Owner's Association based on its majority
5 ownership of the units in question. It is therefore able to propose and pass agreements
6 that affect all of the unit owners. These agreements require unit owners to pay
7 unreasonable Common Expense fees, Hotel Expenses Fees, Shared Facilities Reserves,
8 and Hotel Reserves ("the Fees"). The Fees are not based on reasonable expectation of
9 need. The Fees have been set such that an individual owner may actually *owe* money
10 as a result of having his/her unit rented. They are unnecessarily high and imposed
11 simply to penalize the individual unit owners. Further, MEI-GSR and/or Gage Village
12 have failed to fund their required portion of these funds, while demanding the
13 individual unit owners continue to pay the funds under threat of a lien. MEI-GSR has
14 taken the Fees paid by individual unit owners and placed the funds in its general
15 operating account rather than properly segregating them for the use of the Unit Owner's
16 Association. All of said actions are unconscionable and unenforceable pursuant to NRS
17 116.112(1). The Court will grant the Tenth Cause of Action and not enforce these
18 portions of the agreements.
19

20 L. The legal concept of *quantum meruit* has two applications. The first application is in
21 actions based upon contracts implied-in-fact. The second application is providing
22 restitution for unjust enrichment. *Certified Fire*, at 256. In the second application,
23 "[l]iability in restitution for the market value of goods or services is the remedy
24 traditionally known as quantum meruit. Where unjust enrichment is found, the law
25 implies a quasi-contract which requires the defendant to pay to the plaintiff the value of
26 the benefit conferred. In other words, the defendant makes restitution to the plaintiff in
27 *quantum meruit*." *Id.* at 256-57. Gage Village has been unjustly enriched based on the
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orchestrated action between it and MEI-GSR to the detriment of the individual unit owners as alleged in the Eleventh Cause of Action.

M. Many of the individual unit owners attempted to rent their units through third-party services rather than through the use of MEI-GSR. MEI-GSR and Gage Village intentionally thwarted, interfered with and/or disrupted these attempts with the goal of forcing the sale of the individual units back to MEI-GSR. All of these actions were to the economic detriment of the individual unit owners as alleged in the Twelfth Cause of Action.

N. The Plaintiffs are entitled to both equitable and legal relief. “As federal courts have recognized, the long-standing distinction between law and equity, though abolished in procedure, continues in substance, *Coca-Cola Co. v. Dixi-Cola Labs.*, 155 F.2d 59, 63 (4th Cir. 1946); 30A C.J.S. *Equity* § 8 (2007). A judgment for damages is a legal remedy, whereas other remedies, such as avoidance or attachment, are equitable remedies. *See* 30A *Equity* § 1 (2007).” *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1053 (2015).

O. “[W]here default is entered as a result of a discovery sanction, the non-offending party ‘need only establish a *prima facie* case in order to obtain the default.’ *Foster*, 227 P.3d at 1049 (*citing Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 94, 787 P.2d 777, 781 (1990)). “[W]here a district court enters a default, the facts alleged in the pleadings will be deemed admitted. Thus, during a NRCP 55(b)(2) prove-up hearing, the district court shall consider the allegations deemed admitted to determine whether the non-offending party has established a *prima facie* case for liability.” *Foster*, 227 P.3d at 1049-50. A *prima facie* case requires only “sufficiency of evidence in order to send the question to the jury.” *Id.* 227 P.3d at 1050 (*citing Vancheri v. GNLV Corp.*, 105 Nev. 417, 420, 777 P.2d 366, 368 (1989)). The Plaintiffs have met this burden regarding all of their causes of action.

1 P. "Damages need not be determined with mathematical certainty." *Perry*, 111 Nev. at
2 948, 900 P.2d at 338. The party requesting damages must provide an evidentiary basis
3 for determining a "reasonably accurate amount of damages." *Id. See also*,
4 *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 733, 192 P.3d 243, 248
5 (2008) and *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co., Inc.*, 105 Nev.
6 855, 857, 784 P.2d 954, 955 (1989).

7 Q. Disgorgement is a remedy designed to dissuade individuals from attempting to profit
8 from their inappropriate behavior. "Disgorgement as a remedy is broader than
9 restitution or restoration of what the plaintiff lost." *American Master Lease LLC v.*
10 *Idanta Partners, Ltd*, 225 Cal. App. 4th 1451, 1482, 171 Cal. Rptr. 3d 548, 572
11 (2014)(*internal citation omitted*). "Where 'a benefit has been received by the defendant
12 but the plaintiff has not suffered a corresponding loss or, in some cases, any loss, but
13 nevertheless the enrichment of the defendant would be unjust . . . the defendant may be
14 under a duty to give to the plaintiff the amount by which [the defendant] has been
15 enriched.'" *Id.* 171 Cal. Rptr. 3d at 573 (*internal citations omitted*). *See also Miller v.*
16 *Bank of America, N.A.*, 352 P.3d 1162 (N.M. 2015) and *Cross v. Berg Lumber Co.*, 7
17 P.3d 922 (Wyo. 2000).

18 III. JUDGMENT

19 Judgment is hereby entered against MEI-GSR, Gage Village and the Unit Owner's
20 Association as follows:

21 Monetary Relief:

- 22 1. Against MEI-GSR in the amount of \$442,591.83 for underpaid revenues to Unit owners;
23 2. Against MEI-GSR in the amount of \$4,152,669.13 for the rental of units of owners who had no
24 rental agreement;
25 3. Against MEI-GSR in the amount of \$1,399,630.44 for discounting owner's rooms without
26 credits;
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- 1 4. Against MEI-GSR in the amount of \$31,269.44 for discounted rooms with credits;
- 2 5. Against MEI-GSR in the amount of \$96,084.96 for "comp'd" or free rooms;
- 3 6. Against MEI-GSR in the amount of \$411,833.40 for damages associated with the bad faith
- 4 "preferential rotation system";
- 5 7. Against MEI-GSR in the amount of \$1,706,798.04 for improperly calculated and assessed
- 6 contracted hotel fees;
- 7 8. Against MEI-GSR in the amount of \$77,338.31 for improperly collected assessments;
- 8 9. MEI-GSR will fund the FF&E reserve, shared facilities reserve and hotel reserve in the amount of
- 9 \$500,000.00 each. The Court finds that MEI-GSR has failed to fund the reserves for the units it, or
- 10 any of its agents, own. However, the Court has also determined, *supra*, that these fees were
- 11 themselves unconscionable. The Court does not believe that the remedy for MEI-GSR's failure to
- 12 fund the unconscionable amount should be some multiple of that unreasonable sum. Further, the
- 13 Court notes that Plaintiffs are individual owners: not the Unit Owner's Association. Arguably, the
- 14 reserves are an asset of the Unit Owner's Association and the Plaintiffs have no individual interest in
- 15 this sum. The Court believes that the "seed funds" for these accounts are appropriate under the
- 16 circumstances of the case; and
- 17 10. The Court finds that it would be inappropriate to give MEI-GSR any "write downs" or credits
- 18 for sums they may have received had they rented the rooms in accordance with appropriate business
- 19 practices. These sums will be disgorged.

20

21 **Non-Monetary Relief:**

- 22 1. The receiver will remain in place with his current authority until this Court rules otherwise;
- 23 2. The Plaintiffs shall not be required to pay any fees, assessments, or reserves allegedly due or
- 24 accrued prior to the date of this ORDER;
- 25 3. The receiver will determine a reasonable amount of FF&E, shared facilities and hotel reserve fees
- 26 required to fund the needs of these three ledger items. These fees will be determined within 90 days
- 27 of the date of this ORDER. No fees will be required until the implementation of these new

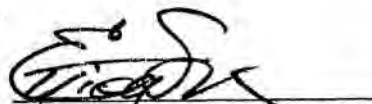
1 amounts. They will be collected from *all* unit owners and properly allocated on the Unit Owner's
2 Association ledgers; and

3 4. The current rotation system will remain in place.

4 **Punitive Damages:**

5 The Court specifically declined to hear argument regarding punitive damages during the
6 prove-up hearing. *See* Transcript of Proceedings 428:6 through 430:1. Where a defendant has been
7 guilty of oppression, fraud, or malice express or implied in an action *not arising from contract*,
8 punitive damages may be appropriate. NRS 42.005(1). Many of the Plaintiff's causes of action
9 sound in contract; therefore, they are not the subject of a punitive damages award. Some of the
10 causes of action may so qualify. The Court requires additional argument on whether punitive
11 damages would be appropriate in the non-contract causes of action. NRS 42.005(3). An appropriate
12 measure of punitive damages is based on the financial position of the defendant, its culpability and
13 blameworthiness, the vulnerability of, and injury suffered by, the offended party, the offensiveness
14 of the punished conduct, and the means necessary to deter further misconduct. *See generally*
15 *Ainsworth v. Combined Insurance Company of America*, 104 Nev. 587, 763 P.2d 673 (1988).
16 Should the Court determine that punitive damages are appropriate it will conduct a hearing to
17 consider all of the stated factors. NRS 42.005(3). The parties shall contact the Judicial Assistant
18 within 10 days of the date of this ORDER to schedule a hearing regarding punitive damages.
19 Counsel will be prepared to discuss all relevant issues and present testimony and/or evidence
20 regarding NRS 42.005 at that subsequent hearing.

21 DATED this 9 day of October, 2015.

22 
23 ELLIOTT A. SATTLER
24 District Judge
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Jonathan Tew, Esq.

Jarrad Miller, Esq.

Stan Johnson, Esq.

Mark Wray, Esq.

DATED this 9 day of October, 2015.


SHEILA MANSFIELD
Judicial Assistant

EXHIBIT U

CV12-02222
DC-09900062812-001
ALBERT THOMAS ETAL, VS. MEI 10 Pages
District Court 01/07/2015 10:07 AM
Washoe County
2745
CMC/CST/E

1 CODE: 3245
2 Jarrad C. Miller, Esq. (NV Bar No. 7093)
3 Jonathan J. Tew, Esq. (NV Bar No. 11874)
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5 50 West Liberty Street, Suite 600
6 Reno, Nevada 89501
7 (775) 329-5600
8 Attorneys for Plaintiffs

FILED

JAN - 7 2015

JACQUELINE BRYANT, CLERK
By: *[Signature]*
DEPUTY CLERK

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

8 ALBERT THOMAS, individually; *et al.*,
9 Plaintiffs,
10 vs.
11 MEI-GSR Holdings, LLC, a Nevada Limited
12 Liability Company, GRAND SIERRA
13 RESORT UNIT OWNERS' ASSOCIATION,
14 a Nevada nonprofit corporation, GAGE
15 VILLAGE COMMERCIAL
16 DEVELOPMENT, LLC, a Nevada Limited
17 Liability Company and DOE DEFENDANTS
18 1 THROUGH 10, inclusive,
19 Defendants.

Case No. CV12-02222
Dept. No. 10

ORDER APPOINTING RECEIVER AND DIRECTING DEFENDANTS' COMPLIANCE

18 This Court having examined Plaintiffs' Motion for Appointment of Receiver ("Motion"),
19 the related opposition and reply, and with *good* cause appearing finds that Plaintiffs have
20 submitted the credentials of a candidate to be appointed as Receiver of the assets, properties.
21 books and records, and other items of Defendants as defined herein below and have advised the
22 Court that this candidate is prepared to assume this responsibility if so ordered by the Court.

23 **IT IS HEREBY ORDERED** that, pursuant to this Court's October 3, 2014 Order, and
24 N.R.S. § 32.010(1), (3) and (6), effective as of the date of this Order, James S. Proctor, CPA,
25 CFE, CVA and CFF ("Receiver") shall be and is hereby appointed Receiver over Defendant
26 Grand Sierra Resort Unit Owners' Association, A Nevada Non-Profit Corporation ("GSRUOA").

27 The Receiver is appointed for the purpose of implementing compliance, among all
28 condominium units, including units owned by any Defendant in this action (collectively, "the

1 Property”), with the Covenants Codes and Restrictions recorded against the condominium units,
2 the Unit Maintenance Agreements and the original Unit Rental Agreements (“Governing
3 Documents”). (See, Exhibits 1, 2 and 3.)

4 The Receiver is charged with accounting for all income and expenses associated with the
5 compliance with the Governing Documents from forty-five (45) days from the date of entry of
6 this Order until discharged.

7 All funds collected and/or exchanged under the Governing Documents, including those
8 collected from Defendants, shall be distributed, utilized, or, held as reserves in accordance with
9 the Governing Documents.

10 **IT IS FURTHER ORDERED** that the Receiver shall conduct itself as a neutral agent,
11 of this court and not as an agent of any party.

12 **IT IS FURTHER ORDERED** that the Receiver is appointed without the need of filing
13 or posting of a bond.

14 **IT IS FURTHER ORDERED** that Defendants MEI-GSR Holdings, LLC and Gage
15 Village Commercial shall cooperate with the Receiver in accomplishing the terms described in
16 this Order.

17 **IT IS FURTHER ORDERED** that, to enforce compliance with the Governing
18 Documents the Receiver shall have the following powers, and responsibilities, and shall be
19 authorized and empowered to:

20 **1. General**

21 a. To review and/or take control of:

22 i. all the records, correspondence, insurance policies, books and accounts of
23 or relating to the Property which refer to the Property, any ongoing construction
24 and improvements on the Property, the rent or liabilities pertaining to the
25 Property.

26 ii. all office equipment used by Defendants in connection with development;
27 improvement, leasing, sales, marketing and/or conveyance of the Property and the
28 buildings thereon; including all computer equipment, all software programs and

1 passwords, and any other information, data, equipment or items necessary for the
2 operations with respect to the Property, whether in the possession and control of
3 Defendants or its principals, agents, servants or employees; provided, however
4 that such books, records, and office equipment shall be made available for the use
5 of the agents, servants and employees of Defendants in the normal course of the
6 performance of their duties not involving the Property.

7 iii. all deposits relating to the Property, regardless of when received, together
8 with all books, records, deposit books, checks and checkbooks, together with
9 names, addresses, contact names, telephone and facsimile numbers where any and
10 all deposits are held, plus all account numbers.

11 iv. all accounting records, accounting software, computers, laptops,
12 passwords, books of account, general ledgers, accounts receivable records,
13 accounts payable records, cash receipts records, checkbooks, accounts, passbooks,
14 and all other accounting documents relating, to the Property.

15 v. all accounts receivable, payments, rents, including all statements and
16 records of deposits, advances, and prepaid contracts or rents, if applicable,
17 including, any deposits with utilities and/or government entities relating to the
18 Property.

19 vi. all insurance policies relating to the Property.

20 vii. all documents relating to repairs of the Property, including all estimated
21 costs or repair.

22 viii. documents reasonably requested by Receiver.

23 b. To use or collect:

24 i. The Receiver may use any federal taxpayer identification number relating
25 to the Property for any lawful purpose.

26 ii. The Receiver is authorized and directed to collect and; open all mail of
27 GSRUOA relating to the Property.
28

1 c. The Receiver shall not become personally liable for environmental contamination
2 or health and safety violations.

3 d. The Receiver is an officer and master of the Court and, is entitled to effectuate the
4 Receiver's duties conferred by this Order, including the authority to communicate *ex.parte* on the
5 record with the Court when in the opinion of the Receiver, emergency judicial action is
6 necessary.

7 e. All persons and entities owing, any money to GSRUOA directly or indirectly
8 relating to the Property shall pay the same directly to the Receiver. Without limiting the
9 generality of the foregoing; upon presentation of a conformed copy of this order, any financial
10 institution holding deposit accounts, funds or property of GSRUOA turnover to the Receiver
11 such funds at the request of the Receiver.

12 **2. Employment**

13 To hire, employ, and retain attorneys, certified public accountants; investigators, security
14 guards, consultants, property management companies, brokers, appraisers, title companies,
15 licensed construction control companies, and any other personnel or employees which the
16 Receiver deems necessary to assist it in the discharge of his duties.

17 **3. Insurance**

18 a. To maintain adequate insurance for the Property to the same extent and, in the
19 same manner as, it has heretofore been insured, or as in the judgment of the Receiver may seem
20 fit and proper, and to request all presently existing policies to be amended by adding the
21 Receiver and the receivership estate as an additional insured within 10-days of the entry of the
22 order appointing the Receiver. If there is inadequate insurance or if there are insufficient funds in
23 the receivership estate to procure adequate insurance, the Receiver is directed to immediately
24 petition the court for instructions. The Receiver may, in his discretion, apply for any bond or
25 insurance providing coverage for the Receiver's conduct and operations of the property, which
26 shall be an expense of the Property, during the period in which the Property is uninsured or
27 underinsured. Receiver shall not be personally responsible for any claims arising therefore.

1 b. To pay all necessary insurance premiums for such insurance and all taxes and
2 assessments levied on the Property during the receivership.

3 4. ***Treatment of Contracts***

4 a. To continue in effect any contracts presently existing and not in default relating to
5 the Property.

6 b. To negotiate, enter into and modify contracts affecting any part or all of the
7 Property.

8 c. The Receiver shall not be bound by any contract between Defendants and any
9 third party that the Receiver does not expressly assume in writing, including any portion of any
10 lease that constitutes the personal obligation of Defendants, but which does not affect a tenant's
11 quiet enjoyment of its leasehold estate.

12 d. To notify all local, state and federal governmental agencies, all vendors and
13 suppliers, and any and all others who provide goods or services to the Property of his
14 appointment-as Receiver of GSRUOA.

15 e. No insurance company may cancel its existing current-paid policy as a result of
16 the appointment of the Receiver, without prior order of this Court.

17 5. ***Collection***

18 To demand, collect and receive all dues, fees, reserves, rents and revenues derived from
19 the Property.

20 6. ***Litigation***

21 a. To bring and prosecute all proper actions for (i) the collection of rents or any
22 other income derived from the Property, (ii) the removal from the Property of persons not
23 entitled to entry thereon, (iii) the protection of the Property, (iv) damage caused to the Property;
24 and (v) the recovery of possession of the Property.

25 b. To settle and resolve any actual or potential litigation, whether or not an action
26 has been commenced, in a manner which, in the exercise of the Receiver's judgment is most
27 beneficial to the receivership estate.

1 7. ***Reporting***

2 a. The Receiver shall prepare on a monthly basis, commencing the month ending 30
3 days after his appointment, and by the last day of each month thereafter, so long as the Property
4 shall remain in his possession or care, reports listing any Receiver fees (as described herein
5 below), receipts and disbursements, and any other significant operational issues that have
6 occurred during the preceding month. The Receiver is directed to file such reports with this
7 Court. The Receiver shall serve a copy of this report on the attorneys of record for the parties to
8 this action.

9 b. The Receiver shall not be responsible for the preparation and filing of tax returns
10 on behalf of the parties.

11 8. ***Receivership Funds /Payments/ Disbursements***

12 a. To pay and discharge out of the Property's rents and/or GSRUOA monthly dues
13 collections all the reasonable and necessary expenses of the receivership and the costs and
14 expenses of operation and maintenance of the Property, including all of the Receiver's and
15 related fees, taxes, governmental assessments and charges and the nature thereof lawfully
16 imposed upon the Property.

17 b. To expend funds to purchase merchandise, materials, supplies and services as the
18 Receiver deems necessary and advisable to assist him in performing his duties hereunder and to
19 pay therefore the ordinary and usual rates and prices out of the funds that may come into the
20 possession of the Receiver.

21 c. To apply, obtain and pay any reasonable fees for any lawful license permit or
22 other governmental approval relating to the Property or the operation thereof, confirm the
23 existence of and, to the extent, permitted by law, exercise the privilege of any existing license or
24 permit or the operation thereof, and do all things necessary to protect and maintain such licenses,
25 permits and approvals.

26 d. To open and utilize bank accounts for receivership funds.
27
28

1 e. To present for payment any checks, money orders or other forms of payment
2 which constitute the rents and revenues of the Property, endorse same and collect the proceeds
3 thereof.

4 9. ***Administrative Fees and Costs***

5 a. The Receiver shall be compensated at a rate that is commensurate with industry
6 standards. As detailed below, a monthly report will be created by the Receiver describing the fee,
7 and work performed. In addition, the Receiver shall be reimbursed for all expenses incurred by
8 the Receiver on behalf of the Property.

9 b. The Receiver, his consultants, agents, employees, legal counsel, and professionals
10 shall be paid on an interim monthly basis. To be paid on a monthly basis, the Receiver must
11 serve, a statement of account on all parties each month for the time and expense incurred in the
12 preceding calendar month. If no objection thereto is filed with the Court and served on the
13 attorneys of record for the parties to this action on or within ten (10) days following service
14 thereof, such statement of account may be paid by the Receiver. If an objection is timely filed
15 and served, such statement of account shall not be paid absent further order of the Court. In the
16 event objections are timely made to fees and expenses, the portion of the fees and expenses as to
17 which no objection has been interposed may be paid immediately following the expiration of the
18 ten-day objection period: The portion of fees and expenses to which: an objection has been
19 timely interposed may be paid within ten (10) days of an agreement among the parties or entry of
20 a Court order adjudicating the matter.

