IN THE SUPREME COURT OF THE STATE OF NEVADA

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,

Appellants,

vs.

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNE 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; 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, as Trustee of the STEVEN W. TAKAKI & FRANCES S. LEE REVOCABLE TRUSTEE AGREEMENT, UTD

Supreme Court No. 85915, 86092, 86985, 87243, 87303, 87566, and 87567

District Court Case No. CV12-02222

JANUARY 11, 2000; FARAD TORABKHAN, individually; SAHAR TAVAKOLI, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, as Trustee of the RAJ AND USHA RAGHURAM LIVING TRUST DATED APRIL 25, 2001; USHA RAGHURAM, as Trustee of the RAJ AND USHA RAGHURAM LIVING TRUST DATED APRIL 25, 2001; LORI K. TOKUTOMI, individually; GARRET TOM, as Trustee of THE GARRET AND ANITA TOM TRUST, DATED 5/14/2006; ANITA TOM, as Trustee of THE GARRET AND ANITA TOM TRUST, DATED 5/14/2006; 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, individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ, individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, individually; SEEMA GUPTA, individually; FREDERICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, as Manager of Condotel 1906 LLC; MAY ANNE HOM, as Trustee of the MAY ANNE HOM TRUST;

MICHAEL HURLEY, individually; DUANE WINDHORST, as Trustee of DUANE H. WINDHORST TRUST U/A dtd. 01/15/2003 and MARILYN L. WINDHORST TRUST U/A/ dtd. 01/15/2003; MARILYN WINDHORST, as Trustee of DUANE H. WINDHORST TRUST U/A dtd. 01/15/2003 and MARILYN L. WINDHORST TRUST U/A/ dtd. 01/15/2003; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLEEN LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISTINE MECHAM, individually; KWANG SOON SON, individually; SOO YEU MOON, individually; JOHNSON AKINBODUNSE, 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 NAM CHOI, individually; YOUNG JA CHOI, individually; SANG DAE SOHN, individually; KUK HYUN (CONNIE) YOO, individually; SANG SOON (MIKE) YOO, individually; BRETT MENMUIR, as Manager of CARRERA PROPERTIES, LLC; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDRES MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, as Trustee of the RIOPELLE FAMILY TRUST; PATRICIA M. MOLL, individually; DANIEL MOLL, individually,

Respondents.

APPENDIX TO RESPONDENTS/CROSS-APPELLANTS' OPPOSITION TO MOTION TO SET ASIDE OR STRIKE NRCP 54(B) CERTIFICATION OF AMENDED FINAL JUDGMENT

VOLUME 1 OF 1

Submitted for all respondents by:

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, over the age of eighteen, and not a party to the within action. I further certify that on December 5, 2023, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

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/s/ Teresa W. Stovak
An Employee of Robertson, Johnson, Miller & Williamson

FILED
Electronically
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Joey Orduna Hastings
Clerk of the Court
Transaction # 3617729

CODE: 1090
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Attorneys for Plaintiffs

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 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

individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ, individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, 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,

Plaintiffs,

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 and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

COME NOW Plaintiffs ("Plaintiffs" or "Individual Unit Owners"), by and through their counsel of record, Robertson, Johnson, Miller & Williamson, and for their causes of action against Defendants hereby complain as follows:

GENERAL ALLEGATIONS

The Parties

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

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

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

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

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

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.

7. Plaintiff George 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.

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

9. Plaintiff Henry Nunn is a competent adult and is a resident of the State of California.

10. Plaintiff Lee Van Der Bokke is a competent adult and is a resident of the State of California.

11. Plaintiff Madelyn Van Der Bokke is a competent adult and is a resident of the State of California.

12. Plaintiff Donald Schreifels is a competent adult and is a resident of the State of Minnesota.

13. Plaintiff Robert R. Pederson, individually and as Trustee of the Pederson 1990 Trust, is a competent adult and is a resident of the State of California.

14. Plaintiff Lou Ann Pederson, individually and as Trustee of the Pederson 1990 Trust, is a competent adult and is a resident of the State of California.

15. Plaintiff Lori Ordover is a competent adult and is a resident of the State of Connecticut.

16. Plaintiff William A. Henderson is a competent adult and is a resident of the State of California.

17. Plaintiff Christine E. Henderson is a competent adult and is a resident of the State of California.

18. Plaintiff Loren D. Parker is a competent adult and is a resident of the State of Washington.

19. Plaintiff Suzanne C. Parker is a competent adult and is a resident of the State of Washington.

20. Plaintiff Michael Izady is a competent adult and is a resident of the State of New York.

21. Plaintiff Steven Takaki is a competent adult and is a resident of the State of California.

22. Plaintiff Farad Torabkhan is a competent adult and is a resident of the State of New York.

23. Plaintiff Sahar Tavakol is a competent adult and is a resident of the State of New York.

24. Plaintiff M&Y Holdings is a Nevada Limited Liability Company with its principal place of business in Nevada.

25. Plaintiff JL&YL Holdings, LLC is a Nevada Limited Liability Company with its principal place of business in Nevada.

26. Plaintiff Sandi Raines is a competent adult and is a resident of the State of Minnesota.

27. Plaintiff R. Raghuram is a competent adult and is a resident of the State of California.

28. Plaintiff Usha Raghuram is a competent adult and is a resident of the State of California.

29. Plaintiff Lori K. Tokutomi is a competent adult and is a resident of the State of California.

30. Plaintiff Garett Tom is a competent adult and is a resident of the State of California.

31. Plaintiff Anita Tom is a competent adult and is a resident of the State of California.

32. Plaintiff Ramon Fadrilan is a competent adult and is a resident of the State of California.

33. Plaintiff Faye Fadrilan is a competent adult and is a resident of the State of California.

34. Plaintiff Peter K. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a competent adult and is a resident of the State of California.

35. Plaintiff Monica L. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a competent adult and is a resident of the State of California.

36. Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.

37. Plaintiff Elias Shamieh is a competent adult and is a resident of the State of California.

38. Plaintiff Nadine's Real Estate Investments, LLC, is a North Dakota Limited Liability Company.

39. Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of Hawaii.

40. Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of Hawaii.

41. Plaintiff Kenneth Riche is a competent adult and is a resident of the State of Wisconsin.

42. Plaintiff Maxine Riche is a competent adult and is a resident of the State of Wisconsin.

43. Plaintiff Norman Chandler is a competent adult and is a resident of the State of Alabama.

44. Plaintiff Benton Wan is a competent adult and is a resident of the State of California.

45. Plaintiff Timothy Kaplan is a competent adult and is a resident of the State of California.

46. Plaintiff Silkscape Inc. is a California Corporation.

47. Plaintiff Peter Cheng is a competent adult and is a resident of the State of California.

48. Plaintiff Elisa Cheng is a competent adult and is a resident of the State of California.

49. Plaintiff Greg A. Cameron is a competent adult and is a resident of the State of California.

50. Plaintiff TMI Property Group, LLC is a California Limited Liability Company.

51. Plaintiff Richard Lutz is a competent adult and is a resident of the State of California.

52. Plaintiff Sandra Lutz is a competent adult and is a resident of the State of California.

53. Plaintiff Mary A. Kossick is a competent adult and is a resident of the State of California.

54. Plaintiff Melvin H. Cheah is a competent adult and is a resident of the State of California.

55. Plaintiff Di Shen is a competent adult and is a resident of the State of Texas.

56. Plaintiff Ajit Gupta is a competent adult and is a resident of the State of California.

57. Plaintiff Seema Gupta is a competent adult and is a resident of the State of California.

58. Plaintiff Fredrick Fish is a competent adult and is a resident of the State of Minnesota.

59. Plaintiff Lisa Fish is a competent adult and is a resident of the State of Minnesota.

60. Plaintiff Robert A. Williams is a competent adult and is a resident of the State of Minnesota.

61. Plaintiff Jacquelin Pham is a competent adult and is a resident of the State of California.

62. Plaintiff May Ann Hom, as Trustee of the May Ann Hom Trust, is a competent adult and is a resident of the State of California.

63. Plaintiff Michael Hurley is a competent adult and is a resident of the State of Minnesota.

64. Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.

65. Plaintiff Duane Windhorst is a competent adult and is a resident of the State of Minnesota.

66. Plaintiff Marilyn Windhorst is a competent adult and is a resident of the State of Minnesota.

67. Plaintiff Vinod Bhan is a competent adult and is a resident of the State of California.

68. Plaintiff Anne Bhan is a competent adult and is a resident of the State of California.

69. Plaintiff Guy P. Browne is a competent adult and is a resident of the State of California.

70. Plaintiff Garth Williams is a competent adult and is a resident of the State of California.

71. Plaintiff Pamela Y. Aratani is a competent adult and is a resident of the State of California.

72. Plaintiff Darleen Lindgren is a competent adult and is a resident of the State of Minnesota.

73. Plaintiff Laverne Roberts is a competent adult and is a resident of the State of Nevada.

74. Plaintiff Doug Mecham is a competent adult and is a resident of the State of Nevada.

75. Plaintiff Chrisine Mecham is a competent adult and is a resident of the State of Nevada.

76. Plaintiff Kwangsoo Son is a competent adult and is a resident of Vancouver, British Columbia.

77. Plaintiff Soo Yeun Moon is a competent adult and is a resident of Vancouver, British Columbia.

78. Plaintiff Johnson Akindodunse is a competent adult and is a resident of the State of California.

79. Plaintiff Irene Weiss, as Trustee of the Weiss Family Trust, is a competent adult and is a resident of the State of Texas.

80. Plaintiff Pravesh Chopra is a competent adult and is a resident of the State of California.

81. Plaintiff Terry Pope is a competent adult and is a resident of the State of Nevada.

82. Plaintiff Nancy Pope is a competent adult and is a resident of the State of Nevada.

83. Plaintiff James Taylor is a competent adult and is a resident of the State of California.

84. Plaintiff Ryan Taylor is a competent adult and is a resident of the State of California.

85. Plaintiff Ki Ham is a competent adult and is a resident of Surry B.C.

86. Plaintiff Young Ja Choi is a competent adult and is a resident of Coquitlam, B.C.

87. Plaintiff Sang Dae Sohn is a competent adult and is a resident of Vancouver, B.C.

88. Plaintiff Kuk Hyung ("Connie") is a competent adult and is a resident of Coquitlam, B.C.

89. Plaintiff Sang ("Mike") Yoo is a competent adult and is a resident of Coquitlam, British Columbia.

90. Plaintiff Brett Menmuir, as Trustee of the Cayenne Trust, is a competent adult and is a resident of the State of Nevada.

91. Plaintiff William Miner, Jr., is a competent adult and is a resident of the State of California.

92. Plaintiff Chanh Truong is a competent adult and is a resident of the State of California.

93. Plaintiff Elizabeth Anders Mecua is a competent adult and is a resident of the State of California.

94. Plaintiff Shepherd Mountain, LLC is a Texas Limited Liability Company with its principal place of business in Texas.

95. Plaintiff Robert Brunner is a competent adult and is a resident of the State of Minnesota.

96. Plaintiff Amy Brunner is a competent adult and is a resident of the State of Minnesota.

97. Plaintiff Jeff Riopelle is a competent adult and is a resident of the State of California.

98. Plaintiff Patricia M. Moll is a competent adult and is a resident of the State of Illinois.

99. Plaintiff Daniel Moll is a competent adult and is a resident of the State of Illinois.

100. Plaintiffs are informed and believe and thereon allege that at all relevant times herein, Defendant MEI-GSR Holdings, LLC ("MEI-GSR") is a Nevada Limited Liability Company with its principal place of business in Nevada.

101. Plaintiffs are informed and believe and thereon allege that at all relevant times herein, Defendant Gage Village Commercial Development, LLC ("Gage Village") is a Nevada Limited Liability Company with its principal place of business in Nevada.

102. Plaintiffs are informed and believe and thereon allege that Gage Village is related to, controlled by, affiliated with, and/or a subsidiary of MEI-GSR.

103. Plaintiffs are informed and believe and thereon allege that at all relevant times herein, Defendant Grand Sierra Resort Unit Owners' Association (the "Unit Owners' Association") is a Nevada nonprofit corporation with its principal place of business in Nevada.

104. The true names and capacities whether individual, corporate, associate or otherwise of Plaintiff Does and Defendant Does 1 through 10, are unknown to Plaintiffs, and Plaintiffs therefore include them by such fictitious names. Plaintiffs will amend this Complaint 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.

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

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

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

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

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

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

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

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

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

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

124. Defendant MEI-GSR has failed to properly account for the contracted "Hotel Fees" and "Daily Use Fees."

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

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

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

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

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

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

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

MEI-GSR's Rental Program

132. As part of Defendant MEI-GSR's Grand Sierra Resort and Casino business operations, it rents: (1) hotel rooms owned by Defendant MEI-GSR that are not condominium

units; (2) GSR Condo Units owned by Defendant MEI-GSR and/or Gage Village; and (3) GSR Condo Units owned by the Individual Condo Unit Owners.

133. Defendant MEI-GSR has entered into a Grand Sierra Resort Unit Rental Agreement with Individual Unit Owners.

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

135. Defendant MEI-GSR has rented the Individual Condo Units for as little as $0.00 to $25.00 a night.

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

137. By functionally, and in some instances actually, giving away the use of units owned by the Individual Unit Owners, Defendant MEI-GSR has received a benefit because those who rent the Individual Units frequently gamble and purchase food, beverages, merchandise, spa services and entertainment access from Defendant MEI-GSR.

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

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

140. Such prioritization effectively devalues the units owned by the Individual Unit Owners.

141. Defendants MEI-GSR and Gage Village intend to purchase the devalued units at nominal, distressed prices when Individual Unit Owners decide to, or are effectively forced to,

sell their units because the units fail to generate sufficient revenue to cover expenses and have no prospect of selling their persistently loss-making units to any other buyer.

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

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

144. Defendant MEI-GSR has breached the Grand Sierra Resort Unit Rental Agreement with Individual Condo 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.

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

FIRST CLAIM FOR RELIEF
(Petition for Appointment of Receiver as to Defendant Grand Sierra Resort Unit Owners' Association)

146. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 143 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

147. Because Defendant MEI-GSR and/or Gage Village controls more units of ownership than any other person or entity, Defendant MEI-GSR and Gage Village effectively control the Grand Sierra Resort 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).

148. As a result of Defendant MEI-GSR controlling the Grand Sierra Resort Unit-Owners' Association, Plaintiffs effectively have no input or control over the management of the Unit Owners' Association.

149. Defendant MEI-GSR has used, and continues to use, its control over the Defendant Grand Sierra Resort Unit Owners' Association to advance Defendant MEI-GSR's economic objectives to the detriment of Plaintiffs.

150. Plaintiffs are entitled to a receiver pursuant to NRS § 32.010.

151. Pursuant to NRS § 32.010, the appointment of a receiver is appropriate in this case as a matter of statute and equity.

152. Unless a receiver is appointed, Defendant MEI-GSR will continue to control the Unit Owners' Association to advance Defendant MEI-GSR's economic objections to the detriment of Plaintiffs.

153. Without the grant of the remedies sought in this Complaint, Plaintiffs have no adequate remedy at law to enforce their rights and Plaintiffs will suffer irreparable harm unless granted the relief as prayed for herein.

WHEREFORE, Plaintiffs request judgment against the Defendant Grand Sierra Resort Unit Owners' Association, as set forth below.

SECOND CLAIM FOR RELIEF
(Intentional and/or Negligent Misrepresentation as to Defendant MEI-GSR)

154. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 151 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

155. Defendant MEI-GSR made affirmative representations to Plaintiffs regarding the use, rental and maintenance of the Individual Unit Owners' GSR Condo Units.

156. Plaintiffs are now informed and believe, and thereon allege, that these representations were false.

157. The Defendant MEI-GSR knew that the affirmative representations were false, in the exercise of reasonable care should have known that they were false, and/or knew or should 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.

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166. The Agreement is an enforceable contract between Defendant MEI-GSR and Plaintiffs.

167. Plaintiffs have performed all of their obligations and satisfied all of their conditions under the Agreement, and/or their performance and conditions were excused.

168. As a direct and proximate result of Defendant MEI-GSR's breaches of the Agreement as alleged herein, Plaintiffs have been, and will continue to be, harmed in the manner herein alleged.

169. In addition, as a direct, proximate and necessary result of Defendant's bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees which they are entitled to recover under the terms of the Agreement.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

FOURTH CLAIM FOR RELIEF
(Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR)

170. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 167 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

171. Defendant MEI-GSR is contractually obligated to Plaintiffs. The contractual obligations are based upon the underlying agreements between Defendant MEI-GSR and Plaintiffs, and principles of equity and representations made by MEI-GSR.

172. Plaintiffs relied upon the representations of Defendant MEI-GSR and trusted Defendant MEI-GSR with the marketing and rental of their GSR Condo Units.

173. Due to the devaluation of the GSR Condo Units caused by Defendant MEI-GSR's actions, the expenses they have had to incur, and their inability to sell the Property in its current state, Plaintiffs have suffered damages.

174. Defendant MEI-GSR was informed of, and in fact knew of, Plaintiffs' reliance 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.

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194. Defendant MEI-GSR failed to represent the actual marketing and rental practices implemented by Defendant MEI-GSR, as the Defendant was contractually and legally required to do.

195. Defendant MEI-GSR's conduct, as described in this Complaint, constitutes deceptive trade practices and is in violation of, among other statutory provisions and administrative regulations, NRS §§ 598.0915 to 598.0925.

196. As a direct and proximate result of Defendant MEI-GSR's deceptive trade practices, Plaintiffs have suffered damages.

197. Plaintiffs are also entitled to recover their costs in this action and reasonable attorneys' fees, as allowed by law.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

SEVENTH CLAIM FOR RELIEF
(Declaratory Relief as to Defendant MEI-GSR)

198. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 195 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

199. As alleged hereinabove, an actual controversy has arisen and now exists between Plaintiffs and Defendant MEI-GSR, regarding the extent to which Defendant MEI-GSR has the legal right to control the Grand Sierra Resort Unit-Owners' Association to advance Defendant MEI-GSR's economic objections to the detriment of Plaintiffs.

200. The interests of Plaintiffs and Defendant MEI-GSR are completely adverse as to the Plaintiffs.

201. Plaintiffs have a legal interest in this dispute as they are the owners of record of certain GSR Condo Units.

202. This controversy is ripe for judicial determination in that Plaintiffs have alluded to and raised this issue in this Complaint.

203. Accordingly, Plaintiffs seek a judicial declaration that Defendant MEI-GSR cannot control the Grand Sierra Resort Unit-Owners' Association to advance Defendant MEI-GSR's economic objectives to the detriment of Plaintiffs.

WHEREFORE, the Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

EIGHTH CLAIM FOR RELIEF
(Conversion as to Defendant MEI-GSR)

204. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 201 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

205. Defendant MEI-GSR wrongfully committed a distinct act of dominion over the Plaintiffs' property by renting their GSR Condo Units both at unreasonably low rates so as to only benefit Defendant MEI-GSR, and also renting said units without providing any compensation or notice to Plaintiffs.

206. Defendant MEI-GSR's acts were in denial of, or inconsistent with, Plaintiffs' title or rights therein.

207. Defendant MEI-GSR's acts were in derogation, exclusion, or defiance of the Plaintiffs' title or rights therein.

WHEREFORE, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

NINTH CLAIM FOR RELIEF
(Demand for Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners Association)

208. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 205 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

209. The Nevada Revised Statutes impose certain duties and obligations upon trustees, fiduciaries, managers, advisors, and investors.

