

**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. 88065**

District Court Case No. CV12-02222

Electronically Filed  
Apr 05 2024 03:14 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

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 ANSWER TO PETITION FOR WRIT OF PROHIBITION  
OR, IN THE ALTERNATIVE, MANDAMUS**

**VOLUME 6 OF 9**

Submitted for all respondents by:

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ATTORNEYS FOR RESPONDENTS ALBERT THOMAS, et al.

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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 April 5, 2024, I electronically filed the foregoing **APPENDIX TO ANSWER TO PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, MANDAMUS, VOLUME 6 OF 9** with the Clerk of the Court by using the ECF system which served the following parties electronically:

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Hon. Elizabeth Gonzalez  
Senior Judge, Dept. 10  
Second Judicial District Court  
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Reno, NV 89501

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

1 Code#4185  
SUNSHINE LITIGATION SERVICES  
2 151 County Estates Circle  
Reno, Nevada 89511  
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 HONORABLE ELIZABETH GONZALEZ, SENIOR JUDGE

8 -o0o-

9 ALBERT THOMAS, et al. Case No. CV12-02222  
Plaintiffs,  
10 vs. Dept No. OJ41

11 MEI-GSR HOLDINGS, LLC, a Nevada  
Limited Liability Company, AM-GSR  
12 HOLDINGS, LLC., a Nevada Limited  
Liability Company, GRAND SIERRA  
13 RESORT UNIT OWNERS' ASSOCIATION, a  
Nevada Nonprofit Corporation, GAGE  
14 VILLAGE COMMERCIAL DEVELOPMENT,  
LLC., a Nevada Limited Liability  
15 Company, et al.,  
Defendants.

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18 TRANSCRIPT OF PROCEEDINGS

19 CONTEMPT TRIAL - DAY 4

20 JUNE 9, 2023

21 RENO, NEVADA

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23 REPORTED BY: CORRIE L. WOLDEN, NV CSR #194, RPR, CP

24 JOB NO. 975735

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A P P E A R A N C E S

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## I N D E X

## WITNESS

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DAVID REED BRADY

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Exhibit D-2	PowerPoint Presentation by David McElhinney	130	--

1 RENO, NEVADA, FRIDAY, JUNE 9, 2023, 8:52 A.M.

2 -o0o-

3

4 THE COURT: This is CV12-02222, Thomas versus  
5 MEI-GSR. Ms. Collings, yesterday we had some continued  
6 discussions on Motions in Limine from our discussion on  
7 Tuesday. I realized last evening that I hadn't directed  
8 your office to prepare orders on the two Motions in Limine  
9 we heard on Tuesday and then the supplemental hearing  
10 yesterday.

11 Could you please prepare orders on those, send  
12 them to opposing counsel for approval, and if you are able  
13 to agree, then send it to me. If you are not able to agree,  
14 send me Word versions from both of you so I can address them  
15 and enter the right order.

16 MS. COLLINGS: Absolutely.

17 THE COURT: Thank you, Ms. Collings. Mr. Smith,  
18 it's just my normal procedure, you know it.

19 MR. SMITH: It is.

20 THE COURT: Don't send me a letter. Don't explain  
21 what your differences are. I can figure it out.

22 MR. SMITH: Yep. I understand.

23 THE COURT: Mr. Brady, are you all hydrated? Are  
24 you ready? Did you get some coffee in you?



1 THE WITNESS: I did. And, Your Honor, I want you  
2 to be sure that I gave back D1 last night, so I don't want  
3 you to think I took it with me.

4 THE COURT: I appreciate how nicely you have  
5 treated all of the exhibits we shared with you as opposed to  
6 our first witness Mr. Teischner who was really rough on the  
7 exhibits.

8 THE WITNESS: That is because he is an accountant,  
9 so usually accountants treat papers like, you know, they are  
10 works of art.

11 THE CLERK: Counsel, all exhibits are out here  
12 again.

13 THE COURT: All right. Mr. Brady, if you could  
14 stand again. Gracie, if you could swear him in since it is  
15 a new day, please.

16 THE CLERK: Yes, Your Honor.

17

18 DAVID REED BRADY,  
19 called as a witness, having been duly sworn,  
20 testified as follows:

21

22 THE COURT: And, Mr. Miller, I am again sorry I  
23 interrupted you yesterday to ask my questions, but I thought  
24 some of them might make people think of things over the

1 evening, so I thought it was best for me to ask my questions  
2 so everybody could think about what I asked over the  
3 evening, so you may resume.

4 MR. McELHINNEY: Your Honor, before we get  
5 started, I would like to make I guess sort of an  
6 announcement for lack of a better term.

7 THE COURT: An announcement?

8 MR. McELHINNEY: Well, that may be a bit dramatic,  
9 but last night --

10 THE COURT: Did you settle the case last night?

11 MR. McELHINNEY: No.

12 THE COURT: Oh, darn. That would have been an  
13 announcement.

14 MR. McELHINNEY: We are sensitive, Your Honor,  
15 about the issue of money that is owed the Plaintiffs. Last  
16 night I went to my computer, I located the e-mail from  
17 Stephanie Sharp and I opened it, the encrypted message.

18 THE COURT: The encrypted one?

19 MR. McELHINNEY: Yes. So now we have wiring  
20 instructions to the account that got opened a couple of days  
21 ago. We wired into --

22 THE COURT: A couple weeks ago.

23 MR. McELHINNEY: A couple weeks ago, fair enough.  
24 The amount that we wired in is \$274,674.44.

1 THE COURT: Give me that number again, please.

2 MR. McELHINNEY: Yes. \$274,674.44.

3 THE WITNESS: Sorry, it's \$79.

4 THE COURT: Thank you, Mr. Brady. \$274,679.44.

5 THE WITNESS: Not 74.

6 MR. McELHINNEY: Okay. I should have checked with  
7 you. You are my numbers guy.

8 THE COURT: And he is testifying under oath to  
9 that number.

10 MR. McELHINNEY: Yes, yes.

11 THE COURT: Because he already has been sworn this  
12 morning.

13 MR. McELHINNEY: So, Your Honor, that represents  
14 the amount of money that is owed the Plaintiffs. Of course  
15 it does not, it's not a delta between, remember, there are a  
16 number of Plaintiffs who owe us money, about \$171,000. Is  
17 that right, Mr. Brady?

18 THE WITNESS: Yes, roughly around that.

19 MR. McELHINNEY: We didn't do an offset. We just  
20 paid the Plaintiffs the money they are owed. Again, once we  
21 had the wiring instructions that's what we did.

22 THE COURT: May I ask a question?

23 MR. McELHINNEY: Yes, please.

24 THE COURT: Was a spreadsheet sent to someone that

1 details what those funds represented?

2 MR. McELHINNEY: I don't believe so. I think it  
3 was just a wire last night.

4 THE COURT: Mr. Brady.

5 THE WITNESS: There is backup. Sorry, this was at  
6 I think 10:00 or 11:00 last night. So I have the backup. I  
7 will send it to Mr. Teischner.

8 THE COURT: Thank you.

9 THE WITNESS: It details each condo owner and the  
10 statements will come out with those balances when they come  
11 out on, they will come out with the balances before the  
12 payout.

13 THE COURT: So Mr. Teischner will get a copy of  
14 the spreadsheet. I would ask you to also provide a copy to  
15 Mr. McElhinney who will then provide that same spreadsheet  
16 to counsel. Is that okay with you?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Thank you, Mr. Brady. I appreciate  
19 that. Mr. Miller.

20 MR. MILLER: Thank you, Your Honor. Just for  
21 clarity, I assume that there is no objection to the  
22 Receiver --

23 THE COURT REPORTER: I'm sorry, do you have a mic?

24 MR. MILLER: I don't have one.

1 THE COURT: Why don't you have one?

2 MR. MILLER: Oh, sorry. Because I'm not paying  
3 attention.

4 I assume that there is no objection to the  
5 Receiver releasing those back due rents to the Plaintiffs?

6 THE COURT: Absolutely there is, because remember  
7 in my order it said before the release of any funds occurred  
8 the Receiver had to request it from the Court.

9 MR. MILLER: Oh, okay.

10 THE COURT: So that was what my order provided so  
11 that there will be a mechanism for me to approve any  
12 disbursements that the Receiver makes.

13 MR. MILLER: I'm glad we have that point of  
14 clarification. I was assuming because --

15 THE COURT: I'm also going to clarify another  
16 order today and I want you guys to be thinking of it, the  
17 order that we all now understand I assume too much that the  
18 Receiver was going to be able to act as the renter of the  
19 units under the Unit Rental Agreement. You all correctly  
20 along with the Receiver interpreted that more correctly that  
21 he can't do that, he is not equipped to, and so the  
22 Defendants are performing that service.

23 I'm going to enter an oral modification of that  
24 order at the conclusion of these proceedings today. I may

1 add some other things to it, so please be thinking about  
2 that to engage me in a discussion as I say those things, so  
3 that if there is something you think is impossible to comply  
4 with or you think is unsatisfactory in documentation that I  
5 can make sure that I address those concerns.

6 MR. McELHINNEY: Thank you, Your Honor.

7 MR. MILLER: Your Honor, can I make an oral motion  
8 for the release of those funds, those back due rents  
9 under --

10 THE COURT: The Receiver has to make that request.

11 MR. MILLER: Okay. Thank you.

12 THE COURT: Not you.

13 THE WITNESS: Your Honor, can you repeat that  
14 number? Since I'm under oath, I want to make sure that it  
15 is correct.

16 THE COURT: The number you told me, \$274,679.44.  
17 Thank you for confirming that, Mr. Brady.

18 THE WITNESS: That is correct.

19 THE COURT: He nodded. Nods don't come across on  
20 the record, but I am making a reflection on the record that  
21 he nodded affirmatively that that number was correct.

22 Any other announcements?

23 MR. McELHINNEY: Nothing for the Defense,  
24 Your Honor.

1 THE COURT: Since I finished my counseling session  
2 with my case at 8:00, may I then hear additional testimony  
3 from Mr. Brady?

4 MR. MILLER: Yes, Your Honor. I have an  
5 evidentiary matter I would like to address first and that is  
6 I would like to move for the admission of the deposition of  
7 Alex Meruelo pursuant to Nevada Rules of Civil Procedure  
8 32(3) which states an adverse party may use for any purpose  
9 the deposition of a party or anyone who when deposed was the  
10 parties' officer, director, manager, agent or --

11 THE COURT: You are not looking up at the Judge.  
12 So I'm not going to admit the deposition. I will permit you  
13 in your rebuttal case to read in any portions of the  
14 deposition that you like as testimonial evidence because you  
15 can use it for any purpose, but I'm not going to read it  
16 when you guys aren't with me. You are going to read it and  
17 suffer with me.

18 MR. MILLER: Okay.

19 MR. SMITH: Yes, Your Honor. I would just lodge a  
20 quick objection. I don't think that rule applies to these  
21 types of proceedings.

22 THE COURT: Oh, I absolutely think it applies to  
23 these kind of proceedings. You and I will disagree about  
24 lots of things about what this proceeding is, but the Nevada

1 Rules of Civil Procedure clearly apply.

2 MR. SMITH: I made the objection. I just think  
3 due to the procedural posture of the case it doesn't, but I  
4 understand Your Honor's position.

5 THE COURT: Did you turn on your microphone?

6 MR. MILLER: Yes.

7 THE COURT: I'm turning mine off, because I have  
8 feedback.

9 Do you want to go back and readmit that e-mail,  
10 now that Mr. McElhinney found it, the redacted e-mail?

11 MR. McELHINNEY: Yeah, I have opened it, so I have  
12 no further objection to its admission.

13 THE COURT: Do you remember the number? Is it  
14 142?

15 THE CLERK: 143, Your Honor.

16 THE COURT: 143. Any objection to the admission  
17 of 143 so I can keep my record clean?

18 MR. McELHINNEY: No objection, Your Honor.

19 THE COURT: 143 will be admitted.

20

21 (Exhibit Number 143 was admitted into evidence.)

22

23 MR. MILLER: Your Honor, I would like to move for  
24 the admission of a new exhibit. I believe it's 146, or 147.



1 THE COURT: Did you show it to Mr. McElhinney?

2 MR. MILLER: Yes, Your Honor.

3

4 (Exhibit Number 147 was marked for identification.)

5

6 THE COURT: Mr. McElhinney, any objection to 147?

7 MR. McELHINNEY: No objection.

8 THE COURT: 147 will be admitted.

9

10 (Exhibit Number 147 was admitted into evidence.)

11

12 CROSS-EXAMINATION

13 BY MR. MILLER:

14 Q Mr. Brady, in your prior testimony I believe you  
15 referenced a daily resort fee?

16 A Yes.

17 Q Do you understand that the Court has issued an  
18 order concerning the daily resort fee?

19 A I was not aware, no.

20 Q Okay.

21

22 (Exhibit Number 148 was marked for identification.)

23

24 MR. MILLER: Your Honor, I would like to move for

1 the admission of 148.

2 THE COURT: Any objection to 148, Mr. McElhinney?

3 MR. McELHINNEY: No objection, Your Honor.

4 THE COURT: I'm forgetting to turn on my mic. The  
5 court reporter keeps turning and looking at me.

6 MR. McELHINNEY: I apologize, Your Honor. No, no  
7 objection.

8 THE COURT: Thank you. It will be admitted.

9

10 (Exhibit Number 148 was admitted into evidence.)

11

12 BY MR. MILLER:

13 Q All right. Mr. Brady, I believe the Court  
14 yesterday asked you if you can recall when the last time  
15 rents were paid out to the Plaintiffs?

16 A I believe so.

17 Q Do you recall when the last time rental checks  
18 were distributed to the Plaintiffs?

19 A I'm not 100 percent certain, but I would think it  
20 would be right around -- actually, I'm not 100 percent  
21 certain.

22 Q Does January of 2020 sound familiar?

23 A I was thinking right around that time, yes,  
24 because, sorry, we do pay out checks, but I'm not sure which

1     condo owners.

2           **Q**       **Okay. Are you confident that no Plaintiff rental**  
3     **checks were issued in all of January 2021?**

4           **A**       All of January of 2021?

5           **Q**       **I'm sorry, all of 2021. For the whole entire year**  
6     **of 2021 do you believe that no rental checks were issued to**  
7     **any of the Plaintiffs?**

8           **A**       I'm not 100 percent confident. I would have to go  
9     back and see, but I would probably say very little, if any,  
10    very little were paid out.

11          **Q**       **Okay. And that would be the same for 2022?**

12          **A**       Same answer, yes.

13          **Q**       **And then the same for 2023 thus far?**

14          **A**       During those years we were waiting for  
15    Mr. Teischner to do his net revenues as he stated many  
16    times, so we were waiting for him.

17          **Q**       **Okay. And I'm not sure, I'm not sure that**  
18    **answered my question, but so for all of 2023 you don't**  
19    **believe that any rental checks were issued for the**  
20    **Plaintiffs?**

21          **A**       For the Plaintiffs, no, I would have to --

22          **Q**       **Okay.**

23          **A**       Because we would pay Mr. Teischner per the order,  
24    so the net revenues.

1           Q           Are you, are you familiar with roughly what the  
2           gross rents are for an average unit in the Summit Tower per  
3           month?

4           A           I don't have the statements in front of me, so --

5           Q           Do you have a general understanding, is it 2 to  
6           \$3,000?

7           A           Depending on how many nights were rented, ADR can  
8           be, sorry, average daily rate can be anywhere from, geez,  
9           can go as low as \$50 to up to \$200 on average, so, you know,  
10          let's call it \$150. Yeah, times 10 to 20 rooms, so \$1,500  
11          to \$3,000.

12          Q           Okay. And Plaintiffs have roughly 100 units?

13          A           Minus -- 93.

14          Q           93 units?

15          A           Well, 95.

16          Q           Okay.

17          A           Because of the --

18          Q           So on average per month the Grand Sierra is taking  
19          in 150 to \$300,000 for the Plaintiffs' units gross rents?

20          A           I would say right around there, correct.

21          Q           And since approximately January of 2020 they  
22          haven't received any money for the rental of their units?

23          A           Well, it wasn't until May of 2023 that gross rents  
24          was even in discussion, so --

1 Q And that wasn't my question.

2 A Understood.

3 Q Okay.

4 A Sorry, can you repeat the question?

5 Q So despite receiving between 150 to \$300,000 a  
6 month in gross rents for the Plaintiff units, since January  
7 of 2020 the Plaintiffs have basically not received any  
8 money; is that correct?

9 A In January of 2020 their total Plaintiffs, they  
10 actually had a due to us, so.

11 Q And that's under the fees that the Court  
12 specifically rejected; is that correct?

13 A Not at that time from January 2020 they were not  
14 rejected. From February 2020 they were not rejected, so.

15 Q Did the Court ultimately reject it; is that  
16 correct?

17 A The Court ultimately rejected it, yes.

18 Q Yes. Okay. Let me have you -- oh, can I get  
19 Exhibit 103, please, or the binder with Exhibit 103. You  
20 have the whole binder. Thank you.

21 A Thank you. Sorry, let me get situated here.  
22 103 you said?

23 Q Yes.

24 A Okay.

1 Q Do you recognize this document?

2 A I do.

3 Q And this is an owner account statement dated  
4 April 20th, 2023. Do you recognize that?

5 A Yes, for the period of March.

6 Q So for the period of March it shows no rental  
7 activity; is that correct?

8 A That is correct.

9 Q And I'm just trying to understand your prior  
10 testimony. You had indicated a reason for stopping the  
11 rental of the units in March?

12 A I believe Mr. McElhinney did, but on February 28th  
13 an order went out that dissolved the condo ownership units'  
14 URA, CC&Rs, and Unit Maintenance Agreement.

15 Q Okay.

16 THE COURT: I didn't dissolve the rental  
17 agreement. Okay. Let's keep going.

18 THE WITNESS: Correct. I think later you came  
19 back, correct, yes.

20 MR. McELHINNEY: Your Honor, I guess I'm going to  
21 impose an objection to Your Honor's comments as though that  
22 is a finding. If the units no longer exist, the URA no  
23 longer exists.

24 THE COURT: The URA is an individual agreement

1 with the owner of the unit and the unit remains in existence  
2 until the sale. The sale has not occurred.

3 MR. McELHINNEY: I don't mean to be argumentative  
4 with the Court.

5 THE COURT: You guys are going to deal with it at  
6 the Supreme Court, and I'm going to have my position, and  
7 you all are going to have your position, and somebody is  
8 going to make a decision later, but I'm going to make  
9 interim orders to fix what's going on right now.

10 MR. McELHINNEY: Understood, Your Honor. I just  
11 don't want the record -- I want the record to be clear that  
12 I don't agree with your position.

13 THE COURT: I certainly understand. Jordan Smith  
14 has told me that several times and I understand his  
15 position. I disagree.

16 BY MR. MILLER:

17 Q So if I understand your counsel's position  
18 correctly, the units no longer existed, that's why you  
19 stopped renting them?

20 A I'm not an expert on that, but, yes, as of  
21 February 28th.

22 Q So I assume if that held true that none of the 670  
23 units that are in the condo association were rented during  
24 that time period?

1           A           That is not correct.

2           Q           Oh, so you continued to rent your, or the  
3   Defendant-owned units during that time period even though  
4   the units no longer existed?

5           A           Correct.

6           Q           All right. You had, my recollection is that you  
7   had some testimony yesterday that concerned what occurred  
8   during COVID and I'm not sure I exactly understood your  
9   testimony.

10                   I think you said that during those months when  
11   there was basically no expenses because of the, or very few  
12   expenses because the condo operation, I mean the casino was  
13   closed, that instead of using those months in the actual  
14   budgets you went back to 2019 and used those numbers for the  
15   closed period of time?

16          A           For the 2021 budget?

17          Q           Yeah.

18          A           Absolutely.

19          Q           Okay. So was there ever a true-up to adjust so  
20   that the Plaintiffs didn't have to pay for those months  
21   where these expenses weren't exactly incurred?

22          A           Yes.

23          Q           Okay. And then you understand the daily use fee,  
24   the components of it. One of the components is



1     housekeeping; is that correct?

2           A           Correct.

3           Q           Is that a significant portion of the daily use  
4     fee?

5           A           Yes.

6           Q           And is a significant portion of the housekeeping  
7     the labor for the person to actually clean the room?

8           A           That's, I would say that's probably 60 percent of  
9     the housekeeping.

10          Q           Okay. And is it your understanding that during  
11     COVID, you know, for some time period from 2020 deep into  
12     2021 that it was the hotel policy that if you had a  
13     multi-day stay in a room that because of COVID that the room  
14     would only get cleaned once. It wasn't getting cleaned  
15     everyday during COVID because of the implications of COVID?

16          A           That is correct, but --

17          Q           All right. And for that period, at least from my  
18     review of the monthly statements, even though you would have  
19     a multi-day stay where the rooms weren't being cleaned  
20     everyday, you still had that 30 plus dollar charge for the  
21     daily use fee. Was that ever trued up?

22          A           They could, they could come and ask to get  
23     cleaned.

24          Q           Okay.

1           A           A lot of them did.

2           Q           How about --

3           A           They were still cleaning other rooms because there  
4           was constantly check-ins, check-outs. We could have up to  
5           1,500 check-ins on any given day.

6           Q           Did you ever, did you ever make any --

7                   THE COURT: You have got to let him finish. Were  
8           you done, sir?

9                   THE WITNESS: No. So when you have 1,500  
10          check-ins they are going, they are cleaning up to 20 rooms a  
11          day, which is we were paying over-time. We had to raise our  
12          prices for housekeepers. Because of the competitive market  
13          we could not hire housekeepers.

14                   After COVID, I don't know if you know this, but  
15          there was a labor shortage. Nobody wanted to work. So to  
16          actually hire anybody, everybody raised their rates. So it  
17          was, it was quite frankly a nightmare and everybody was  
18          working over-time. Everybody was exhausted. And so, yes,  
19          the expenses went up and, yes, we are a casino. We are  
20          opened 365 days a year and they have to constantly clean.

21          BY MR. MILLER:

22          Q           So my question is did you ever make any effort to  
23          adjust the monthly unit statements for those days where the  
24          rooms weren't cleaned because it was a multi-day stay?

1           A           We -- that would be nearly impossible.

2           Q           Okay. So the answer is no?

3           A           No, due to the fact that we probably could not do  
4 it.

5           Q           All right. Let me have you refer to Exhibit 119.

6           A           Okay.

7           Q           Specifically let me have you refer to page 4 of  
8 Exhibit 119.

9           A           Okay.

10          Q           Starting at line 3, this portion of the Court's  
11 order, which is dated December 24th, 2020, states, "While  
12 the Receiver has some discretion in his calculations, he has  
13 no discretion to include in the fees any expense that is not  
14 specifically referenced in the Governing Documents."

15                    "As just one example, the record reflects that the  
16 Shared Facilities Unit is limited by definition in the CC&Rs  
17 to components located within the Condominium Property.  
18 Accordingly, the Receiver may not include in the Shared  
19 Facilities fees or expenses any expenses that are not  
20 derived from the limited Shared Facilities Unit."

21                    This next sentence is very important. It states,  
22 "Further, the Receiver should use the original fee  
23 calculations as a guide to compliance with the Governing  
24 Documents."

1                   Are you familiar with the original calculations  
2   that were circulated in 2007 when the units were purchased  
3   in 2008?

4       A       Oh, I'm sorry, I took this, the original as 2020.

5       Q       No. So you were not --

6       A       I'm sorry.

7       Q       Okay. So I assume you were not in attendance  
8   during the days of hearings that we had on the propriety of  
9   the fees, the fees that were calculated in January of 2020  
10  that were ultimately rejected by the Court?

11      A       You said 2007. I'm sorry, 2020, yes.

12      Q       You were in attendance at those hearings?

13      A       In 2020?

14      Q       Yes.

15      A       What, in May?

16      Q       Yes.

17      A       Yeah.

18      Q       Okay.

19      A       Well, I was in the crowd.

20      Q       Do you recall Mr. Teischner being cross-examined  
21  about the original 2007 calculations versus the calculations  
22  that were being used in 2020?

23      A       I don't recall, I'm sorry.

24      Q       Have you ever went back in making your

1 calculations under the Governing Documents and looked at  
2 those original calculations that were provided in  
3 approximately 2007, 2008 when nobody was trying to unduly  
4 increase or decrease the calculations?

5 A I have gone through the CC&Rs. I don't  
6 specifically know about the 2007, but what I can say is that  
7 from 2007 until now GSR is 100 percent different.

8 Q Okay. But are the CC&Rs 100 percent different  
9 than they were when they were adopted?

10 A No.

11 Q Okay. And do you think that Mr. Teischner and  
12 Ms. Sharp would have followed the Court's order in redoing  
13 their calculations and looked at the original calculations  
14 as specifically ordered by the Court?

15 MR. McELHINNEY: Objection; speculation.

16 THE COURT: Overruled.

17 THE WITNESS: The original in 2007 -- well, when I  
18 see this, the original fee calculations, I'm thinking of the  
19 2020, because this was in December 24, so I'm not sure which  
20 one this reference is to, I'm sorry.

21 BY MR. MILLER:

22 Q Does that make any sense to you that the Court  
23 would order them to go back and look at the calculations  
24 that the Court just rejected?

1           A           Mr. Miller, I don't think I would ever go back to  
2           any of my files from 2007 --

3           Q           **All right.**

4           A           -- or worksheets and use those worksheets because  
5           the accounting principles change, GAAP changes, so I can't  
6           use 2007 because in 2020 there is so many different things  
7           that have changed since then that I would not be able to use  
8           the 2007.

9                       I could maybe use the, you know, the 10,000 foot  
10          level, but for 2007 numbers I cannot honestly use, or the  
11          worksheets, I cannot honestly use them because of a  
12          multitude of things.

13          Q           **Okay. Let me have you -- did I give you the**  
14          **binder with Exhibit 1?**

15          A           No, I have 39.

16          Q           **Okay.**

17          A           Thank you, sir.

18          Q           **In the top left-hand corner of Exhibit 1, which is**  
19          **the 7th Amendment to the Condominium Declaration, what we**  
20          **have been referring to as the CC&Rs, do you see in the top**  
21          **left-hand corner where it states Shawn Oliphant, Esquire and**  
22          **that's where it's supposed to go when it is recorded?**

23          A           Yes.

24          Q           **Okay. Has anyone ever indicated to you that**

1 Shawn Oliphant is the attorney that drafted these CC&Rs?

2 A No.

3 Q Okay. Assuming Shawn Oliphant is the attorney  
4 that drafted these CC&Rs, would it make more sense for  
5 Stephanie Sharp in inquiring about what should and shouldn't  
6 go in the CC&R's to converse with Mr. Shawn Oliphant, the  
7 drafter, rather than Gayle Kern who represents the  
8 Defendants?

9 A I can't answer that, I'm sorry. I don't know  
10 either.

11 Q So Stephanie Sharp, right, she is the counsel for  
12 the Receiver. You understand that, right?

13 A Correct.

14 Q And we have heard a lot of testimony from  
15 Mr. Teischner that he relied upon Stephanie Sharp, right, in  
16 determining what should and should not be included in the  
17 calculations?

18 A That is correct.

19 Q Okay. So you understand that. And then I  
20 believe -- oh, this is, I believe your counsel had indicated  
21 that Ms. Kern didn't agree with some of the stuff that  
22 Stephanie Sharp did. Is that accurate?

23 A I believe Mr. McElhinney said yesterday that it  
24 was too limited, so I would assume that Stephanie Sharp was

1 too limited in the scope based on the CC&Rs.

2 Q If you are a neutral attorney representing a  
3 Receiver do you think it would make more sense for you to  
4 rely upon Shawn Oliphant, the drafter of the CC&R's opinions  
5 about what should and should not be included or rely upon  
6 counsel for the Defendants?

7 MR. McELHINNEY: Asked and answered, Your Honor.  
8 Objection.

9 THE COURT: Overruled. You can answer.

10 THE WITNESS: I think that's one thing, yeah, you  
11 would have to go to the original person that drafted it, but  
12 at the same time this was drafted in 2007, so things have  
13 changed.

14 BY MR. MILLER:

15 Q But, again -- sorry, I thought you were done.

16 THE COURT: Had you finished?

17 THE WITNESS: Sure.

18 BY MR. MILLER:

19 Q But, again, the CC&Rs have not changed; is that  
20 correct?

21 A No, they have not changed.

22 Q Let me have you refer to Exhibit 130 if it's in  
23 front of you.

24 A Yeah.



1 THE COURT: Do you have 130?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Thank you.

4 BY MR. MILLER:

5 Q Exhibit 130 is Defendants' Reply in Support of  
6 Motion for Instructions to Receiver Regarding Reimbursement  
7 of Capital Expenditures, and it's dated July 10th, 2020.

8 A Yes.

9 Q Let me have you refer to page 13 of this document.

10 A Okay.

11 Q This document states at page 13, starting at  
12 line 2, "For these reasons, Defendants request the Court  
13 instruct the Receiver to allow Defendants to withdraw  
14 \$8,030,701 out of the reserves for the cost of capital  
15 expenditures to the property and impose a special assessment  
16 on all Unit Owners to maintain the reserves at the  
17 appropriate levels consistent with an independent Reserve  
18 Study."

19 Do you see that?

20 A Yes.

21 Q I don't understand why if in July of 2020 you are  
22 specifically asking the Court for permission to withdraw  
23 money from the reserves, why then in 2021 and 2022 do you  
24 withdraw over \$16 million from the reserves without any

1 **permission from the Court?**

2 A I think I answered this with Mr. McElhinney, but I  
3 met with legal counsel and the executive team and it was  
4 determined that due to us doing the Summit remodel and it  
5 was specifically for the condo units themselves that it was  
6 imperative, and millions of dollars of expenses were coming  
7 in for the condo units, that it was imperative that -- and  
8 there was no motion that actually denied us of taking money  
9 out of the reserves, so we concluded that we would take  
10 money out of the reserves.

11 Q **Who was on this condo committee that gave you the**  
12 **instruction that it was okay to take the money out of the**  
13 **reserves?**

14 A I think I said condo legal team and executive  
15 team.

16 Q **Okay. Who were the members of the executive team?**

17 A On the executive team, it's all VP's and executive  
18 directors, so there is, I think there is 12 of us. I can  
19 list them, if you want.

20 Q **I would like that, please.**

21 A Sure. The GM, myself, Kent Vaughan.

22 Q **Who is the GM?**

23 A Sorry, Shannon Keel.

24 Q **Okay.**

1           A           The, excuse me, the Senior Vice President of Hotel  
2           Operations, Ken Vaughan. The Senior VP of Marketing,  
3           Christopher Abraham. At that time it was, people go in and  
4           out, but for the most part that deal with the condos, I'm  
5           only going to list the people who deal with the condos, or  
6           do you want me to list them all?

7           **Q           The individuals that authorized the withdrawal of**  
8           **these reserves without Court permission.**

9           A           Sure. So it was, where was I, VP of F & B,  
10          Matt Mascali; VP of Security, Tim Cook; VP of HR, Virginia  
11          Crowe. I believe this is in 2021, '20, or '21, '22, sorry,  
12          excuse me. Executive Director of Marketing, Kaycea Grignon.  
13          VP of Purchasing and Warehouse, I'm drawing a blank.  
14          George -- wow, I'm drawing a blank on that. I will have to  
15          come back to that one.

16          **Q           Do you recall the names of the legal counsel that**  
17          **agreed to this decision to withdraw from the reserves**  
18          **without a Court order?**

19          A           Mr. McElhinney, Ann Hall, Abe Vigil. There were  
20          some Meruelo Group; Al Stoller, who is the corporate CFO,  
21          and Luis Armona.

22          **Q           So Luis Armona agreed to this decision to withdraw**  
23          **from the reserves without a Court order?**

24          A           I'm not sure if he 100 percent agreed, but

1 collectively it was decided with input from our legal  
2 counsel, of course.

3 Q Could the Grand Sierra Resort have waited for an  
4 order from the Court to withdraw any funds from the reserves  
5 during the period of 2021, 2022 or even this year?

6 A Again, we all got together and after looking at  
7 all of the orders there was no, and the CC&Rs, there was no  
8 order that said that we could not withdraw the funds, so  
9 then we determined at that time that it was okay to withdraw  
10 the funds due to the fact that we were starting the condo  
11 units themselves, floor 17 through 24, so, for Summit Tower.

12 Q Okay. My question was different than your answer.  
13 It is could the GSR, MEI-GSR, have not withdrawn those funds  
14 from the reserves that are at issue in these Motions for  
15 Order to Show Cause, could the GSR have not drawn those,  
16 withdrawn those reserves until such time as a Court order  
17 was issued?

18 A Could we have?

19 Q That's exactly my question.

20 A Yes, we could have.

21 Q You could have waited for a Court order?

22 A Again, we discussed this. This was part of it.  
23 We looked at all of the Court orders. There was nothing  
24 ordering us that we could not take the funds out.

1           Q           Now, this might, in my mind this is an important  
2           but a simple question. Could the Grand Sierra Resort have  
3           waited for a Court order to withdraw any funds from the  
4           reserves?

5           A           I thought I answered that, I'm sorry.

6           Q           I'm not asking you why. I just want a clear  
7           response for the record, and that is could the Grand Sierra  
8           Resort or MEI-GSR Holdings have waited for an order from the  
9           Court before it withdrew any funds from the reserves?

10          A           We could have gone either way.

11          Q           This is taking a lot longer I think than it  
12          should. Just listen to my question very carefully.

13          A           Mr. Miller, I heard your question and I believe I  
14          answered it. It could have gone either way.

15                   THE COURT: Let me ask the question slightly  
16                   differently. Were any of the expenses of an emergent nature  
17                   that required you to make the withdrawals?

18                   THE WITNESS: Emergent, yes.

19                   THE COURT: Emergency.

20                   THE WITNESS: Yes, these were all --

21                   THE COURT: Tell me why.

22                   THE WITNESS: Millions of dollars we were spending  
23                   for these rooms, for specifically for these rooms. Deposits  
24                   that were coming in for these rooms, we spent millions of

1 dollars for the rooms and then we capitalized them for, you  
2 know, we had to pay our bills.

3 THE COURT: And you believe that to be an  
4 emergency?

5 THE WITNESS: An emergency for --

6 THE COURT: That's why I'm asking if it was  
7 emergent.

8 THE WITNESS: Yes. If a vendor comes after us and  
9 takes us to collections or we get in a fight with them about  
10 money, it is very detrimental to the company and our  
11 business.

12 THE COURT: So your paying deposits to buy FF&E to  
13 do a remodel six years in the future was an emergency?

14 THE WITNESS: Six years?

15 THE COURT: It's still not done, right?

16 THE WITNESS: Yeah. It will be done in 2024, but  
17 we did it in phases, Your Honor.

18 THE COURT: Okay.

19 BY MR. MILLER:

20 Q So just for the record, and I believe this is a  
21 yes or no question, could MEI-GSR Holdings have waited for  
22 an order from the Court to withdraw funds from the reserves?

23 A That was one of the things, yes, we could have.  
24 We could not have. I, I -- we discussed it.

1 THE COURT: Mr. Miller, you got your answer. Move  
2 on.

3 MR. MILLER: All right.

4 BY MR. MILLER:

5 Q At the time that you withdrew these funds from the  
6 reserves without a Court order, were there any other source  
7 of funds that GSR held, MEI-GSR held in their bank accounts  
8 that could have been used to pay these what you consider to  
9 be emergency deposits or these deposits that you referenced?