21 c. Despite the periodic payment of Receiver's fees and administrative expenses, such
22 fees and expenses shall be submitted to the Court for final approval and confirmation in the form
23 of either, a stipulation among the parties or the, Receiver's final account and report.

24 d. To generally do such other things as may be necessary or incidental to the
25 foregoing specific powers directions and general authorities and take actions relating to
26 the Property beyond the scope contemplated by the provisions set forth above, provided the
27 Receiver obtains prior court approval for any actions beyond the scope contemplated herein.
28

1 10. ***Order in Aid of Receiver***

2 **IT IS FURTHER ORDERED** Defendants, and their agents, servants and employees,
3 and those acting in concert with them, and each of them, shall not engage in or perform directly
4 or indirectly, any or all of the following acts:

5 a. Interfering with the Receiver, directly or indirectly; in the management and
6 operation of the Property.

7 b. Transferring, concealing, destroying, defacing or altering any of the instruments,
8 documents, ledger cards, books, records, printouts or other writings relating to the Property, or
9 any portion thereof.

10 c. Doing any act which will, or which will tend to, impair, defeat, divert, prevent or
11 prejudice the preservation of the Property or the interest of Plaintiffs in the Property.

12 d. Filing suit against the Receiver or taking other action against the Receiver without
13 an order of this Court permitting the suit or action; provided, however, that no prior court order
14 is required to file a motion in this action to enforce the provisions of the Order or any other order
15 of this Court in this action.

16 **IT IS FURTHER ORDERED** that Defendants and any other person or entity who may
17 have possession, custody or control of any Property, including any of their agents,
18 representatives, assignees, and employees shall do the following:

19 a. Turn over to the Receiver all documents which constitute or pertain to all
20 licenses, permits or, governmental approvals relating to the Property.

21 b. Turn over to the Receiver all documents which constitute or pertain to insurance
22 policies, whether currently in effect or lapsed which relate to the Property.

23 c. Turn over to the Receiver all contracts, leases and subleases, royalty agreements,
24 licenses, assignments or other agreements of any kind whatsoever, whether currently in effect or
25 lapsed, which relate to any interest in the Property.

26 d. Turn over to the Receiver all documents pertaining to past, present or future
27 construction of any type with respect to all or any part of the Property.
28

1 e. Turn over to the Receiver all rents, dues, reserves and revenues derived from the
2 Property wherever and in whatsoever mode maintained.

3 f. Nothing in the Order shall be intended to, nor shall be construed to, require the
4 Defendants to turn over any documents protected from disclosure by either the attorney-client
5 privilege or the attorney work product privilege.

6 g. Immediately advise the Receiver about the nature and extent of insurance
7 coverage on the Property.

8 h. Immediately name the Receiver as an additional insured on each insurance policy
9 on the Property.

10 i. DO NOT cancel, reduce, or modify the insurance coverage.

11 **IT IS FURTHER ORDERED** that nothing contained herein, nor any powers conferred
12 on the Receiver pursuant to this Order, shall in any manner delegate, confer, empower or grant to
13 the Receiver any interest in the management of the gaming assets of the property, or confer any
14 rights to share in the management or the profit or loss of the casino operations, nor in any
15 manner manage any portion of the Property not specifically included in this order.

16 **IT IS FURTHER ORDERED** that the Receiver shall promptly, if requested to do so,
17 execute any further additional documents reasonably requested by Defendants' lenders or others
18 to confirm that other than as set forth herein, no transference, sale, hypothecation, or other
19 encumbrance has resulted which would create a change in ownership or management of MEI-
20 GSR.

21 DATED this 6 day of Jan, 2015
22 2014.

23 
24 _____
DISTRICT COURT JUDGE

25 Submitted by:

26 /s/ Jarrad C. Miller
27 Jarrad C. Miller, Esq.
28 Attorney for Plaintiffs

EXHIBIT V

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

Case No: CV12-02222

vs.

Dept. No: 10

MEI-GSR Holdings, LLC, a Nevada Limited
Liability Company, et al,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS

ALBERT THOMAS et al. ("the Plaintiffs") filed the PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS ("the Motion") on January 27, 2014. MEI-GSR Holdings, LLC ("the Defendants") filed the DEFENDANTS' OPPOSITION TO THE PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS ("the Opposition") on February 25, 2014.¹ The Plaintiffs filed the REPLY IN SUPPORT OF MOTION FOR CASE-TERMINATING SANCTIONS ("the Reply") on March 10, 2014. The Plaintiffs submitted the matter for decision on

¹ Pursuant to a stipulation of the parties, the Court entered the ORDER EXTENDING BRIEFING SCHEDULE on February 13, 2014. That order required the Defendants to file their opposition by the close of business February 24, 2014. This is yet one more example of the Defendants flaunting or disregarding rules of practice in this case. The Court has also had to hold counsel in contempt on two occasions: (1) continuous untimely filing on May 14, 2014; and (2) being one-half hour late to the hearing on August 1, 2014.

1 March 11, 2014. The Court held hearings on the Motion on August 1, 2014, and August 11, 2014.

2 The Plaintiffs previously filed a Motion for Case Concluding Sanctions on September 24,
3 2013. The Court held a three-day hearing October 21, 2013 to October 23, 2013 ("October 2013
4 hearing"). The Court struck the Defendants' counterclaims and ordered that the Defendants pay all
5 attorney fees and costs associated with the three-day hearing. The Motion renews the Plaintiffs'
6 request for case terminating sanctions and asks the Court to strike the Defendants' Answer. The
7 Motion asserts that the Defendants' discovery conduct prior to October of 2013 was willful and did
8 severely prejudice the Plaintiffs. The Motion argues that during the October 2013 hearing neither
9 the Court nor the Plaintiffs had a complete understanding of the Defendants' discovery misconduct.
10 The Motion argues that since October of 2013, the Defendants have continued to violate discovery
11 orders and delay discovery.
12

13
14 The Opposition contends that the Defendants have engaged in no conduct warranting the
15 imposition of case concluding sanctions. The Opposition argues the allegations made by the
16 Plaintiffs pre-date the October 2013 hearing. The Opposition argues that no evidence has been lost
17 or fabricated, and that the Defendants have not willfully obstructed the discovery process. The
18 Defendants submit that they have cooperated with the Plaintiffs' effort to locate 224,000 e-mails that
19 contain a word that might relate to the case even though the Defendants believe the vast majority of
20 those e-mails to be irrelevant. The Opposition further argues that the Defendants have cooperated
21 with the Plaintiffs' desire to run a "VB Script" on the Defendants' computer system that may have
22 violated third-party copyrights but which ultimately located no additional e-mails. The Opposition
23 argues that the e-mail production has been expedited but has taken time due to the volume of e-
24 mails. The Opposition contends that the e-mail privilege log that the Defendants submitted
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1 complied with case law of the Ninth Circuit and that they were not required to comply with the
2 Discovery Commissioner's recommendation until the Court adopted the order.²

3 The Nevada Rules of Civil Procedure provide that a party who fails to comply with an order
4 can be sanctioned for that failure. NRCP 37(b). Sanctions against a party are graduated in severity
5 and can include: designation of facts to be taken as established; refusal to allow the disobedient party
6 to support or oppose designated claims or defenses; prohibition of the offending party from
7 introducing designated matters in evidence; an order striking out pleadings or parts thereof or
8 dismissing the action; or rendering a judgment by default against the disobedient party. NRCP
9 37(b)(2). A disobedient party can also be required to pay the reasonable expenses, including
10 attorney fees caused by the failure. NRCP 37(b)(2)(E).
11

12
13 Discovery sanctions are properly analyzed under Young v Johnny Ribeiro Bldg., Inc., 106
14 Nev. 88, 787 P.2d 777 (1990). Young requires "every order of dismissal with prejudice as a
15 discovery sanction be supported by an express, careful and preferably written explanation of the
16 court's analysis of the pertinent factors." Young, 106 Nev. at 93, 787 P.2d at 780. The Young
17 factors are as follows: (1) the degree of willfulness of the offending party; (2) the extent to which the
18 non-offending party would be prejudiced by a lesser sanction; (3) the severity of the sanction of
19 dismissal relative to the severity of the discovery abuse; (4) whether any evidence has been
20 irreparably lost; (5) the feasibility and fairness of less severe sanctions; (6) the policy favoring
21 adjudication on the merits; (7) whether sanctions unfairly operate to penalize a party for the
22 misconduct of his or her attorney; and (8) the need to deter parties and future litigants from similar
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26
27 ² The Court adopted the Discovery Commissioner's recommendation regarding the privilege log on
28 March 13, 2014. The Court noted that the current discovery situation is a product of the Defendants'
discovery failures. The Court further stated that any lack of time to prepare an adequate privilege
log was a result of the Defendants' inaction and lack of participation in the discovery process.

1 abuses. Id. In discovery abuse situations where possible case-concluding sanctions are warranted,
2 the trial judge has discretion in deciding which factors are to be considered. Bahena v. Goodyear
3 Tire & Rubber Co., 126 Nev. Adv. Op. 57, 245 P.3d 1182 (2010). The Young factor list is not
4 exhaustive and the Court is not required to find that all factors are present prior to making a finding.
5 "Fundamental notions of fairness and due process require that discovery sanctions be just and . . .
6 relate to the specific conduct at issue." GNLV Corp v. Service Control Corp., 111 Nev. 866, 870,
7 900 P.2d 323, 325 (1995).
8

9 The Court analyzed the Young factors at the October 2013 hearing and found: (1) the
10 Defendants failed to comply with discovery orders and failed to meet the extended production
11 deadlines; (2) the discovery failures were not willful; (3) lesser sanctions could be imposed, and such
12 sanctions would not unduly cause the Plaintiffs prejudice; (4) the severity of the discovery failures
13 did not warrant ending the case in favor of the Plaintiffs; (5) no evidence was presented that
14 evidence had been irreparably lost; (6) any misconduct of the attorneys did not unfairly operate to
15 penalize the Defendants; (7) there were alternatives to the requested case-concluding sanctions that
16 could serve to deter a party from engaging in abusive discovery practices in the future; and (8) non-
17 case concluding sanctions could be used to accomplish both the policy of adjudicating cases on the
18 merits and the policy of deterring discovery abuses.
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21 The Defendants have, to date, violated NRCP 33 and NRCP 34 (twice). The Defendants
22 have violated three rulings of the Discovery Commissioner and three confirming orders. The Court
23 is aware of four violations of its own orders. The information that has been provided to the Plaintiffs
24 during discovery has been incomplete, disclosed only with a Court order, and often turned over very
25 late with no legitimate explanation for the delays. The Plaintiffs have written dozens of letters and
26 e-mails to the Defendants' counsel in an effort to facilitate discovery. The Plaintiffs have filed five
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28

1 motions to compel and five motions for sanctions. The Court held multiple hearings on discovery
2 matters including two extensive, multi-day hearings on case concluding sanctions. The Court is
3 highly concerned about the Defendants' conduct during discovery and the resulting prejudice to the
4 Plaintiffs. Based on the progress of discovery, the Defendants' ongoing discovery conduct, and the
5 Plaintiffs' Motion the Court has chosen to revisit the Young factors and reassess the decision made
6 at the October 2013 hearing.
7

8 The first factor of the Young analysis is willfulness. The Plaintiffs allege that the discovery
9 failures in this case were deliberate and willful. Repeated discovery abuses and failure to comply
10 with district court orders evidences willfulness. Foster v. Dingwall, 126 Nev. Op. 6, 227 P.3d 1042
11 (2010)(citing, Young, 106 Nev. at 93, 787 P.2d at 780). Willfulness may be found when a party fails
12 to provide discovery and such failure is not due to an inability on the offending party's part. Havas v
13 Bank of Nevada, 96 Nev. 567, 570, 613 P.2d 706, 708 (1980). The Nevada Supreme Court has not
14 opined that it is necessary to establish wrongful intent to establish willfulness.
15

16 At the October 2013 hearing, the Defendants argued that they were substantially in
17 compliance with the June 17, 2013, discovery request. The Defendants initially disclosed between
18 200-300 e-mails. The Defendants argued that the discovery dispute was only over a few irrelevant
19 documents. Since the October 2013 hearing, additional e-mail searches have uncovered 224,226 e-
20 mails not previously disclosed to the Plaintiffs. The Court now has serious doubt that the
21 representations made by the Defendants at the October 2013 hearing were accurate and genuine.
22

23 The Defendants designated Caroline Rich, the Defendants' previous Controller, to gather the
24 discovery information with assistance from their internet technology department ("IT"). The Court
25 initially believed that Ms. Rich did her best to produce the discovery information (including e-mails)
26 she felt was relevant. Ms. Rich did not have direct access to the IT system of the Defendants. Nor
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28

1 did she have access to the e-mails of all staff members. For instance, she did not have access to the
2 e-mails of those employees who outranked her. The Plaintiffs have subsequently discovered e-mails
3 where Ms. Rich is a participant in e-mail correspondence that was directly relevant to the search. It
4 would be excusable if Ms. Rich overlooked e-mail sent by other employees or did not have access to
5 her superiors' e-mail accounts. However, it now appears that she did not disclose e-mails in which
6 she was a participant in the correspondence. This calls into question her credibility.
7

8 The Court is further troubled by the representations of the Defendants' counsel, Sean
9 Brohawn, that the volume of subsequent e-mails was going to be inconsequential and it would take
10 minimal time for the Defendants to produce. The Court would have found the information that there
11 were potentially hundreds of thousands of additional e-mails to be critical in reaching its October
12 2013, decision. The discrepancy between the 200-300 e-mails produced in the original discovery
13 and the 224,226 subsequently identified is enormous. The Court cannot attribute this discrepancy to
14 a good faith error. The discrepancy appears at best to be a failure of the Defendants to adequately
15 search their e-mail system in response to the initial discovery requests. At worst, it is a deliberate
16 failure to comply with the discovery rules.
17

18 The Defendants had an obligation to engage in an adequate search of the information
19 requested in discovery, and to designate the appropriate party to testify regarding the discovery
20 production. *See generally*, NRCP 16.1(b); NRCP 26(b); NRCP 26 (e). Defendants' counsel had the
21 responsibility to oversee and supervise the collection of the discovery. *See*, NRCP 16.1(e)(3). Both
22 the Defendants and the Defendants' counsel failed to meet their discovery obligations. That failure
23 led to the Court being provided seriously inaccurate information at the October 2013 hearing.
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1 The Defendants have consistently violated Nevada Rules of Civil Procedure, orders
2 compelling discovery, and the Court's directives. The Defendants have not proffered any legitimate
3 or lawful explanation for their conduct. The Defendants have not objected to or requested
4 clarification of discovery requests. Many times they have simply not responded. Other responses
5 have been incomplete. Often, information was only produced after the Plaintiffs filed motions to
6 compel. At various hearings and conferences the Defendants produced previously undisclosed
7 discovery information that suddenly appeared. The Court reverses its earlier decision and finds that
8 the Defendants discovery failures are in fact willful.

10 The Court next considered the second Young factor possible prejudice to the Plaintiffs if a
11 lesser sanction were imposed. The Nevada Supreme Court has upheld entries of default where
12 litigants engage in abusive litigation practices that cause interminable delays. Foster, 126 Nev. Op.
13 6, 227 P.3d at 1048 (citing Young, 106 Nev. at 93, 787 P.2d at 780). Willful and recalcitrant
14 disregard of the judicial process presumably prejudices the non-offending party. Id. The discovery
15 received by the Plaintiffs had to be forced from the Defendants, with multiple motions to compel,
16 which has greatly increased the Plaintiffs' costs. The Plaintiffs have been hindered in developing
17 their causes of action and preparing for trial. In reviewing the possible prejudice to the Plaintiffs, the
18 Court finds that the Plaintiffs have been more prejudiced than was apparent at the time of the
19 October 2013 hearing.

22 The Plaintiffs were not provided with 200,000 e-mails at the outset of discovery in
23 accordance with their June 17, 2013, Request for Production. The Plaintiffs conducted their
24 depositions prior to receiving the additional e-mail and financial information. The value of a
25 deposition is significantly diminished if the deposing party does not have all the relevant information
26 they need prior to the deposition. Given the new information, the Plaintiffs may need to re-depose
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1 those individuals. The Plaintiffs discovered additional employees of the Defendants who would
2 potentially have information and require deposition. The Plaintiffs estimated that after review of the
3 e-mails, which was still ongoing at the time of the August hearings, that they would need another six
4 to nine months to prepare the case for trial. That would result in trial almost a year and a half after
5 the original trial date. As additional information has to come light, it has become apparent that the
6 Defendants' discovery conduct has severely prejudiced the Plaintiffs' case.
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8 Thirdly, the Court compared the severity of dismissal to the severity of the discovery abuse.
9 "The dismissal of a case, based upon a discovery abuse . . . should be used only in extreme
10 situations; if less drastic sanctions are available, they should be utilized." GNLV Corp., 111 Nev. at
11 870, 900 P.2d at 325 (citing Young, 106 Nev. at 92, 787 P.2d at 779-80). The Court is no longer
12 persuaded that the effort of Ms. Rich was in good faith or that the Defendants designated the
13 appropriate party to undertake the production of discovery. Ms. Rich was a relatively new
14 employee, she did not have access to her superiors' e-mail and records, and she did not know the
15 names and positions of other Defendants' employees. The Court is not convinced that the
16 Defendants have properly made discovery disclosures such that the Plaintiffs have had a fair
17 opportunity to develop their litigation plan. The Court is keenly aware that granting the Plaintiffs'
18 motion would effectively end the case, leaving only the issue of damages to be decided. The
19 Defendants have abused and manipulated the discovery rules and case-terminating sanctions is the
20 option available to properly punish the Defendants' conduct.
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22 In looking at the fourth factor in October 2013, the Court noted that there was no evidence
23 presented at the hearing or raised by the moving papers that evidence had been irreparably lost. The
24 Plaintiffs argue that information has been lost or destroyed. The fact that evidence had not been
25 produced is not the same as the destruction or loss of evidence. There remains no evidence to
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1 indicate that evidence has been lost or destroyed by the Defendants. This factor remains consistent
2 in the reevaluation of the October 2013, decision.