210. Defendant MEI-GSR has not fulfilled its duties and obligations.

211. Plaintiffs are informed and believe, and thereon allege, that they are interested parties in the Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR's endeavors to market, maintain, service and rent Plaintiffs' GSR Condo Units.

212. Among their duties, Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR are required to prepare accountings of their financial affairs as they pertain to Plaintiffs.

213. Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR have failed to properly prepare and distribute said accountings.

214. Accordingly, Plaintiffs are entitled to a full and proper accounting.

WHEREFORE, Plaintiffs request judgment against the Defendants MEI-GSR and the Grand Sierra Unit Owners Association, as set forth below.

TENTH CLAIM FOR RELIEF
(Specific Performance Pursuant to NRS 116.112, Unconscionable Agreement)

215. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 212 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

216. As alleged herein, Plaintiffs entered into one or more contracts with Defendant MEI-GSR, including the Grand Sierra Resort Unit Rental Agreement and the Unit Maintenance Agreement.

217. The Grand Sierra Resort Unit Rental Agreement is unconscionable pursuant to NRS § 116.112 because MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by Defendant MEI-GSR; (2) GSR Condo Units owned or controlled by Defendant MEI-GSR; and (3) GSR Condo Units owned by Individual Unit Owners so as to maximize Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by the Individual Unit Owners.

218. The Unit Maintenance Agreement is unconscionable pursuant to NRS § 116.112 because of the excessive fees charged and the Individual Unit Owners' inability to reject fee increases.

WHEREFORE, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

ELEVENTH CLAIM FOR RELIEF
(Unjust Enrichment / Quantum Meruit against Defendant Gage Village Development)

219. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 216 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

220. Defendant Gage Village has unjustly benefited from MEI-GSR's devaluation of the GSR Condo Units.

221. Defendant Gage Village has unjustly benefited from prioritization of its GSR Condo Units under MEI-GSR's rental scheme to the immediate detriment of the Individual Unit Owners.

222. It would be inequitable for the Defendant Gage Village to retain those benefits without full and just compensation to the Individual Unit Owners.

WHEREFORE, Plaintiffs request judgment against the Defendant Gage Village, as set forth below.

TWELFTH CLAIM FOR RELIEF
(Tortious Interference with Contract and /or Prospective Business Advantage against Defendants MEI-GSR and Gage Development)

223. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 220 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

224. Individual Unit Owners have contracted with third parties to market and rent their GSR Condo Units.

225. Defendant MEI-GSR has systematically thwarted the efforts of those third parties to market and rent the GSR Condo Units owned by the Individual Unit Owners.

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.

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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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of 18, and not a party within this action. I further certify that on the 26th day of March, 2013, I electronically filed the foregoing **SECOND AMENDED COMPLAINT** with the Clerk of the Court by using the ECF system which served the following parties electronically:

Sean L. Brohawn, Esq.
50 W. Liberty Street, Suite 1040
Reno, NV 89501
Attorneys for Defendants / Counterclaimants

/s/ Kimberlee A. Hill
An Employee of Robertson, Johnson, Miller & Williamson

FILED
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2014-10-03 02:02:11 PM
Cathy Hill
Acting Clerk of the Court
Transaction # 4636596

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

vs.

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

Defendants.

/

Case No: CV12-02222

Dept. No: 10

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.

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

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

The Opposition contends that the Defendants have engaged in no conduct warranting the imposition of case concluding sanctions. The Opposition argues the allegations made by the Plaintiffs pre-date the October 2013 hearing. The Opposition argues that no evidence has been lost or fabricated, and that the Defendants have not willfully obstructed the discovery process. The Defendants submit that they have cooperated with the Plaintiffs' effort to locate 224,000 e-mails that contain a word that might relate to the case even though the Defendants believe the vast majority of those e-mails to be irrelevant. The Opposition further argues that the Defendants have cooperated with the Plaintiffs' desire to run a "VB Script" on the Defendants' computer system that may have violated third-party copyrights but which ultimately located no additional e-mails. The Opposition argues that the e-mail production has been expedited but has taken time due to the volume of e-mails. The Opposition contends that the e-mail privilege log that the Defendants submitted

complied with case law of the Ninth Circuit and that they were not required to comply with the Discovery Commissioner's recommendation until the Court adopted the order. [2]

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

Discovery sanctions are properly analyzed under Young v Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d 777 (1990). Young requires "every order of dismissal with prejudice as a discovery sanction be supported by an express, careful and preferably written explanation of the court's analysis of the pertinent factors." Young, 106 Nev. at 93, 787 P.2d at 780. The Young factors are as follows: (1) the degree of willfulness of the offending party; (2) the extent to which the non-offending party would be prejudiced by a lesser sanction; (3) the severity of the sanction of dismissal relative to the severity of the discovery abuse; (4) whether any evidence has been irreparably lost; (5) the feasibility and fairness of less severe sanctions; (6) the policy favoring adjudication on the merits; (7) whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney; and (8) the need to deter parties and future litigants from similar

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[2] The Court adopted the Discovery Commissioner's recommendation regarding the privilege log on 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.

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

The Court analyzed the Young factors at the October 2013 hearing and found: (1) the Defendants failed to comply with discovery orders and failed to meet the extended production deadlines; (2) the discovery failures were not willful; (3) lesser sanctions could be imposed, and such sanctions would not unduly cause the Plaintiffs prejudice; (4) the severity of the discovery failures did not warrant ending the case in favor of the Plaintiffs; (5) no evidence was presented that evidence had been irreparably lost; (6) any misconduct of the attorneys did not unfairly operate to penalize the Defendants; (7) there were alternatives to the requested case-concluding sanctions that could serve to deter a party from engaging in abusive discovery practices in the future; and (8) non-case concluding sanctions could be used to accomplish both the policy of adjudicating cases on the merits and the policy of deterring discovery abuses.

The Defendants have, to date, violated NRCP 33 and NRCP 34 (twice). The Defendants have violated three rulings of the Discovery Commissioner and three confirming orders. The Court is aware of four violations of its own orders. The information that has been provided to the Plaintiffs during discovery has been incomplete, disclosed only with a Court order, and often turned over very late with no legitimate explanation for the delays. The Plaintiffs have written dozens of letters and e-mails to the Defendants' counsel in an effort to facilitate discovery. The Plaintiffs have filed five

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

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

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

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

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

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

The Defendants had an obligation to engage in an adequate search of the information requested in discovery, and to designate the appropriate party to testify regarding the discovery production. *See generally*, NRCP 16.1(b); NRCP 26(b); NRCP 26 (e). Defendants' counsel had the responsibility to oversee and supervise the collection of the discovery. *See*, NRCP 16.1(e)(3). Both the Defendants and the Defendants' counsel failed to meet their discovery obligations. That failure led to the Court being provided seriously inaccurate information at the October 2013 hearing.

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The Defendants have consistently violated Nevada Rules of Civil Procedure, orders compelling discovery, and the Court's directives. The Defendants have not proffered any legitimate or lawful explanation for their conduct. The Defendants have not objected to or requested clarification of discovery requests. Many times they have simply not responded. Other responses have been incomplete. Often, information was only produced after the Plaintiffs filed motions to compel. At various hearings and conferences the Defendants produced previously undisclosed discovery information that suddenly appeared. The Court reverses its earlier decision and finds that the Defendants discovery failures are in fact willful.

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

The Plaintiffs were not provided with 200,000 e-mails at the outset of discovery in accordance with their June 17, 2013, Request for Production. The Plaintiffs conducted their depositions prior to receiving the additional e-mail and financial information. The value of a deposition is significantly diminished if the deposing party does not have all the relevant information they need prior to the deposition. Given the new information, the Plaintiffs may need to re-depose

those individuals. The Plaintiffs discovered additional employees of the Defendants who would potentially have information and require deposition. The Plaintiffs estimated that after review of the e-mails, which was still ongoing at the time of the August hearings, that they would need another six to nine months to prepare the case for trial. That would result in trial almost a year and a half after the original trial date. As additional information has to come light, it has become apparent that the Defendants' discovery conduct has severely prejudiced the Plaintiffs' case.

Thirdly, the Court compared the severity of dismissal to the severity of the discovery abuse. "The dismissal of a case, based upon a discovery abuse . . . should be used only in extreme situations; if less drastic sanctions are available, they should be utilized." GNLV Corp., 111 Nev. at 870, 900 P.2d at 325 (*citing* Young, 106 Nev. at 92, 787 P.2d at 779-80). The Court is no longer persuaded that the effort of Ms. Rich was in good faith or that the Defendants designated the appropriate party to undertake the production of discovery. Ms. Rich was a relatively new employee, she did not have access to her superiors' e-mail and records, and she did not know the names and positions of other Defendants' employees. The Court is not convinced that the Defendants have properly made discovery disclosures such that the Plaintiffs have had a fair opportunity to develop their litigation plan. The Court is keenly aware that granting the Plaintiffs' motion would effectively end the case, leaving only the issue of damages to be decided. The Defendants have abused and manipulated the discovery rules and case-terminating sanctions is the option available to properly punish the Defendants' conduct.

In looking at the fourth factor in October 2013, the Court noted that there was no evidence presented at the hearing or raised by the moving papers that evidence had been irreparably lost. The Plaintiffs argue that information has been lost or destroyed. The fact that evidence had not been produced is not the same as the destruction or loss of evidence. There remains no evidence to

indicate that evidence has been lost or destroyed by the Defendants. This factor remains consistent in the reevaluation of the October 2013, decision.

Fifth, in October 2013, the Court found that there were many alternatives to the requested case-concluding sanctions that could serve to deter a party from engaging in abusive discovery practices in the future. The Defendants have received four sanctions for their discovery failures. The Defendants' conduct since the October 2013 hearing indicates that the previously imposed sanctions have not been sufficient to modify the Defendants' behavior. Time has shown that there are no effective alternatives to case concluding sanctions.

The Court considered two major policy factors together. Nevada has a strong policy, and the Court firmly believes, that cases should be adjudicated on their merits. *See*, Scrimer v. Dist. Court, 116 Nev. 507, 516-517, 998 P.2d 1190, 1196 (2000). *See also*, Kahn v. Orme, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992). Further, there is a need to deter litigants from abusing the discovery process established by Nevada law. When a party repeatedly and continuously engaged in discovery misconduct the policy of adjudicating cases on the merits is not furthered by a lesser sanction. Foster, 126 Nev. Op. 6, 227 P.3d at 1048. In revaluating the matter, the Court again considered the major policy that cases be adjudicated on their merits. The Court must balance that policy with the need to deter litigants from abusing the discovery process. The information provided at the October 2013 hearing was disingenuous. The Defendants' discovery abuse persisted after the October 2013 hearing despite the severity of the sanctions imposed. The Court is now convinced that the Defendants' actions warrant the imposition of case concluding sanctions. In light of Defendants' repeated and continued abuses, the policy of adjudicating cases on the merits is not furthered in this case. The ultimate sanctions are necessary to demonstrate to future litigants that they are not free to disregard and disrespect the Court's orders.

Lastly, the Court considered whether striking the Answer would unfairly operate to penalize the Defendants for the misconduct, if any, of their attorneys. As previously stated, there were failures to produce and abuses of discovery on behalf of the Defendants. The Court remains concerned that the attorneys for the Defendants did not adequately supervise discovery and misrepresented the number of e-mails at issue for disclosure. There remains no evidence to show that Defendants' counsel directed their client to hide or destroy evidence. Any misconduct on the part of the attorney does not unfairly operate to punish the Defendants.

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

Despite the October 2013 hearing sanctions, the Defendants have continued their noncompliant discovery conduct. The stern sanctions which the Court imposed on the Defendants in October 2013, did not have the desired effect of bringing the Defendants' conduct in line with the discovery rules. After the October 2013 hearing, the Court identified that the major outstanding discovery issue between the parties was the Plaintiffs' access to Defendants' e-mail system. The parties were ordered to work together to develop terms to be used in the e-mail search. The Defendants were ordered to review the 224, 226 e-mails identified by November 25, 2013. The Defendants were ordered to deliver a privilege log for those e-mails the Defendants believed should

not be provided to the Plaintiffs. Further, the Defendants were ordered to provide a copy of withheld e-mails to the court with the privilege log for an in-camera review, and e-mail a copy of the privilege log to the Plaintiffs. The Plaintiffs were to be provided access to all the e-mails not designated in the privilege log beginning November 26, 2013. The Defendants failed to produce those e-mails by the Courts' deadline and the Plaintiffs moved for sanctions. The parties were ordered to submit the Defendants' November 25, 2013, privilege log to Discovery Commissioner, Wesley Ayres, with corresponding briefing. Commissioner Ayres determined that the privilege log was legally insufficient. The result was the Defendants waived any right to withhold e-mails identified in their privilege log and the Plaintiffs were entitled to all 78,473 e-mails containing the search term "condo" or "condominium". The Court adopted the recommendation of the Discovery Commissioner finding that the Defendants' objection to the recommendation based on shortage of time to review the privilege log was a result of the Defendants' inaction and lack of participation in the discovery process. The Defendants still did not release the e-mails and the Plaintiffs filed a motion to compel.

Nevada Rule of Civil Procedure 1 indicates that the rules of civil procedure are to be administered to secure the "just, speedy, and inexpensive determination of every action." It appears to the Court that the Defendants' focus in this case has been not to comply with NRCP 1. The Defendants' failures to comply with discovery rules have been numerous and pervasive throughout the case. The trial has been rescheduled multiple times resulting in a delay of over a year. The Defendants' failures have led to additional costs to the Plaintiffs and required the Plaintiffs to seek relief from the Court on multiple occasions. This has placed an undue burden on both the Plaintiffs and the Court. The Court has employed progressive sanctions to address discovery abuses. Those sanctions have not been adequate to curtail the Defendants' improper conduct. The Court has repeatedly warned the Defendants that if it found the information provided at the October 2013

hearing to be disingenuous, or if discovery abuses continued it would grant case terminating sanctions.

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

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

DATED this 3 day of October, 2014.

ELLIOTT A. SATTLER
District Judge

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

CODE: 3245
Jarrad C. Miller, Esq. (NV Bar No. 7093)
Jonathan J. Tew, Esq. (NV Bar No. 11874)
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
(775) 329-5600
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.

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 and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

Case No. CV12-02222
Dept. No. 10

ORDER APPOINTING RECEIVER AND DIRECTING DEFENDANTS' COMPLIANCE

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

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

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

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

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

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

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

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

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

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

1. ***General***

a. To review and/or take control of:

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

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

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Reno, Nevada 89501

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

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

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

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

vi. all insurance policies relating to the Property.

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

viii. documents reasonably requested by Receiver.

b. To use or collect:

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

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

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

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

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

2. Employment

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

3. Insurance

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

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

4. ***Treatment of Contracts***

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

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

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

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

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

5. ***Collection***

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

6. ***Litigation***

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

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

7. ***Reporting***

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

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

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

a. 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 and the costs and expenses of operation and maintenance of the Property, including all of the Receiver's and related fees, taxes, governmental assessments and charges and the nature thereof lawfully imposed upon the Property.

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

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

d. To open and utilize bank accounts for receivership funds.

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

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

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

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

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

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

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

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

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

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

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 of Plaintiffs in the Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 6 day of Jan, ~~2014.~~ 2015

DISTRICT ~~COURT~~ JUDGE

Submitted by:

/s/ Jarrad C. Miller
Jarrad C. Miller, Esq.
Attorney for Plaintiffs

Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

vs.

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

Defendants.

_____/

Case No: CV12-02222

Dept. No: 10

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This action was commenced on August 27, 2012, with the filing of a COMPLAINT ("the Complaint"). The Complaint alleged twelve causes of action: 1) Petition for Appointment of a Receiver as to Defendant Grand Sierra Resort Unit-Owners' Association; 2) Intentional and/or Negligent Misrepresentation as to Defendant MEI-GSR; 3) Breach of Contract as to Defendant MEI-GSR; 4) Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR; 5) Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR; 6) Consumer Fraud/Nevada Deceptive Trade Practices Act Violations as to Defendant MEI-GSR; 7) Declaratory Relief as to Defendant MEI-GSR; 8) Conversion as to Defendant MEI-GSR; 9) Demand for an Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners Association; 10) Specific Performance Pursuant to NRS 116.122, Unconscionable Agreement; 11) Unjust Enrichment/Quantum Meruit against Defendant Gage Village Development; 12) Tortious Interference with Contract and/or Prospective Business Advantage against Defendants MEI-GSR

and Gage Development. The Plaintiffs (as more fully described *infra*) were individuals or other entities who had purchased condominiums in the Grand Sierra Resort ("GSR"). A FIRST AMENDED COMPLAINT ("the First Amended Complaint") was filed on September 10, 2012. The First Amended Complaint had the same causes of action as the Complaint.

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

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

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

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

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

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

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

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

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

I. FINDINGS OF FACT

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

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

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

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

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

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.

7. Plaintiff George 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.

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

9. Plaintiff Henry Nunn is a competent adult and is a resident of the State of California.

10. Plaintiff Lee Van Der Bokke is a competent adult and is a resident of the State of California.

11. Plaintiff Madelyn Van Der Bokke is a competent adult and is a resident of the State of California.

12. Plaintiff Donald Schreifels is a competent adult and is a resident of the State of Minnesota.

13. Plaintiff Robert R. Pederson, individually and as Trustee of the Pederson 1990 Trust, is a competent adult and is a resident of the State of California.

14. Plaintiff Lou Ann Pederson, individually and as Trustee of the Pederson 1990 Trust, is a competent adult and is a resident of the State of California.

15. Plaintiff Lori Ordover is a competent adult and is a resident of the State of Connecticut.

16. Plaintiff William A. Henderson is a competent adult and is a resident of the State of California.

17. Plaintiff Christine E. Henderson is a competent adult and is a resident of the State of California.

18. Plaintiff Loren D. Parker is a competent adult and is a resident of the State of Washington.

19. Plaintiff Suzanne C. Parker is a competent adult and is a resident of the State of Washington.

20. Plaintiff Michael Izady is a competent adult and is a resident of the State of New York.

21. Plaintiff Steven Takaki is a competent adult and is a resident of the State of California.

22. Plaintiff Farad Torabkhan is a competent adult and is a resident of the State of New York.

23. Plaintiff Sahar Tavakol is a competent adult and is a resident of the State of New York.

24. Plaintiff M&Y Holdings is a Nevada Limited Liability Company with its principal place of business in Nevada.

25. Plaintiff JL&YL Holdings, LLC is a Nevada Limited Liability Company with its principal place of business in Nevada.

26. Plaintiff Sandi Raines is a competent adult and is a resident of the State of Minnesota.

27. Plaintiff R. Raghuram is a competent adult and is a resident of the State of California.

28. Plaintiff Usha Raghuram is a competent adult and is a resident of the State of California.

29. Plaintiff Lori K. Tokutomi is a competent adult and is a resident of the State of California.

30. Plaintiff Garett Tom is a competent adult and is a resident of the State of California.

31. Plaintiff Anita Tom is a competent adult and is a resident of the State of California.

32. Plaintiff Ramon Fadrilan is a competent adult and is a resident of the State of California.

33. Plaintiff Faye Fadrilan is a competent adult and is a resident of the State of California.

34. Plaintiff Peter K. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a competent adult and is a resident of the State of California.

35. Plaintiff Monica L. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a competent adult and is a resident of the State of California.

36. Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.