10 A We are, we -- I just want to make sure I answer  
11 this correctly and without going too far into our  
12 financials, but we are a company that holds our cash very  
13 tight and we know down to the penny of what pretty much our  
14 bank account will be.

15 And the fact that we have to pay interest on a  
16 loan, we have a hundred, hundreds of million dollar loan  
17 that we have to pay interest on. Interest is rising  
18 drastically, I'm not sure if you are aware. So was there  
19 any other funds for this amount of money, I would say it  
20 would be tight.

21 Q Was this not at the same time that you had been  
22 holding all of the rental income from the Plaintiffs' units  
23 going back to January 2020?

24 A If you look at the statements currently, and we

1 paid 275 this morning, ish, sorry, so right now the  
2 Plaintiffs owe us \$171,000. So, again, it's not millions.  
3 There was never millions that the Plaintiffs, that we owed  
4 the Plaintiffs or the Plaintiffs owed us even with, you  
5 know, waiting on the net revenues. You know, that we  
6 applied the bond, that was a million dollars.

7 We had to deposit \$7 million in order for us to  
8 get the furniture in time so the rooms would be ready in  
9 2024. This is a timing issue. So when you are talking  
10 about a million dollars, I'm talking about \$7 million.

11 Q When did the Grand Sierra Resort or MEI-GSR  
12 Holdings contractually obligate itself to make these  
13 deposits for the FF&E for this furniture? Do you recall  
14 when GSR contractually obligated itself to make these  
15 payments?

16 A I'm not -- I don't understand the question, I'm  
17 sorry.

18 Q So roughly, right, \$3 million, \$3.6 million or so  
19 was the first amount that was withdrawn without Receiver  
20 approval, correct?

21 A Correct.

22 Q And you believe that that \$3.6 million was  
23 withdrawn as a result of some contractual obligation and  
24 that you would incur penalties if it wasn't withdrawn; is



1     **that correct?**

2           A           Yes, our vendors needed to get --

3           **Q           What contract was that?**

4           A           We have thousands of vendors that go into that.

5     We have, we have to pay labor. We have to pay the

6     furniture, FF&E. There is thousands of vendors, so I

7     couldn't specifically pick a contract, I'm sorry.

8           **Q           So the entire amount didn't apply to some specific**  
9     **contract. This was just a variation of expenses; is that**  
10    **correct?**

11          A           That is correct.

12          **Q           Good. Okay. And does that same principle hold**  
13    **true for the subsequent, was it 2. or \$12.8 million**  
14    **according to the Receiver's calculations that was taken from**  
15    **the reserves without Court approval?**

16          A           The biggest one was \$7.2 million for a deposit for  
17    Graniti for FF&E furniture, and we needed to make that  
18    deposit because if we did not we would not get the furniture  
19    on time and we could not remodel the rooms in time.

20          **Q           So if I understand your testimony correct,**  
21    **\$7.5 million of the \$12.8 million concerned a specific**  
22    **contract that had a penalty in it; is that correct?**

23          A           It was due for us to start shipping the FF&E, so  
24    it would, the equipment, they will not ship the equipment

1 unless you send, sorry, they will not build the equipment,  
2 then ship it from China to get here in time. So, yes, there  
3 is a lag and, yes, we had to make that deposit or --

4 Q All right.

5 A -- the rooms would not get remodeled. It's been  
6 eight years since the rooms were remodeled, even more now.

7 Q What about the other \$5 million, so even if we  
8 assumed your proposition is correct that the 7.5 was going  
9 to result in some interest penalties, what about the other  
10 5 million that was taken on top of the 7 during that time  
11 period when there was no approval from the Court?

12 A I have every single invoice, and Mr. Teischner  
13 just like the last time in 2020, which still did not get, I  
14 don't think it got, I don't think it got looked at for over  
15 a year. So in 2020 he came by, extensively looked at all of  
16 my invoices, and he actually agreed.

17 And it went to I believe you guys, your legal  
18 counsel, and there was no, I think you guys had some  
19 questions and it kind of stalled out. So he was in  
20 agreement with me. He had questions back and forth like we  
21 always do, but he went over invoices.

22 I have invoices for everything that we took out,  
23 and if the Receiver would like to see them during this time,  
24 he was not working. He said clearly that he was not doing

1 anything. He was not doing the reserve calculation. He was  
2 not doing the net rent calculations. He was not doing the  
3 SFU calculations. He wasn't doing any of his calculations  
4 that he was Court ordered to do.

5 MR. MILLER: Your Honor, could we have a  
6 five-minute break?

7 THE COURT: You can.

8

9 (Whereupon a break was taken from 9:42 a.m. to 9:51 a.m.)

10

11 THE COURT: We are back on the record.

12 MR. MILLER: If we are back on the record, I  
13 understand that under a recent Nevada Supreme Court case  
14 involving Harvey Whittemore --

15 THE COURT: It is not recent.

16 MR. MILLER: Relatively recent, in Bob Eisenberg  
17 time. Bob thought that was funny for the record.

18 My esteemed counsel Mr. Eisenberg informs me that  
19 there is a recent case involving Mr. Whittemore which  
20 indicates that the discussions between counsel and a witness  
21 that occurred during the pendency of either a deposition or  
22 a court proceeding are discoverable, and I believe that I  
23 would have the ability to go into those discussions when  
24 Mr. Brady returns.

1 THE COURT: Mr. Smith and I both know about that  
2 case.

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: Mr. Smith would you like to address  
5 the issue?

6 MR. SMITH: I would, Your Honor. I think my name  
7 is on that one, too.

8 THE COURT: Mine, too.

9 MR. SMITH: That is right. And the rule there is,  
10 one of the factors, the deciding factor is who requested a  
11 break. If it is the witness' lawyer who requested a break  
12 during the middle of testimony, then under certain  
13 circumstances perhaps that's right.

14 Here my memory is Mr. Miller requested this break  
15 and since it was not a break requested by Mr. Brady's  
16 counsel, then, no, you cannot get into those conversations.  
17 Those are still protected by privilege and work product.

18 THE COURT: And Mr. Brady didn't request the  
19 break.

20 MR. SMITH: That is also correct, Your Honor.

21 THE COURT: Sometimes there is a request that is  
22 made to confer with counsel about a privileged issue, which  
23 is clearly protected, but there are other circumstances  
24 where it's not.

1 MR. SMITH: That's right.

2 THE COURT: So I understand, but I will wait and  
3 see what happens.

4 MR. SMITH: Very good.

5 THE COURT: Your next question, Mr. Miller.

6 MR. MILLER: So I understand, the Court is not  
7 permitting me to go into those discussions?

8 THE COURT: I do not think you fall within the  
9 narrow confines of what happened in Whittemore.

10 MR. MILLER: Very well. Thank you, Your Honor.

11 BY MR. MILLER:

12 Q I actually have one final question for you, and  
13 that is do you understand that under the Unit Rental  
14 Agreement there is a 50/50 revenue split, correct?

15 A After the DUF, correct.

16 Q Okay. So does it make any sense to you that if  
17 you have a 50/50 revenue split for the income that's coming  
18 into the Plaintiffs' units that you would also have a  
19 corresponding very limited scope of fees, expenses that can  
20 be attributable to the Plaintiff units?

21 A I'm sorry, repeat the question.

22 Q So the Unit Rental Agreement calls for a 50/50  
23 revenue split, right? The MEI-GSR keeps half of the  
24 revenue?

1 A After the DUF.

2 Q After the DUF. You understand that, right?

3 A I do.

4 Q And then you have got the Unit Maintenance  
5 Agreement, Unit Rental Agreement, and the CC&Rs, correct?

6 A Correct.

7 Q And all of those documents are more or less  
8 drafted so they interact with each other or work in concert.  
9 Do you understand that?

10 A Governing Documents, I do.

11 Q Okay. And if you are drafting a Unit Rental  
12 Agreement that provides for a 50/50 revenue split, does it  
13 not also make sense that you would limit the expenses that  
14 are going to be attributable to the third party, the  
15 Plaintiff units in this case, under the CC&Rs?

16 A And our numbers that were modified after Judge  
17 Sattler in December, it does that. The Plaintiffs and the  
18 other non-Plaintiffs, they don't get charged off all of the  
19 expenses. They get a very small portion of the expenses, so  
20 it is a limited scope, yes.

21 Q So you agreed with my question, then, that the  
22 CC&Rs limit the amounts that can be attributable to the  
23 Plaintiffs?

24 A I don't agree as far as Mr. Teischner's numbers,

1 no. I agree to our numbers, yes.

2 MR. MILLER: No further questions, Your Honor.

3 Thank you.

4 THE COURT: Redirect.

5 MR. McELHINNEY: Thank you, Your Honor.

6

7 REDIRECT EXAMINATION

8 BY MR. McELHINNEY:

9 Q Mr. Brady, give me and the Court an idea, please,  
10 what are the total expenses on an annual basis to run this  
11 hotel? Can you give me a broad number like that?

12 A So the budget that is provided, the total amount  
13 expenses for a year for just the departments that are  
14 included in the current fees that go in for the hotel and  
15 the SFU is, our expenses that we pay is \$44 million and  
16 those are just the direct departments that we include.

17 Q So is that a budget for a year?

18 A That was actual numbers for a year, \$44 million.  
19 It goes back 12 months, like I said before, and that was for  
20 our 2023 budget. That's what GSR has paid out-of-pocket and  
21 that's just a very small portion. We take into account food  
22 and beverage and casino and all of the other departments  
23 that don't go into this and it's hundreds of millions of  
24 dollars.

1           Q           So Mr. Miller had asked you doesn't it make sense  
2           that you limit the expenses that the Plaintiff Unit Owners  
3           are responsible for. Out of that 44 million what percentage  
4           are the Unit Owners responsible for?

5           A           They, depending on if it's a shared facility or a  
6           hotel and Mr. Teischner uses the same square footage  
7           percentage, it's either, most of it is a shared facility and  
8           it's based on square footage, so there is roughly 339,000 of  
9           condo units square footage.

10                   And as the property I believe, compare that to the  
11           property and it is 13 percent that they get applied to, and  
12           then hotel expenses, which is, you know, directly for the  
13           hotel itself per the CC&Rs, that is 24 percent because you  
14           take the 339, 339,00 square feet and divide that by the  
15           hotel square feet percentage.

16           Q           So roughly for Shared Facilities Unit expense the  
17           Unit Owners are responsible for about 13 percent of that?

18           A           Correct.

19           Q           Of the total?

20           A           Correct.

21           Q           And then about 24 percent when it comes to hotel  
22           expenses?

23           A           Yes.

24           Q           Okay. And is that in accordance with the 7th



1 Amended CC&Rs?

2 A Yes. It specifically spells out that you can use  
3 square footage, and Mr. Teischner's numbers said he used the  
4 square footage, too.

5 Q Okay. I want to sort of pursue a little bit  
6 further these questions about pulling the money out of the  
7 capital reserve accounts. Is there an order, as you sit  
8 here today, is there an order in existence that says you  
9 have to have Court or Receiver permission before you pull  
10 the money out of the reserve accounts?

11 A No.

12 Q According to the CC&Rs who is in control of the  
13 reserve accounts?

14 A The declarant, MEI-GSR.

15 Q Do you recall Mr. Teischner's testimony where he  
16 said he has never asked to take control of the reserve  
17 accounts; do you recall that?

18 A I do.

19 Q He also said, he also testified I don't want to be  
20 in control of the reserve accounts; do you recall that?

21 A I do.

22 Q We did file motions in May of 2020 and in June  
23 of 2021 asking for the Court to instruct the Receiver to  
24 approve those withdrawals?

1           A           That is correct.

2           Q           How long did we wait for a decision on those two  
3 motions; do you recall?

4           A           A year, year and a half.

5           Q           We finally got a decision from Her Honor in 2023,  
6 correct?

7           A           We did.

8           Q           Now, the money, the obligations, the money that  
9 you pulled out of those reserve accounts, those were for  
10 existing contracts?

11          A           Yes.

12          Q           For materials or labor?

13          A           Correct.

14          Q           And did you outsource some of the labor for the  
15 tower improvements?

16          A           Absolutely.

17          Q           So when did this project begin on the Summit  
18 Tower?

19          A           I believe in 2021.

20          Q           All right. And were you -- did you sign contracts  
21 in advance of that work commencing to get furniture built  
22 and delivered and labor onboard?

23          A           Absolutely. Because of COVID, I don't know if  
24 everyone is aware, but there was a lot of shipping issues,

1 especially from materials from China, so a lot of, it would  
2 get held up so you have to be years out to order almost any  
3 materials.

4 And it's getting better, but it's still pretty  
5 bad. We still have issues. An example is we are putting a  
6 piece of equipment and it was supposed to be in here this  
7 month and it got delayed, so we can't put it in until next  
8 year.

9 Q Okay. And when did you sign as an example the  
10 \$7 million, \$7.5 million contract that you identified to  
11 build furniture and ship it from China, when did you enter  
12 into that contract?

13 A You enter it before -- I don't personally, MEI-GSR  
14 enters into it before, before payment obviously, so.

15 Q So would this, would this contract have been  
16 entered before the construction, before the project began in  
17 2021?

18 A Yes.

19 Q And when you are dealing with China, they require  
20 a substantial deposit before they will ever start the work;  
21 is that correct?

22 A Not so much with China, but with the company  
23 itself, yes.

24 Q Okay. And so if you had not ordered, if you had

1 not entered into that contract, could you have proceeded  
2 with the improvements to the units in the Summit Tower?

3 A No.

4 Q Is it part of your obligation under the CC&Rs to  
5 maintain the high level of this hotel?

6 A Yes. Per the CC&Rs there is a stipulation that we  
7 have to be a 4 diamond resort.

8 Q And we covered that earlier under, as I recall,  
9 Section 4.5C of the CC&Rs that talks about the building  
10 FF&E; is that correct?

11 A That's correct.

12 Q So from an accounting standpoint can you just go  
13 get the money from someplace else? In other words, let's  
14 not pull it from the reserve accounts, let's pull it from  
15 some other operational budget. Is that appropriate under  
16 any circumstances?

17 A No. The only place that we would be able to get  
18 it is from our revolver, but, again, that interest expense  
19 is so high and depending on where we are, because we have  
20 slow months, we do have to pull money out of the revolver  
21 and it's sometimes maxed out.

22 So depending on the slow months or the busy  
23 months, we have to be, and our interest expenses when they  
24 are due and our loan payment, we have to, we have to be sure

1 that we have adequate money. Also, we have to be sure that  
2 we have adequate per Gaming Control Board for minimums that  
3 we have to have as far as cash on the floor. That's  
4 something separate, so we have to be able to fund the cash  
5 on the floor.

6 So it's not like we can just take money from the  
7 casino and pay. The GCB limits us on how much money can be,  
8 you know, how barebones we can get and it's not dollars.  
9 It's millions of dollars, so there are very --

10 Q Do you -- I'm sorry, I interrupted you.

11 A There are very, there is a lot of moving parts  
12 that we are constantly navigating in looking at the future,  
13 because we do have to pay our loan, we do have to pay our  
14 interest, and we do have to pay our vendors and our labor,  
15 because, again, this machine does not stop.

16 Q Did you regard it as a legitimate emergency  
17 circumstance when you withdrew the money from, when I say  
18 you, when a decision was made to withdraw money from the  
19 reserve accounts?

20 A Yes. We did not take it lightly.

21 Q And judging from Mr. Teischner's past behavior did  
22 you think about calling him in and say please look at all of  
23 these back-up documents and invoices and approve this  
24 withdrawal?

1           A           I believe there was a Court order in January  
2   telling Mr. Teischner to complete this in 90 days. In  
3   90 days it was not completed. Then they gave another, I  
4   believe they gave him another order during that time to  
5   complete it. He did not complete it.

6                   Also, during this time there were, oh, man, I know  
7   at least 10 orders out there that Judge Saitta was not  
8   making any decisions on, so we were at a standstill and as a  
9   business you can't be at a standstill.

10          Q           Okay. You said there were orders out there. Did  
11   you mean motions?

12          A           I'm sorry, motions.

13          Q           That's fine.

14          A           I'm just an accountant.

15          Q           So given that experience with Mr. Teischner, how  
16   likely was it that you thought he would come in and take a  
17   look at your invoices for your withdrawal of the \$7 million  
18   and the \$12 million from the reserve account?

19          A           Based on previous experiences and the disorder  
20   with the Courts and the different Judges very highly  
21   unlikely.

22          Q           Do the -- I'm going to shift gears with you here.  
23   The balances we paid -- GSR wired money into the Receiver's  
24   account either last night or early this morning \$275,000 in

1 round numbers, correct?

2 A Correct. That was the balance due to the owners  
3 that had a due to them. Again, yesterday I believe it was  
4 around 48 Unit Owners of the 93 Unit Owners.

5 Q And I just want to review once again, I think we  
6 touched on this yesterday, but those balances vary from  
7 month-to-month and year-to-year; is that correct? Meaning  
8 sometimes it's a credit, sometimes it's a debit?

9 A Correct.

10 Q When is it -- when the Plaintiffs owe GSR money,  
11 do the Plaintiffs ever take care of that balance and pay it?

12 A No. Like I said earlier, since 2020 there has  
13 been five instances.

14 Q Okay. So, in other words, if during the slow  
15 months if there is not enough rental revenue coming in to  
16 cover their share of the SFUE, HE, and reserves, under the  
17 URA, the Unit Rental Agreement, they are supposed to pay  
18 that, aren't they?

19 A They are, yes.

20 Q As a matter of fact, contractually anyway, whether  
21 or not the Court would allow it, but contractually you are  
22 actually allowed to terminate that Unit Rental Agreement if  
23 they don't meet that obligation; is that accurate?

24 A That is correct.

1 Q And do I understand correctly that the Plaintiffs  
2 who have debits, they never meet that obligation?

3 A That is correct.

4 Q There was a line of questioning primarily  
5 yesterday about if you get an instruction from the Receiver,  
6 if you don't follow it immediately you are interfering with  
7 his ability to be a Receiver. Aren't you allowed to object  
8 to the Receiver or have a discussion with the Receiver if he  
9 makes a demand on you?

10 A Yes. We have good communication. He is to  
11 oversee it and, you know, as a business and company we  
12 always balance each other, you know, well, before he stopped  
13 working we always had a communication and bounced ideas off  
14 each other.

15 Because, again, as far as I know, this was his  
16 first, at least this large, was his first hotel-casino case.  
17 So he was coming into this pretty green, so he, you know, he  
18 had a lot of questions and we would always answer them.

19 And, you know, especially in those 2019, 2020  
20 years, we were in constant communication either with him or  
21 with his assistant Robin, constant communication. They  
22 would ask questions. I would provide answers, worksheets,  
23 whatever they needed.

24 And we still to this day upload to the shared



1 folder. I don't know if he looks at it. From what I  
2 gathered, he didn't even know if the statements were in  
3 there, so I don't think he has looked at it lately, but we  
4 still provide everything that the Court said and he asked  
5 for to a shared folder.

6 Q Is it -- what I hear you telling me is you had a  
7 good relationship with Mr. Teischner in 2020?

8 A Yes.

9 Q At some point did that relationship change?

10 A Yes. When he got counsel it was very lawyer-like,  
11 I guess. It was not good or bad, just lawyer-like.

12 Q So I want to make sure I understand it. So in  
13 2020 you guys had interaction. You talked. You arrived at  
14 a consensus?

15 A Yes.

16 Q And once Stephanie Sharp came onboard did that  
17 nature of the relationship end?

18 A Yes. We still get along and, you know, we still  
19 e-mail and stuff like that, but it wasn't like it was in  
20 '19 or '20.

21 Q And during cross-examination of you yesterday,  
22 Mr. Miller wanted you to look at just one order out of a  
23 series of orders that were issued. Have you noticed that  
24 all of those orders have the exact same date and timestamp?

1 A Yes.

2 Q To the second?

3 A To the second, yes.

4 Q And so they were filed as a group. They were  
5 filed as one document, weren't they?

6 A Yes.

7 Q So looking at one order to ask if it's clear  
8 really misses the point, does it not?

9 A Correct, because you can read them in any order  
10 and then you shuffle them around and then it tells you a  
11 different story.

12 Q And my understanding is that the orders, there  
13 were at least two if not three orders that conflicted with  
14 one another; is that correct?

15 A Yes, as I said yesterday.

16 Q And did that cause you confusion?

17 A Yes, and I believe it caused Mr. Teischner  
18 confusion, too.

19 Q Well, Mr. Teischner testified to that on the first  
20 day, didn't he?

21 A Yes.

22 Q Now, we have the January 7, 2015 order. The  
23 testimony has been that that order basically lays dormant  
24 for 6 1/2 years before it starts to raise, raise its head

1 for lack of a better term. Do you agree with that?

2 A Yes. It was never referenced until a year or two  
3 ago.

4 Q About September 15th, 2021, when Stephanie Sharp  
5 sent that e-mail to Justice Saitta, correct?

6 A Especially from the Receiver or the counsel, that  
7 was the first time, yes.

8 Q And I want to make sure, I think we have been  
9 through this testimony, but I want to make sure I  
10 understand, that was the first time the Receiver had said I  
11 want to start to receive the rent?

12 A Yes.

13 Q And for the next year and eight months or  
14 thereabouts, their request for rent was net rent, correct?

15 A Yes.

16 Q And their authority for citing to net rent was the  
17 January 7, 2015 order, correct?

18 A Correct.

19 Q And it changed to a demand for gross rent in May  
20 of 2023, correct?

21 A That is correct.

22 Q And what authority did they cite for the gross  
23 rent? Wasn't it the same order, January 7, 2015?

24 A It was.

1 Q Was that confusing to you?

2 A Very confusing, yes.

3 Q Because for a year and eight months you had been  
4 working with Mr. Teischner to calculate the net rents,  
5 correct?

6 A Correct. And he even stated that he needed to  
7 calculate the net rents so he could provide it to me so I  
8 could pay to his bank account, which he never opened, that  
9 was a different story, but yes.

10 Q So did you rely upon his representations about net  
11 rent that that is what was required under the January 7,  
12 2015 order?

13 A Yes. We had several conversations about it back  
14 and forth, because the logistics of this, it's not as easy  
15 just providing, you know, the net rent. There is a lot of  
16 stuff that goes into it.

17 A lot from our side that we have to do for him and  
18 a lot on his side, too. And, again, it's him and I believe  
19 a part-time assistant Robin. I'm not sure if she is  
20 full-time or not.

21 So me, I, you know, I have a team, right, that can  
22 help, that helps out with the condos, so I can provide stuff  
23 fairly fast depending on what time of the month or what time  
24 of the year, so I would provide it and then I would wait and

1 then he would finally get back to me. And it was all about  
2 the net rent, it was never about gross, and there was  
3 multiple, multiple conversations about net rent.

4 Q Mr. Miller during his cross-examination of you  
5 yesterday said you control rent. Why didn't you just give  
6 him rent to get him paid. Do you recall those questions?

7 A I do.

8 Q Wasn't Mr. Teischner telling you that he was going  
9 to get himself paid out of the net rents that he was  
10 calculating?

11 A Yes.

12 MR. McELHINNEY: Court's indulgence, please.

13 BY MR. McELHINNEY:

14 Q Do you have any books in front of you?

15 A Just the Plaintiffs'.

16 MR. McELHINNEY: May I have Defendants' book,  
17 let's just try one book right now, I think. Well, let me  
18 have all of the books I guess to be safe, please. Thank  
19 you.

20 May I approach, Your Honor?

21 THE COURT: You may.

22 MR. McELHINNEY: Thank you.

23 THE WITNESS: Thank you, sir.

24 MR. McELHINNEY: Yes, sir.

1 BY MR. McELHINNEY:

2 Q Mr. Brady, would you look at Exhibit 29, and I  
3 believe that is in book -- I apologize, I can't tell exactly  
4 what book it's in. I believe it's in book number 3.

5 A It's in 3. I'm on it.

6 Q Okay.

7 THE COURT: Is this the November 14th, 2022,  
8 letter?

9 MR. McELHINNEY: It is, Your Honor.

10 THE COURT: Thank you.

11 BY MR. McELHINNEY:

12 Q Look at page 4 of his, the very first letter  
13 that's dated November 14, 2022. The very last sentence of  
14 the very last paragraph, "Once the revised charges, once the  
15 revised charges would be determined by me and submitted to  
16 the Defendants and Plaintiffs for review and approval by the  
17 Court, then I would collect the net rents in arrears and on  
18 a monthly basis going forward with which I would pay the  
19 Receiver's monthly fees and the Unit Owners their shares of  
20 the net rents."

21 Is that consistent with what Mr. Teischner was  
22 telling you?

23 A It is, but I couldn't find it on the page.

24 Q I apologize, page 4.

1 A Yeah.

2 Q Very bottom of the page. It's actually the last  
3 full sentence.

4 A Gotcha, yes, sorry.

5 Q And if we read the sentence just ahead of that, it  
6 says, "The amount that would be needed to cover any  
7 shortfall," well, I apologize. That's not the section I was  
8 looking for.

9 I was looking at, and we have covered this before,  
10 the top of that paragraph, page 4, Exhibit 29. "Certainly,  
11 the amount of the net rents would first need to be  
12 calculated before the Receiver could inform GSR of the  
13 amount that it would need to turn over to the Receiver for  
14 past due amounts as well as for the most current months  
15 now," correct?

16 A Correct.

17 Q And that's what Mr. Teischner was telling you as  
18 well, correct, that he was going to calculate it and give  
19 you the numbers for the net rents so that you could pay him  
20 and he could deposit that into his separate account?

21 A Always until May of 2023.

22 Q And he also told you once I calculate the net  
23 rents, I will take my fees and Stephanie Sharp's fees out of  
24 that net rent number and that's how I will get paid?

1 A Correct.

2 Q So when Mr. Miller is asking you why didn't you  
3 just give him rent, he was telling you I'm going to give you  
4 the net rents, I will tell you what to give me, and I will  
5 pay myself out of those rents?

6 A That is correct.

7 Q Did you find, last night you were going through  
8 the CC&Rs and you found a reference in the 7th Amended CC&Rs  
9 that shows easements. Do you recall that?

10 A Yes.

11 MR. MILLER: Objection; exceeds the extent of  
12 cross-examination.

13 THE COURT: I will allow it; overruled. You can  
14 answer it.

15 BY MR. McELHINNEY:

16 Q I remember the Court had asked you questions about  
17 that yesterday about is there some kind of depiction of the  
18 easements on the map. Did you make it -- as I recall, you  
19 showed me the language and it looks like a chicken walked  
20 across the page. They made it so small you can't read it.  
21 Did you find a bigger copy?

22 A Yes. Something was bugging me about the easements  
23 Your Honor brought up, and I was like, I was like I know  
24 it's on there. I know I have seen it, but I couldn't at



1 that time, so it was driving me nuts last night.

2 So, yeah, I tried to find other copies of the  
3 CC&Rs where it was more legible, because there is a certain  
4 page in Exhibit A of the CC&Rs that has the site map and  
5 there is several writings there that actually talk about  
6 easements that's very hard to read because I think it's a  
7 copy over a copy over a copy over a copy over the years.

8 Q Did you make notes of what it actually says?

9 A I did.

10 Q And do you have those with you?

11 A I do.

12 Q And if you would look at Exhibit 1, direct the  
13 Court to that page, and then share with us your notes and I  
14 will ask you how you figured out what it said.

15 A Sure. So it's the -- do you know what exhibit the  
16 CC&Rs are?

17 Q It's Exhibit 1 and I think you have the book  
18 already.

19 THE COURT: This is where I miss my big magnifying  
20 glass that was in my courtroom in the other courthouse.

21 MR. McELHINNEY: I don't even know if that would  
22 help.

23 THE WITNESS: You could read certain -- and if it  
24 doesn't look right, just let me know, and I don't even know

1 if this copy is any better, but all right.

2 So a couple things I just want to point out and I  
3 typed it out last night just so I had it. If you go to  
4 Owner's Certificate, and I know it's blurry, but I have a  
5 copy here of another one that I was able to get that I  
6 looked at, but it says Owner's Certificate on the upper  
7 left-hand side. Are you --

8 BY MR. McELHINNEY:

9 Q It's okay. Proceed.

10 THE COURT: It's on the page that has the title  
11 Hotel Condominiums at Grand Sierra Resort, Phase 7.

12 MR. MILLER: Sorry to interrupt, but does the  
13 witness have a clear copy that we can look at as well?

14 THE COURT: You are all welcome to come look over  
15 the witness' shoulders since you have mics on that are with  
16 you.

17 THE WITNESS: And it's on the back, too.

18 MR. MILLER: All right. Do you need this?

19 THE WITNESS: No, I typed it out.

20 THE COURT: Mr. Miller, you have to give it back.  
21 Don't write on it.

22 MR. MILLER: This was not marked as an exhibit,  
23 but you still want me to give it back?

24 THE COURT: Uh-huh.

1 MR. MILLER: All right. Can I hold it while he  
2 is --

3 THE COURT: Yes.

4 MR. MILLER: Okay. Thank you.

5 THE WITNESS: So Owner's Certificate, upper  
6 left-hand side. "This is to certify the undersigned, Grand  
7 Sierra Operating Corp.," that has now changed to MEI-GSR,  
8 "is the owner of the tract of land represented on this plat  
9 and has consented to the preparation and recordation --" I  
10 will slow down -- "of this plat and that the same is  
11 executed in compliance with and subject to the provisions of  
12 NRS Chapters 115 and 275 --" that one I was not sure, so if  
13 you look it is very hard to read.

14 "The owners hereby grant to all public utilities a  
15 blanket easement for the construction, maintenance, and use  
16 of utility systems and drainage facilities, together with  
17 the right of access thereto, over all common elements and  
18 the S.F.U. as shown hereon. Also, all other easements as  
19 shown and noted on this plat are hereby granted, and  
20 reserving therefrom any and all water and/or water rights  
21 from any dedications."

22 Then if you go to the next page, which on the  
23 notes which is even harder to read, but so number 1 says,  
24 "Shared Facilities Unit, S.F.U., is the entire subdivision

1 excluding all hotel units and the common element parcel."

2 Then number 2, "Common elements are privately  
3 maintained and perpetually funded by the Homeowners  
4 Association."

5 Number 3, "The hotel units and the common element  
6 parcel contain only," and I couldn't, I think it said UR  
7 space, I'm not really sure. That was the only letter I  
8 couldn't or word that I didn't know, but I don't think it  
9 pertains. "But all lath, fittings, wallboard, plasterboard,  
10 plaster, paneling, tiles, wallpaper, paint, finished  
11 flooring, and any other materials constituting any part of  
12 the building are owned and maintained by the owner of the  
13 Shared Facilities Unit."

14 And then number 4 goes into the dimensions of the  
15 hotel units and the boundaries. Number 5 goes to the  
16 heights of the ceilings and also talks about the vertical on  
17 the floors, the elevation, I mean.

18 And then number 6 is, "Sewer utilities within this  
19 subdivision are to be maintained by the Owner of the S.F.U."

20 Number 7 says, "A blanket public utility easement  
21 is hereby granted across all common elements and the S.F.U.  
22 for the purpose of installing, assessing, and maintaining  
23 said utilities."

24 Number 8 says, "All public utility easements

1 include cable television."

2 Number 9, "A blanket easement is granted over all  
3 common elements and the S.F.U. to Unit Owners for access to  
4 their unit."

5 Number 10 says, "All unit boundaries are parallel  
6 or perpendicular to the exterior boundary of the building."

7 Number 11 says, "See Declaration of Covenants,  
8 Conditions, Restrictions and Reservations of Easements for  
9 hotel condominiums at the Grand Sierra Resort."

10 Number 12 says, "See Declarations of Covenants,  
11 Conditions, Restrictions and Reservations of Easements for  
12 hotel condominiums at the Grand Sierra Resort for granting  
13 of blanket access and utility easements to this  
14 subdivision."

15 And then the last it talks about, "The remaining  
16 parcel as shown hereon was surveyed as a part of this  
17 subdivision. The existing monuments along Greg Street,  
18 Glendale Avenue, and US 395 were used to determine the  
19 boundary of the remainder parcel and differ from the record  
20 dimensions as shown hereon."

21 THE COURT: Thank you, sir.

22 THE WITNESS: You are welcome.

23 MR. MILLER: Thank you, Mr. Brady.

24 MR. McELHINNEY: Thank you.

1 BY MR. McELHINNEY:

2 Q During cross-examination yesterday Mr. Miller was  
3 showing you an e-mail or I believe it was a letter from  
4 Mr. Teischner and it said, look, I have asked -- I'm going  
5 to back up. It was Mr. Teischner or his attorney saying  
6 that the Plaintiffs were, the Defendants were instructed to  
7 apply his 2021 fees retroactive to January 2020 and they  
8 refused to do that. Do you recall that line of questioning?

9 A Yes.

10 Q And Mr. Miller was asking you why didn't you  
11 comply with that direction from the Receiver; do you recall?

12 A Yes.

13 Q Is it your understanding that you are supposed to  
14 disregard Court orders and instead follow the instructions  
15 of the Receiver?

16 A No.

17 Q When the Receiver is telling you to apply his 2021  
18 fees retroactive to January 2020, he is talking about just  
19 one of the orders that were all simultaneously issued,  
20 correct?

21 A Correct.

22 Q There is a competing conflicting order that says,  
23 issued at the exact same moment, that he has to complete his  
24 2020 fee calculations and until such time as he does you

1 don't apply his fees retroactive. You apply the fees that  
2 were in place September 29, prior to September 29, 2021,  
3 Court order. Is that your understanding?

4 A Yes.

5 Q So is that why you declined to follow his  
6 instruction to apply his 2021 fees retroactive to  
7 January 2020?

8 A I questioned it and, you know, declined it and  
9 cited my reasons and so, yes.

10 Q Do I understand correctly all of the invoices are  
11 attached to the capital expenditure requests or records?

12 A Yes.

13 Q In other words, if I look at, if the Receiver were  
14 to come over to the GSR and look at the capital expenditure  
15 withdrawals, he would see invoices attached to each and  
16 every one, correct?

17 A Yes.

18 Q Okay. Yesterday the Court was talking about gross  
19 rent. She was asking you how long it would take to  
20 calculate gross rent per day, per week, per month. I would  
21 like to spend a little bit of time talking to you about  
22 that. How often do you calculate gross rent at the GSR?

23 A Pertaining to just condo units?

24 Q Yes.

1           A           Once a month during close, which is between the  
2   1st and the 10th of the month.

3           Q           And if that gross rent was to be handed over to  
4   the Receiver, what are the logistical concerns or the  
5   practical concerns that you would have about doing that, and  
6   if it would create hardship for GSR I would like to know  
7   about that in detail, please.

8           A           Sure. So in my accounting department, which is  
9   accounts payable, accounts receivable, revenue audit, GL,  
10   there is over, you know, 30 employees just in those areas  
11   alone, so it takes a team of not necessarily 30, but it  
12   takes a team to produce this.

13                   Also, at the same time we have a condo system that  
14   attaches to our, what we call LMS, which is our Lodge  
15   Management System, so in order for us to produce these  
16   numbers, we rely on this condo system.

