

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.

Electronically Filed
Apr 09 2024 11:13 AM
Elizabeth A. Brown
Clerk of Supreme Court

MEI-GSR HOLDINGS, LLC, a Nevada corporation; AM-GSR HOLDINGS, LLC, a Nevada corporation; and GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada corporation,
Petitioners,

v.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, AND THE HONORABLE ELIZABETH GONZALEZ (RET.), SENIOR JUDGE, DEPARTMENT OJ41; AND RICHARD M. TEICHER, RECEIVER,
Respondents,

and

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNIE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI and GEORGE VAGUJHELYI, as Trustees of the GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT, U/T/A APRIL 13, 2001; D' ARCY NUNN, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; DONALD SCHREIFELS, individually; ROBERT R. PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LORI ORDOVER, individually; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; STEVEN TAKAKI, individually; FARAD TORABKHAN, individually; SAHAR TAVAKOL, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, individually; USHA RAGHURAM, individually; LORI K. TOKUTOMI, individually; GARRET TOM, individually; ANITA TOM, individually; RAMON FADRILAN, individually; FAYE FADRILAN, individually; PETER K. LEE and MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN, individually; ELIAS SHAMIEH, individually; JEFFREY QUINN individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ,

individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, individually; SEEMA GUPTA, individually; FREDRICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, individually; MAY ANN HOM, as Trustee of the MAY ANN HOM TRUST; MICHAEL HURLEY, individually; DOMINIC YIN, individually; DUANE WINDHORST, individually; MARILYN WINDHORST, individually; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLENE LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISINE MECHAM, individually; KWANGSOO SON, individually; SOO YEUN MOON, individually; JOHNSON AKINDODUNSE, individually; IRENE WEISS, as Trustee of the WEISS FAMILY TRUST; PRAVESH CHOPRA, individually; TERRY POPE, individually; NANCY POPE, individually; JAMES TAYLOR, individually; RYAN TAYLOR, individually; KI HAM, individually; YOUNG JA CHOI, individually; SANG DAE SOHN, individually; KUK HYUNG (CONNIE), individually; SANG (MIKE) YOO, individually; BRETT MENMUIR, as Trustee of the CAYENNE TRUST; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDERS MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, individually; PATRICIA M. MOLL, individually; DANIEL MOLL, individually;

Real Parties in Interest.

**APPENDIX IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS
OR, IN THE ALTERNATIVE, PROHIBITION**

VOLUME 9 of 10

Jordan T. Smith, Esq., Bar No. 12097
Brianna Smith, Esq., Bar No. 11795
Daniel R. Brady, Esq., Bar No. 15508
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Abran Vigil, Esq., Bar No. 7548
Ann Hall, Esq., Bar No. 5447
David C. McElhinney, Esq., Bar No. 33
MERUELO GROUP, LLC
Legal Services Department
5th Floor Executive Offices
2535 Las Vegas Boulevard South
Las Vegas, NV 89109

Attorneys for Petitioners

CHRONOLOGICAL INDEX

Description	Date	Vol. Nos.	Bates Nos.
Complaint	8/27/2012	1	PA0001-0022
Second Amended Complaint	3/26/2013	1	PA0023-0048
Answer to Second Amended Complaint and Counterclaim	5/23/2013	1	PA0049-0065
Order Granting Plaintiffs' Motion for Case-Terminating Sanctions	10/3/2014	1	PA0066-0078
Motion for Appointment of Receiver	10/16/2014	1-2	PA0079-0408
Defendants' Opposition to Plaintiffs' Motion for a Receiver	11/5/2014	2	PA0409-0415
Reply in Support of Motion for Appointment of Receiver	11/17/2014	2-3	PA0416-0460
Default	11/26/2014	3	PA0461-0462
Order Appointing Receiver and Directing Defendants' Compliance	1/7/2015	3	PA0463-0620
Notice of Entry of Order	1/7/2015	3	PA0621-0635
Findings of Fact, Conclusions of Law and Order	10/9/2015	3	PA0636-0659
Stipulation and Order Regarding the Court's Findings of Fact, Conclusions of Law and Judgment	11/3/2015	3	PA0660-0661
Defendants' Motion for Instructions to Receiver Regarding Reimbursement of Capital Expenditures	5/21/2020	3-4	PA0662-0704

Description	Date	Vol. Nos.	Bates Nos.
Opposition to Defendants' Motion for Instructions to Receiver Regarding Reimbursement of Capital Expenditures	6/18/2020	4	PA0705-0717
Defendants' Reply in Support of Motion for Instructions to Receiver Regarding Reimbursement of Capital Expenditures	7/10/2020	4-6	PA0718-1198
Reply in Support of Motion for Instructions to Receiver to Take Over Control of Rents, Dues, Revenues, and Bank Accounts	4/21/2021	6	PA1199-1236
Defendants' Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures	6/24/2021	6-7	PA1237-1559
Opposition to Defendants' Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures	10/11/2021	7-8	PA1560-1601
Defendants' Reply in Support of Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures	11/2/2021	8	PA1602-1629
Motion to Dismiss Pursuant to NRCP 41(e)	2/23/2022	8-9	PA1630-1893
Order	1/26/2023	9	PA1894-1896
Order	1/26/2023	9	PA1897-1899
Final Judgment	2/2/2023	9	PA1900-1903
Transcript of Proceedings – Bench Trial	6/6/2023	9	PA1904-1959
Transcript of Proceedings – Contempt Trial Day 2	6/7/2023	9	PA1960-1995
Transcript of Proceedings – Order to Show Cause	6/8/2023	9-10	PA1996-2069

Description	Date	Vol. Nos.	Bates Nos.
Transcript of Proceedings – Contempt Trial Day 4	6/9/2023	10	PA2070-2123
Order Finding Defendants in Contempt	7/27/2023	10	PA2124-2126
Motion for Attorneys' Fees Incurred for Order to Show Cause Trial	8/16/2023	10	PA2127-2163
Opposition to Plaintiffs' Motion for Attorney's Fees Incurred for Order to Show Cause Trial	8/25/2023	10	PA2164-2176
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Order	10/3/2023	10	PA2203-2206
Amended Order	11/28/2023	10	PA2207-2210
Order Granting in Part Plaintiffs' Fees	1/4/2024	10	PA2211-2212

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Description	Date	Vol. Nos.	Bates Nos.
Amended Order	11/28/2023	10	PA2207-2210
Answer to Second Amended Complaint and Counterclaim	5/23/2013	1	PA0049-0065
Complaint	8/27/2012	1	PA0001-0022
Default	11/26/2014	3	PA0461-0462

Description	Date	Vol. Nos.	Bates Nos.
Defendants' Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures	6/24/2021	6-7	PA1237-1559
Defendants' Motion for Instructions to Receiver Regarding Reimbursement of Capital Expenditures	5/21/2020	3-4	PA0662-0704
Defendants' Opposition to Plaintiffs' Motion for a Receiver	11/5/2014	2	PA0409-0415
Defendants' Reply in Support of Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures	11/2/2021	8	PA1602-1629
Defendants' Reply in Support of Motion for Instructions to Receiver Regarding Reimbursement of Capital Expenditures	7/10/2020	4-6	PA0718-1198
Final Judgment	2/2/2023	9	PA1900-1903
Findings of Fact, Conclusions of Law and Order	10/9/2015	3	PA0636-0659
Motion for Appointment of Receiver	10/16/2014	1-2	PA0079-0408
Motion for Attorneys' Fees Incurred for Order to Show Cause Trial	8/16/2023	10	PA2127-2163
Motion to Dismiss Pursuant to NRCP 41(e)	2/23/2022	8-9	PA1630-1893
Notice of Entry of Order	1/7/2015	3	PA0621-0635
Opposition to Defendants' Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures	10/11/2021	7-8	PA1560-1601
Opposition to Defendants' Motion for Instructions to Receiver Regarding Reimbursement of Capital Expenditures	6/18/2020	4	PA0705-0717

Description	Date	Vol. Nos.	Bates Nos.
Opposition to Plaintiffs' Motion for Attorney's Fees Incurred for Order to Show Cause Trial	8/25/2023	10	PA2164-2176
Order	1/26/2023	9	PA1894-1896
Order	1/26/2023	9	PA1897-1899
Order	10/3/2023	10	PA2203-2206
Order Appointing Receiver and Directing Defendants' Compliance	1/7/2015	3	PA0463-0620
Order Finding Defendants in Contempt	7/27/2023	10	PA2124-2126
Order Granting in Part Plaintiffs' Fees	1/4/2024	10	PA2211-2212
Order Granting Plaintiffs' Motion for Case-Terminating Sanctions	10/3/2014	1	PA0066-0078
Reply in Support of Motion for Appointment of Receiver	11/17/2014	2-3	PA0416-0460
Reply in Support of Motion for Attorneys' Fees Incurred for Order to Show Cause Trial	9/5/2023	10	PA2177-2202
Reply in Support of Motion for Instructions to Receiver to Take Over Control of Rents, Dues, Revenues, and Bank Accounts	4/21/2021	6	PA1199-1236
Second Amended Complaint	3/26/2013	1	PA0023-0048
Stipulation and Order Regarding the Court's Findings of Fact, Conclusions of Law and Judgment	11/3/2015	3	PA0660-0661
Transcript of Proceedings – Bench Trial	6/6/2023	9	PA1904-1959

Description	Date	Vol. Nos.	Bates Nos.
Transcript of Proceedings – Contempt Trial Day 2	6/7/2023	9	PA1960-1995
Transcript of Proceedings – Contempt Trial Day 4	6/9/2023	10	PA2070-2123
Transcript of Proceedings – Order to Show Cause	6/8/2023	9-10	PA1996-2069

DATED this 8th day of April 2024.

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith

Jordan T. Smith, Esq., #12097
 Brianna Smith, Esq., #11795
 Daniel R. Brady, Esq., #15508
 400 South 7th Street, Suite 300
 Las Vegas, Nevada 89101

Abran Vigil, Esq., # 7548
 Ann Hall, Esq., # 5447
 David C. McElhinney, Esq., # 33
 MERUELO GROUP, LLC
 Legal Services Department
 5th Floor Executive Offices
 2535 Las Vegas Boulevard South
 Las Vegas, NV 89109

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 8th day of April 2024, I caused to be served via email (FTP) a true and correct copy of the above and foregoing **APPENDIX IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, PROHIBITION VOLUME 9 of 10** properly addressed to the following:

G. David Robertson, Esq., SBN 1001
Jarrad C. Miller, Esq., SBN 7093
Briana N. Collings, Esq., SBN 14694
ROBERSTON, JOHNSON, MILLER
& WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501
jarrad@nvlawyers.com
briana@nvlawyers.com

Robert L. Eisenberg, Esq., SBN 0950
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519
rlc@lge.net

Attorneys for Real Parties in Interest

F. DeArmond Sharp, Esq., SBN 780
Stefanie T. Sharp, Esq. SBN 8661
ROBISON, SHARP, SULLIVAN &
BRUST
71 Washington Street
Reno, Nevada 89503
dsharp@rssblaw.com
ssharp@rssblaw.com

*Attorneys for the Respondent Receiver
Richard M. Teichner*

Hon. Elizabeth Gonzalez (Ret.)
Senior Judge, Dept. 10
Second Judicial District Court
75 Court Street,
Reno, NV 89501
srjgonzalez@nvcourts.nv.gov

Respondent

/s/ Cinda Towne
An employee of PISANELLI BICE PLLC

CERTIFICATE OF MAILING

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

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

DATED this 3 day of October, 2014.


SHEILA MANSFIELD
Judicial Assistant

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CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yvitoria

Exhibit 9

CV12-02222 DC-09900061780-022
ALBERT THOMAS ETAL. VS. MEI - 2 Pages
District Court 11/26/2014 10:03 AM
Washoe County 1550-
K10NPF PNC

CODE: 1550

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ACTING CLERK OF THE COURT

BY DEPUTY

Handwritten signature: Jacqueline Bryant

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

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ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

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

Defendants.

Case No. CV12-02222
Dept. No. 10

DEFAULT

WHEREAS, on or about January 27, 2014, the Plaintiffs herein filed *Plaintiffs' Motion for Case-Terminating Sanctions* under NRCP 37 ("Motion"), the Motion having been fully briefed, this Court having conducted hearings on the Motion and entered an *Order Granting Plaintiffs' Motion for Case-Terminating Sanctions* on or about October 3, 2014, which struck Defendants' Answer, Default is hereby entered against the above-named Defendants as to the Plaintiffs' Second Amended Complaint on file herein.

DATED this 26th day of November, 2014.

JACQUELINE BRYANT
CLERK OF THE COURT,

By:

Handwritten signature of Deputy Clerk and official seal of the court.

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

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

3
4 **AFFIRMATION**
5 **Pursuant to NRS 239B.030**

6 The undersigned does hereby affirm that the preceding document, **Default:**

7 Document does not contain the social security number of any person

8 -OR-

9 Document contains the social security number of a person as required by:

10 A specific state or federal law, to wit:

11 _____
(State specific state or federal law)

12 -or-

13 For the administration of a public program

14 -or-

15 For an application for a federal or state grant

16 -or-

17 Confidential Family Court Information Sheet
18 (NRS 125.130, NRS 125.230 and NRS 125B.055)

19 Date: November 26, 2014



(Signature)

Jarrad C. Miller

(Print Name)

Plaintiff

(for)

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Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yvilorla

Exhibit 10

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

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

Case No: CV12-02222

vs.

Dept. No: 10

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

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 120. The Individual Unit Owners pay for contracted "Hotel Fees," which include taxes,
25 deep cleaning, capital reserve for the room, capital reserve for the building, routine maintenance,
26 utilities, etc.
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1 121. MEI-GSR has systematically allocated and disproportionately charged capital reserve
2 contributions to the Individual Unit Owners, so as to force the Individual Unit Owners to pay capital
3 reserve contributions in excess of what should have been charged.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 146. MEI-GSR has breached the Grand Sierra Resort Unit Rental Agreement with
18 Individual Condo Unit Owners by failing to follow its terms, including but not limited to, the failure
19 to implement an equitable Rotational System as referenced in the agreement.
20

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

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

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II. CONCLUSIONS OF LAW

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

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

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

1 117 (1975).” *Collins v. Burns*, 103 Nev. 394, 397, 741 P.2d 819, 821 (1987). MEI-
2 GSR is liable for intentionally and/or negligent misrepresentation as alleged in the
3 Second Cause of Action.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Q. Disgorgement is a remedy designed to dissuade individuals from attempting to profit
8 from their inappropriate behavior. “Disgorgement as a remedy is broader than
9 restitution or restoration of what the plaintiff lost.” *American Master Lease LLC v.*
10 *Idanta Partners, Ltd*, 225 Cal. App. 4th 1451, 1482, 171 Cal. Rptr. 3d 548, 572
11 (2014)(*internal citation omitted*). “Where ‘a benefit has been received by the defendant
12 but the plaintiff has not suffered a corresponding loss or, in some cases, any loss, but
13 nevertheless the enrichment of the defendant would be unjust . . . the defendant may be
14 under a duty to give to the plaintiff the amount by which [the defendant] has been
15 enriched.’” *Id.* 171 Cal. Rptr. 3d at 573 (*internal citations omitted*). *See also Miller v.*
16 *Bank of America, N.A.*, 352 P.3d 1162 (N.M. 2015) and *Cross v. Berg Lumber Co.*, 7
17 P.3d 922 (Wyo. 2000).
18

19 III. JUDGMENT

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

22 Monetary Relief:

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

20

21 **Non-Monetary Relief:**

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

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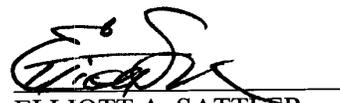
1 amounts. They will be collected from *all* unit owners and properly allocated on the Unit Owner's
2 Association ledgers; and

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

4 **Punitive Damages:**

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

21 DATED this 9 day of October, 2015.

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23 ELLIOTT A. SATTLER
24 District Judge
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CERTIFICATE OF SERVICE

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

Jonathan Tew, Esq.

Jarrad Miller, Esq.

Stan Johnson, Esq.

Mark Wray, Esq.

DATED this 9 day of October, 2015.


SHEILA MANSFIELD
Judicial Assistant

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Exhibit 11

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

ALBERT THOMAS, individually; et al.,

Plaintiffs,

Case No. CV12-02222

Dept. No. 10

vs.

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

Defendants.

ORDER AFFIRMING MASTER'S RECOMMENDATION

Presently before the Court is the RECOMMENDATION FOR ORDER ("the Recommendation") filed by Discovery Commissioner Wesley M. Ayres ("Commissioner Ayres") on August 5, 2019. Defendants MEI-GSR HOLDINGS, LLC, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC and AM-GSR HOLDINGS, LLC (collectively, "the Defendants") filed DEFENDANTS' OBJECTION TO DISCOVERY COMMISSIONER'S AUGUST 5, 2019 RECOMMENDATION FOR ORDER ("the Objection") on August 13, 2019. Plaintiffs ALBERT THOMAS et al. ("the Plaintiffs") filed

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1 PLAINTIFF'S RESPONSE TO DEFENDANTS' OBJECTION TO DISCOVERY

2 COMMISSIONER'S AUGUST 5, 2019 RECOMMENDATION FOR ORDER ("the Response") on
3 August 21, 2019. The matter was submitted for the Court's consideration on September 10, 2019.

4 Case-concluding sanctions were entered against the Defendants for abuse of discovery and
5 disregard for the judicial process. See ORDER GRANTING PLAINTIFFS' MOTION FOR
6 CASE-TERMINATING SANCTIONS, p. 12 (Oct. 3, 2014) ("the October Order"). See also *Young*
7 *v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery
8 sanctions). The Court ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in
9 damages. See FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT (Oct. 9, 2015)
10 ("the FFCLJ"). On May 9, 2016, the Court entered the ORDER GRANTING DEFENDANTS'
11 MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION ("the Dismissal
12 Order"). The Plaintiff appealed the Dismissal Order to the Nevada Supreme Court on May 26,
13 2016. On February 26, 2018, the Nevada Supreme Court reversed the Dismissal Order and
14 remanded the case to the Court. The Nevada Supreme Court denied rehearing on June 1, 2018, and
15 denied en banc reconsideration on November 27, 2018. The case has been remanded to the Court
16 and assumes the procedural posture immediately preceding entry of the Dismissal Order. The
17 parties are currently engaged in limited post-judgment discovery, and discovery disputes have
18 arisen.¹

19 The subject of the Recommendation is PLAINTIFFS' THIRD MOTION TO COMPEL
20 DISCOVERY RESPONSES ("the MTC") filed on May 23, 2019. The Plaintiffs served their First
21 Set of Post-Judgment Requests for Production of Documents ("the PJRFP") on December 27, 2018.

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28 ¹ The Plaintiffs filed a MOTION FOR SUPPLEMENTAL DAMAGES PROVE-UP HEARING ("the Damages Motion") on December 27, 2018. This motion practice is fully briefed but has not been submitted to the Court. The Court has indicated all discovery issues must be resolved before a hearing on supplemental damages will be considered.

1 The Defendants objected to Request Nos. 23, 24, 53, 68, 70 and 77 on March 11, 2019. In the
2 MTC, the Plaintiffs argued: 1) the Defendants have no right to object to the PJRFP because they are
3 merely supplements to those previously propounded and to which the Defendants neither responded
4 nor objected; 2) the Defendants have waived attorney-client privilege for all purposes; 3) the
5 Defendants' objections are meritless; and 4) the Court imposed case-terminating sanctions because
6 the Defendants willfully withheld discovery and violated numerous Court orders. The MTC 7:10-
7 27; 8:1-11; 9:1-28; 10:1-28; 11:1-26; 14:12-22; 15:4-21. The Defendants filed DEFENDANTS'
8 OPPOSITION TO PLAINTIFFS' THIRD MOTION TO COMPEL DISCOVERY ("the MTC
9 Opposition") on June 10, 2019, and responded as follows: 1) any prior objections which were
10 waived do not preclude present objections to the PJRFP; 2) there has been no wholesale waiver of
11 attorney-client privilege, and any prior waiver was limited to certain subjects; and 3) the
12 Defendants' objections are proper as Request Nos. 23, 53, 68, and 70 are overly burdensome,
13 expensive and time-consuming.² The MTC Opposition 2:18-28; 3:1-14; 4:17-28; 5:5-9; 6:12-23;
14 7:27-28; 8:4-16; 12:14-17; 15:16-22; 17:1-3. The Plaintiffs filed the REPLY IN SUPPORT OF
15 PLAINTIFFS' THIRD MOTION TO COMPEL DISCOVERY RESPONSES ("the MTC Reply")
16 on June 25, 2019, and replied as follows: 1) the Defendants have fully waived attorney-client
17 privilege, and the privilege should not be reinstated; 2) the Defendants' objections are meritless
18 attempts at obfuscation and delay; and 3) the Defendants are in default and cannot re-litigate waived
19 objections to discovery requests. The MTC Reply 3:3-26; 4:23-28; 5:1-10; 6:10-26; 8:12-15; 10:22-
20 28; 11:14-28; 15:3-12.

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28 ² The Defendants did not address Request Nos. 24 and 77 in the MTC Opposition.

1 In the Recommendation, Commissioner Ayres determined the following: 1) the Defendants
2 cannot object to supplementation that involves producing documents responsive to earlier discovery
3 requests; 2) Requests No. 23, 24, 53, 68, 70 and 77 are essentially identical to their earlier
4 counterparts, despite minor variations in scope and time, and are permissible supplementations; and
5 3) the Defendants forfeited the right to assert attorney-client privilege with regards to Request No.
6 53, as a result of their own prior discovery abuses.³ The Recommendation 7:1-2; 8:25-26; 9:1-6,
7 23-25; 10:1-24; 11:1-2; 12:10-26; 13:9-11, 23-25; 14:16-26; 15:1-8. Commissioner Ayres also
8 determined that the Defendant should be compelled to produce the documents encompassed by
9 Request Nos. 23, 24, 53, 68, 70 and 77, but did not establish a time frame for production. The
10 Recommendation 17:16-22; 20:21-25; 24:1-4; 28:1-17; 29:1-6, 21-22; 30:1-9; 30:25-26.
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13 The Defendants object to the Recommendation insofar as it compels production of
14 documents responsive to Request Nos. 23, 68 and 70. The Defendants contend the
15 Recommendation disregards the significant burden, time and expense producing these documents
16 would require. The Objection 2:1-8; 4:20-28. The Defendants alternatively ask the Court to reduce
17 the time frame for which the Defendants must provide responsive documents from four and a half
18 years to four or five months. The Objection 2:8-12; 5:15-23. The Plaintiffs contend the Objection
19 should be denied because the Defendants submit new points and evidence not presented to
20 Commissioner Ayres, ignore that the burden is the result of their own misconduct, and fail to
21 address the necessary nature of the requests. The Response 2:8-27; 3:15-27; 5:4-28; 6:1-15.
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28 ³ Commissioner Ayres found the Defendants had not entirely waived the attorney-client privilege and permitted the Defendants to submit a privilege log for documents responsive to any category, except Request No. 53.

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NRCP 34(a) provides in relevant part:

(a) In General. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information-- including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations--stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form

NRCP 26(b) permits discovery

regarding any nonprivileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

NRCP 37(a)(3)(B) provides in relevant part:

A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if . . .

(iv) a party fails to produce documents or fails to respond that inspection will be permitted--or fails to permit inspection--as requested under Rule 34.

The Court will affirm the Recommendation because Commissioner Ayres correctly determined the Defendants should be compelled to produce documents responsive to Request Nos. 23, 68 and 70 for the entire four and a half year time frame. Commissioner Ayres correctly found that each disputed category in the PJRFP was a supplementation of earlier requests for production of documents, to which the Defendants failed to produce responsive documents. Moreover, each category in the PJRFP is relevant to the Plaintiffs' supplemental damages, as required by NRCP 26(b). The Court disagrees that Commissioner Ayres disregarded the burden imposed on the

1 Defendants. In fact, Commissioner Ayres expressly declined to set a strict time frame for
2 production of the documents, acknowledging the amount of time it may take to produce them.
3 Additionally, Commissioner Ayres preserved the Defendants' ability to submit a privilege log for
4 documents in any category, except No. 53. Finally, the burden on the Defendants is one entirely of
5 their own creation. The discovery abuses in this matter are extensive and well-documented: failure
6 to respond to the first request for production of documents, despite various extensions; failure to
7 respond to the second request for production of documents and interrogatories, despite various
8 extensions; failure to make timely pretrial disclosures; failure to obey Commissioner Ayres' rulings
9 and the Court's corresponding confirming orders; and a general tendency to turn over incomplete
10 information in a belated fashion with no legitimate explanation for the delay. *See* ORDER, p. 4-6
11 (Oct. 17, 2013) (striking Defendants' counterclaims). The Court will not limit the production of
12 documents to a four or five month period and permit the Defendants to benefit from their own
13 wrongdoing and further prejudice the Plaintiffs. Had the Defendants turned over the documents
14 when requested, perhaps the task of producing them now would appear less daunting.