37. Plaintiff Elias Shamieh is a competent adult and is a resident of the State of California.

38. Plaintiff Nadine's Real Estate Investments, LLC, is a North Dakota Limited Liability Company.

39. Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of Hawaii.

40. Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of Hawaii.

41. Plaintiff Kenneth Riche is a competent adult and is a resident of the State of Wisconsin.

42. Plaintiff Maxine Riche is a competent adult and is a resident of the State of Wisconsin.

43. Plaintiff Norman Chandler is a competent adult and is a resident of the State of Alabama.

44. Plaintiff Benton Wan is a competent adult and is a resident of the State of California.

45. Plaintiff Timothy Kaplan is a competent adult and is a resident of the State of California.

46. Plaintiff Silkscape Inc. is a California Corporation.

47. Plaintiff Peter Cheng is a competent adult and is a resident of the State of California.

48. Plaintiff Elisa Cheng is a competent adult and is a resident of the State of California.

49. Plaintiff Greg A. Cameron is a competent adult and is a resident of the State of California.

50. Plaintiff TMI Property Group, LLC is a California Limited Liability Company.

51. Plaintiff Richard Lutz is a competent adult and is a resident of the State of California.

52. Plaintiff Sandra Lutz is a competent adult and is a resident of the State of California.

53. Plaintiff Mary A. Kossick is a competent adult and is a resident of the State of California.

54. Plaintiff Melvin H. Cheah is a competent adult and is a resident of the State of California.

55. Plaintiff Di Shen is a competent adult and is a resident of the State of Texas.

56. Plaintiff Ajit Gupta is a competent adult and is a resident of the State of California.

57. Plaintiff Seema Gupta is a competent adult and is a resident of the State of California.

58. Plaintiff Fredrick Fish is a competent adult and is a resident of the State of Minnesota.

59. Plaintiff Lisa Fish is a competent adult and is a resident of the State of Minnesota.

60. Plaintiff Robert A. Williams is a competent adult and is a resident of the State of Minnesota.

61. Plaintiff Jacquelin Pham is a competent adult and is a resident of the State of California.

62. Plaintiff May Ann Hom, as Trustee of the May Ann Hom Trust, is a competent adult and is a resident of the State of California.

63. Plaintiff Michael Hurley is a competent adult and is a resident of the State of Minnesota.

64. Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.

65. Plaintiff Duane Windhorst is a competent adult and is a resident of the State of Minnesota.

66. Plaintiff Marilyn Windhorst is a competent adult and is a resident of the State of Minnesota.

67. Plaintiff Vinod Bhan is a competent adult and is a resident of the State of California.

68. Plaintiff Anne Bhan is a competent adult and is a resident of the State of California.

69. Plaintiff Guy P. Browne is a competent adult and is a resident of the State of California.

70. Plaintiff Garth Williams is a competent adult and is a resident of the State of California.

71. Plaintiff Pamela Y. Aratani is a competent adult and is a resident of the State of California.

72. Plaintiff Darleen Lindgren is a competent adult and is a resident of the State of Minnesota.

73. Plaintiff Laverne Roberts is a competent adult and is a resident of the State of Nevada.

74. Plaintiff Doug Mecham is a competent adult and is a resident of the State of Nevada.

75. Plaintiff Chrisine Mecham is a competent adult and is a resident of the State of Nevada.

76. Plaintiff Kwangsoo Son is a competent adult and is a resident of Vancouver, British Columbia.

77. Plaintiff Soo Yeun Moon is a competent adult and is a resident of Vancouver, British Columbia.

78. Plaintiff Johnson Akindodunse is a competent adult and is a resident of the State of California.

79. Plaintiff Irene Weiss, as Trustee of the Weiss Family Trust, is a competent adult and is a resident of the State of Texas.

80. Plaintiff Pravesh Chopra is a competent adult and is a resident of the State of California.

81. Plaintiff Terry Pope is a competent adult and is a resident of the State of Nevada.

82. Plaintiff Nancy Pope is a competent adult and is a resident of the State of Nevada.

83. Plaintiff James Taylor is a competent adult and is a resident of the State of California.

84. Plaintiff Ryan Taylor is a competent adult and is a resident of the State of California.

85. Plaintiff Ki Ham is a competent adult and is a resident of Surry B.C.

86. Plaintiff Young Ja Choi is a competent adult and is a resident of Coquitlam, B.C.

87. Plaintiff Sang Dae Sohn is a competent adult and is a resident of Vancouver, B.C.

88. Plaintiff Kuk Hyung ("Connie") is a competent adult and is a resident of Coquitlam, B.C.

89. Plaintiff Sang ("Mike") Yoo is a competent adult and is a resident of Coquitlam, B.C.

90. Plaintiff Brett Menmuir, as Trustee of the Cayenne Trust, is a competent adult and is a resident of the State of Nevada.

91. Plaintiff William Miner, Jr., is a competent adult and is a resident of the State of California.

92. Plaintiff Chanh Truong is a competent adult and is a resident of the State of California.

93. Plaintiff Elizabeth Anders Mecua is a competent adult and is a resident of the State of California.

94. Plaintiff Shepherd Mountain, LLC is a Texas Limited Liability Company with its principal place of business in Texas.

95. Plaintiff Robert Brunner is a competent adult and is a resident of the State of Minnesota.

96. Plaintiff Amy Brunner is a competent adult and is a resident of the State of Minnesota.

97. Plaintiff Jeff Riopelle is a competent adult and is a resident of the State of California.

98. Plaintiff Patricia M. Moll is a competent adult and is a resident of the State of Illinois.

99. Plaintiff Daniel Moll is a competent adult and is a resident of the State of Illinois.

100. The people and entities listed above represent their own individual interests. They are not suing on behalf of any entity including the Grand Sierra Unit Home Owner's Association. The people and entities listed above are jointly referred to herein as "the Plaintiffs".

101. Defendant MEI-GSR Holdings, LLC ("MEI-GSR") is a Nevada Limited Liability Company with its principal place of business in Nevada.

102. Defendant Gage Village Commercial Development, LLC ("Gage Village") is a Nevada Limited Liability Company with its principal place of business in Nevada.

103. Gage Village is related to, controlled by, affiliated with, and/or a subsidiary of MEI-GSR.

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

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

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

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

108. 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.

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

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

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

112. 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).

113. Because 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 MEI-GSR's chosen representatives to the Board of Directors (the governing body over the GSR Condo Units).

114. As a result of 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

130. Defendants MEI-GSR and/or Gage Village have attempted to purchase, and purchased, units devalued by their own actions, at nominal, distressed prices when Individual Unit

Owners decide to, or are effectively forced to, sell their units because the units fail to generate sufficient revenue to cover expenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

146. MEI-GSR has breached the Grand Sierra Resort Unit Rental Agreement with Individual Condo 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.

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

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

II. CONCLUSIONS OF LAW

A. The Court has jurisdiction over MEI-GSR, Gage Village, the Unit Owner's Association and the Plaintiffs.

B. The appointment of a receiver is appropriate when: (1) the plaintiff has an interest in the property; (2) there is potential harm to that interest in property; and (3) no other adequate remedies exist to protect the interest. *See generally Bowler v. Leonard*, 70 Nev. 370, 269 P.2d 833 (1954). *See also* NRS 32.010. The Court appointed a receiver to oversee the Unit Owner's Association on January 7, 2015. The Court concludes that MEI-GSR and/or Gage Village have operated the Unit Owner's Association in a way inconsistent with the best interests of all of the unit owners. The continued management of the Unit Owner's Association by the receiver is appropriate under the circumstances of this case and will remain in effect absent additional direction from the Court.

C. Negligent misrepresentation is when "[o]ne who, in the course of his business, profession or employment, or in any other action in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." *Barmeltler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382, 1387 (1998) (quoting *Restatement (Second) of Torts § 552(1) (1976)).* Intentional misrepresentation is when "a false representation made with knowledge or belief that it is false or without a sufficient basis of information, intent to induce reliance, and damage resulting from the reliance. *Lubbe v. Barba,* 91 Nev. 596, 599, 540 P.2d 115,

117 (1975)." *Collins v. Burns,* 103 Nev. 394, 397, 741 P.2d 819, 821 (1987). MEI-GSR is liable for intentionally and/or negligent misrepresentation as alleged in the Second Cause of Action.

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

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

F. An implied covenant of good faith and fair dealing exists in every contract in Nevada. *Hilton Hotels Corp. v. Butch Lewis Productions, Inc.*, 109 Nev. 1043, 1046, 862 P.2d 1207, 1209 (1993). "The duty not to act in bad faith or deal unfairly thus becomes part of the contract, and, as with any other element of the contract, the remedy for its breach generally is on the contract itself." *Id.* (*citing Wagenseller v. Scottsdale Memorial Hospital,* 147 Ariz. 370, 383, 710 P.2d 1025, 1038 (1985)). "It is well established that in contracts cases, compensatory damages 'are awarded to make the aggrieved party whole and ... should place the plaintiff in the position he would have been in had the contract not been breached.' This includes awards for lost profits or expectancy damages." *Road & Highway Builders, LLC v. Northern Nevada Rebar, Inc.*, 128 Nev. Adv. Op. 36, 284 P.3d 377, 382 (2012)(*internal citations omitted).* "When one party performs a contract in a manner that is unfaithful to the purpose of the contract and the

justified expectations of the other party are thus denied, damages may be awarded against the party who does not act in good faith." *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (1995)(*citation omitted*). "Reasonable expectations are to be 'determined by the various factors and special circumstances that shape these expectations.'" *Id.* (*citing Butch Lewis*, 107 Nev. at 234, 808 P.2d at 923). MEI-GSR is liable for breach of the covenant of good faith and fair dealing as set forth in the Fifth Cause of Action.

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

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

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

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

K. The Unit Maintenance Agreement and Unit Rental Agreement proposed by MEI-GSR and adopted by the Unit Owner's Association are unconscionable. An unconscionable

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

L. The legal concept of *quantum meruit* has two applications. The first application is in actions based upon contracts implied-in-fact. The second application is providing restitution for unjust enrichment. *Certified Fire*, at 256. In the second application, "[l]iability in restitution for the market value of goods or services is the remedy traditionally known as quantum meruit. Where unjust enrichment is found, the law implies a quasi-contract which requires the defendant to pay to the plaintiff the value of the benefit conferred. In other words, the defendant makes restitution to the plaintiff in *quantum meruit*." *Id.* at 256-57. Gage Village has been unjustly enriched based on the

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.

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

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

III. JUDGMENT

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

Monetary Relief:

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 MEl-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;

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

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

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

9. MEI-GSR will fund the FF&E reserve, shared facilities reserve and hotel reserve in the amount of $500,000.00 each. The Court finds that MEI-GSR has failed to fund the reserves for the units it, or any of its agents, own. However, the Court has also determined, *supra*, that these fees were themselves unconscionable. The Court does not believe that the remedy for MEI-GSR's failure to fund the unconscionable amount should be some multiple of that unreasonable sum. Further, the Court notes that Plaintiffs are individual owners: not the Unit Owner's Association. Arguably, the reserves are an asset of the Unit Owner's Association and the Plaintiffs have no individual interest in this sum. The Court believes that the "seed funds" for these accounts are appropriate under the circumstances of the case; and

10. The Court finds that it would be inappropriate to give MEI-GSR any "write downs" or credits for sums they may have received had they rented the rooms in accordance with appropriate business practices. These sums will be disgorged.

Non-Monetary Relief:

1. The receiver will remain in place with his current authority until this Court rules otherwise;

2. The Plaintiffs shall not be required to pay any fees, assessments, or reserves allegedly due or accrued prior to the date of this ORDER;

3. The receiver will determine a reasonable amount of FF&E, shared facilities and hotel reserve fees required to fund the needs of these three ledger items. These fees will be determined within 90 days of the date of this ORDER. No fees will be required until the implementation of these new

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

4. The current rotation system will remain in place.

Punitive Damages:

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

DATED this 9 day of October, 2015.

ELLIOTT A. SATTLER
District Judge

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

vs.

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

Defendants.

_____/

Case No: CV12-02222

Dept. No: 10

ORDER

Presently before the Court is DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION ("the Motion") filed by the Defendants MEI-GSR HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY, ET AL. ("the Defendants") on December 1, 2015. Plaintiffs ALBERT THOMAS, ET AL., ("the Plaintiffs") filed an OPPOSITION TO MOTION TO DISMISS ("the Opposition") on December 21, 2015. The Defendants filed a REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION ("the Reply") on December 29, 2015. The Court heard argument on the Motion on February 8, 2016, and March 2, 2016. This written ORDER follows.

The COMPLAINT ("Complaint") in this matter was filed on August 27, 2012. The Complaint alleged twelve causes of action: 1) Petition for Appointment of a Receiver as to Defendant Grand Sierra Resort Unit-Owner's Association; 2) Intentional and/or Negligent

Misrepresentation as to Defendant MEI-GSR; 3) Breach of Contract as to Defendant MEI-GSR; 4) Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR; 5) Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR; 6) Consumer Fraud/Nevada Deceptive Trade Practices Act Violations as to Defendant MEI-GSR; 7) Declaratory Relief as to Defendant MEI-GSR; 8) Conversion as to Defendant MEI-GSR; 9) Demand for an Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners Association; 10) Specific Performance Pursuant to NRS 116.122, Unconscionable Agreement; 11) Unjust Enrichment/Quantum Meruit against Defendant Gage Village Development; and 12) Tortious Interference with Contract and/or Prospective Business Advantage against Defendants MEI-GSR and Gage Development. The Plaintiffs were individuals or other entities who had purchased condominiums in the Grand Sierra Resort ("the GSR"). The Plaintiffs filed the FIRST AMENDED COMPLAINT ("the First Amended Complaint") on September 10, 2012. The First Amended Complaint alleged the same causes of action as the Complaint.

The Defendants filed an ANSWER AND COUNTER CLAIM ("the Answer") on November 21, 2012. The Answer denied the twelve causes of action, asserted eleven Affirmative Defenses, and alleged three Counterclaims. The Counterclaims were: 1) Breach of Contract: 2) Declaratory Relief: and 3) Injunctive Relief. The Plaintiffs filed a SECOND AMENDED COMPLAINT ("the Second Amended Complaint") on March 26, 2013. The Defendants filed an ANSWER TO SECOND AMENDED COMPLAINT AND COUNTER CLAIM ("the Second Answer") on May 23, 2013.

These proceedings have been the subject of numerous allegations of discovery abuses by the Defendants. The Court denied a request for case concluding sanctions in its ORDER REGARDING ORIGINAL MOTION FOR CASE CONCLUDING SANCTIONS filed December 18, 2013 ("the December Order"). The Court found case concluding sanctions were not appropriate; however, the Court felt some sanctions were warranted based on the Defendants' repeated discovery violations. The Court struck all of the Defendants' Counterclaims in the December Order and required the Defendants to pay for the costs of the Plaintiffs' representation in litigating the issue of case concluding sanctions.

The Plaintiffs' renewed their motion for case concluding sanctions on January 27, 2014. The Court conducted a two day hearing regarding a renewed motion for case concluding sanctions. The Court entered an ORDER GRANTING PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS on October 3, 2014 ("the October Order"). The Defendants' Answer was stricken in the October Order. A Default was entered against the Defendants on November 26, 2014. The Court conducted a "prove-up" hearing regarding the issue of damages from March 23 to March 25, 2015. The Court entered the FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT on October 9, 2015 ("the Judgment"). The Court set a hearing on punitive damages for December 10, 2015. The hearing was vacated due to the filing of the Motion.

The Motion contends the Court lacks subject matter jurisdiction over this entire dispute. The Motion alleges the Plaintiffs have failed to abide by procedures codified in NRS 38.310. NRS 38.310 provides:

> 1. No civil action based upon a claim relating to:
>
> (a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or
>
> (b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property,
>
> may be commenced in any court in this State unless the action has been submitted to mediation or, if the parties agree, has been referred to a program pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.
>
> *2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.*

(emphasis added). The Motion avers the Plaintiffs' claims pertain to the "interpretation, application or enforcement of any covenant, conditions or restrictions" of the governing documents to the GSR condominiums. The governing documents in this matter are the Seventh Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Reservations of Easements

for Hotel Condominiums at Grand Sierra Resort ("the CC&Rs"), The Grand Sierra Resort Unit Maintenance Agreement ("the UMA"), the Grand Sierra Resort Purchase and Sale Agreement ("the PA"), and the Unit Rental Agreements ("the URA"). The Motion asserts the failure to comply with the provisions of NRS 38.310 requires all action taken in this matter should be vacated and the case dismissed.

The Motion asserts the creation, operation, and management of the Grand Sierra Resort Unit Rental Association ("GSRURA") is expressly provided for within the CC&R's. The fees imposed on the condominium owners, including those within the UMA, are controlled by the CC&Rs. The Motion argues the Second Amend Complaint alleged violations of the CC&R's and UMA, thus requiring their interpretation and requiring the application of NRS 38.310.

The Opposition avers NRS 38.310 is not applicable to the instant case because the Defendants are third-parties outside the scope of NRS 38.310's protections. The Opposition relies on *Hamm v. Arrowcreek Homeowners' Ass'n,* 124 Nev. 290, 183 P.3d 895 (2008), to support their contention the Defendants are not acting as agents of the GSRURA. In *Hamm,* the Supreme Court of the State of Nevada ("the Supreme Court") addressed whether NRS 38.310 applied to collection agencies. The Supreme Court determined the collection agency at issue was in an agency relationship with the HOA because it was hired by the HOA to collect the assessments from the homeowner. "An agency relationship results when one person possesses the contractual right to control another's manner of performing the duties for which he or she was hired." *Id.* at 299, 183 P.3d at 902. The Supreme Court determined "an agency relationship existed here because Arrowcreek HOA hired [the collection agency] to collect the Hamms' alleged assessments and possessed the contractual right to direct" the collection agency to act on the HOA's behalf. *Id.,* 183 P.3d at 902. The Supreme Court concluded NRS 38.310 was applicable to those claims arising from actions performed as the HOA's agent. The Opposition asserts the Supreme Court therefore held NRS 38.310 only applies to the HOA or agents of the HOA.

The Opposition argues MEI-GSR, Gage, and AM-GSR are not agents of GSRURA, thus NRS 38.310 is not applicable to the defendants in this action. The Opposition therefore asserts the dismissal of this case in not warranted. The Opposition argues the evidence presented in this case

fails to demonstrate the GSRURA pays MEI-GSR to operate the rental program. The Opposition asserts MEI-GSR never acted to effectuate the purposes of GSRURA, only to effectuate the goals of MEI-GSR, Gage, and AM-GSR. The Opposition contends the actions of the Defendants were only to benefit themselves and "wholly abandoned the interests and purposes of the [GSRURA]" by never putting the money collected for various fees and assessments into GSRURA reserves and by acting with the intent to eliminate the GSRURA. The Opposition 20:16-17. The Opposition asserts the absence of an agency relationship between the Defendants and GSRURA renders NRS 38.310 inapplicable. The Opposition argues, should the Court find an agency relationship, NRS 38.310 is still inapplicable because the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Eleventh, and Twelfth causes of action are not asserted against GSRURA. The Opposition alleges the first cause of action for the appointment of a receiver is not subject to NRS 38.310 because an arbitrator cannot appoint a receiver.