17                   If we were to, which also we upload the fees, the  
18   DUF, all of that, so if we were to provide this to  
19   Mr. Teischner the gross revenue, he has two people that work  
20   there. Per the CC&Rs, he has 20 days to get the statements  
21   out. Our condo system produces the statements.

22                   If we provide the gross rents just for the  
23   Plaintiffs alone let's say, that's 93 statements that have  
24   to go out that he has to do. He would have to do manually.



1 He doesn't have a condo system.

2 Also, it takes more than one person for all of  
3 this to happen. He has two people. He would, he would have  
4 to hire more people.

5 Also, during that time if we were to provide and  
6 if it is all 670 units, I don't know how long that would  
7 take, because right now we only provide statements to the  
8 third party owners because we own the other, so we provide  
9 statements to 110 Unit Owners.

10 **Q But if he took it over he would have to supply**  
11 **statements for 670 Unit Owners?**

12 A That is correct.

13 **Q So his team would have to expand substantially,**  
14 **his costs would go up substantially; is that correct?**

15 A Correct. And they would have to be trained,  
16 because, you know, it's no easy task to put this together.  
17 We have been doing this for years, you know, many years. I  
18 have a team that knows the routine that knows this.

19 Also, at the same time if we provide gross rents  
20 to them, that means we can't pay our bills and we would  
21 have, we would front load all of the expenses for those  
22 670 units. That means that is 33 percent of our condo, of  
23 our hotel.

24 **Q So what kind of dollars and cents would we be**

1    **talking about that you would have to front load because you**  
2    **didn't have access to that money?**

3        A        So it's, you know, whether you -- millions,  
4    millions of dollars we would have to front load.

5        Q        Okay.

6        A        Not millions, because like we calculated earlier  
7    with the 93 units or the 110 ADR, it was between 150 to  
8    300,000, and then if you -- again, that's only 16 percent of  
9    the pool. You add the other pool, we are handing over a lot  
10   of money to them and at the same time we are paying all of  
11   the bills.

12                Twenty days to do all of those calculations for  
13   Mr. Teischner when I can't get him that until the 10th and  
14   we are paying the, we are front loading. We are paying the  
15   housekeepers. We are paying the accountants. And, by the  
16   way, my salary, Mr. Miller the other day talked about if I  
17   wasn't getting paid.

18                According to Mr. Teischner's calculations, I'm not  
19   getting paid. My whole team is not getting paid. We  
20   produce the statements. We do all of the back end stuff.  
21   He is going to go hire a team to do what we do right now.  
22   He is going to get paid by that, but I'm not getting paid  
23   according to his new, based on the CC&Rs, my team is not  
24   getting paid.

1           Q           So I want to make sure. I'm going to stop you  
2           just for a minute to make sure I understand that point. You  
3           are talking about his August 2021 calculations, correct?

4           A           Correct, that were approved on January 4th of  
5           2022.

6           Q           January 4th, 2022, correct?

7           A           Yes.

8           Q           So when you look at his calculations, there is no  
9           entry for accounting or finance?

10          A           No.

11          Q           Is that contrary to the CC&Rs?

12          A           Yes.

13          Q           So I'm going to give you a hypothetical. The  
14          Court orders you to hand over gross rent for all of the  
15          units every 30 days. What happens to the GSR if  
16          Mr. Teischner who has never done this -- has he ever done  
17          something like this before, to your knowledge?

18          A           Not that I know of.

19          Q           What happens if he is not able to turn that around  
20          and give the money back to you for your operating expenses  
21          at GSR?

22          A           It will be detrimental. We would, we wouldn't be  
23          able to pay our bills. We wouldn't be able to pay our  
24          vendors. We would start being sued.

1           Also, with the, the non-Plaintiffs third party  
2     owners, they most likely would not get their statements.  
3     They would come after us because it's an agreement between  
4     us and them, the Unit Maintenance Agreement, the Unit Rental  
5     Agreement. It's an agreement between us and them, so they  
6     would come after us. We would get sued by them.

7           It would be, again, we are talking, you know,  
8     depending on when he can turn this around, which I don't  
9     think he can within a month, I don't think so. Two months,  
10    probably not.

11           So we would be at two months of us paying, you  
12    know, turning over the revenue and also paying the bills,  
13    paying the labor for the housekeeping, paying the vendors  
14    for, you know, the supplies that go up to the rooms for the  
15    toilet paper and, you know, the towels and the shampoo and  
16    stuff. We would still have to run a business. We couldn't  
17    run the business.

18       **Q       Okay. Who would train Mr. Teischner and his team**  
19   **to take over this function?**

20       A       Oh, he would be working directly with me, which  
21    would take away from my time actually doing my other job  
22    that is not only condo.

23       **Q       But he doesn't have to work with you. He could**  
24   **just go out and try and figure it out on his own, correct?**

1           A           He could.

2           Q           And with the delays that you have described that  
3   sounds like that would be catastrophic to the GSR; is that  
4   fair?

5           A           Absolutely.

6                   MR. McELHINNEY: Court's indulgence, please.

7                   THE COURT: Sure.

8                   MR. McELHINNEY: As a matter of fact, may we take  
9   a five-minute break, Your Honor?

10                  THE COURT: As long as it's really only five  
11   minutes this time.

12                  MR. McELHINNEY: Okay.

13

14   (Whereupon a break was taken from 10:41 a.m. to 10:45 a.m.)

15

16                  THE COURT: You may proceed.

17                  MR. McELHINNEY: Thank you.

18   BY MR. McELHINNEY:

19           Q           Mr. Brady, the Court had discussed a -- I suppose  
20   I'm going to phrase it as a hypothetical. I don't know if  
21   it was an actual order, but there was an earlier order from  
22   the Court that the Receiver would take over the renting of  
23   the units, and Her Honor just indicated awhile ago that she  
24   may amend that to say that the Defendants continue to rent

1 the units going forward.

2 The hypothetical is let's assume the Court orders  
3 the application of Mr. Teischner's 2021 fee calculations  
4 going forward. Are there, are there any hardships that you  
5 can envision other than the fact that we are subsidizing the  
6 costs, but is that doable for the GSR?

7 A To change to their, to change to  
8 Mr. Teischner's -- which fees, the 20, the fees that were  
9 approved on January 4th?

10 Q In my hypothetical, I'm not saying I would be in  
11 favor of it and would probably argue against it, but I'm  
12 trying to give you a hypothetical that you can work with.  
13 Yes, his January, his August 2021 calculations that I  
14 understand you view as being in violation of the CC&Rs, what  
15 sort of hardships would be involved for the GSR if they were  
16 to implement those numbers as to Plaintiffs' and Defendants'  
17 units?

18 A It would be, currently right now we only have the  
19 third party Owner Units in the condo system, and this was  
20 one of the issues that I talked to Mr. Teischner about is  
21 that currently we do not have the other, excuse me,  
22 560 units that the Defendants own in the condo system.

23 Q And why is that?

24 A Well, because MEI-GSR owns them, so there is no

1 point having a rental unit agreement to ourselves. There  
2 are units. We pay for all of the expenses, so there was no  
3 need to put them in there.

4 The only thing we calculate for them, which is  
5 fairly easy, is the reserve amounts, because it's a flat  
6 dollar amount per square footage and that's easy to  
7 calculate. But what is not easy is, you know, per the CC&Rs  
8 and all of the stuff we would have to go through and see in  
9 the Unit Rental Agreement, we would have to determine, find  
10 out what the cash revenue is for these units, because they  
11 are not in the condo system, so we would have to do it  
12 separate on this just to keep order.

13 Also, by providing this to them it would be very  
14 hard to close the books because I would have to account for  
15 this, because we are giving money to, we are sending money  
16 to the Receiver expecting money to get back. So as far as  
17 the accounting that would, I would have to talk to our  
18 outside firm, CPA firm, Eide Bailly, and see how I would go  
19 about with the accounting of this.

20 Because, again, at the end of the day it's on me  
21 and the company to have accurate financials and balance  
22 sheets that we have to give to the bank in order to meet our  
23 covenants. If we don't meet our covenants, then, you know,  
24 they may hold us in default for our loan.

1           So that would be another aspect that we would have  
2   to think of. I wish it was just turnkey, but accounting is  
3   not like that. There are repercussions that go on that I  
4   can't even think about now.

5           And me and Mr. Teischner, just about the rent we  
6   were going back and forth, so I asked him if I turn over the  
7   rent and anybody who owes you money, that's not on us now.  
8   You took over the rent. So if anybody owes you money, you  
9   have to collect it, not us, not my AR team. You have to  
10   collect it now.

11       Q       So it sounds like if we are talking about all  
12   670 units and we take over that rental program and have to  
13   apply fees and turn that money over to Mr. Teischner, that's  
14   going to be a substantial burden as it concerns the  
15   Defendant-owned units, correct?

16       A       Correct.

17       Q       If we narrow it to the Plaintiff units only, is  
18   that less of a burden?

19       A       Yes.

20       Q       Because they are already in the condo program, you  
21   track them that way, so it would be just a matter of  
22   plugging in whatever fees Her Honor might order and then  
23   turning over net rent to Mr. Teischner?

24       A       Yes, that's always been the discussion with



1 Mr. Teischner and that's the discussion we had back when I  
2 believe this order came out, because, you know, this order,  
3 you know, throws you a curve ball in there and there is all  
4 of these logistics. It's not a turnkey, turn the money over  
5 and that's it. No, it goes way beyond that. I have to  
6 account for that.

7 He has to account for that on his side. Now he is  
8 getting all of this money. That's a lot of money cash in  
9 the bank and he has got to account for the money that goes  
10 out, the money that is due. He has to have his own AR  
11 system, you know, just to track this money.

12 It's not a simple worksheet that you can do.  
13 There is a lot more that goes into it than anybody realizes  
14 here that's not an accountant, especially for this size of a  
15 company. If it was a small mom and pop, yeah, that would be  
16 pretty easy, but this is not a mom and pop operation.

17 Q And if he is --

18 THE COURT: Wait a second. In order to avoid that  
19 challenge, sir, would MEI-GSR agree to pay the Receiver's  
20 pro rata fees on a regular basis rather than sending the  
21 gross rental for the 560 units owned by entities affiliated  
22 with the Defendants?

23 MR. McELHINNEY: Your Honor, I'm going to object.  
24 I mean, I would like to address that with my client.

1 THE COURT: I won't ask him, then.

2 MR. SMITH: May I confer with counsel?

3 THE COURT: Yes.

4 MR. McELHINNEY: One moment, please, Your Honor.

5 MR. SMITH: And can you repeat that question for  
6 me?

7 THE COURT: No. You know what I said to him.

8 (A discussion was held off the record.)

9 MR. McELHINNEY: Your Honor, if I may, I can  
10 probably answer that question better than Mr. Brady. The  
11 answer is, yes, we have that authority as long as it is  
12 understood that that does not constitute a waiver of our  
13 appeals, the continuation of the receivership, the  
14 preliminary injunction, et cetera.

15 THE COURT: That's a lovely decision. Thank you.

16 BY MR. McELHINNEY:

17 Q And, Mr. Brady, had we finished talking about if  
18 it was just the Plaintiffs' units how much, I know it varies  
19 tremendously, but as an example during busy months if you  
20 are just talking about the revenue, rental revenue from the  
21 Plaintiffs' units, how much would be handed over to the  
22 Receiver and would it be enough to cover his -- well, just  
23 tell me that. How much would it be in round numbers?

24 A Gross or net?

1           Q           Net, applying his fees. Now, I know you have got  
2   to kind of spitball that because you haven't done the  
3   calculations.

4           A           Applying his fees?

5           Q           Yes.

6           A           So for, what was it, two years the difference was  
7   a million dollars, so divide that by 24. It would be right  
8   around, so 500,000, 12, I believe -- hold on. I have to get  
9   my calculator out now.

10          Q           Okay.

11          A           I am nothing without my 10 key.

12                    Since we applied our fees and we owed them a net,  
13   it was 102,000, you would add another 41,000, so about 51,  
14   150,000, 140,000 a month.

15          Q           Okay. How much, how much of a shortfall is that  
16   for GSR? I know we had talked about you have to subsidize  
17   to pick up the balance. Your calculations are based upon  
18   real numbers, correct?

19          A           Correct.

20          Q           Mr. Teischner's are not, correct?

21          A           Currently, no.

22          Q           So what's the delta percentage-wise between the  
23   two? How much higher are your calculations compared to  
24   Mr. Teischner's?

1           A           Two to three times.

2           Q           And that means that GSR would have to pick up that  
3   slack if, in fact, Mr. Teischner's numbers are applied?

4           A           Correct.

5           Q           Okay.

6           A           Which over the two years was over a million  
7   dollars, so.

8           Q           And that's money we have posted with the Court,  
9   correct?

10          A           Correct.

11                   MR. McELHINNEY: I don't think I have any further  
12   questions. Court's indulgence one second.

13                   Nothing further, Your Honor.

14                   MR. SMITH: That's correct, Your Honor. I just  
15   want to, as the nerdy appellate --

16                   THE COURT: Hold on. Mr. Miller, are you going to  
17   have any additional questions for the witness?

18                   MR. MILLER: Yes.

19                   THE COURT: Yes, Mr. Smith.

20                   MR. SMITH: I just want to make sure as the nerdy  
21   appellate guy here, I believe Mr. McElhinney was clear when  
22   he answered yes to your question. In addition to what  
23   Mr. McElhinney said I just want to clarify that includes the  
24   agreement without any waiver about our arguments about the

1 status of the receivership being terminated. I think that  
2 was clear, but I just wanted to make that --

3 THE COURT: When I tell you what I'm going to do,  
4 you can then say anything else you want, but I appreciate  
5 you giving me the guidance so I can use the alternate path I  
6 had come up with.

7 MR. SMITH: Very good. And I believe  
8 Mr. McElhinney was clear, but I just wanted to make sure  
9 that point was sharp enough. Thank you.

10 THE COURT: Mr. Miller.

11

12 RECROSS-EXAMINATION

13 BY MR. MILLER:

14 Q Mr. Brady, will you refer to Exhibit 66.

15 A I have both here, one second. Yes.

16 Q Do you recognize that as a monthly statement?

17 A Yes, for December of 2021.

18 Q So if the gross rents are turned over monthly to  
19 Mr. Teischner, how does that stop you guys from continuing  
20 to issue the monthly statements, right? You still have all  
21 of the programming. You still have got to take in all of  
22 the data for the room usage; is that correct?

23 A Why would that stop us? Because he is supposed to  
24 calculate it.

1 Q No.

2 A Accounting purposes, I turn over the money.

3 I'm -- I can't account for any of the fees or anything else.

4 Q You are going to account for how much gross  
5 revenue comes in, correct, before you turn it over?

6 A I will account for gross revenue and turn them --  
7 sorry, excuse me, go ahead.

8 Q So the existing Court orders, or at least the  
9 January 7th, 2015, calls for the turning over of all rents.  
10 So the way this would work as I would understand it, right,  
11 is at the end of the month you would look in your system and  
12 see what all gross rents were, right, which shows up on the  
13 monthly statements anyways; is that correct? We are talking  
14 about the Plaintiffs' units here.

15 A Yes.

16 Q If you look at this, every month you are  
17 accounting for the gross rents anyways; is that right?

18 A For the Plaintiffs, yes.

19 Q Yes.

20 A Yeah.

21 Q Okay. So every month you are accounting for all  
22 of the gross rents, so you are ending up with that number  
23 anyways, right?

24 A Correct.

1 Q Okay. So then you take that amount, right, and  
2 you deposit it into the Receiver's account. How does that  
3 stop you from issuing these monthly statements every month?

4 A That's stops me because I'm not doing the rest.  
5 He is doing the rest. So in accounting I'm handing over  
6 that money.

7 Q And he is --

8 A That's now a, now I'm handing over the money so  
9 now, I would have to get with Eide Bailly, but I'm not  
10 accounting for the daily use fees. I'm not accounting for  
11 any of that. Daily use fees I will be, but all of the other  
12 fees I'm not. That's on him now.

13 Q As it already should have been, right? So he will  
14 tell you --

15 A Okay.

16 Q -- what fees to apply, correct? And if he tells  
17 you what fees to apply in these statements, you run those  
18 calculations, right, and then you turn over the gross rents  
19 to him. He looks at the statements and says I agree with  
20 those amounts or I don't, and then presumably he issues you  
21 back some fee or some amount, right?

22 The point is that it takes away the situation  
23 that's gone on for three years now where you just do  
24 whatever you want and hold all of the money?

1 MR. McELHINNEY: I object to the line of  
2 questioning, Your Honor. It's just mischaracterizing the  
3 testimony.

4 THE COURT: Can you rephrase your question,  
5 please?

6 BY MR. MILLER:

7 Q If the Court orders the turnover of the gross  
8 rents and those amounts are deposited to Mr. Teischner, and  
9 then he determines how much you get back for whatever your  
10 expenses were and he tells you what amounts to put in these  
11 monthly statements, how does that increase your workload at  
12 all?

13 A Turning over the gross revenue?

14 Q Yes.

15 A When I turn over the gross revenue, it stops. I  
16 cannot calculate this, because he is calculating it. He has  
17 got to account for it on his books. He is taking on that.  
18 Then when it comes back to me, I can account for it based on  
19 his thing.

20 So pretty much it's I'm going to send him money,  
21 so it's going to be in AR or AP depending on that. When he  
22 gives it back, then I can calculate the expenses. During  
23 that time, once I turn over that gross revenue I am done.

24 As accounting I have to, I can't just say, oh,



1 hypothetically it could be this, it could be this. I have  
2 to, my books have to be correct.

3 And when I do the gross revenue, I'm handing the  
4 money over. It's not fake money. It's actual money that's  
5 going out of our account. I have to account for that on the  
6 balance sheet and/or financials if that is the case when he  
7 turns the money back.

8 Q Okay. And that accounting can be done; is that  
9 correct?

10 A On my side?

11 Q Yes.

12 A It actually makes it easier for me, because I'm  
13 just going to calculate the gross and turn over the money  
14 and he has to do all of the work.

15 Q But if he gives you the amount of the daily use  
16 fee and the amount of the hotel fees, right, all you have to  
17 do is input that into these monthly statements; is that  
18 correct?

19 A As far as I know, when I give him the gross  
20 revenue he is doing all of the work, not me. Like you said,  
21 we can't be trusted, so once I hand over that money, it's on  
22 him.

23 Q So could the Court order that you turn over the  
24 gross revenues, and then Mr. Teischner instructs you on what

1     daily use fee you are going to put in here and what hotel  
2     fees you are going to put in here, and then you give him the  
3     calculation as to the amounts due back and then he wires  
4     those funds back to you? Could that work?

5         A         No. These fees are tied to accounts. These fees  
6     go on our income statement. I can't hypothetically do that  
7     because it wouldn't balance to the cash out that I send. Do  
8     you understand that? The cash out I send is this. I cannot  
9     produce these statements, because if I produce these  
10    statements it has to tie to my balance sheet. It has to tie  
11    to my financials.

12                By producing these statements, it doesn't work.  
13    I'm sorry, it just doesn't work. So once -- I could produce  
14    these statements. All you are going to see is gross  
15    revenue. You will not see any of that.

16         Q         Okay.

17         A         And I can't do, and it will be a -- so the gross  
18    revenue will be due to, due to the Receiver.

19         Q         Okay. So then I guess Mr. Teischner at that point  
20    will then just need to put in the amount that he believes  
21    for the daily use fee, the amount that he believes for the  
22    hotel fees, and then wire you back those amounts that he  
23    deems appropriate?

24         A         Once he brings it back, then I can do my

1     accounting. I will need his backup on how he calculated it.  
2     Then I will do my accounting and I will apply my expenses  
3     and I will apply, you know, whatever the, whatever we sent  
4     out again with the reserves. Again, this is all logistics.  
5     Right now I can't answer that question, because I don't  
6     know.

7           **Q           Okay. All right.**

8           A           Mr. Teischner had something set up for net  
9     revenues, but that went out the window when he demanded  
10    gross revenues. That's a completely different beast and  
11    that's a completely different accounting that I would have  
12    to, one, talk with my outside CPA firm to be sure that I'm  
13    accounting for it correctly, because at the end of the day  
14    my, my name is, you know, or my CFO's name or MEI-GSR is  
15    signing saying that we attest to these financials to be true  
16    and accurate.

17          **Q           Yes. So that process could work then, right? You**  
18    **turn over the gross rents to him, to Mr. Teischner. He**  
19    **assigns the amounts of the daily use fee, he assigns the**  
20    **amounts of the hotel fees, and then he wires you back the**  
21    **difference. And how you account for it that's your issue;**  
22    **is that correct?**

23          A           Hypothetically, yes.

24                   MR. MILLER: Thank you. No further questions.

1 THE COURT: Anything else, Mr. McElhinney?

2 MR. McELHINNEY: Nothing further, Your Honor.

3 THE COURT: Do you rest?

4 MR. McELHINNEY: Court's indulgence.

5 (A discussion was held off the record.)

6 MR. McELHINNEY: Your Honor, I just want to  
7 confirm all of our exhibits are in evidence. That would be  
8 1 through, I believe it's 1 through 38, 1 through 39.

9 THE COURT: Gracie, can you confirm that?

10 THE CLERK: They have been marked, Your Honor.

11 THE COURT: Have they been admitted?

12 THE CLERK: 130, 131, 132, 133, 134 -- I'm sorry.

13 MR. McELHINNEY: No, I'm interested in Exhibits 1  
14 through 39, please.

15 THE COURT: I believe I admitted them on the first  
16 day of the proceedings.

17 THE CLERK: You are correct, Your Honor. 1  
18 through 38 Defendants' exhibits have been admitted --

19 THE COURT: Thank you.

20 THE CLERK: -- on June 6.

21 MR. McELHINNEY: Thank you. With that  
22 understanding that those were admitted, Defense rests.

23 THE COURT: Thank you.

24 Mr. Brady, you can step down and go back to your

1 corporate representative chair. Thank you, Mr. Brady, for  
2 your patience, and leave the stuff there and we will get it.

3 Mr. Miller, did you want to present a deposition  
4 reading as part of your rebuttal case?

5 MR. MILLER: Yes, Your Honor.

6 THE COURT: Do you have the original deposition?

7 MR. MILLER: Yes. I have four copies of the  
8 deposition.

9 THE COURT: Do you have a copy of that deposition,  
10 Mr. McElhinney, or would you like a copy?

11 MR. McELHINNEY: I don't with me.

12 THE COURT: You do now.

13 Do you have the original or a certified copy  
14 somewhere for the Clerk?

15 MR. MILLER: I do not have the certified copy. I  
16 believe that would be in the possession of the Defendants.

17 THE COURT: Usually it's in the possession of the  
18 person who took the deposition, which would be you.

19 MR. MILLER: It is not in our possession.

20 THE COURT: Does everyone stipulate to use the  
21 document that Mr. Miller is handing -- I see a no nodding  
22 from Mr. McElhinney.

23 MR. McELHINNEY: Your Honor, I don't want to be  
24 unfair to Mr. Miller, but if I have ever seen this document

1 it was years ago and I can't possibly attest to the fact  
2 that this is a true and accurate copy, so I will not  
3 stipulate.

4 THE COURT: Mr. Miller, can you call your office  
5 to see if they have the envelope or a certified copy?

6 MR. MILLER: I know that we do not.

7 THE COURT: So where is it?

8 MR. MILLER: I don't believe we ever received it,  
9 Your Honor. I can make an offer of proof if the --

10 THE COURT: Depositions, I have got to either have  
11 a certified copy or the original or a stipulation. Those  
12 are my three ways to do it.

13 MR. MILLER: These are marked original. This is  
14 what we have.

15 THE COURT: It is a photocopy?

16 MR. MILLER: Yes, Your Honor.

17 THE COURT: Where did you make the copy from,  
18 though? Somebody had the original at the time they made the  
19 photocopy.

20 MR. MILLER: Yeah. I can check our files --

21 THE COURT: Call your office.

22 MR. MILLER: -- at lunch.

23 THE COURT: Call your office. Well, no, call your  
24 office now.

1 MR. MILLER: Okay.

2 THE COURT: Because we are not breaking for lunch  
3 this early. I need every moment at this point.

4 MR. MILLER: Can we take a five-minute recess?

5 THE COURT: Yes.

6 MR. MILLER: Thank you.

7

8 (Whereupon a recess was taken from 11:11 a.m. to 11:14 a.m.)

9

10 THE COURT: What did you find out?

11 MR. MILLER: My belief was confirmed. We do not  
12 have in our possession a copy of the original.

13 THE COURT: So you don't have a certified copy or  
14 an original with a little red thing on the back?

15 MR. MILLER: Yeah, no, we do not.

16 THE COURT: So given the lack of an original or a  
17 certified copy or a stipulation, I will defer to a  
18 consultation between you and Mr. Eisenberg if you have  
19 another option.

20 MR. MILLER: Your Honor, portions of the  
21 deposition transcript were submitted in the Reply in Support  
22 of Motion to Compel Discovery Responses dated  
23 September 22nd, 2020 as Exhibit 1. We would request that  
24 those portions of the deposition transcript submitted as

1 Exhibit 1 to that motion that I referenced be admitted into  
2 evidence pursuant to the parties' stipulation.

3 THE COURT: Any objection, Mr. McElhinney?

4 MR. McELHINNEY: Your Honor, my objection is that  
5 without the original I still think it is inappropriate.  
6 Additionally, this deposition was taken 10 years ago. I  
7 think it's relevancy at this period 10 years later is highly  
8 speculative and I object on that basis.

9 THE COURT: So I have an objection to the  
10 deposition portion that was not an exhibit that was  
11 previously marked at the beginning of the case, so I am not  
12 going to expand the scope to include it at this point.

13 MR. MILLER: Thank you, Your Honor.

14 THE COURT: I have asked the Clerk to look to see  
15 if the original was used at a prior hearing at an  
16 evidentiary hearing or a prove-up trial at which it might  
17 have been deposited with the Clerk's Office and she is  
18 trying to find out the answer.

19 MR. MILLER: Okay. Thank you, Your Honor. And in  
20 all honesty, it's not entirely necessary because we have in  
21 evidence that Mr. Armona and Mr. Meruelo are the managers of  
22 the entity and under the case law the managers of the legal  
23 entity are the ones ultimately responsible for the contempt.

24 THE COURT: So do you want to rest since it's not



1 really necessary?

2 MR. MILLER: I have temptation to ask the Court if  
3 I can make an offer of proof as to what the --

4 THE COURT: Absolutely you can make an offer of  
5 proof of what it would just like I let Mr. McElhinney,  
6 because there appears to be a lost deposition transcript. I  
7 am then not going to consider that evidence, but it would be  
8 part of your record for appellate purposes only.

9 MR. McELHINNEY: And Mr. Smith may supplement  
10 this. We have a deposition transcript that is inadmissible  
11 because the original is not available. I think it's  
12 different than --

13 THE COURT: Original or certified copy.

14 MR. McELHINNEY: Or certified copy, neither one.  
15 So the document is inadmissible. I don't know that we can  
16 get around that by reading excerpts of it to the Court as an  
17 offer of proof. It's irrelevant. It's inadmissible,  
18 whereas Ms. Kern was a live witness here ready to testify.

19 THE COURT: And the issue is somebody in  
20 Carson City may disagree with all of us, and so in an  
21 abundance of caution I'm going to let Mr. Miller say  
22 whatever he is going to say, and you are going to make  
23 whatever objection or Mr. Smith is, and then I'm not going  
24 to listen to it because it doesn't really matter to me and

1 then we will go on, because --

2 MR. McELHINNEY: All right. Thank you,  
3 Your Honor.

4 THE COURT: -- I'm not putting anybody in jail.  
5 Just so we are clear, I got it. He is going to argue it,  
6 but I'm not putting somebody in jail. I have another plan  
7 those of you will like less than somebody going to jail.

8 MR. MILLER: With that said, Your Honor, I see no  
9 reason to waste the Court's time with this issue.

10 THE COURT: So you don't have anything you want to  
11 present in rebuttal, then?

12 MR. MILLER: No, Your Honor.

13 THE COURT: Are you ready to do your closing now  
14 and then we will break for lunch after you finish your  
15 closing?

16 MR. MILLER: Yes, Your Honor.

17 THE COURT: All right. Let's go.

18 MR. MILLER: Your Honor, we heard one portion of  
19 Mr. Brady's testimony this morning that was right on point,  
20 sort of the theme of this case, and if it's quoted correctly  
21 it was, "We are a company that holds our money very tight."  
22 At every turn in this case it's been stop the flow of money  
23 to the Plaintiffs.

24 If the Defendants disagreed with the Court orders

1 or the Receiver's actions, their remedy was to go back to  
2 the Court to seek guidance or relief. Many of these orders  
3 have stood for years. Some of the orders the Defendant  
4 specifically sought reconsideration on on points that are  
5 different than what they argue now about them being  
6 ambiguous.

7 If we look at the standard for contempt, it's  
8 disobedience or resistance to any lawful writ, order, rule  
9 or process issued by the court and that's under  
10 NRS 22.010.3. We believe that we have demonstrated by clear  
11 and convincing evidence that this is, that this has  
12 occurred. And in the event that the contemnor claims  
13 inability to comply with the Court orders, the contemnor is  
14 to satisfy the burden by showing categorically and in detail  
15 why the contemnor cannot comply.

16 Again, the issues of contempt are the refusal to  
17 implement Receiver fees, refusal to turn over rents, whether  
18 to the Receiver or the Plaintiffs, mishandling, withdrawing  
19 without authority from the reserves, obtaining reserve  
20 studies in direct conflict with the Court's orders, and then  
21 finally the failure to rent the Plaintiffs' units, and then  
22 also interference with the source of payment to the Receiver  
23 stopping his work.

24 In reviewing these proceedings and the seven

1 different motions for Order to Show Cause the Court looks at  
2 whether or not the orders were clear and ambiguous, whether  
3 Defendants complied and whether compliance was possible.

4 For the basic timeline, as we all know the  
5 January 7th, 2015, order was the Order of Appointment.  
6 Contrary to the assertions of the Defendant, that order has  
7 always been at issue and has been referenced in connection  
8 we believe with every, with all seven of the granted Motions  
9 for Order to Show Cause and, in fact, is the controlling  
10 document over the receivership.

11 I won't belabor the language of the order because  
12 the Court is keenly aware, but it unambiguously requires  
13 payment of the Receiver from the rents. We know that GSR  
14 held the rents. It unambiguously requires the turning over  
15 of control or cooperation by the Defendants with regard to  
16 all rents, all reserves.

17 We then had the several January 4th, 2022,  
18 confirming orders that really when you look at them they are  
19 all the result of the Defendants' lack of compliance with  
20 the January 7th, 2015 orders.

21 We went through and looked at the provisions of  
22 each of those orders and two in particular, the 122 and 124  
23 we reviewed repeatedly. And, in fact, as we have referenced  
24 the Defendants filed Motions for Reconsideration as to all

1 of those or all of those key orders, which in their Motions  
2 for Reconsideration I believe they argued that they were  
3 clearly erroneous rather than their arguments here during  
4 these proceedings.

5 And then you have the November 18th, 2022, order  
6 wherein the Court denied the reconsideration of those  
7 motions, yet the same continued, conduct continued.

8 If we look back to the first Motion for Order to  
9 Show Cause, which was filed September 27th, 2021, the issues  
10 in that motion were refusal to permit the Receiver to  
11 calculate the reserves and the refusal to turn over rental  
12 revenues.

13 And, again, that motion rests on the January 7th,  
14 2015, Appointment Order and it also rests on the Findings of  
15 Fact and Conclusions of Law and Judgment, which is Exhibit  
16 116, on page 22, which specifically dictates that the  
17 Receiver will determine a reasonable amount of FF&E, shared  
18 facilities, and hotel reserve fees.

19 Exhibits 39, 40, and 47 are all internal e-mails  
20 of the GSR demonstrating that they knew that the Receiver  
21 had control over the reserve accounts. In fact, Exhibit 47,  
22 the specific language is the charges for the reserve should  
23 be left to the sound discretion of Teischner in accordance  
24 with the Governing Documents.

1           Most telling, though, on this point is the motions  
2     requesting that the Court permit or instruct the Receiver to  
3     allow the withdrawal of certain reserves, and we looked at  
4     the last reply that they filed on this issue, which I  
5     believe was July 10th of 2022 specifically saying, you know,  
6     asking the Court for instruction to permit the withdrawal of  
7     those funds. We then admittedly had multiple withdrawals  
8     from the reserves after the date of even that filing that  
9     just clearly demonstrates contempt.

10           As far as interference with the Receiver, if we  
11     look at Exhibit 42, for example, it states, it's an e-mail  
12     from Stephanie Sharp to the Court, "Defendant sent the  
13     reserve before these documents were reviewed by the  
14     Receiver, notwithstanding the direct request from the  
15     Receiver that the undersigned, that they not do so."

16           Defendants have expressed their opposition to the  
17     Receiver or their opinion that the Receiver does not have  
18     authority to interfere with the determination of the  
19     reserves.

20           If you go to Exhibit 43, you have the reserve  
21     study that was issued which includes expenses that the Court  
22     categorically rejected. An important point on this is that  
23     absent a stay of an order, the Defendants have to promptly  
24     comply with that order, and that's under Maness versus

1 Meyers, 419 U.S. 449, 1975.

2 And in that same case it states, "While a party or  
3 an attorney can disagree with an order, they may not refuse  
4 to comply, otherwise such refusal constitutes contempt.

5 Indeed, persons who make private determinations of law and  
6 refuse to obey an order generally risk criminal contempt  
7 even if the order is ultimately ruled to be incorrect." And  
8 that's from Meyers at 458.

9 So the Defendants don't have the ability to do  
10 what they want to do while reconsideration is pending. And  
11 then we heard a great deal of testimony about how Mr. Brady  
12 believes that the Receiver's calculations are wrong and they  
13 don't comply with the Governing Documents.

14 Clearly those initially I objected on the grounds  
15 of relevance, because what Mr. Brady believes about what  
16 goes in the Governing Documents, what should go into these  
17 calculations are indeed irrelevant to this contempt  
18 proceeding. As we know under the case that I just  
19 referenced, even if there was a subsequent order saying, oh,  
20 that was wrong, you are still in contempt because you can't  
21 just violate a Court order because you don't agree with the  
22 result.

23 If you look at Exhibit 44, it's a \$26 million  
24 special assessment that was levied by the Defendants on the

1 Plaintiffs. We know from the testimony of Mr. Teischner  
2 that he didn't approve that.

3 If we look at Exhibit 46, it's an e-mail from the  
4 Receiver with regard to not turning over the rents and that  
5 he was denied read only access to even the reserve accounts,  
6 which is clearly resisting or not cooperating, interfering  
7 with the receivership.

8 We had the numerous issues about bank accounts,  
9 whether it should go into a certain bank account, whether it  
10 should be net rents, gross rents. Yet at every turn it was  
11 interference with seeking a result that would result in no  
12 payment. We can't turn over the rents because we can't, you  
13 don't have the bank account. You have got the Receiver  
14 specifically requesting that the rents go into the UOA bank  
15 account. Refusal to do that.

16 But the most telling with regard to all of the  
17 rental issues or the refusal to turn over the rents is their  
18 own balances showed that certain amounts were due in rents  
19 to certain Plaintiffs, and yet they refused to do that. And  
20 then at the last minute Hail Mary last night the Defendants  
21 wire transfer in what's showed under their balances, which  
22 we know are incorrect balances.