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18 **IT IS ORDERED** the RECOMMENDATION FOR ORDER filed August 5, 2019, is
19 hereby **AFFIRMED**.

20 **DATED** this 1 day of November, 2019.

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24 ELLIOTT A. SATTLER
25 District Judge
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CERTIFICATE OF MAILING

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

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 1 day of November, 2019, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

- JARRAD C. MILLER, ESQ.
- JONATHAN JOEL TEW, ESQ.
- DAVID C. MCELHINNEY, ESQ.


Sheila Mansfield
Judicial Assistant

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Exhibit 12

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1 CODE: 2210
2 Jarrad C. Miller, Esq. (NV Bar No. 7093)
3 Jonathan J. Tew, Esq. (NV Bar No. 11874)
4 Robertson, Johnson, Miller & Williamson
5 50 West Liberty Street, Suite 600
6 Reno, Nevada 89501
7 (775) 329-5600
8 Attorneys for Plaintiffs

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

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

12 Plaintiffs,

13 vs.

Case No. CV12-02222
Dept. No. 10

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

24 Defendants.

25 **MOTION FOR SUPPLEMENTAL DAMAGES PROVE-UP HEARING**

26 Plaintiffs Albert Thomas *et al.*, by and through their counsel of record, the law firm of
27 Robertson, Johnson, Miller & Williamson, hereby move the Court for an order: (1) directing the
28 parties to schedule a supplemental damages prove-up hearing; and (2) authorizing limited
discovery pursuant to this Court's inherent authority and prior sanctions orders. Such relief is
also justified since the Defendants are in active violation of the Court's sanctions orders and
FFCLJ. This motion ("Motion") is supported by the attached memorandum of points and
authorities, the attached exhibits, the papers, pleadings and documents on file herein, and any
oral argument this Court may choose to hear.

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs respectfully request that this Court require the Defendants to produce certain documents and information and order the parties to set a supplemental damages hearing. These measures are necessary because since the date of this Court’s dismissal for lack of subject matter jurisdiction on May 9, 2016 (“Dismissal Order”), the Defendants immediately continued their pattern of, in the words of the Nevada Supreme Court, “illegal and unethical” business practices to financially devastate the Plaintiffs even further.

The Defendants failed to accept that their practices were determined to be wrong by this Court – irrespective of whether they believed they could do whatever they wanted because of the Dismissal Order. A reasonable person would expect a litigant to operate with a modicum of decency and ethical restraint, and to not continue their tortious misconduct and contractual abuses while an active appeal was pending. The GSR elected not to, consistent with their pattern of doing everything and anything to force the Plaintiffs to sell their units.

As a result, this Court should order limited, sanctions-based discovery to allow Defendants to supplement their damages at a supplemental prove-up hearing. The Defendants undertook the risk that the continuation of their misconduct during the pendency of the appeal could result in a supplemental damages award if the Nevada Supreme Court reversed the Dismissal – which it did. Indeed, by continuing their misconduct pending appeal, the Defendants are now in active violation of the Court’s sanctions orders and Findings of Fact, Conclusions of Law and Judgment, which requires redress.

As such, Plaintiffs respectfully request that in furtherance of this Court’s sanctions, and to provide complete sanctions relief prior to a final judgment, Plaintiffs be allowed to prove up additional damages from the date of the Dismissal through the date that a receiver implements just operation of the condo unit rental program and condo-owners’ association.

1 **II. FACTUAL BACKGROUND**

2 After the Defendants committed a series of unprecedented discovery abuses and bad faith
3 litigation tactics, the Plaintiffs moved for case terminating sanctions in this action. Plaintiffs'
4 first request was denied, but this Court issued an order on December 18, 2013 wherein the Court
5 struck all of the Defendants' Counterclaims. Because the discovery abuses continued, and it
6 became clear that "Defendants were disingenuous with the Court and Plaintiffs' counsel when
7 the first decision regarding case concluding sanctions was argued," Plaintiffs again moved for
8 case terminating sanctions, and this Court issued its Order Granting Plaintiffs' Motion for Case-
9 Terminating Sanction on October 3, 2014. This order struck the Defendants' Answer. (See
10 October 9, 2015 Findings of Fact, Conclusions of Law and Judgment ("FFCLJ") at 3:7-9.) All
11 of the Defendants' general and affirmative defenses were stripped and the Defendants conceded
12 all of the allegations contained in the Second Amended Complaint ("SAC").

13 From March 23 - 25, 2015, a prove-up hearing was held pursuant to Foster v. Dingwall,
14 126 Nev. Adv. Op. 6, 227 P. 3d 1042 (2010). The Court heard expert testimony from Craig L.
15 Greene, CPA/CFF, CFE, CCEP, MAFF ("Plaintiffs' Expert") and he was cross-examined by
16 Defendants. Following the prove-up hearing, this Court issued its FFCLJ. In addition to
17 awarding damages to the Plaintiffs for conduct prior to October 9, 2015, the FFCLJ contains the
18 following provisions:

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

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

24 Id. at 22:23-27.

25 Mr. Proctor was appointed under the terms of this Court's Order Appointing Receiver
26 and Directing Defendants' Compliance filed January 7, 2015 ("Receiver Order"). Mr. Proctor
27 served in that capacity until this Court dismissed this action for a lack of subject matter
28 jurisdiction on May 9, 2016 ("Dismissal").

1 As directed by the Court, on January 7, 2016, a Receiver's Determination of Fees and
2 Reserves was filed with the Court wherein the receiver determined the following:

- 3 1. The amount of the monthly **Furniture, Fixture & Equipment (FF&E) reserve** to be
4 charged to all units, both TPO and non-TPO (GSR) is **\$0.329** per square foot ranging
5 from **\$138.09** to **\$690.76** per unit.
- 6 2. The amount of the monthly **Shared Facilities Unit (SFU)** reserve to be charged to all
7 units, both TPO and non-TPO (GSR) is **\$144.32** to **\$721.97**.
- 8 3. The amount of the monthly **Shared Facilities Unit (SFUE)** expense to be charged to
9 each TPO unit is **\$0.094** per square foot ranging from **\$39.64** to **\$151.00** per unit.
- 10 4. The amount of the monthly **Hotel Reserve Fee (HRF)** to be charged to all units, both
11 TPO and non-TPO (GSR) is **\$71.13** to **\$355.83**.
- 12 5. The amount of the monthly **Hotel Expense (HE)** to be charged to each TPO unit is
13 **\$0.071** per square foot ranging from **\$71.78** to **\$273.45** per unit.
- 14 6. As the costs for deep cleaning the units is considered in the overall calculations of
15 expenses allocated to the above fees, the \$600 annual deep cleaning fee is not a separate
16 identifiable item.
- 17 7. The **Daily Use Fee (DUF)** to be charged to each occupied TPO unit is **\$24.54**.

18 Id. at 12. The receiver operated the rental of the condo units based on those fees/expenses until
19 the Dismissal.

20 Immediately after the Dismissal in May of 2016, Defendants returned to the "illegal and
21 unethical business practices" – keeping virtually all revenue from the use of Plaintiffs' condo
22 units.

23 Notably, on July 19, 2016, Defendants sent correspondence to the Plaintiffs stating that
24 because this Court dismissed the action, "it is the GSR's position that fees and expenses due
25 under the applicable agreements between the GSR, the Home Owners' Association and the unit
26 owners that have not been paid because of prior Court rulings are now due and payable." (See
27 Exhibit 1.) The time period referenced by the Defendants was from April 2011 through February
28 of 2016. Id.

Under this Court's FFCLJ, Plaintiffs were not required to pay the fees and expenses
Defendants demanded. Further, Defendants knew that Plaintiffs were appealing the Dismissal
and that the Dismissal was subject to reversal by the Nevada Supreme Court.

To collect the funds, Defendants added the amounts to monthly Owner Account
Statements as amounts owed by owner and kept any rent proceeds to apply the money to the fees
and expenses outstanding balance. (See Exhibit 2, the fees were listed as "Reconciling Amounts

1 From Court Case Dismissal”.) Thus, the Defendants strategically deprived Plaintiffs of all
2 revenue during the appeal – electing not to exercise any caution or restraint.

3 In addition to reinstating fees and expenses back to April of 2011, the Defendants
4 disregarded the Receiver’s Determination of Fees and Reserves and *substantially* increased the
5 fees and expenses. Attached as Exhibit 3 are two Owner Account Statements for a Plaintiff
6 owned unit number 1775. *Id.* The first statement is from April of 2016, before Dismissal, and
7 shows “Contracted Hotel Fees: \$464.96” and a “Daily Use Fee of \$24.54”. *Id.* The second
8 statement is from September of 2018, after Dismissal, and shows “Contracted Hotel Fees:
9 \$647.85” and a “Daily Use Fee of \$31.18”. *Id.* The Defendants simply increased the fees and
10 expenses to prevent Plaintiffs from receiving any funds – a simple continuation of the
11 Defendants’ misconduct flowing from what was alleged in the SAC.

12 The Court will note that on the August 2018 statement, Defendants rented the particular
13 plaintiff’s unit every night that month. Yet, at the end of the month, Plaintiff received nothing.
14 *Id.* The “Net Due from Owner” went from \$7,939.50 to \$7,930.70. *Id.* Also of note from the
15 September statement, is that Defendants charged Plaintiff for one night, September 21st, rather
16 than provide a credit for the use of the room. *Id.* Further, Defendants comped/provided a
17 gaming reduction for the use of Plaintiff’s unit on three nights wherein Plaintiff received less
18 than \$10 per night for the use of the room. *Id.* Even under the old agreements, that this Court
19 deemed unconscionable, the Defendants could only comp Plaintiffs’ units up to five nights per
20 year. In September of 2018, Defendants were setting a pace for 36 comps per year—a patent
21 continuation of their improper theft.

22 Additionally, a common scenario since Dismissal is that the Defendants will rent
23 Plaintiffs units between 25 and 30 nights and Plaintiffs will end up with a negative balance
24 *increasing the claimed “Net Due From Owner” reported on the monthly statements.* (See
25 Exhibit 4.) Clearly, this continued misconduct during the appeal was all intended to further the
26 GSR’s plan to force Plaintiffs to abandon or sell their units – a plan that was alleged in the SAC,
27 and proved by the “smoking gun” emails that Defendants refused to produce in discovery.

1 Given the continuation of misconduct of Defendants, Plaintiffs anticipate the Defendants
2 have continued their other “illegal and unethical business practices” whereby they underreport
3 room revenue on the monthly Owner Account Statements or do not report room usage at all.
4 (See FFCLJ at 18:15-20.) It is also unlikely that they have instituted an equal rotation of rentals
5 as opposed to giving their rooms priority. The aforementioned acts of theft can only be divulged
6 through discovery of the room key data and analysis by Plaintiffs’ Expert.

7 Separately, in early 2017, the Defendants used their control of the majority of votes in the
8 Grand Sierra Resort Unit-Owners Association to approve the “Eighth Amendment to
9 Condominium Hotel Declaration of Covenants Conditions, Restrictions and Restrictions of
10 Easements for Hotel-Condominiums” to inflict further damage to Plaintiffs. (See Exhibit 5.) An
11 analysis of the amendment and need to determine the action void is beyond the scope of this
12 Motion.

13 Finally, after this Court’s Dismissal, Defendants charged Plaintiffs with a “Special
14 Assessment” claiming that “reserve amounts are now insufficient in light of their respective
15 allocation to the renovation projects related to the Units and the Condominium Hotel Property.”
16 (See Exhibit 6.) As an example, the “special assessment” was for the amount of \$13.70 per
17 square foot with the unit referenced in Exhibit 6 being assessed \$7,560. Id.

18 The above-referenced acts conducted by the Defendants since this Courts’ Dismissal are
19 not even remotely exhaustive of the Defendants’ continued, nefarious actions since the
20 Dismissal, but rather, are examples of how the Defendants have continued to cause the Plaintiffs
21 additional damages since the Dismissal. Given the Nevada Supreme Court’s reversal of the
22 Dismissal, the actions of the Defendants must be corrected to conform with the FFCLJ and
23 receivership. Accordingly, Plaintiffs need to obtain discovery into these issues so that they can
24 prove supplemental damages from the date of the Dismissal and termination of the receivership,
25 until such time as the receivership is effectively reinstated. Plaintiffs’ discovery requests are
26 attached as Exhibit 7. Upon review of the responses it may become necessary for Plaintiffs to
27 depose key witnesses.

28

1 Plaintiffs' request for a supplemental prove-up hearing is simply to supplement, and not
2 modify, this Court's FFCLJ through a separate order that, together with the FFCLJ, would
3 establish the compensatory damages portion of the Court's ultimate judgment in the case.
4 Punitive damages, of course, have not yet been resolved and should be placed on hold until the
5 Court rules on this Motion.

6 III. LEGAL ARGUMENT

7 A. *Good Cause Exists to Re-Open Discovery*

8 The Court has found that Plaintiffs are entitled to compensatory damages, or actual
9 damages, which are defined as “[d]amages sufficient in amount to indemnify the injured person
10 for the loss suffered,” and “[a]n amount awarded to a complainant to compensate for a proven
11 injury or loss; damages that repay actual losses.”¹ This Court entered a non-final judgment
12 against Defendants in October 2015 in favor of Plaintiffs. However, since the date of the
13 Dismissal until the filing of this Motion, Defendants' unlawful actions persisted and continued to
14 harm Plaintiffs. Plaintiffs have suffered greatly while this action was on appeal due to the
15 Defendants' decision to continue its misconduct during that period – despite that the Defendants
16 understood the Dismissal was subject to reversal. The current damages awarded by the Court are
17 now insufficient to make Plaintiffs whole for the losses they have suffered. Had the Defendants
18 elected not to continue their misconduct, a supplement of damages to those awarded in the
19 FFCLJ would be unnecessary.

20 Good cause therefore exists to re-open discovery to supplement compensatory damages.
21 This Court is still vested with the same authority under NRCP 37(b)(2), and its inherent powers,
22 to provide complete relief as part of its sanctions orders. See, e.g., Young v. Johnny Ribeiro
23 Bldg., 106 Nev. 88, 92, 787 P.2d 777 (1990). While complete, compensatory damages are
24 justified under this Court's prior sanctions orders, Defendants are now also indisputably in
25 violation of those orders and the FFCLJ. Since the Defendants could have awaited the outcome
26 on appeal without changing the status quo, they have essentially invited and justified additional
27

28 ¹ *Compensatory Damages*, cross referencing *Actual Damages*, BLACK'S LAW DICTIONARY, 321 (7th ed. abr. 2000).

1 compensatory damages so that this Court can provide complete relief and compensatory damages
2 in this action.

3 Since no final judgment has been entered in this case, and the Defendants are in active
4 violation of the sanctions orders and FFCLJ, (a) a supplemental damages prove-up hearing under
5 Foster and (b) additional, time-restricted discovery is appropriate.

6 It is well-known that district courts have broad discretion to control the discovery process
7 of actions before it. See In re Adoption of a Minor Child, 118 Nev. 962, 968-69, 60 P.3d 485,
8 489 (2002) (“Absent a clear abuse of discretion, this court will not reverse a district court’s
9 management of discovery.”) Furthermore, this Court has authority to broaden the scope of
10 discovery under NRCPC 26(b)(2) if it determines that,

- 11 (i) the discovery sought is [not] unreasonably cumulative or duplicative, or is
12 [not] obtainable from some other source that is more convenient, less
13 burdensome, or less expensive; (ii) the party seeking discovery has [not] had
14 ample opportunity by discovery in the action to obtain the information sought;
15 (iii) the discovery is [not] unduly burdensome or expensive, taking into account
16 the needs of the case, the amount in controversy, limitations on parties’ resources,
17 and the importance of the issues at stake in the litigation.

18 Here, the discovery sought is neither duplicative nor cumulative: Plaintiffs are merely seeking to
19 supplement their claim for compensatory damages. The only way to do so is to allow limited
20 discovery to determine the amount of damages suffered from the Dismissal to the reinstatement of
21 a receiver.

22 ***B. The Requested Prove-Up Hearing Would be Limited in Time and Scope,
23 and Would Supplement, Not Modify, the Court’s FFCLJ***

24 In the FFCLJ, this court already determined that Plaintiffs established their claims
25 through substantial evidence and proved the compensatory damages they were entitled to up to
26 that point. Accordingly, any supplemental prove-up hearing would not impact the Court’s
27 findings in the FFCLJ or require any change to it (or the damages findings specified therein) for
28 the time frames addressed. As such, at any supplemental prove-up hearing, Plaintiffs would only
need to put on a prima facie case to support supplemental damages suffered subsequent to the
date of the Dismissal. See Foster v. Dingwall, 126 Nev. 56, 227 P.3d 1042 (2010).

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of 18, and not a party within this action. I further certify that on the 27th day of December, 2018, I caused to be deposited in the U.S. Mail, first-class postage fully prepaid the foregoing **MOTION FOR SUPPLEMENTAL DAMAGES PROVE-UP HEARING** with the Clerk of the Court by using the ECF system which served the following parties electronically:

H. Stan Johnson, Esq.
Steven B. Cohen, Esq.
Cohen-Johnson, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, NV 89119
Facsimile: (702) 823-3400
Email: sjohnson@cohenjohnson.com
Attorneys for Defendants

Jeffrey L. Hartman, Esq.
Hartman & Hartman
510 W. Plumb Lane, Suite B
Reno, NV 89509
Facsimile: (775) 324-1818
Email: notices@banhkruptcyreno.com
Attorneys for Receiver

I further certify that on the 27th day of December, 2018, I caused to be hand-delivered, a true and correct copy of the foregoing **MOTION FOR SUPPLEMENTAL DAMAGES PROVE-UP HEARING**, addressed to the following:

Gayle A. Kern, Esq.
Kern & Associates, Ltd.
5421 Kietzke Lane, Suite 200
Reno, NV 89511
Facsimile: (775) 324-6173
Email: gaylekern@kernltd.com
Attorneys for Defendants


An Employee of Robertson, Johnson,
Miller & Williamson

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EXHIBIT INDEX

Ex. No.	Description	Pages
1	Correspondence from Defendants to Plaintiffs dated July 19, 2016 (Reconciliation)	4
2	Sample monthly rental statements from Defendants to Plaintiffs (Taylor 1769, dated July 20, 2016)	2
3	Sample monthly rental statements from Defendants to Plaintiffs (Taylor 1775, dated April 28, 2016)	4
4	Sample monthly rental statements from Defendants to Plaintiffs	9
5	HOA Written Ballot dated January 3, 2017 (Nunn)	1
6	Correspondence from Defendants to Plaintiffs dated June 5, 2017 (Special Assessment)	4
7	Plaintiffs' First Set of Post-Judgment Requests for Production of Documents	24
8	Declaration of Jarrad C. Miller, Esq. in support of Motion for Supplemental Damages Prove-Up Hearing	2

FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yvilorla

Exhibit 13

IN THE SUPREME COURT OF THE STATE OF NEVADA

MEI-GSR HOLDINGS, LLC, A NEVADA
LIMITED LIABILITY COMPANY; AM-
GSR HOLDINGS, LLC, A NEVADA
LIMITED LIABILITY COMPANY;
GRAND SIERRA RESORT UNIT
OWNERS' ASSOCIATION, A NEVADA
NON-PROFIT ORGANIZATION; AND
GAGE VILLAGE COMMERCIAL
DEVELOPMENT, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellants,

No. 69184

FILED

FEB 01 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

vs.

ALBERT THOMAS; JANE DUNLAP;
JOHN DUNLAP; BARRY HAY; MARIE-
ANNIE ALEXANDER AS TRUSTEE OF
THE MARIE-ANNIE ALEXANDER
LIVING TRUST; MELISSA
VAGUJHELYI AND GEORGE
VAGUJHELYI, AS CO-TRUSTEES OF
THE GEORGE VAGUJHELYI AND
MELISSA VAGUJHELYI 2001 FAMILY
TRUST AGREEMENT U/T/A APRIL 13,
2001; D'ARCY NUNN; HENRY NUNN;
LEE VAN DER BOKKE; MADELYN
VAN DER BOKKE; DONALD
SCHREIFELS; ROBERT R. PEDERSON,
INDIVIDUALLY AND AS TRUSTEE OF
THE PEDERSON 1990 TRUST; LOU
ANN PEDERSON, INDIVIDUALLY
AND AS TRUSTEE OF THE
PEDERSON 1990 TRUST; LORI
ORDOVER; WILLIAM A. HENDERSON;
CHRISTINE E. HENDERSON; LOREN
D. PARKER; SUZANNE C. PARKER;
MICHAEL IZADY; STEVEN TAKAKI;
FARAD TORABKHAN; SAHAR
TAVAKOL; M & Y HOLDINGS, A
NEVADA LIMITED LIABILITY

16-03301

COMPANY; JL & YL HOLDINGS, LLC,
A NEVADA LIMITED LIABILITY
COMPANY; SANDI RAINES; R.
RAGHURAM; USHA RAGHURAM;
LORI K. TOKUTOMI; GARETT TOM;
ANITA TOM; RAMON FADRILAN;
FAYE FADRILAN; PETER K. LEE AND
MONICA L. LEE, AS TRUSTEES OF
THE LEE FAMILY 2002 REVOCABLE
TRUST; DOMINIC YIN; ELIAS
SHAMIEH; NADINE'S REAL ESTATE
INVESTMENTS, LLC, A NORTH
DAKOTA LIMITED LIABILITY
COMPANY; JEFFERY JAMES QUINN;
BARBARA ROSE QUINN; KENNETH
RICHE; MAXINE RICHE; NORMAN
CHANDLER; BENTON WAN;
TIMOTHY KAPLAN; SILKSCAPE INC.,
A CALIFORNIA CORPORATION;
PETER CHENG; ELISA CHENG; GREG
A. CAMERON; TMI PROPERTY
GROUP, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY;
RICHARD LUTZ; SANDRA LUTZ;
MARY A. KOSSICK; MELVIN H.
CHEAH; DI SHEN; AJIT GUPTA;
SEEMA GUPTA; FREDRICK FISH;
LISA FISH; ROBERT A. WILLIAMS;
JACQUELIN PHAM; MAY ANN HOM,
AS TRUSTEE OF THE MAY ANN HOM
TRUST; MICHAEL HURLEY; DUANE
WINDHORST; MARILYN WINDHORST;
VINOD BHAN; ANNE BHAN; GUY P.
BROWNE; GARTH WILLIAMS;
PAMELA Y. ARATANI; DARLEEN
LINDGREN; LAVERNE ROBERTS;
DOUG MECHAM; CHRISINE
MECHAM; KWANGSOO SON; SOO
YEUN MOON; JOHNSON
AKINDODUNSE; IRENE WEISS, AS
TRUSTEE OF THE WEISS FAMILY

TRUST; PRAVESH CHOPRA; TERRY POPE; NANCY POPE; JAMES TAYLOR; RYAN TAYLOR; KI HAM; YOUNG JA CHOI; SANG DAE SOHN; KUK HYUNG, "CONNIE"; SANG "MIKE" YOO; BRETT MENMUIR, AS TRUSTEE OF THE CAYENNE TRUST; WILLIAM MINER, JR.; CHANH TRUONG; ELIZABETH ANDERS MECUA; SHEPARD MOUNTAIN, LLC, A TEXAS LIMITED LIABILITY COMPANY; ROBERT BRUNNER; AMY BRUNNER; JEFF RIOPELLE; PATRICIA M. MOLL; AND DANIEL MOLL,

Respondents.

ORDER DISMISSING APPEAL

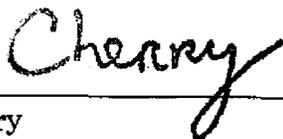
This is an appeal from a default judgment. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

On December 22, 2015, this court entered an order to show cause directing appellants to show cause why the appeal should not be dismissed as premature. *See Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991); *Rae v. All American Life & Cas. Co.*, 95 Nev. 920, 605 P.2d 196 (1979). Appellants have responded to our order and concede that the appeal is premature at this point. Accordingly, we conclude that we lack jurisdiction and we

ORDER this appeal DISMISSED.