3 Fifth, in October 2013, the Court found that there were many alternatives to the requested
4 case-concluding sanctions that could serve to deter a party from engaging in abusive discovery
5 practices in the future. The Defendants have received four sanctions for their discovery failures.
6 The Defendants' conduct since the October 2013 hearing indicates that the previously imposed
7 sanctions have not been sufficient to modify the Defendants' behavior. Time has shown that there
8 are no effective alternatives to case concluding sanctions.
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10 The Court considered two major policy factors together. Nevada has a strong policy, and the
11 Court firmly believes, that cases should be adjudicated on their merits. *See, Scrimmer v. Dist. Court*,
12 116 Nev. 507, 516-517, 998 P.2d 1190, 1196 (2000). *See also, Kahn v. Orme*, 108 Nev. 510, 516,
13 835 P.2d 790, 794 (1992). Further, there is a need to deter litigants from abusing the discovery
14 process established by Nevada law. When a party repeatedly and continuously engaged in discovery
15 misconduct the policy of adjudicating cases on the merits is not furthered by a lesser sanction.
16 *Foster*, 126 Nev. Op. 6, 227 P.3d at 1048. In reevaluating the matter, the Court again considered the
17 major policy that cases be adjudicated on their merits. The Court must balance that policy with the
18 need to deter litigants from abusing the discovery process. The information provided at the October
19 2013 hearing was disingenuous. The Defendants' discovery abuse persisted after the October 2013
20 hearing despite the severity of the sanctions imposed. The Court is now convinced that the
21 Defendants' actions warrant the imposition of case concluding sanctions. In light of Defendants'
22 repeated and continued abuses, the policy of adjudicating cases on the merits is not furthered in this
23 case. The ultimate sanctions are necessary to demonstrate to future litigants that they are not free to
24 disregard and disrespect the Court's orders.
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1 Lastly, the Court considered whether striking the Answer would unfairly operate to penalize
2 the Defendants for the misconduct, if any, of their attorneys. As previously stated, there were
3 failures to produce and abuses of discovery on behalf of the Defendants. The Court remains
4 concerned that the attorneys for the Defendants did not adequately supervise discovery and
5 misrepresented the number of e-mails at issue for disclosure. There remains no evidence to show
6 that Defendants' counsel directed their client to hide or destroy evidence. Any misconduct on the
7 part of the attorney does not unfairly operate to punish the Defendants.
8

9 The Nevada Supreme Court offered guidance as to how sanctions are to be imposed.
10 "Fundamental notions of fairness and due process require that discovery sanctions be just and . . .
11 relate to the specific conduct at issue." GNLV Corp., 111 Nev. at 870, 900 P.2d at 325 (*citing*
12 Young, 106 Nev. at 92, 787 P.2d at 779-80). The Court recognizes that discovery sanctions should
13 be related to the specific conduct at issue. The discovery abuse in this case is pervasive and colors
14 the entirety of the case. The previous discovery sanctions have been unsuccessful in deterring the
15 Defendants' behavior. Due to the severity and pattern of the Defendants' conduct there are no lesser
16 sanctions that are suitable.
17

18 Despite the October 2013 hearing sanctions, the Defendants have continued their
19 noncompliant discovery conduct. The stern sanctions which the Court imposed on the Defendants in
20 October 2013, did not have the desired effect of bringing the Defendants' conduct in line with the
21 discovery rules. After the October 2013 hearing, the Court identified that the major outstanding
22 discovery issue between the parties was the Plaintiffs' access to Defendants' e-mail system. The
23 parties were ordered to work together to develop terms to be used in the e-mail search. The
24 Defendants were ordered to review the 224, 226 e-mails identified by November 25, 2013. The
25 Defendants were ordered to deliver a privilege log for those e-mails the Defendants believed should
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1 not be provided to the Plaintiffs. Further, the Defendants were ordered to provide a copy of withheld
2 e-mails to the court with the privilege log for an in-camera review, and e-mail a copy of the privilege
3 log to the Plaintiffs. The Plaintiffs were to be provided access to all the e-mails not designated in the
4 privilege log beginning November 26, 2013. The Defendants failed to produce those e-mails by the
5 Courts' deadline and the Plaintiffs moved for sanctions. The parties were ordered to submit the
6 Defendants' November 25, 2013, privilege log to Discovery Commissioner, Wesley Ayres, with
7 corresponding briefing. Commissioner Ayres determined that the privilege log was legally
8 insufficient. The result was the Defendants waived any right to withhold e-mails identified in their
9 privilege log and the Plaintiffs were entitled to all 78,473 e-mails containing the search term "condo"
10 or "condominium". The Court adopted the recommendation of the Discovery Commissioner finding
11 that the Defendants' objection to the recommendation based on shortage of time to review the
12 privilege log was a result of the Defendants' inaction and lack of participation in the discovery
13 process. The Defendants still did not release the e-mails and the Plaintiffs filed a motion to compel.
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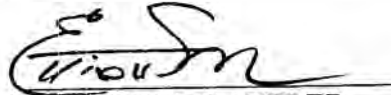
16 Nevada Rule of Civil Procedure 1 indicates that the rules of civil procedure are to be
17 administered to secure the "just, speedy, and inexpensive determination of every action." It appears
18 to the Court that the Defendants' focus in this case has been not to comply with NRCP 1. The
19 Defendants' failures to comply with discovery rules have been numerous and pervasive throughout
20 the case. The trial has been rescheduled multiple times resulting in a delay of over a year. The
21 Defendants' failures have led to additional costs to the Plaintiffs and required the Plaintiffs to seek
22 relief from the Court on multiple occasions. This has placed an undue burden on both the Plaintiffs
23 and the Court. The Court has employed progressive sanctions to address discovery abuses. Those
24 sanctions have not been adequate to curtail the Defendants' improper conduct. The Court has
25 repeatedly warned the Defendants that if it found the information provided at the October 2013
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1 hearing to be disingenuous, or if discovery abuses continued it would grant case terminating
2 sanctions.

3 NOW, THEREFORE IT IS HEREBY ORDERED that the Motion is GRANTED.

4 IT IS FURTHER ORDERED, that the Defendants' Answer is stricken. The Parties are
5 ORDERED to contact the Judicial Assistant for Department 10 within ten days from the date of this
6 order to set a hearing to prove up damages.
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8 DATED this 3 day of October, 2014.

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11 ELLIOTT A. SATTLER
12 District Judge
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CERTIFICATE OF MAILING

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Jonathan Tew, Esq. for Cayenne Trust, et al
Jarrad Miller, Esq. for Cayenne Trust, et al
G. Robertson, Esq. for Cayenne Trust, et al
Sean Brohawn, Esq. for Grand Sierra Resort Unit-Owners Association, et al
Stan H. Johnson, Esq. for Grand Sierra Resort Unit-Owners Association, et al.

DATED this 3 day of October, 2014.


SHEILA MANSFIELD
Judicial Assistant

EXHIBIT W

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

Case No: CV12-02222

vs.

Dept. No: 10

MEI-GSR Holdings, LLC, a Nevada Limited
Liability Company, et al,

Defendants.

ORDER REGARDING ORIGINAL MOTION FOR CASE CONCLUDING SANCTIONS

Albert Thomas et al ("the Plaintiffs") filed a Motion for Sanctions Under NRCP 37(b) for Failure to Comply with Court Orders ("the Motion") on September 24, 2013. The Court enter an Oder Shortening time on September 27, 2013, in light of the fast-approaching trial date. The Defendants were to file an opposition no later than 5:00 p.m. on October 2, 2013. No opposition was filed by this deadline. On October 3, 2103, the Plaintiffs requested that this matter be submitted for decision. Approximately one hour later, MEI-GSR Holdings, LLC et al ("the Defendants") filed an Opposition to Plaintiffs' Motion for Sanctions ("the Opposition"). The Plaintiffs filed a Reply in Support of Plaintiffs' Motion for Sanctions Under NRCP 37(b) for Failure to Comply with Court Orders ("the Reply") on October 4, 2013. An Errata to the Reply was filed later that day. The Plaintiffs contemporaneously resubmitted the matter for the Court's decision.

The Motion asked the Court to strike the Defendants' Answer. This would effectively end the case, leaving only the issue of damages to be decided. The Court issued an Order on October 17,

1 2013 (“the October Order”) in which the factual background of the discovery issues are fully and
2 adequately recited. The Court hereby adopts that factual recitation, making specific note of the
3 Defendants’ repeated failures to respond to the Plaintiffs’ motions to compel, to object to
4 Commissioner Ayers’ Recommendations for Order, and to comply with the Adopted Orders of this
5 Court based off of Commissioner Ayers’ recommendations. *See*, October Order, 2:23 – 6-9. The
6 Court felt a hearing would assist in assessing the extent to which sanctions were appropriate. A
7 three-day hearing commenced on October 21, 2013, at approximately 1:30 p.m.¹ Over the course of
8 those three days the Court heard testimony from Craig Greene, a financial investigator, Caroline
9 Rich, the Grand Sierra Resort’s Controller, and William Lee Burtch, the Grand Sierra Resort’s
10 Senior Vice President of Innovation and Technology. The Court conducted a lengthy analysis under
11 Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d 777 (1990), and ultimately declined to
12 impose case-concluding sanctions. The Court instead struck the Defendants’ counterclaims and
13 ordered that the Defendants pay all attorney’s fees and costs associated with the three-day hearing.

14 Young requires “every order of dismissal with prejudice as a discovery sanction be supported
15 by an express, careful and preferably written explanation of the court’s analysis of the pertinent
16 factors.” Young, 106 Nev. at 93, 787 P.2d at 780. The Court did not grant such a sanction.
17 However, the Court did thoroughly analyze those factors in reaching its decision to impose the lesser
18 sanctions. This Order memorializes the Court’s findings and will thus detail each factor, *infra*.

19 The Young factors are as follows: (1) the degree of willfulness of the offending party, (2) the
20 extent to which the non-offending party would be prejudiced by a lesser sanction, (3) the severity of
21 the sanction of dismissal relative to the severity of the discovery abuse, (4) whether any evidence has
22 been irreparably lost, (5) the feasibility and fairness of less severe sanctions, (6) the policy favoring
23 adjudication on the merits, (7) whether sanctions unfairly operate to penalize a party for the
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25 ¹ The two-week trial was originally set to begin on October 21, 2013. In an in-chambers status conference on October
26 16, 2013, the Court informed counsel that trial could not start on the scheduled date due to failures in discovery. The
27 Court pushed back the trial date two days to October 23, 2013. Notwithstanding the advance notice and extra time, the
28 Defendants failed to submit their proposed jury instructions in violation of WDCR 7(8). The Defendants’ counsel did
not assist the Court staff with marking exhibits prior to the scheduled trial date, and failed to timely file a trial statement
as required by WDCR 5. Lastly, the Court noted at the hearing that the Defendants’ pretrial disclosures were filed two
weeks late, in violation of N.R.C.P. 16.1(3).

1 misconduct of his or her attorney, and (8) the need to deter parties and future litigants from similar
2 abuses. Id. In discovery abuse situations where possible case-concluding sanctions are warranted,
3 the trial judge has discretion in deciding which factors are to be considered. Bahena v. Goodyear
4 Tire & Rubber Co., 126 Nev. Adv. Op. 57, 245 P.3d 1182, (2010).

5 The Plaintiffs alleged that the discovery failures in this case were deliberate and willful. The
6 Court found that there was no doubt that certain failures laid at the feet of the Defendants. The
7 Defendants failed to comply with discovery orders and failed to meet the extended production
8 deadlines to which they agreed. However, after hearing testimony from Caroline Rich, the Court
9 could not find that such failure was willful. The fact that emails were not produced and accounts
10 were not searched did not appear to be an intentional disruption of the discovery process by the
11 employees of the Defendant. Ms. Rich did her best to produce what she felt was relevant. Although
12 her judgment excluded pertinent material, such oversight did not rise to the level of willfulness.
13 Further, the Court could not find that the Defense attorneys Mr. Brohawn or Mr. Reese willfully
14 obstructed the discovery process.

15 The Court next considered the possible prejudice to the Plaintiffs if a lesser sanction were
16 imposed. "The dismissal of a case, based upon a discovery abuse . . . should be used only in extreme
17 situations; if less drastic sanctions are available, they should be utilized." GNLV Corp v. Service
18 Control Corp, 111 Nev. 866, 870, 900 P.2d 323, 325 (1995). While a case-concluding sanction
19 would benefit the Plaintiffs, the Court found that (1) lesser sanctions could be imposed, and (2) such
20 sanctions would not unduly cause the Plaintiffs prejudice. Instrumental in this finding was the
21 Plaintiffs' Counsel's own admission that, if necessary, they could go to trial in a matter of days with
22 the information that they had at that point.

23 Thirdly, the Court compared the severity of dismissal to the severity of the discovery abuse.
24 The Court again affirmatively found that discovery failures had occurred. The severity of those
25 abuses was not determinable and thus did not warrant ending the case in favor of the Plaintiffs.
26 There was no evidence as to who was at fault for the failures to produce information. Further, the
27 Court found that the good faith effort of Caroline Rich eliminated the possibility that the violations
28 should be met with such a severe sanction.

1 In looking at the fourth factor, the Court noted that there was no evidence presented at the
2 hearing or raised by the moving papers that evidence had been irreparably lost. The fact that
3 evidence had not been produced is not the same as the destruction or loss of evidence. This factor
4 was not particularly helpful in the Court's determination.

5 Fifth, the Court found that there were many alternatives to the requested case-concluding
6 sanctions that could serve to deter a party from engaging in abusive discovery practices in the future.
7 The Court excluded from its consideration certain possible sanctions. For example, the Court found
8 that it would not be feasible to order a jury to deem a fact relating to withheld evidence to be true,
9 when the Court itself could not find that such evidence in fact existed. Notwithstanding, the Court
10 found that other sanctions could be feasible and fair to both parties.

11 The Court considered the two major policy factors together. Nevada has a strong policy, and
12 the Court firmly believes, that cases should be adjudicated on their merits. *See, Scrimmer v. Dist.*
13 *Court*, 116 Nev. 507, 516-517, 998 P.2d 1190, 1196 (2000). *See also, Kahn v. Orme*, 108 Nev. 510,
14 516, 835 P.2d 790, 794 (1992). Further, there is a need to deter litigants from abusing the discovery
15 process established by Nevada law. The Court found that it could employ non-case concluding
16 sanctions to accomplish both of these prerogatives.

17 Lastly, the Court considered whether striking the Answer would unfairly operate to penalize
18 the Defendants for the misconduct, if any, of their attorneys. As previously stated, there were
19 failures to produce and abuses of discovery on behalf of the Defendants. The Defendants produced
20 some, albeit incomplete, information to the Plaintiffs. The evidence did not show that Mr. Brohawn,
21 Mr. Reese, or their firm was directing the client to hide or destroy evidence. While the abuses
22 amount to the kind of misconduct that warrants some sort of sanction, they do not warrant penalizing
23 the Defendants themselves with the extreme sanction of concluding the case.

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1 The Nevada Supreme Court offered guidance as to sanctions that may be imposed in lieu of
2 case-concluding sanctions. "Fundamental notions of fairness and due process require that discovery
3 sanctions be just and . . . relate to the specific conduct at issue." GNLV Corp., 111 Nev. at 870, 900
4 P.2d at 325 (citing Young, 106 Nev. at 92, 787 P.2d at 779-80). Under those fundamental notions
5 and upon balance of the Young factors, the Court found the following sanctions to be appropriate:

- 6 1. All of the Defendants' counterclaims were stricken.²
- 7 2. The Defendants would bear the reasonable cost associated with the three-day hearing,
8 including attorney's fees, expert witness fees and all other reasonable expenses.³

9 IT IS SO ORDERED.

10 DATED this 18 day of December, 2013.

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12 ELLIOTT A. SATTLER
13 District Judge
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26 ² See, NRCP 37(b)(2)(when a party fails to comply with a court order, the court may strike pleadings or parts thereof).
27 See also GNLV Corp., 111 Nev. at 871, 900 P.2d at 326 (suggesting that a Court can strike a party's cross-claim as an
appropriate sanction).

28 ³ See NRCP 37(b)(2)("[T]he Court shall require the party failing to obey the order or the attorney advising that party or
both to pay the reasonable expenses, including attorney's fees, caused by the failure" to comply).

CERTIFICATE OF MAILING

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Jonathan Tew, Esq. for Cayenne Trust, et al
Jarrad Miller, Esq. for Cayenne Trust, et al
G. Robertson, Esq. for Cayenne Trust, et al
Sean Brohawn, Esq. for Grand Sierra Resort Unit-Owners Association, et al

DATED this 18th day of December, 2013.

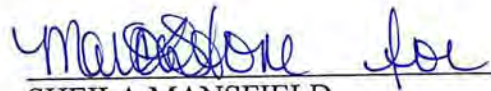

SHEILA MANSFIELD
Judicial Assistant

EXHIBIT X

CODE: 3060

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ37

MEI-GSR Holdings, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company; AM-GSR HOLDINGS, LLC, a Nevada limited liability company; and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

ORDER GRANTING PLAINTIFFS' SUPPLEMENTAL MOTION FOR FEES
PURSUANT TO THE COURT'S DECEMBER 24, 2020 ORDER GRANTING MOTION
FOR CLARIFICATION AND SANCTIONING THE DEFENDANTS

Presently before the Court is Plaintiffs' Supplemental Motion for Fees Pursuant to the Court's December 24, 2020 Order Granting Motion for Clarification and Sanctioning the Defendants, filed April 7, 2021 ("Motion"). Defendants filed Defendants' Opposition to Supplemental Motion for Fees Pursuant to the Court's December 24, 2020 Order Granting Motion for Clarification and Sanctioning the Defendants on April 20, 2021 ("Opposition"). Plaintiffs filed their Reply in Support of Supplemental Motion for Fees Pursuant to the Court's

1 December 24, 2020 Order Granting Motion for Clarification and Sanctioning the Defendants on
2 April 30, 2021. The Motion was submitted for consideration by the Court on May 4, 2021.

3 The Motion sets forth Plaintiffs' supplemental request for fees incurred in (a) submitting
4 their motion for fees ("Fees Motion") pursuant to the Court's December 24, 2020 Order Granting
5 Clarification ("December 24, 2020 Order"), (b) filing a reply to Defendants' opposition to the
6 Fees Motion, and (c) opposing Defendants' Motion for Leave to File Motion for Reconsideration
7 of the Court's December 24, 2020 Order ("Defendants' Motion for Reconsideration"), which
8 largely attempted to rehash and relitigate previously rejected arguments. (Motion at 2:7-12.)
9 Plaintiffs' total requested fees for these tasks is \$17,885. Defendants argue the requested fees
10 are unreasonably excessive and that Nevada law does not permit recovery thereof. (Opposition
11 at 2:14-18, 3:3-10.) Defendants further argue that the Defendants' Motion for Reconsideration
12 may very well render Plaintiffs' Fees Motion and Motion moot.¹ (Id. at 3:3-10; see also
13 Defendants' Motion for Reconsideration, filed January 7, 2020.)

14 Case-concluding sanctions were entered against the Defendants for abuse of discovery
15 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
16 Terminating Sanctions, filed October 3, 2014 at 12.) See Young v. Johnny Ribeiro Bldg., Inc.,
17 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
18 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
19 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

20 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
21 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
22 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA") and
23 the rental revenue and certain other property interests relating to the other Defendants. (See
24 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
25 implementing compliance, among all condominium units, including units owned by any
26 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
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28 ¹ Defendants' Motion for Reconsideration stands fully briefed and submitted at the time of this Order.

1 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
2 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
3 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
4 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

5 The Court's December 24, 2020 Order includes two distinct portions: first, that the
6 Receiver was to recalculate certain fees in a specific way and that the improper fee allocations
7 were to be disgorged to Plaintiffs, and second, that the Defendants were to pay Plaintiffs'
8 attorneys' fees and costs incurred in briefing the motion which ultimately resulted in the
9 December 24, 2020 Order. This sanction was imposed as a result of "Defendants' attempt to
10 advance their interpretation of the Court's orders to the [R]eceiver [which] interfered with the
11 October Order taking effect and resulted in unnecessarily duplicative litigation." (December 24,
12 2020 order at 3:17-19.) Plaintiffs filed their motion for fees ("Fees Motion") pursuant to the
13 December 24, 2020 Order, to which Defendants filed an opposition. (See Motion for Fees
14 Pursuant to the Court's December 24, 2020 Order Granting Motion for Clarification, filed
15 January 4, 2021; Defendants' objection to Plaintiffs' Motion for Fees Pursuant to the Court's
16 December 24, 2020 Order Granting Motion for Clarification, filed January 14, 2021.)

17 The instant Motion requests a supplemental award of fees incurred in actions taking place
18 after the December 24, 2020 Order was issued. The Motion states Plaintiffs incurred a total of
19 \$17,885 in attorneys' fees as a result of (1) preparing the Fees motion, (2) preparing a reply to
20 Defendants' opposition to the Fees Motion, and (3) preparing an opposition to Defendants'
21 largely duplicative motion for reconsideration. (Motion at 6:9-12, 7:1-3.) Fees incurred as a
22 result of preparing a motion for fees are recoverable. See Rosenfeld v. United States DOJ, 903
23 F. Supp. 2d 859, 878 (N. D. Cal. 2012) ("Plaintiffs may recover attorney's fees for time
24 reasonably expended on a motion for attorney's fees and costs."). Furthermore, because the fee
25 award was a sanction for Defendants' attempt to convince the Receiver of their clearly inaccurate
26 interpretation of the Court's orders, and the motion for reconsideration largely furthered those
27 inaccurate arguments, the continued arguments, and Plaintiffs' fees incurred to address them, are
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1 included by the December 24, 2020 Order's sanction. Accordingly, the Court finds such fees are
2 recoverable as a general matter.

3 Nevada uses the lodestar formula to determine the appropriate amount of attorney fees.
4 Hsu v. Clark County, 123 Nev. 625, 636, 173 P.3d 724, 732 (2007). The lodestar formula calls
5 for the number of hours reasonably spent on the motion to be multiplied by a reasonable hourly
6 rate. Id. at 637, 173 P.3d at 733.

7 Plaintiffs have provided that their counsel spent a total of 24.6 hours on the Fees Motion
8 briefing, including preparation of the Fees Motion, researching authority cited in Defendants'
9 opposition thereto, and preparing a reply in support of the Fees Motion. (Motion at 5:26-6:4.)
10 Defendants argue Plaintiffs' hours expended are excessive. (Opposition at 9:6-9.) The Court
11 finds the number of hours expended by Plaintiffs' counsel on the Fees Motion briefing to be
12 reasonable in light of the procedural history of this case and the issues raised by the Fees Motion
13 and Defendants' opposition thereto.