23 But the years of preceding this of not even paying  
24 out the amounts that are owed under the statements is just



1 clearly contemptuous, failure to return, or failure to  
2 release the rents, whether it be to the Receiver or the  
3 Plaintiffs.

4 Exhibit 56 is another e-mail wherein Mr. Teischner  
5 e-mailed to Mr. Brady concerning the release of the rents,  
6 and this was May 9th of 2023 demanding the gross rents, and  
7 rather than staying in compliance you get more argument  
8 that, no, we only have to release the net rents.

9 And then we come to learn that the excuse was,  
10 well, you don't have a bank account, but yet the Receiver's  
11 counsel had sent the bank account information I believe on  
12 the 5th. And I will, you know, give deference to defense  
13 counsel that it just wasn't opened because it was encrypted.

14 But, again, it's always the result of nonpayment  
15 on every issue. In the end it's, well, we couldn't pay  
16 because of this, we couldn't pay because of this, and it's  
17 at every single turn, other than last night on the eve of  
18 the closing of these proceedings.

19 And if we look at the second Motion for Order to  
20 Show Cause, that Motion for Order to Show Cause is in  
21 connection with not using the Receiver's calculation of  
22 fees. Again, we have the Appointment Order, Exhibit 115,  
23 which unequivocally the Receiver controls the governing, the  
24 implementation of the Governing Documents. He is in charge

1 of the rents. The Defendants have a duty to turn over all  
2 rents.

3           Preceding this Motion for Order to Show Cause, we  
4 also have the December 24th, 2020, order which states, "The  
5 Receiver shall recalculate the DUF, the Hotel Expense Fees,  
6 and Shared Utilities Fees to include only those expenses  
7 that are specifically provided for in the Governing  
8 Documents." And that's page 3, lines 24 to 26.

9           So you have got the Appointment Order and that  
10 December 24th order confirming, look, only the Receiver  
11 calculates these fees. The Receiver's fees are to be  
12 applied, or are the fees to be used.

13           We then look at Exhibit 58, which is the  
14 September, the September monthly account statements for  
15 2021. Those account statements showed a DUF of 24.54 and a  
16 hotel fees column of \$610.26.

17           And then Exhibit 59 is the November statements for  
18 that same year wherein the Defendants increase the daily use  
19 fee to 32.47 and doubled the contracted hotel fees to  
20 \$1,225.63.

21           So you have got orders, the Appointment Orders  
22 saying the Receiver is in charge of implementation of the  
23 Governing Documents, in charge of the rents. You have got  
24 the December 24th, 2020, order specifically stating that the

1 Receiver is the one that does these calculations for these  
2 fees, and yet between September and November the Defendants  
3 unilaterally on their own increase these fees.

4 And their excuse was, or is now, it wasn't in  
5 their Motions for Reconsideration, is now that these orders  
6 couldn't be read in harmony, that we didn't know what to  
7 apply. So is an excuse to contempt that you increase the  
8 fees?

9 There is no way you can look at either of those  
10 orders and come to the result that, oh, yes, we have  
11 authority to increase the fees, which is exactly what  
12 occurred.

13 We look at the Exhibit 61, which is an e-mail from  
14 I believe the Receiver's counsel dated November 17th, 2021,  
15 and this just confirms that the Receiver did not authorize  
16 the fees, did not authorize the special assessment, and that  
17 was also confirmed by the testimony of the Receiver. For  
18 the Defendants to unilaterally recalculate and increase the  
19 fees was an act of contempt of court.

20 And then we look at Exhibit 64, which was a letter  
21 from the Receiver to the Court where he addresses the  
22 impropriety of the large special assessment and requests  
23 that certain actions be taken to unwind these events. And  
24 as a follow-up to that letter, that letter is Exhibit 65,

1 the Receiver even had to go to the extent of filing a Motion  
2 for Instructions to have this contemptuous conduct more or  
3 less unwound.

4 Something very interesting happens around this  
5 same time, right? So the Receiver files his Motion for  
6 Instructions on these issues October 18th, 2021, and then  
7 his last invoice is paid October of 2021 pursuant to the  
8 testimony of the Receiver.

9 And we heard testimony from Mr. Brady that the HOA  
10 ran out of money at that time. I believe Mr. Teischner  
11 referenced that, but the fact of the matter was at that time  
12 the Defendants were still taking in all of Plaintiffs'  
13 rental revenue, taking in the rental revenue from their  
14 units, not paying, we know going back to January of 2020 not  
15 paying a dollar to the Plaintiffs in their rental revenue.

16 So they are holding all of the rents for these  
17 units and they can't write a check from all of the rents  
18 that they are in possession of to Mr. Teischner to keep him  
19 going so the necessary work could be done? Rather they just  
20 sat on the funds and made arguments about whether net rents  
21 applied or didn't apply.

22 The issue was simple. The Appointment Order  
23 clearly dictates the Receiver is paid from the rents.  
24 MEI-GSR is holding all of the rents. The order requires

1 that the Defendants release the rents to the Receiver upon  
2 request and here we sit month after month unpaid invoice  
3 which stopped all work.

4 And then the Receivers, the Defendants' primary  
5 excuses time after time from the deposition, or I mean the  
6 testimony of Mr. Brady, is that we had to take all of these  
7 actions because Mr. Teischner was no longer doing work, so  
8 we were just forced to do this. We have an excuse for  
9 contempt because all work stopped.

10 The problem with that is you can't create your own  
11 basis for proceeding in contempt, right? They are the  
12 entity that set this into motion, so every argument that we  
13 had to do the reserves because Teischner wouldn't, we had to  
14 do X because Teischner wouldn't, all of that falls on its  
15 face because you created this situation.

16 All the work stopped because you were holding all  
17 of the rents, not releasing any of the rents, not even  
18 releasing rents under your calculations and Mr. Teischner is  
19 not getting paid. The solution was simple.

20 Instead, their plan was to try to force a special  
21 assessment so that Plaintiffs would have to come out of  
22 their pocket for more money to pay the Receiver at a time  
23 when the rents had been cut off to them since January  
24 of 2020.

1 And it goes back to the theme when we started.

2 "We are a company that holds our money very tight." Every  
3 penny stopped to the Plaintiffs and after October of 2021  
4 every penny stopped to the Receiver up until a couple of  
5 months ago.

6 And the only impetus for that was because you had  
7 the Court granting the unit, you have the Court granting  
8 permission to terminate the Unit Rental Agreement, I mean  
9 the association, and then you have the Stipulation and Order  
10 that, in fact, terminates or dissolves the UOA.

11 And once that's in place, the Defendants know, oh,  
12 the Receiver has to get some money, because we are not going  
13 to be able to terminate this or actually sell the units  
14 until the Receiver does certain work.

15 But we have a conflict there now, too, because the  
16 Defendants are trying to assert the position that the  
17 Receiver has no authority to do anything for lack of  
18 jurisdiction, which if you take that to conclusion I guess  
19 the units will just sit indefinitely held in trust with the  
20 Receiver because that's what the termination agreement  
21 states, is that the units terminate I believe and that the  
22 units are held by the Association with the Receiver as  
23 trustee.

24 That issue also goes back to don't you turn over

1 the gross rents for all of the units at this point? At this  
2 point the units are owned by the UOA, right? So upon  
3 termination of the Association, title to the units transfers  
4 to the UOA. Teischner is now trustee for the UOA holding  
5 all of those units and yet Defendants are still taking and  
6 holding all of the rental revenue that's derived from this  
7 asset that's held by the Receiver, or as trustee for the  
8 UOA.

9 We then move to the third Motion for Order to Show  
10 Cause dated February 1st, 2022, and this is, this motion  
11 concerns the first unauthorized withdrawal of the reserves  
12 in the amount of \$3,562,441.28.

13 THE COURT: What's the date of that motion, again?

14 MR. MILLER: That motion is dated February 1st,  
15 2022.

16 THE COURT: Thank you.

17 MR. MILLER: And then the second component of  
18 contempt in connection with that motion is the issuing of  
19 the monthly statements that don't track the January 4th,  
20 2022 orders, and I won't belabor that point again. We have  
21 the two orders, Exhibit 22 and Exhibit 24, but we also have  
22 the Motions for Reconsideration that don't reference that,  
23 that the issue of any, that those, that those orders can't  
24 be read in harmony.

1 And, in fact, the only logical conclusion, right,  
2 when you have specifically Court-approved fees that the  
3 Receiver went to the, to the effort of calculating, the  
4 Court reviewed and approved clearly those were the fees that  
5 should have been applied at that time.

6 And even if we look at the Exhibit 22, which was  
7 the order that talked about leaving those fees in place that  
8 were there prior to September 27th, '21, that order even  
9 references in the following sentence I believe that until  
10 Court fees are approved.

11 Well, you have approved fees. How could you reach  
12 any other conclusion other than to apply the Court-approved  
13 fees? But, again, too, this is just one element or one  
14 minor component of the repeated contempt in connection with  
15 the refusal to turn over the rents.

16 So even if the Court thought that that was a  
17 source of confusion and there was a basis under those  
18 grounds to not hold the Defendants in contempt, you still  
19 look at what occurred prior to January 4th, 2022, when they  
20 applied their own fees.

21 When they issued certain statements that showed  
22 Plaintiffs were owed money. Refused to even turn that money  
23 over to the Plaintiffs. Refused to turn it over to the  
24 Receiver.



1           And then you have the most recent conduct where  
2   the Receiver, we have already talked about this, I believe  
3   it was Exhibit 55 or Exhibit 56, this year the Receiver says  
4   turn over the gross rents. And instead of giving the  
5   affirmative response it will turn over the gross rents, you  
6   have Mr. Brady e-mailing back his arguments as to why that's  
7   not right, which, again, is interference or failure to  
8   cooperate with the receivership.

9           If you look at the orders that were at issue in  
10   the February 1st, 2022, Motion for Order to Show Cause, you  
11   have got violations of Exhibit 22, which another component  
12   of Exhibit 22 is the order granting Receiver's Motions for  
13   Instructions. It states that the special assessment be  
14   immediately withdrawn and refunded, and that's at page 7,  
15   lines 22 to 28.

16           You have got another order issued on that date  
17   which is 1/20 which states that the special assessments to  
18   fund the receivership were to be withdrawn and refunded.

19           The contempt that occurred in connection with the  
20   withdraw of the special assessments as we put Mr. Brady on  
21   the stand, where was the letter that went out to the  
22   Plaintiffs to let them know that the special assessment that  
23   they had received, which purportedly obligated them I think  
24   to pay about \$25,000 a year for the next three years under

1 the special assessment, where is the letter indicating that  
2 the special assessment had been withdrawn?

3 We think the special assessment was just  
4 harassment, more of the continuation of you need to abandon  
5 your unit. You need to abandon this case. This is what you  
6 are in for.

7 There is a key, the key portion of that order was  
8 to send out notice to these people that that's no longer a  
9 financial obligation that they have to be concerned about  
10 over the next three years. \$25,000 a year, it's a fair  
11 amount of money.

12 There is no evidence that that was complied with.  
13 In fact, the only evidence on the withdrawal of either of  
14 those special assessments and the dictates under that is a  
15 letter that came from Associa Management and that is  
16 Exhibit 70. First, that's not a letter from the Defendants.  
17 The Defendants were under the obligation to do this.

18 And then if we look at that letter, it has a false  
19 statement in it. It says only one of the special  
20 assessments was withdrawn, and then it admittedly states  
21 that the timeline is not going to be complied with under the  
22 dictates of the order. It states that it's going to take  
23 some time to unwind these special assessments, yet when you  
24 look at Exhibit 22 and Exhibit 120 that withdraw the special

1 assessments, they provide specific timelines.

2           You also had a violation of Exhibit 123, which has  
3 never been challenged as ambiguous by the Defendants. In  
4 that Exhibit 123, that order again reiterates that the  
5 Receiver is to prepare a reimbursement report. So, again,  
6 the Receiver is the one that decides what's reimbursed out  
7 of the reserves, not the Defendants, and then we have this  
8 unauthorized withdrawal of \$3.5 million.

9           The first exhibit that demonstrates that these  
10 actions occurred is Exhibit 66. It's the January 2022  
11 monthly statements.

12           We then have Exhibit 68, which is an e-mail from  
13 Stephanie Sharp confirming that the Receiver didn't  
14 authorize this conduct. We have the testimony of  
15 Mr. Teischner confirming he didn't authorize the conduct.

16           If we then move on to the fourth Motion for Order  
17 to Show Cause, which is dated April 25th, 2022, the issues  
18 of contempt in that motion concern the refusal to turn over  
19 rents and the refusal to pay the Receiver.

20           Orders violated by that conduct are the  
21 Appointment Order; again, Exhibit 115, Exhibit 122, and  
22 Exhibit 124. And, again, I won't go over the Exhibits 122  
23 and 124 again, but you have those issues there.

24           Under additional evidence in that, you have got

1 Exhibit 76, which is from Ms. Sharp. Again, she confirms,  
2 "The Receiver did not approve the statements. The  
3 Defendants refused to apply the Court-ordered fees to all  
4 670 units, thus the receivership is insolvent."

5 That's a critical statement from Ms. Sharp's  
6 e-mail. I will read it one more time, "The Receiver did not  
7 approve the statements. The Defendants refused to apply the  
8 Court-ordered fees to all 670 units, thus the receivership  
9 is insolvent. Nothing can be done because there are no  
10 funds to operate the receivership. No rents have been  
11 turned over to date."

12 And then, again, Exhibit 77 is another owner  
13 account statement, which the owner account statements if you  
14 had to limit yourself to one piece of evidence, they are the  
15 clear and convincing evidence, right, that the Defendants  
16 aren't doing what they are ordered to do, what they are  
17 supposed to do. They are unilaterally applying their own  
18 fees. They are not even holding those in place. They  
19 continually are gradually increased.

20 Exhibit 78 is the Receiver report dated  
21 March 31st, 2022, and this is the one where Mr. Teischner  
22 indicates that he wants to use the UOA bank account to  
23 deposit the rents. Rather than cooperate with  
24 Mr. Teischner, there is a refusal to do that. Mr. Teischner

1 provides his analysis that your argument that this is going  
2 to impact the non-profit status, he doesn't agree with that,  
3 but still no compliance with his request.

4 We then move on to the fifth Motion for Order to  
5 Show Cause, which is dated December 28, 2022, and this  
6 concerns applying Defendants' fees, not the Receiver's fees,  
7 and a refusal to release the rents.

8 And what is interesting about this motion and the  
9 reason it was filed is the Court on November 14th, 2022,  
10 filed an order confirming the January 4, 2022, orders. So  
11 we had some resistance during that prior period that, well,  
12 we don't need to do those things because we are seeking  
13 reconsideration of those motions and as a result of that  
14 reconsideration these issues aren't entirely resolved. We  
15 know that's just not the law, but that's sort of the  
16 repeated theme of the Defendants.

17 But then on November 14, 2022, the Court affirms  
18 those orders. And, again, when you look at the motions on  
19 those orders, many of the complaints that they make about  
20 the orders aren't addressed in those Motions for  
21 Reconsideration.

22 But you have affirmance of the orders, and then  
23 the very next statement that's issued after those orders,  
24 which I believe is Exhibit 126 -- oh, no, sorry, it's not

1 Exhibit 126. Where is that? Oh, Exhibit 82 and Exhibit 83  
2 demonstrate that despite the affirming order you are still  
3 getting Defendant-imposed fees that are much higher than  
4 what Mr. Teischner had applied.

5 And then the other, they want to say Mr. Teischner  
6 didn't do his job. Mr. Teischner didn't complete these  
7 fees, didn't get these things done.

8 Well, we all know that he wasn't being paid, but  
9 where are the e-mails from GSR to Mr. Teischner or where is  
10 the reaching out to Mr. Teischner to say do you want us to  
11 implement such and such fee? Do you want us to do this?

12 No, it's the road blocks, right? We need a full  
13 recalculation of such and such years as we deem it is  
14 required under these orders and we are not doing anything  
15 until those are done and until it goes into a certain  
16 account. There is no cooperation whatsoever, but  
17 interference.

18 And then I won't go back through the specific  
19 violations under the fifth Motion for Order to Show Cause  
20 because it relates to the same conduct. It's just  
21 particularly egregious once you have that affirming order  
22 issued by the Court.

23 So that leads us to the sixth Motion for Order to  
24 Show Cause, which is dated December 29th, 2022, and the

1 issues with the sixth Motion for Order to Show Cause is the  
2 Defendants' procured a reserve study and sent out a  
3 \$44 million special assessment, I think which was  
4 approximately \$65,000 per unit without Receiver approval.

5 In addition to the special assessment, which was  
6 based on a reserve study from a company that the year before  
7 the Defendant had, or the Court had specifically rejected  
8 that company's reserve study, the Court ordered that the  
9 reserve study was untrustworthy. The Court ordered that you  
10 couldn't have certain expenses such as the pool expenses.

11 And what did the Defendants do? They turn around  
12 the following year, use the same company with the same  
13 defects that were previously litigated. How does that not  
14 interfere with the receivership when you are going out and  
15 using the same company with the same flaws that were  
16 previously litigated?

17 The other issue at that time is the second  
18 substantial withdrawal from the reserve funds without  
19 Receiver approval, and I believe under the Receiver's  
20 calculations it was approximately \$12.8 million that was  
21 taken out of the reserves without Receiver approval.

22 That conduct violated again Exhibit 116, the  
23 Appointment Order, or Exhibit 115, the Appointment Order.  
24 Also, it violated Exhibit 116, the Findings of Fact,

1 Conclusions of Law and Judgment.

2           The conduct violated Exhibit 120, which states  
3 when the Appointment Order was issued all authority vested  
4 in the Receiver, or transferred to the Receiver, et cetera,  
5 et cetera. It violated Exhibit 121, which is also a  
6 January 4th, 2022, order wherein the Court says, in quotes,  
7 "The Court finds the Defendants' reserve study to be flawed  
8 and untrustworthy and finds that the Receiver has the proper  
9 and sole authority to order, oversee, and implement the new  
10 reserve study," and that's from page 5, lines 16 to 18.

11           It goes on to state that the Receiver alone has  
12 authority to direct and audit the reserve study, not the  
13 Defendants. We heard testimony from Mr. Teischner that he  
14 did not approve the reserve study or the special assessment.  
15 We heard testimony from Mr. Brady confirming that they used  
16 the same reserve study specialist despite the prior order.

17           Exhibit 90 is the actual reserve study that  
18 conflicts with the, with the Court's prior orders.  
19 Exhibit 91 is an e-mail from Stephanie Sharp confirming that  
20 the Receiver did not approve the reserve study.

21           And then we have Exhibit 100 with regard to the  
22 failure to pay or turn over the rents, which is a  
23 declaration of Mr. Brady, but at the end of that declaration  
24 there is an e-mail chain included with that declaration



1 which includes e-mails from Mr. Teischner to Mr. Brady  
2 stating, "Have the fees that I calculated for 2021 been  
3 retroactively applied to the Plaintiffs? Also, if the  
4 adjustments for the revised fee charges for the 2021 have  
5 been made have they also been retroactively applied to 2020  
6 as ordered?"

7 We then move on to the seventh Motion for Order to  
8 Show Cause, which is perhaps the most simple, and that's  
9 dated May 2nd of this year, of 2023, and the issue with that  
10 contemptuous conduct is that they stopped renting the  
11 Plaintiffs' units.

12 We know that the Receiver order is still in  
13 effect. We know that there was never an order granting  
14 termination of the Unit Rental Agreements. We know that the  
15 Defendants in the past when they sought to terminate the  
16 Unit Rental Agreements they filed a Motion to Terminate Unit  
17 Rental Agreements, which was denied. So we know the Unit  
18 Rental Agreements were still in place.

19 If we look at Exhibit 128, which is dated  
20 March 14th, 2023, the Court actually issued a confirming  
21 order confirming that the units, I believe the language is  
22 need to continue to be rented.

23 If we look at Exhibit 102, which is an e-mail  
24 dated April 5th, 2023, from Mr. McElhinney, that e-mail

1 states, "Ms. Sharp, on March 14th, 2023, the Court entered  
2 its order granting Motion for Instructions to Receiver.  
3 Therein the Court ordered the Receiver to continue to rent  
4 the former units under the Unit Rental Agreement so as to  
5 avoid economic waste."

6 "On March 30th, 2023, Plaintiffs' counsel sent you  
7 an e-mail asking you to confirm that the units are still  
8 being rented," ellipsis, there is some missing sections in  
9 there that were more or less irrelevant, but this last  
10 sentence of that e-mail is critical.

11 "Defendants, therefore, will perform the above  
12 described servicing under protest with a reservation of  
13 rights and without waiving any issues or arguments on appeal  
14 from the December 5th, 2022, order, the final judgment, or  
15 any other appealable rulings."

16 So on March 30th, 2023, the Defendants' counsel  
17 confirms that the units will continue to be rented. We get,  
18 we get the statement for March, for the March rental  
19 activity, which is Exhibit 103, and it shows despite the  
20 representations in that March 30th e-mail the units were not  
21 rented at all during that time period.

22 So not only do you have contempt, but you have a  
23 misleading as of March 30th that they would continue to be  
24 rented, and it's not until the following month that we get

1 the statements that we learn that, no, they weren't rented.  
2 And it's a month and, I believe we are looking at a little  
3 over a month and a week.

4 So in the grand scheme of this case, it's not,  
5 it's not comparable to the other damages, but under I  
6 believe the testimony of Mr. Reed Brady for every month for  
7 these Plaintiffs' units you are looking between 150,  
8 \$300,000 of gross rents coming in that's not, that's not  
9 going to rents for the Plaintiffs and it's not money that  
10 can be used to offset any expenses that are applied to. So  
11 it's really a double, I guess kind of a double whammy for  
12 the Plaintiffs for lack of a better word.

13 Plaintiffs are requesting that the Court find the  
14 Defendants in contempt of court. Pursuant to NRS 22.100,  
15 "If a person is found guilty of contempt, a fine may be  
16 imposed on the person not exceeding \$500 or the person may  
17 be imprisoned not exceeding 25 days, or both. Again, that's  
18 NRS 22.100.

19 Now, the Court has already indicated that nobody  
20 is going to jail as a result of these proceedings. We will  
21 submit that we believe that's the only remedy that would get  
22 the attention or action from these Defendants, but,  
23 obviously, this is within the purview and discretion of the  
24 Court.

1           The case law further indicates that, "Those who  
2   are officially responsible for the conduct of the entity's  
3   affairs no less than the entity itself are guilty of  
4   disobedience and may be punished for contempt," and that's  
5   under Wilson versus U.S., 221 U.S. 361 at 376, 1911.

6           I believe Exhibit 147 submitted today is pages  
7   from the Nevada Secretary of State web pages wherein it's  
8   demonstrated that both Luis Armona and Alex Meruelo are the  
9   managers of MEI-GSR Holding, which is the entity that is  
10   perpetuating the contempt.

11           What was more interesting I thought this morning  
12   was that Mr. Brady admitted, or not admitted, testified that  
13   when they had these meetings to discuss withdrawing the  
14   funds from the reserves without Court approval that  
15   Luis Armona was one of the individuals involved in those  
16   meetings, and Luis Armona is a managing member of the, of  
17   the entity unless under the case law apparently he would be  
18   the individual that would be subject to the imprisonment.

19           And I would resubmit to the Court that the Court  
20   should condition compliance with its orders on some term of  
21   imprisonment if, under the 25 day regulation. The purpose  
22   of civil contempt is to get compliance with civil orders,  
23   and the Court is well within its authority to dictate that  
24   certain events occur or that the Defendants undertake

1 certain actions in compliance with the Court's orders.

2 And then if they don't do so or fail to do so  
3 within a specific time period that that sentence of  
4 imprisonment will then go into effect. And that's really  
5 where this case is at, in my opinion, when you look at all  
6 of the orders that have been issued, all of the attempts to  
7 stop the transfer of any money to either the Receiver or the  
8 Plaintiffs.

9 The repeated orders don't seem to get the job done  
10 for lack of a better word and we think that a condition of  
11 the Court's order having some term of imprisonment with a  
12 warrant being issued not exceeding 25 days may be the lever  
13 that finally gets the Defendants to comply.

14 We heard testimony from Mr. Brady that it would be  
15 difficult for the GSR to deposit and transfer to the  
16 Receiver the gross rents. We believe that that is the  
17 appropriate remedy under these circumstances.

18 The only way you move authority or real authority  
19 over to the Receiver from these Defendants is to move the  
20 money over to the Receiver and in his control. So long as  
21 they have control, the track record in this case has been we  
22 do whatever we want. We apply our fees. We don't send out  
23 money to you even if it's owed under our fee calculations.

24 So the money that's generated from the rents, not

1 only because the Receiver is now the one who holds the asset  
2 as trustee of the units, but also because that's the other  
3 method that gets compliance from these Defendants.

4 If the Receiver has the money and he decides if it  
5 goes back to the Defendants or goes back, or gets paid out  
6 to the Plaintiffs for rental revenue after approval from the  
7 Court, he has all of the control. He was supposed to have  
8 control from the beginning. That has obviously failed.

9 We think that as another critical component of the  
10 Court's order would be, to get compliance with the  
11 Defendants, is the removal of control from the Defendants,  
12 which is provided for under the, under the law and the Court  
13 can issue that as a remedy.

14 We think that as a result of these proceedings the  
15 Court should hold the Defendants in contempt. We think that  
16 the improperly, the Court should order that the improperly  
17 withdrawn reserve amounts should be refunded to the  
18 reserves.

19 We believe that the reserves should be transferred  
20 into the Defendants', or not the Defendants', the Receiver's  
21 reserve account, or the Receiver's account. Clearly the  
22 Defendants should not be left in control of the reserves.

23 There was a process in place before where the  
24 Receiver would get the monthly account statements. We knew

1 they were properly being funded. The Defendants weren't to  
2 withdraw any money unless the Receiver and the Court  
3 approved the withdraw. That process has failed. That  
4 process failed when the \$3.6 million was taken out of the  
5 reserves.

6 We believe it's time now to transfer those  
7 reserves into the exclusive control of the Receiver and,  
8 again, not only because we have got violations of the  
9 Receiver order, but now the GSRUOA is the one that owns  
10 those reserves. Ownership and control of the GSRUOA has  
11 been exclusively transferred to the Receiver.

12 The GSRUOA now also holds title to the units. For  
13 that, for the reserves -- for that entity to still be in the  
14 control of Defendants that have committed fraud and  
15 withdrawn money from the reserves, that we believe that time  
16 has passed and we are just asking for more misappropriation  
17 from the reserves by not turning over those accounts and  
18 having the funds withdrawn, redeposited in there.

19 We believe that starting with the next monthly  
20 statements that are issued to the Plaintiffs that all gross  
21 rents should be turned over to the Receiver. Again, this is  
22 not only because it puts the Receiver in control as he is  
23 supposed to be in control, because we tried this other  
24 method where the Receiver gave them instruction on what to

1 do, tried to leave them in control where they could issue  
2 the monthly rent statements directly to the Plaintiffs, and  
3 they just didn't do it.

4 So the only way to resolve that issue is to take  
5 those funds and have them immediately transferred over, not  
6 immediately, at the end of the month transferred over to the  
7 Receiver. And while the GSR may not like the additional  
8 accounting work that's going to be required with that  
9 transfer, that's the consequence of doing the things that  
10 you have done. That's the consequence of being in a  
11 position where you committed fraud and a Receiver has to be  
12 appointed. That's the consequence of violating numerous  
13 Court orders.

14 At some point you have to suffer the consequence,  
15 and the consequence for them is, look, you are going to have  
16 some additional accounting costs here because those monies  
17 need to go to the Receiver. The Receiver then determines  
18 what the fee should be applied, and then he transfers back  
19 the amounts with the instructions of how to distribute them.

20 And if the Defendants are unwilling to do that,  
21 then every month the Receiver will just continue to build  
22 those revenues, which are the asset of the UOA anyways,  
23 right? I mean, the UOA now holds title to those units.

24 And then finally the Court had asked for some



1 additional briefing on --

2 THE COURT: Not additional briefing, additional  
3 thoughts.

4 MR. MILLER: I'm sorry, you are correct. I  
5 apologize, I'm wrong. You asked for additional thoughts on  
6 what additional remedies the Court could award in connection  
7 with the contemptuous conduct.

8 I thought that the Court would ask for instruction  
9 on that prior to my closing, so Bri, my associate  
10 Mrs. Collings, was prepared to deliver that argument on the,  
11 on what additional remedies the Court can order, and I know  
12 this is a little bit unorthodox --

13 THE COURT: Does she want to do it before or after  
14 lunch? Do you want to do it before or after we break for  
15 lunch? Would you like to go before or after we break for  
16 lunch? It's okay. I will let two of you --

17 MS. COLLINGS: Then after lunch would be  
18 preferable.

19 THE COURT: What?

20 MS. COLLINGS: After lunch would be preferable.

21 THE COURT: After lunch.

22 All right. Anything else, Mr. Miller?

23 MR. MILLER: Your Honor, I would like to --

24 THE COURT: You can reserve time for rebuttal.

1 MR. MILLER: Yeah, and the only addition would be  
2 that I would include the statements of Mrs. Collings once  
3 she makes those as far as appropriate remedies for the Court  
4 to issue.

5 THE COURT: Yes, she is going to make them right  
6 after lunch and then we will go to Mr. McElhinney  
7 afterwards.

8 MR. MILLER: Perfect. Thank you.

9 THE COURT: And then if Mr. Smith wants to talk,  
10 he will talk. And then I will go back to your table, and if  
11 Mr. Eisenberg wants to talk he can talk, if Ms. Collings  
12 wants to talk she can talk, if you want to talk you can  
13 talk, and we will be done, and then I will read to you what  
14 I have been typing in my notes for four days.

15 MR. MILLER: Thank you.

16 THE COURT: See you in an hour.

17

18 (Whereupon a break was taken from 12:18 p.m. to 1:13 p.m.)

19

20 THE COURT: Ms. Collings.

21 MS. COLLINGS: Your Honor, as Mr. Miller  
22 mentioned, I'm just going to address the very limited issue  
23 of what contempt sanctions the Court might award following  
24 this proceeding.

1           NRS 22.100(3) allows a party to recover "other  
2 reasonable expenses" as you mentioned yesterday afternoon.  
3 The Court has brought authority in determining what these  
4 expenses as part of a civil contempt sanction may be. These  
5 other reasonable expenses include "any actual loss caused by  
6 the contemptuous conduct." That's Detwiler vs. Eighth  
7 Judicial District Court, 137 Nev. 202, 2021.

8           The Plaintiffs have incurred a substantial amount  
9 of "actual loss" as a result of Defendants' contempt. These  
10 effectively fall into three categories. First, the  
11 Plaintiffs' loss of rental revenues. As has been discussed  
12 ad nauseam this week, the Plaintiffs have not received a  
13 single penny of rental revenue from their units from  
14 January 2020 until today. That's almost two and a half  
15 years with no rental revenue.

16           Second, they lost the amounts in the reserves. As  
17 we've heard, the Defendants have unilaterally withdrawn  
18 millions of dollars from the reserves to which the  
19 Plaintiffs might have a right upon the dissolution of the  
20 UOA.

21           Third, the Plaintiffs have effectively lost their  
22 hard won appointment of the Receiver as a result of the  
23 Defendants' contemptuous not paying the Receiver from  
24 October 2021 until just recently. I appreciate that the

1 interpleader has brought the Receiver current, but during  
2 those times the Plaintiffs were effectively without an  
3 operating receivership.

4 Accordingly, these other reasonable expenses that  
5 fall into subsection 3 should absolutely include the  
6 following four things. First, the Receiver's invoices for  
7 this proceeding that just undeniably arises from the  
8 Defendants' contempt. That's the only reason we are here  
9 this week, that's the only reason Mr. Teischner was on the  
10 stand for as long as he was.

11 Secondly, any portion of the Receiver's invoices  
12 and his counsel's invoices that the Receiver believes is  
13 attributable to the Defendants' contemptuous conduct. This  
14 would be work that the Receiver was not doing to further his  
15 obligations to implement the Governing Documents, but simply  
16 the work he did to address the Defendants' repeated  
17 violations of those Governing Documents and also of the  
18 Court's orders.

19 Third, interest on the unpaid rents. As I just  
20 mentioned, the Defendants have not received a single penny  
21 of their rents for almost 2 1/2 years. We believe then that  
22 the legal remedy for that would be for them to be awarded  
23 interest at a legal rate for those amounts.

24 Fourth, and finally, would be interest on the

1 improperly withdrawn funds in the amount that would have  
2 been earned had the funds not been withdrawn. So this is  
3 different than the previous category of interest in that  
4 what we are requesting is only the amount of interest that  
5 would have been earned on the funds had the Defendants not  
6 withdrawn them.

7 I understand that Defendants previously moved the  
8 reserve funds from one bank to another, and one of the  
9 reasons for doing so was because the second bank had a more  
10 favorable interest rate. The Plaintiffs should be entitled  
11 to enjoy that better interest rate.

12 Civil contempt sanctions ultimately serve to make  
13 the innocent party whole. Plaintiffs are undoubtedly the  
14 innocent parties here and absolutely have been harmed by  
15 Defendants' contemptuous conduct.

16 The expense items that I just described for you  
17 will only serve to make the Plaintiffs whole following the  
18 Defendants' contempt. So to answer Your Honor's question  
19 posed yesterday afternoon about whether the Receiver's fees  
20 for his testimony this week should be included in the "other  
21 expenses" in subsection 3, we believe the answer is  
22 unequivocally yes. Those fees absolutely should be included  
23 along with the rest of the expenses that I have just  
24 described.

1 THE COURT: Thank you, Ms. Collings.

2 Mr. McElhinney.

3 MR. McELHINNEY: Your Honor, give us a moment  
4 please to set up.

5 THE COURT: Are you using a PowerPoint?

6 MR. McELHINNEY: I am.

7 THE COURT: Can you make sure a copy of it is  
8 provided to the Clerk?

9 MR. McELHINNEY: Absolutely.

10 MR. MILLER: Your Honor, can I make just one quick  
11 point of clarification and that is the interest from the  
12 reserves would be deposited into the reserve accounts, not  
13 damages to the Plaintiff.

14 THE COURT: I got that part.

15 MR. MILLER: Thank you.

16 THE COURT: I understood that from Ms. Collings'  
17 argument.

18 MR. McELHINNEY: Your Honor, would you like a  
19 copy?

20 THE COURT: Absolutely. Thank you. We are going  
21 to mark this as D-2.

22

23 (Exhibit Number D-2 was marked for identification.)

24

1 MR. McELHINNEY: Good afternoon, Your Honor.

2 As we stand here today, we know that Defendants  
3 have wired \$275,000 into the Receiver's account, so we have  
4 purged contempt as to any withheld money from the Unit  
5 Owners.

6 We have posted, I don't have the exact number, but  
7 it was \$1,030,000 in round numbers, we posted that with the  
8 Court. We have a Supreme Court stay in effect. That takes  
9 care of the delta that Mr. Teischner represented between his  
10 fees and our fees from January 2020 through I believe the  
11 testimony was December 31, 2021. That has purged that  
12 allegation of contempt.

13 We have interplead \$135,000 to pay the Receiver's  
14 and Ms. Sharp's bills, so any representation that we haven't  
15 paid the Receiver to date has been purged.