_____, J.
Douglas



_____, J.
Cherry



_____, J.
Gibbons

cc: Hon. Elliott A. Sattler, District Judge
Lansford W. Levitt, Settlement Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Cohen-Johnson LLC
Law Offices of Mark Wray
Robertson, Johnson, Miller & Williamson
Washoe District Court Clerk

COURT STATE OF NEVADA

CERTIFIED COPY

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: *July 26, 2016*

Supreme Court Clerk, State of Nevada *

By *Daniel Williams* Deputy

FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yvilorla

Exhibit 14

IN THE SUPREME COURT OF THE STATE OF NEVADA

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; 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 JANUARY 11, 2000; FARAD TORABKHAN, INDIVIDUALLY; SAHAR TAVAKOL, 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; MONICA L.

Supreme Court No. 70498
District Court Case No. CV1202222

DID

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 H.
CHEAH, INDIVIDUALLY; DI SHEN,
INDIVIDUALLY; NADINE'S REAL ESTATE
INVESTMENTS, LLC; AJIT GUPTA,
INDIVIDUALLY; SEEMA GUPTA,
INDIVIDUALLY; FREDRICK FISH,
INDIVIDUALLY; LISA FISH, INDIVIDUALLY;
ROBERT A. WILLIAMS, INDIVIDUALLY;
JACQUELIN PHAM, AS MANAGER OF
CONDOTEL 1906, LLC; MAY ANNE HOM, AS
TRUSTEE OF THE MAY ANNE HOM TRUST;
MICHAEL HURLEY, INDIVIDUALLY; DUANE
WINDHORST, TRUSTEE OF DUANE
WINDHORST TRUST U/A DTD. 01/15/2003
AND MARILYN WINDHORST TRUST U/A
DTD. 01/015/2003; MARILYN WINDHORST,
AS TRUSTEE OF DUANE 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; CHRISINE MECHAM,
INDIVIDUALLY; KWANG SOON SON,
INDIVIDUALLY; SOO YEU MOON,
INDIVIDUALLY; JOHNSON AKINDODUNSE,

INDIVIDUALLY; IRENE WEISS, AS TRUSTEE OF THE WEISS FAMILY TRUST; PRAVESH CHOPRA, INDIVIDUALLY; TERRY POPE, INDIVIDUALLY; NANCY POPE, INDIVIDUALLY; JAMES TAYLOR, INDIVIDUALLY; RYAN TAYLOR, INDIVIDUALLY; KI 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 ANDERS MECUA, INDIVIDUALLY; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, INDIVIDUALLY; AMY BRUNNER, INDIVIDUALLY; JEFF RIOPELLE, AS TRUSTEE OF THE RIOPELLE FAMILY TRUST; PATRICIA M. MOLL, INDIVIDUALLY; AND DANIEL MOLL, INDIVIDUALLY,

Appellants,

vs.

MEI-GSR HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY; GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, A NEVADA NON-PROFIT CORPORATION; GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND AM-GSR HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Respondents.

REMITTITUR

TO: Jacqueline Bryant, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified Copy of Opinion/Order
Receipt for Remittitur

DATE: December 24, 2018

Elizabeth A. Brown, Clerk of Court

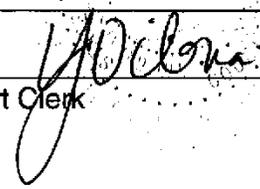
By: Rory Wunsch
Deputy Clerk

cc (without enclosures):

Hon. Elliott A. Sattler, District Judge
Robertson, Johnson, Miller & Williamson
Lemons, Grundy & Eisenberg
Parker & Edwards
Leach Kern Gruchow Anderson Song/Reno
Lewis Roca Rothgerber Christie LLP/Las Vegas

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on DEC 27 2018



District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

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; 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 JANUARY 11, 2000; FARAD TORABKHAN, INDIVIDUALLY; SAHAR TAVAKOL, 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; MONICA L.

Supreme Court No. 70498
District Court Case No. CV1202222

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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.
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INDIVIDUALLY; FREDRICK FISH,
INDIVIDUALLY; LISA FISH, INDIVIDUALLY;
ROBERT A. WILLIAMS, INDIVIDUALLY;
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MICHAEL HURLEY, INDIVIDUALLY; DUANE
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WINDHORST TRUST U/A DTD. 01/15/2003
AND MARILYN WINDHORST TRUST U/A
DTD. 01/015/2003; MARILYN WINDHORST,
AS TRUSTEE OF DUANE 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,
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INDIVIDUALLY; CHRISINE MECHAM,
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INDIVIDUALLY; SOO YEU MOON,
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Appellants,

vs.

MEI-GSR HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY; GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, A NEVADA NON-PROFIT CORPORATION; GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND AM-GSR HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Respondents.

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

“We REVERSE the district court's order granting respondents' motion to dismiss for lack of subject matter jurisdiction AND REMAND to the district court for proceedings consistent with this order.”

Judgment, as quoted above, entered this 26th day of February, 2018.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

“Rehearing Denied”

Judgment, as quoted above, entered this 1st day of June, 2018.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

“Order Denying En Banc Reconsideration.”

Judgment, as quoted above, entered this 28th day of November, 2018.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this December 24, 2018.

Elizabeth A. Brown, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk



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

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

7 ALBERT THOMAS, et. al.,) ORDER
8 Plaintiff,)
9 vs.) Case#: CV12-02222
10 MEI-GSR HOLDINGS, LLC., a Nevada) Dept. 10 (Senior Judge)
11 Limited Liability Company, et al)
12 Defendant.)
13)
14)
15)

16
17 Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being
18 fully informed rules on the:

19 **Defendants' Motion for Instructions to Receiver Re Reimbursement of Capital**

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

21
22 No one disputes Defendants have made substantial upgrades and improvements to the GSR
23 property ("Property") over the last five years. The issue at the heart of the motion is whether the
24 unit owners of GSRUOA are required by the CC&Rs to bear a portion of this remodeling expense.
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28 ¹ The Court has also reviewed the Plaintiffs Opposition filed on 6/18/2020, and the Defendants Reply filed 7/10/2020.

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

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

Dated this 26th day January, 2023.



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

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

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

7	ALBERT THOMAS, et. al.,)	ORDER
8	Plaintiff,)	
9	vs.)	Case#: CV12-02222
10	MEI-GSR HOLDINGS, LLC., a Nevada)	
11	Limited Liability Company, et al)	Dept. 10 (Senior Judge)
12	Defendant.)	
13)	
14)	

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

19 **Defendants' Motion for Instructions Re Reimbursement of 2020 Capital Expenditures** filed
20 6/24/21.¹ This motion is denied.

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

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

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

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

The procedures required under section 6.10(a) were not followed prior to the 2020 expenses being incurred. The Court declines to find the 2020 expenses are "extraordinary expenditures" which would permit reimbursement under Section 6.10(b).

Dated this 26th day January, 2023.



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

CERTIFICATE OF SERVICE

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

DALE KOTCHKA-ALANES

DANIEL POLSENBERG, ESQ.

DAVID MCELHINNEY, ESQ.

BRIANA COLLINGS, ESQ.

ABRAN VIGIL, ESQ.

JONATHAN TEW, ESQ.

JARRAD MILLER, ESQ.

TODD ALEXANDER, ESQ.

F. SHARP, ESQ.

STEPHANIE SHARP, ESQ.

G. DAVID ROBERTSON, ESQ.

ROBERT EISENBERG, ESQ.

JENNIFER HOSTETLER, ESQ.

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

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

JTS@pisanellibice.com

2 PISANELLI BICE PLLC
400 South 7th Street, Suite 300
3 Las Vegas, Nevada 89101
Telephone: 702.214.2100
4 Facsimile: 702.214.2101

5 Abran Vigil, Esq., Bar No. 7548

abran.vigil@meruelogroup.com

6 Ann Hall, Esq., Bar No. 5447

ann.hall@meruelogroup.com

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

david.mcelhinney@meruelogroup.com

8 MERUELO GROUP, LLC
Legal Services Department
9 5th Floor Executive Offices
2535 Las Vegas Boulevard South
10 Las Vegas, NV 89109
Tel: (562) 454-9786

11 *Attorneys for Defendants*
12 *MEI-GSR Holdings, LLC;*
13 *Gage Village Commercial Development, LLC;*
14 *and AM-GSR Holdings, LLC*

15 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

16 **IN AND FOR THE COUNTY OF WASHOE**

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

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

FINAL JUDGMENT

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

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

12 Plaintiff(s),

13 v.

14 MEI-GSR HOLDINGS, LLC, a Nevada
15 Limited Liability Company, AM-GSR
16 HOLDINGS, LLC, a Nevada Limited Liability
17 Company, GRAND SIERRA RESORT UNIT
18 OWNERS' ASSOCIATION, a Nevada
19 Nonprofit Corporation, GAGE VILLAGE
20 COMMERCIAL DEVELOPMENT, LLC., a
21 Nevada Limited Liability Company, and DOES
22 I-X inclusive,

23 Defendant(s).

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

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

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

1 CODE: 4185
NICOLE J. HANSEN, CCR 446
2 Sunshine Litigation Services
151 Country Estates Circle
3 Reno, Nevada 89511
(775) 323-3411
4 Court Reporter

5

6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE HONORABLE ELIZABETH GONZALEZ

--o0o--

9

10 ALBERT THOMAS ET AL, Case No. CV12-02222

11 Plaintiffs, Dept. No. OJ37

12 vs.

13 MEI-GSR HOLDINGS LLC ET Al,

14 Defendants.

15 TRANSCRIPT OF PROCEEDINGS

BENCH TRIAL

16 TUESDAY, JUNE 6, 2023

17 APPEARANCES:

18 For the Plaintiffs: JARRAD MILLER, ESQ.
BOB EISENBERG, ESQ.
19 BRIANA COLLINGS, ESQ.
Reno, Nevada

20

21 For the Defendants: DAVID MCELHINNEY, ESQ.
JORDAN SMITH, ESQ.
22 ABRAN VIGIL, ESQ.

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<p style="text-align: right;">Page 2</p> <p style="text-align: center;">I N D E X</p> <p>THE WITNESS: PAGE:</p> <p>RICHARD TEICHNER</p> <p>Direct examination by Mr. Miller 57</p> <p>Cross-examination by Mr. McElhinney 160</p>	<p style="text-align: right;">Page 4</p> <p>Robert Eisenberg: E-I-S-E-N-B-E-R-G, representing plaintiffs.</p> <p>THE COURT: Ms. Collings?</p> <p>MS. COLLINGS: Good morning, Your Honor.</p> <p>Brianna Collings: C-O-L-L-I-N-G-S, for the plaintiffs.</p> <p>MR. MILLER: Jarrad Miller, for the plaintiffs. J-A-R-R-A-D. M-I-L-L-E-R.</p> <p>MR. MCELHINNEY: David McElhinney. I don't know if my mike is on or not.</p> <p>THE COURT: It's not. You need to work on it.</p> <p>MR. MCELHINNEY: David McElhinney, spelled: M-c, capital E-L-H-I-N-N-E-Y. I am counsel for defendants, MEI-GSR Holdings, Gage Village Commercial Development, and AM GSR Holdings.</p> <p>MR. SMITH: Jordan Smith, also on behalf of the same defendants as Mr. McElhinney.</p> <p>THE COURT: And Mr. Vigil, just in case.</p> <p>MR. VIGIL: Good morning. Is this microphone working?</p> <p>THE COURT: No.</p> <p>MR. VIGIL: How about now? Good morning. My name is Abran Vigil. First name: A-B-R-A-N. Last name is V-I-G-I-L. And I'm also appearing on behalf of</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">-o0o-</p> <p style="text-align: center;">RENO, NEVADA; TUESDAY, JUNE 6, 2023, 9:00 A.M.</p> <p style="text-align: center;">-o0o-</p> <p>THE COURT: CV12-0222. And for those of you who do not know me, my name is Elizabeth Gonzalez. I'm a Senior Judge appointed by the Nevada Supreme Court to oversee this case.</p> <p>I know we have some audience members. I'm sorry you're off to the side. This is an unusual setup for the courtroom, but we do need you to stay where you are.</p> <p>Counsel, I'm going to go ahead and introduce the staff, who you may be coming into contact with. Alicia LaRue is the court administrator. Officer Russo is our deputy with us now. I think you all met him. Nicole is our court reporter today. Gracie is our court clerk. And we're going to hopefully not need Duke in maintenance, who may have to show up.</p> <p>I need all counsel, starting with Mr. Eisenberg, need to identify yourself and spell your name and who you represent to assist our court clerk, our court reporter, Nicole, and keeping in track of everybody.</p> <p>MR. EISENBERG: Good morning, Your Honor.</p>	<p style="text-align: right;">Page 5</p> <p>defendants, MEI-GSR, AM GSR and Gage Village.</p> <p>THE COURT: Thank you. Is there anyone else who plans to speak today who has not introduced themselves who is not a witness?</p> <p>Do we have exhibit lists? I heard a rumor there might be a number of stipulations related to the exhibits, and I'd like to go through that quickly, if we could.</p> <p>MR. MCELHINNEY: Your Honor, the stipulation -- David McElhinney. The stipulation entered into amongst counsel is that all pleadings that had been filed with the court.</p> <p>THE COURT: Well, you know how we used to do an exhibit list --</p> <p>MR. MCELHINNEY: Yes.</p> <p>THE COURT: -- when we would have a trial proceedings. We have an exhibit list.</p> <p>MR. MCELHINNEY: We do.</p> <p>THE COURT: Great.</p> <p>MR. MCELHINNEY: I thought you wanted stipulations, Your Honor. I apologize.</p> <p>THE COURT: I do, but I need a list first because we've got to mark which ones are stipulated.</p> <p>MR. MCELHINNEY: Okay. You guys can approach</p>

<p style="text-align: right;">Page 6</p> <p>1 the clerk. She's the one who needs it.</p> <p>2 MR. MILLER: Thank you, Your Honor.</p> <p>3 THE COURT: But she has to do her job.</p> <p>4 MR MILLER: Is that your list from the trial</p> <p>5 statement?</p> <p>6 MR. MCELHINNEY: Yes.</p> <p>7 MR. MILLER: We have a subsequent list here</p> <p>8 that tracks, I believe, your trial statement and our</p> <p>9 trial statement. Do we want to just do the one?</p> <p>10 MR. MCELHINNEY: I think I may have added two</p> <p>11 or three exhibits on the end of my list that may make it</p> <p>12 a little different from yours. I apologize.</p> <p>13 THE COURT: That's okay. Hand it to the</p> <p>14 clerk.</p> <p>15 MR. MILLER: This is plaintiff's list.</p> <p>16 THE COURT: Thank you. All right. Thank</p> <p>17 you, Gentlemen.</p> <p>18 Gracie, you now have an exhibit list.</p> <p>19 THE CLERK: Thank you.</p> <p>20 THE COURT: Now you can tell me what the</p> <p>21 stipulations are. So Gracie can mark on the lists you've</p> <p>22 given you've stipulated so they can be admitted.</p> <p>23 Mr. Miller?</p> <p>24 MR. MCELHINNEY: Mr. Miller can go over that.</p>	<p style="text-align: right;">Page 8</p> <p>1 plaintiffs' trial statement, there's a portion in that</p> <p>2 trial statement that reflects stipulation amongst the</p> <p>3 parties. And it is located in that document filed -- I</p> <p>4 should know that -- July 1st, Your Honor. And in that</p> <p>5 regard, the stipulation.</p> <p>6 THE COURT: Maybe June 1st since July 1st</p> <p>7 hasn't happened. Was it filed June 1st?</p> <p>8 MR. MILLER: Sorry. I can't hear you.</p> <p>9 THE COURT: Was it filed on June 1st not July</p> <p>10 1st since July 1st hasn't happened yet?</p> <p>11 MR. MILLER: Yes, Your Honor. I apologize.</p> <p>12 THE COURT: It's okay. That's my job.</p> <p>13 MR. MILLER: Yes, it was filed on June 1st.</p> <p>14 In that regard, the stipulation specifically includes all</p> <p>15 of the exhibits, affidavits, declarations that were filed</p> <p>16 in connection with the entire motion stream, the seven</p> <p>17 granted motions for order to show cause.</p> <p>18 All right. So let me ask my question</p> <p>19 differently. Can either of you -- any of you can answer</p> <p>20 this question. On the list that you gave Gracie a few</p> <p>21 minutes ago, are there any exhibits that are listed on</p> <p>22 that list that are not subject to your stipulation?</p> <p>23 MR. MCELHINNEY: By number? Your Honor, the</p> <p>24 answer is no for defendant's list.</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. MILLER: Thank you, Your Honor. The</p> <p>2 stipulation between the parties -- Do you have a copy of</p> <p>3 it in front of you? I just want to make sure I</p> <p>4 accurately state it. Okay. The parties have stipulated</p> <p>5 to the admissibility of one: Emails and letters to, from</p> <p>6 or by any of plaintiffs' counsel, defendants' counsel,</p> <p>7 current or former employees and representatives or</p> <p>8 individuals of any of the named parties or from, by, or</p> <p>9 to the receiver.</p> <p>10 Number two: Any motions, oppositions,</p> <p>11 replies filed in this action along with the exhibits</p> <p>12 attached thereto.</p> <p>13 Number three: Any and all orders entered</p> <p>14 into this action.</p> <p>15 Number four: Any declarations, affidavits</p> <p>16 filed in this action or that are attached to any motion,</p> <p>17 opposition or reply. This is our stipulation.</p> <p>18 THE COURT: Let him finish reading and then</p> <p>19 we'll go to him.</p> <p>20 THE CLERK: Thank you.</p> <p>21 MR. MILLER: Okay. And five: All or any</p> <p>22 portion of transcripts of hearings conducted in these</p> <p>23 proceedings. And this stipulation is also reflected in</p> <p>24 plaintiffs' trial statement. The very last page of</p>	<p style="text-align: right;">Page 9</p> <p>1 THE COURT: Mr. Smith looks like that's not</p> <p>2 the right answer.</p> <p>3 MR. SMITH: Your Honor, your question was --</p> <p>4 THE COURT: Wait. You've got to put your</p> <p>5 mike -- Come on, Jordan.</p> <p>6 MR. SMITH: I know. I'm going to mess it up</p> <p>7 a few times. So I understood Your Honor's question to be</p> <p>8 are there any exhibits on the list handed to the clerk</p> <p>9 that there's not a stipulation on?</p> <p>10 THE COURT: Yes. That's exactly my question,</p> <p>11 sir.</p> <p>12 MR. SMITH: The answer to that question is</p> <p>13 yes.</p> <p>14 THE COURT: Which numbers?</p> <p>15 MR. SMITH: Well, the easier way is to think</p> <p>16 about it the opposite way, which is which ones on that</p> <p>17 list do we stipulate to would be the easiest way to think</p> <p>18 about it. We're not stipulating to --</p> <p>19 THE COURT: I think the universe of documents</p> <p>20 you are stipulating to is much greater than the universe</p> <p>21 of documents you're not stipulating to; correct?</p> <p>22 MR. SMITH: Well, there's a separate question</p> <p>23 about whether all of the documents described by</p> <p>24 Mr. Miller a moment ago were listed on that exhibit list.</p>

<p style="text-align: right;">Page 10</p> <p>1 THE COURT: That is correct. That's why I'm 2 asking the question.</p> <p>3 MR. SMITH: That is right. So I think for 4 clarity's sake, it may be easier if we go through the 5 ones on that list that we do stipulate to. It's a 6 separate issue about whether other documents Mr. Miller 7 referenced are listed or not. That's a separate issue, 8 but --</p> <p>9 THE COURT: However we do it, just so we go 10 by number.</p> <p>11 MR. SMITH: That is correct, Your Honor. 12 I'll refer to Mr. McElhinney on that point. That's what 13 I understood Your Honor's question to be.</p> <p>14 THE COURT: That's exactly what my question 15 is since you've been in trial with me more times than you 16 can count.</p> <p>17 Mr. McElhinney, so by number, can you tell me 18 the items on the exhibit list the plaintiff gave to the 19 Clerk Gracie that you stipulate to by proposed exhibit 20 number.</p> <p>21 MR. MCELHINNEY: Judge, I'm going to offer a 22 caveat very quickly.</p> <p>23 MR. MILLER: Sorry. This copy holds my 24 notes.</p>	<p style="text-align: right;">Page 12</p> <p>1 THE COURT: They're already stipulated to. 2 MR. MILLER: They are stipulated to, Your 3 Honor.</p> <p>4 THE COURT: Next group? 5 MR. MILLER: Exhibits 39 through 113 are the 6 exhibits that were attached to the underlying motion 7 practice.</p> <p>8 MR. MCELHINNEY: And those are the numbers we 9 stipulate to, Your Honor.</p> <p>10 THE COURT: Stipulated to. Next series? 11 MR. MILLER: Exhibits 114 through 129 are 12 orders of the court which I believe are admissible on 13 their own but also stipulated to as being admissible.</p> <p>14 MR. MCELHINNEY: That's accurate, Your Honor. 15 We stipulate.</p> <p>16 THE COURT: Okay. Next group? 17 MR. MILLER: So the documents that we may 18 have issue with are 130 to 139.</p> <p>19 THE COURT: Are there any after 139 on your 20 list?</p> <p>21 MR. MILLER: Not on my list, Your Honor. 22 THE COURT: So 130 to 139, we will deal with 23 if you offer them into evidence. 24 Mr. McElhinney, are there any additional</p>
<p style="text-align: right;">Page 11</p> <p>1 MR. MCELHINNEY: The caveat, Your Honor, is 2 Your Honor is aware that our attorney-client privilege 3 was deemed waived early in these proceedings. I had 4 asked to have it reinstated. That was denied.</p> <p>5 THE COURT: Correct.</p> <p>6 MR. MCELHINNEY: I don't want my stipulation 7 to be regarded as any sort of a waiver.</p> <p>8 THE COURT: Certainly. I am not accepting it 9 as a waiver.</p> <p>10 MR. MCELHINNEY: Very well. Thank you.</p> <p>11 THE COURT: Only for purposes of these 12 proceedings, understand you're not waiving any of the 13 motion practice.</p> <p>14 MR. MCELHINNEY: Thank you, Your Honor. With 15 that understanding, as soon as they give me the numbers 16 of their exhibit, I will identify those numbers.</p> <p>17 MR. MILLER: These -- for Jordan's purposes, 18 this is the same document that's contained in the front 19 of our trial exhibits. Your Honor, I might be able to 20 speed this along.</p> <p>21 THE COURT: It doesn't matter. Just so I get 22 it done.</p> <p>23 MR. MILLER: Okay. So Exhibits 1 through 38 24 are those that were provided by the defendants.</p>	<p style="text-align: right;">Page 13</p> <p>1 documents that are on your list besides those that have 2 been admitted as 1 through 129 which have been admitted 3 by stipulation?</p> <p>4 MR. MCELHINNEY: Your Honor, I want to make 5 sure counsel has seen my additional exhibits, so court's 6 indulgence for one moment.</p> <p>7 THE COURT: Certainly, Mr. McElhinney. (WHEREUPON, an off-the-record discussion ensued.)</p> <p>9 MR. MCELHINNEY: So, Your Honor, I want to be 10 clear. Exhibits 35, 36, 37, and 38 were added by me just 11 recently. I've just been discussing those with 12 Mr. Miller.</p> <p>13 THE COURT: So did you use numbers too? 14 MR. MCELHINNEY: I did.</p> <p>15 MR. MILLER: We have no overlapping numbers 16 though. Sorry, Your Honor, but --</p> <p>17 THE COURT: Okay.</p> <p>18 MR. MILLER: Yeah. I stipulate to the 19 admissibility of 35 through 38.</p> <p>20 THE COURT: But those I've already admitted 21 because I admitted them --</p> <p>22 MR. MILLER: Yes, but he -- Sorry. He just 23 told me he changed those, so --</p> <p>24 THE COURT: Okay. So did it change any of</p>

Page 14

1 those that you --

2 MR. MILLER: No. I agree with the changed

3 documents.

4 THE COURT: Okay. Are there any others,

5 Mr. McElhinney, on your list?

6 MR. MCELHINNEY: No. No further exhibits.

7 THE COURT: So at this time, based upon the

8 stipulation, I've admitted Exhibits 1 through 129. 130

9 through 139, we will deal with if they are offered.

10 Anything else on a housekeeping basis,

11 Ms. Clerk?

12 MR. MCELHINNEY: I don't believe so, Your

13 Honor.

14 THE COURT: I'm looking at Gracie not you.

15 MR. MCELHINNEY: Oh, I'm sorry.

16 THE CLERK: Your Honor, if counsel could

17 e-mail me their exhibit list and that would be so much

18 easier.