The Reply argues the Defendants are all within the provisions of NRS 38.300 to NRS 38.360. The Reply contends GSRURA is the homeowner's association for the Grand Sierra hotel-condominium units and is covered by NRS 38.310. Both Gage and AM-GSR are successor Declarants pursuant to the CC&Rs. The liability of both Gage and AM-GSR to the Plaintiffs would be as Declarants under the CC&Rs relating to the operation and management of the units. The Reply asserts all issues in the Second Amended Complaint implicate the interpretation and application of the governing documents, requiring the Plaintiffs to comply with NRS 38.310.

The Opposition also relies on *McKnight Family, LLP v. Adept Mgmt. Serv.*, 129 Nev. Adv. Op. 64, 310 P.3d 555 (2013), to argue NRS 38.310 is inapplicable to claims regarding the right to possess and use property. In *McKnight,* the Supreme Court found:

> An action is exempt from the NRS 38.310 requirements if the action relates to an individual's right to possess and use his or her property. In Hamm, this court determined that a lien on a property does not present an immediate danger of irreparable harm nor is it related to an individual's title to property for NRS 38.310 purposes because a lien exists separate from the property, and the right to use and dispose of the property remains with the owner until the lien is enforced at foreclosure proceedings.

Id., 310 P.3d at 558. The Opposition asserts all causes of action in this case relate to the Plaintiffs' right to use and possess their property. The Opposition argues the evidence establishes the Defendants deliberately interfered with the Plaintiffs' rights to use and possess their property by renting the condominiums without permission and taking steps to force the Plaintiffs to sell or lose their units. The Opposition relies on the Court's finding MEI-GSR wrongfully committed numerous acts of dominion and control over the property of the Plaintiffs in "derogation, exclusion or defiance of the title and/or rights of the individual unit owners." The Judgment 18:15-21. Within the Opposition, and during oral argument, the Plaintiffs argue all their claims pertain to and stem from the title the Plaintiffs hold in the condominium units.

The Reply argues the Plaintiffs' claims do not relate to the title of property. The Reply contends the *McKnight* Court stated claims "relating to title" are exempt from NRS 38.310, not claims regarding the right to possess and use property. The *McKnight* Court addressed wrongful foreclosure, quiet title, and slander of title. The Supreme Court found only the quite title claim was exempt from NRS 38.300(3) because it required the district court to determine who holds superior title to a land parcel. The Reply contends the Plaintiffs' claims exist separate from the title to land and are civil actions per NRS 38.300.

The Court finds none of the claims in the Second Amended Complaint would impact the owners' title to the units; therefore the Court will not deny the Motion on this ground. The Court finds the claims raised by the Plaintiffs require interpretation and application of the governing documents. The Plaintiffs' causes of action relate to matters provided for in the governing documents. *McKnight* limited its analysis to a claim for quiet title. The causes of action in this matter do not concern claims of superior title. To determine whether there was interference with the use of the Plaintiffs' ability to use their condominiums necessarily requires interpretation of the CC&Rs. To apply *McKnight*'s "possession and use" language as the Plaintiffs request would be a broader application than the Supreme Court has permitted in *McKnight*. *McKnight,* 129 Nev. Adv. Op. 64, 310 P.3d at 558. Pursuant to the Plaintiffs' argument, almost any alleged violations of the CC&Rs could arguably be framed as interference with the use and possession of one's property.

This is an unreasonable reading of the applicable statute. "If the plain meaning of a statute is clear on its face, then [this court] will not go beyond the language of the statute to determine its meaning." *Rosequist v. Int'l Ass'n of Firefighters,* 118 Nev. 444, 448, 49 P.3d 651, 653 (2002).[1]

The Opposition next contends NRS 38.310 does not pertain to subject matter jurisdiction. The Opposition asserts NRS 38.310 pertains to justiciability and not jurisdiction. The Opposition argues "the Nevada Legislature *cannot divest the District Court of subject matter jurisdiction.*" The Opposition 27:20-22 (emphasis in original). The Opposition alleges the Supreme Court has erred in finding a party must exhaust administrative remedies prior to proceeding with an action in the district court. The Opposition 29:3-5. The Opposition cites *City of Henderson v. Kilgore,* 122 Nev. 331, 336, 131 P.3d 11, 15, n.10 (2006), to argue the failure to exhaust administrative remedies does not pertain to subject matter jurisdiction, but pertains to justiciability. The Reply contends NRS 38.310 provides a mandatory statutory administrative remedy which deprives the Court of subject matter jurisdiction due to the Plaintiffs' failure to exhaust all administrative measures.

The Court finds the Opposition's argument on this issue be unpersuasive. Access to the courts has been limited by the legislature via requirements to exhaust available administrative remedies. "[W]hether couched in terms of subject-matter jurisdiction or ripeness, a person generally must exhaust all available administrative remedies before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable." *Allstate Ins. Co. v. Thorpe,* 123 Nev. 565, 571, 170 P.3d 989, 993 (2007). There are various types of legal actions which the legislature has placed conditions upon before a party may seek relief in the district court. Similar to the requirements of

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[1] *McKnight* has been cited twenty-four times by the Federal District Court for the District of Nevada ("Federal District Court") and once in an unpublished decision by the Supreme Court. The Court finds these cases to be persuasive, but not precedential, authority. In reversing the granting of a motion to dismiss a quiet title action, the Supreme Court stated *McKnight* recognized a quiet title claim is exempt from NRS 38.310, but did not expand *McKnight*'s holding. *LN Mgmt., LLC v. Caban,* 64833, 2014 WL 5795500, at *1 (Nev. Nov. 5, 2014). The Federal District Court has found claims for unjust enrichment, bad faith, and wrongful foreclosure fall under the confines of NRS 38.310 and such claims must be dismissed. The Federal District Court has noted *McKnight* found quiet title claims are expressly exempt from NRS 38.310, but has not expanded this exemption beyond causes of action for quiet title. *Carrington Mortgage Services, LLC v. Absolute Bus. Sols., LLC; Estrella Homeowners Ass'n,* 215CV01862JADPAL, 2016 WL 1465339, at *3 (D. Nev. 2016); *U.S. Bank, N.A., v. Woodchase Condominum Homeowners Association & Jason Edington,* 215CV01153APGGWF, 2016 WL 1734085, at *2 (D. Nev. 2016); *Abet Justice LLC v. First Am. Tr. Servicing Sols., LLC,* 214CV908JCMGWF, 2016 WL 1170989, at *3 (D. Nev. 2016); *U.S. Bank, Nat. Ass'n v. NV Eagles, LLC,* 2:15-CV-00786-RCJ, 2015 WL 4475517, at *3 (D. Nev. 2015).

NRS 38.310, NRS 613.420, requires the exhaustive of administrative remedies as a prerequisite for filing employment discrimination claims in district court. *Pope v. Motel 6,* 121 Nev. 307, 114 P.3d 277 (2005) ("NRS 613.420 requires an employee alleging employment discrimination to exhaust her administrative remedies by a filing a complaint with NERC before filing a district court action."). The Supreme Court has acknowledged "the legislature intended that claims involving employment discrimination were to be administratively exhausted prior to seeking redress in the district courts." *Palmer v. State,* 106 Nev. 151, 153, 787 P.2d 803, 804 (1990). The Supreme Court has upheld similar application of administrative remedy requirements in various matters. *See* NRS 679B.120; NRS 463.310; NRS 374.640; NRS 278.3195; NRS 41A.071.

In *State, Nevada Dept. of Taxation v. Scotsman Mfg. Co., Inc.,* 109 Nev. 252, 254, 849 P.2d 317, 319 (1993), the Supreme Court addressed whether NRS 374.640(1) and NRS 374.680 required Scotsman to file a refund claim with the Department of Taxation and Tax Commission prior to filing a claim in the district court. The Supreme Court found "[a] taxpayer must exhaust its administrative remedies before seeking judicial relief; failure to do so deprives the district court of subject matter jurisdiction." *Id.,* 849 P.2d at 319.

The Supreme Court discussed the exhaustion of administrative remedies requirement in *Benson v. State Eng'r,* 131 Nev. Adv. Op. 78, 358 P.3d 221 (2015). In *Benson,* the district court granted the State Engineer's motion to dismiss for failure to exhaust administrative remedies. The Supreme Court affirmed and found the party was required to "exhaust all available administrative remedies pertaining to the State Engineer's decision on a water permit before filing a petition for judicial review with the district court." *Id.,* 358 P.3d at 228. In *Mesagate Homeowners' Ass'n v. City of Fernley*, 124 Nev. 1092, 1099, 194 P.3d 1248, 1252 (2008), the Supreme Court again found exhaustion of administrative remedies was required "before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable." The Supreme Court held in *Mesagate* the plaintiff failed to exhaust their administrative remedies by not appealing the City's approval of a building permit to the Board of Appeals established pursuant to NRS 278.3195, and the matter was nonjusticable as a result.

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Similar to the language in NRS 38.310, NRS 41A.071 states if an action for medical malpractice "is filed in the district court, the district court *shall* dismiss the action, without prejudice, if the action is filed without a [medical expert] affidavit." (emphasis added). Both NRS 38.310 and NRS 41A.071 contain "shall." Shall "is mandatory and does not denote judicial discretion." *Washoe Med. Ctr. v. Second Judicial Dist. Court of State of Nev. ex. re. County of Washoe,* 122 Nev. 1298, 1303, 148 P.3d 790 (2006). "The Legislature's choice of the words 'shall dismiss' instead of 'subject to dismissal' indicated that the Legislature intended that the court have no discretion with respect to dismissal." *Id.,* 148 P.3d at 790.

The Supreme Court has recently found failure to comply with the affidavit requirement warrants dismissal even after years of litigation. In *Wheble v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 128 Nev. Adv. Op. 11, 272 P.3d 134, 137 (2012), the plaintiff filed the complaint in 2006. The plaintiff failed to attach the affidavit to the complaint and filed an errata to the complaint five days later attaching the expert affidavit. The defendants moved for summary judgment in 2009 arguing the plaintiff's failure to attach an expert affidavit to their initial complaint rendered the entire complaint void. The Supreme Court held a "medical malpractice complaint filed without the required affidavit is void ab initio." *Id.,* 272 P.3d at 137. A void ab initio complaint is "of no force and effect" from the beginning of the action. *Washoe Med Ctr,* 122 Nev. at 1304, 148 P.3d at 794.

The United States Supreme Court has recognized there is a "long-settled rule of judicial administration that no one is entitled to judicial relief for supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers v. Bethlehem Shipbuilding Corp.,* 303 U.S. 41, 50-51, 58 S. Ct. 459, 463 (1938). The "doctrine is applied in a number of different situations." *McKart v. United States*, 395 U.S. 185, 193, 89 S. Ct. 1657, 1662 (1969). The United States Supreme Court has held "strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." *McNeil v. United States,* 508 U.S. 106, 113, 113 S.Ct. 1980, 1984 (1993)(citing *Mohasco Corp. v. Silver,* 447 U.S. 807, 826, 100 S.Ct. 2486, 2497, (1980)).

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"Lack of subject matter jurisdiction can be raised at any time during the proceedings and is not waivable." *Mainor v. Nault*, 120 Nev. 750, 761, 101 P.3d 308, 315 (2004). The Supreme Court, however, has held "a party may, by his conduct, become estopped to raise such a jurisdictional question." *Gamble v. Silver Peak Mines,* 35 Nev. 319, 133 P. 936, 937 (1913). The Opposition asserts the Defendants have waived the issue of subject matter jurisdiction by litigating this case, filing in justice court, and by stipulating with the Plaintiffs to bring the dispute before the Court. The Court notes the Defendants filed the Motion after the entry of the Judgment in this matter and prior to the hearing on punitive damages. The Defendants did not raise the purported jurisdictional defect until almost four years after the institution of this action. The Defendants explained during oral argument the issue of subject matter jurisdiction could be raised at any time. When asked by the Court whether the trial could have occurred and the jury was in deliberation whether the Defendants could seek to dismiss the case for lack of subject matter jurisdiction, the Defendants responded in the affirmative. February 8, 2016, Hearing Trans. 9:17-24. The Defendant asserted the parties "could have gone through the entire case, and then if there was an appeal, the Supreme Court could have actually, on their own, without anyone raising the issue" dismissed the action for lack of subject matter jurisdiction pursuant to NRS 38.310. February 8, 2016, Hearing Trans. 33:13-18.

The Defendants allege they were not aware of the application and requirements of NRS 38.310 until preparing for the punitive damages hearing. Dec. of H. Stan Johnson 1:6-10 ("I was doing research on the Opposition to Plaintiffs' Motion for Punitive Damages. I read a case which referenced NRS 38.310. To the best of my knowledge this was when I became aware of NRS 38.310."). The Court notes it is unclear why NRS 38.310 was discovered in the course of punitive damages research and not at a prior time. The Defendants referenced NRS 116 at the March 25, 2015, Evidentiary Hearing. The Defendants acknowledged the requirement to arbitrate because the Real Estate Division "actually have primary jurisdiction" over issues regarding the homeowners association's actions regarding reserves. March 25, 2015, Evidentiary Hearing Trans. 537:15-16. As the Plaintiffs noted at oral argument, the reference to NRS 116 indicates there was an awareness of possible administrative measures that needed to be exhausted prior to the Court having jurisdiction. Defendants' counsel's assertion his comments were limited to NRS 116 and

underfunded reserve damages sought rather than civil actions considered under NRS 38.310, is unpersuasive. The reasoning of *Gamble,* however, is not applicable to the instant case.

The Supreme Court in *Gamble* addressed the jurisdictional argument raised by the respondents, finding, "[a] party in an *appellate* court who has treated the judgment as final and asked that the same be affirmed or reversed will not be heard afterwards, when the decision has gone against him, to contend that the judgment was not final and the court therefore without jurisdiction to determine the questions presented on appeal." *Gamble,* 35 Nev. at 319, 133 P. at 937 (emphasis added). The Supreme Court stated,

> We see no valid reason why the rule of estoppel to question the finality of the judgment ought not to apply as well to a respondent who has assumed throughout the proceedings that the judgment was final. In this case counsel for respondents, not only did not question the finality of the judgment in brief or oral argument, but prayed for its affirmance. In the lower court they stipulated that the statement on motion for a new trial should be regarded as the statement on appeal from the judgment. They also petitioned for and obtained an order for the issuance of a writ of assistance as a part of the process to carry out the judgment, assuming, as they must have done for such purpose, that the judgment was final.

Id., 133 P. at 938. The Supreme Court has further noted defendants who are willing to proceed and be bound by the jurisdiction of the court and the ultimate resolution of the dispute cannot challenge jurisdiction after judgment has been entered against them. *Boisen v. Boisen,* 85 Nev. 122, 124, 451 P.2d 363, 364 (1969)("[H]is assertion of jurisdiction by the counterclaim coupled with his complete acquiescence in the wife's claim to jurisdiction at trial estopped him from raising the issue for the first time on appeal."). The "judgement being in favor of the [Plaintiffs], the [Defendants], who invoked the jurisdiction of the court in the first instance, cannot now be heard to question that jurisdiction." *Grant v. Grant,* 38 Nev. 185, 189, 147 P. 451, 452 (1915).

Clearly there is a tension between the freedom to raise jurisdiction at any time and the waiver or estoppel bars to raise the issue. The Court finds it is constrained to resolve the issue in favor of the Defendants. The Court finds the reasoning of *Gamble* or *Grant* does not extend to this case. The Defendants sought relief through the court system by filing numerous actions in Justice Court. The Defendants later stipulated with the Plaintiffs to resolve the disputes between the parties in District Court. The Opposition 3:18-21. However, the parties did not proceed to trial. It was the action of

this Court in issuing case concluding sanctions which resulted in the judgment in favor of the Plaintiffs. The Court's actions accelerated the conclusion of these proceedings and the parties did not proceed to the ultimate resolution of the matter through trial. The Defendants did not wait to raise the issue of jurisdiction after the conclusion of trial and on appeal such as the parties did in *Gamble.* Accordingly, the Court finds the facts of this case do not warrant estoppel as discussed in *Gamble* and *Grant.*

The Court finds the language of NRS 38.310 mandates the Court to dismiss this action. Under NRS 38.310, "the district court must dismiss any dispute arising from the interpretation, application, or enforcement of homeowners' associations covenants, conditions, and restrictions [ ] if the parties did not first submit the dispute to mediation or arbitration." *Hamm,* 124 Nev. at 293, 183 P.3d at 898. Unlike *Arrowcreek* and *McKnight*, where the parties challenging the court's jurisdiction acted immediately, the Defendants waited to take action until after judgment was rendered against them. This conduct results in great detriment to the Plaintiffs in this action. Yet, the Court finds the Supreme Court's application of mandatory statutory language in *Wheble* requires the Court to dismiss this action, despite the great deal of work the parties and Court have dedicated to this litigation.

The Court finds to act contrary to the mandates of NRS 38.310 would violate the separation of powers, whereby courts are bound to follow the laws passed by legislative bodies. As John Adams noted in his 7th "Novanglus" letter published in 1774, we are "a government of laws, and not of men." "This separation is fundamentally necessary because '[w]ere the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would be the legislator: Were it joined to the executive power the judge might behave with all the violence of an oppressor.'" *Berkson v. LePome,* 126 Nev. 492, 498-99, 245 P.3d 560, 565 (2010)(*citing Galloway v. Truesdell,* 83 Nev. 13, 19, 422 P.2d 237, 242 (1967)). The Court cannot substitute its opinion of what should happen under these facts for the opinion of the people of this State as expressed by their elected legislators.

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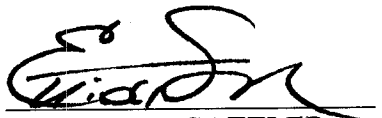
This matter has been the subject of extensive motion practice. The Court finds this result to be inimical and unjust after the course of the Defendants' conduct throughout this litigation. The record speaks for itself regarding the lackadaisical and inappropriate approach the Defendants have exhibited toward the Nevada Rules of Civil Procedure, the District Court Rules, the Washoe District Court Rules, and the Court's orders. The Defendants have done everything possible to make the proceedings unjust, dilatory, and costly in abject contravention of NRCP 1. The Court is bound to following the law and its application and interpretation by the Supreme Court. Should this Court feel it had the authority to decide the issue presented based on what was "fair" or "just" it would deny the Motion out of hand. The Defendants clearly do not deserve the result they will receive, but it is the law.

IT IS HEREBY ORDERED the DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION is GRANTED.

DATED this 9 day of May, 2016.



ELLIOTT A. SATTLER
District Judge

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this _____ day of May, 2016, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

NONE

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 9 day of May, 2016, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Jonathan Tew, Esq.

Jarrad Miller, Esq.

Stan Johnson, Esq.

Mark Wray, Esq.

Sheila Mansfield
Administrative Assistant

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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. 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 and DOE DEFENDANTS 1 THROUGH 10, inclusive, Defendants.	Case No. CV12-02222 Dept. No. 10

AFFIDAVIT OF BIAS OR PREJUDICE CONCERNING KATHLEEN SIGURDSON, ESQ. PURSUANT TO NRS 1.235

STATE OF NEVADA)
: ss.
COUNTY OF WASHOE)

I, JARRAD C. MILLER, being first duly sworn, depose and state as follows:

1. Except as otherwise stated, all matters herein are based upon my personal knowledge.

2. I am over the age of 18, competent to make this Affidavit, and if called to testify, my testimony will be consistent with the statements contained herein.

3. I am an attorney licensed to practice law in the State of Nevada.

4. I am a shareholder with the law firm of Robertson, Johnson, Miller & Williamson and counsel for the Plaintiffs herein.