16 We have agreed on the record to pay  
17 Mr. Teischner's fees going forward, including Ms. Sharp's  
18 bills, so we will be keeping up with that as we go forward,  
19 so that has been purged as well.

20 We have discussed this before actually in opening.  
21 I would like to revisit it before I get started with my  
22 PowerPoint. Procedurally we know that the Plaintiffs have  
23 the burden of showing by clear and convincing evidence that  
24 the contemnors, in this case Defendants, alleged contemnors,

1 violated a specific and definite order of the Court. During  
2 this presentation we are going to be reviewing those orders,  
3 looking for clarity whether or not there is ambiguity in  
4 those orders.

5 Clear and convincing evidence means evidence  
6 establishing every factual element to a highly probable,  
7 high probability or evidence which must be clear, so clear  
8 as to leave no substantial doubt.

9 Generally, an order for civil contempt must be  
10 grounded upon one's disobedience of an order that spells out  
11 the details of compliance in clear and specific and  
12 unambiguous terms so that such person will readily know  
13 exactly what duties or obligations are imposed on him or  
14 her. And this is set forth in more detail in our trial  
15 statement that was filed March 27, 2023.

16 At the end of my closing, Mr. Smith is going to  
17 make some representations to the Court concerning NRS 22 and  
18 the standards there.

19 Governing Documents, I want to start there because  
20 this defines and controls the relationship between the  
21 parties. We've talked about that already. Let's revisit it  
22 again. 7th Amended CC&Rs, 2007 Unit Rental Agreement, the  
23 Unit Maintenance Agreement, and I'm going to tell you in  
24 advance I did this PowerPoint. There are typos in here



1     so --

2                 THE COURT: That's all right.

3                 MR. McELHINNEY: -- I apologize. It isn't pretty.

4                 So these three are the Governing Documents that  
5     define the respective rights and responsibilities of the  
6     parties. GSRUOA is a domestic non-profit corporation, stand  
7     alone, distinct, and separate from MEI-GSR.

8                 MEI-GSR Holdings, LLC is discussed as the owner of  
9     the GSR. It has roles in the 7th Amended CC&Rs as a  
10    Declarant and as the Shared Facilities Owner of the private  
11    and Public Shared Facilities.

12                And when you look at the other documents, the 2007  
13    Unit Rental Agreement and Unit Maintenance Agreement you see  
14    reference to the company, that is also MEI-GSR, and of  
15    course it defines the relationship of the Unit Owners as  
16    well.

17                Let's start with the 7th Amended CC&Rs, Exhibit 1  
18    that is in evidence. A covenant that runs with the land and  
19    is incorporated by reference into the Plaintiffs' deeds to  
20    their units, and I mentioned this repeatedly because it  
21    literally defines the Unit Owners' interests in their unit.

22                So to the extent that document gets modified or  
23    altered, it has a substantial impact on the Unit Owner's  
24    interest. It defines the Unit Owner's use of the Common

1 Elements and the Public Shared Facilities, including  
2 easements for use and enjoyment of facilities and the  
3 expenses they are responsible for, including, and we talked  
4 about this, fees, costs and use charges for easements and  
5 facilities within the Shared Facilities Unit or the parcel.  
6 We know from definition that the parcel is the entire tract  
7 of land.

8 FF&E expenses for refurbishment and renovation of  
9 the units themselves and that is covered under Section 4.3  
10 or 4.4 of the CC&Rs. The building FF&E is distinct and  
11 separate from the FF&E and it's for refurbishment and  
12 renovation of the Public Shared Facilities and property  
13 outside of the condo property. We know about the shared  
14 facilities and hotel expenses. Those are defined in the  
15 7th Amended CC&Rs, as are the reserves.

16 Let's start, do a little bit deeper dive on the  
17 7th Amended CC&Rs, Article 4, Section 4.3. Public Shared  
18 Facilities Easements appears on page 14 of Exhibit 1. It's  
19 an easement for reasonable ingress, egress, and access over  
20 and across, without limitation, all of the items listed  
21 there.

22 Now, I'm going into this, Your Honor. It's  
23 relevant again because the Plaintiffs have alleged that we  
24 have hyperinflated our fees. We have engaged in wild, rogue

1 behavior in marking up the fees.

2 I think the testimony demonstrates here today that  
3 our fees are in accordance with the CC&Rs. They track the  
4 CC&Rs and they are authorized under the CC&Rs. So we see  
5 walkways, hallways, corridors, hotel lobby.

6 And in one of the orders there is a distinct, and  
7 perhaps it's an argument in a motion from the Plaintiffs  
8 that you can't include charges for the lobby. That is just  
9 false.

10 It is expressly identified in Section 4.3,  
11 elevators and stairways that provide access to and from the  
12 hotel, residential and commercial units, and then easements  
13 for reasonable pedestrian access ways on, over, upon,  
14 et cetera, access ways that are located even outside the  
15 hotel building, so clearly far beyond the condominiums.

16 And I mention this, and I will probably come back  
17 to it in a moment, but if you recall the Receiver said in  
18 his calculations that he only includes those expenses for  
19 the Summit Tower. That's a clear violation of the 7th  
20 Amended CC&Rs, and when I asked him for details about that,  
21 he kept referring me back to his attorney who appears, and I  
22 don't mean to be unkind, but she appears to be acting as  
23 sort of a de facto Receiver at this point because the  
24 Receiver couldn't answer many questions for me and kept

1 directing me to his attorney to get answers.

2 Section 4.3(e)(i), Public Shared Facilities  
3 Easements, page 14. I think we have already been through  
4 that.

5 Section 4.3(e)(iii), Public Shared Facilities  
6 Easements on page 15. Easements to use the loading area and  
7 to have access between the loading area and the hotel. That  
8 is the back of the hotel, as I recall Mr. Brady told us,  
9 and, of course, that's essential. That is one of the  
10 expenses they have to carry because we buy, my client buys  
11 in bulk. They store it in those areas. It's necessary that  
12 they incur some of those expenses as well.

13 Section 4.3(e)(iv), easements to use and enjoy  
14 portions of the Shared Facilities Unit which from time to  
15 time are made available by the Owner of the Shared  
16 Facilities Unit for use by the Unit Owners.

17 Now, I appreciate the fact that the CC&Rs don't  
18 expressly state pool, but I cannot imagine another  
19 definition that wouldn't include the pool other than  
20 easement to use and enjoy portions of the Shared Facilities  
21 Unit which from time to time are made available by the Owner  
22 of the Shared Facilities Unit to the Unit Owners.

23 And it expressly states in here that the Unit  
24 Owners are subject to fees, costs and other use charges as

1 may be adopted or imposed from time to time by the Shared  
2 Facilities Unit Owner, including, without limitation, each  
3 Unit Owner's proportionate share of the Shared Facilities  
4 Expenses as covered under Section 6.9.

5 So I think what I suggest to the Court is when you  
6 are looking at Section 6.9, you necessarily have to go back  
7 to Section 4.3 to see what is covered and what they are  
8 responsible for.

9 We jump to Section 4.5(b)(i), in each instance  
10 that the Declarant makes a determination that the FF&E is in  
11 need of replacement, for purposes of including refurbishment  
12 or renovation, each Unit Owner will be required to  
13 participate in each FF&E replacement program, and the costs  
14 will be assessed either unit-by-unit for actual cost, a  
15 percentage of interest, square footage basis or such other  
16 reasonable cost allocation as the Declarant shall determine.  
17 The decision of the Declarant shall be conclusive and  
18 binding upon the Unit Owners.

19 You can see that what has happened is that has  
20 been displaced. That has been a modification of the  
21 7th Amended CC&Rs where we have the Plaintiffs, the Unit  
22 Owners coming in and saying I don't like what you did. I  
23 think you did too much. I think it's too expensive.

24 That is an alteration of the express terms of the

1 CC&Rs, and part of the confusion in this case and, let's  
2 face it, what this case really comes down to is are the  
3 orders clear or are they ambiguous? Do they lend themselves  
4 to multiple interpretations?

5 Several of the orders say that the 7th Amended  
6 CC&Rs cannot be amended as long as a Receiver is in place,  
7 and yet some of those same orders that we will look at in a  
8 moment effectively modify some of these Governing Documents.

9 This section, Section 4.5(c) is the building FF&E,  
10 distinct and separate from the FF&E, and this includes  
11 property outside of the condominium property. It includes  
12 the lobby, front desk, concierge, reception area  
13 furnishings, fixtures, equipment and facilities. Corridors  
14 and hallways are included when they must be replaced,  
15 repaired or refurbished as deemed necessary by the  
16 Declarant.

17 Again, we see the Plaintiffs interjecting  
18 themselves into this process saying, no, we think that's  
19 excessive. We think that's too much. That's outrageous  
20 because of the special assessments that we are receiving.

21 This is a determination to be made by the  
22 Declarant under the 7th Amended CC&Rs. And, again, these  
23 calculations could be based upon actual unit-by-unit cost or  
24 square footage or such other reasonable cost allocations as

1 the Declarant deems necessary and the decision of the  
2 Declarant is conclusive and binding upon the Unit Owners.

3 So let's summarize. We were talking about Public  
4 Shared Facilities easements. We know from reading the  
5 7th Amended CC&Rs the Unit Owners have easements for  
6 reasonable ingress, egress, et cetera, as listed; walkways,  
7 hallways, corridors, hotel lobby, elevators, stairways, et  
8 cetera. Easements in Shared Facilities Unit and/or parcel,  
9 that's clearly far outside any interpretation that it's  
10 limited to just the tower as Mr. Teischner testified.

11 Easements to use the loading areas, we talked  
12 about that. Easements to use and enjoy portions of the  
13 Shared Facilities Unit which are made available to the  
14 Unit Owners, and subject at all times to the fees, costs and  
15 use charges as may be imposed by the Declarant MEI-GSR.

16 Summarize the FF&E for units. The Declarant makes  
17 the determination of need for the replacement or renovation.  
18 Each unit owner is required to participate and pay his or  
19 her share of the costs. The costs can be assessed multiple  
20 ways as listed, including square footage.

21 And I keep mentioning that I think because it came  
22 up, it came up during the four days of hearings, I think it  
23 was in 2021, when Mr. Teischner was on the stand for quite  
24 sometime, and he was criticized for having used square

1 footage that the Court deemed resulted in excessive fees to  
2 the Unit Owners. I just want to point out repeatedly we see  
3 square footage is permitted or such other reasonable cost  
4 allocation as the Declarant shall determine.

5 Summarize building FF&E. The Declarant makes the  
6 determination for the need of replacement, repair or  
7 refurbishment. Not the Plaintiffs. We don't need the  
8 Receiver's permission, at least not according to the  
9 7th Amended CC&Rs.

10 It includes furnishings, fixtures, for not only  
11 the Shared Facilities Unit, but property outside the  
12 condominium property. It includes lobby, front desk,  
13 concierge, et cetera. Costs, again we have a list of how  
14 they can be assessed, including square footage.

15 Now, let's jump to Section 6.9, page 37 of the  
16 CC&Rs, and this is Exhibit 1. In addition to defining  
17 responsibility for fees and expenses, it defines the rights  
18 and responsibilities of the Shared Facilities Unit Owner,  
19 that's MEI-GSR, to prepare a detailed proposed budget for  
20 the ensuing calendar year to establish the Shared Facilities  
21 Unit Expense.

22 They are instructed to order an independent  
23 reserve study to set independent Shared Facilities Unit  
24 reserves for capital expenditures and costs of deferred



1 maintenance. It is at the sole and absolute discretion of  
2 the Shared Facilities Unit Owner.

3 Again, a modification of the 7th Amended because  
4 now we have the Receiver interjecting himself into that  
5 process and the Unit Owners objecting if we come up with  
6 fees or costs with which they do not agree.

7 7th Amended CC&Rs, Section 6.10, page 40, it is  
8 really the identical responsibilities that the Declarant has  
9 for setting hotel expenses. 6.9 is talking about Shared  
10 Facilities Unit Expenses. The responsibilities and duties  
11 are the same.

12 It also defines, the CC&Rs also define how they  
13 can be modified or changed. Not only do we have orders  
14 saying they can't be modified while the Receiver is in  
15 power, but Section 13.6 on page 59 says no provision of the  
16 CC&Rs affecting the rights, privileges and duties of the  
17 Declarant may be modified without its written consent.

18 We see that there are modifications going on  
19 pursuant to Court orders and yet by the very terms of the  
20 7th Amended CC&Rs that the Receiver had been duty bound to  
21 implement, they are being modified.

22 And these are the orders that say, stand for the  
23 proposition or state that the 7th Amended CC&Rs cannot be  
24 amended until the Receiver is relieved of his duties.

1 That's Exhibit 25, the Order Granting Receiver's Motion for  
2 Orders and Instructions, and Exhibit 23, the Order Granting  
3 Plaintiffs' Motion for Instructions to Receiver.

4 Take a look at the 2007 Unit Rental Agreement,  
5 Exhibit 2. It defines the agreement between the company,  
6 that's MEI-GSR, which has the sole and exclusive right to  
7 rent the unit of those Unit Owners who voluntarily entered  
8 into the rental agreement.

9 Not all of the Plaintiffs entered into a rental  
10 agreement. It is voluntary. It sets forth the rental  
11 procedures. The company calculates the net rental revenue  
12 after deducting the DUF and amounts payable by Unit Owners  
13 per the CC&Rs.

14 I put it in the bold print because it appears in  
15 the Unit Rental Agreement. I think you will -- one of the  
16 basic arguments of the Plaintiffs is if we are not making  
17 money on our unit, somebody is stealing our money.

18 And what I find so interesting, even in the  
19 Court's Findings of Fact and Conclusions of Law, Judge  
20 Sattler decides this is investment property. And yet when  
21 you look at the Unit Rental Agreement, it acknowledges that  
22 there are no rental income guarantees of any nature.  
23 Neither the company nor manager guarantees that the owner  
24 will receive, there is a typo, any minimum payments under

1 this agreement or that the owner will receive -- I'm so  
2 stuck on Receiver, I keep saying Receiver -- the owner will  
3 receive rental income equivalent to that generated by any  
4 other unit in the hotel.

5 It defines the company's sole right to terminate  
6 the agreement or modify the services in its sole and  
7 absolute discretion with or without cause.

8 Judge Sattler, we had filed a motion to terminate  
9 this agreement sometime ago. It was no longer financially  
10 beneficial to the Defendants. We were locked in a  
11 disagreement with the Plaintiffs, and Judge Sattler said,  
12 no, you are not going to be able to exercise that right, at  
13 least not right now.

14 Unit Maintenance Agreement, Exhibit 3, establishes  
15 services to be provided by the company, again that's  
16 MEI-GSR. The company is to charge Unit Owners a monthly  
17 reserve, FF&E reserve, for the sole purpose of funding  
18 replacement of the FF&E for the units. It defines the  
19 company's right to modify the services to be provided and/or  
20 adjust the charges payable for services provided and to  
21 reflect actual changes in the cost of providing services.

22 There is a similar disclosure in the Unit  
23 Maintenance Agreement that they signed. Owner understands,  
24 acknowledges, represents and warrants that neither the

1 company nor any of their representatives made any statements  
2 or representations with respect to the economic benefits or  
3 tax benefits to be derived from the ownership of the units.

4 One of the exhibits that is in evidence is  
5 actually a Purchase and Sale Agreement. I encourage  
6 Your Honor to look at that exhibit. Exhibit L that is  
7 attached to that exhibit has similar disclosures and  
8 certifications from the buyers that nobody told them they  
9 would make money on these units, that they are not good  
10 investment properties. That it is a good buy for you if you  
11 are looking for a vacation home.

12 What is a Receiver's relationship with these  
13 Governing Documents we have been talking about. The  
14 Receiver is appointed over the GSRUOA, is specifically  
15 assigned the task of implementing compliance with the very  
16 documents that we have been talking about, the Governing  
17 Documents.

18 The 7th Amended CC&Rs cannot be amended until the  
19 Receiver is relieved of his duties, we talked about that and  
20 the orders that stand for that proposition.

21 The Receiver does not have discretion to deviate  
22 from the Governing Documents, and yet the testimony we heard  
23 from Mr. Teischner certainly appears that he has deviated  
24 substantially from the Governing Documents. And I think in

1 order to reach that conclusion, Your Honor can look at  
2 Mr. Brady's testimony and look at Mr. Teischner's testimony.  
3 They are remarkably different. Both of them can't be right.

4 You know, Mr. Brady's testimony is, look, these  
5 are my actual costs. These are my actual out-of-pocket and  
6 they are in accordance with the 7th Amended CC&Rs.

7 Mr. Teischner said I only charged for what's in  
8 the tower. Do I believe it's consistent with the CC&Rs, I  
9 do, but there is, again, he has excluded items such as  
10 accounting, human resources, other charges that just  
11 undisputedly are covered under the 7th Amended CC&Rs.

12 This Exhibit 8 in evidence, this is the  
13 Receiver's, Mr. Proctor's determination of fees and  
14 reserves. He provides his calculations, and in his  
15 calculations he notes that the 2014 Reserve Study is deemed  
16 reliable and reasonable, pending an updated Reserve Study,  
17 so his SFU and hotel reserve calculations remained the same  
18 as the most recent amounts charged by the Defendants,  
19 meaning that nobody disputes that the Receiver is to  
20 calculate the reserves. We have never, we have never  
21 contested that.

22 What the Plaintiffs have done is they have argued  
23 by implication if he is to calculate the reserve studies for  
24 SFU and hotel calculations, by implication he must take over

1 the reserve studies as well. There was no order that said  
2 that until it came out on January 2nd, 2022.

3 He also observed that pursuant to the Governing  
4 Documents, the GSR is to submit to the Receiver the annual  
5 budget for the units for 2017 in November of 2016. The  
6 point being, he looked to GSR to submit that budget. He  
7 wasn't taking over that role, as Mr. Teischner has allegedly  
8 done now.

9 What did the Receiver not request. It's important  
10 because what I'm going to be talking to you a lot about  
11 today, Your Honor, is the course of conduct. Course of  
12 conduct can actually define the terms of a contract, the  
13 terms of an order as well. How did the parties treat that  
14 order over the years and did it appear that they had reached  
15 an agreement of sorts as to the content or execution of that  
16 order.

17 From his appointment on January 7, 2015, through  
18 his removal as Receiver on December of 2018, Mr. Proctor  
19 never claimed, nor did the Plaintiffs, that he could or  
20 should take control of the net or gross rental income of the  
21 units, nor the distribution of the rental income to the  
22 Plaintiffs and Defendants.

23 Why is that important? Because Your Honor has  
24 pointed out a couple of times, as has Plaintiffs, doesn't

1 the January 7, 2015, order say that? It does. And they  
2 never executed on it, never. Which indicates to me a course  
3 of conduct that the Receiver will not take on those  
4 responsibilities until, unless and until he elects to do so  
5 and that is a course of conduct in this case repeatedly.

6 Now, I'm going to point out, because I know  
7 Mr. Miller will point it out, when Mr. Proctor was the  
8 Receiver this thing went up on appeal from May of 2016,  
9 didn't come back until December of 2018, clearly there  
10 wasn't much he could do. There was nothing he could do  
11 during that period.

12 THE COURT: Well, the case was dismissed.

13 MR. McELHINNEY: It was, absolutely. It was  
14 dismissed and then went up on appeal. It came back and was  
15 remanded December of 2018, but, nonetheless, the fact  
16 remains for that period of time Mr. Proctor never brought it  
17 up.

18 He never claimed that the reserve studies were  
19 flawed and untrustworthy. As a matter of fact, he said they  
20 were prepared by third party professionals and he relied  
21 upon them.

22 So there was no allegation that they were flawed  
23 or untrustworthy or that he should be solely in control of  
24 ordering or overseeing the independent reserve studies.

1 Again, there could be an argument made I suppose by  
2 implication that he could have exercised that under the  
3 January 7, 2015 order, but he never did.

4 Never claimed that upon his appointment all  
5 authority that had been vested in the board, managers, the  
6 Declarant, and other decisionmakers was immediately  
7 transferred to the Receiver. That argument never came up.

8 Could the argument be made that that was his right  
9 or his power under the January 7, 2015 order? I'm not going  
10 to concede that it does, but the argument could be made he  
11 never exercised that power.

12 Mr. Proctor never claimed that he was appointed  
13 Receiver over the GSRUOA and certain Defendants' assets,  
14 which I find remarkable, because I think that's contrary to  
15 Nevada law, but that is a representation made by Plaintiffs  
16 in their Motion for Instructions to Receiver on  
17 September 28, 2021. That is Exhibit 15, page 4, lines 27  
18 through 28.

19 So Mr. Teischner is appointed January 25, 2019, in  
20 place and in stead of James Proctor. From the date of his  
21 appointment in January of 2019 to September of 2021,  
22 Mr. Teischner never claimed, as Receiver over the GSRUOA,  
23 entitlement to take control of the net or gross rental  
24 income that belongs to MEI-GSR.



1           He never claimed exclusive authority to order and  
2   oversee independent reserve studies that per the CC&Rs were  
3   the sole responsibility of the Declarant and the Owner of  
4   the Shared Facilities Unit, which document is not supposed  
5   to be amended or altered.

6           He never argued that he replaced and usurped any  
7   and all authority and power of the GSRUOA Board of  
8   Directors, the Declarant or any other agent, placing that  
9   power and authority instead into the exclusive hands of the  
10   Receiver.

11           Course of conduct, Your Honor. If that power  
12   resided in the Receiver from January 7, 2015, and we are to  
13   be held in contempt for that, you have to ask yourself what  
14   were the, how were the parties treating one another pursuant  
15   to that order? Was anybody coming up and saying, hey,  
16   McElhinney, that order exists from 2015. You have to  
17   immediately turn that power over.

18           That did not happen until 6 1/2 years after that  
19   order was issued. That is a course of conduct and that can  
20   create confusion and a latent ambiguity in the contents of  
21   that order. Meaning you could read it in plain English.  
22   You can look at it in a vacuum, but if you put it in context  
23   there is a lot going on here. The parties are conducting  
24   themselves in a certain manner in relationship to that

1 order.

2           So for the first time following entry of the  
3 January 7, 2015, order appointing the Receiver, the Receiver  
4 on September 15th, 2021, through his attorney asks the Court  
5 to approve and order the following: Open his own separate  
6 account upon which he has exclusive signatory authority,  
7 collect rents for the Plaintiff-owned units, including the  
8 daily resort fee, net of total charges for DUF, SFUE, and  
9 HE fees plus reserves, and he cites, what is his authority,  
10 January 7, 2015.

11           So here we are 6 1/2 years later. He is saying  
12 I'm demanding net rent and my authority is the January 7,  
13 2015, order.

14           One month following his e-mail to the Court, the  
15 Receiver filed his motion, and this is Exhibit 19, and in  
16 that his requests are very similar. He requests that he be  
17 allowed to take over the Reserve Studies to make sure they  
18 comply with the Governing Documents. The first time that  
19 demand has ever been made is 6 1/2 years after that order  
20 was entered, arguing that any other conclusion is illogical.

21           He requests that he be ordered to open a separate  
22 account into which he will deposit "all rents", including  
23 daily resort fees, received by GSR currently and in the  
24 future, net of the total charges for the DUF, SFUE, and HE

1 fees and for reserves combined.

2 The Receiver is using the term all rents to define  
3 net rents and he is citing at his authority the January 7,  
4 2015, order. My clients, it is not unreasonable for them to  
5 conclude at that point that the power that the Receiver  
6 feels he has under the January 7, 2015, order is a power  
7 over net rents, and they conduct themselves accordingly as  
8 we will look coming up here shortly.

9 This is the language that appears in his motion.  
10 He is to calculate the DUF, SFUE, and HE for 2020. Let's  
11 not make a mistake. These were not calculations for 2021.  
12 It was for 2020.

13 And he says in his motion that until such time as  
14 he completes those calculations and they are approved by the  
15 Court, in quotes, "Those fees in place prior to the Court's  
16 September 27, 2021 order shall remain in place until the  
17 fees for 2020 are recalculated and approved by the Court  
18 such that only a single account adjustment will be  
19 necessary." That's in his motion, Exhibit 19, page 8, lines  
20 13 through 15.

21 Four days later the Plaintiffs file a joinder.  
22 They don't need much time to think about it. They jump on  
23 it. October 22nd, 2021, the Plaintiffs filed a joinder to  
24 the Receiver's Motion for Orders and Instructions, observing

1 that all of the issues addressed in the Receiver's motion  
2 have been previously fully litigated in this case and are  
3 the subject of existing orders. And the Plaintiffs request  
4 that the Court grant the Receiver's motion exactly as the  
5 Receiver had set forth in his motion. However -- well, we  
6 will look at it in a second.

7 What did the Receiver mean when he requested,  
8 "Those fees in place prior to the Court's September 27,  
9 2021, order shall remain in place until the fees for 2020  
10 are recalculated and approved by the Court such that only a  
11 single account adjustment will be necessary"?

12 Well, if we look at his October 18, 2021, motion  
13 he says it means that he wanted the prior Receiver's fee  
14 calculations to remain in place until his revised fees are  
15 calculated for 2020 and approved by the Court, and that's  
16 Exhibit 19, pages 10 and 11.

17 However, in his omnibus reply that is filed more  
18 than a year later on December 19, 2022, it is Exhibit 32, he  
19 changes. He says, well, no, I didn't mean Proctor's  
20 numbers. I meant by that phrase my 2021 fee calculations.

21 Now that's extraordinarily material. It means  
22 either Mr. Teischner -- Mr. Teischner strikes me as a very  
23 honest fellow, but he changed his idea about what that  
24 phrase meant. Now, either he is confused or he is being

1 dishonest with the Court.

2 But the point that I want Your Honor to take away  
3 is at first he said that phrase means Proctor's numbers and  
4 then out of his own mouth he says one year later, no, I  
5 meant my 2021 numbers. And, of course, this position about  
6 his 2021 fee calculations being referred to in that phrase  
7 is impossible. I mean, the Receiver's 2021 fee calculations  
8 were not approved until January 4, 2022, so, obviously, that  
9 phrase is not referring to his 2021 fees.

10 The Plaintiffs file a joinder, as I had indicated,  
11 four days later, and the Plaintiffs join the Receiver's  
12 request but they express concern about one particular  
13 provision in the Receiver's motion. The Plaintiffs' caution  
14 that the phrase, "Those fees in place prior to the Court's  
15 September 27, 2021, order shall remain in place until the  
16 fees for 2020 are recalculated and approved by the Court  
17 such that only a single account adjustment will be  
18 necessary," will create, "the glaring issue of what fees  
19 will be applied."

20 They are concerned, aren't they? What they are  
21 saying here is don't use that phrase, Receiver, because it's  
22 going to create confusion, exactly the confusion that we are  
23 acknowledging and yet they still want to hold us in contempt  
24 for that language for violating what they say is the meaning

1 of that language.

2 The Plaintiffs' recommendation to avoid this  
3 glaring issue of what fees will be applied is to insert the  
4 following language instead: "The Receiver's new fee  
5 calculations are approved retroactive to January 2020 and  
6 shall be applied for 2020, 2021, and going forward until a  
7 subsequent order from the Court." That's Exhibit 20,  
8 page 4, lines 20 through 22, and page 5, line 1.

9 So the order comes out. That's Exhibit 25. The  
10 Order Granting the Receiver's Motion for Orders and  
11 Instruction. Who prepared that order? Mr. Miller's office  
12 prepared that order, and the very language that he said  
13 should not be used because it would create a glaring issue  
14 of what fees would be applied showed up in the order, didn't  
15 it?

16 It says, "Those fees in place prior to the Court's  
17 September 27, 2021 order shall remain in place until the  
18 fees for 2020 are recalculated and approved by the Court  
19 such that only a single account adjustment will be  
20 necessary." The language he told us it would cause  
21 confusion he put it in the order. Justice Saitta signed it.

22 And to stand before the Court and say that  
23 provision is clear and not ambiguous I think is just  
24 disingenuous. In writing he admitted it would create

1 confusion and, in fact, it did.

2 I'm putting these orders side-by-side. It's  
3 similar to the demonstrative exhibit that we already had  
4 marked. Conflicting language in the orders regarding what  
5 fees should be applied, it's critical to Your Honor's  
6 analysis. You can't hold us in contempt if these orders are  
7 conflicting and render themselves unclear.

8 Remember, Mr. Miller's solution was, Mr. Brady,  
9 just look at the one order. Don't look at the other order,  
10 just look at this order, is it clear? Well, the problem is  
11 all of the orders were filed as one order. They are  
12 separately labeled, but they are on the same date at the  
13 exact same time, I mean right to the second.

14 So, obviously, they were filed as one document.  
15 You cannot read them in isolation. What does one say,  
16 Exhibit 25, Order Granting Receiver's Motion for Orders and  
17 Instructions, it says, "Those fees in place prior to the  
18 Court's September 27, 2021 order shall remain in place until  
19 the fees for 2020 are recalculated and approved by the Court  
20 such that only a single account adjustment will be  
21 necessary."

22 Compare that language to the language that appears  
23 in the Order Approving the Receiver's Request to Approve  
24 Updated Fees, Exhibit 26. "The Receiver's new fee

1 calculations as submitted to the Court should immediately be  
2 applied retroactively to January 2020 and going forward  
3 until a subsequent order from the Court is issued."

4 Well, wait a minute. That's the language that the  
5 Plaintiff said should have appeared in Exhibit 25, right?  
6 They said you want to avoid that confusion, use this  
7 language. But they didn't, did they? They prepared an  
8 order that had confusing language.

9 You cannot reconcile these documents, you can't,  
10 and yet incredibly, and we will look at a slide of this in a  
11 moment, the Plaintiffs showed up in court on May 24, 2022,  
12 and said to Justice Saitta, no, these two orders don't  
13 conflict.

14 And I'm arguing to the Court they do conflict. We  
15 need resolution here. We don't know which order to follow.  
16 If you follow one you are in breach of the other and that's  
17 inescapable, and their argument was, no, they can be read  
18 harmoniously.

19 Now, I think I heard Mr. Miller say during this  
20 trial they are ambiguous. That's the closest I have ever  
21 gotten him, at least getting him to abandon that  
22 indefensible position of they are harmonious.

23 They are not harmonious, and we point that out  
24 repeatedly to the Court, and yet here we are facing contempt



1 charges before Your Honor because we didn't follow the order  
2 that he wanted us to follow, Exhibit 26. No, we followed  
3 Exhibit 25. We pointed out the conflict. Nobody resolved  
4 it.

5 You know, part of all of this is, it doesn't  
6 really lend itself to contempt proceedings. What we should  
7 be doing is seeking clarification rather than contempt.  
8 These orders are without dispute conflicting with one  
9 another, and yet we turned our back on them and we end up  
10 with Motions for Order to Show Cause instead of Motions for  
11 Clarification.

12 This is a May 24th, 2022, Order to Show Cause.  
13 Yeah, I think, I don't think I meant -- I meant to be  
14 referring to the hearing. Oh, I take that back. The  
15 May 24, 2022, hearing was on the Motion for Order to Show  
16 Cause, so we are kind of doing this hearing twice.

17 We did this, a smaller version of this in front of  
18 Justice Saitta on May 24, 2022, on their Motion for Order to  
19 Show Cause. This precise issue was addressed. I identified  
20 the conflict between the orders.

21 Plaintiffs' Counsel Mr. Tew responds that the  
22 orders do not conflict with one another and he says they can  
23 be read in harmony with one another. Harmony I sort of  
24 throw in that definition equals agreement or accord.

1 But despite having made that argument that they  
2 can be read in harmony, Plaintiffs never explained how those  
3 two orders can be read in harmony. As I sit here today, I  
4 don't believe they can.

5 More conflicting language appears in the orders  
6 that adds to the confusion in this case. We are looking at  
7 the Order Granting Receiver's Motion for Orders and  
8 Instructions and, again, that's that language we have been  
9 talking about.

10 Receiver shall open a separate account into which  
11 all rents received by Defendants, net of total charges for  
12 DUF, SFUE, and HE fees and reserves are to be deposited. So  
13 we see again Plaintiffs using the term all rents meaning net  
14 rents.

15 Look at the Order Granting Plaintiffs' Motion to  
16 Stay Special Assessment, and if you will bear with me, I was  
17 going to say I would get the Exhibit Number. Bear with me,  
18 Your Honor, I want to find it.

19 Excuse me, that's Exhibit 27, Order Granting  
20 Plaintiffs' Motion to Stay Special Assessment. The Receiver  
21 shall open a separate account into which all rental revenue  
22 from the units is deposited. Huh, I wonder what they meant?  
23 Did they mean net rent? They meant net rent.

24 If this was filed in Plaintiffs' motion filed on

1 August 20, 2021 and reply on September 17th and on  
2 page 4:24-28 of the order itself, it references the  
3 Receiver's intention to collect net rents.

4 So we know that even in this order while it is not  
5 completely clear when they say all rental revenue, on  
6 page 4, lines 24 through 28, it references the Receiver's  
7 intention to collect net rent; therefore, again, they are  
8 using not only all rents, but all rental revenue as a  
9 reference to net rents.

10 More confusion from the Plaintiffs. On May 4,  
11 2023, the Plaintiffs again change course filing a Supplement  
12 to Plaintiffs' Motion for Order to Show Cause, which was  
13 filed September 27, 2021. This is not really a supplement  
14 at all, rather it sets forth a new demand.

15 Now if you look at their September 27, 2021,  
16 motion, they are seeking to hold us in contempt for not  
17 handing over net rent. In their supplement they ask  
18 Your Honor to hold us in contempt for not handing over gross  
19 rent.

20 And this is a shift that is not fair to the  
21 Defendants. There is a course of conduct here. They have  
22 said our authority comes from January 7, 2015, and that  
23 authority is to collect all rents, which is net rents.

24 We lived with that for a year and eight months,

1 and then we get this e-mail saying, oh, by the way, that  
2 January 7, 2015, order is not net rents, not anymore. It's  
3 gross rents. That is not fair, it's inappropriate, and it  
4 shows the confusion that is created by course of conduct by  
5 the parties in this case.

6 And this slide sort of goes to that issue. The  
7 Receiver and the Plaintiffs have defined rent to mean net  
8 rent. The Receiver filed his October 18, 2021, motion  
9 seeking permission to deposit all rents net of the total  
10 charges for the DUF, SFUE, HE, and reserves, and he cites  
11 the January 7, 2015, Appointment Order as his authority.

12 The Plaintiffs file a Joinder 4 days later citing  
13 the exact same authority. The Court entered its Order  
14 Granting Receiver's Motion for Orders and Instructions on  
15 January 4, 2022.

16 Now, we have heard repeatedly that, well, the  
17 Receiver stopped doing his work because he wasn't getting  
18 paid. It is our position, Your Honor, and there is  
19 documentation to support it in Exhibit 29, that he wasn't  
20 getting paid because he had not calculated the net rent.

21 The Receiver filed his letter to the Court wherein  
22 he acknowledged his obligation to calculate the net rent.  
23 That is in his November 14, 2022, letter. This is, this is  
24 11 months after entry of the January 4, 2022, order that

1 told him he had to calculate the net rent and that's what he  
2 would put into that separate account.

3 Now, by this time he still has not opened the  
4 separate account. And his explanation is, well, you know, I  
5 don't, it's hard to open an account, so I'm just going to  
6 put it into the GSRUOA account.