14 Plaintiffs have provided that their counsel spent a total of 31.6 hours on their opposition
15 to Defendants' Motion for Reconsideration. (Motion at 7:1-3.) Defendants, again, argue this
16 number of hours is excessive and not warranted. (Opposition at 9:9-21.) Although the
17 Defendants attempt to minimize the complexity of the issues set forth in the Defendants' Motion
18 for Reconsideration and the necessity to set forth the complex procedural background within
19 Defendants' opposition thereto, the Court does not agree that the Defendants' Motion for
20 Reconsideration, nor the Plaintiffs' opposition thereto, was as simplistic as Defendants state.
21 Instead, the Defendants' Motion for Reconsideration set forth a variety of fallacious legal
22 arguments and misconstrued the factual and procedural background of this case, therefore
23 requiring Plaintiffs to expend numerous pages refuting the same. Thus, the Court finds the
24 number of hours expended by Plaintiffs' counsel on this task reasonable.

25 Defendants also argue that Plaintiffs' time entries are inadequate. (Opposition at 10:17-
26 11:25.) Defendants argue the entries are "so vaguely generic that the [C]ourt cannot determine
27 with certainty whether the activities they purport to describe were necessary and reasonable."
28 (Id. at 11:21-23.) After reviewing the time entries in full, the Court finds the entries are adequate

1 and provide the Court sufficient information to determine that the tasks undertaken by Plaintiffs'
2 counsel were both necessary and reasonable.

3 Accordingly, the Court finds the number of hours expended by Plaintiffs' counsel on
4 those tasks for which Plaintiffs seek to recover attorneys' fees were reasonable.

5 Next, Plaintiffs have set forth their counsels' hourly rate. These rates range from \$425 to
6 \$335 for attorneys and are \$135 for paralegals.² (Motion at 6:9-12, 7:1-3.) Defendants do not
7 appear to dispute the reasonableness of such hourly rates. The Court therefore finds such hourly
8 rates are reasonable.

9 Under the lodestar formula, the Court finds the hours reportedly spent by Plaintiffs'
10 counsel and their hourly rates are reasonable, and thus the lodestar award is \$17,885.

11 The Court must next consider the Brunzell factors to determine the appropriateness of the
12 lodestar amount. Accordingly, to determine whether any adjustments to the lodestar amount are
13 necessary, the Court must consider:

14 (1) the qualities of the advocate: his ability, his training, education,
15 experience, professional standing and skill; (2) the character of the
16 work to be done: its difficulty, its intricacy, its importance, time
17 and skill required, the responsibility imposed and the prominence
18 and character of the parties where they affect the importance of the
litigation; (3) the work actually performed by the lawyer: the skill,
time and attention given to the work; (4) the result: whether the
attorney was successful and what benefits were derived.

19 Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31, 33 (1969). The Court finds all of
20 these factors weigh against any adjustment to the lodestar amount and in favor of awarding
21 Plaintiffs the full lodestar amount.

22 First, the Court is acutely aware of the high quality of Plaintiffs' counsel, and thus
23 concludes this factor is in favor of awarding Plaintiffs the entire lodestar amount.

24 Second, the Court finds the character of the work to be done to be especially important.
25 The Court's December 24, 2020 Order imposed sanctions upon Defendants for attempting to
26 mislead the Receiver into accepting a clearly faulty interpretation of the Court's previous orders.

27 _____
28 ² Plaintiffs note the hourly fees underwent a routine annual increase, which is why they are different from previous
fees applications. (Motion at 6, fn.2.)

1 (See Order Granting Clarification, filed December 24, 2020 at 3:17-19 (“The Defendants’
2 attempt to advance their interpretation of the Court’s orders to the [R]eceiver interfered with the
3 October Order taking effect and resulted in unnecessarily duplicative litigation. Therefore, the
4 Court exercises its inherent authority to require the Defendants to pay for the fees the Plaintiffs
5 were unnecessarily forced to incur in filing the Motion and the Reply.”).) Thus, the time spent in
6 drafting the Fees Motion – which was ordered by the Court – is certainly important. The
7 sanction within the December 24, 2020 Order was intended to penalize Defendants’
8 wrongdoings. If the Court were to limit the Plaintiffs’ recovery of their attorneys’ fees incurred
9 as a result of Defendants’ wrongdoings, the sanction would have no teeth. Accordingly, the
10 second factor also weighs in favor of awarding the entire lodestar amount.

11 Third, the work actually performed by Plaintiffs’ counsel is evidenced by the billing
12 records submitted with the Motion. (Motion at Ex. 1.) Each time entry reflects work which was
13 necessary and that the individual whose time is reflected dedicated ample skill, time, and
14 attention to the task at hand. Brunzell, 85 Nev. at 349, 455 P.2d at 33. This factor thus also
15 weighs in favor of awarding the full lodestar amount.

16 Fourth and finally, the Court must consider the result. The Court finds this factor weighs
17 in favor of awarding the entire lodestar amount as well. The Court clearly agreed with Plaintiffs’
18 positions taken in the briefing which resulted in the December 24, 2020 Order imposing
19 sanctions. (See generally Order Granting Reconsideration, filed December 24, 2020.) Thus,
20 Plaintiffs have obtained a successful result. This factor weighs in favor of granting the full
21 lodestar amount to Plaintiffs.

22 The Brunzell factors clearly indicate that the lodestar amount is appropriate and requires
23 no adjustments. The Court therefore finds an award of the entire lodestar amount is proper.

24 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion is granted in full.


25 **IT IS FURTHER ORDERED** that Defendants shall pay to the Plaintiffs the sum of
26 \$17,885 within thirty (30) days of this Order.

27 //

28 //

1 **IT IS SO ORDERED.**

2 DATED 12-21-21.

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5 _____
6 SENIOR JUSTICE
7 Nancy Saitta

8 Submitted by:

9 ROBERTSON, JOHNSON,
10 MILLER & WILLIAMSON

11 _____
12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.
14 Jonathan Joel Tew, Esq.
15 Attorneys for Plaintiffs
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EXHIBIT Y

1 CODE 3370

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6 IN THE SECOND JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE
8

9 ALBERT THOMAS, individually; et al.,

Case No. CV12-02222

10 Plaintiffs,

Dept. No. 9

11 Vs.
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13 MEI-GSR HOLDINGS, LLC, a Nevada Limited Liability
14 Company; AM-GSR Holdings, LLC, a Nevada Limited
15 Liability Company; GRAND SIERRA RESORT UNIT
16 OWNERS' ASSOCIATION, a Nevada Non Profit
17 Corporation; GAGE VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada Limited Liability Company;
19 and, DOES I-X, inclusive,

20 Defendants.
21 _____ /

22 **ORDER DISQUALIFYING ALL JUDICIAL OFFICERS OF THE SECOND**
23 **JUDICIAL DISTRICT COURT**
24

25 Pursuant to the Nevada Code of Judicial Conduct Rule 2.11, the undersigned concludes
26 disqualification of all judicial officers in the Second Judicial District Court is necessary in this
27 matter in order to avoid any appearance of impropriety and to avoid the question of impartiality.

28 Accordingly, in the interest of justice, and good cause appearing therefore,

IT IS HEREBY ORDERED:

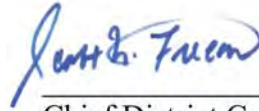
1. All current judicial officers in the Second Judicial District Court are disqualified from acting in this matter; and,

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2. Clerk of the Court Jacqueline Bryant shall coordinate with the Administrative Office of the Courts to request assignment of this matter to Senior Judge Steven Kosach.

IT IS SO ORDERED.

Dated: January 21, 2021.



Chief District Court Judge

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[NONE]

DAVID MCELHINNEY, ESQ. for GAGE VILLAGE COMMERCIAL DEVELOPMENT,
LLC et al

JONATHAN TEW, ESQ. for D'ARCY NUNN et al

JARRAD MILLER, ESQ. for D'ARCY NUNN et al

G. ROBERTSON, ESQ. for D'ARCY NUNN et al

F. SHARP, ESQ. for RICHARD M TEICHNER

JENNIFER HOSTETLER, ESQ. for GAGE VILLAGE COMMERCIAL DEVELOPMENT,
LLC et al

STEFANIE SHARP, ESQ. for RICHARD M TEICHNER

Judicial Assistant

EXHIBIT Z

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on PLAINTIFFS MOTION FOR ATTORNEYS' FEES and PLAINTIFFS' SUPPLEMENTAL MOTION FOR ATTORNEYS' FEES ("Motions for Fees").¹ After consideration of the briefing, the Court grants, in part, the Motions for Fees.

There are two basis to award attorney's fees to Plaintiffs in this matter. First based upon the contractual provision and second based upon the Court's finding of fraud.

Pursuant to the Grand Sierra Resort Unit Maintenance Agreement, a contract entered into

¹ The Court has reviewed the original Motion for Attorneys' Fees filed October 20, 2015; original Opposition filed November 9, 2015; original Reply filed November 20, 2015; the Supplemental Motion filed February 7, 2023; Opposition filed March 17, 2023; and the Reply filed on April 12, 2023. The Court has also reviewed the filings made on May 1, 2023, pursuant to the minute order entered on April 26, 2023. The Court finds it was premature to rule on the original Motion filed October 20, 2015, until after the final judgment was entered. Defendants argued this in their late filed Opposition and filed a motion to strike the request for submission on November 9, 2015. The matter was resubmitted after full briefing on November 25, 2015.

1 by each Plaintiff, on the one hand, and Defendants, on the other hand:

2 EACH PARTY SHALL BEAR ITS OWN ATTORNEY'S FEES AND OTHER
3 COSTS IN PROSECUTING OR DEFENDING THE DISPUTE EXCEPT THAT
4 IN THE EVENT ANY ACTION OR PROCEEDING IS BROUGHT BY ANY
5 PARTY HERETO TO ENFORCE THIS AGREEMENT, THE PREVAILING
6 PARTY SHALL BE ENTITLED TO REASONABLE ATTORNEY'S FEES
AND COSTS IN ADDITION TO ALL OTHER RELIEF TO WHICH THAT
PARTY OR THOSE PARTIES MAY BE ENTITLED.

7 The original Grand Sierra Resort Unit Rental Agreement adopted this provision at page 15,
8 paragraph (d). The Court notes the identical paragraph appears in the 2011 version of the Unit
9 Rental Agreement.²

10 Because the Court has found that Defendants committed fraud, Nevada's statutory scheme requires
11 an award of reasonable fees. NRS 41.600(3)(c) provides that in actions by victims of fraud,
12

13 3. If the claimant is the prevailing party, the court shall award the claimant:

14 (c) The claimant's costs in the action and reasonable attorney's fees.

15 This statute applies in this matter. It is unnecessary to consider a fee award under NRS 18.010 or
16 NRCP 37 given these two basis.

17 While Plaintiffs seek to utilize a "lodestar analysis", the Court declines to award fees based upon that
18 analysis. This case is not of such complexity that such an award is appropriate. While significant
19 investigation and document review was required, this case primarily involves forensic accounting
20 case. One witness was called at the original trial on compensatory damages, Craig Greene, and
21 Plaintiffs took 14 depositions in this case.³ While a Receivership is in place that is not an added layer
22 of complexity as the Receiver's duties relate in large part to the allegations made by Plaintiffs in this
23 matter. Most of the work done by Plaintiffs' counsel in this matter relates to motion practice.
24
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27 ² The Court notes that since the entry of the final judgment the dissolution process of the Grand Sierra Resorts Unit Owners Association has begun. The controlling Unit Rental Agreement is unaffected by this process as it is an individual agreement between the individual unit owner and Grand Sierra Resorts.

28 ³ The Court notes, Plaintiffs' counsel also defended their own clients' depositions.

In evaluating the amount of fees, the Court analyzes the factors enumerated in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The factors to be considered in determining whether the requested amount is appropriate to award to the prevailing party include:

(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

Brunzell, 85 Nev. at 349, 455 P.2d at 33.

The Court finds that the hourly rates identified in the redacted fee agreements⁴ are reasonable given the nature of the litigation and experience of the various timekeepers.⁵ The hours that have been identified in the Motions for Fees are also reasonable especially given the long and tortured procedural posture of this case. The Court finds that the procedural posture of the case and the repeated motions filed in this matter did multiply the work needed and does not militate in favor of

⁴ Those rates are:

Timekeeper	Rate
G. David Robertson	\$395
Kirk C. Johnson	\$335
Jarrad C. Miller	\$315
Richard D. Williamson	\$295
Jonathan J. Tew	\$275
Paralegals	\$135-\$145

No evidence has been submitted that there was an agreement to increase the rates.

⁵ Although not included in the fee agreements, the Court finds Mr. Eisenberg's fees to be reasonable in rate, amount and necessary given the procedural posture of the case. The hours and rates for Mr. Eisenberg's team are summarized below:

Timekeeper	Supplement Hours	Rate
Robert L. Eisenberg, Esq.	420.2	\$500
Todd Alexander, Esq.	49.9	\$300
Dane Littlefield, Esq.	2	\$200
Sarah Molleck, Esq.	16	\$200
Catherine Ammon, Paralegal	20.2	\$125

a reduction of the number of hours recorded by Plaintiffs' counsel.⁶ The work in this matter was performed and the result has been beneficial to the Plaintiffs.

After evaluating the *Brunzell* factors and considering all the evidence and arguments related to the Motions for Fees, the Court, awards the total amount of \$3,637,682.25⁷ as attorneys fees to the Plaintiffs from the Defendants.

⁶ The hours for the Robertson Johnson Miller and Williamson team listed in each motion are summarized:

Timekeeper	Motion Hours	Supplement Hours
G. David Robertson, Esq.	10.2	5.5
Kirk C. Johnson, Esq.	2.3	2.8
Jarrad C. Miller, Esq.	2238.5	3605.15
Richard D. Williamson, Esq.	34.7	12.3
Jonathan J. Tew, Esq.	1158.4	3388.4
Marilee Breternitz, Esq.	2.8	7.1
Michael Mapes, Esq.	51	0
Patrick M. Kealy, Esq.	3.6	0
Briana N. Collings, Esq.	0	204.8
Patricia A. Lynch, Esq.	0	2.7
Alison Gansert Kertis, Esq.	0	68.2
Kimberlee Hill, Paralegal	578	546
General Paralegal	60.1	214.4

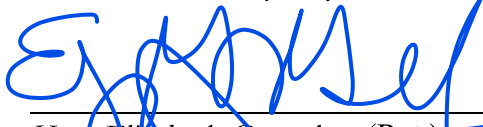
⁷ The table below summarizes the calculation:

Timekeeper	Motion Hours	Supplement Hours	Total Hours by Timekeeper	Rate	Total by Timekeeper
G. David Robertson, Esq.	10.2	5.5	15.7	\$395	6201.5
Kirk C. Johnson, Esq.	2.3	2.8	5.1	\$335	1708.5
Jarrad C. Miller, Esq.	2238.5	3605.15	5843.65	\$315	1840749.75
Richard D. Williamson, Esq.	34.7	12.3	47	\$295	13865
Jonathan J. Tew, Esq.	1158.4	3388.4	4546.8	\$275	1250370.
Marilee Breternitz, Esq.	2.8	7.1	9.9	\$275	2722.5
Michael Mapes, Esq.	51	0	51	\$275	14025.
Patrick M. Kealy, Esq.	3.6	0	3.6	\$275	990.
Briana N. Collings, Esq.	0	204.8	204.8	\$275	56320.
Patricia A. Lynch, Esq.	0	2.7	2.7	\$275	742.5
Alison Gansert Kertis, Esq.	0	68.2	68.2	\$275	18755.
Kimberlee Hill, Paralegal	578	546	1124	\$145	162980.
General Paralegal	60.1	214.4	274.5	\$135	37057.5
Robert L. Eisenberg, Esq.	0	420.2	420.2	\$500	210100.
Todd Alexander, Esq.	0	49.9	49.9	\$300	14970.
Dane Littlefield, Esq.	0	2	2	\$200	400.
Sarah Molleck, Esq.	0	16	16	\$200	3200.
Catherine Ammon, Paralegal	0	20.2	20.2	\$125	2525.
GRAND TOTAL					3637682.25

These hourly totals do not include hours for the following previously awarded fees: Fees that Plaintiffs have already obtained recovery: (\$167,483.00); Credit for Paid Sanctions by Commissioner Ayres (\$2,000.00); and Credit for fees awarded in 1/4/22 Order (\$17885).

1 Plaintiffs counsel to submit an amended judgment for the fees.
2
3

4 Dated this 11th day May 2023.

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7 Hon. Elizabeth Gonzalez, (Ret.)
8 Sr. District Court Judge
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CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 11th day of May, 2023, I electronically filed the foregoing with the Clerk of
the Court system which will send a notice of electronic filing to the following:

DALE KOTCHKA-ALANES
DANIEL POLSENBERG, ESQ.
DAVID MCELHINNEY, ESQ.
BRIANA COLLINGS, ESQ.
ABRAN VIGIL, ESQ.
JONATHAN TEW, ESQ.
JARRAD MILLER, ESQ.
TODD ALEXANDER, ESQ.
F. DEARMOND SHARP, ESQ.
STEPHANIE SHARP, ESQ.
G. DAVID ROBERTSON, ESQ.
ROBERT EISENBERG, ESQ.
JENNIFER HOSTETLER, ESQ.
ANN HALL, ESQ.
JAMES PROCTOR, ESQ.
JORDAN SMITH, ESQ.

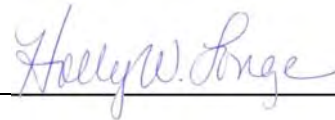


EXHIBIT AA

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on both of DEFENDANTS' MOTIONS TO RETAX COSTS ("Motions to Retax").¹ The Motions to Retax are granted in part² and denied in part.

The early filing of a memorandum of costs and disbursements is not fatal to an award under NRS 18.110(1).

¹ The Court has reviewed the Verified Memorandum of Costs and Disbursements, filed October 16, 2015; Defendants Motion to Retax, filed October 22, 2015; Plaintiffs Opposition, filed November 9, 2015; Defendants Reply, filed November 23, 2015; Plaintiffs' Supplemental Verified Memorandum of Costs, filed January 20, 2023; Defendants Motion to Retax Costs, filed on January 23, 2023; Plaintiffs' Opposition to Defendants' Motion to Retax Costs filed on February 13, 2023; and, Defendants Reply in Support of Defendants' Motion to Retax Costs filed on March 1, 2023. The original motion was deferred by written order entered on December 17, 2015. The Court notes Plaintiffs have voluntarily withdrawn their request for the outside paralegal costs as these were awarded as part of the motion for attorneys' fees.

² The Court grants the Motions to Retax as to Fed Ex shipments, hand deliveries, and mileage for hand deliveries and working lunches and dinners (not related to deposition travel) as these are not specifically included in the statute and given the local nature of these proceedings, not in the Court's estimation recoverable.

1 NRS 18.020 requires an award of costs to the prevailing party. The costs included in both
2 memoranda of costs and disbursements are reasonable in amount, sufficiently documented, and
3 appear to have been necessary for the prosecution of the action.

4 *Excess expert expenses*

5
6 NRS 18.005(5) limits expert expenses to \$1500. Plaintiffs seek recovery of excess fees for two
7 experts – a forensic accountant and an ESI/ forensic analyst. Both of these experts testified in
8 judicial proceedings in this matter. Each of these experts are in specialized disciplines that were
9 necessary to prosecute this matter and provided information that was relied upon by the Court.³

10
11 There are several factors that favor granting Plaintiffs their entire request for both experts. Both
12 expert's opinions (represented by statements made in court) aided the judicial officers in deciding the
13 case. Neither expert was cumulative to other witnesses. The work performed by both experts was
14 necessary given the posture of the case.

15
16 With respect to Mr. Mare, the ESI/forensic analyst, the long-standing discovery disputes between
17 the Plaintiffs and Defendants are well documented and necessitated specialized expertise to discover
18 electronically stored information which had not previously been produced. The rates and expenses
19 related to this are reasonable and consistent with other Nevada practitioners in this area. Using
20 someone outside of Reno was not unreasonable under the circumstances here.