19 THE COURT: Could you email the exhibit list

20 to the clerk, please, somebody who knows what they're

21 doing? I have a couple of people who look like they

22 might know the answer to that question. Great. Good

23 job. Okay. That would be the people when I say counsel

24 and support staff. Thank you.

Page 15

1 MR. MILLER: I don't believe they have the

2 email or exhibit list that we just provided you with,

3 right?

4 THE COURT: Who does?

5 MR. MILLER: Ms. Collings?

6 THE COURT: Ms. Collings, could you send that

7 to Gracie?

8 MS. COLLINGS: Absolutely.

9 THE COURT: Gracie will give you her e-mail.

10 THE CLERK: It's

11 Gracie.dawson@washocourts.US. And that's courts plural.

12 THE COURT: Any more housekeeping after we

13 get the exhibit list?

14 THE CLERK: No, Your Honor.

15 THE COURT: All right. Counsel, one of the

16 things that I always strive to do when I was a judge was

17 to make sure only one person talks at a time. It is

18 critical for the court reporter's purpose that only one

19 of us speak at a time.

20 If you need to make an objection, I certainly

21 understand. All you've got to do is stand up. I'm going

22 to know you're making an objection. I'll wait until

23 somebody finishes or the other person will pause, but

24 it's really important for Nicole's purposes that only one

Page 16

1 of us speak at a time.

2 Also, given the acoustics in this room which

3 remind me of the last courtroom I was in as a judge, the

4 sound is not very good. So it's critical that you use

5 your microphones. So I certainly appreciate the support

6 of Mr. Russo in assisting us in getting everybody miked

7 up and Gracie in helping us, but it's going to be really

8 important that you use those microphones.

9 If it turns out that somebody else on your

10 team needs to speak, please let them use the microphones

11 so we can make sure that we get them so you have an

12 accurate record for the next portion of your proceedings

13 which will be in front of the Nevada Supreme Court.

14 Also, it's really important you not have

15 personal attacks today. I know this is a contentious

16 case. I know we have contentious issue before me, but

17 that doesn't mean we can't all be professional. So I

18 encourage you to try and remember that as we're going

19 through this process without making any personal attacks.

20 If at any time someone who is not examining a

21 witness needs to get up and leave or go to the restroom,

22 take a phone call or just leave for the day, please feel

23 free to do it. It will not bother me. I do not take

24 offense. So if you want to get up and leave and it's not

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1 your witness, we'll see you later. If you have a mike

2 on, please leave the mikes here before you go the

3 restroom.

4 All right. Do I have any questions before I

5 go to my first real order of business of the day?

6 MR. MCELHINNEY: No questions, Your Honor.

7 THE COURT: You guys haven't tried a case in

8 front of me. Eisenberg has been in my courtroom many

9 times but you all haven't.

10 Any questions, Ms. Collings or Ms. Miller you

11 have of me about process?

12 MR. MILLER: No, Your Honor.

13 THE COURT: Okay. If you have any questions

14 during the day, I'd rather you ask so we can clarify it

15 right then instead of waiting three days later to try and

16 figure out what I meant when I said something because I

17 remember a lot better right when I said it than I will

18 three days later.

19 I anticipate we're going to have a tough time

20 getting this case done in the time we're allotted given

21 what I read in your trial briefs. Does anyone mind

22 starting at 8:30 for the rest of the mornings?

23 MR. MCELHINNEY: Fine with defense, Your

24 Honor.

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1 MR. MILLER: No objection, Your Honor.
2 THE COURT: Ms. Collings, is that okay with
3 you?
4 MS. COLLINGS: That's fine with me.
5 THE COURT: Mr. Eisenberg, I know you're not
6 planning to speak most of the time, but can we start at
7 8:30?
8 MR. EISENBERG: That's fine, Your Honor.
9 THE COURT: Gracie, is that okay with you,
10 and the court reporter?
11 THE CLERK: Yes.
12 THE COURT REPORTER: That's fine.
13 THE COURT: We will plan to start, Russo, at
14 8:30. I don't know if you're assigned for the whole week
15 or not, but we're going to try and start at 8:30 so we
16 can get through that.
17 If anybody needs a bathroom break and it's
18 your witness, just do this symbol to break or tell me:
19 Judge, I need to take a break, and then we're going to
20 take a break. There's not a jury here. I don't have to
21 worry about giving breaks and getting the jurors back.
22 I have two motions in limine that are
23 pending: One filed by defendant, one by plaintiffs.
24 I've read both. I don't need any defendant. The

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1 defendants' motion is denied. The plaintiffs' motion is
2 denied in part.
3 Ms. Kern may testify to the extent of her
4 declaration that was previously filed in this matter, but
5 since there are no reports or records like there would be
6 with a treating physician, she cannot go beyond the scope
7 of that declaration.
8 All right. So your opening, Mr. Miller.
9 MR. MILLER: Your Honor, I have a very brief
10 opening. The court granted the seven motions for order
11 to show cause pursuant to NRS 220.103 which applies to
12 disobedience or resistance to any lawful writ, order,
13 rule or process issued by the court or judge at chambers.
14 The evidence will demonstrate that the
15 contentious conduct can be reduced to four categories of
16 conduct that demonstrate a failure to cooperate with the
17 clear dictates of the orders.
18 The four areas of conduct that I believe
19 we'll be covering is one: The refusal to implement the
20 receiver's fees; two: Refusal to turn over the rental
21 proceeds; three: The unauthorized withdrawal from the
22 reserves and preparation of reserves; and four: Stopping
23 the rental activity of plaintiffs' units. Because of the
24 long duration of the pendency of the seven motions, there

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1 is overlap between the conduct as subsequent orders were
2 issued.
3 THE COURT: Which is why I set them all
4 together.
5 MR. MILLER: Thank you, Your Honor. So there
6 is some redundancy between the motions as subsequent
7 orders were granted. Importantly, contempt implies to
8 keywords that we'll probably hear over and over:
9 Disobedience or resistance to the orders, the appointment
10 order which is the January 7th, 2015 order which is
11 Exhibit 115 will no doubt be reviewed ad nauseam during
12 these proceedings.
13 That appointment order dictates that the
14 defendants shall cooperate and not interfere with the
15 receiver, so those buzzwords cooperate and not interfere
16 will ultimately probably be referred to repeatedly during
17 these proceedings.
18 The legal standard that the plaintiffs have
19 is to prove by clear and convincing evidence the
20 contempt. In the event that the contempt order claims
21 inability to comply with the orders, the contempt order
22 is to satisfy the burden by categorically showing in
23 detail why the contempt order could not comply or cannot
24 comply with the order. And our pretrial brief provides

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1 the case law for these statements, but I just wanted to
2 give the general legal background before we go forward.
3 In the words of the defendants, the issues in
4 these hearings is in quotes: "Whether the subject orders
5 were sufficiently clear and definite; two: If so,
6 whether defendants' compliance was possible; and three:
7 Whether defendants actually complied with the order."
8 And that's defendants' statements from their opposition
9 to motion for order to show cause dated April 19th, 2023.
10 Defendants -- we believe that the evidence
11 will demonstrate that the defendants have violated the
12 January 7th, 2015 appointment order, Exhibit 115; the
13 findings of fact conclusions of law, Exhibit 116; the
14 December 24th, 2020 order, which is Exhibit 119; five
15 orders issued on January 4th, 2020, which are Exhibits
16 120 to 124; the November 14th, 2022 order which is
17 Exhibit 126.
18 However, the court ordered that all of the
19 violations relate to the appointment order which again,
20 Your Honor, is Exhibit 115. Because we're going to
21 repeatedly look at this order, I would ask the court if
22 you could refer to Exhibit 115. At this point, can I
23 provide the court with the court's copies and --
24 THE COURT: That would be lovely.

<p style="text-align: right;">Page 22</p> <p>1 MR. MILLER: Thank you.</p> <p>2 THE COURT: And are these going to serve as</p> <p>3 the copy for the clerk for purposes of storing them</p> <p>4 forever?</p> <p>5 MR. MILLER: Yeah, there are two copies here:</p> <p>6 One for you, one for the clerk.</p> <p>7 THE COURT: Okay.</p> <p>8 MR. MILLER: Here in these binders are</p> <p>9 Exhibits 139 or -- sorry -- Exhibits 39 to 139. So they</p> <p>10 do not include the defendants' exhibits. Are you okay</p> <p>11 with that? I can bring yours up, Your Honor.</p> <p>12 THE COURT: I've got them. Were there more</p> <p>13 exhibits you guys need to give the clerks?</p> <p>14 MR. MCELHINNEY: Yes, Your Honor. If I may.</p> <p>15 MR. MILLER: Your Honor, while we're dealing</p> <p>16 with these exhibits, if it's okay with you, I would like</p> <p>17 to invoke the rule of exclusion as to any witnesses that</p> <p>18 are not client representatives. I do not believe that</p> <p>19 the rule of exclusion would apply to the receiver being a</p> <p>20 representative of the court.</p> <p>21 THE COURT: So I only have four witnesses, I</p> <p>22 think, that you guys are going to call, right ?</p> <p>23 MR. MILLER: We only plan on calling two,</p> <p>24 Your Honor.</p>	<p style="text-align: right;">Page 24</p> <p>1 115, which is the order appointing receiver and directing</p> <p>2 defendants' compliance. That document is file-stamped</p> <p>3 January 7th, 2015.</p> <p>4 And there are several sections of this</p> <p>5 document that I would like to go over with you this</p> <p>6 morning, Your Honor, because they set the background for</p> <p>7 the refusal to turn over the rents, the refusal to have</p> <p>8 the receiver calculate the fees, the mishandling of the</p> <p>9 reserves and stopping the rental of the units.</p> <p>10 Starting with page one, line 23, the document</p> <p>11 states: It is hereby ordered that pursuant to this</p> <p>12 court's October 3rd, 2014 order and NRS 32.01013 and 6,</p> <p>13 effective as of the date of this order, James Proctor,</p> <p>14 CFE, CVA and CFF receiver, shall be and is hereby</p> <p>15 appointed receiver over Defendant Grand Sierra Resort</p> <p>16 Unit Owners Association and the non-profit corporation</p> <p>17 GSR UOA.</p> <p>18 Not reading from the document, I think the</p> <p>19 court is aware that in approximately January of 2019,</p> <p>20 Mr. Teichner was substituted in for Mr. Proctor. So any</p> <p>21 of the dictates of this order that apply to James Proctor</p> <p>22 now apply to Mr. Teichner as receiver.</p> <p>23 Going back to the document, the next line at</p> <p>24 page one, line 27 says: The receiver is appointed for</p>
<p style="text-align: right;">Page 23</p> <p>1 THE COURT: The receiver, Ms. Kern, and I</p> <p>2 think the company representative over there.</p> <p>3 MR. MILLER: And Ken Vaughn, I believe,</p> <p>4 unless they do not --</p> <p>5 THE COURT: Is Ken Vaughn here?</p> <p>6 MR. MCELHINNEY: He is not here, Your Honor.</p> <p>7 We're not going to be calling him.</p> <p>8 THE COURT: Okay. So we don't need to invoke</p> <p>9 the exclusionary rule because everybody who is going to</p> <p>10 be called is here or is a lawyer.</p> <p>11 MR. MILLER: Yes.</p> <p>12 THE COURT: All right. Sorry. Did we get</p> <p>13 all of the exhibits that we needed to the clerk? Because</p> <p>14 she has to put stickers on them.</p> <p>15 MR. MCELHINNEY: Your Honor, I don't have a</p> <p>16 set for the clerk unless those are the exhibits that will</p> <p>17 be shown to the witness in which case --</p> <p>18 THE COURT: She is happy to have them be the</p> <p>19 witness set.</p> <p>20 MR. MCELHINNEY: Okay.</p> <p>21 THE COURT: You may continue, Mr. Miller.</p> <p>22 MR. MILLER: Thank you, Your Honor. So</p> <p>23 again, I believe the operative document in these</p> <p>24 proceedings are or the most pivotal document is Exhibit</p>	<p style="text-align: right;">Page 25</p> <p>1 purposes of implementing compliance among all condominium</p> <p>2 units including units owned by defendants in this action</p> <p>3 collectively, the property as a defined term with the</p> <p>4 covenants, codes and restrictions recorded against the</p> <p>5 condominium units, the unit maintenance agreement, and</p> <p>6 the original unit rental agreements. And those</p> <p>7 documents, we repeatedly refer to as the governing</p> <p>8 documents as defined herein, and they were attached as</p> <p>9 Exhibits 1, 2, and 3 to this order.</p> <p>10 Going down to page two, line 14, states:</p> <p>11 It is further ordered that defendants MEI-GSR</p> <p>12 Holding, LLC and Gage Village Commercial shall cooperate</p> <p>13 with the receiver in accomplishing the terms described in</p> <p>14 this order. It is further ordered that to enforce</p> <p>15 compliance with the governing documents, the receiver</p> <p>16 shall have the following powers and responsibilities and</p> <p>17 shall be authorized in their powers to do one general A:</p> <p>18 To review and/or take control of specifically, and then</p> <p>19 the next portion states: All records, correspondence,</p> <p>20 insurance policies, books, accounts relating to the</p> <p>21 property which refer to the property, any ongoing</p> <p>22 construction and improvements of the property, and then</p> <p>23 this is important -- the rents as stated in that portion</p> <p>24 of the documents as rents will come up repeatedly through</p>

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1 this document.

2 Next going to page three, line 15, and this

3 is under the same general powers to take control. It

4 states: All accounts receivable, payments, rents, again,

5 including all statements and records of deposit, advances

6 and pre-paid contracts or rents again, if applicable,

7 including any deposits with utility and/or government

8 entities relating to the property.

9 Next turning to page five, lines 17 to 19,

10 under the powers of the receiver for collection, it

11 states: To demand, collect, and receive all dues,

12 fees -- this is very important -- reserves, rents, and

13 revenues derived from the property.

14 Next turning to page six, lines 11 to 14,

15 it's titled, Receiver Funds Payment Disbursements. A:

16 To pay and discharge out of the property's rents, again,

17 a defined term, and/or GSR monthly dues, collections, all

18 the reasonable and necessary expenses of the receivership

19 and the costs and expenses of operation and maintenance

20 of the property. So Mr. Teichner's payments pursuant to

21 this document pursuant to this order and the court's

22 subsequent orders were to be derived from the rents.

23 Turning to page eight, lines 1 through six,

24 titled, "Order in Aid of Receiver", it is further ordered

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1 defendants and their agents, servants and employees and

2 those acting in concert with them and each of them shall

3 not engage in or perform directly or indirectly any or

4 all of the following acts. A: Interfering with the

5 receiver directly or indirectly in the management or

6 operation of the property.

7 Going further down on page eight, starting at

8 line 16 and again, this is another critical provision.

9 It is further ordered that the defendants and any other

10 person or entity who may have possession, custody and

11 control of any property including any of their agents,

12 representatives, assignees of employees, shall do the

13 following.

14 And if you go to E, which starts on page

15 nine, lines one to two, it specifically states: Turn

16 over to the receiver all rents, dues, revenues -- I'm

17 sorry -- reserves and revenues derived from the property

18 wherever and whatsoever mode maintained. That provision,

19 we believe that the plaintiffs show, is repeatedly

20 violated by the evidence or we believe the evidence shows

21 that that provision is repeatedly violated or has been.

22 Again, Your Honor, we'll be looking at the

23 refusal to implement the receiver's calculated fees, the

24 refusal to turn over the rents, mishandling the reserves,

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1 and failure to rent units or the plaintiffs' units.

2 Each motion for order to show cause has

3 numerous exhibits that were attached by the plaintiffs as

4 evidence in support of the claimed violations. I'm just

5 going to touch on a few items of evidence for each motion

6 for order to show cause which we believe summarily

7 demonstrate the contempt in this action.

8 And for all intents and purposes, Your Honor,

9 with each witness and as I go through any of the evidence

10 in this case, my intent is to start with the oldest

11 motion and work from that date, November 27th, 2021, all

12 the way towards the most recent motion chronologically

13 seems to be the most simple to me, so I'm just going to

14 try not to jump around.

15 So with regard to the 9-27-21 motion for

16 order to show cause, Exhibit 42 thereto is an email from

17 Ms. Sharp to the judge at the time, and it states:

18 Defendant sent the reserve studies -- some additional

19 language in there that isn't really relevant -- before

20 these documents were reviewed by the receiver

21 notwithstanding the direct request from the receiver,

22 counsel, the undersigned, that they not do so. In

23 quotes. Defendants have expressed their opposition that

24 the receiver does not have authority to interfere with

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1 the determination of the reserves.

2 With regard to the second motion for order to

3 show cause, which was filed November 19th, 2021, Exhibit

4 119 thereto or Exhibit 119 in the record is the court's

5 December 24, 2020 order, and it states in there, in

6 quotes: Receiver shall recalculate the DUF, the hotel

7 expense fees, shared facilities fees to include only

8 those expenses that are specifically provided in the

9 governing documents.

10 Exhibit 64, which was Exhibit 1 to the

11 underlying briefing, Exhibit 64 in these hearings is a

12 receiver letter to the court stating the impropriety of

13 the special assessment not informing the -- discusses not

14 informing the receiver about the special assessment, and

15 then it states in quotes, "Defendants have implemented a

16 budget for 2022 and sent the notices of the 2022 fee

17 units to the unit owners without having informed the

18 receiver until after the fact."

19 The third motion for order to show cause

20 dated February 1st, 2022, there's an email to that or an

21 exhibit attached to that motion which is Exhibit 68 to

22 these proceedings, and it's an email from Ms. Stefanie

23 Sharp, the defendant's counsel, confirming the actions of

24 the defendants.

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1 THE COURT: She's the receiver's counsel?
2 MR. MILLER: Yes, the receiver's counsel.
3 THE COURT: Thank you.
4 MR. MILLER: Confirming that the actions of
5 the defendants were not authorized and in her opinion
6 violated the court's order. Motion for order to show
7 cause dated April 25th, 2022 is an e-mail or Exhibit 76
8 to that motion is an email from Ms. Stefanie Sharp which
9 indicates that the receiver did not approve the applied
10 fees and that nothing can be done because no rents have
11 been turned over to the receiver.
12 The fifth motion for order to show cause
13 dated December 28th, 2022, demonstrates that despite the
14 recent issuance or the issuance of the court's January
15 4th, 2022 order approving receiver's fees, the courts
16 November 14th, 2022 order denying reconsideration of the
17 January 4th, 2022 orders, Exhibit 82 demonstrates that
18 the defendants applied their own fees regardless
19 disregarding the fees approved by the court.
20 With regard to the sixth motion for order to
21 show cause dated December 29, 2022 which concerns the
22 issuance of the defendants issuing a new reserve study
23 and a \$44 million-dollar special assessment, Exhibit 91
24 in the record demonstrates that Ms. Sharp, counsel for

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1 the receiver, confirmed that the receiver did not approve
2 the reserve study.
3 And then the seventh and most recent motion
4 for order to show cause which is dated May 2nd, 2023,
5 Exhibit 102 therefore is an email from defense counsel
6 confirming that the units would continue to be rented,
7 but the monthly statements thereafter after the exhibit,
8 the first one being Exhibit 103, demonstrate that there
9 was no rental activity of the units, that the defendants
10 had stopped renting the units.
11 And again, Your Honor, there's multiple
12 exhibits to each motion, but those are just some of the
13 key exhibits that demonstrate a lack of cooperation and
14 interference with the receivership.
15 Your Honor, at the end of this proceeding, we
16 are going to ask that the defendants be held in contempt
17 of court pursuant to NRS 22.100 which provides that if a
18 person is found guilty of contempt, a fine may be imposed
19 on the person not exceeding \$500 or the person may be
20 imprisoned not exceeding 25 days or both.
21 We would submit to the court that the \$500
22 fine, given the economy of scale in this case would have
23 no meaning, that only the imposition of imprisonment
24 would serve a purpose in this case. And we will ask the

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1 court at the end of this case to issue a warrant for the
2 25 days imprisonment.
3 As the case law suggests, the parties in
4 civil contempt hold the keys to their own jail cell
5 meaning we believe that the court's order of imprisonment
6 should be contingent on the defendants' continued failure
7 to comply with the court's orders.
8 We would ask that the court order the
9 imprisonment not occur so long as one: Funding of all
10 amounts taken from the reserves in the last three years
11 be deposited into an account exclusively controlled by
12 the receiver within ten days; two: The immediate and
13 continued turnover to the receiver on a daily basis of
14 all incoming gross rents for plaintiffs' and defendants'
15 units, and three: The prompt, within five days of the
16 receiver's demand application of all fees, reserves as
17 directed and determined by the receiver on the outgoing
18 monthly statements.
19 And again, we believe that the law supports
20 that the court can issue an order requiring those things,
21 and if they do not occur under the timetable set by the
22 court not -- and my time tables are just suggestions --
23 that the warrant be issued for the 25-day imprisonment
24 of.

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1 THE COURT: So, Mr. Miller, I'm going to stop
2 you for a second. Assume I agree with you and that I
3 think the \$500 is probably, under the circumstances of
4 this particular case, has absolutely no impact in
5 changing conduct. How on earth am I going to put a
6 corporate defendant in jail?
7 MR. MILLER: We provide the case law to
8 support putting the corporate defendant in the jail. It
9 is in our trial statement and we cite --
10 THE COURT: I've got it. I understand that.
11 MR. MILLER: Yeah. So the records in the
12 State of Nevada demonstrate that Mr. Alex Murillo is the
13 manager of the defendant entities. We have deposition
14 transcript from Mr. Alex Murillo demonstrating that he is
15 the ultimate decision maker. We believe that likely,
16 Mr. Brady's testimony will confirm that Mr. Murillo is
17 the ultimate decision maker.
18 The case law that we've submitted in
19 connection with our trial brief supports that the
20 decision maker of an entity is the person who is
21 responsible for contemptuous actions, but we may, through
22 these proceedings, learn that some other corporate
23 employee was the decision maker that required the
24 contentious or ordered the contemptuous conduct. But the

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1 court absolutely has authority to hold the decision maker
2 for the corporate entity responsible for the
3 imprisonment.
4 THE COURT: Okay. And you're also entitled
5 to any attorneys' fees related to all of your motions
6 related to applications for order to show cause; correct?
7 MR. MILLER: Yes, Your Honor.
8 THE COURT: If you're successful.
9 MR. MILLER: There is an issue there, Your
10 Honor.
11 MR. SMITH: Your Honor, I didn't hear your
12 last comment.
13 THE COURT: You're also entitled to all of
14 the attorneys' fees related to the contempt proceedings,
15 because that's what the statute was amended to because
16 everybody was frustrated about it. How many years ago,
17 Mr. Smith? Ten years? Fifteen that they amended the
18 statute?
19 MR. SMITH: Sounds about right, Your Honor.
20 MR. MILLER: Yes, Your Honor. There are
21 significant issues there that would need to be discussed
22 if that was the court's remedy given that we've already
23 moved and been awarded attorneys' fees for many of these
24 much of the briefing that occurred pursuant to the

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1 court's recent orders, and then we believe we're entitled
2 to our attorneys' fees under the provisions of the
3 contracts. So the award of attorneys' fees in connection
4 with these proceedings is also about as meaningful as the
5 \$500 fine.
6 THE COURT: Okay.
7 MR. MILLER: But, yeah. I guess we'll
8 address those if we get there, right?
9 THE COURT: That is correct. If I find there
10 are clear and unambiguous orders that have been violated
11 and we get there.
12 MR. MILLER: Yes. Thank you, Your Honor.
13 Your Honor, I could read you the case law now that
14 relates to these.
15 THE COURT: Please don't.
16 MR. MILLER: Yeah. Okay. Thank you.
17 Finally, Your Honor, as you're aware, the
18 parties have stipulated to the admissibility of all of
19 the exhibits that were attached to the underlying motion
20 practice. All of those exhibits are evidence that can be
21 considered by the court in its ruling, we believe, and we
22 are hopeful that that will serve to expedite these
23 proceedings. And we appreciate your taking over this
24 monumental task of going through all of these motions.