5. Pursuant to NRS 1.230(1), a judge shall not preside over a matter when the judge entertains actual bias or prejudice for or against one of the parties to the action.

6. "[T]here is a serious risk of actual bias – based on objective and reasonable perceptions – when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent." Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868, 884, 129 S.Ct. 2252, 2263-64 (2009).

7. This affidavit of prejudice is submitted because a very similar "extraordinary situation where the Constitution requires recusal" addressed in Caperton is present in this matter as explained in further detail below. Caperton, 556 U.S. at 887, 129 S.Ct. at 2265.

8. The First Amended Complaint in this action was filed on September 10, 2012. Subsequently, on March 26, 2013, Plaintiffs filed their Second Amended Complaint ("SAC") in the action.

9. Plaintiffs SAC alleged, among other things, that Defendant MEI-GSR Holdings, LLC ("Defendant MEI-GSR"), owned/managed by Alex Meruelo, was controlling the Unit Owners' Association to Plaintiffs' detriment and Defendants' benefit. Plaintiffs asserted the following claims for relief: Petition for Appointment of Receiver as to Defendant Grand Sierra Resort Unit Owners' Association; Intentional and/or Negligent Misrepresentation as to Defendant MEI-GSR; Breach of Contract as to Defendant MEI-GSR; Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR; Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR; Consumer Fraud/Nevada Deceptive Trade Practices Act against Defendant MEI-GSR; Declaratory Relief as to Defendant MEI-GSR; Conversion as to Defendant MEI-GSR; Demand for Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners' Association; Specific Performance Pursuant to NRS 116.112, Unconscionable Agreement; Unjust Enrichment/Quantum Meruit against Defendant

Gage Village Development; and Tortious Interference with Contract and/or Prospective Business Advantage against Defendants MEI-GSR and Gage Development.

10. From September 3, 2013 to September 6, 2013, counsel for Defendants had the opportunity to depose the majority of the Plaintiffs in this case, but Plaintiffs' attempts at obtaining discovery were thwarted by Defendants.

11. On September 4, 2013, the Discovery Commissioner granted Plaintiffs' Motion to Compel Production of Documents and sanctioned Defendants $1,000, "as and for an award of the reasonable expenses incurred by Plaintiffs in making this motion."

12. On September 5, 2013, the Discovery Commissioner granted Plaintiffs' Second Motion to Compel and sanctioned Defendants another $1,000 for their "unexcused failures to respond to Plaintiffs' interrogatories and requests for production."

13. On September 13, 2013, Plaintiffs filed a Motion to Compel Deposition after Alex Meruelo, owner of Defendant MEI-GSR Holdings, LLC, failed to attend his scheduled deposition on September 5, 2013.

14. On October 17, 2013, the Court issued an Order setting a hearing after Plaintiffs filed a Motion for Sanctions Under NRCP 37(b) for Defendants' failure to comply with Court Orders.

15. On October 21, 2013, the Court began a three-day hearing to assess the extent to which sanctions were appropriate. At the conclusion of the hearing, the Court struck the Defendants' counterclaims as a sanction for failing to comply with the discovery rules and this Court's Orders and ordered that Defendants pay all Plaintiffs' attorneys' fees and costs associated with the three-day hearing.

16. On November 22, 2013, Plaintiffs filed a Renewed Motion for Sanctions Under NRCP 37(b) because Defendants' nefarious litigation practices continued.

17. On October 3, 2014, this Court granted Plaintiffs' Motion for Case-Terminating Sanctions, struck the Defendants' Answer, and set a prove-up hearing on damages.

18. Commencing on March 23, 2015, the Court held a three-day prove-up hearing on Plaintiffs' damages.

19. On October 9, 2015, this Court issued a Findings of Fact, Conclusions of Law and Judgment ("FFCL") wherein Plaintiffs were awarded more than $8,000,000 (EIGHT MILLION DOLLARS) in monetary relief against Defendants.

20. In its FFCL, the Court highlighted Defendants' "systematic attempts at obfuscation and intentional deception." FFCL at 2:17-18. The Court went on to state that "the Court has repeatedly had to address the lackadaisical and inappropriate approach the Defendants have exhibited toward the Nevada Rules of Civil Procedure, the District Court Rules, the Washoe District Court Rules, and the Court's orders. The Defendants have consistently, and repeatedly, chosen to follow their own course rather than respect the need for orderly process in this case." Id. at 2:18-22. The Court further stated, "[t]he Defendants have turned [the directive of NRCP 1] on its head and done everything possible to make the proceedings unjust, dilatory, and costly." Id. at 2:24-25.

21. At the time the FFCL was entered in late 2015, the Court deferred hearing argument regarding punitive damages to a later date.

22. Following the FFCL, an appeal and extensive motion practice occurred. The Court granted a motion to dismiss for lack of subject matter jurisdiction filed by Defendants, which was then reversed by the Nevada Supreme Court. See Albert Thomas, et al. v. MEI-GSR et. al, Nevada Supreme Court Opinion No. 70498, dated February 26, 2018.

23. The first Receiver appointed in this action, James Proctor, had to be removed as receiver from this case because the Plaintiffs had learned that Defendants offered him a position of employment with the Grand Sierra Resort.

24. At all times relevant hereto, the Honorable Elliot Sattler was the District Court Judge in Department 10 presiding over this case.

25. The Court still needs to rule on a pending motion concerning punitive damages filed by the Plaintiffs, and if granted, the Court will need to hold a hearing concerning a potential punitive damages award which could be a multiple of the existing $8,000,000 (EIGHT MILLION DOLLAR) compensatory award of damages.

26. Despite being the highest rated general jurisdiction judge according to the Washoe County Bar Association Judicial Survey, the Honorable Elliot Sattler was the only general jurisdiction Washoe County District Court Judge to draw an opponent during the 2020 election. (See, Washoe County Bar Association Judicial Survey 2020 Results, attached hereto as Exhibit 1, obtained from https://www.wcbar.org/wp-content/uploads/2020/09/WCBA-Summary_8-24-20.pdf.)

27. Kathleen Sigurdson, Esq. filed for judicial candidacy against the Honorable Elliot Sattler on January 17, 2020.

28. An article was published in the Nevada Independent titled Is Justice for Sale in Washoe County? which indicates that multiple legal professionals in Washoe County were promised a "fully funded" campaign if they would run against the Honorable Elliot Sattler in the 2020 election. (See, article attached hereto as Exhibit 2 entitled "Is Justice for Sale in Washoe County?" obtained from https://thenevadaindependent.com/article/is-justice-for-sale-in-washoe-county.)

29. NRS 294A.100 provides that no person shall make or commit to make a contribution to a candidate for any state office in an amount which exceeds $10,000.

30. It has been reported that on January 31, 2020, the Grand Sierra Resort ("GSR"), made the $10,000 maximum contribution to Ms. Sigurdson's campaign. (See, 2020 Contributions and Expenses Report #1, attached hereto as Exhibit 3.)

31. The GSR does not appear to be a frequent contributor to political campaigns. The Nevada Secretary of State's website reports that the GSR has contributed to Nevada political campaigns on only four occasions: (1) on July 20, 2016, the GSR contributed $1,000 to Amber Joiner in her campaign for State Assembly, District 24; (2) on December 27, 2017, the GSR contributed $5,000 to Jason Frierson in his campaign for State Assembly, District 8; (3) on December 11, 2018, the GSR contributed $1,528.00 to Bonnie Weber in her campaign for Reno City Council, Ward 4; and (4) on January 31, 2020, the GSR contributed $10,000 to Kathleen Sigurdson in her campaign for District Court Judge, Department 10. (See, Exhibit 4.)

32. The GSR's $10,000 donation was not the only donation made from an Alex Meruelo entity to Kathleen Sigurdson's campaign in an effort to unseat Judge Sattler.

33. In fact, eleven (11) Meruelo-owned and/or controlled companies, nine (9) of which are based in California and share the same address as the Meruelo Group, each made the $10,000 maximum contribution to Ms. Sigurdson's campaign for Washoe County District Court Judge:

(1) SLS Las Vegas (Sahara);

(2) Grand Sierra Resort;

(3) Meruelo Media Holdings;

(4) KLOS Radio, LLC;

(5) KPWR Radio, LLC;

(6) KDAY Radio, LLC;

(7) Herman Weissker, Inc.;

(8) Cantamar Property Management, Inc.;

(9) Herman Weissker Power, Inc.;

(10) One Call Construction Services; and

(11) Doty Bros Equipment Co.

(Collectively, "Meruelo-owned entities"). (See, 2020 Contributions & Expenses Reports #1 and #3, attached hereto as Exhibits 3 and 5.)

34. The SLS Las Vegas, otherwise known as the Sahara, was purchased by the Meruelo Group in June 2017. SB Gaming, LLC, is a Nevada limited liability company managed by Alex Meruelo. See, Exhibit 6. The dba for SB Gaming, LLC, is Sahara Las Vegas. See, Exhibit 7. On February 21, 2020, the Sahara contributed $10,000 to Ms. Sigurdson's campaign. See, Exhibit 3.

35. Alex Meruelo owns the Meruelo Group, which has its corporate office at 9550 Firestone Blvd., Suite 105, Downey, CA 90241. See, Exhibit 8.

36. KLOS Radio, LLC's Statement of Information filed with the California Secretary of State on May 16, 2019, lists Meruelo Media, LLC as its Member or Manager and lists the

mailing address of the business as 9550 Firestone Blvd., Suite 105, Downey, California 90241. See, Exhibit 9. KLOS Radio, LLC contributed $10,000 to Ms. Sigurdson's campaign. See, Exhibit 5.

37. KPWR Radio, LLC's Statement of Information filed with the California Secretary of State on May 30, 2017, lists Meruelo Media, LLC as its Member or Manager and lists the physical address of the business at 9550 Firestone Blvd., Suite 105, Downey, California 90241. See, Exhibit 10. KPWR Radio, LLC contributed $10,000 to Ms. Sigurdson's campaign. See, Exhibit 5.

38. KDAY Radio, LLC's Statement of Information filed with the California Secretary of State on March 12, 2020, lists Meruelo Media, LLC as its Member or Manager and lists the mailing address for the business as 9550 Firestone Blvd., Suite 105, Downey, California 90241. See, Exhibit 11. KDAY Radio, LLC contributed $10,000 to Ms. Sigurdson's campaign. See, Exhibit 5.

39. Herman Weissker, Inc.'s Statement of Information filed with the California Secretary of State on April 3, 2020, lists Alex Meruelo as the Director and lists the mailing address for the business as 9550 Firestone Blvd., Suite 105, Downey, California 90241. See, Exhibit 12. Herman Weissker, Inc. contributed $10,000 to Ms. Sigurdson's campaign. See, Exhibit 5.

40. Cantamar Property Management, Inc.'s Statement of Information filed with the California Secretary of State on December 16, 2004, lists Alex Meruelo as its Chief Executive Officer, Secretary, Chief Financial Officer, and Director. The mailing address for the business is also listed as 9550 Firestone Blvd., Suite 105, Downey, California 90241. See, Exhibit 13. Cantamar Property Management, Inc. contributed $10,000 to Ms. Sigurdson's campaign. See, Exhibit 5.

41. Herman Weissker Power, Inc.'s Statement of Information filed with the California Secretary of State on August 31, 2020, lists Alex Meruelo as the Director and lists the mailing address for the business as 9550 Firestone Blvd., Suite 105, Downey, California 90241. See,

Exhibit 14. Herman Weissker Power, Inc. contributed $10,000 to Ms. Sigurdson's campaign. See, Exhibit 5.

42. One Call Construction Services Inc.'s Statement of Information filed with the California Secretary of State on August 31, 2020, lists Alex Meruelo as a Director and lists the mailing address for the business as 9550 Firestone Blvd., Suite 105, Downey, California 90241. See, Exhibit 15. One Call Construction Services Inc. contributed $10,000 to Ms. Sigurdson's campaign. See, Exhibit 5.

43. Doty Bros. Equipment Co.'s Statement of Information filed with the California Secretary of State on August 31, 2020, lists Alex Meruelo as its Director and lists the mailing address for the business as 9550 Firestone Blvd., Suite 105, Downey, California 90241. See, Exhibit 16. Doty Bros. Equipment Co. contributed $10,000 to Ms. Sigurdson's campaign. See, Exhibit 5.

44. In total, the above-referenced Meruelo-owned entities contributed $110,000 to Ms. Sigurdson's campaign, which raised $120,985.00 at the time of the subject reporting. Thus, Meruelo-owned entities are reported to have contributed about 91% of Ms. Sigurdson's campaign proceeds.

45. The GSR Property prominently displayed numerous signs promoting Kathleen Sigurdson prior to the election. See, Exhibit 17.

46. Meruelo-owned entities appear to have devised a scheme to use separate business entities as conduits to funnel approximately $110,000 to Ms. Sigurdson's campaign. This scheme allowed the Meruelo-owned entities to make combined contributions at more than ten times what a single individual can donate to a campaign under NRS 294A.100.[1]

47. In addition, I have been informed that Kathleen Sigurdson attended one or more meetings with Alex Meruelo at the Grand Sierra Resort in furtherance of her campaign to unseat Judge Sattler.

[1]AG Opinion No. 94-17 provides that "[a] business entity may give the maximum campaign contribution allowed by statute irrespective of its relationship to other business organizations."

48. The election results were certified by Washoe County, and Ms. Sigurdson ultimately unseated the Honorable Elliot Sattler, who was the presiding judge over this matter for the past eight (8) years.

49. On November 16, 2020, the Reno Gazette Journal published an article about the 2020 local election results, which included discussion of the "several sizable donations" Alex Meruelo made to Ms. Sigurdson's campaign. See, Exhibit 18.

50. The Honorable Elliot Sattler's term expires on December 31, 2020, after which Ms. Sigurdson will take the bench in that department.

51. The extraordinary campaign contributions made by Meruelo-owned entities were made at a time when Defendants had a vested stake in the outcome of this case. See, Caperton, 129 S.Ct. at 2256. At all times relevant hereto, Plaintiffs' Motion for Punitive Damages remained pending.

52. The hearing for punitive damages in this matter has recently been set for January 20, 2021, after Kathleen Sigurdson will be sworn into the department presiding over this case.

53. "Just as no man is allowed to be a judge in his own cause, similar fears of bias can arise when—without the other parties' consent—a man chooses the judge in his own cause. And applying this principle to the judicial election process, there [is] a serious, objective risk of actual bias that require[s] [] recusal." Id. at 556 U.S. at 886, 129 S.Ct. at 2265.

54. The risk that Defendants' influence engenders actual bias is sufficiently substantial, and it "must be forbidden if the guarantee of due process is to be adequately implemented." See, Caperton, 129 S.Ct. at 2255.

55. The probability of actual bias on the part of the newly-elected judge is "too high to be constitutionally tolerable", and as such, this case should be transferred to a different department. See, Caperton, 556 U.S. at 876, 129 S.Ct. at 2259.

56. I hereby certify that this affidavit is filed in good faith and not interposed for delay.

I declare under penalty of perjury, upon personal knowledge, that the foregoing is true and correct.

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.

Executed this 28th day of December, 2020, at Reno, Nevada.

Jarrad C. Miller, Esq.

Subscribed and sworn to before
me by Jarrad C. Miller, Esq.
this 28th day of December, 2020.

Notary Public

STEFANIE ELICE SMITH
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 17-3258-2 - Expires August 7, 2021

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of 18, and not a party within this action. I further certify that on the 28th day of December, 2020, I electronically filed the foregoing **AFFIDAVIT OF BIAS OR PREJUDICE CONCERNING KATHLEEN SIGURDSON, ESQ. PURSUANT TO NRS 1.235** with the Clerk of the Court by using the ECF system which served the following parties electronically:

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/s/ Stefanie E. Smith
An Employee of Robertson, Johnson, Miller & Williamson

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SUPREME COURT OF THE STATE OF NEVADA
ADMINISTRATIVE OFFICE OF THE COURTS

IN THE MATTER OF THE ASSIGNMENT OF A SENIOR JUDGE

Order No. 21-00267

MEMORANDUM OF TEMPORARY ASSIGNMENT

WHEREAS all district judges in the Second Judicial District have recused themselves from hearing any and all matters in *Albert Thomas, individually; et al., 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 Non Profit Corporation; Gage Village Commercial Development, LLC, a Nevada Limited Liability Company; and Does I – X, inclusive,* Case Number CV12-02222, now therefore,

IT IS HEREBY ORDERED that the Honorable Nancy M. Saitta, Senior Justice, is assigned to hear any and all matters in *Albert Thomas, individually; et al., 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 Non Profit Corporation; Gage Village Commercial Development, LLC, a Nevada Limited Liability Company; and Does I – X, inclusive,* Case Number CV12-02222, and she shall have authority to sign any orders arising out of this assignment. The Court shall notify

the parties of the assignment and provide Nancy M. Saitta, Senior Justice with any assistance as requested.

Entered this 19 day of February 2021.

NEVADA SUPREME COURT

By: Parraguirre, Justice

Copy: The Honorable Nancy M. Saitta, Senior Justice
The Honorable Scott Freeman, Chief Judge, Second Judicial District Court
Jackie Bryant, Court Administrator, Second Judicial District Court

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al*., Plaintiffs, 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 DOE DEFENDANTS 1 THROUGH 10, inclusive, Defendants.	Case No. CV12-02222 Dept. No. OJ37

APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Albert Thomas *et al*., by and through their counsel of record, the law firms of Robertson, Johnson, Miller & Williamson, and Lemons, Grundy & Eisenberg, hereby submit this Application for Temporary Restraining Order, and Motion for Preliminary Injunction ("Application"). This Application is supported by the attached memorandum of points and authorities, and the entire record of this case.

RESPECTFULLY SUBMITTED this 1st day of March, 2022.

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

By: */s/ Jonathan Joel Tew*
Jarrad C. Miller, Esq.
Jonathan J. Tew, Esq.
Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

No situation cries out for a temporary restraining order and injunction more than this one. As a result of the Defendants' nefarious actions which include blatant fraud, this Court has appointed a receiver to implement compliance with the Governing Documents and preserve the Plaintiffs' property during the pendency of this litigation. Further, the Court has ordered that the Defendants shall not do "**any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Property or the interest of the Plaintiffs in the Property**." (January 15, 2015 Order at 8:2-11 (emphasis supplied).) Despite ***knowing*** that their conduct will irreparably harm the Plaintiffs and violate the Court's Orders, the Defendants have noticed a meeting for March 14, 2022 to hold a vote on whether the GSRUOA should be dissolved, and by consequence, terminate the Receivership. Worse the vote – which the Defendants' have a supermajority over – will direct the sale of Plaintiffs' units which will be purchased by the Defendant entities controlled by Alex Meruelo ("Alex"), the principal owner of the Defendant entities.

Unfortunately, the plan to terminate the GSRUOA and sell Plaintiffs' units is yet another flagrant indication to this Court that its orders mean nothing to the Defendants and that they hold no respect for Nevada law or the judicial process – the same pattern that has now continued for a

decade. The Defendants are rogue actors that have be caught red-handed committing literally thousands of separate acts of blatant fraud by renting Plaintiff owned units and not reporting and/or under reporting the revenue—**simple disgraceful theft**. (*See* October 9, 2015 Findings of Fact, Conclusion of Law and Judgment ("FFCLJ") at 15:3-4 and 21:24-22:6.)