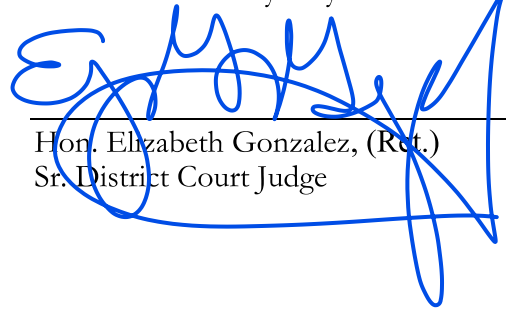
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22 Mr. Greene's testimony was critical to both Plaintiffs' liability and damages case. The complex
23 forensic accounting work done related to the unit rental program and associated expenses assessed
24 by Defendants was crucial to the Court's determination on compensatory damages. The
25 categorization of damages among the causes of action allowed the current Senior Judge to make an

26
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³ This matter has endured significant judicial turnover and related delays. After the initial judge was defeated in a
28 contested election, the entire Second Judicial District recused itself from this matter. (Affidavit of Bias, filed December
28, 2020; Order Disqualifying All Judicial Officers of the Second Judicial District Court, filed January 21, 2021.) The
matter was then assigned to three successive Senior Judges.

1 appropriate award of punitive damages without reconvening the trial. Greene's expenses are
2 comparable to those of other forensic accountants in the Reno area.
3 Plaintiffs' counsel is directed to prepare an amended judgment consistent with this order including
4 updated calculations by category for each of the Motions to Retax. After review and comment by
5 opposing counsel, Plaintiffs' counsel is directed to submit the amended judgment for review and
6 signature.
7

8 Dated this 30th day May 2023.

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10 A handwritten signature in blue ink, appearing to read 'Elizabeth Gonzalez', is written over a horizontal line. The signature is stylized with large loops and a long, sweeping tail that extends downwards and to the right.
11 Hon. Elizabeth Gonzalez, (Ret.)
12 Sr. District Court Judge
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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
3 that on the 30th day of May, 2023, I electronically filed the foregoing with the Clerk of
4 the Court system which will send a notice of electronic filing to the following:

5 DALE KOTCHKA-ALANES
6 DANIEL POLSENBERG, ESQ.
7 DAVID MCELHINNEY, ESQ.
8 BRIANA COLLINGS, ESQ.
9 ABRAN VIGIL, ESQ.
10 JONATHAN TEW, ESQ.
11 JARRAD MILLER, ESQ.
12 TODD ALEXANDER, ESQ.
13 F. DEARMOND SHARP, ESQ.
14 STEPHANIE SHARP, ESQ.
15 G. DAVID ROBERTSON, ESQ.
16 ROBERT EISENBERG, ESQ.
17 JENNIFER HOSTETLER, ESQ.
18 ANN HALL, ESQ.
19 JAMES PROCTOR, ESQ.
20 JORDAN SMITH, ESQ.

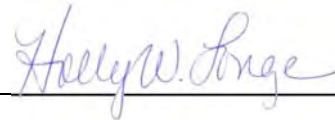
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EXHIBIT BB

CODE: 1105

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ41

MEI-GSR HOLDINGS, LLC, a Nevada
limited liability company, GRAND SIERRA
RESORT UNIT OWNERS' ASSOCIATION,
a Nevada nonprofit corporation, GAGE
VILLAGE COMMERCIAL
DEVELOPMENT, LLC, a Nevada limited
liability company; AM-GSR HOLDINGS,
LLC, a Nevada limited liability company; and
DOE DEFENDANTS 1 THROUGH 10,
inclusive,

Defendants.

SECOND AMENDED FINAL MONETARY JUDGMENT

This matter having come before the Court for a default prove-up hearing from March 23, 2015 to March 25, 2015, with Findings of Fact and Conclusions of Law and Judgment entered October 9, 2015, and again before the Court on July 8, 2022 and July 18, 2022 on Plaintiffs' November 6, 2015 Motion in Support of Punitive Damages Award, with an Order entered on January 17, 2023.

IT IS HEREBY ORDERED AND ADJUDGED that judgment is entered in favor of Plaintiffs and against Defendants as follows:

1. Against MEI-GSR Holdings, LLC (“MEI-GSR”) and AM-GSR Holdings, LLC (“AM-GSR”) in the amount of \$442,591.83 for underpaid revenues to Unit owners;
2. Against MEI-GSR, AM-GSR, and Gage Village Development, LLC in the amount of \$4,152,669.13 for the rental of units of owners who had no rental agreement;
3. Against MEI-GSR and AM-GSR in the amount of \$1,399,630.44 for discounting owner’s rooms without credits;
4. Against MEI-GSR and AM-GSR in the amount of \$31,269.44 for discounted rooms with credits;
5. Against MEI-GSR and AM-GSR in the amount of \$96,084.96 for “comp’d” or free rooms;
6. Against MEI-GSR and AM-GSR in the amount of \$411,833.40 for damages associated with the bad faith “preferential rotation system”;
7. Against MEI-GSR and AM-GSR in the amount of \$1,706,798.04 for improperly calculated and assessed contracted hotel fees;
8. Against MEI-GSR and AM-GSR in the amount of \$77,338.31 for improperly collected assessments;

TOTAL COMPENSATORY DAMAGES.....\$8,318,215.54

Prejudgment interest on the compensatory damages portion of the Judgment is awarded.

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Gage Village Development is jointly and severally liable with MEI-GSR for the sum of \$4,152,669.13 in compensatory damages, only.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs be given and granted punitive damages against Defendants in the total amount of **\$9,190,521.92**.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs be given and granted their legal fees against Defendants in the total amount of **\$3,637,682.25**.

1 IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs be given and granted
2 their costs against Defendants in the total amount of **\$855,525.33**, broken down as follows:

3 Pursuant to Plaintiffs' Verified Memorandum of Costs, filed October 16, 2015, Plaintiffs
4 shall be awarded

5	Court and Recorder Fees.....	\$3,876.00
6	Hearing Transcript Fees.....	\$2,612.60
7	Witness Fees	\$359.00
8	Service Fees	\$525.5
9	Deposition Transcript Fees	\$21,619.56
10	Expert Fees.....	\$456,041.00
11	Messenger/Shipping Fees	\$228.91
12	Travel	\$3,647.82
13	Supplies.....	\$1,863.21
14	Computerized Research	\$1,430.86
15	Copies	\$29,118.53
16	Facsimile.....	\$83.40
17	Postage	\$229.57
18	Long Distance	\$88.49
19	Total	\$521,451.45

20 Pursuant to Plaintiffs' Supplemental Verified Memorandum of Costs, filed January 20,
21 2023, Plaintiffs shall be awarded

22	Court and Recorder Fees.....	\$51,721.00
23	Hearing Transcript Fees.....	\$8,934.97
24	Service Fees	\$110.00
25	Expert Fees.....	\$226,462.60
26	Miscellaneous	\$23,161.88
27	Computerized Legal Research	\$5,086.90
28	Photocopies	\$18,117.80


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Postage\$229.12
Long Distance Phone\$23.52
Total\$333,847.79

This Judgment shall accrue post-judgment interest at the applicable legal rate as provided by Nevada law until fully satisfied.

IT IS FURTHER ORDERED AND ADJUDGED that Defendants shall take nothing by way of their counterclaims which were previously stricken by the Court.

DATED this 29th day of June, 2023.



HON. ELIZABETH GONZALEZ
Sr. District Court Judge

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
3 that on the 29th day of June, 2023, I electronically filed the foregoing with the Clerk of
4 the Court system which will send a notice of electronic filing to the following:

5 DALE KOTCHKA-ALANES
6 DANIEL POLSENBERG, ESQ.
7 DAVID MCELHINNEY, ESQ.
8 BRIANA COLLINGS, ESQ.
9 ABRAN VIGIL, ESQ.
10 JONATHAN TEW, ESQ.
11 JARRAD MILLER, ESQ.
12 TODD ALEXANDER, ESQ.
13 F. DEARMOND SHARP, ESQ.
14 STEPHANIE SHARP, ESQ.
15 G. DAVID ROBERTSON, ESQ.
16 ROBERT EISENBERG, ESQ.
17 JENNIFER HOSTETLER, ESQ.
18 ANN HALL, ESQ.
19 JAMES PROCTOR, ESQ.
20 JORDAN SMITH, ESQ.

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EXHIBIT CC

CODE: 1105

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ41

MEI-GSR HOLDINGS, LLC, a Nevada
limited liability company, GRAND SIERRA
RESORT UNIT OWNERS' ASSOCIATION,
a Nevada nonprofit corporation, GAGE
VILLAGE COMMERCIAL
DEVELOPMENT, LLC, a Nevada limited
liability company; AM-GSR HOLDINGS,
LLC, a Nevada limited liability company; and
DOE DEFENDANTS 1 THROUGH 10,
inclusive,

Defendants.

CORRECTED SECOND AMENDED FINAL MONETARY JUDGMENT

This matter having come before the Court for a default prove-up hearing from March 23, 2015 to March 25, 2015, with Findings of Fact and Conclusions of Law and Judgment entered October 9, 2015, and again before the Court on July 8, 2022 and July 18, 2022 on Plaintiffs' November 6, 2015 Motion in Support of Punitive Damages Award, with an Order entered on January 17, 2023.

IT IS HEREBY ORDERED AND ADJUDGED that judgment is entered in favor of Plaintiffs and against Defendants as follows:

1. Against MEI-GSR Holdings, LLC (“MEI-GSR”) and AM-GSR Holdings, LLC (“AM-GSR”) in the amount of \$442,591.83 for underpaid revenues to Unit owners;
2. Against MEI-GSR, AM-GSR, and Gage Village Development, LLC in the amount of \$4,152,669.13 for the rental of units of owners who had no rental agreement;
3. Against MEI-GSR and AM-GSR in the amount of \$1,399,630.44 for discounting owner’s rooms without credits;
4. Against MEI-GSR and AM-GSR in the amount of \$31,269.44 for discounted rooms with credits;
5. Against MEI-GSR and AM-GSR in the amount of \$96,084.96 for “comp’d” or free rooms;
6. Against MEI-GSR and AM-GSR in the amount of \$411,833.40 for damages associated with the bad faith “preferential rotation system”;
7. Against MEI-GSR and AM-GSR in the amount of \$1,706,798.04 for improperly calculated and assessed contracted hotel fees;
8. Against MEI-GSR and AM-GSR in the amount of \$77,338.31 for improperly collected assessments;

TOTAL COMPENSATORY DAMAGES.....\$8,318,215.55

Prejudgment interest on the compensatory damages portion of the Judgment is awarded.

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Gage Village Development is jointly and severally liable with MEI-GSR for the sum of \$4,152,669.13 in compensatory damages, only.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs be given and granted punitive damages against Defendants in the total amount of **\$9,190,521.92**.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs be given and granted their legal fees against Defendants in the total amount of **\$3,637,682.25**.

1 IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs be given and granted
2 their costs against Defendants in the total amount of **\$855,525.33**, broken down as follows:

3 Pursuant to Plaintiffs' Verified Memorandum of Costs, filed October 16, 2015, Plaintiffs
4 shall be awarded

5	Court and Recorder Fees.....	\$3,876.00
6	Hearing Transcript Fees.....	\$2,612.60
7	Witness Fees	\$359.00
8	Service Fees	\$525.5
9	Deposition Transcript Fees	\$21,619.56
10	Expert Fees.....	\$456,041.00
11	Messenger/Shipping Fees	\$228.91
12	Travel	\$3,647.82
13	Supplies.....	\$1,863.21
14	Computerized Research	\$1,430.86
15	Copies	\$29,118.53
16	Facsimile.....	\$83.40
17	Postage	\$229.57
18	Long Distance	\$88.49
19	Total	\$521,723.85

20 Pursuant to Plaintiffs' Supplemental Verified Memorandum of Costs, filed January 20,
21 2023, Plaintiffs shall be awarded

22	Court and Recorder Fees.....	\$51,721.00
23	Hearing Transcript Fees.....	\$8,934.97
24	Service Fees	\$110.00
25	Expert Fees.....	\$226,462.60
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Postage\$229.12
Long Distance Phone\$23.52
Total\$333,847.79

This Judgment shall accrue post-judgment interest at the applicable legal rate as provided by Nevada law until fully satisfied.

IT IS FURTHER ORDERED AND ADJUDGED that Defendants shall take nothing by way of their counterclaims which were previously stricken by the Court.

DATED this 10th day of July, 2023.



HON. ELIZABETH GONZALEZ
Sr. District Court Judge

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
3 that on the 10th day of July, 2023, I electronically filed the foregoing with the Clerk of
4 the Court system which will send a notice of electronic filing to the following:

5 DALE KOTCHKA-ALANES
6 DANIEL POLSENBERG, ESQ.
7 DAVID MCELHINNEY, ESQ.
8 BRIANA COLLINGS, ESQ.
9 ABRAN VIGIL, ESQ.
10 JONATHAN TEW, ESQ.
11 JARRAD MILLER, ESQ.
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16 ROBERT EISENBERG, ESQ.
17 JENNIFER HOSTETLER, ESQ.
18 ANN HALL, ESQ.
19 JAMES PROCTOR, ESQ.
20 JORDAN SMITH, ESQ.

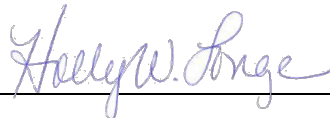
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EXHIBIT DD

CODE: 2535
Jarrad C. Miller, Esq. (NV Bar No. 7093)
Briana N. Collings, Esq. (NV Bar No. 14694)
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Telephone: (775) 329-5600
Facsimile: (775) 348-8300
jarrad@nvlawyers.com
briana@nvlawyers.com

Robert L. Eisenberg, Esq. (NV Bar No. 0950)
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Telephone: (775) 786-6868
Facsimile: (775) 786-9716
rle@lge.net

Attorneys for Plaintiffs

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ41

MEI-GSR HOLDINGS, LLC, a Nevada
limited liability company, GRAND SIERRA
RESORT UNIT OWNERS' ASSOCIATION,
a Nevada nonprofit corporation, GAGE
VILLAGE COMMERCIAL
DEVELOPMENT, LLC, a Nevada limited
liability company; AM-GSR HOLDINGS,
LLC, a Nevada limited liability company; and
DOE DEFENDANTS 1 THROUGH 10,
inclusive,

Defendants.

NOTICE OF ENTRY OF JUDGMENT

PLEASE TAKE NOTICE that on July 10, 2023, the above Court issued its Corrected
Second Amended Final Monetary Judgment. A copy thereof is attached hereto as Exhibit "1" and
made a part hereof by reference.

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AFFIRMATION

Pursuant to NRS § 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

RESPECTFULLY SUBMITTED this 11th day of July, 2023.

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501

And

LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519

By: /s/ Briana N. Collings
Jarrad C. Miller, Esq.
Briana N. Collings, Esq.
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson,
3 Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of 18,
4 and not a party within this action. I further certify that on the 11th day of July, 2023, I electronically
5 filed the foregoing **NOTICE OF ENTRY OF JUDGMENT** with the Clerk of the Court by using
6 the ECF system which served the following parties electronically:

7 Abran Vigil, Esq.
8 Meruelo Group, LLC
9 Legal Services Department
10 5th Floor Executive Offices
11 2535 Las Vegas Boulevard South
12 Las Vegas, NV 89109
13 *Attorneys for Defendants*
14 *MEI-GSR Holdings, LLC,*
15 *Gage Village Commercial*
16 *Development, LLC, and*
17 *AM-GSR Holdings, LLC*

Ann O. Hall, Esq.
David C. McElhinney, Esq.
Meruelo Group, LLC
2500 E. 2nd Street
Reno, NV 89595
Attorneys for Defendants
MEI-GSR Holdings, LLC,
Gage Village Commercial
Development, LLC, and
AM-GSR Holdings, LLC

14 Jordan T. Smith, Esq.
15 Pisanelli Bice PLLC
16 400 South 7th Street, Suite 300
17 Las Vegas, NV 89101
18 *Attorneys for Defendants*
19 *MEI-GSR Holdings, LLC;*
20 *Gage Village Commercial*
21 *Development, LLC; and*
22 *AM-GSR Holdings, LLC*

F. DeArmond Sharp, Esq.
Stefanie T. Sharp, Esq.
Robison, Sharp Sullivan & Brust
71 Washington Street
Reno, NV 89503
Attorneys for Receiver
Richard M. Teichner

23
24
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/s/ Stefanie Martinez

An Employee of Robertson, Johnson, Miller & Williamson

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EXHIBIT INDEX

Ex. No.	Description	Pages
1	Corrected Second Amended Final Monetary Judgment	5

FILED
Electronically
CV12-02222
2023-07-11 08:20:11 AM
Alicia L. Lerud
Clerk of the Court
Transaction # 9765779

EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”

CODE: 1105

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IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

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HON. ELIZABETH GONZALEZ
Sr. District Court Judge

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DALE KOTCHKA-ALANES
DANIEL POLSENBERG, ESQ.
DAVID MCELHINNEY, ESQ.
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ROBERT EISENBERG, ESQ.
JENNIFER HOSTETLER, ESQ.
ANN HALL, ESQ.
JAMES PROCTOR, ESQ.
JORDAN SMITH, ESQ.

Holly W. Lange

EXHIBIT EE

1 CODE: 1090
2 G. David Robertson, Esq. (NV Bar No. 1001)
3 Jarrad C. Miller, Esq. (NV Bar No. 7093)
4 Jonathan J. Tew, Esq. (NV Bar No. 11874)
5 Robertson, Johnson, Miller & Williamson
6 50 West Liberty Street, Suite 600
7 Reno, Nevada 89501
8 (775) 329-5600
9 Attorneys for Plaintiffs

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**IN AND FOR THE COUNTY OF WASHOE**

9 ALBERT THOMAS, individually; JANE
10 DUNLAP, individually; JOHN DUNLAP,
11 individually; BARRY HAY, individually;
12 MARIE-ANNE ALEXANDER, as Trustee of
13 the MARIE-ANNIE ALEXANDER LIVING
14 TRUST; MELISSA VAGUJHELYI and
15 GEORGE VAGUJHELYI, as Trustees of the
16 GEORGE VAGUJHELYI AND MELISSA
17 VAGUJHELYI 2001 FAMILY TRUST
18 AGREEMENT, U/T/A APRIL 13, 2001; D'
19 ARCY NUNN, individually; HENRY
20 NUNN, individually; MADELYN VAN DER
21 BOKKE, individually; LEE VAN DER
22 BOKKE, individually; DONALD
23 SCHREIFELS, individually; ROBERT R.
24 PEDERSON, individually and as Trustee of
25 the PEDERSON 1990 TRUST; LOU ANN
26 PEDERSON, individually and as Trustee of
27 the PEDERSON 1990 TRUST; LORI
28 ORDOVER, individually; WILLIAM A.
HENDERSON, individually; CHRISTINE E.
HENDERSON, individually; LOREN D.
PARKER, individually; SUZANNE C.
PARKER, individually; MICHAEL IZADY,
individually; STEVEN TAKAKI,
individually; FARAD TORABKHAN,
individually; SAHAR TAVAKOL,
individually; M&Y HOLDINGS, LLC;
JL&YL HOLDINGS, LLC; SANDI RAINES,
individually; R. RAGHURAM, individually;
USHA RAGHURAM, individually; LORI K.
TOKUTOMI, individually; GARRET TOM,
individually; ANITA TOM, individually;
RAMON FADRILAN, individually; FAYE
FADRILAN, individually; PETER K. LEE
and MONICA L. LEE, as Trustees of the LEE
FAMILY 2002 REVOCABLE TRUST;
DOMINIC YIN, individually; ELIAS
SHAMIEH, individually; JEFFREY QUINN,

Case No. CV12-02222
Dept. No. 10

SECOND AMENDED COMPLAINT

1 individually; BARBARA ROSE QUINN
individually; KENNETH RICHE,
2 individually; MAXINE RICHE, individually;
NORMAN CHANDLER, individually;
3 BENTON WAN, individually; TIMOTHY D.
KAPLAN, individually; SILKSCAPE INC.;
4 PETER CHENG, individually; ELISA
CHENG, individually; GREG A.
5 CAMERON, individually; TMI PROPERTY
GROUP, LLC; RICHARD LUTZ,
6 individually; SANDRA LUTZ, individually;
MARY A. KOSSICK, individually; MELVIN
7 CHEAH, individually; DI SHEN,
individually; NADINE'S REAL ESTATE
8 INVESTMENTS, LLC; AJIT GUPTA,
individually; SEEMA GUPTA, individually;
9 FREDRICK FISH, individually; LISA FISH,
individually; ROBERT A. WILLIAMS,
10 individually; JACQUELIN PHAM,
individually; MAY ANN HOM, as Trustee of
11 the MAY ANN HOM TRUST; MICHAEL
HURLEY, individually; DOMINIC YIN,
12 individually; DUANE WINDHORST,
individually; MARILYN WINDHORST,
13 individually; VINOD BHAN, individually;
ANNE BHAN, individually; GUY P.
14 BROWNE, individually; GARTH A.
WILLIAMS, individually; PAMELA Y.
15 ARATANI, individually; DARLENE
LINDGREN, individually; LAVERNE
16 ROBERTS, individually; DOUG MECHAM,
individually; CHRISINE MECHAM,
17 individually; KWANGSOO SON,
individually; SOO YEUN MOON,
18 individually; JOHNSON AKINDODUNSE,
individually; IRENE WEISS, as Trustee of
19 the WEISS FAMILY TRUST; PRAVESH
CHOPRA, individually; TERRY POPE,
20 individually; NANCY POPE, individually;
JAMES TAYLOR, individually; RYAN
21 TAYLOR, individually; KI HAM,
individually; YOUNG JA CHOI,
22 individually; SANG DAE SOHN,
individually; KUK HYUNG (CONNIE),
23 individually; SANG (MIKE) YOO,
individually; BRETT MENMUIR, as Trustee
24 of the CAYENNE TRUST; WILLIAM
MINER, JR., individually; CHANH
25 TRUONG, individually; ELIZABETH
ANDERS MECUA, individually;
26 SHEPHERD MOUNTAIN, LLC; ROBERT
BRUNNER, individually; AMY BRUNNER,
27 individually; JEFF RIOPELLE, individually;
PATRICIA M. MOLL, individually;
28 DANIEL MOLL, individually; and DOE

1 PLAINTIFFS 1 THROUGH 10, inclusive,
2 Plaintiffs,
3 vs.

4 MEI-GSR Holdings, LLC, a Nevada Limited
5 Liability Company, GRAND SIERRA
6 RESORT UNIT OWNERS' ASSOCIATION,
7 a Nevada nonprofit corporation, GAGE
8 VILLAGE COMMERCIAL
9 DEVELOPMENT, LLC, a Nevada Limited
10 Liability Company and DOE DEFENDANTS
11 1 THROUGH 10, inclusive,
12 Defendants.