7 That would be a violation of Chapter 82,  
8 Your Honor. I mean, that would be an ultra vires act for a  
9 non-profit corporation to start collecting money, profit  
10 money that would be distributed to parties. That would lead  
11 to problems for our corporation through the non-profit. We  
12 objected.

13 The point, though, is there is an order saying,  
14 Receiver, you will open a separate account. And instead of  
15 coming to Your Honor and saying, well, I don't want to open  
16 a separate account, let me use something else, he just  
17 ignores it and does what he wants. He is in violation of  
18 the Court order and it's ignored by the parties. The  
19 Plaintiffs don't do anything about it.

20 And in that letter of November 14, 2022, he says  
21 certainly the amount of the net rents would first need to be  
22 calculated before the Receiver could inform GSR of the  
23 amount that it would need to turn over to the Receiver.

24 We are allowed to rely upon that representation

1 and yet you see what's happening today? Well, the  
2 January 7, 2015, order says you got to hand over the rents.  
3 McElhinney, what are you doing? You are violating the Court  
4 order.

5 Wait a minute, Receiver, you said all rent means  
6 net rents. You asked for permission to calculate the net  
7 rents and put them into a separate account. The Court  
8 granted that and 11 months later you are admitting that you  
9 still haven't done it and it is your job to calculate it.

10 And you can't turn it back on us at this 11th hour  
11 and say why didn't you just hand over rents? I don't know,  
12 because the Receiver said he was calculating them and he  
13 told them he was going to hand them over to me, and he said  
14 in that same letter that I will look to those net rents to  
15 pay my bills and Stephanie Sharp's bills.

16 So when Mr. Miller is saying to Mr. Brady on the  
17 stand you had rent money, why didn't you just give it to him  
18 so you could get him paid? Because he told me he was  
19 calculating the net rents and once he got that calculation  
20 he would give that number to me, meaning Reed Brady, and  
21 then he would pay himself out of that net rent.

22 My client is allowed to rely upon that  
23 representation. That is a course of conduct that we are  
24 talking about that arises from how did we treat the

1 January 5th -- January 7th, 2015, order? We treated it like  
2 this.

3 Even as late as December 1, 2022, the Receiver in  
4 a Motion for Orders and Instructions, he requests  
5 clarification as to whether his net rent calculations  
6 defined in the 1/4/22 order apply to only Plaintiffs' units  
7 or Defendants' units. That is page 3, lines 6 through 16.  
8 There is no mention of handing over gross rent. And that's  
9 Exhibit 31, by the way, Your Honor, I apologize.

10 Plaintiffs' counsel, their admissions as to net  
11 rent, Exhibit 30. Plaintiffs' counsel in an e-mail dated  
12 November 23, 2022, states, "In summary, the Affirmed Order  
13 demonstrates that it would be yet another patent and willful  
14 violation of the Court's November 14, 2022, Order/Affirmed  
15 Orders if the rents for the Plaintiffs' and Defendants'  
16 units, after applying the Receiver's approved updated fees,  
17 are not turned over to the Receiver so that both the  
18 Receiver, Receiver's counsel, and Plaintiffs can be paid  
19 within 30 days of the November 14, 2022 Order."

20 Again, course of conduct. Not gross rent, net  
21 rent. And the Receiver isn't saying give me rent money so I  
22 can be paid. He is saying I will take my payment out of  
23 that net rent that I'm calculating and I will give to you,  
24 GSR. I will tell you what that number is.

1           We are allowed to rely upon that representation  
2   from our Receiver. It's totally consistent with the  
3   Plaintiffs' position. You cannot hold us in contempt,  
4   Your Honor, by looking back at the January 7, 2025 order and  
5   saying --

6           THE COURT: 2015.

7           MR. McELHINNEY: I'm sorry?

8           THE COURT: 2015.

9           MR. McELHINNEY: 2015 order and saying, well, it's  
10   clear in the order, Mr. McElhinney. That's missing, I think  
11   that's missing the context in which this order was created  
12   and how it was carried out by the parties. It literally  
13   identifies how those terms are to be executed.

14           I think I'm going to skip this one, because I  
15   don't know that I got this into evidence. It is an e-mail  
16   exchange. I'm going to skip over it.

17           And then things change remarkably on May 4, 2023.  
18   The Receiver and the Plaintiff demand gross rent for the  
19   first time ever from the date of the issuance of the  
20   January 4, 2022 order granting Receiver's Motion for Orders  
21   and Instructions, Exhibit 25, through as recently as the  
22   evening of May 4, 2023, Receiver and the Plaintiffs are  
23   demanding net rent.

24           However, on May 4, 2023, Reed Brady receives an



1 e-mail from the Receiver demanding that rather than handing  
2 over the net rent that we have been talking about for the  
3 last 1 year and 8 months, the Receiver now wants Defendants  
4 to hand over gross rent, again, citing the authority under  
5 the January 7, 2015, Appointment Order.

6 The Plaintiffs join in on May 5 stating, "It is  
7 simply contempt of court for the Defendants to not properly  
8 tender the incoming gross rents."

9 Receiver acknowledges his confusion. He talked  
10 about it on the stand. He said it in writing in this e-mail  
11 exchange on May 5, 2023, an e-mail from Mr. Teischner to the  
12 parties. "This order," he is referring to the January 4,  
13 2022, order granting Receiver's Motion for Orders and  
14 Instructions, "conflicts, conflicts with both the Court's  
15 January 7, 2015 order, which clearly says rents and nowhere  
16 says or implies net rents, and with the Court's January 26,  
17 2023, order. However, this may be a legal argument that the  
18 Plaintiffs and Defendants need to address and about which  
19 filings with the Court for clarification might need to be  
20 sought."

21 If he is confused, and we are confused, and  
22 Mr. Brady is confused, it's probably because these orders  
23 are confusing or at the very least ambiguous, and Your Honor  
24 I believe cannot hold us in contempt if you determine one or

1 more of these orders are ambiguous.

2 I think the January 7, 2015 order is a little  
3 different, because I think if we read it on its face, I have  
4 a lot of problems with it because I think it violates Nevada  
5 law which can lead to some confusion, but, more importantly,  
6 it's the course of conduct.

7 It's the fact that this order laid dormant for  
8 6 1/2 years, and then once it started to appear, that is to  
9 say once the Receiver elected to start to exercise authority  
10 under that order, he said all rents mean net rents and then  
11 he changed it as recently as May of 2023 to gross rents.

12 I believe that the Receiver and the Plaintiff  
13 should be judicially estopped to now demand that what they  
14 meant by all rent was gross rent. Again, I say in this tab  
15 it's been for the last 17 months both the Receiver and  
16 Plaintiffs have taken the position in their moving papers  
17 filed with this Court, and their arguments before the Court,  
18 and e-mails amongst the parties, that the January 7, 2015  
19 Order Appointing Receiver and giving him power to review  
20 and/or control the rent that belongs to MEI-GSR was a  
21 reference to net rents, which they have been demanding  
22 Defendants hand over ever since up until May of this year  
23 when it turned into gross rents.

24 In an about face on May 4, 2022, they began

1 claiming that that reference to rent in the January 7, 2022  
2 order didn't mean net rent like we told you for the last  
3 1 year, 8 months. Now we say it means gross rent, and now  
4 they are saying you have to hand over all of the rent  
5 otherwise you are in contempt.

6 Judicial estoppel, just a quick look at it,  
7 Your Honor. Judicial estoppel applies to protect the  
8 judiciary's integrity and prevents a party from taking  
9 inconsistent positions by intentional wrongdoing or an  
10 attempt to obtain an unfair advantage.

11 And I think that's what's going on here. Look at  
12 how they changed at the last minute to gross rent and they  
13 want you to hold us in contempt for not handing over gross  
14 rent.

15 And I cite cases NOLM, LLC versus County of Clark,  
16 120 Nev. 736, 743, 100 P.3d 658 at page 663, that's a 2004  
17 case, and they quote, Kitty, K-i-t-t-y, Anne, A-n-n-e, Music  
18 Company versus Swan, S-w-a-n, 112 Cal. App. 4th 30, 4 Cal.  
19 Rptr.3d 796 at page 800. That's Court of Appeals  
20 California, 2003, where it says this court may invoke the  
21 doctrine at its discretion.

22 Judicial estoppel may apply when, number 1, the  
23 same party has taken two positions, clearly the case here.  
24 The positions were taken in judicial or quasi-judicial

1 administrative proceedings, clearly applicable here.

2 The party was successful in asserting the first  
3 position, clearly applicable here. You have got a Court  
4 order for God's sake saying all rent means net rents and  
5 that's what you will calculate. And, number 4, the two  
6 positions are totally inconsistent, which they are.

7 And, number 5, the first position was not taken as  
8 a result of ignorance, fraud or mistake. Clearly it was  
9 not. That was their interpretation of the January 7, 2015,  
10 order and they have decided to change their minds 1 year and  
11 8 months later. They should be judicially estopped from  
12 doing so.

13 I'm going to take a minute and look at Exhibit 5,  
14 which is the Motion for Appointment of Receiver filed  
15 October 16, 2014, because there is an important admission in  
16 there and I want to take a look at it. Court's indulgence.

17 In their Complaint, the Plaintiffs sought  
18 appointment of the Receiver over the GSRUOA only. In their  
19 motion, they sought appointment of the Receiver over the  
20 GSRUOA and the MEI-GSR, and in their motion in their  
21 conclusion on page 8, bottom of the page 8, top of page 9,  
22 "The appointment of James S. Proctor as Receiver over  
23 Defendant Grand Sierra Resort Unit Owners' Association, a  
24 Nevada Non-Profit Corporation." And, number 2, "Over

1 Defendant MEI-GSR Holdings, LLC, a Nevada Limited Liability  
2 Company for the limited purposes of monitoring and  
3 controlling," this is important, "if the Receiver in his  
4 sole discretion deems necessary, the operation, rental,  
5 maintenance, fees, dues, and reserve collection of all  
6 condominium units governed by the GSRUOA."

7 Here is what is important about that and is worthy  
8 of Your Honor's consideration. This is an admission by them  
9 that before they could control the rents or reserves, they  
10 needed that Receiver appointed over the MEI-GSR. That's  
11 consistent with Nevada law.

12 You cannot bring into the receivership estate  
13 property or items that do not belong to the entity over whom  
14 you were appointed Receiver. That's just basic Nevada law.  
15 That's why they asked for appointment over the Receiver.

16 And the second important point is their  
17 envisionment was that the Receiver in his sole and absolute  
18 discretion when he deems it necessary he can exercise that  
19 authority. And I think, in fact, if you look at the course  
20 of conduct that is exactly what has happened in this case.

21 So when you see an entry in the January 7, 2015,  
22 order that says he can take, you know, you have to turn the  
23 reserves over to him, that's not how the parties treated it.

24 Look at this point. Mr. Teischner is on the stand

1 and I say to him have you ever asked for the reserves,

2 Mr. Teischner? No. Do you want them? No.

3 So even though that order says we are supposed to  
4 do it immediately, Mr. Teischner never asked for it and he  
5 darn well doesn't want it. And it's consistent with that  
6 representation, it is subject to the discretion of the  
7 Receiver when he wants to exercise that power. That's a  
8 course of conduct by which this January 7th, 2015 order was  
9 enforced.

10 And this is just sort of following up. The Court,  
11 when the Court issued the Appointment Order on January 7,  
12 2015, the Court denied in part and granted in part the  
13 Plaintiffs' motion appointing the receiver over the GSRUOA,  
14 a Nevada non-Profit Corporation, but not MEI-GSR for the  
15 express purposes of implementing compliance with the three  
16 Governing Documents, and importantly the Court denied  
17 Plaintiffs' request to appoint the Receiver over MEI-GSR  
18 Holdings, which Plaintiffs acknowledged in their motion was  
19 necessary to monitor and control the operation of the condo  
20 units and the rental, fee, dues, and reserve collections,  
21 all of which are owned and controlled by MEI-GSR, not  
22 GSRUOA.

23 In the January 7, 2015, order as part of his  
24 obligation to implement compliance with the Governing

1 Documents, the Receiver of the GSRUOA was granted the power  
2 to review and/or take control over the rent that, according  
3 to the Governing Documents and Plaintiffs' Motion for  
4 Appointment of Receiver belongs to MEI-GSR.

5 That particular paragraph talks about review and  
6 control. We know that for the first 6 1/2 years there was a  
7 review. After 6 1/2 years, starting on September 15, 2021,  
8 he decided to take control for the first time and without  
9 any notice. I mean, I think it would be reasonable to say  
10 if you want to change from review to control, maybe you  
11 ought to ask for clarification from the Court or file  
12 another motion. It is a distinct change of circumstance  
13 from reviewing to actually taking control.

14 This sort of gets into my argument about is this  
15 order even legal. How did the Receiver of the GSRUOA obtain  
16 power to control and take possession of rents that according  
17 to the Governing Documents and even Plaintiffs' Motion for  
18 Appointment belong to the MEI-GSR?

19 Now, you know, I'm sure you could say, well, if  
20 you were going to object you should have done that a long  
21 time ago, McElhinney. I'm talking about confusion. I'm  
22 talking about ambiguity which is relevant to these  
23 proceedings.

24 Recall even in the Plaintiffs' September 28, 2021,

1 Motion for Instructions to the Receiver, they admit that the  
2 Appointment Order appointed the Receiver over the GSRUOA and  
3 certain Defendants' assets. How could that be? If he is  
4 not appointed over those Defendants, then those are not part  
5 of the receivership estate, including rents and revenues,  
6 which, again, they admitted belong to MEI-GSR.

7 If the Receiver is ordered to implement compliance  
8 with the Governing Documents, then how is it that he is  
9 ignoring or modifying the terms of the Governing Documents  
10 by having the GSRUOA review and/or take control of MEI-GSR  
11 assets?

12 Those are defined -- MEI-GSR's rights to collect  
13 and control the rent and to do budgets and order independent  
14 third party reserve studies all are controlled by the  
15 Governing Documents. Governing Documents that he has sworn,  
16 the Receiver has sworn to implement and yet they are being  
17 modified.

18 Why? Because when you appoint the Receiver over  
19 the GSRUOA, you are really substituting that party in place  
20 of MEI-GSR. You can call it what you want, but it's a  
21 modification of the agreements and something that is not  
22 allowed.

23 And this was just sort of my, I think, stream of  
24 consciousness looking at the law and why I think that



1 January 7, 2015, order is confusing. NRS 32.155, the owner  
2 is defined and it means the person for whose property a  
3 Receiver is appointed. That's GSRUOA.

4 NRS 32.185, receivership property is defined as  
5 receivership property means the property of an owner, okay,  
6 that's the person over whom the Receiver is appointed, that  
7 is described in the order appointing a Receiver or a  
8 subsequent order. That term includes proceeds, products,  
9 offspring, rents or profits of or from the property. Again,  
10 that's GSRUOA property.

11 NRS 32.295, powers and duties of the Receiver. To  
12 collect, control, manage, conserve and protect receivership  
13 property. Not property belonging to somebody else,  
14 receivership property, and that by definition means property  
15 that is owned by the owner over whom the Receiver is  
16 appointed.

17 I think Your Honor understands the point I'm  
18 trying to make. That order is contrary to Nevada law and it  
19 is inherently confusing. It is latently ambiguous, not only  
20 because of that conflict with the law, but because of the  
21 manner in which the custom of practice, the manner in which  
22 it has been enforced, for the reasons I have been talking  
23 about for the last whatever it's been, an hour.

24 Plaintiff's claim that the January 7, 2015

1 Appointment Order immediately removed the Board of  
2 Directors. Plaintiffs' counsel argued this at a hearing  
3 before Justice Saitta on July 2nd, 2021, and it was denied  
4 by the Court. The Court observing that for the last 6 years  
5 no one has ever claimed any of the January 7, 2015, order  
6 provisions were being violated. That's Exhibit 13, page 34.

7 Now, why she reversed field in the January 4,  
8 2022, orders I don't know, but clearly at the July 2021  
9 hearing at the very least her comments show that she is  
10 confused by the status of this Receiver as well, because  
11 when John Tew said no, no, no, as a matter of law this  
12 Receiver immediately took over the entire operation of the  
13 board. Justice Saitta did not agree and she, in fact, let  
14 the board go forward with a vote that very afternoon.

15 So I think at the end of the day, the January 7,  
16 2015, order is very confusing. Plaintiff did not seek to  
17 have the Receiver take control of the non-receivership  
18 property for 6 1/2 years after issuance of that order, and  
19 this was not what they requested in their Second Amended  
20 Complaint.

21 This adds to our confusion. So I know the  
22 January 7, 2015, order is in violation of NRS Chapter 32,  
23 which makes it confusing in and of itself, and/or the Court  
24 by entering the order materially modified the Governing

1 Documents to assign the GSRUOA ownership interest in the  
2 unit rents in order to make the rents part of the  
3 receivership estate.

4 And then, again, we have been talking about course  
5 of conduct, I won't bore you further with that, at least not  
6 on this slide, but course of conduct is all important in the  
7 way, in the manner in which this order was enforced.

8 The Receiver refuses to carry out his Court-  
9 ordered responsibility to calculate the net rent. The order  
10 was clear, the Receiver shall open a separate account on  
11 which Receiver has sole signatory authority, and into which  
12 all rents, all rents, net of total charges for DUF, SFUE,  
13 and HE fees and reserves are to be deposited.

14 That's the January 4, 2022, Order Granting  
15 Receiver's Motion for Orders and Instructions, page 8, lines  
16 6 through 9. This gets accomplished 1 year and 4 months  
17 later on May 4, 2023, when the Receiver actually gets that  
18 account opened.

19 Let's talk about the Receiver's refusal to carry  
20 out his Court-ordered responsibility. And I get it. I hear  
21 the Plaintiffs just saying, well, you created the  
22 impossibility. You didn't pay him. Well, wait a minute.  
23 He said he was going to calculate net rents. He admitted in  
24 his November 14, 2022, letter to the Court that I can't tell

1 GSR what to hand over until I finish my calculations, but

2 I'm not going to do that until I get paid.

3 The Receiver didn't go to the Court and say I want  
4 to be relieved of these responsibilities. He just said I'm  
5 not going to do it and he put my clients squarely on the  
6 horns of a dilemma.

7 Either they are going to follow the order and sit  
8 back and wait for an independent third party reserve study  
9 that the Receiver had said I'm not going to do, or they can  
10 carry out the mandatory provisions of the 7th Amended CC&Rs  
11 to keep themselves out of trouble so they can set a budget  
12 and operate their business.

13 And this is a slide discussing that. The Receiver  
14 shall order, oversee, and implement a new reserve study  
15 which is in accordance with the Governing Documents. That's  
16 in the January 4, 2022, Order Granting Plaintiffs' Motion  
17 for Instructions to the Receiver. That is Exhibit 23,  
18 page 5, lines 23 through 24.

19 Nobody disputes that's what the order says. This  
20 power arose by implication based upon the Findings of Fact,  
21 Conclusions of Law and Judgment that required the Receiver  
22 to calculate the reserves.

23 Now, again, when Mr. Miller is going through the  
24 e-mail exchanges between me and Ms. Sharp or me and

1 Ann Hall, we are discussing his responsibility to calculate  
2 the reserves. Nobody has disputed that. Mr. Proctor was  
3 doing that back in 2016, 2017. We don't dispute it.

4 What we do dispute is this new power by  
5 implication where, okay, if I'm supposed to calculate the  
6 reserves, then it's only logical that I should also take  
7 over the independent third party reserve study. That  
8 interpretation showed up for the first time in an order on  
9 January 4, 2022.

10 This substantially modifies and amends the 7th  
11 Amended CC&Rs that required the Shared Facilities Unit Owner  
12 and the Declarant to prepare the detailed proposed budget  
13 for the ensuing calendar year to establish SFUE and HE, and  
14 ordering an independent reserve study to set independent  
15 reserves for capital expenditures and costs of deferred  
16 maintenance at the sole and absolute discretion of the  
17 Shared Facilities Unit Owner and the Declarant in accordance  
18 with the express terms of the 7th Amended CC&Rs.

19 Given the Receiver's refusal to order, oversee,  
20 and implement a new reserve study, set reserves, set SFUE  
21 and HE fees and reserves, and any necessary special  
22 assessments, all in accordance with the Governing Documents,  
23 Defendants carried out those functions as they have done  
24 historically and as required under the 7th Amended CC&Rs

1 that may not as a matter of a Court order be amended.

2 And now instead of somebody coming after the  
3 Receiver and seeking to hold him in contempt for refusing,  
4 because, again, he doesn't come to the Court and say I'm not  
5 being paid, I want to be relieved of these duties, instead  
6 he just does nothing putting us in that difficult position  
7 of what do we do?

8 We need to act quickly. We can't file a motion  
9 and go through a 30 day process. We need a budget.  
10 Otherwise, we are in all kinds of trouble in our business  
11 for the particular reasons that Mr. Brady described to  
12 Your Honor. And as he told you, ordering the independent  
13 third party study is essential to set a budget and without  
14 it we are extraordinarily handicapped.

15 So let's summarize. The January 7, 2015 Order  
16 Appointing Receiver is inherently vague and ambiguous. It  
17 is latently ambiguous because of the manner in which it was  
18 executed and no action having taken place on that order for  
19 6 1/2 years.

20 The conflicting orders. Defendants have followed  
21 one of the orders, applying their fees that were in place  
22 prior to the Court's order of September 27, 2021. I don't  
23 think we talked about that. Let's spend a minute on it.

24 Plaintiffs keep suggesting that we are just

1 applying whatever fees we want. I think Mr. Brady made  
2 clear that dealing with that confusing language you will  
3 apply those fees in place prior to September 27, 2021, we  
4 went through a checklist of what that means exactly.

5 And first it went Proctor's numbers. Then  
6 according to Mr. Teischner, it meant his 2021 numbers, which  
7 we regard as impossible because those were not approved  
8 until January 4, 2022.

9 So the only fees that were left, Your Honor, were  
10 our fees, and they were the fees, we used the same model,  
11 the same approach as was used by Mr. Teischner in 2020, but  
12 we eliminated those particular items that Judge Sattler said  
13 you can't put that in the DUF. It has to be fixed. We  
14 fixed it. Those are the numbers we used.

15 You've heard the testimony, Your Honor. You have  
16 to judge, but Mr. Brady was specific about his costs. They  
17 are actual costs and they comply with the 7th Amended CC&Rs,  
18 a far cry from rogue Defendants who are doing whatever they  
19 want and trying to hyperinflate their costs so as to punish  
20 the Plaintiffs. That's not what's going on here and the  
21 evidence shows that.

22 I think we have talked about the rest of those  
23 items. I believe we have presented testimony that contrary  
24 to the Plaintiffs' arguments and the Receiver's arguments

1 the CC&Rs do require the Unit Owners to pay for costs of  
2 refurbishment and renovation for areas including, but not  
3 limited to, the lobby, the front desk, concierge, reception  
4 area furnishings, fixtures, equipment and facilities,  
5 corridor and hallway furnishings, et cetera, and that's not  
6 only the FF&E, but it's the building FF&E.

7 And our Director of Finance, Mr. Brady told us, he  
8 has explained to the Court how and why he calculated the  
9 actual expenses, all of which include the categories of  
10 expenses included in the CC&Rs, demonstrating that these are  
11 not hyperinflated or excessive fees.

12 Your Honor, there is no order that requires  
13 Defendant to seek permission of the Receiver before  
14 withdrawing money from the reserve accounts. We have  
15 looked. It doesn't exist.

16 Recall that we filed two motions, and I know  
17 Your Honor knows, two motions for Instructions to the  
18 Receiver Regarding Reimbursement for Capital Expenditures,  
19 one on May 21, 2020 and the second on June 24, 2021.

20 We filed the motions seeking the Receiver's  
21 approval since per Court order he was charged with the  
22 accounting for all income and expenses associated with  
23 compliance with the Governing Documents. We do not argue  
24 that he has sole authority to approve withdrawal from the



1 reserve accounts.

2 The Receiver refused to prepare a report on  
3 Defendants' requests as ordered to do so. That's the  
4 January 4, 2022, Order Directing Receiver to Prepare a  
5 Report on Defendants' Request for Reimbursement of 2020  
6 Capital Expenditures that only addressed the second of the  
7 two motions.

8 And I will be honest with you, Your Honor, for  
9 years we were ignored by the Court. These were put to the  
10 bottom of the Court's priority list. We have spent,  
11 according to testimony we heard yesterday, over \$500 million  
12 on this property in improvements. All we are asking for is  
13 reimbursement from the capital reserve accounts for a small  
14 portion of those expenditures which represent the  
15 Defendants' share in that responsibility, which is without  
16 question clearly set forth in the 7th Amended CC&Rs.

17 The Defendants have a business to run. They  
18 require budgets. They have spent this money. I show  
19 \$300 million. It's \$500 million that directly benefit the  
20 Plaintiffs.

21 After waiting for nearly 3 years for the Receiver  
22 to carry out his responsibilities, the Defendants looked to  
23 the express terms of the 7th Amended CC&Rs that allow them  
24 to withdraw the funds from the reserves in order to

1 reimburse themselves for a small fraction of their capital  
2 expenditures and likewise looked through the orders and saw  
3 no orders that required us to seek Court permission prior to  
4 withdrawing money from our reserve accounts.

5 On May 24, 2023, Your Honor determined that cause  
6 had been shown for failing to comply with the December 5,  
7 2022, order related to the dissolution plan for not  
8 continuing to rent the former units following recordation of  
9 the Termination Agreement of the condominium hotel units,  
10 signed by all parties and the Receiver and recorded on  
11 February 27, 2023. That may be February 28, 2023.

12 Our position is as follows. Following the  
13 recording of the Termination Agreement, as a matter of law  
14 each unit owner has an exclusive right to occupancy -- it  
15 doesn't say anything about renting -- occupancy of a portion  
16 of the real estate that formerly constituted their unit.  
17 Their unit doesn't even exist anymore.

18 And the respective interests of the Unit Owners in  
19 their former units are the fair market values of their  
20 units. And I'm reading from NSR 116.2118 and NRS 116.21185.  
21 There is no provision in NRS Chapter 116 that authorizes the  
22 continuing rental of units that no longer exist.

23 There is no provision in the NRS Chapter 116 that  
24 says the Unit Owners of their former units can continue to

1 rent their units. And as pointed out by Mr. Teischner, they  
2 don't even own their units anymore. Those units are now  
3 titled in the name of the GSRUOA, the Receiver.

4 Now, it's in trust for the Unit Owners, but I can  
5 tell you the Receiver is not a party to any Unit Rental  
6 Agreement, not with us. And the units no longer exist, so  
7 we have trouble understanding why Your Honor -- well, I'm  
8 going to take it back. I understand what you said.

9 You said that would be an economic waste not to  
10 rent these units, but our position is if you follow the law  
11 these units don't exist and it is a theoretical if not  
12 actual impossibility to rent units that no longer exist and  
13 that are no longer owned in the name of the units or titled  
14 in the name of the units.

15 So our position was upon recordation of the  
16 termination agreement, the Defendants ceased renting the  
17 former units. Now, on March 14th we received Your Honor's  
18 order -- let me back up a little bit.

19 On January 26, 2023, the Plaintiffs actually filed  
20 a Motion for Instructions to clarify that the units were to  
21 be rented until they were sold. That resulted in  
22 Your Honor's order of March 14, 2023, order determining that  
23 allowing Unit Owners to only occupy their former units would  
24 promote economic waste and you ordered the Receiver to

1 continue to rent the former units under the URA.

2 I want to be clear. Defendants' units are not  
3 under the URA. And if you think about it, why would we  
4 enter into a Unit Rental Agreement with ourselves, because  
5 we own the units, we are renting the units, so a literal  
6 reading of this order would mean it's only the units under  
7 the URA.

8 It's probably a good time for me to ask you that  
9 question, because the last thing I want to be facing is  
10 another Order to Show Cause. Do I understand that  
11 correctly, that you are instructing whether it's the  
12 Receiver or us to continue to rent these units that is only  
13 those units under the URA?

14 THE COURT: You can rent any of the units you want  
15 as long as you do it fairly, Mr. McElhinney.

16 MR. McELHINNEY: Okay. I appreciate that,  
17 Your Honor. Thank you. I appreciate that clarification.

18 Now, on March 30, Plaintiffs' counsel sends an  
19 e-mail to counsel for the Receiver, and on March 14 the  
20 Receiver -- oh, saying, he says in his e-mail to Ms. Sharp,  
21 "On March 14th the Receiver was instructed by the Court to  
22 continue to rent the former units. Can you please confirm  
23 the following?" And then he asks questions about are the  
24 units being, in fact, being rented?

1           On April 5, Defendants' counsel sends an e-mail to  
2 Receiver's counsel, and I definitely skipped some e-mails in  
3 there. I don't mean to make any misrepresentations. There  
4 were some back and forth where Ms. Sharp said, well, you  
5 know the Defendants are in complete control of the rental  
6 program and we are not doing anything until we get paid.

7           I jumped in on April 5, 2023, not March 30, and  
8 I'm sorry I did. I probably shouldn't have, but what I say  
9 in here is given the Receiver's refusal, once again, to  
10 carry out his Court-ordered responsibilities and the Court's  
11 concern to avoid economic waste, Defendant will, under  
12 protest, and with a full reservation of rights continue  
13 renting all units in accordance with the express terms of  
14 the URA as it had been doing prior to the termination of the  
15 Common Interest Community.

16           Now, we stopped for March for the reasons I have  
17 already expressed. That Termination Agreement was recorded  
18 February 28th, 2023, and in our view the units didn't exist.

19           On March 14th Your Honor issues an order not  
20 telling us to continue to rent the property, but telling the  
21 Receiver to continue to rent the property. We sat back and  
22 waited to see what the Receiver was going to do. It was  
23 crickets, nothing going on.

24           That's when I stepped up and said, look, I don't

1 think, you know, it's under protest, but I don't think the  
2 Receiver is capable of taking on this task anyway. As  
3 ordered by the Court to avoid economic waste, we will take  
4 it over.

5 Now, about 2 or 3 days later, their units were put  
6 back in the queue and we started renting them. I got a  
7 letter, an e-mail back from Mr. Miller saying why did you  
8 lie to us?

9 I didn't lie. When I sent this e-mail on  
10 April 5th I said we will continue that rental, meaning, I  
11 suppose I could have been more explicit, but meaning I will  
12 start now. I mean, the Court on March 14th said it was the  
13 Receiver's job, not ours, but now that he is not doing  
14 anything, and I don't think he is capable anyway, we will  
15 take it over.

16 And no good deed goes unpunished, I suppose. Now  
17 I'm being held in contempt or my client is in contempt for  
18 not having rented the units in the month of March. I think  
19 we had a reasonable excuse for not doing so. I think it is  
20 consistent with Nevada law, and I don't think Your Honor can  
21 hold us in contempt. We started up right away again on  
22 April 7th renting their units.

23 I think this is the rest of the e-mail. I  
24 probably had them out of order. I'm going to skip it.

1 Yeah, this is just the final e-mail from Mr. Miller to me  
2 that said, "So did you intentionally mislead the Plaintiffs  
3 and the Receiver? We will proceed with the Motion for Order  
4 to Show Cause." Again, no good deed goes unpunished, I  
5 suppose.

6 That's the rest of the exchange if Your Honor  
7 wants to see it. That concludes my PowerPoint. I  
8 appreciate Your Honor's patience. Just some final thoughts  
9 before I turn this over to Mr. Smith, if I may.

10 It's probably neither here nor there. I guess I  
11 want to have my moment here. I think it's sad that these  
12 parties are fighting with one another.

13 I have a lot of respect for MEI-GSR. I think it  
14 is an upstanding organization. The people that I see  
15 everyday at the GSR are good, honest people. They have  
16 spent \$500 million on this property rising up the values in  
17 this property.

18 I mean, when my clients bought this property in  
19 2011, it was bank-owned, had been banked-owned for about  
20 8 years. It was about ready to be boarded up.

21 My client didn't sell any of these units to these  
22 Plaintiffs. And, quite frankly, I feel bad for them that  
23 they paid hundreds of thousands of dollars for units  
24 probably -- well, buying all of them from our predecessor.

1 I have no idea what kind of representations were made to  
2 them.

3 But my client comes in, rescues this property from  
4 being shut down and proceeds to spend millions of dollars.  
5 Their units arguably were worth virtually nothing when we  
6 bought the property. They are now up to values of \$25,000,  
7 \$30,000 thereabouts. Is it even approaching what they paid  
8 for it? No, but that's not our fault. We are doing the  
9 best we can.

10 The money we have spent has helped them  
11 immeasurably. It puts heads in the beds, which I think  
12 that's a terminology I'm hearing from some of the people at  
13 GSR, which is their job, put people in the rooms. And that  
14 place is full all the time. It really, they really do a  
15 fine job because of the money we have spent, and they  
16 benefit from that.

17 So I hate to see them fighting this way. In some  
18 ways we should be in the same camp, because to the extent  
19 they beat us up, they beat themselves up and probably vice  
20 versa.

21 These conflicts and clarifications are not things  
22 to be resolved by a contempt of court process. We are  
23 trying to present a solution, and I think we have done that  
24 in the things that we have done just recently to purge the



1 contempt.

2 I know Your Honor wants this case done, so do the  
3 Defendants. Even though we think the Court lacks  
4 jurisdiction over the continuing receivership, we think the  
5 solution is to require the Receiver to complete the work and  
6 wind down. And I would hope Your Honor would give us a  
7 deadline. Tell them you need to complete these things  
8 within 45 days, 60 days, whatever, to put an end to this  
9 long drawn-out process.

10 And require us to pay net rents. I hope it was  
11 clear from Mr. Brady's testimony that it would be virtually  
12 catastrophic if you ordered us to turn over gross rent. Not  
13 only am I concerned for my client, but I don't think  
14 Mr. Teischner can do it.

15 Your Honor has concerns I think because that's why  
16 you are going to modify your order and say the Receiver is  
17 not going to run the rental program, you guys are. If you  
18 turn gross rent over to the Receiver, he is going to have to  
19 hire a whole crew. His fees will go astronomically high.  
20 And if he is slow, it could lead to irreparable harm to my  
21 client, so I would hope you would be entertaining net rent,  
22 not gross rent.

23 THE COURT: You will be surprised by my plan,  
24 Mr. McElhinney. We just have to let Mr. Smith speak first,

1 and then I hear last from the Plaintiffs, and then you will  
2 hear my plan.

3 MR. McELHINNEY: Mr. Smith has a few words to say  
4 I believe before we turn it back over to Mr. Miller.

5 MR. SMITH: Thank you, Your Honor, and thanks,  
6 Mr. McElhinney, for letting me take a few moments of his  
7 time. So I want to address the homework assignment and the  
8 issues raised by it that you gave us last night.

9 Under NRS 22.100(3), the categories of available  
10 damages are actually quite narrow. It doesn't include the  
11 many categories of monetary amounts or affirmative action  
12 that the Plaintiffs asked Your Honor to impose. Remember,  
13 we started this proceeding talking about jail and now we  
14 have shifted a little bit to talking about monetary amounts,  
15 so let me address --

16 THE COURT: That's because I said I wasn't going  
17 to put anybody in jail.

18 MR. SMITH: No, I understand that, but this was in  
19 the Plaintiffs' plan and it clearly pivoted a little bit  
20 here and now they are asking for many categories that just  
21 simply aren't available by statute. In many ways they are  
22 treating this now as a wish list of things they could get  
23 monetarily or affirmative action that has never been ordered  
24 to begin with. That's just simply not there.