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1 THE COURT: Thank you.
2 Mr. McElhinney? Please remember to use your
3 microphone.
4 MR. MCELHINNEY: Your Honor, may I approach
5 the podium?
6 THE COURT: You may.
7 MR. MCELHINNEY: And as I recall, I get
8 feedback as I walk up to it, so bear with me.
9 THE COURT: There's also, if you don't want
10 to use that lectern, there's one of the smaller ones that
11 you can move around if that's easier for you.
12 MR. MCELHINNEY: That would be great. Thank
13 you.
14 THE COURT: Okay. Thank you. And do have
15 your lapel mike is on?
16 MR. MCELHINNEY: I do.
17 THE COURT: All right.
18 MR. MCELHINNEY: Your Honor, this is a trial
19 that involves seven separate motions for order to show
20 cause. Those seven motions span nearly two years. That
21 creates challenges in and of itself. The earliest was
22 filed September 27th, 2021; the most recent filed May 10,
23 2023, and that was the supplement. And that's a
24 challenge because we had, during the course of that time,

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1 not only new judges but we had changed circumstances and
2 we had new orders coming in, some of which were not
3 addressed in the early motions, some of which were
4 addressed in the later motions.
5 The subjects addressed in the seven motions
6 include plaintiffs' allegations that defendants refused
7 to hand over net rental income often using the term,
8 "total rent" in reference to net rental income; recently,
9 a demand that we hand over gross rental income, refusal
10 to withdraw alleged unauthorized independent third-party
11 reserve studies and special assessments.
12 The plaintiffs have alleged that we've
13 applied allegedly inflated excessive fees and costs in
14 violation of the governing documents in violation of
15 court orders. That's why we felt it was so important to
16 have Ms. Kern's testimony here today to demonstrate to
17 Your Honor that our calculations are not excessive,
18 they're not inflated, and they're not in violation of the
19 governing documents, allegations that we made
20 unauthorized withdrawals from reserve accounts that
21 include reimbursements for capital expenditures, not
22 allowed them the governing documents according to the
23 allegations of plaintiffs.
24 And then in plaintiffs' supplement filed most

<p style="text-align: right;">Page 38</p> <p>1 recently, I believe that was the May 10th document, 2 plaintiffs, rather than seeking to hold defendants in 3 contempt to failure to hand over net rent, now ask the 4 court to hold defendants in contempt for not handing over 5 gross rent now that the receiver after 16 months has 6 finally opened a separate account after he was ordered to 7 do so January 4th, 2022.</p> <p>8 Most recently is the May 2nd, 2023 motion. 9 Plaintiffs allege that the court's December 5, 2022 order 10 obligated defendants to continue to rent the plaintiffs' 11 former units even after recordation of the agreement to 12 terminate the condominium-hotel that expressly based upon 13 recordation February 28th, 2023 terminated the 14 condominium-hotel and even the court having declared that 15 pursuant to NRS 116.2118, Subparagraph 1, that the 16 respective interest of the unit owners and their former 17 units are the fair market value of those former units.</p> <p>18 Procedural law, I don't think there's a 19 dispute. Under NRS 22.010, plaintiff has the burden of 20 showing by clear and convincing evidence that defendants 21 violated specific and definite orders of the court. Any 22 findings of contempt must be grounded upon defendants' 23 disobedience of an order that spells out in detail in the 24 details of compliance and they have to be clear,</p>	<p style="text-align: right;">Page 40</p> <p>1 instructions to receiver written by plaintiffs, Exhibit 2 23; the order entered December 5, 2022, which I believe 3 is the order that Your Honor has been referring to as the 4 dissolution plan; the order entered March 14th, 2023 5 granting receiver's motion for instructions regarding 6 termination of the GSR UOA.</p> <p>7 We're going to be -- during the course of the 8 trial, we're going to be looking at the conflicting 9 language and ambiguity in one or more of those orders. 10 We will necessarily be looking at the conflicting and 11 ambiguous language that appears in at least one instance 12 language that the plaintiffs admitted in their motion 13 practice would cause a glaring issue of what fees would 14 be applied. And yet they now insist that there's no 15 inconsistency, that the orders can be read in harmony 16 with one another.</p> <p>17 We have argued one of these motions already 18 on May 24th, 2022 in front of Justice Saitta, and we'll 19 be talking about that transcript. That is an exhibit 20 that we'll be discussing with the court. This is 21 something that the plaintiffs in their trial statement 22 have dismissively referred to as defendants' continued 23 tired ambiguity argument.</p> <p>24 I think we'll demonstrate during this trial,</p>
<p style="text-align: right;">Page 39</p> <p>1 specific, and unambiguous terms so that defendants will 2 readily know exactly what duties or obligations are being 3 imposed upon them.</p> <p>4 The key orders that we will be looking at, 5 Your Honor -- and drawing Your Honor's attention to are 6 the order appointing the receiver, which is our Exhibit 7 6. Mr. Miller is referring to his own exhibit. They are 8 identical in their content. That order was written in 9 its entirety by plaintiffs' counsel. And I'm going to 10 mention that on a couple of occasions.</p> <p>11 I know there's nothing wrong with asking an 12 attorney to prepare a proposed order and submit it to the 13 court, but I submit that the orders that have been 14 prepared by Mr. Miller's office have often been confusing 15 or conflicting with one another which goes right to the 16 heart of the issue of contempt in this matter.</p> <p>17 We'll be looking at the order granting 18 receiver's motion for orders and instructions. That's 19 Exhibit 25 in our exhibit books, order approving the 20 receiver's request to approve updated fees, that is 21 Exhibit 36 in our exhibit book, order granting 22 plaintiff's motion to stay special assessment -- that is 23 Exhibit 27 -- all of which were written by the plaintiffs 24 by the way -- order granting plaintiffs' motion for</p>	<p style="text-align: right;">Page 41</p> <p>1 Your Honor, that there are ambiguities, that the 2 plaintiffs knew about the ambiguities, and now they are 3 falsely claiming that these orders can be read in harmony 4 with one another.</p> <p>5 The governing documents we're going to be 6 proceeding necessarily to look at those documents 7 regarding the rights and obligations of the parties under 8 the governing documents and what fees and charges are 9 permitted under the governing documents.</p> <p>10 The December 24, 2020 order makes it clear 11 that the receiver does not have discretion to deviate 12 from the governing documents and any expenses included in 13 the fees charged under the governing documents including 14 DUF hotel expense and shared facility unit expense must 15 explicitly track the governing documents. That is in -- 16 That's our Exhibit 10, page two, lines 21 through 24.</p> <p>17 While the court approved the receiver's 2021 18 fee calculations, there is no finding that the receiver's 19 2021 fee calculations are in compliance with the 20 governing documents. He has also been ordered to prepare 21 2020 fee calculations for the shared facility unit 22 expense, hotel expense and reserves and DUF. He has not 23 done that. He was ordered to continue to calculate these 24 costs for 2022 and 2023.</p>

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1 Under the governing documents that he is to
2 assure implementation with, the evidence will show that
3 he had to do true-ups for 2021. Once you do the
4 calculations at the end of the year, you have to do a
5 true-up, and Mr. Brady will tell us the essential nature
6 of that and why it's important and business necessity to
7 carry out those functions.

8 This is necessary as plaintiffs have alleged
9 repeatedly in their motions for order to show cause that
10 and even in their trial statement that we have imposed
11 inflated fees that are indisputable proof of defendants'
12 violation of the orders of the court, that the defendants
13 have overcharged fees to plaintiffs in violation of the
14 governing documents, that defendants rogue calculating
15 and implementing drastic fee increases upon plaintiffs is
16 an absolute violation of court orders, and these
17 contemptuous actions are thus worthy of sanctions.
18 That's a quote from their trial statement at page 18,
19 line 7 through ten.

20 That's why it is so important that we spend
21 time with the governing documents, make a determination
22 of exactly what fees and costs are allowed in order that
23 we can defend against these allegations of our alleged
24 rogue calculations and implementing drastic fee

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1 increases.

2 Seventh amended CC&R's. These are covenants
3 that run with the land. I think Your Honor observed that
4 in one of your recent orders. It literally defines the
5 unit owners' interest in the property. Unit owners at
6 all times hold their interests in the units subject to
7 the rights, easements, privileges and restrictions set
8 forth in the Seventh Amended CC&R's. That is the Seventh
9 Amendment CC&R's is our Exhibit 1. I'm referring to page
10 D1 and page two.

11 The CC&R's define the unit owners' rights to
12 use the common elements, the public shared facilities
13 including easements for the use and enjoyment of the
14 facilities, and the fees and costs and use charges for
15 which they are responsible for easements and facilities
16 not only within the shared facilities unit, but in the
17 entire parcel as well.

18 The unit maintenance agreement defines our
19 DUF and the elements that go into the DUF. It
20 establishes the services to be provided by MEI-GSR to the
21 unit owners. The 2007 unit rental agreement defines the
22 agreement between the unit owners and MEI-GSR.

23 When you look at that document -- and I
24 believe that's Exhibit 2 in our list of exhibits -- it

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1 refers to company. I don't think there's a dispute. The
2 evidence will show that we never sold any of these units,
3 MEI-GSR never sold any of these units. These units were
4 all sold by our predecessor before we came on board. But
5 we substituted into the agreements so when you see the
6 referenced company, that is a reference to MEI-GSR.

7 Under the terms of the unit rental agreement,
8 until MEI-GSR has the sole and exclusive right to rent
9 the units to the unit owners who voluntarily entered into
10 the rental agreements and it defines the manner in which
11 the rental income is to be calculated and distributed by
12 MEI-GSR.

13 The evidence will show you that the GSR UOA
14 over whom the receiver is appointed has absolutely
15 nothing to do with the unit rental agreement or the unit
16 maintenance agreement. We'll review the court's orders
17 that address the governing documents expressly stating
18 that the receiver does not have discretion to deviate
19 from the governing documents and ordering that
20 specifically that the Seventh Amended CC&Rs may not be
21 modified in any manner as long as the receiver is in
22 place.

23 I submit to you that court orders have
24 modified the governing documents by placing the GSR UOA

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1 in control of functions that were solely and exclusively
2 the function of MEI-GSR. And in the process of doing so,
3 they violated the other statements in the orders saying
4 that these governing documents in the Seventh Amended
5 cannot be modified.

6 We're going to be looking at emails and
7 letters to the court and between the parties. We'll be
8 reviewing receivers and his counsel's letters and email
9 to the court as well as plaintiffs' counsels' emails to
10 me, Ms. Sharp, as set forth and captures their
11 understanding of the orders and what those orders require
12 the defendants to do.

13 We're going to be looking at hearing
14 transcripts. We'll review court transcripts wherein the
15 court expresses confusion and disagreement with
16 plaintiffs' interpretation of what Mr. Miller has
17 identified as probably the most important order in this
18 case -- that's the January 7th, 2015 order appointing
19 receiver, an instance wherein Justice Saitta refused to
20 follow plaintiffs' interpretation of that order wherein
21 Mr. Two, who was with plaintiffs' counsel at the time,
22 was arguing that the January 7th, 2015 order immediately
23 displaced the board and turned the entire control of the
24 UOA over to the receiver.

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1 Justice Saitta instead concluded that while
2 -- and this is reflected in the transcript -- that while
3 Mr. Teichner may attend the board meetings, there was no
4 order that prevented the existing board to operate its
5 own business. That's Exhibit 13. That was a July 2nd,
6 2021 hearing. The significance being that the judge was
7 confused about the order, so if it was so clear, why
8 would she be confused? And we'll talk about reasons for
9 that in the course of the trial.

10 We'll be looking at Nevada law and its impact
11 on one or more of the orders. Why? Because it goes to
12 my client's understanding of the contents of the orders,
13 the receivership and receivership property is defined by
14 Chapter 32 that defines the powers and duties of the
15 receiver and what constitutes receivership property.

16 We'll review plaintiffs' arguments wherein
17 they claim that the January 7th, 2015 order appointing
18 the receiver appointed him over the GSR UOA and certain
19 defendants' assets. I think that's an interesting
20 concept, but I don't find it supported anywhere in Nevada
21 law.

22 We'll be looking at the motion that the
23 plaintiffs filed in their application for appointment of
24 a receiver. Now in their complaint, they ask for the

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1 appointment of the receiver only over the GSR UOA. In
2 their motion -- and we'll look at it carefully -- they
3 ask for the appointment of the receiver over the GSR UOA
4 and MEI-GSR Holdings. And they say in a paragraph: We
5 need him appointed over that entity so we can control the
6 rents.

7 I wasn't around when the order was issued. I
8 don't want to speculate, but I think it's made a pretty
9 good summary that Judge Sattler would not grant the
10 appointment of the receiver over the MEI-GSR because it
11 had not been requested in the plaintiffs' complaint.

12 So what we have is a motion by the plaintiffs
13 admitting that in order to control the rent, they need to
14 have the receiver appointed over the MEI-GSR. That is
15 declined, and yet they're still claiming that they have
16 power over rent that does not belong to the GSR UOA.

17 We'll also be looking at live testimony,
18 listening to live testimony. I concede -- Well, it is
19 the very first time defendants have been allowed to
20 present testimony. I mean, this has been more than a
21 ten-year proceeding, and I think with one side silenced
22 and the other side is the only one presenting the
23 evidence, I think that becomes a real burden for the
24 parties and for the court.

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1 I believe the evidence will show that in
2 fact, defendants' fees are accurate. They're being
3 applied consistent with the governing documents and
4 pursuant to court orders. I believe the evidence will
5 show that these fees are not hyperinflated nor in
6 violation of governing documents.

7 I believe the evidence will show that we
8 never refused to turn over the court-ordered net fees to
9 the receiver, rather the receiver, by his own admission,
10 failed and refused to calculate the net rental income and
11 never completed his 2020 fee calculations as ordered by
12 the court in Exhibit 25 which is the order granting
13 receiver's motion for orders and instructions.

14 The evidence will show that when the receiver
15 refused to carry out his court-ordered obligations to
16 order and oversee independent third-party reserve
17 studies, defendants were compelled to carry out that
18 function in his place as required by the express terms of
19 NRS -- sorry -- express terms of the Seventh Amended
20 CC&R's which the receiver himself was supposed to
21 implement. And we further had to carry out those actions
22 as a matter of business necessity as I had mentioned
23 earlier.

24 I believe the evidence will show that the

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1 category of expenses included in the reserve study and
2 our calculations of DUF, the daily use fee shared hotel
3 and unit expense, do not exceed the categories allowed
4 under the Seventh Amended CC&R's.

5 And we will spend time talking about why
6 defendants performed the mandatory functions of the
7 governing documents to be carried out.

8 Finally, we'll examine whether the receiver
9 has actually reviewed an properly implemented the express
10 terms of the governing documents that he has been ordered
11 to do. A couple of words of caution. I guess objection
12 more like it. Plaintiffs cannot seek supplemental
13 damages in a contempt hearing. And I think that's, you
14 know, they --

15 THE COURT: We all know that.
16 MR. MCELHINNEY: Okay.
17 THE COURT: We all know that.
18 MR. MCELHINNEY: I guess my --
19 THE COURT: It's very detailed in the statute
20 and limited to what is going to be awarded as part of a
21 contempt proceeding.

22 MR. MCELHINNEY: Very well, Your Honor. So
23 my concern there being this isn't the time or place to be
24 saying we want our disgorged funds as part of the

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1 contempt proceedings. Those are damages. And you're
2 aware of our position. I mean, we --

3 THE COURT: I am aware of your position.

4 MR. MCELHINNEY: Compensability damages were
5 awarded quite some time ago. Additionally, I see and
6 heard today that plaintiffs seek affirmative relief from
7 the court that is not set forth -- that is not
8 appropriate under the contempt proceedings.

9 They're asking that the receiver open an
10 account to be controlled exclusively by the receiver and
11 that all gross rents for the plaintiffs and defendants
12 units be turned over to him. That is affirmative relief
13 that would have to be sought by separate motion that
14 wouldn't be an appropriate award in these proceedings. I
15 believe that's all I have, Your Honor. I appreciate your
16 time. Thank you.

17 THE COURT: Thank you. Does anyone need a
18 break before begin with witnesses?

19 MR. SMITH: Your Honor, I would like a
20 two-minute break, if we can.

21 THE COURT: Yes, we may have a short recess.
22 We'll be in recess for five minutes.

23 (Recess.)

24 THE COURT: I've been asked to remember to

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1 use my microphone, so I'm going to use my microphone.
2 First witness?

3 MR. SMITH: All actually, Your Honor, if I
4 may before we get started with the evidence, you
5 mentioned the next possible step for all of the parties
6 here is heading over to Carson City on appeal.

7 THE COURT: It is not the next possible step.
8 You're already in that step, Mr. Smith. The Supreme
9 Court has issued an order to show cause whether you're
10 really supposed to be there or not, so of course.

11 MR. SMITH: That is right. We're already
12 there. I think we should be there, but we'll certainly
13 be there again once this proceeding is over with.

14 And so at this point, particularly in light
15 of the court's ruling on plaintiffs' motion in limine
16 with regard to Ms. Kern, there's an additional objection
17 possibly even if it should be more properly considered a
18 motion in limine as well with regard to plaintiffs'
19 evidence, and that is if I understand Your Honor's ruling
20 on this motion to limine related to Ms. Kern is that
21 Ms. Kern and the defense are limited to presenting facts
22 in Ms. Kern's declaration. So separate and apart from --

23 THE COURT: That's because the brief said
24 it's like a treating physician. She can be a percipient

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1 witness. But when we have treating physicians, we have
2 their records. So it's very difficult, Mr. Smith.

3 MR. SMITH: So it's Your Honor's ruling that
4 if she's not offering expert testimony, she can offer
5 facts outside of her declaration.

6 THE COURT: No. She is limited to her
7 declaration.

8 MR. SMITH: And that is the basis for my
9 objection with regard to the plaintiffs' evidence. If
10 the defense in a show cause hearing is prevented from
11 showing all of the facts to show cause outside of the
12 declarations then the plaintiffs must also be precluded
13 from offering any facts or evidence outside the terse
14 facts they've put in their declarations to get this
15 contempt proceeding in motion in the first place.

16 So separate and apart from the jurisdictional
17 arguments we made in our motion to limine, which I
18 understand Your Honor denied, they should also similarly
19 be limited to offering any facts outside of those
20 declarations.

21 The declarations, as we've argued, contain
22 very little factual information and certainly not
23 sufficient facts to invoke contempt in the first place.
24 And so if Ms. Kern and the defense are limited to the

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1 facts offered in their declarations, the same ruling must
2 apply to the plaintiffs. They should be limited likewise
3 to the facts set forth in their declarations,
4 particularly when there are other problems with their
5 declarations that we outline mostly in our reply brief in
6 support of our motion in limine, for example, the
7 September 27th, Mr. Miller's declaration is not submitted
8 under penalty of perjury. The November 19th, 2021
9 declaration also not submitted under penalty of perjury.
10 February 1st, 2022 declaration is not signed before a
11 justice, judge or clerk of the court or any other justice
12 of the peace or notary. And that's not submitted under
13 penalty of perjury. And likewise the April 25th, 2022
14 declaration is not submitted under penalty of perjury.

15 So these are deficient declarations in the
16 first place in the middle of facts that are in there to
17 begin with are not competent. So I'm just asking for the
18 same ruling to be applied to the plaintiffs that Your
19 Honor applied to the defense.

20 THE COURT: I understand your position,
21 Mr. Smith.

22 Would you like to respond, Mr. Miller?

23 MR. MILLER: Yes, Your Honor. Plaintiffs
24 intend to solicit testimony that perfectly tracks the

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1 underlying motion practice; the declarations that were
 2 submitted, the affidavits that were submitted, the
 3 hundred or approximately hundred exhibits, many of which
 4 are exchanges with the receiver and the receiver's
 5 counsel.

6 The defendants have no due process argument
 7 here. The briefing is very thorough. All of the
 8 exhibits are referenced in the declarations affidavits.
 9 The defendants did, at the last minute last night, make
 10 new arguments that the declarations were or affidavits
 11 were insufficient. However, in doing so, they cited Awad
 12 versus Wright 106 Nev. 407 which that case specifically
 13 states here: NRS 220.302 specifically requires an
 14 affidavit be submitted at the contempt proceeding.

15 So any alleged deficiencies that they hail
 16 Mary claim the night before the proceeding have been
 17 resolved as a result of the affidavits, the amended
 18 affidavits that we filed last night which track perfectly
 19 the pleadings filed in connection with the underlying
 20 motions and the declarations.

21 So our position is, Your Honor, all of these
 22 issues that we intend on soliciting or all of the
 23 evidence we intend to begin soliciting, as you'll see
 24 from my examination of the witnesses, is going to track

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1 the exhibits that were submitted in this case. And I
 2 also, I mean, this is an attempt to reargue the motions
 3 in limine that the court's already ruled on.

4 THE COURT: Mr. Smith, anything else?

5 MR. SMITH: Yes, Your Honor. On that last
 6 point, we're not rearguing the last motion in limine that
 7 Your Honor denied. That was a jurisdictional argument.
 8 This was an evidentiary argument.

9 And you heard Mr. Miller saying what he
 10 intends to do is offer evidence that tracks the motion
 11 practice and the exhibits. Well, that directly conflicts
 12 with Nevada Supreme Court precedent.

13 I would point Your Honor to the Awad case.
 14 And here's what Awad case says. Quote, "Where the
 15 affidavit fails to allege all essential material facts, a
 16 deficiency cannot be cured by proof at a hearing."
 17 So the declarations that they've offered for
 18 an order to show cause are deficient of facts, they can't
 19 go beyond that at this hearing. The argument that
 20 Mr. Miller's argument that you can do it now directly
 21 conflicts with the law, so therefore, he should be
 22 precluded from offering any facts or evidence to bolster
 23 or supplement facts that are found nowhere in the
 24 deficient affidavits.

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1 THE COURT: The motion is denied. The
 2 witness? Who are our witness?

3 MR. MILLER: Your Honor, the plaintiffs would
 4 like to call Mr. Teichner.

5 THE COURT: Mr. Teichner, if you would come
 6 first, please.

7 Sir, if you'd raise your right hand, please.
 8 (The witness was sworn.)

9 THE COURT: You may be seated, sir. So if we
 10 could get the witness set of binders over to him. Who
 11 has the witness set of binders?

12 MR. MILLER: I believe we provided two
 13 copies; is that correct? I understand the clerk's copies
 14 will be used for the witness.

15 THE COURT: Okay. So which exhibit binders
 16 would you like the witness to have so I can carry them
 17 over there to him or do you want to carry them?

18 MR. MILLER: Either way. 39 through 120, I
 19 believe, or 130. It's those two binders.

20 THE CLERK: Thank you.

21 MR. MILLER: I'm not sure if you heard her
 22 instruction, Mr. Teichner, but she indicated that none of
 23 the documents can be removed from these binders. So as
 24 you refer to them, just make sure they stay in the

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1 binder.

2 THE WITNESS: Sure.

3 THE COURT: And don't write on any of them.
 4 If you need a Post-It note to mark something or write
 5 something down, let me know and I'll get you one.

6 THE WITNESS: We okay.

7 MR. MILLER: And then every document I'm
 8 going to refer to, I'm going to refer to it by as either
 9 39 through 139, and you just look at that number.

10 THE WITNESS: Sure.

11

12 DIRECT EXAMINATION

13 BY MR. MILLER:

14 Q Mr. Teichner, you've been appointed as
 15 receiver in this action; is that correct?

16 A Yes.

17 Q And you're still the receiver in this action?

18 A Yes.

19 Q And have you continuously been the receiver
 20 since approximately January of 2019?

21 A Correct.

22 Q Are you familiar -- Let me have you look at
 23 Exhibit 115.

24 A 115?

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1 Q Yes.

2 A I have it.

3 Q Exhibit 115 is the order appointing receiver

4 and directing defendants' compliance. Is that the

5 document that you have in front of you?

6 A Yes.

7 Q Okay. And do you understand that that's the

8 document that primarily dictates the terms of your

9 receivership of you being the receiver in this action?

10 A Yes.

11 Q So have you referred to this document many

12 times?

13 A Yes.

14 Q Do you feel comfortable with the document?

15 A Yes.

16 Q Understanding its terms? Okay. This

17 morning, I slowly read into the record -- probably at the

18 annoyance of the court and everybody -- the portions of

19 this critical document. Was there anything that I read

20 into the record that you didn't understand?

21 A No.

22 Q Okay. And can I summarize that you as

23 receiver are in charge with implementing compliance with

24 the governing documents?

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1 A Yes.

2 Q And you understand that the governing

3 documents are the CC&Rs?

4 MR. MCELHINNEY: Objection, Your Honor.

5 Leading the witness.

6 THE COURT: Can you rephrase your question?

7 Q (BY MR. MILLER:) What are governing

8 documents, Mr. Teichner?

9 A CC&R's, the rental unit agreement. There's

10 the maintenance agreement.

11 Q Okay. Thank you, Mr. Teichner. Do you

12 understand that as receiver, you have been charged with

13 or empowered to control the reserves and the rents?

14 MR. MCELHINNEY: Objection, leading the

15 witness.

16 THE COURT: Can you rephrase your question,

17 please.

18 Q (BY MR. MILLER:) Your Honor, or

19 Mr. Teichner, can I have you refer to page five of the

20 appointment order of Exhibit 115, lines 17 to 19.