13 COME NOW Plaintiffs ("Plaintiffs" or "Individual Unit Owners"), by and through their
14 counsel of record, Robertson, Johnson, Miller & Williamson, and for their causes of action
15 against Defendants hereby complain as follows:

16 **GENERAL ALLEGATIONS**

17 **The Parties**

18 1. Plaintiff Albert Thomas is a competent adult and is a resident of the State of
19 California.

20 2. Plaintiff Jane Dunlap is a competent adult and is a resident of the State of
21 California.

22 3. Plaintiff John Dunlap is a competent adult and is a resident of the State of
23 California.

24 4. Plaintiff Barry Hay is a competent adult and is a resident of the State of
25 California.

26 5. Plaintiff Marie-Annie Alexander, as Trustee of the Marie-Annie Alexander Living
27 Trust, is a competent adult and is a resident of the State of California.

28 6. Plaintiff Melissa Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa
Vagujheyli 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
resident of the State of Nevada.

1 7. Plaintiff George Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa
2 Vagujhelyi 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
3 resident of the State of Nevada.

4 8. Plaintiff D'Arcy Nunn is a competent adult and is a resident of the State of
5 California.

6 9. Plaintiff Henry Nunn is a competent adult and is a resident of the State of
7 California.

8 10. Plaintiff Lee Van Der Bokke is a competent adult and is a resident of the State of
9 California.

10 11. Plaintiff Madelyn Van Der Bokke is a competent adult and is a resident of the
11 State of California.

12 12. Plaintiff Donald Schreifels is a competent adult and is a resident of the State of
13 Minnesota.

14 13. Plaintiff Robert R. Pederson, individually and as Trustee of the Pederson 1990
15 Trust, is a competent adult and is a resident of the State of California.

16 14. Plaintiff Lou Ann Pederson, individually and as Trustee of the Pederson 1990
17 Trust, is a competent adult and is a resident of the State of California.

18 15. Plaintiff Lori Ordovery is a competent adult and is a resident of the State of
19 Connecticut.

20 16. Plaintiff William A. Henderson is a competent adult and is a resident of the State
21 of California.

22 17. Plaintiff Christine E. Henderson is a competent adult and is a resident of the State
23 of California.

24 18. Plaintiff Loren D. Parker is a competent adult and is a resident of the State of
25 Washington.

26 19. Plaintiff Suzanne C. Parker is a competent adult and is a resident of the State of
27 Washington.

1 20. Plaintiff Michael Izady is a competent adult and is a resident of the State of New
2 York.
3 21. Plaintiff Steven Takaki is a competent adult and is a resident of the State of
4 California.
5 22. Plaintiff Farad Torabkhan is a competent adult and is a resident of the State of
6 New York.
7 23. Plaintiff Sahar Tavakol is a competent adult and is a resident of the State of New
8 York.
9 24. Plaintiff M&Y Holdings is a Nevada Limited Liability Company with its
10 principal place of business in Nevada.
11 25. Plaintiff JL&YL Holdings, LLC is a Nevada Limited Liability Company with its
12 principal place of business in Nevada.
13 26. Plaintiff Sandi Raines is a competent adult and is a resident of the State of
14 Minnesota.
15 27. Plaintiff R. Raghuram is a competent adult and is a resident of the State of
16 California.
17 28. Plaintiff Usha Raghuram is a competent adult and is a resident of the State of
18 California.
19 29. Plaintiff Lori K. Tokutomi is a competent adult and is a resident of the State of
20 California.
21 30. Plaintiff Garrett Tom is a competent adult and is a resident of the State of
22 California.
23 31. Plaintiff Anita Tom is a competent adult and is a resident of the State of
24 California.
25 32. Plaintiff Ramon Fadrilan is a competent adult and is a resident of the State of
26 California.
27 33. Plaintiff Faye Fadrilan is a competent adult and is a resident of the State of
28 California.

1 34. Plaintiff Peter K. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a
2 competent adult and is a resident of the State of California.

3 35. Plaintiff Monica L. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a
4 competent adult and is a resident of the State of California.

5 36. Plaintiff Dominic Yin is a competent adult and is a resident of the State of
6 California.

7 37. Plaintiff Elias Shamieh is a competent adult and is a resident of the State of
8 California.

9 38. Plaintiff Nadine's Real Estate Investments, LLC, is a North Dakota Limited
10 Liability Company.

11 39. Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of
12 Hawaii.

13 40. Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of
14 Hawaii.

15 41. Plaintiff Kenneth Riche is a competent adult and is a resident of the State of
16 Wisconsin.

17 42. Plaintiff Maxine Riche is a competent adult and is a resident of the State of
18 Wisconsin.

19 43. Plaintiff Norman Chandler is a competent adult and is a resident of the State of
20 Alabama.

21 44. Plaintiff Benton Wan is a competent adult and is a resident of the State of
22 California.

23 45. Plaintiff Timothy Kaplan is a competent adult and is a resident of the State of
24 California.

25 46. Plaintiff Silkscape Inc. is a California Corporation.

26 47. Plaintiff Peter Cheng is a competent adult and is a resident of the State of
27 California.

28

1 48. Plaintiff Elisa Cheng is a competent adult and is a resident of the State of
2 California.

3 49. Plaintiff Greg A. Cameron is a competent adult and is a resident of the State of
4 California.

5 50. Plaintiff TMI Property Group, LLC is a California Limited Liability Company.

6 51. Plaintiff Richard Lutz is a competent adult and is a resident of the State of
7 California.

8 52. Plaintiff Sandra Lutz is a competent adult and is a resident of the State of
9 California.

10 53. Plaintiff Mary A. Kossick is a competent adult and is a resident of the State of
11 California.

12 54. Plaintiff Melvin H. Cheah is a competent adult and is a resident of the State of
13 California.

14 55. Plaintiff Di Shen is a competent adult and is a resident of the State of Texas.

15 56. Plaintiff Ajit Gupta is a competent adult and is a resident of the State of
16 California.

17 57. Plaintiff Seema Gupta is a competent adult and is a resident of the State of
18 California.

19 58. Plaintiff Fredrick Fish is a competent adult and is a resident of the State of
20 Minnesota.

21 59. Plaintiff Lisa Fish is a competent adult and is a resident of the State of Minnesota.

22 60. Plaintiff Robert A. Williams is a competent adult and is a resident of the State of
23 Minnesota.

24 61. Plaintiff Jacquelin Pham is a competent adult and is a resident of the State of
25 California.

26 62. Plaintiff May Ann Hom, as Trustee of the May Ann Hom Trust, is a competent
27 adult and is a resident of the State of California.

28

1 63. Plaintiff Michael Hurley is a competent adult and is a resident of the State of
2 Minnesota.
3 64. Plaintiff Dominic Yin is a competent adult and is a resident of the State of
4 California.
5 65. Plaintiff Duane Windhorst is a competent adult and is a resident of the State of
6 Minnesota.
7 66. Plaintiff Marilyn Windhorst is a competent adult and is a resident of the State of
8 Minnesota.
9 67. Plaintiff Vinod Bhan is a competent adult and is a resident of the State of
10 California.
11 68. Plaintiff Anne Bhan is a competent adult and is a resident of the State of
12 California.
13 69. Plaintiff Guy P. Browne is a competent adult and is a resident of the State of
14 California.
15 70. Plaintiff Garth Williams is a competent adult and is a resident of the State of
16 California.
17 71. Plaintiff Pamela Y. Aratani is a competent adult and is a resident of the State of
18 California.
19 72. Plaintiff Darleen Lindgren is a competent adult and is a resident of the State of
20 Minnesota.
21 73. Plaintiff Laverne Roberts is a competent adult and is a resident of the State of
22 Nevada.
23 74. Plaintiff Doug Mecham is a competent adult and is a resident of the State of
24 Nevada.
25 75. Plaintiff Chrisine Mecham is a competent adult and is a resident of the State of
26 Nevada.
27 76. Plaintiff Kwangsoo Son is a competent adult and is a resident of Vancouver,
28 British Columbia.

1 77. Plaintiff Soo Yeun Moon is a competent adult and is a resident of Vancouver,
2 British Columbia.

3 78. Plaintiff Johnson Akindodunse is a competent adult and is a resident of the State
4 of California.

5 79. Plaintiff Irene Weiss, as Trustee of the Weiss Family Trust, is a competent adult
6 and is a resident of the State of Texas.

7 80. Plaintiff Pravesh Chopra is a competent adult and is a resident of the State of
8 California.

9 81. Plaintiff Terry Pope is a competent adult and is a resident of the State of Nevada.

10 82. Plaintiff Nancy Pope is a competent adult and is a resident of the State of Nevada.

11 83. Plaintiff James Taylor is a competent adult and is a resident of the State of
12 California.

13 84. Plaintiff Ryan Taylor is a competent adult and is a resident of the State of
14 California.

15 85. Plaintiff Ki Ham is a competent adult and is a resident of Surry B.C.

16 86. Plaintiff Young Ja Choi is a competent adult and is a resident of Coquitlam, B.C.

17 87. Plaintiff Sang Dae Sohn is a competent adult and is a resident of Vancouver, B.C.

18 88. Plaintiff Kuk Hyung (“Connie”) is a competent adult and is a resident of
19 Coquitlam, B.C.

20 89. Plaintiff Sang (“Mike”) Yoo is a competent adult and is a resident of Coquitlam,
21 British Columbia.

22 90. Plaintiff Brett Menmuir, as Trustee of the Cayenne Trust, is a competent adult and
23 is a resident of the State of Nevada.

24 91. Plaintiff William Miner, Jr., is a competent adult and is a resident of the State of
25 California.

26 92. Plaintiff Chanh Truong is a competent adult and is a resident of the State of
27 California.

1 93. Plaintiff Elizabeth Anders Mecua is a competent adult and is a resident of the
2 State of California.

3 94. Plaintiff Shepherd Mountain, LLC is a Texas Limited Liability Company with its
4 principal place of business in Texas.

5 95. Plaintiff Robert Brunner is a competent adult and is a resident of the State of
6 Minnesota.

7 96. Plaintiff Amy Brunner is a competent adult and is a resident of the State of
8 Minnesota.

9 97. Plaintiff Jeff Riopelle is a competent adult and is a resident of the State of
10 California.

11 98. Plaintiff Patricia M. Moll is a competent adult and is a resident of the State of
12 Illinois.

13 99. Plaintiff Daniel Moll is a competent adult and is a resident of the State of Illinois.

14 100. Plaintiffs are informed and believe and thereon allege that at all relevant times
15 herein, Defendant MEI-GSR Holdings, LLC (“MEI-GSR”) is a Nevada Limited Liability
16 Company with its principal place of business in Nevada.

17 101. Plaintiffs are informed and believe and thereon allege that at all relevant times
18 herein, Defendant Gage Village Commercial Development, LLC (“Gage Village”) is a Nevada
19 Limited Liability Company with its principal place of business in Nevada.

20 102. Plaintiffs are informed and believe and thereon allege that Gage Village is related
21 to, controlled by, affiliated with, and/or a subsidiary of MEI-GSR.

22 103. Plaintiffs are informed and believe and thereon allege that at all relevant times
23 herein, Defendant Grand Sierra Resort Unit Owners’ Association (the “Unit Owners’
24 Association”) is a Nevada nonprofit corporation with its principal place of business in Nevada.

25 104. The true names and capacities whether individual, corporate, associate or
26 otherwise of Plaintiff Does and Defendant Does 1 through 10, are unknown to Plaintiffs, and
27 Plaintiffs therefore include them by such fictitious names. Plaintiffs will amend this Complaint
28 to allege their true names and capacities when such are ascertained. Plaintiffs are informed and

believe and thereon allege that each of the fictitiously named Defendant Does is liable to Plaintiffs in some manner for the occurrences that are herein alleged.

MEI-GSR's Control of the Unit Owners' Association is to Plaintiffs' Detriment

105. The Individual Unit Owners re-allege each and every allegation contained in paragraphs 1 through 102 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

106. The Grand Sierra Resort Condominium Units ("GSR Condo Units") are part of the Grand Sierra Unit Owners Association, which is an apartment style hotel condominium development of 670 units in one 27-story building. The GSR Condo Units occupy floors 17 through 24 of the Grand Sierra Resort and Casino, a large-scale hotel casino, located at 2500 East Second Street, Reno, Nevada.

107. All of the Individual Unit Owners: hold an interest in, own, or have owned, one or more GSR Condo Units.

108. Defendants Gage Village and MEI-GSR own multiple GSR Condo Units.

109. Defendant MEI-GSR owns the Grand Sierra Resort and Casino.

110. Under the Declaration of Covenants, Conditions, Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort ("CC&Rs"), there is one voting member for each unit of ownership (thus, an owner with multiple units has multiple votes).

111. Because Defendants MEI-GSR and Gage Village control more units of ownership than any other person or entity, they effectively control the Unit Owners' Association by having the ability to elect Defendant MEI-GSR's chosen representatives to the Board of Directors (the governing body over the GSR Condo Units).

112. As a result of Defendants MEI-GSR and Gage Village controlling the Unit Owners' Association, the Individual Unit Owners effectively have no input or control over the management of the Unit Owners' Association.

113. Defendants MEI-GSR and Gage Village have used, and continue to use, their control over the Defendant Unit Owners' Association to advance Defendants MEI-GSR and Gage Villages' economic objectives to the detriment of the Individual Unit Owners.

1 114. Defendants MEI-GSR and Gage Villages' control of the Unit Owners'
2 Association violates Nevada law as it defeats the purpose of forming and maintaining a
3 homeowners' association.

4 115. Further, the Nevada Division of Real Estate requires a developer to sell off the
5 units within 7 years, exit and turn over the control and management to the owners.

6 116. Under the CC&Rs, the Individual Unit Owners are required to enter into a "Unit
7 Maintenance Agreement" and participate in the "Hotel Unit Maintenance Program," wherein
8 Defendant MEI-GSR provides certain services (including, without limitation, reception desk
9 staffing, in-room services, guest processing services, housekeeping services, Hotel Unit
10 inspection, repair and maintenance services, and other services).

11 117. The Unit Owners' Association maintains capital reserve accounts that are funded
12 by the owners of GSR Condo Units. The Unit Owners' Association collects association dues of
13 approximately \$25 per month per unit, with some variation depending on a particular unit's
14 square footage.

15 118. The Individual Unit Owners pay for contracted "Hotel Fees," which include taxes,
16 deep cleaning, capital reserve for the room, capital reserve for the building, routine maintenance,
17 utilities, etc.

18 119. Defendant MEI-GSR has systematically allocated and disproportionately charged
19 capital reserve contributions to the Individual Unit Owners, so as to force the Individual Unit
20 Owners to pay capital reserve contributions in excess of what should have been charged.

21 120. Defendants MEI-GSR and Gage Development have failed to pay proportionate
22 capital reserve contribution payments in connection with their Condo Units.

23 121. Defendant MEI-GSR has failed to properly account for, or provide an accurate
24 accounting for the collection and allocation of the collected capital reserve contributions.

25 122. The Individual Unit Owners also pay "Daily Use Fees" (a charge for each night a
26 unit is occupied by any guest for housekeeping services, etc.).

27 123. Defendants MEI-GSR and Gage Village have failed to pay proportionate Daily
28 Use Fees for the use of Defendants' GSR Condo Units.

1 units; (2) GSR Condo Units owned by Defendant MEI-GSR and/or Gage Village; and (3) GSR
2 Condo Units owned by the Individual Condo Unit Owners.

3 133. Defendant MEI-GSR has entered into a Grand Sierra Resort Unit Rental
4 Agreement with Individual Unit Owners.

5 134. Defendant MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by
6 Defendant MEI-GSR; (2) GSR Condo Units owned by Defendant MEI-GSR and/or Gage
7 Village; and (3) GSR Condo Units owned by Individual Condo Unit Owners so as to maximize
8 Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by the Individual Unit
9 Owners.

10 135. Defendant MEI-GSR has rented the Individual Condo Units for as little as \$0.00
11 to \$25.00 a night.

12 136. Yet, MEI-GSR has charged "Daily Use Fees" of approximately \$22.38, resulting
13 in revenue to the Individual Unit Owners as low as \$2.62 per night for the use of their GSR
14 Condo Unit (when the unit was rented for a fee as opposed to being given away).

15 137. By functionally, and in some instances actually, giving away the use of units
16 owned by the Individual Unit Owners, Defendant MEI-GSR has received a benefit because those
17 who rent the Individual Units frequently gamble and purchase food, beverages, merchandise, spa
18 services and entertainment access from Defendant MEI-GSR.

19 138. Defendant MEI-GSR has rented Individual Condo Units to third parties without
20 providing Individual Unit Owners with any notice or compensation for the use of their unit.

21 139. Further, Defendant MEI-GSR has systematically endeavored to place a priority on
22 the rental of Defendant MEI-GSR's hotel rooms, Defendant MEI-GSR's GSR Condo Units, and
23 Defendant Gage Village's Condo Units.

24 140. Such prioritization effectively devalues the units owned by the Individual Unit
25 Owners.

26 141. Defendants MEI-GSR and Gage Village intend to purchase the devalued units at
27 nominal, distressed prices when Individual Unit Owners decide to, or are effectively forced to,
28

1 sell their units because the units fail to generate sufficient revenue to cover expenses and have no
2 prospect of selling their persistently loss-making units to any other buyer.

3 142. Some of the Individual Unit Owners have retained the services of a third party to
4 market and rent their GSR Condo Unit(s).

5 143. Defendant MEI-GSR has systematically thwarted the efforts of any third party to
6 market and rent the GSR Units owned by the Individual Unit Owners.

7 144. Defendant MEI-GSR has breached the Grand Sierra Resort Unit Rental
8 Agreement with Individual Condo Unit Owners by failing to follow its terms, including but not
9 limited to, the failure to implement an equitable Rotational System as referenced in the
10 agreement.

11 145. Defendant MEI-GSR has failed to act in good faith in exercising its duties under
12 the Grand Sierra Resort Unit Rental Agreements with the Individual Unit Owners.

13 **FIRST CLAIM FOR RELIEF**
14 **(Petition for Appointment of Receiver as to**
15 **Defendant Grand Sierra Resort Unit Owners' Association)**

16 146. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
17 143 of this Complaint as though fully stated herein and hereby incorporate them by this reference
18 as if fully set forth below.

19 147. Because Defendant MEI-GSR and/or Gage Village controls more units of
20 ownership than any other person or entity, Defendant MEI-GSR and Gage Village effectively
21 control the Grand Sierra Resort Unit Owners' Association by having the ability to elect
22 Defendant MEI-GSR's chosen representatives to the Board of Directors (the governing body
23 over the GSR Condo Units).

24 148. As a result of Defendant MEI-GSR controlling the Grand Sierra Resort Unit-
25 Owners' Association, Plaintiffs effectively have no input or control over the management of the
26 Unit Owners' Association.