The Court should enter an immediate, temporary restraining order and hold a hearing on whether an injunction should issue. Given the intent of the Defendants to dissolve the GSRUOA **and sell the Plaintiffs' units, this irreparable harm warrants an immediate restraining order**. The Defendants cannot simply take the property of the Plaintiffs through a unilaterally imposed sale to entities with the same common ownership and control as the Defendants. Such a result would give no meaning to the Court's orders and the FFCLJ. Since the Plaintiffs' property interests are unique, and there is no other remedy to stop the Defendants' rogue actions, a TRO and injunction stopping the Defendants and the GSRUOA from violating the Court's orders without authority and selling the Plaintiffs' property should issue as soon as possible.

II. FACTS

On January 7, 2015 the Court issued the Order Appointing Receiver and Directing Defendants' Compliance ("Receiver Order"). Thereunder, "[t]he Receiver is appointed for the purpose of implementing compliance, among all condominium units, including units owned by any Defendant in this action (collectively, "the Property"), with the Covenants Codes and Restrictions recorded against the condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements ("Governing Documents"). (*Id.* at 1:27 to 2:3.) The Receiver Order further dictates that the Defendants shall not do "**any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Property or the interest of the Plaintiffs in the Property**." (*Id.* at 8:2-11 (emphasis supplied).)

The October 9, 2015 FFCLJ further dictates that "[t]he receiver will remain in place with his current authority **until this Court rules otherwise** . . .." (*Id.* at 22:22 (emphasis supplied).) The FFCLJ states that the Defendants "intend to purchase the devalued units at nominal, distressed prices when Individual Unit Owners decide to, or are effectively forced to, sell their units . . .." (*Id.* at 15:10-13.) The FFCLJ further states that: "The Court concludes that

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[Defendants] have operated the Unit Owner's Association in a way inconsistent with the best interests of all of the unit owners. The continued management of the Unit Owner's Association by the receiver is appropriate under the circumstances of this case and will remain in effect absent additional direction from the Court." (*Id.* at 16:9-15.) The Court determined to be fact that there is one voting member for each unit of ownership under the CC&Rs and that because Defendants control more units of ownership than any other owner, other owners effectively have no control or input of the GSRUOA. (*Id.* at 11:24 to 12:8.) Defendants as a matter of fact "have used, and continue to use, their control over the Unit Owners' Association to advance the . . . [Defendants'] economic objectives to the detriment of the Individual Unit Owners." (*Id.* at 12:9-11.)

On or about February 28, 2022 numerous Plaintiffs received via U.S. mail the attached Agreement to Terminate Condominium Hotel, Condominium Hotel Association, and Declaration of Covenants, Conditions, Restrictions and Reservation of Easements ("Agreement to Terminate"); Agreement for Sale of Condominium Hotel Interests ("Agreement for Sale"); and Meeting of the Members ("Meeting Notice"). (*See* Exhibits 1, 2 and 3.)

The Meeting Notice states that "[t]he purpose is to vote on the proposed Termination and Sale of the Property . . . ." (*Id.* at 1.) The Meeting is set for March 14, 2022. (*Id.* at 1, ¶ 1.) Under New Business, the Meeting Notice states that "[i]f the hotel unit owner and at least eighty percent (80%) of the owners entitled to vote (whether in person or by proxy), vote yes, the condominium hotel shall be terminated." (*Id.* at 1 § 3(a).) Further, "[i]f the hotel unit owner and at least eighty percent (80%) of the owners entitled to vote (whether in person or by proxy), vote yes, the Declaration shall be terminated." (*Id.* at 1 § 3(b).) Further, "[i]f the hotel unit owner and at least eighty percent (80%) of the owners entitled to vote (whether in person or by proxy), vote yes, the sale is approved. Upon the sale of the units, the Association will be terminated . . . ." (*Id.* at 1 § 3(c).)

Under the Agreement for Sale, the condominium units would be sold to Summit Units Acquisition LLC. (*Id.* at 1.) Summit Unit Acquisitions LLC is apparently owned and control by Alex - the principal owner of the Defendant entities in this action. (*See* Exhibit 4.) Thus, the

Defendants' actions as demonstrated by the Agreement to Terminate, Agreement for Sale and Meeting Notice seek to violate the FFCLJ and the Receiver Order by selling the Plaintiffs' property and terminating the Unit Owners' Association.

III. LEGAL ARGUMENT

A. Issuance of a Temporary Restraining Order Against Defendants is Necessary

This Court is constitutionally empowered to issue injunctive relief. Nev. Const. Art 6, Sec. 6. The decision to issue this equitable remedy is within the Court's sound discretion. *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 780, 587 P.2d 1329 (1978). Under the facts of this case, the Court should award immediate injunctive relief.

This Court may enter an *ex parte* temporary restraining order ("TRO") without written or oral notice to the adverse party where:

> (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
> (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

NRCP 65(b)(1). In every TRO granted without notice, the Court shall file it with the Clerk's Office, indicate the date and hour of issuance, define the irreparable injury, and state why the order was granted without notice. *Id*. Any TRO granted without notice must expire by its terms in 14 days, unless the Court extends the TRO for good cause, or unless the enjoined party consents to an extension. *Id.* When a TRO is granted without notice, the motion for a preliminary injunction shall be set for hearing at the earliest possible time and take precedence over all matters except older matters of the same character. *Id.*

"[R]eal property and its attributes are considered unique and loss of real property rights generally results in irreparable harm." *Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987). While temporary restraining orders are extraordinary remedies, they should be granted upon such terms as are just and when the circumstances justify them. This case unquestionably justifies a temporary restraining order to stop the sale of the Plaintiffs real property, condominium units.

Here, the Plaintiffs will suffer irreparable injury, loss, or damage of the Plaintiff owned real property, condominium units.

B. Issuance of a Preliminary Injunction Against Defendants is Warranted

"A preliminary injunction is available if an applicant can show a likelihood of success on the merits," and that the nonmoving party's conduct, should it continue, "will cause irreparable harm for which compensatory damage is an inadequate remedy." *Dangberg Holdings v. Douglas Co.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999) (citing *Pickett v. Comanche Construction, Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992)). Injunctive relief is an extraordinary remedy, and the irreparable harm must be articulated in specific terms by the issuing order or be readily apparent elsewhere in the record. *Id.* at 144, 978 P.2d at 320.

The standard guiding the District Court in the exercise of its discretion can be found in NRS 33.010. *See id.* at 142, 978 P.2d at 319. Under the statute, an injunction may be granted in any one of the following cases:

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

NRS 33.010; *accord* Nev. Const. art. 6, § 6 (granting district courts power to issue injunctions). Even though SSM need only satisfy one of these circumstances, it can satisfy all three.

1. *An Injunction Under NRS 33.010(1)*

"When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually" then it is appropriate to issue an injunction. NRS 33.010(1). Thus, the two elements are (a) it shall appear by the complaint that

the plaintiff is entitled to the relief demanded, and (b) the requested relief involves restraining the commission or continuance of the complained acts.

Plaintiffs already prevailed on their cause of action for a Receiver given the Defendants' attempts to usurp Plaintiffs' property, so the Plaintiffs automatically prevail here and an injunction must be issued. (*See* FFCLJ and Receiver Order.)

2. *An Injunction Under NRS 33.010(2)*

An injunction may also be issued "[w]hen it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff." NRS 33.010(2).

As noted above, many of the Defendants' actions are causing Plaintiffs irreparable harm and the Defendants' recent actions aim to do worse. (*See* FFCLJ, Receiver Order and Exhibits 1, 2 and 3; s*ee also Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987) (holding that "real property and its attributes are considered unique and loss of real property rights generally results in irreparable harm"); *Sobol v. Capital Mgmt. Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986) (determining that "acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury and thus authorize issuance of an injunction").

Therefore, Plaintiffs are also entitled to an injunction under NRS 33.010(2).

3. *An Injunction Under NRS 33.010(3)*

An injunction should be issued "[w]hen it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual." NRS 33.010(3).

The Defendants are actively and willfully violating this Court's January 4, 2022 Orders, the FFCLJ, and the Receivership Order. They are therefore violating the Plaintiffs' rights and the Receiver's rights. The Court should therefore issue an injunction and sanction the Defendants with an enormous monetary sanction since they are already in default and subject to case-terminating sanctions.

4. *Plaintiffs are Suffering Irreparable Harm Without Adequate Remedy at Law*

The Nevada Supreme Court recognizes that "real property and its attributes are considered unique and loss of real property rights generally results in irreparable harm," *Dixon*, 103 Nev. at 416, 742 P.2d at 1030, and further that "acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury and thus authorize issuance of an injunction." *Sobol*, 102 Nev. at 446, 726 P.2d at 337. Notably, the Court should issue an injunction if injunctive relief is "far superior" to an inadequate legal remedy. *Nev. Escrow Serv. v. Crockett*, 91 Nev. 201, 203, 533 P.2d 471, 472 (1975). Finally, injunctive relief is appropriate even when the adequacy of a legal remedy is unclear. *Ripps v. Las Vegas*, 72 Nev. 135, 139, 297 P.2d 258, 259 (1956). There can be no doubt that destroying the GSRUOA and selling Plaintiffs' real property require injunctive relief.

In sum, given the allegations in the Complaint which have been established as true, the Defendants' violation of the Court's Receiver Order, the FFCLJ, and the Court's January 4, 2022 Orders, an injunction must issue. ***The Court Need Not Weigh the Relative Hardships based on Defendants' Ongoing and Improper Conduct***

The equitable principle of relative hardship is only available to innocent parties who proceed without knowledge or warning that they are acting contrary to others' rights; it does not apply to defendants who have knowledge or warning that they are acting improperly. *Gladstone v. Gregory*, 95 Nev. 474, 480, 596 P.2d 491, 495 (1979

Here, the Court need not weigh the relative hardships of the parties should an injunction issue because Defendants have acted with full knowledge of their wrongful actions and violation of Court orders.

But, even if the Court were to consider the relative hardships on the parties, the relative hardships and interests clearly weigh heavily in favor of Plaintiffs and the granting of an injunction. *See Ottenheimer v. Real Estate Division*, 91 Nev. 338, 342, 535 P.2d 1284, 1285-86 (1975) (holding that the district court should have granted injunctive relief because "maintaining

the status quo pending final judgment will impose small burden on the [adverse party]"). The relative interests of the parties in this case also weigh heavily in favor of granting an injunction.

Defendants will not suffer any harm because as the Court-appointed receiver is charged with operating the units under the Governing Documents. (Receiver Order at 1:27 to 2:3.)

Indeed, the only hardships to consider are those that Plaintiffs will continue to suffer if Defendants are allowed to move forward with their inappropriate and contemptuous misconduct.

And those hardships are imminent.

5. *The Court Should Require a Nominal Bond*

NRCP 65(c) requires the posting of security as a prerequisite to granting a preliminary injunction "in such sum as the court deems proper." "Despite the seemingly mandatory language, Rule 65(c) invests the district court with discretion as to the amount of security required, if any." *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (citations omitted).

The Court may waive the bond or order a nominal bond amount where, as here, the balance of hardships overwhelmingly favors the party seeking the injunction, *e.g., Elliott v. Kiesewetter*, 98 F.3d 47, 60 (3d Cir. 1996), where there is a particularly strong likelihood that the moving party will prevail on the merits, *e.g.*, *Ticketmaster L.L.C. v. RMG Techs., Inc.*, 507 F. Supp. 2d 1096, 1116 (C.D. Cal. 2007), or where the enjoined party will suffer only minimal injury. *See, e.g., id.; Behymer-Smith v. Coral Acad. of Sci.*, 427 F. Supp. 2d 969, 974 (D. Nev. 2006) (requiring a $100 bond). All three of these factors support a nominal bond here – if any.

In any event, the hardships and merits analyses greatly favor Plaintiffs, thus warranting a nominal bond. Moreover, "the purpose underlying the bond requirement is to protect those enjoined from damages associated with the wrongful issuance of injunctions . . . ." *Dangberg Holdings Nev., LLC v. Douglas County*, 115 Nev. 129, 145, 978 P.2d 311, 321 (1999). In this case, there is little threat that an injunction will unreasonably harm or otherwise damage Defendants, monetarily or otherwise.

IV. CONCLUSION

For all of the above reasons, the Court should issue the proposed Temporary Restraining Order attached as Exhibit 5, and set an expedited briefing schedule for a hearing on the preliminary injunction.

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 1st day of March, 2022.

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

By: */s/ Jonathan Joel Tew*
Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
jarrad@nvlawyers.com
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of 18, and not a party within this action. I further certify that on the 1st day of March, 2022, I electronically filed the foregoing **APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of the Court by using the ECF system which served the following parties electronically:

Daniel F. Polsenberg, Esq.
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Index of Exhibits

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3	Meeting of the Members	4
4	Nevada Secretary of State business information for Summit Units Acquisition LLC and Meruelo Investment Partners LLC	4
5	Affidavit of Jarrad C. Miller, Esq.	3
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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 the Administrative Order No. 21-00267 filed on September 19, 2022, the undersigned has been assigned responsibility for this ongoing matter. Given the long history and numerous outstanding motions, it is of assistance to the undersigned for the parties to provide a joint status report prior to any hearings being scheduled. The report should include all relevant history necessary for the undersigned to determine an appropriate course of action for final resolution of this matter. Joint status report to be filed within ten (10) days.

Dated this 29th day September, 2022.

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 29th day of September, 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.

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G. DAVID ROBERTSON, ESQ.

ROBERT EISENBERG, ESQ.

JENNIFER HOSTETLER, ESQ.

Holly W. Lange

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, exhibits, declarations,[1] transcripts and related documents and being fully informed rules on the APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND MOTION FOR PRELIMINARY INJUNCTION ("the Injunctive Relief Motion") related to a meeting noticed by Defendants for March 14, 2022 to hold a vote on whether the Grand Sierra Resort Unit Owners Association ("GSRUOA") should be dissolved.

The Court makes the following factual findings:

[1] The declarations considered include those filed on Match 28, 2022 after the March 25, 2022 hearing.

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

> ...The meeting is scheduled for next Monday. I don't know how long it will take for the order to be prepared, reviewed by Mr. McElhinney, sent to you for a signing and everything, but I just want to make sure I understand that ***the meeting next Monday is off.***
> THE COURT: That is correct, by virtue of court order. Yes.

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

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

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

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

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

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

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

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

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

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

Section 9.1 of the 7th Amended CC&Rs sets forth both a right and obligation of the unit owners that has been a part of their Deed and Title to their Units since the date they purchased their units. Defendants and its privies are currently the owner of over 80% of the units of GSRUOA.

The notice of the unit owners meeting at issue in these injunctive relief proceedings is Exhibit 3 to the Injunctive Relief Motion. That notice complies with NRS 116 and Section 9.1 of the 7th Amended CC&Rs.

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

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

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

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

> Defendants, and their agents, servants and employees, and those acting in concert with them, shall not engage in or perform directly or indirectly, any or all of the following acts: a. Interfering with the Receiver, directly or indirectly, in the management and operation of the 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

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

[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.

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

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

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

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

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

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

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

NRS 116.2118[4] governs the termination of a common-interest community.

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[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 sale.

[4] That statute provides:

1. Except in the case of a taking of all the units by eminent domain, in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, or in the circumstances described in NRS 116.2124, a common-interest community may be terminated only by agreement of units' owners to whom at least 80 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

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

NRS 116.2118(2), provides that an agreement to terminate the common interest community 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 unit owners.

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

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

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

3. In the case of a condominium or planned community containing only units having horizontal boundaries described 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.

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 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.

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 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 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 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 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 assessments and other obligations imposed on units' owners by this chapter or the declaration.

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 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 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.

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.

NRS 116.21185 provides for resolution of value of interests following termination.[5] Plaintiffs have alleged that the appraisal done at the request of Defendants was not done by the GSRUOA. The Court agrees. As a result, the Court will permit unit owners to contest the appraisals and present their own appraisals setting forth their claimed fair market value.

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

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

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[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:

1. Except as otherwise provided in subsection 2, the respective interests of units' owners are the fair market values of their units, allocated interests, and any limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers must be 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.

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:

(a) In a condominium, their respective interests in the common elements immediately before the termination;
(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..

[6] Those include:

Plaintiffs' 04/25/22 Motion for Order to Show Cause (Defendants' contempt for violations of Court's orders, including 01/04/22 orders)
Plaintiffs' 03/02/22 Motion for Order to Show Cause (Defendants' contempt for violations of Court's orders, including 01/04/22 orders)
Plaintiffs' 02/01/22 Motion for Order to Show Cause (Defendants' contempt for violations of Court's orders, including 01/04/22 orders)
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.

The Court makes the following legal conclusions:

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

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

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

Therefore, the Court issues the following Orders:

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

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

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

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

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

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

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

Dated this 5th day December, 2022.

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 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.

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G. DAVID ROBERTSON, ESQ.

ROBERT EISENBERG, ESQ.

JENNIFER HOSTETLER, ESQ.

Holly W. Lange

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.

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

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

The economic loss doctrine does not apply to limit Plaintiffs' recovery for intentional torts.[4]

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

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

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

[3] Regardless of what an earlier Judge called the proceeding, the March 2015 evidentiary hearing was a bench trial. The 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).

The Nevada Legislature has limited the recovery of punitive damages in NRS 42.005.[5]

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

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

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

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

---

[5] That statute provides in pertinent part:

1. Except as otherwise provided in NRS 42.007, in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of 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

* * *

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…

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

> 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?
> A. I authorized the front desk to use non-rental units due to demand, consumer demand.
> Q. And when you authorized the front desk in was it July of 2011 –
> A. Yes.
> 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?

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

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

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

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

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

> Damages awarded for underpaid revenues $442,591.83 fall within the conversion claim[7] and intentional misrepresentation/fraud[8];

A. No.
Q. Why?
A. I didn't have authorization to rent them.
Q. So it was a conscious decision to rent them without authorization?
A. Yes.

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

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

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

Damages awarded for the rental of units of owners who had no rental agreements $4,152,669.13 falls within the conversion claim[9] and intentional misrepresentation/fraud[10]; The award of punitive damages on these claims would not act as a double recovery for Plaintiffs. The Court finds that the remaining damages awarded in the October 9, 2015 Order are based on contract claims rather than tort claims and not appropriate for consideration of punitive damages. Given Defendants' tortious scheme and the intentional misconduct of Defendants, punitive damages in this case are appropriate to set an example.

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

While the Court recognizes that there is a spectrum of percentages which have been awarded in various Nevada punitive damages cases, given the nature of the conduct and procedural history of this case, the Court concludes the appropriate multiplier in this matter is two (2) times the compensatory award for the conversion claim and intentional misrepresentation/fraud claim. Accordingly based on the compensatory damages for which punitive damages are appropriate totaling $4,595,260.96 the Court awards punitive damages in the total amount of $9,190,521.92 Plaintiffs counsel is directed to submit a final judgment consistent with the October 9, 2015 Order and this Order.

Dated this 17th day of January 2023.

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

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

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

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

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 17th 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.

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.

Holly W. Lange

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
Facsimile: 702.214.2101

Abran Vigil, Esq., Bar No. 7548
abran.vigil@meruelogroup.com
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

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 individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ, individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, 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

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

(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 ME1-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;

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

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

7. Against ME1-GSR in the amount of $1,706,798.04 for improperly calculated and assessed contracted hotel fees;

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

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

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.**

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

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 2nd day of February, 2023

THE HONORABLE ELIZABETH G. GONZALEZ (RET.)