21 A I have it.

22 Q Are you familiar with that? Read that

23 revision of the document.

24 A Read it?

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1 Q Just so you're familiar with it.

2 A Yes.

3 Q So, Mr. Teichner, what are you empowered to

4 do as receiver in this case?

5 A Well, do you want me to go down all of the

6 different aspects of what --

7 Q Generally, if you can tell us what you're

8 empowered to do.

9 A Well, I'm empowered to essentially take

10 control of the GSR UOA, the assets, to receive rents, to

11 pay bills.

12 Q What about calculating fees?

13 A Oh, yes. Calculating fees, sure. I don't

14 know if that's specifically in this order, but the fees

15 are certainly associated with the collection of the

16 rents. The when you say the fees, that's the DUF, SFUE,

17 HE, and reserves, I believe.

18 Q Okay. And do you believe that you're in

19 charge of calculating those fees as a result of

20 implementing compliance with the governing documents?

21 A Yes.

22 Q Are you familiar with the appointment order?

23 If you turn to page eight starting at line 16.

24 A Yes.

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1 Q Is it your understanding that you're charged

2 with the powers of receiver to take over the rents?

3 A Yes.

4 Q To take over the reserves?

5 A Yes.

6 Q Have you recently demanded the rents?

7 A Yes.

8 Q Have you been provided with the rents?

9 A No.

10 Q Do you know why not?

11 A Only because there's been some motions or

12 that I guess have prevented my being able to receive the

13 rents from the defendants. I've certainly mentioned that

14 in some motions and replies that I filed with the court

15 and at least a couple of letters I sent to the court.

16 Q So you have demanded the rents; is that

17 correct?

18 A Well, when you say "demanded," I don't know

19 if that's the word, the appropriate word, but I've said

20 that I haven't received them and I need to receive them

21 in order to be in compliance with this document, the

22 January 7th, 2015 document.

23 Q All right. Do you recall calculating the

24 daily use fee?

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1 THE COURT: Hold on a second.

2 Q (BY MR. MILLER:) In this action?

3 THE COURT: We've got some technical issues,

4 so --

5 MR. MILLER: Your Honor, I'm going to have

6 him refer to 124 next.

7 THE COURT: Hold on. We have some technical

8 issues.

9 MR. MILLER: I was just thinking he could

10 start getting there.

11 THE COURT: Thank you so much for your help.

12 Mr. Miller, you may continue.

13 Q (BY MR. MILLER:) Thank you, Your Honor.

14 Mr. Teichner, would you refer to Exhibit 124.

15 A Okay. I have it.

16 Q You have that? Are you familiar with this

17 document? Have you seen it? It's titled, "Order

18 Approving Receiver's Request to Approve Updated Fees"?

19 A Yes.

20 Q And do you understand that on August 16th,

21 2021, did you provide the court with an analysis of fees

22 for the daily use fee and the hotel fees?

23 MR. MCELHINNEY: Objection, leading the

24 witness.

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1 THE COURT: Can you rephrase your question,

2 please?

3 Q (BY MR. MILLER:) What did you provide the

4 court with on approximately August 16th, 2021?

5 A I can't say because I would have to see on

6 that date, I just --

7 Q Yeah, that's fair enough. You're on Exhibit

8 124; is that correct? Do you have that in front of you?

9 A 124? Yes.

10 Q So please read page one, line 20 to line 25.

11 Maybe that will refresh your recollection as to what was

12 provided to the court.

13 A Before the court is receiver's analysis and

14 calculation of daily use fees, shared facility unit

15 expense fee, and hotel expense fee with requests to prove

16 updated fees to the court to set effective date for new

17 fees found August 15th, 2021.

18 Receiver analysis. Defendants filed

19 defendant's objection to receiver's analysis and

20 calculation of daily use fees, shared facilities, unit

21 expense fees and for the court to set effective date for

22 new fees on September 17th, 2021. Plaintiffs filed

23 plaintiffs' response --

24 Q That's good, Mr. Teichner. Thank you. So

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1 does that refresh your recollection as to what you

2 submitted to the court?

3 A Yes.

4 Q So did you prepare fees in connection with

5 the condominium units?

6 A Yes.

7 Q And those were submitted approximately August

8 16th, 2021?

9 A Yes.

10 Q Okay. And then it looks like you did a

11 supplement September or an errata September 17th, 2021?

12 A Yeah.

13 MR. MCELHINNEY: Your Honor, I don't mean to

14 have a continuing objection, but I'd like to know what

15 this witness knows instead of being led.

16 THE COURT: I agree. I've asked him to

17 rephrase the question. Can you not lead. Who, what,

18 where, when, how and why.

19 MR. MILLER: Yes, Your Honor. Thank you.

20 THE COURT: Thank you.

21 Q (BY MR. MILLER:) The September 17th, 2021

22 fee calculations, what did those include?

23 A What do they include?

24 Q Yeah.

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1 A Well, the calculation for the DUF, it was a

2 combination of the SFUE shared facility unit expense and

3 hotel expense, so I calculated the per-unit charge.

4 Sorry. The charge per square foot per unit.

5 Q Did you calculate the daily use fee?

6 A Yes.

7 Q Do you recall what your calculations for the

8 daily use fee were?

9 A No, but it was based on, I think, three

10 levels of square footage, ranges of square footage.

11 MR. MILLER: Your Honor, I do not intend to

12 have this marked as an exhibit, but it's already in the

13 record. It's the receiver's analysis and calculation of

14 daily use fee filed 8-16-2021. Can I use this to refresh

15 his recollection as to what the daily use fee is?

16 THE COURT: Any objection?

17 MR. MCELHINNEY: No objection.

18 THE COURT: It may be used that way.

19 MR. MILLER: Thank you.

20 THE COURT: Don't give it to me since it's

21 not admitted for purposes of today.

22 And, sir, that's given to you to refresh your

23 recollection. If you could review it.

24 THE WITNESS: Sorry, Your Honor?

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1 THE COURT: It's for you to review.
2 THE WITNESS: Yes.
3 THE COURT: After you refresh your
4 recollection, if you could turn it over and then not look
5 at it while you answer the questions he's going to ask
6 you next.
7 THE WITNESS: Okay, Your Honor.
8 THE COURT: Okay.
9 THE WITNESS: Yes, Your Honor.
10 THE COURT: Is there something in particular
11 you want to refresh his recollection related to?
12 Q (BY MR. MILLER:) Yes, Your Honor.
13 Mr. Teichner, can you refresh your
14 recollection as to what your calculations were for the
15 daily use fee on a daily basis?
16 THE COURT: After you have refreshed your
17 recollection, please let us know and then turn over the
18 piece of paper.
19 THE WITNESS: You mentioned on a daily basis?
20 Q (BY MR. MILLER:) Yes. It's the daily use
21 fee, so --
22 A Well, again, that's three levels of the daily
23 use fee.
24 Q Perfect. And I'm just going to ask you what

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1 those amounts were.
2 A For the --
3 MR. MCELHINNEY: Your Honor, objection. Your
4 instructions to the witness was after you've reviewed it,
5 turn it over and testify from your own memory as opposed
6 to reading the document.
7 THE COURT: That is correct. I can't have
8 you reading the document. But if you need a notepad so
9 you can take notes with the refreshing of your
10 recollection, I'd be happy to hand you this little
11 notepad. There you go, sir. My arms aren't quite long
12 enough.
13 Q (BY MR. MILLER:) Mr. Teichner, would
14 referring, looking at the document, you provided three
15 different daily use fee numbers, correct, for different
16 sized units in your report. Is that correct?
17 A Yes.
18 Q Do you recall what those three numbers were?
19 A No, I don't exactly. No.
20 Q Okay. Can you refresh yourself? Can you
21 look at the document to refresh your recollection as to
22 what the dollar amounts were that you calculated for the
23 daily use fee under those reports that you submitted to
24 the court? This is going to be very important in these

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1 proceedings.
2 A I may or may not refer to the document.
3 Q You can look at the document to remember and
4 again, this should probably come from the court to
5 remember.
6 THE COURT: Here you go, sir. Here's a pen.
7 So you can actually do something a little more simple.
8 You can look at the document, write down the answer to
9 the question, then look up, tell us you've refreshed your
10 memory, but you have to refer to your notes. Or you can
11 admit the document and we can read from it.
12 MR. MILLER: Your Honor, I'd like to move for
13 the admission of --
14 THE COURT: Next in order?
15 MR. MILLER: Yes. Actually --
16 THE COURT: I am assuming that you were up to
17 140 based on our discussion earlier today.
18 MR. MILLER: Yes.
19 THE COURT: Would you like to offer 140?
20 MR. MILLER: Yes, Your Honor.
21 THE COURT: Sir, can I borrow that document
22 really quick? The one you're looking at. Can I borrow
23 it?
24 THE WITNESS: Sorry?

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1 THE COURT: The one you're refreshing your
2 recollection on, can I borrow it? No, not the paper.
3 That document. This one. Yes, thank you.
4 Gracie, can you mark this as 140?
5 THE CLERK: Yes, Your Honor.
6 THE COURT: Any objection to the admission of
7 140?
8 MR. MCELHINNEY: No objection.
9 THE COURT: Thank you. Give me a minute,
10 sir, and I'll give it back to you. She has to put a
11 sticker on it.
12 THE WITNESS: Yes.
13 THE CLERK: Exhibit 140 marked.
14 THE COURT: Thank you.
15 Any objection to the admission of 140?
16 MR. MCELHINNEY: No objection, Your Honor.
17 THE COURT: 140 will be admitted.
18 Q (BY MR. MILLER:) Mr. Teichner, if you turn
19 to page nine of that document, or actually, turn to page
20 12 which is the last numbered page of the document.
21 A Yes.
22 Q And then go to Exhibit 1, which is the next
23 page.
24 A Okay.

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1 Q What is Exhibit 1?

2 A The title is: GSR's Expenses Attributable to
3 the Shared Facilities Unit for the Daily Use Fee."

4 Q And on the bottom right corner or actually, I
5 guess if you're holding it up, top right corner, does it
6 say: Total daily use fee charges?

7 A Total?

8 Q Total daily use fee charges? Does it state
9 that?

10 A It says: Daily DUF charges. Is that what
11 you're referring to?

12 Q Yes.

13 A Yeah. Okay.

14 Q And the numbers below that statement, there's
15 three different numbers there. Are those your daily use
16 fee calculations?

17 A Yes.

18 Q And are those the only daily use fee
19 calculations that you've done in this case that were
20 approved by the court?

21 A Yes.

22 Q Can you read the three amounts for me into
23 the record of the daily use fee calculations?

24 A For units less than 800 square feet, the

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1 daily use DUF is \$25.63. For units 800 to 1,500 square
2 feet, the amount is \$22.05. And over 1,500 square feet:
3 \$25.66.

4 Q Mr. Teichner, let me have you refer to
5 Exhibit 59.

6 A Okay.

7 Q Do you recognize Exhibit 59 to be an owner
8 account statement?

9 A Yes.

10 Q What are the owner account statements? What
11 does this document do?

12 A Well, they show the amount of rents received,
13 the daily use fees, and then show amounts that are
14 charged against those for the expenses, the expenses I
15 referred to, the SFUE and HE expenses, and the reserves.

16 Q Okay. Mr. Teichner, in looking at the
17 document, you see the columns that are titled, "Daily use
18 fee"?

19 A Yes.

20 Q Do you understand that column to be where
21 your calculated daily use fee charges would have gone?

22 A Yes.

23 Q Okay. So if it were based upon your
24 calculations on a certain date after you provided the

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1 calculations to the court, would it have been your
2 instruction that your calculation of the daily use fee go
3 into the monthly statements?

4 A Yes.

5 Q Okay. And then did you -- Let me ask you to
6 turn to the second page of 59. Do you see the line that
7 says: Contracted hotel fees?

8 A Yes.

9 Q Did you also prepare a calculation of the
10 contracted hotel fees?

11 A Yes.

12 Q And are those contracted hotel fees also
13 reflected in Exhibit 140 which is receiver's calculation
14 of fees?

15 A Yes.

16 Q Let me have you refer to Exhibit 124.

17 A I have it.

18 Q What's your understanding of Exhibit 124?
19 It's titled --

20 THE COURT: We already did this.

21 Q (BY MR. MILLER:) Okay. Is it your
22 understanding that your calculated daily use fee was
23 approved by the court?

24 A Yes.

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1 Q Now, Mr. Teichner, that was just some
2 background. Now I'm going to the questions I'm going to
3 ask you now, we're going to go back to basically
4 September 27th, 2021, which is the date we filed the
5 first motion for order to show cause. Are you familiar
6 at all with plaintiffs' first motion for order to show
7 cause?

8 A Not -- I'd have to be refreshed on that.

9 Q Okay. I believe the exhibits will do that.
10 Let me have you turn to Exhibit 39.

11 A I have it.

12 Q The bottom of Exhibits 39 is an email from
13 Sean Clark to Richard Teichner. Are you familiar with
14 this document?

15 A Yes.

16 Q Can you read the second-to-last sentence in
17 the document, which has a four in front of it?

18 A Where?

19 Q The very bottom of the document.

20 A Yes.

21 Q The second-to-last line. Can you read that?

22 A The second to last line?

23 Q Yes, please. It has a four in front of it.

24 A Where it says "The reserves"? Okay. The

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1 reserves -- "The reserves" and have you determine which
 2 reserve study you are using 2014 or 2016.

3 Q Okay. Do you recall a point in this case
 4 where you had to determine which reserves to use or which
 5 reserve study to use?

6 A Yes.

7 Q Okay. And do you recall that being your
 8 decision or the defendants' decision?

9 A That was my decision.

10 Q Okay. Let me ask you to turn to Exhibit 40.

11 A Okay.

12 Q So a little over halfway down into this
 13 document, it's an email from Sean Clark to Richard
 14 Teichner. And it says: "Recalculation and determination
 15 of expenses and reserves."

16 Are you familiar with this email?

17 A Well, it was a long time ago, but yes. I
 18 mean, now that I read it, yes.

19 Q And at that time, did the defendants -- Did
 20 you ever have any communications with the defendants
 21 wherein they recognized that it was your duty to
 22 determine the reserves?

23 A Well, there was some point in time, I just
 24 don't recall when.

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1 Q Okay. But you have a recollection that they
 2 understood that you would be in charge of calculating the
 3 reserves?

4 A Well, the way I had left it with them if
 5 we're going back this far to when Mr. Clark was the
 6 director of finance -- I'm getting some feedback.

7 THE COURT: I turned it off.

8 THE WITNESS: Was that I was going to review
 9 what they did. I was going to look at the reserve study
 10 and review what they did in the reserve study, and I had
 11 questions about it which I posed, I think at the time, I
 12 posed it to GSR or somebody at GSR. And it wasn't until
 13 I retained my own attorney that I got confirmation that
 14 the reserve studies were flawed.

15 Q Okay. So was it your intent to prepare
 16 reserve studies that were not flawed?

17 A Did they do that?

18 Q Was it your intent to do that, to have
 19 reserves applied to the property that weren't flawed?

20 A Well, yes, to redo the reserve study, but to
 21 have them redone. And that was eventually, I believe the
 22 court determined that that would be done effective for
 23 the year 2020 not before.

24 Q Mr. Teichner, let me have you refer to

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1 Exhibit 42.

2 A I have it.

3 Q Referring to the bottom of 42, it states:
 4 From Stefanie Sharp. Who is Stefanie Sharp?

5 A From Stefanie Sharp to.

6 Q My question is: Who is Stefanie Sharp?

7 A Who is she? She's the counsel that I
 8 retained in this matter.

9 Q Okay. And this email that starts at the
 10 bottom is dated Wednesday, September 15th, 2021. Is that
 11 correct?

12 A Yes.

13 Q Going to page two, can you read the first
 14 paragraph of her email?

15 A Starting with: Good afternoon?

16 Q Sure.

17 A "Good afternoon, Justice Saitta. The purpose
 18 of this email is to address the issue which was recently
 19 arisen with respect to the reserve studies for the
 20 hotel-condominium units. As stated in the receiver's
 21 report for August and for the purpose of background
 22 without informing the receiver of his counsel beforehand,
 23 a notice of special reserve assessment dated August 24th,
 24 2021 and the reserve studies was sent to the unit owners

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1 along with a schedule containing the amount of assessment
 2 due to unit owners based on the square footage of the
 3 respective unit types."

4 "Defendants set the reserve studies and the
 5 notice of special reserve assessment before those
 6 documents were reviewed by the receiver and
 7 notwithstanding the direct request from the receiver
 8 through the undersigned that they not to do so. And then
 9 (receiver and the undersigned did not have any
 10 conversations with Ms. Betterley of Reserve Consultants
 11 regarding the content of the reserve studies. Telephone
 12 and email communications between counsel and the receiver
 13 and Ms. Betterley were limited to ascertaining the
 14 reserve studies would be completed after Ms. Betterley
 15 reviewed the governing documents and after her having
 16 access to a contact person at GSR to perform the site
 17 visits.) Defendants have expressed their position that
 18 the receiver does not have the authority to interfere in
 19 a determination of the reserve study."

20 Q Thank you, Mr. Teichner. Do you believe
 21 those statements are accurate?

22 A By Ms. Sharp?

23 Q Yes.

24 A Yes.

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1 Q And you agree with what you just read into
2 the record?
3 A Yes.
4 Q Let me have you turn to Exhibit 44.
5 A I have it.
6 Q Are you familiar with this document?
7 A Yes.
8 Q Have you seen this document before?
9 A Yes.
10 Q And this is a notice of special reserve
11 assessment dated August 24th, 2021. Is that correct?
12 A Yes.
13 Q Is it your understanding that this document
14 was sent to the plaintiffs?
15 A Yes.
16 Q Can I have you turn to page two. What's the
17 total amount of special assessment that was sought?
18 A Total amount for the three years 20 -- 2020
19 through 2023?
20 Q Yes.
21 A \$26 million dollars.
22 Q \$26 million? Did you authorize this
23 special --
24 A No.

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1 Q -- assessment?
2 A No.
3 Q Did you instruct the defendants not to send
4 special assessment?
5 A I didn't know that it was being sent until
6 after it was sent.
7 Q Okay. So this was sent without your approval
8 or review?
9 A Yes.
10 Q Did you, after receiving it, express to the
11 defendants that you thought the special assessment was
12 improper?
13 A Either I or Ms. Sharp did.
14 Q Let me have you turn to Exhibit 46,
15 Mr. Teichner.
16 A Forty?
17 Q Forty-six. Sorry.
18 A Forty-six?
19 Q Yes.
20 A Okay.
21 Q And this document is an email from Stefanie
22 Sharp to Justice Saitta; is that correct?
23 A Yes.
24 Q And it's dated September 15th, 2021?

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1 A Yes.
2 Q Do you see where it states: Accounts?
3 A Yes.
4 Q Can you read the language below where it
5 states: Accounts?
6 A Both bullet points?
7 Q Yes, please.
8 A "That defendants comply with receiver's
9 request that the receiver be provided with read-only
10 access to all three of the reserve accounts as noted in
11 the receiver's report for the month of August, receiver
12 requested that he have read-only access to the reserve
13 accounts so that he can monitor the activities in those
14 accounts.
15 However, defendants denied this request.
16 That the court approve the opening of an account for the
17 receivership and order the following: That the rents for
18 the plaintiff-owned units including the daily reserve
19 fees, net of total charges for the DUF, SFUE and HE fees
20 combined and reserves be deposited into the bank account
21 for the receivership. The receiver will have sole
22 signature authority over the account."
23 "That the receiver be authorized to disperse
24 one-half of the net rents to the plaintiffs and one-half

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1 of the rents to the defendants with such disbursements to
2 occur at three-months intervals; that any amount which
3 the court orders be disgorged by the defendants to the
4 plaintiffs be deposited into the receiver's bank account
5 for disbursement by the receiver to the plaintiffs."
6 Q Thank you, Mr. Teichner. Do you agree with
7 all of the statements that you've just read?
8 A I did at the time. The only thing that I
9 don't necessarily agree with is that the net rents be
10 deposited. I think that's changed. I think I've
11 determined and my counsel determined that based on the --
12 well, a number of things, but on the January 7th, 2015
13 order and one of the orders by Her Honor, the term
14 "rents" is used not "net rents" in any place. So I
15 believe that I'm supposed to receive all of the rents. I
16 determine the fee charges and the reserve charges and
17 then the net amount gets disbursed to the unit owners.
18 Q Thank you, Mr. Teichner. Going back to the
19 date of this email though, which is September 15th, as of
20 that date, had you calculated the fees for the units as
21 reflected in your receiver analysis of calculated fees
22 which is Exhibit 140?
23 A Yes.
24 Q So if you have the calculation of fees, is it

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1 easy to determine what the net rents are by applying
2 those fees?
3 A Yes.
4 Q Okay. And do you know if your fees were ever
5 applied to the owner account statements?
6 A I'm sorry?
7 Q Do you know if your fees were ever applied to
8 the owner account statements?
9 A The fees that I calculated?
10 Q The fees that are demonstrated in Exhibit 140
11 were approved by the court. Do you recall if those were
12 ever placed on the owner account statements? If you
13 don't know, we'll get there.
14 A What was done was a revision of the net fees,
15 and that was calculated and with an amount that would be
16 due to the unit owners. And at the time, again, the only
17 monthly statements I get are the plaintiffs' monthly
18 statements.
19 But at the time, there was an adjustment to
20 the plaintiffs' accounts for that for the differential in
21 the fee charges were calculated. There was -- We did a
22 calculation, and we sent that onto GSR, and there was an
23 adjustment made at that time to the balances of the
24 specific unit owners' plaintiffs' units.

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1 Q Okay. Going back to the email that is 46,
2 you asked for access, read-only access to the reserve
3 accounts. Is that correct?
4 A Yes.
5 Q Do you know why the access for you to look at
6 the accounts was denied? Did defendants give you any
7 explanation?
8 A Did I have access to them?
9 Q It states -- if you read that first
10 paragraph.
11 A Yes.
12 Q "Again, as noted in the receiver's report
13 from the month of August, the receiver requested that he
14 have read-only access to the reserve accounts so that he
15 can monitor the activity in those accounts. However,
16 defendants denied this request."
17 Do you know why the request was denied?
18 A No.
19 Q Let me have you turn to Exhibit 47.
20 A Okay.
21 Q Exhibit 47, can you read from where it says:
22 On March 20th, 2020, which is just --
23 A Did you say 45 or 47?
24 Q Forty-seven. Sorry.

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1 A Just that one paragraph?
2 Q Yes.
3 A "On March 20th, 2020, at 1:47 p.m.,
4 McElhinney, David C. wrote: And the plaintiffs in their
5 most recent motion for instructions to receiver are
6 asking for the following particular instructions, and I
7 would appreciate your thoughts as to those instructions."
8 Q Next paragraph. Can you read the next
9 paragraph?
10 A Number one?
11 Q Yeah.
12 A "Charged defendants and plaintiffs the same
13 reserve amounts as dictated by the existing orders. This
14 strikes me as a bit too restrictive. The charges for
15 reserves should be left to the sound discretion of
16 Teichner in accordance with the governing documents which
17 is what he has been doing. Do you agree?"
18 Q Do you believe it's accurate that the
19 reserves should be left to your sound discretion under
20 the governing documents?
21 A That I have discretion?
22 Q Yes.
23 A Yes.
24 Q Okay. Thank you. Let me have you turn to

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1 Exhibit 50.
2 A I have it.
3 Q Have you ever seen this email before?
4 A I'm sorry?
5 Q Have you ever seen this document before?
6 A I believe so, but I can't remember
7 specifically.
8 Q Do you recall in April of 2021, was it your
9 position that a reserve study needed to be done?
10 A Yeah.
11 Q Is that a yes?
12 A Yes.
13 Q Okay. And do you know if that was conveyed
14 to the defendants that it was your position that a
15 reserve study needed to be done?
16 A May you repeat the question? I was reading
17 this.
18 Q Did you convey to the defendants around that
19 time in April of 2021 that it was your position as
20 receiver that a reserve study needed to be done,
21 performed?
22 A Well, I may have, but I don't know
23 specifically. Just to clarify that reserve studies
24 updates were done every year, and then every I believe it

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1 was every three years that a complete reserve study was
2 done.