1 149. Defendant MEI-GSR has used, and continues to use, its control over the
2 Defendant Grand Sierra Resort Unit Owners' Association to advance Defendant MEI-GSR's
3 economic objectives to the detriment of Plaintiffs.

4 150. Plaintiffs are entitled to a receiver pursuant to NRS § 32.010.

5 151. Pursuant to NRS § 32.010, the appointment of a receiver is appropriate in this
6 case as a matter of statute and equity.

7 152. Unless a receiver is appointed, Defendant MEI-GSR will continue to control the
8 Unit Owners' Association to advance Defendant MEI-GSR's economic objections to the
9 detriment of Plaintiffs.

10 153. Without the grant of the remedies sought in this Complaint, Plaintiffs have no
11 adequate remedy at law to enforce their rights and Plaintiffs will suffer irreparable harm unless
12 granted the relief as prayed for herein.

13 **WHEREFORE**, Plaintiffs request judgment against the Defendant Grand Sierra Resort
14 Unit Owners' Association, as set forth below.

15 **SECOND CLAIM FOR RELIEF**
16 **(Intentional and/or Negligent Misrepresentation as to Defendant MEI-GSR)**

17 154. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
18 151 of this Complaint as though fully stated herein and hereby incorporate them by this reference
19 as if fully set forth below.

20 155. Defendant MEI-GSR made affirmative representations to Plaintiffs regarding the
21 use, rental and maintenance of the Individual Unit Owners' GSR Condo Units.

22 156. Plaintiffs are now informed and believe, and thereon allege, that these
23 representations were false.

24 157. The Defendant MEI-GSR knew that the affirmative representations were false, in
25 the exercise of reasonable care should have known that they were false, and/or knew or should
26 have known that it lacked a sufficient basis for making said representations.

158. The representations were made with the intention of inducing Plaintiffs to contract with Defendant MEI-GSR for the marketing and rental of Plaintiffs' GSR Condo Units and otherwise act, as set out above, in reliance upon the representations.

159. Plaintiffs justifiably relied upon the affirmative representations of Defendant MEI-GSR in contracting with Defendant MEI-GSR for the rental of their GSR Condo Units.

160. As a direct and proximate result of Defendant MEI-GSR's misrepresentations, Plaintiffs have been, and will continue to be, harmed in the manner herein.

161. Plaintiffs are further informed and believe, and thereon allege, that said representations were made by Defendant MEI-GSR with the intent to commit an oppression directed toward Plaintiffs by intentionally devaluing there GSR Condo Units. As a result, Plaintiffs are entitled to an award of exemplary damages against the Defendant, according to proof at the time of trial.

162. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to statute, decisional law, common law and this Court's inherent powers.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

THIRD CLAIM FOR RELIEF
(Breach of Contract as to Defendant MEI-GSR)

163. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 160 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

164. Defendant MEI-GSR has entered into a Grand Sierra Resort Unit Rental Agreement (the “Agreement”) with Individual Condo Unit Owners.

165. Defendant MEI-GSR has breached the Agreement with Individual Unit Owners by failing to follow its terms, including but not limited to, the failure to implement an equitable Rotational System as referenced in the agreement.

1 166. The Agreement is an enforceable contract between Defendant MEI-GSR and
2 Plaintiffs.

3 167. Plaintiffs have performed all of their obligations and satisfied all of their
4 conditions under the Agreement, and/or their performance and conditions were excused.

5 168. As a direct and proximate result of Defendant MEI-GSR's breaches of the
6 Agreement as alleged herein, Plaintiffs have been, and will continue to be, harmed in the manner
7 herein alleged.

8 169. In addition, as a direct, proximate and necessary result of Defendant's bad faith
9 and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees which they
10 are entitled to recover under the terms of the Agreement.

11 **WHEREFORE**, Plaintiffs request judgment against Defendant MEI-GSR, as set forth
12 below.

13 **FOURTH CLAIM FOR RELIEF**
14 **(Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR)**

15 170. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
16 167 of this Complaint as though fully stated herein and hereby incorporate them by this reference
17 as if fully set forth below.

18 171. Defendant MEI-GSR is contractually obligated to Plaintiffs. The contractual
19 obligations are based upon the underlying agreements between Defendant MEI-GSR and
20 Plaintiffs, and principles of equity and representations made by MEI-GSR.

21 172. Plaintiffs relied upon the representations of Defendant MEI-GSR and trusted
22 Defendant MEI-GSR with the marketing and rental of their GSR Condo Units.

23 173. Due to the devaluation of the GSR Condo Units caused by Defendant MEI-GSR's
24 actions, the expenses they have had to incur, and their inability to sell the Property in its current
25 state, Plaintiffs have suffered damages.

26 174. Defendant MEI-GSR was informed of, and in fact knew of, Plaintiffs' reliance
27 upon its representations.

175. Based on these facts, equitable or quasi-contracts existed between Plaintiffs and Defendant MEI-GSR's actions as described hereinabove.

176. Defendant MEI-GSR, however, has failed and refused to perform its obligations.

177. These refusals and failures constitute material breaches of their agreements.

178. Plaintiffs have performed all of their obligations and satisfied all conditions under the contracts, and/or their performance and conditions, under the contracts, were excused.

179. As a direct and proximate result of Defendant MEI-GSR's wrongful conduct as alleged herein, the Plaintiffs have been, and will continue to be, harmed in the manner herein alleged.

180. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to statute, decisional law, common law and this Court's inherent powers.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

FIFTH CLAIM FOR RELIEF
(Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR)

181. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 178 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

182. As alleged herein, Plaintiffs entered into one or more contracts with Defendant MEI-GSR, including the Grand Sierra Resort Unit Rental Agreement.

183. Under the terms of their respective agreement(s), Defendant MEI-GSR was obligated to market and rent Plaintiffs' GSR Condo Units.

184. Defendant MEI-GSR has manipulated the rental of: (1) the hotel rooms owned by Defendant MEI-GSR; (2) GSR Condo Units owned by Defendant MEI-GSR and Defendant Gage Village; and (3) GSR Condo Units owned by Plaintiffs so as to maximize Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by Plaintiffs.

185. Every contract in Nevada has implied into it, a covenant that the parties thereto will act in the spirit of good faith and fair dealing.

186. Defendant MEI-GSR has breached this covenant by intentionally making false and misleading statements to Plaintiffs, and for its other wrongful actions as alleged in this Complaint.

187. As a direct and proximate result of Defendant MEI-GSR's breaches of the implied covenant of good faith and fair dealing, Plaintiffs have been, and will continue to be, harmed in the manner herein alleged.

188. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to statute, decisional law, common law and this Court's inherent powers.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

SIXTH CLAIM FOR RELIEF
(Consumer Fraud/Nevada Deceptive Trade Practices Act Against Defendant MEI-GSR)

189. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 186 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

190. NRS § 41.600(1) provides that “[a]n action may be brought by any person who is a victim of consumer fraud.”

191. NRS § 41.600(2) explains, in part, “‘consumer fraud’ means . . . [a] deceptive trade practice as defined in NRS §§ 598.0915 to 598.0925, inclusive.”

192. NRS Chapter 598 identifies certain activities which constitute deceptive trade practices; many of those activities occurred in MEI-GSR's dealings with Plaintiffs.

193. Defendant MEI-GSR, in the course of its business or occupation, knowingly made false representations and/or misrepresentations to Plaintiffs.

1 194. Defendant MEI-GSR failed to represent the actual marketing and rental practices
2 implemented by Defendant MEI-GSR, as the Defendant was contractually and legally required
3 to do.

4 195. Defendant MEI-GSR's conduct, as described in this Complaint, constitutes
5 deceptive trade practices and is in violation of, among other statutory provisions and
6 administrative regulations, NRS §§ 598.0915 to 598.0925.

7 196. As a direct and proximate result of Defendant MEI-GSR's deceptive trade
8 practices, Plaintiffs have suffered damages.

9 197. Plaintiffs are also entitled to recover their costs in this action and reasonable
10 attorneys' fees, as allowed by law.

11 **WHEREFORE**, Plaintiffs request judgment against Defendant MEI-GSR, as set forth
12 below.

13 **SEVENTH CLAIM FOR RELIEF**
14 **(Declaratory Relief as to Defendant MEI-GSR)**

15 198. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
16 195 of this Complaint as though fully stated herein and hereby incorporate them by this reference
17 as if fully set forth below.

18 199. As alleged hereinabove, an actual controversy has arisen and now exists between
19 Plaintiffs and Defendant MEI-GSR, regarding the extent to which Defendant MEI-GSR has the
20 legal right to control the Grand Sierra Resort Unit-Owners' Association to advance Defendant
21 MEI-GSR's economic objections to the detriment of Plaintiffs.

22 200. The interests of Plaintiffs and Defendant MEI-GSR are completely adverse as to
23 the Plaintiffs.

24 201. Plaintiffs have a legal interest in this dispute as they are the owners of record of
25 certain GSR Condo Units.

26 202. This controversy is ripe for judicial determination in that Plaintiffs have alluded to
27 and raised this issue in this Complaint.

1 203. Accordingly, Plaintiffs seek a judicial declaration that Defendant MEI-GSR
2 cannot control the Grand Sierra Resort Unit-Owners' Association to advance Defendant MEI-
3 GSR's economic objectives to the detriment of Plaintiffs.

4 **WHEREFORE**, the Plaintiffs request judgment against Defendant MEI-GSR, as set
5 forth below.

6 **EIGHTH CLAIM FOR RELIEF**
7 **(Conversion as to Defendant MEI-GSR)**

8 204. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
9 201 of this Complaint as though fully stated herein and hereby incorporate them by this reference
10 as if fully set forth below.

11 205. Defendant MEI-GSR wrongfully committed a distinct act of dominion over the
12 Plaintiffs' property by renting their GSR Condo Units both at unreasonably low rates so as to
13 only benefit Defendant MEI-GSR, and also renting said units without providing any
14 compensation or notice to Plaintiffs.

15 206. Defendant MEI-GSR's acts were in denial of, or inconsistent with, Plaintiffs' title
16 or rights therein.

17 207. Defendant MEI-GSR's acts were in derogation, exclusion, or defiance of the
18 Plaintiffs' title or rights therein.

19 **WHEREFORE**, Plaintiffs request judgment against the Defendant MEI-GSR, as set
20 forth below.

21 **NINTH CLAIM FOR RELIEF**
22 **(Demand for Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit**
23 **Owners Association)**

24 208. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
25 205 of this Complaint as though fully stated herein and hereby incorporate them by this reference
26 as if fully set forth below.

27 209. The Nevada Revised Statutes impose certain duties and obligations upon trustees,
28 fiduciaries, managers, advisors, and investors.

1 210. Defendant MEI-GSR has not fulfilled its duties and obligations.

2 211. Plaintiffs are informed and believe, and thereon allege, that they are interested
3 parties in the Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR's
4 endeavors to market, maintain, service and rent Plaintiffs' GSR Condo Units.

5 212. Among their duties, Defendant Grand Sierra Unit Owners Association and
6 Defendant MEI-GSR are required to prepare accountings of their financial affairs as they pertain
7 to Plaintiffs.

8 213. Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR have
9 failed to properly prepare and distribute said accountings.

10 214. Accordingly, Plaintiffs are entitled to a full and proper accounting.

11 **WHEREFORE**, Plaintiffs request judgment against the Defendants MEI-GSR and the
12 Grand Sierra Unit Owners Association, as set forth below.

13 **TENTH CLAIM FOR RELIEF**
14 **(Specific Performance Pursuant to NRS 116.112, Unconscionable Agreement)**

15 215. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
16 212 of this Complaint as though fully stated herein and hereby incorporate them by this reference
17 as if fully set forth below.

18 216. As alleged herein, Plaintiffs entered into one or more contracts with Defendant
19 MEI-GSR, including the Grand Sierra Resort Unit Rental Agreement and the Unit Maintenance
20 Agreement.

21 217. The Grand Sierra Resort Unit Rental Agreement is unconscionable pursuant to
22 NRS § 116.112 because MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by
23 Defendant MEI-GSR; (2) GSR Condo Units owned or controlled by Defendant MEI-GSR; and
24 (3) GSR Condo Units owned by Individual Unit Owners so as to maximize Defendant MEI-
25 GSR's profits and devalue the GSR Condo Units owned by the Individual Unit Owners.

26 218. The Unit Maintenance Agreement is unconscionable pursuant to NRS § 116.112
27 because of the excessive fees charged and the Individual Unit Owners' inability to reject fee
28 increases.

1 **WHEREFORE**, Plaintiffs request judgment against the Defendant MEI-GSR, as set
2 forth below.

3 **ELEVENTH CLAIM FOR RELIEF**
4 **(Unjust Enrichment / Quantum Meruit against Defendant Gage Village**
5 **Development)**

6 219. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
7 216 of this Complaint as though fully stated herein and hereby incorporate them by this reference
8 as if fully set forth below.

9 220. Defendant Gage Village has unjustly benefited from MEI-GSR's devaluation of
10 the GSR Condo Units.

11 221. Defendant Gage Village has unjustly benefited from prioritization of its GSR
12 Condo Units under MEI-GSR's rental scheme to the immediate detriment of the Individual Unit
13 Owners.

14 222. It would be inequitable for the Defendant Gage Village to retain those benefits
15 without full and just compensation to the Individual Unit Owners.

16 **WHEREFORE**, Plaintiffs request judgment against the Defendant Gage Village, as set
17 forth below.

18 **TWELFTH CLAIM FOR RELIEF**
19 **(Tortious Interference with Contract and /or Prospective Business Advantage**
20 **against Defendants MEI-GSR and Gage Development)**

21 223. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
22 220 of this Complaint as though fully stated herein and hereby incorporate them by this reference
23 as if fully set forth below.

24 224. Individual Unit Owners have contracted with third parties to market and rent their
25 GSR Condo Units.

26 225. Defendant MEI-GSR has systematically thwarted the efforts of those third parties
27 to market and rent the GSR Condo Units owned by the Individual Unit Owners.

28 226. Defendant MEI-GSR has prioritized the rental of GSR Condo Units Owned by
Defendant Gage Village to the economic detriment of the Individual Unit Owners.

227. Defendant Gage Village has worked in concert with Defendant MEI-GSR in its scheme to devalue the GSR Condo Units and repurchase them.

WHEREFORE, Plaintiffs request judgment against the Defendants as follows:

1. For the appointment of a neutral receiver to take over control of Defendant Grand Sierra Unit Owners' Association;
2. For compensatory damages according to proof, in excess of \$10,000.00;
3. For punitive damages according to proof;
4. For attorneys' fees and costs according to proof;
5. For declaratory relief;
6. For specific performance;
7. For an accounting; and
8. For such other and further relief as the Court may deem just and proper.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that this document does not contain the social security number of any person.

RESPECTFULLY SUBMITTED this 26th day of March, 2013.

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501

By: /s/ Jarrad C. Miller
G. David Robertson, Esq.
Jarrad C. Miller, Esq.
Jonathan J. Tew, Esq.
Attorneys for Plaintiffs

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Sean L. Brohawn, Esq.
50 W. Liberty Street, Suite 1040
Reno, NV 89501
Attorneys for Defendants / Counterclaimants

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EXHIBIT FF

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Sean L. Brohawn, Esq.
Nevada Bar No. 7618
SEAN L. BROHAWN, PLLC
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Reno, Nevada 89501
Telephone: (775) 453-1505
Facsimile: (775) 453-1537
Sean@brohawnlaw.com

Attorneys for Defendants /
Counterclaimants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; JANE
DUNLAP, individually; JOHN DUNLAP,
individually; BARRY HAY, individually;
MARIE-ANNE ALEXANDER, as Trustee of the
MARIE-ANNIE ALEXANDER LIVING
TRUST; MELISSA VAGUJHELYI and GEORGE
VAGUJHELYI, as Trustees of the GEORGE
VAGUJHELYI AND MELISSA VAGUJHELYI
2001 FAMILY TRUST AGREEMENT, U/T/A
APRIL 13, 2001; D' ARCY NUNN, individually;
HENRY NUNN, individually; MADELYN VAN
DER BOKKE, individually; LEE VAN DER
BOKKE, individually; DONALD SCHREIFELS,
individually; ROBERT R. PEDERSON,
individually and as Trustee of the PEDERSON
1990 TRUST; LOU ANN PEDERSON,
individually and as Trustee of the PEDERSON
1990 TRUST; LORI ORDOVER, individually;
WILLIAM A. HENDERSON, individually;
CHRISTINE E. HENDERSON, individually;
LOREN D. PARKER, individually; SUZANNE
C. PARKER, individually; MICHAEL IZADY,
individually; STEVEN TAKAKI, individually;
FARAD TORABKHAN, individually; SAHAR
TAVAKOL, individually; M&Y HOLDINGS,
LLC; JL&YL HOLDINGS, LLC; SANDI
RAINES, individually; R. RAGHURAM,
individually; USHA RAGHURAM, individually;
LORI K. TOKUTOMI, individually; GARRET
TOM, individually; ANITA TOM, individually;
RAMON FADRILAN, individually; FAYE
FADRILAN, individually; PETER K. LEE and

Case No.: CV12-02222

Dept. No.:10

ANSWER TO SECOND AMENDED
COMPLAINT AND COUNTERCLAIM

1 MONICA L. LEE, as Trustees of the LEE
2 FAMILY 2002 REVOCABLE TRUST;
3 DOMINIC YIN, individually; ELIAS SHAMIEH,
4 individually; JEFFREY QUINN, individually;
5 BARBARA ROSE QUINN individually;
6 KENNETH RICHE, individually; MAXINE
7 RICHE, individually; NORMAN CHANDLER,
8 individually; BENTON WAN, individually;
9 TIMOTHY D. KAPLAN, individually;
10 SILKSCAPE INC.; PETER CHENG, individually;
11 ELISA CHENG, individually; GREG A.
12 CAMERON, individually; TMI PROPERTY
13 GROUP, LLC; RICHARD LUTZ, individually;
14 SANDRA LUTZ, individually; MARY A.
15 KOSSICK, individually; MELVIN CHEAH,
16 individually; DI SHEN, individually; NADINE'S
17 REAL ESTATE INVESTMENTS, LLC; AJIT
18 GUPTA, individually; SEEMA GUPTA,
19 individually; FREDRICK FISH, individually;
20 LISA FISH, individually; ROBERT A.
21 WILLIAMS, individually; JACQUELIN PHAM,
22 individually; MAY ANN HOM, as Trustee of the
23 MAY ANN HOM TRUST; MICHAEL HURLEY,
24 individually; DOMINIC YIN, individually;
25 DUANE WINDHORST, individually; MARILYN
26 WINDHORST, individually; VINOD BHAN,
27 individually; ANNE BHAN, individually; GUY P.
28 BROWNE, individually; GARTH A. WILLIAMS,
individually; PAMELA Y. ARATANI, individually;
DARLENE LINDGREN, individually; LAVERNE
ROBERTS, individually; DOUG MECHAM,
individually; CHRISINE MECHAM, individually;
KWANGSOO SON, individually; SOO YEUN
MOON, individually; JOHNSON AKINDODUNSE,
individually; IRENE WEISS, as Trustee of the
WEISS FAMILY TRUST; PRAVESH CHOPRA,
individually; TERRY POPE, individually; NANCY
POPE, individually; JAMES TAYLOR,
individually; RYAN TAYLOR, individually; KI
HAM, individually; YOUNG JA CHOI,
individually; SANG DEE SOHN, individually;
KUK HYUNG (CONNIE), individually;
SANG (MIKE) YOO, individually; BRETT
MENMUIR, as Trustee of the CAYENNE TRUST;
WILLIAM MINER, JR., individually; CHANH
TRUONG, individually; ELIZABETH ANDERS
MECUA, individually; SHEPHERD MOUNTAIN,
LLC; ROBERT BRUNNER, individually; AMY
BRUNNER, individually; JEFF RIOPELLE,
individually; PATRICIA M. MOLL, individually;
DANIEL MOLL, individually; and DOE
PLAINTIFFS 1 THROUGH 10, inclusive,

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FADRILAN, individually; PETER K. LEE and
MONICA L. LEE, as Trustees of the LEE
FAMILY 2002 REVOCABLE TRUST;
JEFFREY QUINN, individually; BARBARA
ROSE QUINN individually; KENNETH RICHE,
individually; MAXINE RICHE, individually;
NORMAN CHANDLER, individually; BENTON
WAN, individually; TIMOTHY D. KAPLAN,
individually; SILKSCAPE INC.; GREG A.
CAMERON, individually; TMI PROPERTY
GROUP, LLC; NADINE'S REAL ESTATE
INVESTMENTS, LLC; ROBERT A.
WILLIAMS, individually; DUANE
WINDHORST, individually; MARILYN
WINDHORST, individually; GARTH A.
WILLIAMS, individually; PAMELA Y.
ARATANI, individually; DARLENE
LINDGREN, individually; SOO YEUN MOON,
individually; IRENE WEISS, as Trustee of the
WEISS FAMILY TRUST; PRAVESH
CHOPRA, individually; TERRY POPE,
individually; NANCY POPE, individually; KI
NAM CHOI, individually; YOUNG JA CHOI,
individually; KUK HYUNG (CONNIE) YOO,
individually; SANG (MIKE) YOO, individually;
BRETT MENMUIR, as Trustee of the
CAYENNE TRUST; CHANH TRUONG,
individually; SHEPHERD MOUNTAIN, LLC;
ROBERT BRUNNER, individually; AMY
BRUNNER, individually; JEFF RIOPELLE,
individually; and DOES 1
through 200, inclusive,

Counter-Defendants

ANSWER

Defendants, MEI-GSR HOLDINGS, LLC, a Nevada limited liability company ("GSR"),
GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation
("GSR UOA"), GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited
Liability Company ("Gage Village") (collectively "Defendants"), by and through their counsel of
record, SEAN L. BROHAWN, PLLC, for their answer to Plaintiffs' Second Amended
Complaint, allege as follows:

1 1. Defendants are without knowledge or information sufficient to form a belief as to
2 the truth of the allegations contained in Paragraphs 1 through 99 and, therefore, the same are
3 denied.