1           So let me first start with the language of the  
2     statute like we always do. Your Honor was asking about  
3     receivership expenses and the cost of the receivership's  
4     participation.

5           But here is what subsection 3 of NRS 22.100  
6     actually says. And Ms. Collings, I'm sure it was  
7     inadvertent, but she left out a couple really important  
8     words in that statute. Subsection 3 says, "In addition to  
9     the penalties provided in subsection 2, if a person is found  
10    guilty of contempt pursuant to subsection 3 of NRS 22.010,  
11    the court may require the person to pay," here is the  
12    important part, "the court may require the person to pay to  
13    the party seeking to enforce the writ, order, rule or  
14    process the reasonable expenses, including, without  
15    limitation, attorney's fees, incurred by the party as a  
16    result of the contempt."

17           So plain language of the statute, who is the party  
18    here seeking to enforce the writ? It is the Plaintiffs.  
19    The Receiver in an odd turn of events is not here enforcing  
20    any of the orders, not claiming we interfered with him, not  
21    claiming any of these things. Instead, it is the Plaintiffs  
22    who are now trying to enforce the Receiver's orders.

23           And I think there is questions not only about  
24    injury, which I will discuss, but also about standing. I

1 don't think it's immaterial that the Plaintiffs are seeking  
2 to enforce rights and duties that belong to the Receiver.  
3 They don't belong to the Plaintiff.

4 That January 2015 order allowed the Receiver to do  
5 many things. The Receiver is not here. The Receiver is not  
6 claiming the Defendants violated that order or any other  
7 order. It is the Plaintiffs, and so I don't think they have  
8 standing, but they certainly don't have standing to receive  
9 amounts that do not belong to a party who under the terms of  
10 the statute is seeking to enforce the writ.

11 Ms. Collings brought up the Detwiler case.  
12 Detwiler also talks about this and there is a couple  
13 important words in Detwiler. What Detwiler says is that  
14 these sanctions, civil sanctions, must be limited to the  
15 opponent's actual loss caused by the contemptuous conduct of  
16 the opponent.

17 The opponent here, again, is the Plaintiffs, not  
18 the Receiver. The Receiver then, they can't recover his  
19 fees and expenses for this proceeding, can't recover the  
20 cost of his participation.

21 There was another important passage in Detwiler I  
22 want to point out to Your Honor. It says, 718 of the  
23 opinion, it says, "If the relief provided is a fine, it is  
24 remedial when it is paid to the complainant." Complainant

1 here, Plaintiffs again, not Receiver.

2 The passage continues, "And punitive when it is  
3 paid to the Court, though a fine that would be payable to  
4 the court is also remedial when the defendant can avoid  
5 paying the fine simply by performing the affirmative act  
6 required by the court's order."

7 Detwiler continues, well, what civil fines are  
8 available? How do you calculate those? And what Detwiler  
9 says, again, on 720, I believe, it says, "Civil sanctions  
10 are limited to the opponent's actual loss resulting from the  
11 contempt."

12 Actual loss resulting from the contempt and that  
13 involves only the period of alleged contemptuous conduct.  
14 So what evidence do we have of the Plaintiffs' actual loss  
15 arising from the contempt? Actual loss resulting from the  
16 contempt, we have no evidence of the Plaintiffs.

17 Each individual Plaintiffs, all 92 of them, what  
18 evidence is there of each of theirs, their actual loss? We  
19 heard evidence that some of them actually owe GSR money.  
20 You can't recover any damages for the Plaintiffs that owe  
21 GSR money.

22 What loss do these 92 Plaintiffs have they shown  
23 resulted from the contemptuous conduct? This isn't a class  
24 action, Your Honor, so they can't just simply point to a

1 couple cherry-picked statements and say, well, let's  
2 extrapolate that, multiply it by 92, and that must be our  
3 losses.

4           They got Mr. Brady today to talk about generally  
5 over time what the gross amounts might be, but your actual  
6 loss they would have to say, well, you should have rented it  
7 X number of times. Mr. Brady explained how that is  
8 inherently speculative. There is seasonality. There is  
9 comps. There is all of these factors that go into it, so  
10 it's highly speculative and they have simply not proven what  
11 their actual damages are arising from the contempt.

12           Each of these statements which they cherry picked  
13 are just snapshots. One month we might owe them money, the  
14 next month they might owe us money. What happens when they  
15 owe us money? They never ever pay us. So they have not  
16 shown any actual loss arising from the contempt.

17           And Mr. McElhinney pointed out in his closing the  
18 documents say, Plaintiffs, you have no guarantee that your  
19 units are actually going to be rented. We make no guarantee  
20 about how many nights per week, how many nights per month  
21 somebody might have a head in your bed, so they did not  
22 establish it and it's wholly speculative.

23           Other issues, Your Honor, civil contempt, Detwiler  
24 again tells us sanctions must be remedial, meaning they look

1 backwards, make you whole for what happened. Well, how does  
2 that work with all of the affirmative action? Set aside the  
3 monetary amounts they are requesting, they are asking again  
4 for a wish list of all of these things; modifications of  
5 orders, things that prior orders have never actually said  
6 asking for affirmative action.

7 That is not a type of civil contempt sanction that  
8 is simply available. You can't order affirmative relief.  
9 This isn't an injunction proceeding. They are not asking to  
10 modify prior orders, so affirmative action like this is not  
11 an appropriate or available form of civil contempt.

12 It's try and make you whole, I agree with  
13 Ms. Collings on that. They have got to establish what  
14 amounts would make them whole, and these prior affirmative  
15 acts in the future do not fit that bill and are an  
16 inappropriate type of civil sanction.

17 I do want to address a couple other categories  
18 that Ms. Collings referenced. I think I addressed the first  
19 category of loss of rental income. No evidence of that.  
20 Highly speculative to show actual loss there.

21 The reserves, they have not established how have  
22 the Plaintiffs, individual 92 Plaintiffs, been harmed by the  
23 withdrawal of reserves? They have not established that.

24 Right to interfere, this interference with the

1 Receiver. How have they been harmed and how would a  
2 monetary amount fix that? The one that keeps coming to me  
3 is this argument that, well, you had an order to rescind the  
4 special assessments. The statements weren't sufficient or I  
5 guess didn't go out fast enough.

6 How did they suffer any monetary injury from that?  
7 They didn't. So this amorphous interference concept that we  
8 keep hearing about, they have not established how it  
9 actually harmed the Plaintiff.

10 The Receiver is not here claiming he was  
11 interfered with. Mr. McElhinney asked him two questions and  
12 basically he just said, well, the interference is I wasn't  
13 paid.

14 Mr. McElhinney has explained and the evidence has  
15 shown you why it's not something we have done. It is a  
16 product of the Receiver's own making. So the Plaintiffs  
17 shouldn't be compensated and the Defendants shouldn't have  
18 to pay any monetary sanction as a result of things that  
19 didn't actually cause any monetary injury to the Plaintiffs.

20 Interest on unpaid rents. I think I have  
21 addressed that. If you are not entitled to unpaid rents and  
22 do not establish that, you are certainly not entitled to  
23 interest on it.

24 Same with the reserves, I still don't understand



1 how the individual Plaintiffs, all 92 of them, have been  
2 harmed by that. And they could have got up and testified.  
3 Not one Plaintiff in this entire case has ever taken that  
4 witness stand, not at the default proceeding and not in this  
5 proceeding.

6 Many of them have been here all week. They could  
7 have and they chose not to. And that choice, that strategic  
8 choice for whatever reason has consequences and it has  
9 consequences for the outcome of this proceeding. Thank you.

10 THE COURT: Thank you.

11 Mr. Miller, briefly.

12 MR. MILLER: Yes, Your Honor.

13 Your Honor, as I understood much of the  
14 Defendants' argument, it was disagreement with past orders,  
15 attempts to reargue past orders. For instance, the most  
16 prevailing theme is to try to sew some level of distrust in  
17 the Receiver's fees, even though we have had four days of  
18 hearings on fees. We have had motions to approve the fees.  
19 We have had the fees approved.

20 And then there is a lot of misstatements about the  
21 Receiver's calculation of fees. The Receiver's calculation  
22 of fees is Exhibit 140. We get the argument that there is  
23 no costs in there that could be attributable to the  
24 accounting services.

1 Yet if the Court looks through the fees, which  
2 again have been litigated, they have been opposed by  
3 Defendants. The arguments have been made. The Court has  
4 issued an order approving these fees. There was no Motion  
5 for Reconsideration, but yet we have heard countless hours  
6 about how Mr. Brady's calculations are right and  
7 Mr. Teischner's are wrong.

8 In reviewing Mr. Teischner's fee request about  
9 the, in connection with the claim that there is just no  
10 expenses for the payroll or the accounting, if you look at  
11 the calculations themselves, room administration payroll for  
12 the period, director of revenue management, director of  
13 hotel operations, you have got a couple hundred thousand  
14 dollars here that's attributable to those types of services.

15 So claims that the things like that were just  
16 excluded are wrong. They don't justify the contemptuous  
17 conduct. Again, even if an order was subsequently  
18 determined to be wrong, it's still contempt to not comply  
19 with the order.

20 Second, on a factual note, we heard the claim that  
21 the Plaintiffs complained that there must be something  
22 wrong, that they believe they were guaranteed money.  
23 Plaintiffs have never represented that they are guaranteed  
24 money.

1           What Plaintiffs are entitled to is exactly what  
2     the Appointment Order requires and that is compliance with  
3     the Governing Documents. Apply all of the fees as  
4     determined by the Receiver. Equally rotate the rental of  
5     the rooms.

6           Don't push the high paying cash revenue room  
7     nights to your rooms, which is all stuff that the Receiver  
8     is going to have to go look at over the last 2 years, and  
9     then the cards shake out where they are. If they make  
10    money, they make money. But what the Plaintiffs are  
11    entitled to is for the Receiver to perform these tasks under  
12    the Governing Documents without interference from the  
13    Defendants.

14           The other item or argument I believe I heard was  
15    that there was never any opposition to the 2014 Reserve  
16    Study. No, because the 2014 study was done by a different  
17    entity and as best I can tell relatively properly, so, no,  
18    they were never challenged because they were significantly  
19    different.

20           Again, turning back to Exhibit 140, which is the  
21    Receiver's calculation of fees, it really sort of is the  
22    crux of all of these problems, right, because you have the  
23    Receiver doing his job, performing calculations after days  
24    of hearings, submitting those calculations to the

1 Defendants, and then they never get applied.

2 And then you have got this argument, well, you are  
3 only entitled to net rents and we can't come up with net  
4 rents because we don't agree with the Receiver's fees. We  
5 think it's ambiguous how to interpret them.

6 So argument after argument we are not going to  
7 apply fees that were calculated by the Receiver, which is  
8 exactly what his job is, and we can never get to net rents  
9 because now your Receiver is not getting paid. Fine, you  
10 want to go for something that's more reasonable, net rents  
11 under the Receiver's calculations, you refuse to do that.

12 You want to push it out, play games, then let's  
13 ask the Court to enforce the unambiguous order that needs to  
14 be enforced at this point, which is the January 7, 2015,  
15 order wherein the Court clearly has authority.

16 I'm not saying you are going to -- I'm sure you  
17 are not going to exercise that authority based on your  
18 comments, but you are 100 percent within the Court's order,  
19 the existing Appointment Order to at the end of these  
20 hearings order the Defendants to be found in contempt of  
21 court until they deposit all of those gross rents into the  
22 Receiver's accounts.

23 And that's the reality of it. They say you are  
24 not entitled to this remedy. We have come here seeking

1 compliance with all of these orders. They haven't been  
2 complied with.

3           Clearly the Court has broad discretion on this,  
4 but to say that that's not a remedy that you could, that you  
5 can order as a result of these hearings, it's just not  
6 accurate, right? I mean that's what the order, that's what  
7 the January 15th, '20 -- or the January 7th, 2015, order  
8 dictates.

9           And the only reason we are in this position is  
10 because we get calculations of fees, you don't like the  
11 fees, so what do you do? You stop paying the Receiver and  
12 then you say, oh, he is not updating his fees so we can't  
13 comply with this.

14           And it comes back to that idea that you can't  
15 manufacture your own excuses for contemptuous conduct. You  
16 can't set up the situation where the goalpost can never be  
17 reached because, one, you refuse to do the obvious and just  
18 apply the Receiver's calculated fees and then, two, you cut  
19 off payment to him so he won't do any additional work. And  
20 with that, Your Honor, we rest.

21           THE COURT: Thank you. So let me get through the  
22 whole thing, and then if you want to ask questions or ask me  
23 for clarification, please do. But I want to get through the  
24 whole thing and I have been typing on it all week, so it's

1 four pages long single spaced.

2 Okay. Counsel, I want to thank all of you for the  
3 professional and competent way in which you have all  
4 participated in this difficult proceeding. As we all know,  
5 I am the most recent in a long succession of judicial  
6 officers assigned or making decisions in this matter. Those  
7 include Discovery Commissioner Ayers, Judge Sattler,  
8 Judge Sigurdson, Chief Judge Freeman, Senior Judge Kosach,  
9 Senior Judge Maddox, Senior Justice Saitta, and Chief Judge  
10 Simons.

11 I am not in a position to second-guess the  
12 decisions of the judicial officers who have made decisions  
13 before my assignment or to modify the decisions that those  
14 officers have made.

15 Senior judges assigned to a case under the senior  
16 judge program do not have a dedicated staff to rely upon to  
17 assist with the necessary judicial tasks and do not have the  
18 same electronic access as judges in the judicial district.  
19 This creates substantial difficulty for any senior who takes  
20 on a case through the AOC under SCR 10.

21 Regardless of the difficulties, my responsibility  
22 in this matter is to get this case to the finish line, which  
23 at this stage includes resolving the pending issues related  
24 to contempt before me, the dissolution plan detailed in the

1 December 5th, 2022 order, and the windup of the  
2 receivership.

3 In addition to Gracie Dawson and the officers who  
4 have assisted us during this contempt trial, I would like to  
5 thank the administration of the Second Judicial District, in  
6 particular Chief Judge Lynne Simons, Court Administrator  
7 Alicia Lerud, and Judge Simons' JA Holly Longe who were  
8 critical in providing resources for my assignment.

9 With respect to this contempt trial, the Order  
10 Appointing Receiver and Directing Defendants' Compliance  
11 filed January 7th, 2015, which I will refer to as the  
12 Appointment Order, is critical to my analysis. The  
13 Appointment Order governs the conduct of the parties in this  
14 matter.

15 The Appointment Order provides in pertinent part,  
16 "It is further ordered that, to enforce compliance with the  
17 Governing Documents the Receiver shall have the following  
18 powers, and responsibilities, and shall be authorized and  
19 empowered to pay and discharge out of the Property's rents  
20 and/or GSRUOA monthly dues collections all the reasonable  
21 and necessary expenses of the receivership and the costs and  
22 expenses of operation and maintenance of the Property,  
23 including all of the Receiver's and related fees, taxes,  
24 governmental assessments and charges and the nature thereof

1 lawfully imposed upon the Property."

2 "It is further ordered that Defendants and any  
3 other person or entity who may have possession, custody or  
4 control of any Property, including any of their agents,  
5 representatives, assignees, and employees shall do the  
6 following: Turn over to the Receiver all rents, dues,  
7 reserves, and revenues derived from the Property wherever  
8 and in whatsoever mode maintained."

9 Regardless of the terms of the Appointment Order,  
10 the Defendant chose not to pay any of the rents, dues,  
11 reserves, and revenues to the Receivership Estate. As a  
12 result, the Receivership Estate was not funded. Therefore,  
13 the Receiver was not paid for his ongoing work, and as a  
14 result the Receiver made a decision not to continue with  
15 those tasks which were assigned to him after the last  
16 payment of his fees in October of 2019.

17 Despite repeated requests to the Court and the  
18 parties over several years, the Defendants did not pay any  
19 portion of the rents regardless of whatever interpretations  
20 Defendants believed the definition of rents to be. This  
21 failure to pay rents of any sort is the genesis of the  
22 problems which have plagued the Receivership Estate and the  
23 Receiver's work for many years.

24 Merely because Defendants believed the orders to



1 be wrong and the analysis of the judicial officers  
2 misplaced, disobedience to these orders is not the  
3 appropriate path. The correct path is an appeal under  
4 NRAP 3(A), which is related to injunctive relief orders or  
5 appointment of a Receiver or failure to terminate the  
6 Receivership, or a petition for extraordinary relief under  
7 NRAP 21 and any associated motion to stay.

8           Instead, here the Defendants substituted their own  
9 judgment for the judgment of the Receiver and the Court,  
10 because Defendants disagreed with the assessment of  
11 appropriate expenses by the Court and the Receiver.

12           The Defendants' dissatisfaction with the Court's  
13 analysis is not a basis for the Defendants to replace those  
14 determinations with their own preferred analysis. Simple  
15 disobedience of the orders is not the appropriate approach.

16           As a result of the multiple judicial officers that  
17 have been assigned to this matter, at times different words  
18 and phrases have been used in orders. The judicial turnover  
19 is relevant in this contempt trial.

20           In order to hold a party in contempt under the  
21 Nevada statutory process set forth under NRS 22.090, the  
22 presiding judicial officer must find by clear and convincing  
23 evidence that there has been a knowing and willful violation  
24 of a clear and unambiguous order. In this matter, ambiguity

1 exists because of the language in multiple orders related to  
2 the term rent.

3 The Court is very critical of both the Defendants'  
4 substitution of its own judgment and the Defendants' failure  
5 to pay the undisputed amounts to the Receivership Estate  
6 during the pendency of the Receivership. During this trial  
7 for the first time, Defendants submitted an undisputed  
8 amount of rents to the Receivership Estate in the amount of  
9 \$274,679.44.

10 Given the ambiguity in the orders, the Court  
11 concludes that these failures do not rise to the level of  
12 contempt for four of the seven applications for OSC.  
13 Defendants are to prepare an order reflecting this decision  
14 on the applications filed September 27, 2021, November 19th,  
15 2021, April 25th, 2022, and December 28th, 2022.

16 With respect to the May 23rd, 2023, Application  
17 for Order to Show Cause, the Court recognizes the concerns  
18 expressed by all parties and the Receiver about his ability  
19 to rent the units during the period of the implementation of  
20 the dissolution plan. As such, the Court declines to hold  
21 the Defendants in contempt for failure to rent the units  
22 during the limited period which is the subject of that  
23 motion.

24 The Court modifies its March 14th, 2023 Order

1 filed at 12:42 p.m. to accommodate those issues. As those  
2 units are now being rented through Defendants, the Court  
3 orders that, one, Defendants will rent the units in a fair  
4 rotation; two, rather than providing the gross rents or  
5 revenue for the 95 units beneficially owned by the  
6 Plaintiffs and 560 units beneficially owned by entities  
7 affiliated with the Defendants as outlined in the  
8 Appointment Order, GSR will pay its pro rata share of all  
9 expenses of the Receivership on a monthly basis as submitted  
10 by the Receiver.

11 The amount of gross rents or revenue for the  
12 95 units beneficially owned by the Plaintiffs will be  
13 provided to the Receiver on a monthly basis after the  
14 internal accounting controls by Defendants' Finance  
15 Department have been completed.

16 Within 10 business days of receipt, the Receiver  
17 will calculate the estimated expenses previously approved by  
18 the Court as set forth in the January 26, 2023, Order filed  
19 at 8:31 a.m. and the pro rata share of expenses of the  
20 Receivership for the 95 units beneficially owned by the  
21 Plaintiffs to be deducted from the gross rents and forward a  
22 spreadsheet to all counsel by electronic mail calculating  
23 the net rents to be paid to each unit owner, including those  
24 entities affiliated with the Defendants.

1 Any objection to the calculation of the net rents  
2 to be paid to each unit owner shall be filed within three  
3 business days with an Application for Order Shortening Time  
4 concurrently submitted to the Court. If no objection is  
5 filed, or after a ruling by the Court on any objection, the  
6 net rents will be distributed for the 95 units beneficially  
7 owned by Plaintiffs.

8 Defendants will forward the pro rata share of  
9 expenses of the Receivership for the 95 units beneficially  
10 owned by Plaintiffs after deduction from the gross rents of  
11 the 95 units beneficially owned by Plaintiffs. If the  
12 Receiver and MEI-GSR Finance agree, the Receiver may provide  
13 that spreadsheet with the net rents to be paid to each unit  
14 owner, including those entities affiliated with the  
15 Defendants, Defendants may then process those payments.

16 If the Receiver and MEI-GSR Finance do not agree  
17 to the Defendants processing the payments, the Receiver  
18 shall process those payments and charge that work as an  
19 expense to the Receivership Estate. The Court upon  
20 application of the parties will true up the actual expenses  
21 prior to the windup of the Receivership. Plaintiffs are to  
22 prepare an order reflecting this decision and an order  
23 amending the March 14, 2023 Order filed at 12:42 p.m.

24 With respect to the Applications for Order to Show

1 Cause filed February 1st, 2022, and December 29th, 2022, the  
2 Appointment Order provides in pertinent part: "It is further  
3 ordered that Defendants and any other person or entity who  
4 may have possession, custody or control of any Property,  
5 including any of their agents, representatives, assignees,  
6 and employees shall do the following: Turn over to the  
7 Receiver all rents, dues, reserves, and revenues derived  
8 from the Property wherever and in whatsoever mode  
9 maintained."

10 This language is clear and unambiguous. While the  
11 Receiver has testified that he initially chose to monitor  
12 the existing reserve accounts rather than opening new  
13 accounts, this did not change the entity who was in control  
14 of those funds.

15 On September 15th, 2021, a request was renewed by  
16 Receiver's counsel for the transfer of funds, including the  
17 reserve funds. Regardless of the account the reserve funds  
18 were in, since the appointment of the Receiver, the reserve  
19 funds have been under the control of the Receiver pursuant  
20 to the Appointment Order.

21 Neither the Court nor the Receiver authorized any  
22 withdrawal of funds from the reserve account. Although the  
23 Defendants filed motions with the Court to approve certain  
24 capital expenditures, they did not obtain a decision.

1           The Court finds by clear and convincing evidence  
2   that Defendants willfully violated the Appointment Order by  
3   withdrawing \$3,562,441.28 in 2021 and \$12,892,660.18 in 2022  
4   from the reserve accounts without approval by the Receiver  
5   or the Court. These funds have not been returned to the  
6   reserve accounts.

7           Defendants claim those amounts were largely for  
8   prepayment of expenses for the remodel of the condominiums.  
9   Less than 300 units have been remodeled, most owned by  
10   entities affiliated with the Defendants. As the Association  
11   has been dissolved at the request of Defendants prior to  
12   completing the remodel, this wrongful conduct is magnified.

13           Despite the willful misappropriation of the  
14   reserve funds by Defendants, the Court is limited to the  
15   penalties in NRS 22.100. The Court orders the following:  
16   Within 30 days of the entry of the written order, Defendants  
17   are to return the \$16,455,101.46 misappropriated from the  
18   reserve fund along with interest that would have been earned  
19   in the reserve account, or statutory interest, whichever is  
20   higher, from the date of the withdrawals.

21           Within 45 days of the entry of the written order,  
22   transfer all of the reserve funds to a separate interest  
23   bearing account designated by the Receiver. Fines will be  
24   the maximum statutory amount under NRS 22.100(2) of \$500 for



1

2 STATE OF NEVADA )  
 ) ss.  
3 WASHOE COUNTY )

4 I, CORRIE L. WOLDEN, an Official Reporter of the  
5 Second Judicial District Court of the State of Nevada, in and  
6 for Washoe County, DO HEREBY CERTIFY;

7 That I am not a relative, employee or  
8 independent contractor of counsel to any of the parties; or a  
9 relative, employee or independent contractor of the parties  
10 involved in the proceeding, or a person financially interested  
11 in the proceeding;

12 That I was present in Department No. 10 of the  
13 above-entitled Court on June 9, 2023, and took verbatim  
14 stenotype notes of the proceedings had upon the matter  
15 captioned within, and thereafter transcribed them into  
16 typewriting as herein appears;

17 That the foregoing transcript, consisting of  
18 pages 1 through 212, is a full, true and correct transcription  
19 of my stenotype notes of said proceedings.

20 DATED: At Reno, Nevada, this 14th day of  
21 October, 2023.

22

/s/Corrie L. Wolden

23

---

CORRIE L. WOLDEN  
CSR #194, RPR, CP

24



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

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

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

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

Defendant.

ORDER

Case#: CV12-02222

Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on MOTION TO CERTIFY AMENDED FINAL JUDGMENT AS FINAL PURSUANT TO NRCP 54(b) (“Motion to Certify”)<sup>1</sup> In an abundance of caution, the Motion to Certify is granted.

While it is clear that the claim for a Receiver has previously been adjudicated through the Order Appointing Receiver and Directing Defendants’ Compliance filed January 7, 2015 (“Appointment Order”), the oversight of the Receivership and the Receivership Estate is a continuing judicial responsibility. The Court has repeatedly stated that it retains jurisdiction over the dissolution plan

<sup>1</sup> The Court has reviewed the Motion to Certify Amended Final Judgment as Final Pursuant to NRCP 54(b) filed on May 26, 2023; Defendants’ Opposition to Plaintiffs’ Motion to Certify Amended Final Judgment as Final Pursuant to NRCP 54(b)(filed 5/26/23) filed on June 14, 2023 and Plaintiffs Reply in Support of Motion to Certify Amended Final Judgment as Final Pursuant to NRCP 54(b) filed June 23, 2023.

1 detailed in the December 5, 2022 order, and the wind up of the Receivership. The December 5,  
2 2022 order provides in pertinent part:

3 Therefore, the Court issues the following Orders:

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

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

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

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

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

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

27 By choosing the process detailed under the December 5, 2022 preliminary injunction and moving  
28 forward with the termination of the GSRUOA under that framework, the Defendants have  
voluntarily elected to proceed with the process outlined in the December 5, 2022 order.

On February 6, 2023, the parties entered into a stipulation related to the termination and agreed that  
the agreement to terminate was consistent with the January 26, 2023 order filed at 11:06a.m. That  
order provides in pertinent part:

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

1 Based upon the February 6, 2023 stipulation, on February 7, 2023 the Court entered an order  
2 approving the stipulation. In compliance with the February 7, 2023 order, the Receiver on February  
3 14, 2023 executed the agreement to terminate. and now is the trustee over the property interests  
4 previously held by the unit owners and GSRUOA pending approval of the sale.

5  
6 As the Receiver's past due fees have now been paid, within 10 judicial days of this order, the  
7 Receiver shall file a written status report related to status of calculation of the actual historical  
8 permissible expenses for Defendants to deduct from the revenue of the Parties units as well as the  
9 amount of current expenses to deduct from ongoing revenue.

10  
11 The Receiver's calculations, payment by Plaintiffs of any shortfall, and return of any excess expenses  
12 unilaterally deducted from the Plaintiffs' revenues by Defendants since the appointment of the  
13 Receiver may affect one of the accepted valuation methods. Additionally return of the reserve funds  
14 related to the recently completed contempt trial may affect another valuation methodology.

15 It is the Court's intention to complete the true up of these calculations and accounts prior to  
16 Plaintiffs submitting their appraisals for consideration by the Court as part of the dissolution plan  
17 set forth in the December 5, 2022 order.  
18

19 Dated this 28th day June 2023.

20  
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22 \_\_\_\_\_  
23 Hon. Elizabeth Gonzalez, (Ret.)  
24 Sr. District Court Judge  
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DALE KOTCHKA-ALANES  
DANIEL POLSENBERG, ESQ.  
DAVID MCELHINNEY, ESQ.  
BRIANA COLLINGS, ESQ.  
ABRAN VIGIL, ESQ.  
JONATHAN TEW, ESQ.  
JARRAD MILLER, ESQ.  
TODD ALEXANDER, ESQ.  
F. DEARMOND SHARP, ESQ.  
STEPHANIE SHARP, ESQ.  
G. DAVID ROBERTSON, ESQ.  
ROBERT EISENBERG, ESQ.  
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Facsimile: (775) 329-7169  
*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.*, Case No.: CV12-02222  
Plaintiff, Dept. No.: OJ37  
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.

RECEIVER'S STATUS REPORT REQUESTED BY THE COURT IN ITS ORDER  
GRANTING THE MOTION TO CERTIFY AMENDED FINAL JUDGMENT AS FINAL  
PURSUANT TO NRCP 54(b) DATED, DATED JUNE 28, 2023



TEICHNER ACCOUNTING  
FORENSICS & VALUATIONS, PLLC

July 12, 2023

Honorable Elizabeth Gonzales,  
Senior Judge  
Second Judicial Court  
Department Number 10  
75 Court Street  
Reno, Nevada 89501

Re: *Receivership In Re Case No. CV12-02222*: Status of calculation of actual historical permissible expenses for Defendants to deduct from the revenue of the parties units as well as the amount of current expenses to deduct from ongoing revenue

Dear Judge Gonzales:

This correspondence serves as the status report related to the status of the calculation of the actual historical permissible expenses for Defendants to deduct from the revenue of the parties' units as well as the amount of current expenses to deduct from ongoing revenue which you requested in your June 28<sup>th</sup> Order on the Motion to Certify.

In calculating both the historical expenses and current expenses, which consist of the Daily Use Fee, the Shared Facility Unit Expense, and the Hotel Expense (collectively the "fee charges"), I have received the worksheets that the Defendants prepared for these expenses. To calculate the allowable fee charges, I need to analyze and extract those expenses and components of expenses that are not includable in calculating the fee charges so that only expenses or portions of expenses which are allowed under the governing documents are included. This process includes my going to the GSR and verifying the detail of expenses in the general ledger that comport with each year's audited financial statements of the hotel operations. I will need to calculate the permissible fee charges for 2020 through the present and I anticipate that this work will be completed by mid-August.

At the conclusion of the hearing on June 9<sup>th</sup>, Your Honor ruled that "[w]ithin 10 business days of receipt (of the "gross rents of revenue for the 95 units beneficially owned by the Plaintiffs"), the Receiver will calculate the estimated expenses previously approved by the Court as set forth in the January 26, 2023 Order filed at 8:31 a.m. and the pro rata share of expenses of the receivership for the 95 units beneficially owned by the Plaintiffs to be deducted from the gross rents and forward a spreadsheet to all counsel...". Counsel for the Plaintiffs has advised this Receiver that the fee charges which this Receiver is to use until the updated fee charges are calculated are the fee charges set forth in Exhibit 1 to the Receiver's Omnibus Reply filed on December 19, 2022, which fee charges were approved by this Court in its March 27, 2023 Order. If this is not what the Court intended, I respectfully request that Your Honor advise me of the fee charges I am to use until I am able to calculate the updated fee charges for 2023.

3500 Lakeside Court, Suite 210 • Reno, NV 89509  
Phone: (775) 828-7474 • Fax: (775) 201-2110

8275 South Eastern Ave, Suite 200 • Las Vegas, NV 89123  
Phone: (702) 724-2645 • Fax: (702) 441-4007

Email: [accountingforensics@gmail.com](mailto:accountingforensics@gmail.com) • Website: [accounting-forensics.com](http://accounting-forensics.com)

R.App.1233

Attached is my email dated July 7, 2023 to Messrs. McElhinney and Miller in which I set forth the procedures I intended to implement. Because of objections raised to this email, I am withdrawing it and I will follow the following procedures mandated by Your Honor at the hearing (although retaining some provisions agreed upon set forth in the endnotes below that I believe do not conflict with Your Honor's mandates).

1. The amount of gross rents or revenue for 95 units beneficially owned by the Plaintiffs will be provided to the Receiver on a monthly basis after the internal accounting controls by Defendants' Finance Department have been completed. Within 10 business days of receipt, I will calculate the estimated expenses previously approved by the Court as set forth in the January 26, 2023, order filed at 8:31 a.m. and the pro rata share of expenses of the receivership and estimated reserve charges (described below) for the 95 units beneficially owned by the Plaintiffs to be deducted from the gross rents and forward a spreadsheet to all counsel by electronic mail calculating the net rents to be paid to each unit owner, including those entities affiliated with the Defendants<sup>1</sup>. Any objection to the calculation of the net rents to be paid to each unit owner shall be filed within three business days with an Application for Order Shortening Time concurrently submitted to the Court.
2. If no objection is filed, or after a ruling on any objection, the net rents will be distributed for the 95 units beneficially owned by Plaintiffs<sup>2,3</sup>

Regarding the charges for the reserves, my attorney has been in contact with Robert W. Browning of Browning Reserve Group in Sacramento, of which she has kept me informed and of which I have approved. We are now waiting for a proposal from Mr. Browning to prepare a reserve study for 2020 and updates for 2021 through 2023, and possibly a new study for 2023 instead of an update for that year, if indicated.

Once the proposal has been received from Mr. Browning, assuming that I accept the proposal as to its cost and timing, the proposal will be submitted to the Court for approval.

It is likely that the reserve studies may not be completed by the time I have calculated the fee charges, in which case there will need to be estimates used for the reserve charges for 2020 through 2023. Accordingly, this Receiver proposes that, since my counsel and I have determined that the previous reserve charges are overstated based on the prior reserve consultant's inclusion of non-permissible costs, pursuant to the CC&Rs, seventy-five percent (75%) of reserve charges used by Defendants for 2020, based on the prior reserve consultant's reserve study, temporarily be used as reserve charges for each year from 2020 to 2023 until this Receiver arrives at revised reserve charges based on the new reserve studies pertaining to each of those years.

Respectively,



Richard M. Teichner,

Receiver for the Grand Sierra Resort Unit Owners' Association

---

<sup>1</sup>The revenue wired to the Receiver will include gross rents and the DUF for the Plaintiffs' share of the revenue and the Defendants share of the revenue. The revenue on the Defendant-owned units, less the estimated reserve charges, will be wired to Defendants on or about the same time that the net rents are wired to the Plaintiffs trust account (see endnote 3). If the UOA requires funding in order to remain viable, the Receiver will use a portion of the revenue of the Defendants and Plaintiffs necessary to cover any shortfall of funds of the UOA. The respective share of the Defendants' and Plaintiffs' share of revenue to be used for the UOA will be the ratio of the number of units owned by each Defendants and Plaintiffs to the total of the combined number of units. (Two Plaintiffs each own two units, which is 560 units and 93 units, respectively, totaling 653 units, and for the purpose of paying the Receiver's fees, the Defendants have agreed to consider the number of units owned by Plaintiffs as 93 and number of units owned by Defendants as 560, resulting in their respective percentages of fees paid to Receiver as 14.24% and 85.76%. For the purpose of funding any shortfall of the UOA for its operations the share of gross revenue that will be borne by the Plaintiffs and the Defendants is 14.24% and 85.76%, respectively.

<sup>2</sup>It should be noted that I have not yet received any gross rents on the Plaintiffs' units from the Defendants, who have previously deposited in Receiver's bank account \$274,679.44, representing only the net rents of Plaintiffs who had positive account balances after the Defendants having deducted fee charges and reserve charges that they had calculated.

<sup>3</sup>Pursuant to an agreement with counsel for the Plaintiffs, the net rents will be wired to counsel for the Plaintiffs' trust account and counsel will make the distributions to the Plaintiffs.