Respectfully submitted by:

PISANELLI BICE PLLC

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

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

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

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Alicia L. Lerud
Clerk of the Court
Transaction # 9497069

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al., 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).	Case No. CV12-02222 Dept. No.: 10

ORDER APPROVING PARTIES STIPULATION

The Court having received and reviewed the Stipulation signed by attorneys for Plaintiffs and Defendants and Exhibit 1 attached thereto and the same having been filed with the Court on February 6, 2023, ("Stipulation") and good cause appearing,

IT IS ORDERED that the Receiver shall execute the "certification" of the Agreement to Terminate, a true and correct copy of which is attached to the Stipulation as Exhibit 1.

Dated this 7 day of February, 2023.

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

Submitted by:

ABRAN VIGIL, ESQ.
Nevada Bar No. 7548
ANN HALL, ESQ.
Nevada Bar No. 5447
DAVID C. MCELHINNEY, ESQ.
Nevada Bar No. 0033
MERUELO GROUP, LLC
Attorneys for Defendants
MEI-GSR Holdings, LLC,
AM-GSR Holdings, LLC, and
GAGE VILLAGE
COMMERCIAL
DEVELOPMENT, LLC

INDEX OF EXHIBITS

1. February 6, 2023 Signed and Filed Stipulation…….. 6-24 pp.

Exhibit 1

3795
ABRAN VIGIL, ESQ.
Nevada Bar No. 7548
ANN HALL, ESQ.
Nevada Bar No. 5447
DAVID C. MCELHINNEY, ESQ.
Nevada Bar No. 0033
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Attorneys for Defendants MEI-GSR Holdings, LLC, AM-GSR Holdings, LLC, and GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al., 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).	Case No. CV12-02222 Dept. No.: 10

STIPULATION

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs ALBERT THOMAS, et al., by and through their counsel JARRAD MILLER, ESQ. and Defendants MEI-GSR Holdings, LLC; AM-GSR Holdings, LLC.; and GAGE VILLAGE COMMERCIAL

DEVELOPMENT, LLC; that the attached Agreement to Terminate has been approved by the parties as compliant with the Court order of January 26, 2023 (filed at 11:06 a.m.) The parties allow the Receiver to execute the "certification" of the Agreement to Terminate in accordance with Court Order.

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.

IT IS SO STIPULATED.

By: /s/ David McElhinney, Esq.

6th February of ~~January,~~ 2023.

David McElhinney
2500 East Second Street
Reno, NV 89595
Attorney for Defendants

By: _____

2nd Feb. of ~~January~~, 2023.

Jarrad Miller
Robertson, Johnson, Miller and Williamson
50 W. Liberty Street Suite 600
Reno, NV 89501
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am employed in County of Clark, State of Nevada and, on this date, February 6, 2023 I deposited for mailing with the United States Postal Service, and served by electronic mail, a true copy of the attached document addressed to:

G. David Robertson, Esq., SBN 1001
Jarrad C. Miller, Esq., SBN 7093
Briana N. Collings, Esq. SBN 14694
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Tel: (775) 329-5600
jarrad@nvlawyers.com
briana@nvlawyers.com
Attorneys for Plaintiffs

F. DeArmond Sharp, Esq., SBN 780
Stefanie T. Sharp, Esq. SBN 8661
ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503
Tel: (775) 329-3151
Tel: (775) 329-7169
dsharp@rssblaw.com
ssharp@rssblaw.com
Attorneys for the Receiver
Richard M. Teichner

Robert L. Eisenberg, Esq. SBN 0950
LEMONS, GRUNDY, & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Attorney for Plaintiffs

Jordan T. Smith, Esq.
Pisanelli Bice PLLC
400 South 7th Street, Suite 300
Las Vegas, NV 89101

Further, I certify that on the February 6, 2023, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filings to all persons registered to receive electronic service via the Court's electronic filing and service system.

DATED this February 6, 2023

Iliana Godoy

INDEX OF EXHIBITS

1. Agreement to Terminate Condominium Hotel, Condominium Hotel Association, and Declaration of Covenants, Conditions, Restrictions and Reservation of Easements.. 6-17 pp.

Exhibit 1

APNS: 012-211-24; 012-211-28; 012-211-36;
012-491-01; 012-491-02; 012-491-04;
012-491-05; 012-491-08; 012-491-12;
012-491-13; 012-492-01 through 012-492-06;
012-492-08; 012-492-08; 012-492-14 through
012-492-16; 012-492-18; 012-493-01; 012-493-02;
012-493-04 through 012-493-06

When recorded please mail to:
Grand Sierra Resort Unit Owners Association
c/o Associa Sierra North
10509 Professional Circle #200
Reno, NV 89521

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

AGREEMENT TO TERMINATE CONDOMINIUM HOTEL, CONDOMINIUM HOTEL ASSOCIATION, AND DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS

Condominium Hotel	:	Hotel-Condominiums At Grand Sierra Resort
Association	:	Grand Sierra Resort Unit – Owner's Association
Declaration	:	Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Hotel-Condominiums at Grand Sierra Resort recorded December 15, 2006 as Document No. 3475705, Official records Washoe County, Nevada and all amendments thereto, including but not limited to the Seventh Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Easements for Hotel-Condominiums at Grand Sierra Resort recorded June 27, 2007 as Document No. 3548504 and the Ninth Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Easements for Hotel-Condominiums at Grand Sierra Resort re-recorded November 30, 2021 as Document No. 5253317.
Real Property	:	The legal description is included in Exhibit A attached hereto. This legal description is Exhibit A from the Declaration.

The undersigned Hotel Unit Owner and the owners of units at the Condominium Hotel representing at least eighty percent (80%) of the votes in the Association defined above (the "*80% Units' Owners*") hereby agree as follows:

1. Termination of Condominium Hotel. At a meeting conducted by the Association on January 18, 2023 (the "*Meeting*"), Hotel Unit Owner and 80% Units' Owners approved the termination of the Condominium Hotel. The Condominium Hotel is terminated effective upon the filing of this Agreement in the records of the Office of the County Recorder of Washoe County, State of Nevada.

2. Sale of Common Elements, Shared Components, and Units. Following termination of the Condominium Hotel, all of the common elements, shared components, and units of the Condominium Hotel shall be sold pursuant to the terms of a subsequently drafted Agreement for Sale of Condominium Hotel Interests and further Court Order from the Second Judicial District Court of the State of Nevada in and for the County of Washoe in Case No. CV12-02222 ("Receivership Action"). Pursuant to NRS 116.2118(5), approval of the yet to be drafted Agreement for Sale of Condominium Hotel Interests must take place at a meeting and receive approval from the Hotel Unit Owner and 80% of the Units' Owners and be approved by the Court in the Receivership Action.

3. Approval of Sale of Real Estate. At the Meeting, Hotel Unit Owner and 80% Units' Owners authorized the Association controlled by the Receiver appointed in the Receivership Action, on behalf of the Units' Owners, to contract for the sale of real estate owned by the Units' Owners in the Condominium Hotel. For all real estate to be sold following termination, title to that real estate, upon execution of this termination agreement, vests in the Association with the Receiver as trustees for the holders of all interests in the units. And as long as the Association hold title to the real estate, each of the Unit's Owners shall have a right of occupancy as provided in the Declaration and during that period of occupancy, each of the Units' Owners shall remain liable for all assessments, shared expenses and other obligations imposed on Units' Owners by applicable Nevada law or the Declaration.

4. Termination of Association. At the Meeting, Hotel Unit Owner and 80% of Units' Owners approved the termination of the Association. The Association defined above now has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds thereof distributed upon Court approval in the Receivership Action, the Association continues in existence with all powers it had before termination under the receivership. Upon execution of the sale documents and distribution of the proceeds and an order issued in the Receivership Action the Association will be terminated.

5. Termination of Declaration. The Declaration is terminated effective upon the filing of this Agreement in the records of the Office of the County Recorder of Washoe County, State of Nevada unless otherwise ordered by the Court in the Receivership Action, or the Association is terminated in accordance with paragraph 4 herein. A Rescission and Notice of Termination of the Declaration shall also be recorded on or before the date identified in Section 8 below.

6. Severability. If any provision of this Agreement is held to be invalid or unenforceable to any extent, the invalidity or unenforceability of that provision shall not affect any other provision of this Agreement so long as the essential terms of the transactions contemplated

by this Agreement remain enforceable or otherwise ordered in the Receivership Action. The stricken provision or part shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision or part as is legally possible so as to effect the original intent of the parties as closely as possible. If modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this Agreement, the entire Agreement is to be held unenforceable.

7. Compliance. To the extent that any provisions of this Agreement, should be deleted, modified, or amended in order to comply with the provisions of the Declaration or Nevada Revised Statutes, those provisions shall be deleted, modified, or amended accordingly in a self-executing manner to the same extent necessary to achieve compliance and achieve the essential purposes of this Agreement unless otherwise ordered in the Receivership Action. All other terms of this Agreement shall remain in full force and effect.

8. Effectiveness of Agreement. This Agreement will be void unless it is recorded on or before December 1, 2050.

9. General Provisions. This Agreement may be executed in counterparts and may be further altered by Court Order.

[End of Page – Signatures Follow]

EXECUTION

The parties executed this Agreement as of the date first written above.

HOTEL UNIT OWNER:

MEI-GSR HOLDINGS, LLC,
a Nevada limited liability company

By: _____
Alex Meruelo
Manager

80% of UNITS' OWNERS:

AM-GSR HOLDINGS LLC
a Nevada limited liability company

By: _____
Alex Meruelo
Manager

GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a California limited liability company

By: _____

Alex Meruelo
Manager

CERTIFICATION ON NEXT PAGE

Certification

The undersigned, hereby certifies, under penalty of perjury, that this Agreement to Terminate (a) was provided to its members for action and that at least eighty percent (80%) voted in favor of termination of the Association and termination of the Declaration; (b) that the affirmative action was taken by those members whose votes are recorded in the official records of the Association, and (c) that such affirmative vote conforms with the requirements found in the Declaration.

ASSOCIATION:

Grand Sierra Resort Unit-Owners Association, A Nevada Nonprofit Corporation

By: _____
Richard M. Teichner, Receiver

STATE OF NEVADA)
)
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2023, by Alex Meruelo as Manager of MEI-GSR Holdings, LLC, a Nevada limited liability company, as manager of AM-GSR HOLDINGS LLC, a Nevada limited liability company, and as manager of GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a California limited liability company

_____
Notary Public

STATE OF NEVADA)
)
COUNTY OF WASHOE)

This instrument was acknowledged before me on _____, 2023, by _____ as Receiver of Grand Sierra Resort Unit-Owners Association, a Nevada nonprofit corporation.

_____
Notary Public

EXHIBIT A

Legal Description

The land referred to herein is situated in the State of Nevada, County of, described as follows:

PARCEL 1:

All that certain lot, piece or parcel of land situated in the City of Reno, County of Washoe, State of Nevada, Section Seven (7), Township Nineteen (19) North, Range Twenty (20) East, M.D.M.:

BEGINNING at the Northwest corner of Parcel Map No. 340, recorded November 10, 1976, Official Records, Washoe County, Nevada, said POINT OF BEGINNING being further described as lying on the Southerly right of way of Glendale Avenue;

THENCE North 88°15'47" East along said Southerly right of way 347.44 feet to a found 5/8" rebar with cap, stamped "Summit Engineers RLS 4787", said point also being the Northeast corner of Parcel 1 of Parcel Map 338, recorded November 10, 1976, Official Records, Washoe County, Nevada;

THENCE South 00°06'54" East along the East line of said Parcel 1, a distance of 208.59 feet;

THENCE South 89°53'06" West, 174.30 feet;

THENCE South 00°05'54" East, 158.86 feet to the South line of said Parcel 2;

THENCE North 89°23'54" West along said South line, a distance of 174.31 feet to a found 5/8" rebar, being the Southwest corner of said Parcel 1;

THENCE North 00°05'36" East along the West line of Parcel 1, a distance of 355.44 feet to the POINT OF BEGINNING.

Said parcel is also shown as Adjusted Parcel 2 on Record of Survey No. 3004.

APN: 012-211-24.

PARCEL 1-A:

A non-exclusive easement for the right, privilege and authority

Continued on next page

for the purpose only of ingress and egress of vehicles and/or persons in, upon and over the roadway and cuts, located on the land and premises, situated in the County of Washoe, State of Nevada, described as follows:

The following describes a parcel of ground located within the South 1/2 of Section 7, Township 19 North, Range 20 East, M.D.B.&M., County of Washoe, State of Nevada, and being more particularly described as follows:

BEGINNING at the Northeast corner of Parcel B, as shown on Parcel Map No. 227, filed in the office of the Washoe County Recorder on the 26th day of February, 1976, File No. 397925; thence South 89°23'54" East, 51.51 feet;

THENCE North 89°53'06" East, 10.00 feet to the true point of beginning; thence North 0°06'54" West, 29.91 feet, thence 15.71 feet on the arc of a tangent curve to the left, having a radius of 10.00 feet and a central angle of 90°00'00"; thence North 0°06'54" West, 60.00 feet; thence 15.71 feet on the arc of a curve to the left whose tangent bears North 89°53'06" East, having a radius of 10.00 feet and a central angle of 90°00'00"; thence North 0°06'54" West, 80.00 feet; thence 15.71 feet on the arc of a tangent curve to the left, having a radius of 10.00 feet and a central angle of 90°00'00";

THENCE North 0°06'54" West, 60.00 feet; thence 15.71 feet on the arc of a curve to the left, whose tangent bears North 89°53'06" East, having a radius of 10.00 feet and a cental angle of 90°00'00"; thence North 0°06'54" West, 90.00 feet;

THENCE 15.55 feet on the arc of a tangent curve to the right, having a radius of 9.72 feet and a central angle of 91°37'19" to a point on the Southerly right of way of Glendale Avenue; thence along said Southerly right of way line North 88°15'47" East, 69.74 feet; thence departing said Southerly right of way line, 15.42 feet on the arc of a curve to the right, whose tangent bears South 88°15'47" West, having a radius of 10.00 feet and a central angle of 88°22'41"; thence South 0°06'54" East, 361.61 feet; thence South 89°53'06" West, 50.00 feet to the true point of beginning.

Continued on next page

EXCEPT all that portion of said easement lying within the hereinabove described Parcel 1.

Document Number 2292338 is provided pursuant to the requirements of Section 1. NRS 111.312

PARCEL 2:

A portion of the North Half (N 1/2) of Section 18, Township 19 North, Range 20 East, M.D.M., more particularly described as follows:

COMMENCING at the Section corner common to Sections 7, 8, 17 and 18, Township 19 North, Range 20 East, M.D.M. and proceeding South 10°25'59" East, a distance of 99.98 feet to a 1/2 inch diameter pin, said pin being at the Northeast corner of that land conveyed from Matley, et al, to Lee Brothers, in a deed recorded as Document No. 306898 of the Official Records of Washoe County, Nevada; thence North 89°00'20" West, along the Northerly line of said Parcel, a distance of 563.20 feet to a 1/2 inch diameter iron pin; thence South 00°59'40" West, a distance of 187.77 feet to a 1/2 inch diameter iron pin; thence North 84°35'28" West, a distance of 24.46 feet to the TRUE POINT OF BEGINNING; thence North 84°35'28" West, a distance of 231.51 feet; thence South 00°54'52" West, a distance of 370.06 feet to a galvanized steel fence post; thence North 54°40'01" West, a distance of 335.84 feet to a point on the Southerly right of way line of Greg Street; thence along the Southerly right of way line of Greg Street the following four (4) courses and distances: 1) North 47°58'37" East, a distance of 232.02 feet; 2) from a tangent which bears the last named course, along a circular curve to the right with a radius of 760.00 feet and a central angle of 19°23'42", an arc length of 257.27 feet to a point of compound curvature; 3) along said compound circular curve to the right with a radius of 45.00 feet and central angle of 83°54'13", an arc length of 65.90 feet; 4) South 28°43'28" East a distance of 134.97 feet to the TRUE POINT OF BEGINNING, all as shown and set forth on that certain Record of Survey for MGM GRAND, filed in the office of the County Recorder of Washoe County, Nevada, on November 24, 1981, as File No. 769945.

APN: 012-231-29

Continued on next page

Document Number 2292339 is provided pursuant to the requirements of Section 1. NRS 111.312

PARCEL 3:

A parcel of land situate in Sections 7 & 18, Township 19 North, Range 20 East, M.D.M., Reno, Washoe County, Nevada, and more particularly described as follows:

Beginning at the intersection of the Northerly line of Mill Street with the Easterly line of U.S. Highway 395 as shown on Record of Survey Map Number 1518, File Number 769946 of the Official Records of Washoe County, Nevada, from which the Northeast corner of said Section 18 bears North 86°22'05" East a distance of 3260.13 feet; thence along the Easterly line of Interstate 580 the following eight (8) courses and distances; 1) North 09°34'52" West, a distance of 352.44 feet; 2) North 03°28'05" West, a distance of 425.16 feet; 3) North 01°26'55" West, a distance of 498.41 feet; 4) North 01°24'09" West, a distance of 434.30 feet; 5) from a tangent which bears North 01°25'23" West, along a circular curve to the right with a radius of 858.06 feet and a central angle of 36°09'39", an arc length of 541.54 feet; 6) from an tangent which bears North 34°44'16" East along a circular curve to the left with a radius of 900.00 feet and a central angle of 28°28'08", an arc length of 447.19 feet; 7) North 06°16'08" East a distance of 117.19 feet; 8) from a tangent which bears the last named course, along a circular curve to the right with a radius of 61.15 feet and a central angle of 83°37'49", an arc length of 89.26 feet to a point on the Southerly line of Glendale Avenue; thence along the Southerly line of Glendale Avenue the following four (4) courses and distances; 1) North 89°53'57" East, a distance of 196.41 feet; 2) North 00°06'21" East, a distance of 4.00 feet; 3) North 89°53'57" East, a distance of 11.17 feet; 4) North 88°16'07" East, a distance of 80.83 feet to a point on the Westerly line of Watson and Meehan Corporation Property, said point being the Northeasterly corner of Parcel No. 1, as shown on the Parcel Map No. 340, filed in the Office of Washoe County Recorder on November 10, 1976 File No. 434453; thence along the Westerly, Southerly, and Easterly lines of said Watson and Meehan Corporation Property the following three (3) courses and distances: 1) South 00°05'56" West, a distance of 355.44 feet; 2) South