4 2. Defendants admit the allegations of Paragraph 100.

5 3. Defendants deny the allegations of Paragraph 101.

6 4. Defendants deny the allegations of Paragraph 102.

7 5. Defendants admit the allegations of Paragraph 103.

8 6. Answering the allegations of Paragraph 104, Defendants are without knowledge
9 or information sufficient to form a belief as to the truth of the allegations contained in Paragraph
10 104 and, therefore, the same are denied.

11 7. Answering the allegations of Paragraph 105, Defendants incorporate the
12 preceding allegations of this Answer, as if the same were set forth at length herein.

13 8. Answering the allegations of paragraph 106, Defendants admit that the GSR
14 Condo Units are part of the Grand Sierra Resort Unit-Owners' Association, and that the GSR
15 Condo Units are located on floors 17 through 24 of the hotel tower of the Grand Sierra Resort &
16 Casino, at 2500 East Second Street, Reno, Nevada. Defendants deny the remaining allegations of
Paragraph 106.

17 9. Defendants admit the allegations of 107.

18 10. Defendants admit the allegations of Paragraph 108.

19 11. Defendants deny the allegations of Paragraph 109.

20 12. Defendants admit the allegations of Paragraph 110.

21 13. Defendants admit the allegations of Paragraph 111.

22 14. Defendants deny the allegations of Paragraph 112.

23 15. Defendants deny the allegations of Paragraph 113.

24 16. Defendants deny the allegations of Paragraph 114.

25 17. Defendants deny the allegations of Paragraph 115.

26 18. Defendants admit the allegations of Paragraph 116.

27 19. Answering the allegations of Paragraph 117, Defendants admit that the Unit
28 Owners' Association maintains a capital reserve account, and that the Unit Owners' Association
collects association dues that vary depending upon the size of the unit, as provided in the

1 CC&Rs. Defendants deny the remaining allegations of Paragraph 117.

2 20. Answering the allegations of Paragraph 118, Defendants admit that the Unit
3 Owners pay for certain taxes, unit cleaning services, capital reserve funding for components
4 within the units and for identified elements and systems of the building, routine maintenance of
5 each unit and utilities that service each unit. Defendants deny the remaining allegations of
6 Paragraph 118.

7 21. Defendants deny the allegations of Paragraph 119.

8 22. Defendants deny the allegations of Paragraph 120.

9 23. Defendants deny the allegations of Paragraph 121.

10 24. Defendants admit the allegations of Paragraph 122.

11 25. Defendants deny the allegations of Paragraph 123.

12 26. Defendants deny the allegations of Paragraph 124.

13 27. Answering the allegations of Paragraph 125, Defendants admit that certain fees
14 paid by Unit Owners are not included within the budget of the Unit Owners' Association, as
15 provided in the CC&Rs. Defendants deny the remaining allegations of Paragraph 125.

16 28. Defendants deny the allegations of Paragraph 126.

17 29. Defendants deny the allegations of Paragraph 127.

18 30. Defendants deny the allegations of Paragraph 128.

19 31. Defendants deny the allegations of Paragraph 129.

20 32. Defendants deny the allegations of Paragraph 130.

21 33. Defendants deny the allegations of Paragraph 131.

22 34. Answering the allegations of Paragraph 132, Defendants admit that GSR rents
23 GSR Condo Units owned by GSR and Gage Village, as well as some of the GSR Condo Units
24 owned by certain individual condo Unit owners. Defendants deny the remaining allegations of
Paragraph 132.

25 35. Answering the allegations of Paragraph 133, Defendants admit that GSR has
26 entered into Unit Rental Agreements with certain individual condo Unit owners. Defendants
27 deny the remaining allegations of Paragraph 133.

28 36. Defendants deny the allegations of Paragraph 134.

37. Defendants are without knowledge or information sufficient to form a belief as to

1 the truth of the allegations contained in Paragraph 135 and, therefore, the same are denied.

2 38. Defendants are without knowledge or information sufficient to form a belief as to
3 the truth of the allegations contained in Paragraph 136 and, therefore, the same are denied.

4 39. Defendants are without knowledge or information sufficient to form a belief as to
5 the truth of the allegations contained in Paragraph 137 and, therefore, the same are denied.

6 40. Defendants are without knowledge or information sufficient to form a belief as to
7 the truth of the allegations contained in Paragraph 138 and, therefore, the same are denied.

8 41. Defendants deny the allegations of Paragraph 139.

9 42. Defendants deny the allegations of Paragraph 140.

10 43. Defendants deny the allegations of Paragraph 141.

11 44. Defendants admit the allegations of Paragraph 142.

12 45. Defendants deny the allegations of Paragraph 143.

13 46. Defendants deny the allegations of Paragraph 144.

14 47. Defendants deny the allegations of Paragraph 145.

15 **FIRST CLAIM FOR RELIEF**

16 48. Answering the allegations of Paragraph 146, Defendants incorporate the
preceding allegations of this Answer, as if the same were set forth at length herein.

17 49. Defendants admit the allegations of Paragraph 147.

18 50. Defendants deny the allegations of Paragraph 148.

19 51. Defendants deny the allegations of Paragraph 149.

20 52. Defendants deny the allegations of Paragraph 150.

21 53. Defendants deny the allegations of Paragraph 151.

22 54. Defendants deny the allegations of Paragraph 152.

23 55. Defendants deny the allegations of Paragraph 153.

24 **SECOND CLAIM FOR RELIEF**

25 56. Answering the allegations of Paragraph 154, Defendants incorporate the
26 preceding allegations of this Answer, as if the same were set forth at length herein.

27 57. Defendants admit the allegations of Paragraph 155.

28 58. Defendants deny the allegations of Paragraph 156.

59. Defendants deny the allegations of Paragraph 157.

1 60. Defendants deny the allegations of Paragraph 158.

2 61. Defendants deny the allegations of Paragraph 159.

3 62. Defendants deny the allegations of Paragraph 160.

4 63. Defendants deny the allegations of Paragraph 161.

5 64. Defendants deny the allegations of Paragraph 162.

6 **THIRD CLAIM FOR RELIEF**

7 65. Answering the allegations of Paragraph 163, Defendants incorporate the
8 preceding allegations of this Answer, as if the same were set forth at length herein.

9 66. Answering the allegations of Paragraph 164, Defendants admit that GSR has
10 entered into Unit Rental Agreements with certain individual condo Unit owners. Defendants
11 deny the remaining allegations of Paragraph 164.

12 67. Defendants deny the allegations of Paragraph 165.

13 68. Answering the allegations of Paragraph 166, Defendants admit that GSR has
14 entered into individual Unit Rental Agreements with certain individual condo Unit owners, but
15 has not entered into a global agreement regarding Unit rental with Unit Owners as a whole.
16 Defendants admit that each individual existing rental agreement is enforceable. Defendants deny
17 the remaining allegations of Paragraph 166.

18 69. Defendants deny the allegations of Paragraph 167.

19 70. Defendants deny the allegations of Paragraph 168.

20 71. Defendants deny the allegations of Paragraph 169.

21 **FOURTH CLAIM FOR RELIEF**

22 72. Answering the allegations of Paragraph 170, Defendants incorporate the
23 preceding allegations of this Answer, as if the same were set forth at length herein.

24 73. Answering the allegations of Paragraph 171, Defendants admit that GSR and
25 Plaintiffs are contractually obligated to each other, under one or more types of agreements
26 between them. Defendants deny the remaining allegations of Paragraph 171.

27 74. Defendants are without knowledge or information sufficient to form a belief as to
28 the truth of the allegations contained in Paragraph 172 and, therefore, the same are denied.

 75. Defendants deny the allegations of Paragraph 173.

 76. Defendants deny the allegations of Paragraph 174.

77. Defendants deny the allegations of Paragraph 175.

78. Defendants deny the allegations of Paragraph 176.

79. Defendants deny the allegations of Paragraph 177.

80. Defendants deny the allegations of Paragraph 178.

81. Defendants deny the allegations of Paragraph 179.

82. Defendants deny the allegations of Paragraph 180.

FIFTH CLAIM FOR RELIEF

83. Answering the allegations of Paragraph 181, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

84. Answering the allegations of Paragraph 182, Defendants admit that GSR and Plaintiffs are contractually obligated to each other, under one or more types of agreements between them. Defendants deny the remaining allegations of Paragraph 182.

85. Answering the allegations of Paragraph 183, Defendants admit that individual rental agreements require GSR to market and rent individually owned units. Defendants deny the remaining allegations of Paragraph 183.

86. Defendants deny the allegations of Paragraph 184.

87. Defendants deny the allegations of Paragraph 185.

88. Defendants deny the allegations of Paragraph 186.

89. Defendants deny the allegations of Paragraph 187.

90. Defendants deny the allegations of Paragraph 188.

SIXTH CLAIM FOR RELIEF

91. Answering the allegations of Paragraph 189, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

92. Answering the allegations of Paragraph 190, Defendants assert that NRS 41.600 speaks for itself. Defendants deny the remaining allegations of Paragraph 190.

93. Answering the allegations of Paragraph 191, Defendants assert that NRS 41.600 speaks for itself. Defendants deny the remaining allegations of Paragraph 191.

94. Answering the allegations of Paragraph 192, Defendants assert that NRS Chapter 598 speaks for itself. Defendants deny the remaining allegations of Paragraph 192.

95. Defendants deny the allegations of Paragraph 193.

1 96. Defendants deny the allegations of Paragraph 194.

2 97. Defendants deny the allegations of Paragraph 195.

3 98. Defendants deny the allegations of Paragraph 196.

4 99. Defendants deny the allegations of Paragraph 197.

5 **SEVENTH CLAIM FOR RELIEF**

6 100. Answering the allegations of Paragraph 198, Defendants incorporate the
7 preceding allegations of this Answer, as if the same were set forth at length herein.

8 101. Defendants are without knowledge or information sufficient to form a belief as to
9 the truth of the allegations contained in Paragraph 199 and, therefore, the same are denied.

10 102. Defendants are without knowledge or information sufficient to form a belief as to
11 the truth of the allegations contained in Paragraph 200 and, therefore, the same are denied.

12 103. Defendants are without knowledge or information sufficient to form a belief as to
13 the truth of the allegations contained in Paragraph 201 and, therefore, the same are denied.

14 104. Defendants are without knowledge or information sufficient to form a belief as to
15 the truth of the allegations contained in Paragraph 202 and, therefore, the same are denied.

16 105. Defendants are without knowledge or information sufficient to form a belief as to
17 the truth of the allegations contained in Paragraph 203 and, therefore, the same are denied.

18 **EIGHTH CLAIM FOR RELIEF**

19 106. Answering the allegations of Paragraph 204, Defendants incorporate the
20 preceding allegations of this Answer, as if the same were set forth at length herein.

21 107. Defendants deny the allegations of Paragraph 205.

22 108. Defendants deny the allegations of Paragraph 206.

23 109. Defendants deny the allegations of Paragraph 207.

24 **NINTH CLAIM FOR RELIEF**

25 110. Answering the allegations of Paragraph 208, Defendants incorporate the
26 preceding allegations of this Answer, as if the same were set forth at length herein.

27 111. Defendants are without knowledge or information sufficient to form a belief as to
28 the truth of the allegations contained in Paragraph 209 and, therefore, the same are denied.

112. Defendants deny the allegations of Paragraph 210.

113. Defendants are without knowledge or information sufficient to form a belief as to

1 the truth of the allegations contained in Paragraph 211 and, therefore, the same are denied.

2 114. Defendants deny the allegations of Paragraph 212.

3 115. Defendants deny the allegations of Paragraph 213.

4 116. Defendants deny the allegations of Paragraph 214.

5 **TENTH CLAIM FOR RELIEF**

6 117. Answering the allegations of Paragraph 215, Defendants incorporate the
7 preceding allegations of this Answer, as if the same were set forth at length herein.

8 118. Answering the allegations of Paragraph 216, Defendants admit that GSR and
9 Plaintiffs are contractually obligated to each other, under one or more types of agreements
10 between them. Defendants deny the remaining allegations of Paragraph 216.

11 119. Defendants deny the allegations of Paragraph 217.

12 120. Defendants deny the allegations of Paragraph 218.

13 **ELEVENTH CLAIM FOR RELIEF**

14 121. Answering the allegations of Paragraph 219, Defendants incorporate the
15 preceding allegations of this Answer, as if the same were set forth at length herein.

16 122. Defendants deny the allegations of Paragraph 220.

17 123. Defendants deny the allegations of Paragraph 221.

18 124. Defendants deny the allegations of Paragraph 222.

19 **TWELFTH CLAIM FOR RELIEF**

20 125. Answering the allegations of Paragraph 223, Defendants incorporate the
21 preceding allegations of this Answer, as if the same were set forth at length herein.

22 126. Defendants are without knowledge or information sufficient to form a belief as to
23 the truth of the allegations contained in Paragraph 224 and, therefore, the same are denied.

24 127. Defendants deny the allegations of Paragraph 225.

25 128. Defendants deny the allegations of Paragraph 226.

26 129. Defendants deny the allegations of Paragraph 227.

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1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 The Complaint fails to state a claim or cause of action against Defendants for which relief
4 can be granted.

5 **SECOND AFFIRMATIVE DEFENSE**

6 Plaintiffs have failed to mitigate their damages and, to the extent of such failure of such
7 mitigation, are precluded from recovery herein.

8 **THIRD AFFIRMATIVE DEFENSE**

9 Defendants allege that the incidents referred to in the Complaint, and any and all injuries
10 and damages resulting therefrom, if any occurred, were caused or contributed to by the acts or
11 omissions of a third party over whom Defendants had no control.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 Defendants allege that the injuries or damages suffered by Plaintiffs, if any, were caused
14 in whole or in part by an independent intervening cause over which these Defendants had no
15 control.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 The injuries or damages, if any, sustained by Plaintiffs were caused in whole, or in part,
18 through the negligence of others who were not the agents of these Defendants or acting on behalf
19 of the these Defendants.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 The injuries or damages, if any, suffered by Plaintiffs, were caused in whole, or in part,
22 or were contributed to by reason of the negligence of Plaintiffs.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 Plaintiffs' claims are barred by one or more statutes of limitations.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 Plaintiffs assumed the risk of injury by virtue of its own conduct.

27 **NINTH AFFIRMATIVE DEFENSE**

28 Plaintiffs waived the causes of action asserted herein.

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WHEREFORE, Defendants pray that:

- ## COUNTERCLAIM

1. The named Counter-Defendants are all current or former owners of one or more hotel-condominiums within the project known as the Grand Sierra Resort Unit-Owners' Association (the "Project").

3. GSR is a successor declarant in the Project, and as such, is entitled to collect certain non-homeowner's association dues and/or fees under the CC&Rs governing the Project, and under separate Unit Maintenance Agreements between each unit owner in the Project and GSR.

4. GSR has demanded that Counter-Defendants pay the full amount of dues and fees owed by them under the CC&Rs and/or the UMAs, but to date, Counter-Defendants have failed or refused to make all such payments.

5. Additionally, each UMA requires the unit owner to provide active credit card

1 information to GSR, as a source for payment of certain expenses incurred by the unit owner.

2 6. Some of the Counter-Defendants have failed or refused to provide active credit
3 card information to GSR, in compliance with the UMAs.

4 7. Prior to bringing this Counterclaim, GSR provided notice to each Counter-
5 Defendant of the above breaches of the UMAs, and provided each Counter-Defendant with at
6 least 60 days within which to cure such breaches, however, Counter-Defendants have failed or
7 refused to cure all such breaches.

8 **FIRST CAUSE OF ACTION**
9 (Breach of Contract)

10 8. GSR incorporates by reference the preceding Paragraphs of this Counterclaim as
11 if set forth at length herein.

12 9. GSR and Counter-Defendants are parties to the CC&Rs and UMAs.

13 10. GSR has performed all obligations required to be performed by it under the
14 CC&Rs and UMAs, or was excused from performance of such obligations due to Counter-
15 Defendants' conduct.

16 11. Counter-Defendants have breached the CC&Rs and UMAs by failing to pay all
17 sums when due under those agreements and/or by failing to provide active credit card
18 information as required by the UMAs, despite individual written demands by GSR.

19 12. Counter-Defendants' breaches of the CC&Rs and UMAs have foreseeably caused
20 GSR damages in an amount in excess of \$10,000, subject to proof at trial.

21 **SECOND CAUSE OF ACTION**
22 (Declaratory Relief)

23 13. GSR incorporates by reference the preceding paragraphs of this Counterclaim as
24 if set forth at length herein.

25 14. GSR asserts that the CC&Rs and UMAs are valid and existing contracts to which
26 each Counter-Defendant is a party, and that Counter-Defendants owe duties to GSR under those
27 contracts. On information and belief, Counter-Defendants deny that they owe duties to GSR
28 under the C&Rs and UMAs.

15. An actual controversy has arisen and now exists between GSR and Counter-Defendants concerning their respective rights, entitlements, obligations and duties under the CC&Rs and UMAs.

16. GSR therefore requests a declaratory judgment determining the parties' rights under the CC&Rs and UMAs.

THIRD CAUSE OF ACTION
(Injunctive Relief)

17. GSR incorporates by reference the preceding paragraphs of this Counterclaim as if set forth at length herein.

18. Counter-Defendants are obligated under each UMA to provide active credit card information to GSR to help defray charges incurred under each UMA. Several of the Counter-Defendants have failed or refused to provide such credit card information to GSR.

19. GSR therefore requests that this Court enter a mandatory injunction requiring Counter-Defendants to provide active credit card information to GSR, as required by the UMAs.

WHEREFORE, GSR requests relief against Counter-Defendants as follows:

1. That GSR be granted judgment for all past due dues, fees, and related charges owed by Counter-Defendants under the CC&Rs and UMAs, in an amount in excess of \$10,000, subject to proof at trial;

2. That this Court enter a declaratory judgment determining the parties' rights under the CC&Rs and UMAs;

3. That this Court enter a mandatory injunction requiring Counter-Defendants to provide active credit card information to GSR, as required by the UMAs;

4. For costs of suit incurred herein, interest, and attorneys' fees; and

5. For such other and further relief as the Court deems proper.

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 23rd day of May, 2013,

SEAN L. BROHAWN, PLLC

By: Sean L. Brohawn
Sean L. Brohawn, Esq.
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Attorneys for Defendants /
Counterclaimant

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of SEAN L. BROHAWN, PLLC, and that on the date shown below, I caused service of a true and correct copy of the attached:

ANSWER TO SECONDN AMENDED COMPLAINT AND COUNTERCLAIM

to be completed by:

- _____ personally delivering
- _____ sending via Federal Express or other overnight delivery service
- _____ depositing for mailing in the U.S. mail with sufficient postage affixed thereto
- _____ delivery via facsimile machine to fax no. _____
- X delivery via e-mail/Electronic court filing

addressed to:

G. David Robertson, Esq. (NV Bar No. 1001) (775) 329-5600 Attorneys for
Jarrad C. Miller, Esq. (NV Bar No. 7093) Plaintiffs
Jonathan J. Tew, Esq. (NV Bar No. 11874)
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501

DATED this 23rd day of May, 2013.