3 Q Let me have you read the first paragraph of
4 Exhibit 50 where it states: "Good afternoon, Gentlemen."
5 A "Good afternoon, Gentlemen. As we touched
6 upon during our call last week, the reserve studies
7 reported on the governing documents for the
8 hotel-condominiums need to be done this year and approved
9 by the board of owners -- the board of the owners
10 association by July 15th. As we discussed, in the past,
11 the Association did not contract or pay for the reserve
12 studies."
13 Q All right. Thank you. So is it your
14 understanding that your counsel indicated to the GSR that
15 the reserve study needed to be completed?
16 A Yes.
17 Q Okay. Let me have you refer to Exhibit 51.
18 A Okay.
19 Q Can I have you read the first paragraph.
20 Exhibit 51 is an email from your counsel dated August
21 30th, 2021. Do you see that?
22 A Yes.
23 Q To myself and defense counsel. Can you read
24 that email, what your counsel wrote?

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1 A Yes. It says: Jarrad?
2 Q Yes.
3 A "Jarrad, no. Absolutely not. The receiver
4 and I have not even had the opportunity to review the
5 draft reserve studies. Furthermore, I told Ms. Hall not
6 to send anything out until the reserve studies were
7 reviewed by and commented on by me and the receiver.
8 Thank you for --" that's the first paragraph.
9 Q So the reserve study that the defendants sent
10 out, did you review that reserve study before it was
11 sent? Is this email accurate?
12 A No. No.
13 Q Did you approve of the reserve study that the
14 defendant sent out?
15 A No.
16 Q And this was a reserve study that was
17 prepared after you had told them that a reserve study
18 needed to be prepared; is that correct?
19 A Yes.
20 Q And is it accurate that you or your counsel
21 told them not to send the reserve study out?
22 A Yes. If I may expand on this.
23 MR. MCELHINNEY: Your Honor, objection.
24 There's no question pending.

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1 THE COURT: Sustained. Hold on a second.
2 Could you ask a follow-up question?
3 MR. MILLER: I did not.
4 THE COURT: Could you ask a followup
5 question?
6 Q (BY MR. MILLER:) Yes. Mr. Teichner, is
7 there a point you'd like to make about this?
8 A I'm sorry?
9 Q Is there something you'd like to or a remark
10 that you'd like to make about this?
11 A Well, yeah. I wanted to say that Ms. Sharp
12 was in communication with Ms. Betterley about the reserve
13 studies, and we had concerns about them and that there
14 was some -- I'll characterize it as misunderstanding, but
15 I don't think there was agreement between Ms. Betterley
16 and Ms. Sharp about what the government -- well,
17 Ms. Sharp was going by the governing documents, and
18 Ms. Betterley, I don't think, had sufficient knowledge of
19 what the governing documents said.
20 MR. MCELHINNEY: Objection, move to strike,
21 Your Honor. It's speculative.
22 THE COURT: Denied.
23 MR. MCELHINNEY: And it's also hearsay.
24 THE COURT: Denied.

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1 Q (BY MR. MILLER:) Thank you, Mr. Teichner.
2 Can I have you turn to Exhibit 52, please.
3 A I have it.
4 Q Will you turn to page three of Exhibit 52.
5 A I have it.
6 Q And page three of Exhibit 52, is that an
7 email from Ann Hall, counsel for defendants, to Stefanie
8 Sharp, your counsel, dated August 30th, 2021?
9 A Yes.
10 Q Can you read the first portion of that email
11 going down approximately to half the page.
12 MR. MCELHINNEY: Your Honor, I'm just going
13 to object. The document speaks for itself. I'm not sure
14 -- it's not from him. It's from his counsel. Hearsay.
15 THE COURT: Overruled. It's been admitted.
16 THE WITNESS: Okay. "Stefanie. I am
17 responding to your email of 8-27 today as I have been out
18 of town. Recall that I requested information from you on
19 8-24-21 to provide any authority that you have to prevent
20 GSR from sending out the final reserve study prepared by
21 the independent reserve specialist as we are required to
22 do by CC&R's and the assessment notices pursuant to the
23 reserve study."
24 "On 8-27-21, we generally stated reserve --

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1 stated receiver must insure compliance with the governing
 2 documents, and receiver is responsible for quote,
 3 'distributing, utilizing or holding in reserve all funds
 4 collected under the governing documents. There's no
 5 closed quotes on this. Okay. You know, quote,
 6 'Governing documents,' unquote is a defined term under
 7 the new CC&R's, and reserve study is not a quote,
 8 'Governing document' unquote."

9 "You also stated that the quote, 'The
 10 receivership order prevents defendants from interfering
 11 with the receiver,' unquote and his management of the
 12 hotel condominium units. You know that defendants have
 13 not interfered with Mr. Teichner especially not by being
 14 transparent and by sending information required by the
 15 CC&R's."

16 "What do you think Mr. Miller would have done
 17 if he had found out we had the final reserve study since
 18 8-24-21 but did not provide it to any unit owner as we
 19 are supposed to do? You're aware that Mr. Teichner does
 20 not manage the hotel-condominium units. You also know
 21 that defendant, MEI-GSR, is required -- in bold in
 22 capital letters -- to obtain and disseminate reserve
 23 study to the unit owners."
 24 "What you did not address is if the receiver

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1 was appointed under the UOA as of the 2015 order
 2 appointing receiver revised and the UOA as no reserve
 3 requirements. Why do you believe you can interfere with
 4 the independent reserve study without an order from the
 5 court of appropriate jurisdiction? Respectfully, you are
 6 not the judge in this matter. The receiver is actually
 7 violating court orders by going outside the scope of his
 8 authority."

9 Q Thank you, Mr. Teichner. So was it your
 10 understanding that the GSR was telling you that you
 11 couldn't interfere with the reserve studies?
 12 A What is my understanding?
 13 Q Was that your understanding at the time that
 14 the GSR was telling you that you couldn't interfere with
 15 the reserve studies?
 16 A Yes.
 17 Q And was it your belief that you were in
 18 charge of the reserve studies?
 19 A Yes.
 20 Q Did sending out the reserve studies without
 21 your approval interfere with your work as receiver?
 22 A Can you repeat that?
 23 Q So we know that you requested that a reserve
 24 study be done; correct?

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1 A Yes.
 2 Q We know that they did a reserve study and
 3 sent it out without your permission; is that correct?
 4 A Yes.
 5 Q Did that interfere with your ability to do
 6 your job as receiver?
 7 A Yes.
 8 Q Thank you. Do you recall recently opening an
 9 account for the receivership?
 10 A Yes, a bank account.
 11 Q Okay. And do you recall approximately when
 12 that occurred?
 13 A I'm sorry?
 14 Q Do you recall approximately when that
 15 occurred?
 16 A No, but I'd just have to estimate about three
 17 weeks ago.
 18 Q Okay. I'm going to do something I said I
 19 wouldn't do. I'm going to chronologically go out of
 20 order, but let me have you refer to Exhibit 56. So we're
 21 going from back in April of 2021, and now we're looking
 22 at stuff from May of this year: 2023.
 23 A Okay.
 24 Q So in Exhibit 56, will you turn to the second

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1 page which is an email from you to Reed Brady.
 2 A Yes.
 3 Q Are you familiar with this recent email
 4 exchange with Mr. Brady?
 5 A Yes.
 6 Q Okay. Go to where it says page five, and
 7 it's dated May 4th, 2023. It's going to be the last
 8 document in there.
 9 A Okay.
 10 Q Can you please read your email to Mr. Brady
 11 dated May 4th, 2023.
 12 A Yes. "Effectively immediately, I need for
 13 you to send me the total amounts collected on all the
 14 plaintiff unit owners' units and on all of the defendant
 15 unit owners' units. Those total rents that are collected
 16 by GSR starting now which according to my understanding
 17 would consist of rents for April 2023 had to be wired
 18 into my receiver bank account for which you will be
 19 provided the name of the bank, the name on the account,
 20 the routing number and the account number."
 21 Q And that was May 4th; correct?
 22 A Yes.
 23 Q And as we sit here today, have those rents
 24 been provided to you and deposited into your account?

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1 A No.

2 Q Okay, Mr. Teichner, we're going to jump back

3 in time to November 19th, 2021. That's when we filed our

4 second motion for order to show cause. Let me have you

5 turn to Exhibit 119.

6 A Okay.

7 Q And that document, are you familiar with this

8 document? Have you ever seen this before?

9 A Yes.

10 Q And this is an order granting motion for

11 clarification dated 12-24-20. Is that correct?

12 A Yes.

13 Q Let me have you read from page three, lines

14 24 to 26.

15 A Starting "Specifically"?

16 Q Yes, please.

17 A "Specifically, the receiver shall calculate

18 the DUF, the hotel expense fees and shared facility fees

19 to include only those expenses that are specifically

20 provided in the governing documents."

21 Q Okay. So after receiving that order, was it

22 your understanding that you, the receiver, is the one

23 that calculates these fees?

24 A Yes.

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1 Q And in fact, going back to January the 7th,

2 2015 when you first came into this case, was it your

3 understanding that you calculated the fees?

4 A Yes.

5 Q Let me have you turn to Exhibit 58.

6 A I have it.

7 Q So this document is an owner account

8 statement dated September 9th, 2021. Is that correct?

9 A Yes.

10 Q And what's the daily use fee that was applied

11 in this statement?

12 A The period for which the charges applied?

13 Q Yes.

14 A It was for the month of August 2021.

15 Q Okay. But what was the amount of the daily

16 use fee that was applied at that time?

17 A Well, the total of the column or?

18 Q Per day. What was the per-day charge for the

19 daily use fee?

20 A Well, it varied.

21 Q Well, that's but for one day, was it \$24.54?

22 A That's the first item, yes.

23 Q Okay. So for one day of rental under this

24 particular size of unit, the daily use fee was \$24.54?

Page 96

1 A Correct.

2 Q Okay. Let me have you turn to Exhibit 59.

3 A Yes.

4 Q And this is an owner account statement dated

5 November 8th, 2021. Is that correct?

6 A Yes.

7 Q And what was the amount of the daily use fee

8 that was being charged in this statement?

9 A For one day was \$32.47.

10 Q Okay. Did you approve of the increase of the

11 daily use fee from September to November going from

12 \$24.54 to \$32.47? Did you approve of that?

13 A No.

14 Q Did that increase conflict with the

15 calculations that you had prepared?

16 A Yes.

17 Q Did applying a daily use fee -- Sorry. Do

18 you believe that your daily use fee calculations were

19 prepared in compliance with the governing documents?

20 A Yes.

21 Q Did the court ultimately approve your daily

22 use fee as being compliant with the governing documents?

23 A Yes.

24 Q Okay. So the defendants, did they

Page 97

1 unilaterally make this increase on the charges to the

2 plaintiffs?

3 A They must have.

4 Q In applying their own fees rather than the

5 fees that you calculated, did that interfere with your

6 implementing the governing documents?

7 A I would say so. Yes.

8 Q By not applying the fees that you had

9 calculated but applying their own fees, did they fail to

10 cooperate with your instructions as to what the daily use

11 fee is?

12 A Yes.

13 Q And going back to 58, look at the contracted

14 hotel fees.

15 A Yes.

16 Q And what was the amount of interactive hotel

17 fees for September of 2021?

18 A \$610.26.

19 Q And then turning to 59, what was the amount

20 of the contracted hotel fees?

21 A \$1,225.63.

22 Q So the defendant doubled the contracted hotel

23 fees from September to November?

24 A On this particular -- for this plaintiff

Page 98

1 unit, yes.

2 Q Did you authorize the doubling of those

3 contracted hotel fees?

4 A No.

5 Q Do you believe that the contracted hotel fees

6 reflected in Exhibit 59 at \$1,225.63 exceeded what you

7 had calculated for the appropriate contracted hotel fees?

8 A Yes.

9 Q And did that interfere -- them implementing

10 these fees, did that interfere with your implementation

11 of the governing documents?

12 A Yes.

13 THE COURT: Sir, when did you prepare the

14 chart that's Exhibit 1 to 140, which is the exhibit that

15 you have? When did you prepare the chart that is Exhibit

16 1 to Exhibit 140, the document you were using earlier to

17 refresh your memory?

18 THE WITNESS: I'm sorry?

19 THE COURT: Hold on a second. When did you

20 prepare that?

21 THE WITNESS: When did I prepare this, Your

22 Honor?

23 THE COURT: Yes, but you've got to speak into

24 the microphone.

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1 THE WITNESS: I believe it was August.

2 THE COURT: Speak into the microphone so

3 everyone can hear.

4 THE WITNESS: August of 2021.

5 THE COURT: August.

6 THE WITNESS: I believe. I believe so.

7 THE COURT: I'm the person with the feedback,

8 so I'm turning my microphone off.

9 MR. MILLER: Did he answer your -- He's still

10 looking it up. Would it be possible for her to read the

11 court's question back to the witness? I think he's --

12 (Requested portion read by the reporter.)

13 THE COURT: Sir, do you know when you

14 prepared the document I handed you?

15 THE WITNESS: This document? This document?

16 Is it the document?

17 MR. MILLER: 140.

18 THE WITNESS: Yes. And it's August of 2021.

19 MR. MILLER: Okay.

20 THE COURT: Thank you. Can I have my copy

21 back?

22 THE WITNESS: In fact, this filing was on the

23 of 16th, 2021.

24 Q (BY MR. MILLER:) All right. Thank you. So

Page 100

1 back to Exhibit 59. Do you see at the bottom of Exhibit

2 59 on the first page, it states: 2021 special assessment

3 due to full reserve study? Do you see that?

4 A Yes.

5 Q And do you see the amount listed there?

6 A Yes.

7 Q What is that amount?

8 A \$24,387.95.

9 Q Did you approve of the defendants making a

10 special assessment to this plaintiff for this unit on

11 this month for the amount of \$24,387.95?

12 A No.

13 Q So turning to the second page of Exhibit 59,

14 if you look at the bottom of it, do you see where it

15 says: Net due to owner or net due from owner?

16 A Yes.

17 Q Is it your understanding that the defendants

18 -- What's your understanding of what this shows where it

19 says: Net due to owner or net due from owner?

20 A That's the amount when you add up all of the

21 items above that, the revenue which is a credit, and then

22 the charges, all of the charges including the special

23 assessment charge, the result is the \$29,284.13 which

24 would be due from the unit owner.

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1 Q And again, you didn't approve of this

2 statement, but under this statement, the defendants are

3 demanding that the plaintiff unit owner pay \$29,284.13?

4 A That's what it says. Yes.

5 Q Okay. And then let's go back to Exhibit 58.

6 And this is September 9th, 2021; is that correct?

7 A Yes.

8 Q And under this prior statement, again, issued

9 in September as opposed to November, what does it state

10 as far as who owes who what? Is there an amount that the

11 statement shows owing to or from the unit owner?

12 A It shows a credit which would mean an amount

13 owed to the unit owner.

14 Q Okay. So before the defendants unilaterally

15 increased the daily use fee, increased the hotel fees and

16 applied a \$24,000 special assessment, the defendants

17 under this accounting owed this unit owner \$7,432?

18 A Yes.

19 Q And then two months later, purportedly, they

20 owed \$29,284?

21 A Yes.

22 Q Does sending owner account statements to the

23 plaintiffs then include false numbers, numbers not

24 approved by you? Does that interfere with your ability

Page 102

1 to comply with the governing documents?
2 A No.
3 Q No, it doesn't.
4 Q By sending out a statement to unit owners
5 that shows numbers that are not accurate?
6 A Not accurate?
7 Q That doesn't interfere with your ability to
8 do your job? Do you think -- Is that correct?
9 A Yes.
10 Q As part of being a receiver, do you think
11 it's your job to implement compliance with the governing
12 documents by sending out statements that have accurate
13 information?
14 A Of course.
15 Q Okay. So if the defendants send out monthly
16 statements that don't have accurate information such as
17 unapproved special assessment, does that interfere with
18 your job?
19 MR. MCELHINNEY: Objection, asked and
20 answered.
21 THE COURT: Overruled.
22 THE WITNESS: Yes.
23 Q (BY MR. MILLER:) It does interfere with your
24 job?

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1 A Yes.
2 Q Thank you. Let me have you refer to exhibit
3 60. And this is from Stefanie Sharp to myself dated
4 November 17th, 2021. Can you read that email?
5 A "Good afternoon, Jarred. The receiver did
6 not approve the inclusion of the new contracted hotel fee
7 or the fee for which -- the fee for 2021 special
8 assessment due -- Sorry. For the 2021 special assessment
9 due to full reserve study on the most recent statements,
10 an example of which is attached."
11 Q Thank you. So you agree with that statement
12 you did not approve those?
13 A Correct.
14 Q Thank you. Let me have you turn to Exhibit
15 64.
16 A Yes.
17 Q Specifically, turn to Exhibit 1 within
18 Exhibit 64 which is a letter from you dated November
19 30th, 2021.
20 A Yes.
21 Q Are you familiar with this letter?
22 A Yes.
23 Q Does this letter also confirm to the court on
24 November 30th, 2021, that you didn't approve of these

Page 104

1 actions, the special assessment?
2 A Yes.
3 Q And in fact, you referred to the special
4 assessment as, in quotes, "Manifest impropriety of the
5 large special assessment"?
6 A Yes.
7 Q In the fourth paragraph, you state that GSR
8 approved 2021 full reserve study to which the receiver
9 has objected indicating that the real reason that there
10 was a special assessment for the reserves and that they
11 were front loaded is to pay for the remodeling the
12 defendants had started in 2021 in which they planned to
13 mostly complete in 2022 with which the remaining work to
14 be completed by 2024. These remodeling costs have
15 already been accounted for in the costs of reserves for
16 which the unit owners have been paying every month."
17 Can you tell me what you meant by that?
18 A Well, yes. The reserve studies that were
19 done, albeit not correct, or not in compliance with the
20 governing documents, still accounts for future costs and
21 expenses that would be -- would include improvements and
22 based on what I had seen in the reserve studies that were
23 performed, was that those future costs were already
24 accounted for and included in the amounts that were being

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1 charged to the unit owners. In other words, the unit
2 owners' charges were based on the reserve studies that
3 determined how much would be needed to fund the reserves
4 for the future expenses.
5 Q So generally, later on, we'll look at the
6 withdrawal of over \$3 million dollars by the defendants
7 unilaterally and over \$16 million dollars by the
8 defendants unilaterally from the reserves. Had those
9 reserve -- had those amounts not been withdrawn from the
10 reserves, do you know approximately how much should be in
11 the reserves right now?
12 A No.
13 Q Okay. But that's a number that you could
14 figure out; is that correct?
15 A Yes.
16 Q And how would you do that?
17 A Well, again, first of all, reserve studies
18 would have to be done correctly.
19 Q But the reserve studies don't determine what
20 can be withdrawn from the reserve account, right? It's
21 the CC&R's that dictate what can be withdrawn from the
22 reserves; is that correct?
23 A Yes.
24 Q So how would you do this? Determine what

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1 should be in the reserves?

2 A Well, there's two factors here. One is how

3 much do the reserves need to be funded by charges to the

4 unit owners. That's the funding of the reserves. And

5 then there's the payments from the reserves for

6 legitimate costs that the hotel incurs that are

7 attributable to the condominium units.

8 Q Okay. Going to page two of this letter that

9 is Exhibit 64, can you read the second-to-last paragraph

10 that states: "This court is aware"?

11 A Do you want me to read this?

12 Q Yes, please.

13 A "The court should also be aware that the GSR

14 has already reimbursed itself from the reimbursement

15 accounts from capital expenditures from the period July

16 19th July 2019 to December 2020 in the amount of

17 \$3,497,527. Although the receiver received the requested

18 invoices and other documents supporting the expenditures,

19 the reimbursement was not approved by the receiver or by

20 the court."

21 Q Okay. And read the second-to-last paragraph,

22 the one that states: "This court is aware that the GSR

23 has been."

24 A The court is aware that the GSR has been

Page 107

1 assessing fees and charges which it unilaterally

2 calculated and that the receiver's position is that these

3 actions are in violation of this court's January 6th of

4 2015 order -- it should be January 7th, I believe --

5 appointing receiver and directing defendants' compliance

6 as well as in violation of the finding of facts,

7 conclusions of law and judgment entered in this matter.

8 Now the defendants have exacerbated the situation by

9 preparing their own budget and fees for 2022."

10 Q Thank you. And do you believe those

11 statements in your letter were accurate? Is that --

12 A Yes.

13 Q And do you believe the conduct that's

14 referenced in that paragraph after your letter, did that

15 interfere with your ability to implement compliance with

16 the governing documents?

17 A Yes.

18 Q Were the defendants not cooperating with your

19 ability to implement compliance with the governing

20 documents?

21 A Well, the answer would be yes because of the

22 amount that they extracted from the reserves without

23 approval.

24 Q And the implementation of fees that you

Page 108

1 didn't approve?

2 A Well, yes.

3 Q Thank you. Let me have you turn to Exhibit

4 65.

5 A I have it.

6 Q And this document is titled: "Receiver's

7 Motion for Order and Instructions." Are you familiar

8 with that document?

9 A Yes.

10 Q Can you read page two of the document

11 starting with line 22?

12 A "By way of this motion, the receiver is

13 requesting instructions and orders from the court with

14 respect to the following. One: Reserves and reserve

15 studies. Two: Calculation of daily use fee, DUF, shared

16 facilities expense fees, SFUE, and hotel expense fee, HE,

17 for the calendar year 2020, the establishment of a bank

18 account for the receivership and the deposit into and

19 distribution of rents there from, discrepancies found

20 during the analysis of room rotation and rates, Ninth

21 Amendment and restatement to condominium-hotel

22 declaration of covenants, conditions, restrictions and

23 reservations of easements for hotel-condominiums at Grand

24 Sierra Resort and communication with receiver. All of

Page 109

1 the following have been discussed and the receiver's

2 monthly reports filed with the court."

3 Q So at this point, you specifically asked the

4 court to address these issues?

5 A Correct.

6 Q Okay. And then when did you stop receiving

7 payment for your services as receiver?

8 A The last payment I received was October 2021,

9 which was for the month of September 2021.

10 Q So the last payment October 2021.

11 A It's been one year and seven months.

12 Q Okay.

13 THE COURT: Sir, did you receive the funds

14 from the clerk's office?

15 THE WITNESS: Sorry?

16 THE COURT: Did the inter pled funds that

17 were deposited into the clerk's account that an order was

18 granted to reimburse you for your fees, have you received

19 those recently?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 THE WITNESS: Yes.

23 Q (BY MR. MILLER:) Okay. So last payment was

24 October -- until, I mean, the court correctly points out

Page 110

1 right that you recently have been brought current. Is
2 that correct?
3 A Yes.
4 Q Okay. But going back to 2021, the last
5 payment you received in 2021 was dated October 21st, 2021
6 when that invoice was paid?
7 A October? Yes. I think I received the funds
8 on October 31st, I believe, when they were deposited.
9 Yeah.
10 Q And then you didn't receive payment in
11 November of 2021?
12 A No, not since then.
13 Q Not in December of 2021?
14 A No.
15 Q So as soon as you started to have these
16 concerns about the reserves not being proper, your daily
17 use fees not being applied, and you express that concern
18 to the court, the defendant stopped accepting your
19 payment?
20 A They stopped paying.
21 Q They stopped paying, right?
22 A Let's see. This was filed -- I just want to
23 make sure that you're associating the stop of payments
24 with this filing. Is that what you --

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1 Q So this was filed October 18th, 2021. And I
2 mean this --
3 A Right.
4 Q -- which is Exhibit 65; correct?
5 A Right.
6 Q And then you received your last payment three
7 days after this filing?
8 A Within a few days.
9 Q Within a few days after this filing, you
10 received your last payment. But after that, all payments
11 stopped to you; is that correct?
12 A That's correct.
13 Q All right. Did you request payment?
14 A Sure. Multiple times.
15 Q Okay. And was it your understanding that
16 your payment was to come from the rental revenues?
17 A Correct.
18 Q Is there any reason as we sit here today why
19 you believe they didn't provide you with the payment of
20 your invoices from the rental revenues?
21 A No. They -- again, they, whoever either
22 side, plaintiffs or defendants, had ten days within which
23 to object. There were no objections filed at any time
24 until fairly recently, and that was at the -- that

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1 related to the total amount that was due. And I don't
2 know if "objection" is the right term by the way, but no.
3 There's no reason that I know of why the payments
4 stopped.
5 Q Okay. So approximately how many total condo
6 units are there? Do you know?
7 A How many total condominiums?
8 Q Yeah.
9 A Well, there's a total of 670, but they're not
10 all -- they're not all plaintiffs' and defendants' owned
11 units.
12 Q Okay. And how many approximately do you
13 believe that defendants own now?
14 A Defendants?
15 Q Yeah. Let me ask you a different question.
16 THE COURT: Wait. Let him answer the
17 question.
18 THE WITNESS: Maybe somewhere between 630 and
19 640 is an estimate.
20 Q (BY MR. MILLER:) Okay. And then the
21 plaintiffs own approximately 90, 95 units?
22 A I don't know if they own that many anymore.
23 Q Okay. So going back to -- Let's look at just
24 by way of example, 58. Document 58.