Continued on next page

89°23'34" East, a distance of 348.62 feet; 3) North 00°06'34" West, a distance of 369.63 feet to a point on the Southerly right of way line of Glendale Avenue, said point being the Northeasterly corner of Parcel No. 1, as shown on the Parcel Map No. 338, filed in the Office of Washoe County Recorder on November 10, 1976, File No. 434451; thence North 88°16'07" East, along the Southerly right of way line of Glendale Avenue, a distance of 156.65 feet; thence South 02°12'06" East a distance of 4.24 feet to the Northeast corner of a concrete block wall, thence South 02°12'06" East, along Easterly face of said block wall, a distance of 13.05 feet to an angle point in said block wall; thence North 88°00'20" East, along the Northerly line of said block wall, a distance of 61.31 feet to a chain link fence; thence along said chain link fence the following seventeen (17) courses and distances; 1) South 88°11'19" East, a distance of 10.04 feet; 2) South 79°03'12" East, a distance of 10.54 feet; 3) South 70°04'24" East, a distance of 9.08 feet; 4) South 56°48'54" East, a distance of 10.33 feet; 5) South 52°50'24" East, a distance of 49.76 feet; 6) South 49°03'32" East, a distance of 10.57 feet; 7) South 38°43'47" East, a distance of 78.93 feet; 8) South 41°22'11" East, a distance of 10.14 feet; 9) South 48°20'20" East, a distance of 10.07 feet; 10) South 54°50'53" East, a distance of 10.04 feet, 11) South 59°44'13" East, a distance of 39.96 feet; 12) South 50°21'10" East, a distance of 10.37 feet; 13) South 39°50'28" East, a distance of 10.12 feet; 14) South 31°57'47" East, a distance of 105.60 feet; 15) South 20°08'38" East, a distance of 76.52 feet; 16) South 34°19'10" East, a distance of 165.32 feet; 17) South 14°17'58" East, a distance of 279.78 feet; thence along a line that is more or less coincident with said chain link fence the following fifteen (15) courses and distances: 1) South 06°44'18" East, a distance of 109.36 feet; 2) South 05°15'13" East, a distance of 158.53 feet; 3) South 27°57'06" East, a distance of 129.07 feet; 4) South 43°18'46" East, a distance of 228.10 feet; 5) South 44°58'46" East, a distance of 133.07 feet; 6) South 38°2'46" East, a distance of 64.06 feet; 7) South 47°15'55" East, a distance of 107.92 feet; 8) South 50°50'59" East, a distance of 489.05 feet; 9) South 55°41'02" East, a distance of 45.51 feet; 10) South 46°38'29" East, a distance of 98.99 feet; 11) South 63°53'42" East a distance of 151.28 feet; 12) South 52°31'06" East, a distance of 151.08 feet; 13)

Continued on next page

North 78°53'28" East, a distance of 75.55 feet; 14) South 73°46'40" East, a distance of 132.04 feet; 15) South 64°35'20" East, a distance of 98.69 feet to a point on the Northerly right of way line of Greg Street; thence along the Northerly right of way line of Greg Street the following ten (10) courses and distances: 1) South 20°40'40" West, a distance of 294.78 feet; 2) from a tangent which bears South 47°48'19" West, along a circular curve to the right with a radius of 750.00 feet and a; central angle of 27°10'38", and arc length of 355.75 feet; 3) South 74°58'57" West, a distance of 120.67 feet; 4) from a tangent which bears the last named course, along a circular curve to the right with a radius of 36.00 feet an a central angle of 31°49'47", an arc length of 20.00 feet to a point of compound curvature; 5) along said compound circular curve to the right with a radius of 116.00 feet and a central angle of 32°40'13", an arc length of 66.14 feet; 6) South 71°14'17" West, a distance of 50.82 feet; 7) South 11°03'06" East, a distance of 8.54 feet; 8) from a tangent which bears the last named course, along a circular curve to the right with a radius of 36.00 feet and a central angle of 76°26'01", an arc length of 48.02 feet to a point of reverse curvature; 9) along said reverse circular curve to the left with a rading of 604.00 feet and a central angle of 17°23'58", an arc length of 183.42 feet; 10) South 47°58'57" West, a distance of 824.51 feet to the Northeast corner of parcel conveyed to Bruno Benna, et al, recorded as Document No. 83899, Official Records of Washoe County, Nevada; thence North 63°46'57" West along the Northerly line of said Benna Parcel, a distance of 1099.66 feet to the Northeasterly corner of Parcel B as shown on Parcel Map No. 341, filed in the office of Washoe County recorded on November 10, 1976, File No. 434454, thence South 26°13'03" West, along the Easterly line of said Parcel B, a distance of 266.37 feet; thence South 18°46'57" East and distance of 28.28 feet to a point on the Northerly right of way line of Mill Street; thence North 63°44'52" West, along said Northerly right of way line, a distance of 80.00 feet; thence North 26°13'03" East, a distance of 286.32 feet to the Northerly line of said Benna Parcel; thence from a tangent which bears North 03°43'05" East, along a circular curve to the left with a radius of 86.58 feet and a central angle of 81°31'28" an arc length of 123.19 feet; thence North 77°48'23" West a distance of 234.00 feet; thence South 26°13'03" West a distance of 280.15 feet to the

Continued on next page

Northerly line of Mill Street; thence North 63°44'52" West, along the Northerly line of Mill Street, a distance of 208.34 feet to the Point of Beginning.

said land is shown and delineated as Parcel A on Record of Survey Map No. 3804, recorded June 23, 2000 as Document No. 2458502, Official Records.

BASIS OF BEARINGS: Recorded of Survey Map Number 2775, File No. 1934848 of the Official Records of Washoe County, Nevada; NAD 83, Nevada West Zone.

APN: 012-211-26

Document Number 2458501 is provided pursuant to the requirements of Section 1, NRS 111.312

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..

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

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

Dated this 27th day March, 2023.

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

[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:

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.

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;

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

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

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 MEI-GSR in the total amount of $9,190,521.92.

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

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 April, 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 10th day of April, 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.
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STEPHANIE SHARP, ESQ.
G. DAVID ROBERTSON, ESQ.
ROBERT EISENBERG, ESQ.
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CODE: 3370
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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. 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.	Case No. CV12-02222 Dept. No. OJ41

ORDER FINDING DEFENDANTS IN CONTEMPT

On June 6 through 8, 2023, the Court held a hearing on Plaintiffs' various Motions for Orders to Show Cause. Based upon the pleadings, papers on file herein, and the oral argument and evidence admitted at the hearing, the Court rules as follows on two such motions:

With respect to the Applications for Order to Show Cause filed February 1st, 2022, and December 29th, 2022, the Appointment Order dated January 7, 2015 provides in pertinent part, "It is further ordered that Defendants and any other person or entity who may have possession, custody or control of any property, including any of their agents, representatives, assignees, and employees shall do the following: . . . Turn over to the Receiver all rents, dues, reserves and revenues derived from the Property wherever and in whatsoever mode maintained."

This language is clear and unambiguous. While the Receiver has testified that he initially chose to monitor the existing reserve accounts rather than opening new accounts, this did not change the entity who was in control of those funds.

On September 15th, 2021, a request was renewed by Receiver's counsel to transfer the funds, including the reserve funds, regardless of the account the reserve funds were in. Since the appointment of the Receiver, the reserve funds have been under the control of the Receiver pursuant to the Appointment Order.

Neither the Court nor the Receiver authorized any withdrawal of funds from the reserve account. Although the Defendants filed motions with the Court to approve certain capital expenditures, they did not obtain a decision.

The Court finds by clear and convincing evidence that Defendants willfully violated the Appointment Order by withdrawing $3,562,441.28 in 2021 and $12,892,660.18 in 2022 from the reserve accounts without approval by the Receiver or the Court. These funds have not been returned to the reserve accounts.

Defendants claim those amounts were largely for prepayment of expenses for the remodel of the condominiums. Less than 300 units have been remodeled, most owned by entities affiliated with the Defendants. As the Grand Sierra Resort Unit Owners' Association has been dissolved at the request of Defendants prior to completing the remodel, this wrongful conduct is magnified.

Despite the willful misappropriation of the reserve funds by Defendants, the Court is limited to the penalties in NRS 22.100. The Court orders the following:

(1) Within 30 days of the entry of this written order, Defendants are to return the $16,455,101.46 misappropriated from the reserve fund along with interest that would have been earned in the reserve account, or statutory interest, whichever is higher, from the date of the withdrawal; and

(2) Within 45 days of the entry of this written order, transfer all of the reserve funds to a separate interest-bearing account designated by the Receiver.

Fines will be the maximum statutory amount under NRS 22.100(2) of $500 for this blatant and contemptuous conduct to be paid to the Plaintiffs and the Court determines the following additional reasonable expenses under NRS 22.100(3) are to be paid to the Plaintiffs by Defendants:

(1) The reasonable attorney fees for the Plaintiffs in preparing orders from the contempt proceeding;

(2) 75 percent of the reasonable attorney fees for the Plaintiffs preparing for the contempt proceeding not previously ordered by the Court and 75 percent of the reasonable attorney fees for the Plaintiffs participating in the contempt proceeding; and

(3) The Plaintiffs' share of the reasonable expenses of the Receiver in preparing for and testifying at the June 6 through 8 proceedings.

DATED this 27 day of July, 2023.

THE HONORABLE ELIZABETH G. GONZALEZ (RET.)

Submitted by:

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

/s/ Jarrad C. Miller
Jarrad C. Miller, Esq. (NV Bar No. 7093)
Briana N. Collings, Esq. (NV Bar No. 14694)
Attorneys for Plaintiffs

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Attorneys for the Receiver for the Grand Sierra Resort Unit Owners' Association, Richard M. Teichner

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.,*

Plaintiff,

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 DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.
_____/

Case No.: CV12-02222

Dept. No.: OJ37

RECEIVER'S REVISION TO ESTIMATE REGARDING WHEN CALCULATIONS NEEDED TO TRUE-UP EXPENSES CAN BE COMPLETED

A copy of the Receiver's Revision to Estimate Regarding When Calculations Needed to True-up Expenses Can Be Completed is attached hereto as Exhibit "1."

/././

/././

/././

/././

AFFIRMATION: The undersigned does hereby affirm that this document does not contain the social security number of any person.

RESPECTFULLY SUBMITTED this 21st day of November 2023.

ROBISON, SHARP, SULLIVAN & BRUST

/s/ Stefanie T. Sharp
F. DEARMOND SHARP, ESQ.
STEFANIE T. SHARP, ESQ.
Attorneys for Receiver

Robison, Sharp,
Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of the forgoing **RECEIVER'S REVISION TO ESTIMATE REGARDING WHEN CALCULATIONS NEEDED TO TRUE-UP EXPENSES CAN BE COMPLETED** on all parties to this action by the method(s) indicated below:

- by using the Court's CM/ECF Electronic Notification System addressed to:

Abran Vigil, Esq.
Meruelo Group, LLC
Legal Services Department
5th Floor Executive Offices
2535 Las Vegas Boulevard South
Las Vegas, NV 89109
Attorneys for Defendants MEI-GSR Holdings, LLC, Gage Village Commercial Development, LLC, and AM-GSR Holdings, LLC

Ann O. Hall, Esq.
David C. McElhinney, Esq.
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Attorneys for Defendants MEI-GSR Holdings, LLC, Gage Village Commercial Development, LLC, and AM-GSR Holdings, LLC

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Attorneys for Defendants MEI-GSR Holdings, LLC; Gage Village Commercial Development, LLC; and AM-GSR Holdings, LLC

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Attorneys for Plaintiffs

- by electronic mail to:

Richard M. Teichner, As Receiver for GSRUOA
Teichner Accounting Forensics & Valuations, PLLC
3500 Lakeside Court, Suite 210
Reno, NV 89509
accountingforensics@gmail.com

DATED: This 21st day of November 2023.

/s/ Celeste Hernandez
Employee of Robison, Sharp, Sullivan & Brust

Robison, Sharp, Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

F I L E D
Electronically
CV12-02222
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Alicia L. Lerud
Clerk of the Court
Transaction # 10007626

EXHIBIT “1”

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Revision to Estimate
Regarding When Calculations Needed to True-up Expenses Can Be Completed

The estimate when the true-up of expenses can be completed is revised based on the reasons that follow.

A. As indicated in my initial Estimate as to When Calculations Needed to True-up Expenses Can Be Completed ("Initial Estimate"), I have extracted the qualifying expenses for the SFUE, HE, and DUF charges for years 2020 through 2023, and will submit schedules with the calculations for the revised fee charges to the Court once I can complete verifying the expenses by comparing the qualifying expenditures extracted from GSR's schedules of the fee charges with the expense accounts in the general ledgers of GSR. Much of this verification process has already been performed for the SFUE and HE charges, except for one more procedure that my assistant is undertaking.

   As for the DUF charges, I will need the detail of the expenses from the general ledger accounts, which I have requested[1], so that I can extract the qualifying expenditures incurred by the Defendants. Some of these expenditures are included in the general categories that Defendants have used in in their applying DUF charges, which I have determined in the past that various of those expenditures do not qualify as being includable in the DUF charges based on the Governing Documents. The determination of the qualifying DUF charges needs to be made for the years 2020, 2022, and 2023, as the DUF charges for 2021 have already been approved by the Court.

B. As I also indicated in the Initial Estimate, the procedures that had not been performed for 2022 and year-to-date 2023 and needed to be performed, and that process had begun. Late last week, these procedures were completed for 2022 and through September 2023, and the same procedures will continue to be performed for each month until the condominium units are sold, as mentioned in the Initial Estimate.[2] My assistant and I will review the findings of the discrepancies and, as previously mentioned, adjustments will likely need to be made in addition to the true-ups based on the adjustments for qualifying expenses discussed above.

C. In the Initial Estimate, mention was made that I need to determine which of the expenditures the Defendants have represented to be capital improvements are reimbursable in accordance with the Governing Documents. This process includes examining invoices and other

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1 Not having previously requested the general ledger accounts detail for the 2020, 2022, and 2023 is the result of my miscommunication with my assistant, whereby I was under the impression that she had received the detail from Defendants and had performed the testing procedures similar to the procedures she had performed for the SFUE and HE charges. While I was preparing schedules for the DUF charges, I discovered that the general ledger detail had not been previously requested, and therefore I sent an email to Mr. Brady on the evening of November 13 and Mr. Brady immediately replied stating, "I will get that (sic) for you". As of the time I am writing this report, I have not yet received the general ledger detail for the DUF charges and have sent Mr. Brady a follow-up request for this information on November 17.

2 As indicated in the Initial Estimate, I have requested data on room rates and occupancy for hotel floors 1 through 16 to compare such data with the data for the Plaintiffs' units, given that comparisons are to be between rooms with same square footage, rooms at the same location on respective floors, and rooms that have been remodeled versus not remodeled. Also, given that room rates can change throughout a day, daily averages of rates would be compared. However, to date Defendants have refused to provide data for the rooms on floors 1 through 16 that can be used for comparative purposes in determining room rates and rotation for the Plaintiff-owned rooms.

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evidence of payments made. To date, I have received copies of invoices and other evidence of charges having been incurred by Defendants for amounts appearing to total $7,225,000. Mr. Brady had indicated to me that this amount is approximately one-half of the total amount for which the Defendants are seeking reimbursement from the reserve bank accounts.[3] Yet to be performed by me is examining the detail of the $7,225,000 and evidence of payments totaling this amount, as well as the additional expenditures for which evidence is to be forthcoming, in order to ascertain that such expenditures are in compliance with the Governing Documents.

Important to note is that withdrawals have been made from the reserve bank accounts, which have not been turned over to me, as Receiver, as my understanding is that the Defendants have filed appeals with the Supreme Court regarding the transfer of the reserve bank account balances to the Receiver and objecting to the amount that the District Court ordered them to repay resulting from their withdrawals from the reserve bank accounts.[4]

D. In the Initial Estimate, mention was made that some of the Plaintiff unit owners and the Defendants were in arrears for monthly dues payable to GSRUOA and that I suggested that, to the extent dues remain unpaid, they be deducted from the distribution of the net rents to the Plaintiffs and deducted from the distribution of the net rents to the Defendants. This arrangement has been agreed to by both the Plaintiffs and Defendants, and deductions for unpaid dues will made against the net rents for October . To the extent that any of the unit owner's net rents do not cover the amount of unpaid dues for October, then their remaining unpaid amount of dues will be deducted against their respective net rents in November and for the next successive month(s) as necessary.

E. As for the balances in the reserve bank accounts, irrespective what those balances will be once the Supreme Court renders its decision regarding the extent to which the Defendants are to repay the withdrawals they made from the accounts and its decision as to whether the balances in the three bank accounts are to be turned over the Receiver, my understanding, as I mentioned in the Initial Estimate, is that the balances in the reserve accounts are to be distributed to the unit owners once the amount of the reimbursement to the Defendants for their qualifying capital improvements is made and that there is no longer a need to retain the amounts held as reserves. Also, as previously mentioned, is that some Plaintiffs stopped

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3 On November 8, in the late evening, I sent an email to Mr. Brady asking if an updated request of the capital expenditures had previously been sent to me, and indicated that" I need a full description of each item including some type of reference to the invoice or other evidence of payment(s)…". Mr. Brady responded immediately saying that he had sent me the "$7mm invoice that we paid which is nearly half" and saying that he "will send you the worksheets and can get you the invoices together". Since I had not received any of this information by November 17, I requested it again on that date.

4 Throughout 2022 and during year-to-date 2023, the Defendants have made numerous transfers in and out of the reserve bank accounts, many of which were to and from MEI GSR Holdings LLC or an account ending in 0294 (except for one withdrawal in April 2022 for $7,225,000 by Graniti Vicentia LLC), and many others of which were withdrawals from the accounts and full or partial payments into the accounts. Such transactions in 2023 to date have resulted in the total of the ending balances in the three reserve accounts beginning with $1,973,083.81 as of January 1 and ending with **$65.96 as of October 31, 2023**.

Assuming that the Defendants will be required to repay funds that they have withdrawn from the reserve bank accounts, interest to be charged is at the higher of the interest that would have been earned on the funds or the statutory rate and will need to be computed from the time that each withdrawal was made to the time that the amount of the withdrawal, or a portion thereof, has been repaid.

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paying the amounts to which they were liable. Even though the amounts of each Plaintiff's contributions to the reserves are being revised by the truing up of the reserve charges for years 2020 through 2022 and through May 2023[5], the amounts for the reserve charges that have not been collected will be determined so that the trued-up distributions to the Plaintiff can be made.

Important to note is that, starting with October 2023, there will no longer be deductions for estimated reserve contributions against either the Plaintiffs' or Defendants' net rentals.

In the Initial Estimate I stated that the true-ups of the SFUE/HE and DUF fee charges, including the verification procedures for the 2022 and year-to-date 2023, along with the true-ups applied to unit owners accounts, were estimated to be completed between November 13 and November 20. Certainly, this is now not the case. The DUF charges still need to be determined, along with a with some additional verification procedures, albeit not very time-consuming, and then the completed schedules for the DUF charges and the already completed schedules for SFUE/HE charges will need to be approved by the Court before the true-ups of these fee charges can be applied to the unit owners' accounts.

My estimate for when the DUF and SFUE/HE charges will be submitted to the Court is during the week of December 11.[6]

As for the other procedures mentioned above:

For C., the process of determining the expenditures qualifying for reimbursement from the reserve accounts in accordance with the Governing Documents, which includes examining the invoices and evidence of payments, has virtually not yet begun, as explained above. Additionally, once I make a determination, along with the help of Ms. Sharp, I assume that the Defendants and the Plaintiffs will have the opportunity to object to any of my conclusions. It should be noted that I will be working with Mr. Brady for accessing information that I will need in determining which expenditures will qualify for reimbursement. However, until or unless the withdrawals, along with interest, are repaid by Defendants, I can only determine what the amount of reimbursement from the reserve accounts should have been.

I can now only provide a rough estimate when the expenditures qualifying for reimbursement will be submitted to the Court, which is during the week of January 15. (Also, see footnote 6.)

For E., until I know the amount that will be in the reserve bank accounts for distribution, I cannot how much that each unit owner will receive.

5 The reserves withheld from the Plaintiffs, as well as from the Defendants, have been based on an estimate per square foot of the respective units from June through September 2023.

6 Although performing my role as Receiver in facilitating the winding up of the receivership is of the highest priority, given that the holidays are coming up, information is still forthcoming, I will be unavailable from November 29 through December 6, as I will out of town, and I have other commitments regarding litigation matters for which I have been retained, the completion of the tasks are not likely to occur prior to the estimated range of dates.

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