## Richard Teichner

---

**From:** accountingforensics@gmail.com  
**Sent:** Friday, July 7, 2023 2:16 PM  
**To:** David.McElhinney@meruelogroup.com; 'Jarrad Miller'  
**Cc:** 'Reed Brady'; 'Stefanie Sharp'; robyn@smithsonbooks.com  
**Subject:** Receiver's procedures for collection of rents and payment of fee charges and expenses

Messrs. McElhinney and Miller,

Below, I have delineated the procedures and methodologies I intend to implement regarding the collection of rents and the disposition of the rents after the fee charges and reserve charges have been applied to the Plaintiffs' shares of rents.

Given that –

The gross rents and DUF for Plaintiffs owned units will be wired into Receiver's back account.

Defendants will receive one-half of gross rents less one-half of the DUF.

Plaintiffs are to be paid one-half of the net of (1) the gross rents including the DUF, (2) less the DUF, to arrive at the Plaintiffs' share of rents before the fee and reserve charges to the Plaintiffs. Example: Gross rents are \$100. Included in the gross rents is \$20 of DUF. Plaintiffs receive \$40 before the charges for fees. Defendants receive \$60, consisting of (a) their one-half share of gross rents less DUF in the amount of \$40, plus (b) their DUF expenses.

Then, after giving effect to the above, the following sets forth the process for paying the Plaintiffs and Defendants beginning with April 2023 (to the extent the following would still apply to April and to May).

Defendants will wire one-half of the gross rents and DUF on the Plaintiffs' units into the Receiver's back account.

Also, until the DUF, fee and reserve charges are calculated, there won't be any distributions to the Plaintiffs, except that, if the Supreme Court determines that the \$1,103,950.59 is distributable to the Plaintiffs, then such amount, net of any amounts already distributed that apply to the same period(s) to which the \$1,103,950.59 applies.

Not all net rents will be distributed to the Plaintiffs. Until the true-ups are determined, the Receiver will retain a portion of the Plaintiffs' net rents. Moreover, the Receiver will determine and maintain an amount in reserve for months in which the expenses for fee and reserve charges might exceed the Plaintiffs' share of the rentals, which I understand is a possibility during months in which occupancy is typically lower than the other months of the year.

Although this does not involve or affect Defendants, the Receiver will transfer the Plaintiffs' one-half share of the gross rents and DUF that it receives each month from Defendants to a trust account of Robertson, Johnson, Miller & Williamson ("RJMW"). Additionally, each month the Receiver will provide Mr. Miller with a spreadsheet listing the Plaintiffs and their unit(s) by number and showing the rents and DUF, and charges for and reserves, attributable to each of the Plaintiff's units. RJMW will then distribute the net rents to each of the Plaintiffs.

Once the DUF charges and reserve charges are recalculated, the Defendants will be reimbursed for DUF charges, less the (one-time) amount for difference between the reserve charges that the Defendants charged the Plaintiffs and the non-Plaintiff TPO's and the recalculated reserve charges to the Plaintiffs and non-Plaintiff TPOs since January 2020.

Each month, the Defendants will wire into the Receiver's bank account the recalculated amounts of charges for the Defendant owned units and the non-Plaintiff TPO owned units for the three types of reserves, and then the Receiver will deposit those amounts, along with the reserve charges of the Plaintiffs, into the respective reserve bank accounts that the Receiver has opened.

The Receiver's (and his counsel's) fees will be split between Plaintiffs and Defendants based on the ratio of the number of units owned by each to the total of number of units owned by them. Therefore, since the Plaintiffs own 93 units and the Defendants own 560 units, the respective percentages are 14.24% and 85.76%. The Plaintiffs' 14.24% of Receiver's fees will be paid to the Receiver from the Plaintiffs' gross rents received by the Receiver. The Defendants will wire its 85.76% of the Receivers' fees into the Receivers' bank account. The Receiver's fees shall be wired into the Receiver's bank account each by the Defendants no later than twenty (20) days after the end of the month for which the Receiver's invoice is presented. (See Mr. McElhinney's email of June sent at 9:56 AM.) Additionally, in no event, will the Receiver disburse the fees to his (Richard Teichner's) firm or to his counsel's firm within ten (10) days of the date of the preceding month's invoice, since either party may object to an invoice "on or within ten (10) days following service thereof...". (Appointment Order 7:12-20.) If no objection has been made, and therefore the Receiver has received payment of his fees from the Defendants, then the Receiver will disburse the 100% of the fees it has received (from Plaintiffs' rents and Defendants payment) to both his firm's business account and to his counsel's firm based on each's respective share of the Receiver's fees. Since the Receiver's invoices are generally not distributed to the parties until a few days after the end of the month, I believe that's it's only fair that any objections to a Receiver's invoice should be on or within ten days from the date that the invoice is sent (by email) to the parties.

Richard M. Teichner



**TEICHNER ACCOUNTING FORENSICS & VALUATIONS, PLLC**

**Richard M. Teichner, CPA, ABV, CVA®, MAFF®, CFF, CRFAC®, CRFAU, DABFA®, FCPA™, CGMA®, CDFA®**

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1 AFFIRMATION: The undersigned does hereby affirm that this document does not contain  
2 the social security number of any person.

3 RESPECTFULLY SUBMITTED this 13th Day of July 2023

4 ROBISON, SHARP, SULLIVAN & BRUST

5 /s/ Stefanie T. Sharp

6 F. DEARMOND SHARP, ESQ.

7 STEFANIE T. SHARP, ESQ.

8 *Attorneys for Receiver*

**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 **RECEIVER'S STATUS REPORT REQUESTED BY THE COURT IN ITS ORDER GRANTING THE MOTION TO CERTIFY AMENDED FINAL JUDGMENT AS FINAL PURSUANT TO NRCP 54(b) DATED, DATED JUNE 28, 2023** 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*

Jordan T. Smith, Esq.  
Pisanelli Bice PLLC  
400 South 7th Street, Suite 300  
Las Vegas, NV 89101  
*Attorneys for Defendants MEI-GSR Holdings, LLC; Gage Village Commercial Development, LLC; and AM-GSR Holdings, LLC*

Robert L. Eisenberg, Esq. (NV Bar No. 0950)  
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DATED: This 13<sup>th</sup> day of July 2023.

/s/ Leslie M. Lucero  
Employee of Robison, Sharp, Sullivan & Brust

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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.

Case No. CV12-02222  
Dept. No. OJ41

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

Defendants.

**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:

1 With respect to the Applications for Order to Show Cause filed February 1st, 2022, and  
2 December 29th, 2022, the Appointment Order dated January 7, 2015 provides in pertinent part,  
3 “It is further ordered that Defendants and any other person or entity who may have possession,  
4 custody or control of any property, including any of their agents, representatives, assignees, and  
5 employees shall do the following: . . . Turn over to the Receiver all rents, dues, reserves and  
6 revenues derived from the Property wherever and in whatsoever mode maintained.”

7 This language is clear and unambiguous. While the Receiver has testified that he initially  
8 chose to monitor the existing reserve accounts rather than opening new accounts, this did not  
9 change the entity who was in control of those funds.

10 On September 15th, 2021, a request was renewed by Receiver’s counsel to transfer the  
11 funds, including the reserve funds, regardless of the account the reserve funds were in. Since the  
12 appointment of the Receiver, the reserve funds have been under the control of the Receiver  
13 pursuant to the Appointment Order.

14 Neither the Court nor the Receiver authorized any withdrawal of funds from the reserve  
15 account. Although the Defendants filed motions with the Court to approve certain capital  
16 expenditures, they did not obtain a decision.

17 The Court finds by clear and convincing evidence that Defendants willfully violated the  
18 Appointment Order by withdrawing \$3,562,441.28 in 2021 and \$12,892,660.18 in 2022 from the  
19 reserve accounts without approval by the Receiver or the Court. These funds have not been  
20 returned to the reserve accounts.

21 Defendants claim those amounts were largely for prepayment of expenses for the remodel  
22 of the condominiums. Less than 300 units have been remodeled, most owned by entities  
23 affiliated with the Defendants. As the Grand Sierra Resort Unit Owners’ Association has been  
24 dissolved at the request of Defendants prior to completing the remodel, this wrongful conduct is  
25 magnified.

26 Despite the willful misappropriation of the reserve funds by Defendants, the Court is  
27 limited to the penalties in NRS 22.100. The Court orders the following:

- 1 (1) Within 30 days of the entry of this written order, Defendants are to return the  
2 \$16,455,101.46 misappropriated from the reserve fund along with interest that would  
3 have been earned in the reserve account, or statutory interest, whichever is higher,  
4 from the date of the withdrawal; and  
5 (2) Within 45 days of the entry of this written order, transfer all of the reserve funds to a  
6 separate interest-bearing account designated by the Receiver.

7 Fines will be the maximum statutory amount under NRS 22.100(2) of \$500 for this  
8 blatant and contemptuous conduct to be paid to the Plaintiffs and the Court determines the  
9 following additional reasonable expenses under NRS 22.100(3) are to be paid to the Plaintiffs by  
10 Defendants:

- 11 (1) The reasonable attorney fees for the Plaintiffs in preparing orders from the contempt  
12 proceeding;  
13 (2) 75 percent of the reasonable attorney fees for the Plaintiffs preparing for the contempt  
14 proceeding not previously ordered by the Court and 75 percent of the reasonable  
15 attorney fees for the Plaintiffs participating in the contempt proceeding; and  
16 (3) The Plaintiffs' share of the reasonable expenses of the Receiver in preparing for and  
17 testifying at the June 6 through 8 proceedings.

18 DATED this 27 day of July, 2023.

19  
20  
21   
22 THE HONORABLE ELIZABETH G. GONZALEZ  
(RET.)

23 Submitted by:

24 ROBERTSON, JOHNSON,  
25 MILLER & WILLIAMSON

26 /s/ Jarrad C. Miller

27 Jarrad C. Miller, Esq. (NV Bar No. 7093)  
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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.

Case No. CV12-02222  
Dept. No. OJ41

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

Defendants.

**ORDER MODIFYING MARCH 14, 2023 ORDER RE CONTINUED RENTAL OF THE  
PARTIES' UNITS UNTIL SALE**

With respect to the May 23rd, 2023, Application for Order to Show Cause, the Court  
recognizes the concerns expressed by all parties and the Receiver about the Receiver's ability to



1 rent the parties' units during the period of the implementation of the dissolution plan as  
2 described in the Court's December 5, 2022 Order. As such, the Court declines to hold the  
3 Defendants in contempt for failure to rent the units during the limited period which is the subject  
4 of that motion.

5 The Court modifies its March 14th, 2023, Order filed at 12:42 p.m. to accommodate  
6 those issues. As the parties' units are now being rented through Defendants, the Court orders  
7 that (1) Defendants will rent the units in a fair rotation; and (2) rather than providing the gross  
8 rents or revenue for the 95 units beneficially owned by the Plaintiffs and 560 units beneficially  
9 owned by entities affiliated with any of the Defendants as outlined in the Appointment Order,  
10 GSR will pay its pro rata share of all expenses of the receivership on a monthly basis as  
11 submitted by the Receiver.

12 The amount of gross rents or revenue for the 95 units beneficially owned by the Plaintiffs  
13 will be provided to the Receiver on a monthly basis after the internal accounting controls by  
14 Defendants' Finance Department have been completed.

15 Within 10 business days of receipt, the Receiver will calculate the estimated expenses  
16 previously approved by the Court as set forth in the January 26, 2023, order filed at 8:31 a.m.  
17 and the pro rata share of expenses of the receivership for the 95 units beneficially owned by the  
18 Plaintiffs to be deducted from the gross rents and forward a spreadsheet to all counsel by  
19 electronic mail calculating the net rents to be paid to each unit owner, including those entities  
20 affiliated with the Defendants.

21 Any objection to the calculation of the net rents to be paid to each unit owner shall be  
22 filed within three business days with an Application for Order Shortening Time concurrently  
23 submitted to the Court. If no objection is filed, or after a ruling by the Court on any objection,  
24 the net rents will be distributed for the 95 units beneficially owned by Plaintiffs.

25 Defendants will forward the pro rata share of expenses of the receivership for the 95 units  
26 beneficially owned by Plaintiffs after deduction from the gross rents of the 95 units beneficially  
27 owned by Plaintiffs. If the Receiver and MEI-GSR finance agree, the Receiver may provide the  
28

1 spreadsheet with net rents to be paid to each unit owner, including those entities affiliated with  
2 the Defendants. Defendants may then process those payments.

3 If the Receiver and MEI-GSR finance do not agree to the Defendants processing the  
4 payments, the Receiver shall process those payments and charge that work as an expense of the  
5 receivership estate. The Court, upon application of the parties, will true up the actual expenses  
6 prior to the wind-up of the receivership.

7 DATED this 27 day of July, 2023.

8  
9  
10   
11 THE HONORABLE ELIZABETH G. GONZALEZ  
(RET.)

12 Submitted by:

13 ROBERTSON, JOHNSON,  
14 MILLER & WILLIAMSON

15 /s/ Jarrad C. Miller

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DEVELOPMENT, LLC*

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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. OJ37

**DEFENDANTS' MOTION FOR  
CLARIFICATION AND/OR MOTION  
FOR RECONSIDERATION OF  
AMBIGUOUS LANGUAGE  
CONTAINED IN THE COURT'S  
AUGUST 1, 2023 ORDER DENYING  
CERTAIN MOTIONS FOR ORDERS TO  
SHOW CAUSE**

Defendants MEI-GSR HOLDINGS, LLC ("MEI-GSR"), AM-GSR Holdings, LLC, and  
GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC (collectively "Defendants") by and  
through their counsel Meruelo Group, LLC, file Defendants' Motion for Clarification and/or  
Motion for Reconsideration of Ambiguous Language Contained in the Court's August 1, 2023

Order Denying Certain Motions for Orders to Show Cause, (“Motion”). Defendants’ Motion is supported by the following memorandum of points and authorities, the papers and pleadings on file herein, and oral argument that is being requested of the Court

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. RELEVANT FACTS**

**A. THE COURT’S JUNE 9, 2023 INSTRUCTIONS TO THE RECEIVER  
AND PARTIES**

At the conclusion of the four-day trial on Plaintiffs’ seven Motions for Order to Show Cause, commencing June 6<sup>th</sup> and ending on June 9<sup>th</sup>, 2023, the Court announced its decision, denying five of the Plaintiffs’ seven applications for Order to Show Cause and granting the remaining two applications. On the final day of the trial, the Court made the following findings and conclusion of law:

“In order to hold a party in contempt under the Nevada statutory process set forth under NRS 22.090, the Presiding Judicial Officer must find by clear and convincing evidence that there has been a knowing and willful violation of a clear and unambiguous order. In this matter, ambiguity exists because of the language in the multiple orders related to the term rent.

The Court is very critical of both the Defendants’ substitution of its own judgment and the Defendants’ failure to pay the undisputed amounts to the receivership estate during the pendency of the receivership. During this trial, for the first time Defendants submitted an undisputed amount of rents to the receivership estate in the amount of \$274,679.44.

**Given the ambiguity in the orders**, the Court concludes that these failures do not rise to the level of contempt for four of the seven applications for OSC. Defendants are to prepare an order reflecting this decision on the applications filed September 27, 2021, November 19, 2021, April 25, 2022 and December 28, 2022.” (June 9, 2023 rough draft transcript, pg. 5), (emphasis added).

In her oral findings and conclusions, the Court fails to identify what orders she determined to be ambiguous, merely referring to them generically as “the orders”. It appears that she was intending to reference the Court Orders identified by Plaintiffs in their 4 above referenced Motions for Order to Show Cause, wherein Plaintiffs cited to particular Orders and asked the Court to hold Defendants in contempt for having violated express terms that appear in those Orders. However, what those orders are and what provisions in those orders the Court found to be ambiguous, is impossible to determine from her June 9<sup>th</sup> findings and conclusions, thereby creating an ambiguity.

1 In accordance with the Court's June 9<sup>th</sup> instructions, on Tuesday, August 1, 2023, Defendants  
2 submitted their proposed orders regarding the Court's finding and conclusion that "the orders"  
3 were ambiguous and denial of Plaintiffs' four motions for Order to Show Cause. Copies of the  
4 proposed orders prepared by Defendants are attached to this Motion for Reconsideration as  
5 Exhibits A, B, C and D. Each of the proposed orders, by their content endeavor to eliminate the  
6 ambiguity in the Court's June 9<sup>th</sup> findings and conclusions by specifically identifying "the orders"  
7 that the Court determined to be ambiguous. The Court ended up rejecting Defendants' proposed  
8 orders, (Exhibits A, B, C and D) that would have eliminated the ambiguity and instead adopted  
9 Plaintiffs' proposed order which was then executed and filed, effectively becoming the Order of  
10 this Court.<sup>1</sup> The Court's August 1, 2023 Order Denying Certain Motions for Orders to Show  
11 Cause does absolutely nothing to eliminate the confusion and ambiguity in the Court's finding and  
12 conclusion as it merely repeats what the Court expressed on June 9, 2023.<sup>2</sup>

### 13 14 15 **I. LEGAL STANDARD FOR REHEARING OF MOTIONS**

16 "The rehearing of motions must be done in conformity with [D.C.R. 13](#), Section [7](#). A party seeking  
17 reconsideration of a ruling of the court, other than an order which may be addressed by motion  
18 pursuant to [N.R.C.P. 50\(b\)](#), [52\(b\)](#), [59](#) or [60](#), must file a motion for such relief within 14 days after  
19 service of written notice of entry of the order or judgment, unless the time is shortened or enlarged  
20 by order." WDCR 12.8. D.C.R. 13.7, in turn, provides, "No motion once heard and disposed of  
21 shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless  
22 by leave of the court granted upon motion therefor, after notice of such motion to the adverse  
23 parties."

24 Defendants have filed the instant motion within the requisite 14-day period after service of  
25 written notice of entry of the Court's August 1, 2023 Order Denying Certain Motions for Orders to

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26 <sup>1</sup> See the Court's August 1, 2023 Order Denying Certain Motions for Orders to Show Cause, ("Order"), attached  
27 hereto as Exhibit E.

28 <sup>2</sup> The Order, at pg. 3:18-21, states, "**Given the ambiguity in the orders**, the Court concludes that these failures do not  
rise to the level of contempt for four of the seven applications for OSC. The Court therefore denies the applications  
filed on September 27, 2021, November 19, 2021, April 25, 2022, and December 28, 2022." (emphasis added).

1 Show Cause and Defendants respectfully request leave of court to file and have considered the  
2 motion for reconsideration incorporated herein.<sup>3</sup>  
3 A petition for rehearing is appropriate where it “direct[s] attention to some controlling matter  
4 which the court has overlooked or misapprehended.” *Matter of Ross*, 99 Nev. 657, 659, 668 P.2d  
5 1089, 1091 (1983); *cf. Gordon v. Eighth Judicial Dist. Court of State of Nev. In & For Cnty. of*  
6 *Clark*, 114 Nev. 744, 745, 961 P.2d 142, 143 (1998) (a petition for rehearing is appropriate where  
7 “the court has overlooked or misapprehended some material matter, or when otherwise necessary  
8 to promote substantial justice”). Thus, designed to aid the district court, motions for  
9 reconsideration are appropriate where they allow the court to correct its own errors. *Masonry &*  
10 *Tile Contractors Ass’n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d  
11 486, 489 (1997) (“A district court may reconsider a previously decided issue if substantially  
12 different evidence is subsequently introduced or the decision is clearly erroneous.”). A ruling “is  
13 ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire  
14 evidence is left with the definite and firm conviction that a mistake has been committed.”  
15 *Unionamerica Mortg. and Equity Trust v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1271 (1981)  
16 (internal quotations omitted).

## 17 **II. LEGAL STANDARD FOR CLARIFICATION AND CORRECTION OF MISTAKE** 18 **ARISING FROM OVERSIGHT OR OMISSION**

19 NRCP 60(a) entitled Corrections Based on Clerical Mistakes; Oversights and Omissions provides  
20 as follows:

21  
22 The court may correct a clerical mistake or a mistake arising from oversight or omission  
23 whenever one is found in a judgment, order, or other part of the record. The court may do  
24 so on motion or on its own, with or without notice. But after an appeal has been docketed  
in the appellate court and while it is pending, such a mistake may be corrected only with  
the appellate court's leave.<sup>4</sup>

25 The Court may invoke NRCP 60(a) to resolve an ambiguity in its order to more clearly reflect  
26 contemporaneous intent and ensure that the Court’s purpose is fully implemented. In instances  
27 where an order, as worded, is too vague to permit enforcement, the Court may reword the order as

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28 <sup>3</sup> Notice of Entry of Order Denying Certain Motions for Orders to Show Cause was filed August 7, 2023.

<sup>4</sup> NRCP 60(a) is identical in its wording to FRCP 60(a)

necessary to reflect its original intent. *See Garamendi v. Henin*, 683 F.3d 1069, 1078, (9<sup>th</sup> Cir. 2012). See also *Robi v. Five Platters, Inc.*, 981 F. 2d 1439 (9<sup>th</sup> Cir. 1990) (it is not an abuse of discretion for the district court to clarify its original intention...by amending a judgment that ordered that a party's trademark be canceled however it failed to identify the particular trademark to be canceled.); *Sartin v. McNair Law Firm, P.A.*, 2012 U.S. Dist. LEXIS 172500, \*8-9, (U.S. Dist. Ct. South Carolina, 2012), (Rule 60(a) provides that the court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order or other part of the record. Rule 60(a) also allows the court to correct an ambiguity in an order or ruling to clarify the court's intent and to more clearly reflect contemporaneous intent and ensure that the court's purpose is fully implemented. See also *Burton v. Johnson*, 975 F.2d 690, 694 (10<sup>th</sup> Cir. 1992) and 12 *Moore's Federal Practice*, Sec. 60.11(1)(a) (3d Ed.).

### **III. ARGUMENT**

As demonstrated herein the Court has erroneously overlooked or misapprehended material matters. First, the Court's June 9<sup>th</sup> finding and conclusion is ambiguous regarding her reference to "ambiguity in the orders". The Court, in rendering this finding and conclusion failed to identify what "orders" she was referring to and what specific language in those orders she regarded as ambiguous. Logic dictates that she was intending to reference the Court Orders identified by Plaintiffs in their 4 above referenced Motions for Order to Show Cause, wherein Plaintiffs cited to particular Orders and asked the Court to hold Defendants in contempt for having violated certain provisions that appeared in those Orders.

In accordance with the Court's June 9<sup>th</sup> instructions, on Tuesday, August 1, 2023, Defendants submitted their proposed orders regarding the Court's finding and conclusion of ambiguity in the orders and denial of Plaintiffs' four motions for Order to Show Cause. Copies of those proposed orders are attached to this Motion as Exhibits A, B, C and D. Each of the proposed orders, by their content endeavor to eliminate the ambiguity in the Court's June 9<sup>th</sup> finding and conclusion by specifically identifying "the orders" that the Court determined to be ambiguous. Without the benefit of this clarification the Court's vague reference to "the orders" will likely become a topic of disagreement and potential motion practice amongst the parties and the receiver in future

1 dealings in these proceedings and therefore elimination of the ambiguity is necessary and  
2 essential.

3 As stated above, the Court rejected Defendants' proposed orders, (Exhibits A, B, C and D) that, if  
4 executed by the Court, would have eliminated the ambiguity complained of here. Instead the  
5 Court adopted Plaintiffs' proposed order which was then executed and filed, thereby becoming the  
6 Court's August 1, 2023 Order Denying Certain Motions for Orders to Show Cause which fails to  
7 provide any detail so as to eliminate the confusion and ambiguity in the Court's June 9<sup>th</sup> finding  
8 and conclusion and which is itself ambiguous as it merely repeats the finding and conclusion  
9 exactly as expressed by the Court on June 9, 2023.<sup>5</sup>

## 13 CONCLUSION

14  
15 Whether treated as a NRCP 60(a) Motion for Clarification and/or a D.C.R. 13 Motion for  
16 Reconsideration, the result is the same. The Court's August 1, 2023, Order Denying Certain  
17 Motions for Orders to Show Cause contains language that is ambiguous as more particularly set  
18 forth above. Without the benefit of this Court's clarification and/or reconsideration of its August  
19 1, 2023 Order the ambiguity will likely lead to future disagreements, motion practice amongst the  
20 parties and the receiver and a waste of judicial resources, specifically concerning which Orders  
21 and what language in those Orders the Court found and concluded to be ambiguous. For the  
22 foregoing reasons, Defendants urge the Court to clarify and/or reconsider its August 1, 2023 Order  
23 Denying Certain Motions for Orders to Show Cause and eliminate the ambiguous language by  
24 identifying what Court Orders the Court is referring to in its phrase, "given the ambiguity in the  
25 orders" and specifically setting forth what provisions in the Court Orders the Court found  
26 ambiguous.

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27 <sup>5</sup> See Order, pg. 3:18-21 ("Given the ambiguity in the orders, the Court concludes that these failures do not rise to the  
28 level of contempt for four of the seven applications for OSC. The Court therefore denies the applications filed on  
September 27, 2021, November 19, 2021, April 25, 2022, and December 28, 2022.")



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**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 August 14, 2023.

/s/ David C. McElhinney, Esq.  
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ANN HALL, ESQ.  
Nevada Bar No. 5447  
DAVID C. MCELHINNEY, ESQ.  
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Legal Services Department  
5<sup>th</sup> Floor Executive Offices  
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Las Vegas, NV 89109  
Attorneys for Defendants

**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, August 14, 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:

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Jonathan J. Tew, Esq., SBN 11874  
Briana N. Collings, Esq. SBN 14694  
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Further, I certify that on the August 14, 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 August 14, 2023



Iliana Godoy

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# Exhibit A

1 **3795**

2 ABRAN VIGIL, ESQ.  
3 Nevada Bar No. 7548  
4 ANN HALL, ESQ.  
5 Nevada Bar No. 5447  
6 DAVID C. MCELHINNEY, ESQ.  
7 Nevada Bar No. 0033  
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17 *Attorneys for Defendants MEI-GSR Holdings,*  
18 *LLC, AM-GSR Holdings, LLC, and GAGE*  
19 *VILLAGE COMMERCIAL DEVELOPMENT,*  
20 *LLC*

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

23 ALBERT THOMAS, et. al.,

24 Plaintiff(s),

25 v.

26 MEI-GSR HOLDINGS, LLC., a Nevada  
27 Limited Liability Company, AM-GSR  
28 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

29 **ORDER DENYING PLAINTIFFS' NOVEMBER 19, 2021 MOTION FOR ORDER TO**  
30 **SHOW CAUSE**

31 This matter proceeded to a contempt trial, conducted under NRS 22.090, commencing June  
32 6, 2023, on seven separate Motions for Order to Show Cause filed by Plaintiffs on September 27,

2021; November 19, 2021; February 1, 2022; April 25, 2022; December 28, 2022; December 29, 2022; and May 2, 2023, (collectively referred to herein as “Motions for Order to Show Cause”). Trial proceeded for four days, ending on June 9, 2023, during which trial Plaintiffs presented the testimony of the Court Appointed Receiver, Richard Teichner and Defendants presented the testimony of Grand Sierra Resort’s Executive Director of Finance & Accounting, Reed Brady.

In their Motion for Order to Show Cause filed November 19, 2021, (“Motion”), Plaintiffs request that the Court hold Defendants in contempt for alleged violations of this Court’s January 7, 2015 Order Appointing Receiver and Directing Defendants’ Compliance (“Receiver Order”) and the Court’s December 24, 2020 Order by Defendants doubling the Contracted Hotel Fees charged to the Plaintiffs and increasing the Daily Use Fee between October and November of 2021 without Receiver approval and imposing a new special assessment of approximately \$25,000 on each of the Plaintiffs 95 units. (Motion, pg. 2:7-13; pg. 3:9-11). Defendants, in their Opposition to Motion for Order to Show Cause and Request for Award of Attorneys’ Fees and Costs, filed December 3, 2021, (“Opposition”), argue that neither the language of the January 7, 2015 Order Appointing Receiver nor the December 24, 2020 Order spell out in specific and unambiguous terms that the Receiver has authority over reserve studies conducted by independent third parties or that he may direct the results of those studies. Defendants further argue that Defendants, in accordance with their responsibilities to issue an annual budget by November 1<sup>st</sup> of each year, have proceeded to assess updated Contracted Hotel Fees and a Special Assessment due to the Receiver’s refusal to abide by the 2021 Reserve Study and the CC&Rs, and that this conduct is not clearly addressed in either the January 7, 2015 Order Appointing Receiver nor the December 24, 2020 Order and cannot serve as a lawful basis for contempt. (Opposition, pg. 2:15-25) noting in particular that the Order Appointing Receiver does not detail in specific and unambiguous terms that the Defendants cannot insert fees into the Owner Account Statements that are required by the 2021 Reserve Study and the Governing Documents when the Receiver refuses to enforce the Governing Documents. (Opposition, pg. 5:11-15).

“An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person

1 will readily know exactly what duties or obligations are imposed on him.” Southwest Gas Corp. v.  
2 Flintkote Co., 99 Nev. 127, 659 P.2d 861 (1983); Cunningham v. Eighth Judicial Dist. Court, 102  
3 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986). “The need for clarity and lack of ambiguity are  
4 especially acute in the contempt context.” State, Div. of Child & Fam. Servs. V. Eighth Jud. Dist.  
5 Ct., 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004). “It is well settled that indefiniteness and  
6 uncertainty in a judgment or decree may constitute a good defense in contempt proceedings.” State  
7 v. Sixth Jud. Dist. Ct., 63 Nev 249, 257, 167 P.2d 648, 651 (1946), overruled on other grounds by  
8 Plirier v. Bd. Of Dental Exam’rs, 81 Nev. 384, 387, 404 P.2d 1,2 (1965).

9 The Court having read and considered Plaintiffs’ Motion for Order to Show Cause filed  
10 November 19, 2021, (“Motion”), Defendants’ Opposition to Plaintiffs’ Motion for Order to Show  
11 Cause and Request for Award of Attorneys’ Fees and Costs, filed December 3, 2021, (“Opposition”)  
12 and Plaintiffs’ Reply in Support of Motion for Order to Show Cause, filed December 17, 2021,  
13 (“Reply”); the Court having also listened to and considered the testimony of Mr. Teichner and Mr.  
14 Brady; and, the Court having further reviewed and considered all trial exhibits and listened to and  
15 entertained the arguments of counsel in rendering its decision, and good cause appearing, it is this  
16 Court’s determination that the January 7, 2015 Receiver Order and December 24, 2020 Order, are  
17 unclear and ambiguous in their contents and the Court therefor finds and concludes that the failures  
18 of Defendants enumerated in Plaintiffs’ Motion and Reply, do not rise to the level of contempt.

19 IT IS HEREBY ORDERED that Plaintiffs November 19, 2021 Motion for Order to Show  
20 Cause is denied.

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23 DATED \_\_\_\_\_.

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26 SENIOR JUDGE  
27 Elizabeth Gonzalez  
28

# Exhibit B



1 **3795**

2 ABRAN VIGIL, ESQ.  
3 Nevada Bar No. 7548  
4 ANN HALL, ESQ.  
5 Nevada Bar No. 5447  
6 DAVID C. MCELHINNEY, ESQ.  
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17 *Attorneys for Defendants MEI-GSR Holdings,*  
18 *LLC, AM-GSR Holdings, LLC, and GAGE*  
19 *VILLAGE COMMERCIAL DEVELOPMENT,*  
20 *LLC*

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

23 ALBERT THOMAS, et. al.,

24 Plaintiff(s),

25 v.

26 MEI-GSR HOLDINGS, LLC., a Nevada  
27 Limited Liability Company, AM-GSR  
28 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

29 **ORDER DENYING PLAINTIFFS' SEPTEMBER 27, 2021 MOTION FOR ORDER TO**  
30 **SHOW CAUSE**

31 This matter proceeded to a contempt trial, conducted under NRS 22.090, commencing June  
32 6, 2023, on seven separate Motions for Order to Show Cause filed by Plaintiffs on September 27,

2021; November 19, 2021; February 1, 2022; April 25, 2022; December 28, 2022; December 29, 2022; and May 2, 2023, (collectively referred to herein as “Motions for Order to Show Cause”). Trial proceeded for four days, ending on June 9, 2023, during which trial Plaintiffs presented the testimony of the Court Appointed Receiver, Richard Teichner and Defendants presented the testimony of Grand Sierra Resort’s Executive Director of Finance & Accounting, Reed Brady.

In their Motion for Order to Show Cause filed September 27, 2021, (“Motion”), Plaintiffs request that the Court hold Defendants in contempt for alleged violations of this Court’s January 7, 2015 Order Appointing Receiver and Directing Defendants’ Compliance (“Receiver Order”) due to (1) Defendants refusal to permit the Receiver to calculate and apply the reserves through a reserve study prepared in accordance with the Governing Documents and for having issued special assessments for the years 2021, 2022 and 2023 based upon an unauthorized reserve study and (2) Defendants having interfered with the Receiver’s exercise of his duty to take control of rental revenue. (Motion, pg. 2:3-10; pg. 7:21-28; pg.8:1-5). Defendants, in their Opposition to Motion for Order to Show Cause filed October 11, 2021, (“Opposition”), argue that the language of the January 7, 2012 Order Appointing Receiver in no way spells out in specific and unambiguous terms that the Receiver has authority over reserve studies conducted by independent third parties, nor does it clearly and unambiguously state MEI-GSR must turn over to the Receiver rental revenue that is not part of the receivership estate. (Opposition, pg. 2:14-18)

“An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him.” *Southwest Gas Corp. v. Flintkote Co.*, 99 Nev. 127, 659 P.2d 861 (1983); *Cunningham v. Eighth Judicial Dist. Court*, 102 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986). “The need for clarity and lack of ambiguity are especially acute in the contempt context.” *State, Div. of Child & Fam. Servs. V. Eighth Jud. Dist. Ct.*, 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004). “It is well settled that indefiniteness and uncertainty in a judgment or decree may constitute a good defense in contempt proceedings.” *State v. Sixth Jud. Dist. Ct.*, 63 Nev 249, 257, 167 P.2d 648, 651 (1946), overruled on other grounds by *Plirier v. Bd. Of Dental Exam’rs*, 81 Nev. 384, 387, 404 P.2d 1,2 (1965).

1 The Court having read and considered Plaintiffs' Motion for Order to Show Cause filed  
2 September 27, 2021, ("Motion"), Defendants' Opposition to Plaintiffs' Motion for Order to Show  
3 Cause, filed October 11, 2021, ("Opposition") and Plaintiffs' Reply in Support of Motion for Order  
4 to Show Cause, filed November 5, 2021, ("Reply"); the Court having also listened to and considered  
5 the testimony of Mr. Teichner and Mr. Brady; and, the Court having further reviewed and considered  
6 all trial exhibits and listened to and entertained the arguments of counsel in rendering its decision, and  
7 good cause appearing, it is this Court's determination that the January 7, 2015 Receiver Order, is  
8 unclear and ambiguous in its contents and the Court therefor finds and concludes that the failures of  
9 Defendants enumerated in Plaintiffs' Motion and Reply, do not rise to the level of contempt.

10 IT IS HEREBY ORDERED that Plaintiffs September 27, 2021 Motion for Order to Show  
11 Cause is denied.

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14 DATED \_\_\_\_\_.

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17 SENIOR JUDGE  
18 Elizabeth Gonzalez  
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