Page 113

1 A Yes.
2 Q So do the units bring in every month
3 approximately somewhere between \$25- and \$3,500 per unit
4 in rents?
5 A Did you say every month?
6 Q Yeah. I'm talking about gross rents.
7 A Well, sorry. When are you say "per unit," it
8 varies among units.
9 Q Yeah. And I'm just trying to get an estimate
10 of what's your estimate of what type of gross rents come
11 in per unit each month. When I look at the statements, I
12 mean, you see a lot of \$2,500, \$3,500. I'm asking if you
13 know on average what each unit brings in a month in just
14 a rough estimate.
15 A Well, no, I can't say offhand. There are
16 slow months. You know, winter months are usually a
17 little slower, especially after the holidays. And then
18 of course it picks up quite a bit during the summer
19 months. So it really varies throughout the year.
20 Q Okay. So let's take this sample statement,
21 which is Exhibit 58. Do you see that? And on this
22 particular month, just a random month, September 9th,
23 you've got \$2,638.20 in gross rent coming in, right?
24 A Yes.

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1 Q And then you've got a total of over 600
2 units, right, that are either plaintiff or
3 defendant-owned; correct?
4 A Yes.
5 Q So I won't be able to do this in my head, but
6 so you're taking 600 times \$2,500 a month, right, and
7 that's roughly how much you have coming in every month in
8 gross rents for the plaintiff and defendants' units?
9 MR. MCELHINNEY: Objection.
10 Q (BY MR. MILLER:) Worth hundreds of
11 thousands, millions of dollars; correct?
12 MR. MCELHINNEY: Objection, leading, and I
13 think it's contrary to the testimony. He said there was
14 slow months where there isn't that much money coming in.
15 THE COURT: Overruled. Do you understand the
16 question, sir? Do you understand the question, sir?
17 THE WITNESS: Yes. I do.
18 THE COURT: Okay.
19 Q (BY MR. MILLER:) Without question, do a
20 sufficient amount of gross rents come in every month for
21 these plaintiff and defendant-owned units to easily pay
22 your monthly invoices?
23 A Yes.
24 Q Okay. So as you sit here today, can you

Page 115

1 think of any explanation as to why you didn't continue to
2 receive payment after October 21st, 2021, when the source
3 of your payment is the rents?
4 A The only way I can answer that is that the
5 defendants at one time made an argument that after
6 applying all of the fee charges that there was actually
7 moneys owed by the unit owners, and I don't agree with
8 that. I don't necessarily agree with that because of the
9 fee charges that were made. They were overstated.
10 Q And isn't there another problem there? What
11 about the rent from the defendants' units, the
12 defendants' units, the rent that came in for that? Why
13 couldn't that have been used to pay your bills?
14 A Well, I don't know.
15 Q I mean, even if their argument was right,
16 which it's not, but even if it was right, there was no
17 net revenue due from the plaintiffs' units, you still
18 have the revenue from the defendants' units to pay your
19 bills. Is that correct?
20 A Yes.
21 Q Millions of dollars?
22 A Yes. By the way, I just might mention that I
23 believe that this unit you're looking at here that has
24 \$2,600 of rent, I believe that's less than an

Page 116

1 800-square-foot unit, so that would be the lowest square
2 footage. However, there are more 800 square foot units,
3 I believe, than all others as well, so --
4 Q All right. Thank you. Did not receiving
5 payment for years, over a year, did that inter -- Did not
6 being paid for your work, did that interfere with your
7 ability to do your work as the receiver?
8 A Yes. Not knowing -- certainly. Not knowing
9 if I'm ever going to get paid, you know, I need to get
10 paid, obviously, and so does my attorney.
11 Q So not paying you through the rents, that
12 interfered with your ability to do your duties as a
13 receiver?
14 A Correct.
15 Q Do you think that not paying you the amounts
16 through the rents that came in was cooperative with the
17 receivership order?
18 A No.
19 Q So getting to the next motion for order to
20 show cause, which is dated February 1st, 2021, so now
21 we're jumping forward to February 1st, 2021, let me have
22 you refer to Exhibit 22.
23 THE COURT: 22?
24 MR. MILLER: I'm so sorry. Exhibit 122. If

Page 117

1 I said 22. I don't see a clock in here.
2 THE COURT: We're going to break at 12:15 and
3 come back at about 1:30 so that we can hopefully get
4 done. So no, you don't see a clock.
5 Q (BY MR. MILLER:) All right. Let me have you
6 refer to page 7, lines 22 to 28.
7 A Did you say page nine?
8 Q Page seven.
9 A Seven?
10 Q Yeah.
11 A Okay.
12 Q Do you understand this to be an order issued
13 by the court? And it was filed January 4th, 2022, and
14 the order is titled: Order Granting Receiver's Order for
15 Instructions." But let me have you read page seven
16 starting with line 22 to 28.
17 A "It is further ordered that the notice of
18 special assessments and reserve studies sent to the unit
19 owners by defendants on August 24th, 2021, shall be
20 immediately withdrawn, that the defendant shall send out
21 a notice to all unit owners of said withdrawal within ten
22 days of this order, that any amounts paid by unit owners
23 pursuant to the notice of special assessment should be
24 refunded within ten days of this order and that the

Page 118

1 receiver has sole authority to order and receive reserve
2 studies related to defendants' property and under the
3 governing documents."
4 Q Okay. Let me have you refer to Exhibit 124.
5 A Okay.
6 Q Exhibit 124 is entitled, "Order Approving
7 Receiver's Request to Approve Updated Fees." And can you
8 look at page two and read lines three of five?
9 A Are we talking about Exhibit 120?
10 Q 124.
11 A Still on 124? Okay. I'm on 124.
12 Q 124, page two.
13 A I'm there.
14 Q Lines three to five.
15 A Just three to five. All right.
16 "It is hereby ordered that the receiver's new
17 fee calculation as ordered by the court should
18 immediately be applied retroactively retroactive to
19 January 20th and going forward until subsequent order
20 from the court is issued."
21 Q Now prior to this order, as you sit here
22 today, was there any reason why the defendants shouldn't
23 have applied your fees as soon as you provided them to
24 him?

Page 119

1 A Not that I know of. No.
2 Q Okay. But after January 4th, 2022, you
3 actually have an order because they continued to apply
4 their own fees that said use the receiver's fees; is that
5 correct?
6 A Correct.
7 Q Let me have you refer to Exhibit 120. And
8 Exhibit 120 is an order dated January 4, 2022, titled,
9 "Order Granting Plaintiffs' Motion to Stay Special
10 Assessment." And let me have you look at page five,
11 starting with line ten.
12 A Line ten?
13 Q Yeah. Page five, line ten? Can you read
14 that portion of the order.
15 A Yeah. "It is further ordered that defendants
16 shall rescind the special assessment refund to any unit
17 owners who have paid the special assessment within 20
18 days of this order."
19 Q All right. Let me have you refer to Exhibit
20 123.
21 A Yes.
22 Q Starting at line 26 on page two, can you read
23 that portion of the order to the end of page three where
24 it states: "The receiver finds the -- or the court finds

Page 120

1 the receiver is charged with implementing compliance with
2 the governing documents."
3 A Okay. "The court finds receivers charged
4 with implementing compliance with the governing documents
5 as was appointed for recent. See general appointment
6 order. Therefore, the court orders receiver to provide a
7 report to the court within 90 days from the date of this
8 order recommending which items contained within the
9 defendants' request for reimbursement of capital
10 expenditures can be reimbursements under the governing
11 documents and this court's existing orders."
12 Q So was it your understanding that you were to
13 determine what could be reimbursed from the reserves?
14 A Correct.
15 Q Not the defendants?
16 A Correct.
17 Q Okay. And is there a reason -- Did you ever
18 prepare this report that was ordered by the court?
19 A Well, to answer that, I prepared a schedule
20 sometime before this order with various expenses that I
21 had questioned. That was never resolved. In fact,
22 Mr. Two in your office had told me he had questions and
23 concerns beyond what I had questioned about what needed
24 to be reimbursed, so --

Page 121

1 Q Were you not getting paid at the time that
2 the court issued this order?
3 A No.
4 Q Okay. Do you believe if you had been getting
5 paid monthly that you would have prepared the requested
6 report within 90 days as directed by the court's order?
7 A Yes, I would have done -- I would have
8 prepared an updated one.
9 Q Okay. So it's my understanding that no
10 report was submitted 90 days from the court order. Is
11 that correct?
12 A That is correct.
13 Q And why was there not a report submitted?
14 A Well, I believe two reasons. One was there
15 were a lot of pending questions that I had. And
16 secondly, like you indicated, I hadn't been paid. I
17 didn't know if I was going to get paid. And I wasn't --
18 to be perfectly honest, I wasn't going to spend thousands
19 of dollars in fees, potential fees, with not having been
20 paid since October of 2021. I mean, there's a lot of
21 work that needed to be done and wasn't done besides this.
22 Q Do you recall at about what point you decided
23 I'm not going to keep doing work in this case until I get
24 paid?

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1 A Not exactly, but I know that because I was
 2 doing some work afterwards and issuing reports all the
 3 way through I believe May of 2022 and continued to do
 4 work for the UOA as necessary that they needed me to
 5 approve bills, they needed me to, you know, there's a
 6 number of things. I can't remember all of the things I
 7 did, but it's all the work that I did since I stopped
 8 doing the routine work and the work that was still
 9 necessary to be done is all delineated in the attachments
 10 to my invoices.

11 Q Okay. Let me have you turn to Exhibit 66.
 12 A Did you say 56 or 66?
 13 Q Sixty-six. 6-6.
 14 A 6-6. Let me just add one other thing. My
 15 attorney wasn't going to do any more work either that was
 16 necessary, so I couldn't use reserve services other than
 17 what was absolutely necessary as well.

18 Q All right. So Exhibit 66, it's an owner
 19 account statement dated January 18th, 2022. Is that
 20 correct?
 21 A Yes.
 22 Q In looking at this owner account statement,
 23 do you -- This is for activity in December. Is that
 24 correct?

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1 MR. MCELHINNEY: Objection, foundation.
 2 THE COURT: Overruled. Do you know, sir?
 3 Q (BY MR. MILLER:) Mr. Teichner, from looking
 4 at this document, can you tell for what period of time
 5 these fees were applied?
 6 MR. MCELHINNEY: Your Honor, my objection is
 7 foundation. I don't even think he's identified this
 8 document if he has personal knowledge about it.
 9 THE COURT: Counsel, it's admitted. So it
 10 says on it: Arrival December 1, departure various dates
 11 through 12-31, and it has an invoice dated January 18th,
 12 2022. And it says: Period 12-1-2021 to 12-31-2021.
 13 Anybody disagree? Okay. Thanks. Is this a
 14 good time to break for lunch?
 15 MR. MILLER: Yes. Thank you, Your Honor.
 16 THE COURT: See you guys at 1:30.
 17 (Recess.)
 18 THE COURT: All right, sir. I'd like to
 19 remind you you're still under oath.
 20 Let's go, Mr. Miller. Mr. Miller, we don't
 21 have to go through every document six times.
 22 Q (BY MR. MILLER:) Seven times? All right.
 23 Mr. Teichner, can you take a look at Exhibit 122.
 24 A Yes.

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1 Q And Exhibit 122 is an order dated January 4,
 2 2022 titled, "Order Granting Receiver's Motion for Order
 3 and Instructions." Can you look at page eight, line 17
 4 of that document?
 5 A Page eight. Okay.
 6 Q Actually, can you read the first paragraph of
 7 page eight?
 8 A "It is further ordered that the receiver
 9 shall recalculate the DUF, SFUE, HE and HE based on the
 10 same methodology as has been used in calculating the fee
 11 charges for 2021, subject to a court approval of such
 12 methodology. Those fees in place prior to the court's
 13 September 27th, 2021 order shall remain in place until
 14 the fees for 2020 are recalculated and approved by this
 15 court such that only a single account adjustment will be
 16 necessary."
 17 MR. MILLER: Thank you.
 18 Your Honor, as a function of the briefing on
 19 the underlying motion for order to show cause, the two
 20 exhibits that he recently read into the record, 122 or
 21 122, that portion of the order that talked about what
 22 fees to apply, and then before we went on break, he read
 23 a portion of 124 that also talks about what fees are to
 24 be applied.

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1 THE COURT: Yes.
 2 MR. MILLER: Those two orders were issued on
 3 the same date, and I've prepared -- it's a demonstrative
 4 exhibit, but it just has those same paragraphs on the
 5 same page, so we're not bouncing back and forth between
 6 those two documents.
 7 THE COURT: Any objection to demonstrative
 8 exhibit that we'll mark as D-1?
 9 MR. MCELHINNEY: It will be demonstrative,
 10 Your Honor.
 11 THE COURT: Demonstrative only.
 12 MR. MCELHINNEY: Give me just a second to
 13 review.
 14 MR. MCELHINNEY: No objection, Your Honor.
 15 THE COURT: Approach the clerk and give her
 16 one. Hand it to the clerk. D-1. Give it to the
 17 witness. I'll use the one she has.
 18 THE CLERK: Exhibit D-1.
 19 THE COURT: Thank you. It's not admitted.
 20 It's just marked. All right, guys. Let's keep going.
 21 Q (BY MR. MILLER:) Okay. Mr. Teichner, so you
 22 now have in your possession D-1. Do you understand that?
 23 A Yes.
 24 Q And the portion of Exhibit 122, which is the

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1 last side of the exhibit, is from the motions stream of
2 the receiver's motion for order instructions. Do you see
3 that? So that's an order in response to your motion for
4 instructions. Do you understand that?

5 A Yeah.

6 Q Okay. And then on the right side, Exhibit
7 124 is from the order approving receiver's fees. Do you
8 see that?

9 A Yes.

10 Q Have you read both of these previously as to
11 which fees were to be applied post January 4th, 2022?

12 A My interpretation has been that the fees that
13 were calculated for the year 2022 -- I'm sorry -- 2021
14 were supposed to be applied to the year 2020 until such
15 time I recalculated the fees for 2020.

16 Q Did you do any subsequent recalculation after
17 the fees that were approved that are represented in
18 receiver's analysis and calculation of daily use fee
19 which I believe we marked as Exhibit 140?

20 A Yes.

21 Q You did a subsequent calculation to the
22 receiver's?

23 A When you -- The ones that I calculated ?

24 Q Yes. The ones that were approved by the

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1 court.

2 A Did I receive those?

3 Q No. Did you do a subsequent calculation of
4 fees after the fees that you submitted to the court in
5 Exhibit 140? So your April 2021 calculation of fees, the
6 ones that you submitted the fees to the court. Do you
7 have Exhibit 140 in front of you?

8 A Yes.

9 Q And this is receiver's analysis and
10 calculation of daily use fee, right?

11 A Right.

12 Q What I'm asking you is after these
13 calculations, did you do any subsequent calculations that
14 were submitted to the court?

15 A A separate one.

16 Q When?

17 A No. No. If you're asking me if I did a
18 separate one, the answer is no.

19 Q No. Okay. So this calculation of fees,
20 which is Exhibit 140, is the only calculations of fees
21 that you have submitted since September or -- I'm sorry
22 -- August of 2021?

23 A Well, subsequent to that, I don't remember
24 exact date now, but I submitted to the court a

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1 recalculation of the fees that had been applied to 2020
2 and an adjustment to 2021. That's what the \$1,104,000
3 was based on, so to be clear, okay, I didn't recalculate
4 the fees based on the Exhibit 140, but what I did a
5 recalculation of what the fees should have been based on
6 applying the 2021 fees to 2020 and applying them
7 obviously to 2021 and back to 2020.

8 Q Okay. So again, the fees that are
9 represented in Exhibit 140 that we've looked at repeated
10 times, those are the only fee calculations that you have
11 submitted to the court, right, for the daily use fee in
12 the hotel fees?

13 A Correct.

14 Q Okay. And there hasn't been a subsequent
15 calculation of fees since this submittal?

16 A Correct.

17 Q Under -- in 140. All right. So in looking
18 at this demonstrative exhibit, 122 and 124, let's work
19 through 122 first. It's stated: It is further ordered
20 that the receiver shall recalculate the DUF, SFUE and HE
21 based on the same methodology as used in calculating the
22 charges for '21, subject to court approval of such
23 methodology." And again, we don't have any subsequent
24 calculation of fees; is that correct?

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1 A Correct.

2 Q All right. "Those fees in place prior to the
3 court's September 27th, 2021 order shall remain in place
4 until the fees for 2020 are recalculated and approved by
5 this court such that only a single account adjustment
6 will be necessary."

7 So your fees that were calculated under
8 Exhibit 140, are those based upon the numbers for 2020?
9 Is that where you -- Is that the data that you used to
10 arrive at these 2021 fee calculations?

11 A Well, I'm not sure I understand the question
12 because the fees that I recalculated --

13 Q So what I'm asking --

14 A Go on.

15 Q What I'm asking you is it says you leave
16 those fees in place prior to the court -- prior to
17 September 27th, 2021 order shall remain in place until
18 the fees for 2020 are recalculated. And what I'm asking
19 you is: Are these the -- Is Exhibit 140 data from 2020?
20 Is this the subsequent calculation that the order talks
21 about?

22 A Well, it's based on the budget, the prior
23 budget, but the fees that were recalculated would be
24 applied to 2021.

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1 Q Okay. But they were calculated from the 2020
2 budget?
3 A Well, yeah, because the budget -- the way the
4 budget works is that the fees that are calculated are
5 based on the prior year through November -- I believe
6 it's through November of the prior year as well as the
7 subsequent years fees are computed.
8 Q All right. And then again, the court
9 probably doesn't want me to do this, but if we look back
10 at Exhibit 124, the first paragraph on the demonstrative
11 exhibit says: "The receiver's new fee calculations as
12 submitted to the court should immediately be applied
13 retroactive to January 2020 and going forward until
14 subsequent order from the court is issued."
15 Did you understand that provision?
16 A Yes.
17 Q And do you believe that your fees were to be
18 applied after January 4, 2020?
19 A Applied to what year?
20 Q Well, the order states retroactively to
21 January 2020.
22 A Right.
23 Q Okay.
24 A Until the fees for 2020 were to be

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1 recomputed.
2 Q And they haven't been, right? Because --
3 A Correct.
4 Q Okay. Very good. Let's look at Exhibit 66.
5 A Yes, sir.
6 Q Are you there yet?
7 A Yes.
8 Q Exhibit 66 is owner account statement dated
9 January 18th, 2022. Is that correct?
10 A Yes.
11 Q And what's the daily use fee that was applied
12 on January 18th, 2022 after the court's January 4th, 2022
13 orders?
14 A This was for the month of December 2021?
15 Q Yes, but this is the statement that was
16 issued on January 18th, 2022, right? So this was issued
17 after the court's January 4th orders.
18 A Yes.
19 Q Okay. And what was the daily use fee that's
20 charged on that statement? It's in front -- It's Exhibit
21 66.
22 A What was the date that these were charged? I
23 don't --
24 Q The January 18th, 2022 statement is Exhibit

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1 60 --
2 A 66.
3 Q Correct. And there's a daily use fee that's
4 charged on those statements. What is it?
5 A It's the charge on the statement?
6 Q Yes.
7 A Are you talking about for did you say daily
8 use fee or?
9 Q Yes, the daily use fee.
10 A Just want to make sure I understand what
11 you're asking.
12 Q Yes.
13 A \$876.69 is the total. Per day is \$32.47.
14 Q So is that daily use fee applied on January
15 18th, 2022, does that track your calculation of the daily
16 use fee under Exhibit 140?
17 A No.
18 Q Okay. Do you believe that that statement
19 should have applied your daily use fee as calculated in
20 your receiver's analysis which is Exhibit 140?
21 A Yes.
22 Q Now the defendant's -- Do you understand that
23 the defendants have argued or have they ever told you
24 that they believe that the fees in place prior to

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1 September 27th, 2021 under Exhibit 122 should be applied
2 rather than your new calculation of fees that was applied
3 by the court?
4 A Right. Yes.
5 Q They have told you that?
6 A Well, no, but that's what they've done. I
7 don't -- I can't remember if they told me that. I don't
8 know.
9 Q Okay. Let me ask you to take a look at
10 Exhibit 58.
11 A I have it.
12 Q Exhibit 58 is the statement dated September
13 9th, 2021; correct?
14 A Right.
15 Q So if we look in September, for 2021, what
16 was the daily use fee then? Was it \$24.54?
17 A Well, that's the first item, yes, per day.
18 Q Okay. So then if you adopted the defendants'
19 reading that the September 27th, 2021 prior fees are what
20 should be used, which I'm not saying -- it doesn't make
21 sense to me, but even if you adopted that, you look at
22 that September 9th statement, and the daily use fee was
23 \$24.54, right?
24 A Right.

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1 Q And then if we turn to Exhibit 59, we see
 2 that the daily use fee increased to \$32.47. Is that
 3 correct?
 4 A Yes.
 5 Q So neither your recalculated fees or the fees
 6 that were applied prior to September 27th, 2021 were
 7 applied on June 18th when they issued the new statements.
 8 Is that correct?
 9 A Yes.
 10 Q So either way, the lowered fees that more
 11 accurately tracked your fees were not applied?
 12 A Correct.
 13 Q And do you believe not applying your fees
 14 interfered with your ability to implement the governing
 15 documents?
 16 MR. MCELHINNEY: Objection to the question,
 17 Your Honor. I think he's leading the witness.
 18 THE COURT: Rephrase your question, please.
 19 Q (BY MR. MILLER:) Did not applying the fees
 20 interfere with your duties?
 21 MR. MCELHINNEY: Same objection, Your Honor.
 22 THE COURT: Overruled.
 23 THE WITNESS: Correct. Yes.
 24 Q (BY MR. MILLER:) Thank you. Let me have you

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1 refer to Exhibit 68.
 2 A That's 58.
 3 Q No, I want to refer to 68 this time.
 4 A 68. I have it.
 5 Q Are you familiar with this email?
 6 A Yes.
 7 Q Can you read just the first portion on the
 8 top of the page which is an email from Stefanie Sharp,
 9 your counsel, to myself, and it's dated January 24th,
 10 2022.
 11 A "Good afternoon, Jarrad. Receiver did not
 12 authorize the issuance of the statements including the
 13 January 16th, 2022 statement."
 14 Q We're going to move onto the fourth motion
 15 for order to show cause which was filed 4-25-2022. Let
 16 me have you refer to Exhibit 76.
 17 A Seventy-six?
 18 Q Yes. And again, this is an email from your
 19 counsel, Stefanie Sharp, dated April 22nd, 2022, to
 20 myself. Can you read that email for me?
 21 A "Good afternoon, Jarrad. Please see the
 22 email I just sent earlier this afternoon. The receiver
 23 did not approve the statements. The defendants refuse to
 24 apply the court order fees to all 670 units, thus the

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1 receivership is insolvent. Nothing can be done because
 2 there are no funds to do so or to operate the
 3 receivership. No rents have been turned over to date."
 4 "The receiver is more than willing to
 5 implement the court's orders once the fees and mine are
 6 paid and the assessments are refunded and there are fees
 7 available to operate the receivership including payments
 8 of net rents to the plaintiffs and the non-plaintiff
 9 owners."
 10 And by the way, that's not correct. It
 11 shouldn't be to non-plaintiffs who are not involved in
 12 this as we found out later.
 13 Q Thank you, Mr. Teichner. Do you believe that
 14 accurately summarizes the status of the receivership at
 15 that time? Is there anything about your counsel's email
 16 that you disagree with?
 17 A No.
 18 Q And I actually made a mistake here. I have
 19 to go back to the last motion for one additional exhibit.
 20 Let me have you go back to or refer to Exhibit 70.
 21 A Yes.
 22 Q Do you recall that we referred -- that I
 23 previously referred you to the Exhibit 122 order granting
 24 receiver's fees which withdrew or ordered the withdrawal

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1 of a special assessment? Do you recall that?
 2 A Yes.
 3 Q And there were two special assessments at
 4 that time; correct? There was a special assessment
 5 issued by the defendants for improvements for additional
 6 funding to the reserves, and then was there also a second
 7 special assessment that was issued to pay your fees
 8 rather than payment from the rents as ordered by the
 9 court?
 10 A Yes.
 11 Q And you understood that pursuant to those
 12 January 4th, 2020 orders, both of those special
 13 assessments were withdrawn. Is that correct?
 14 A Yes.
 15 Q Okay. So if we refer to Exhibit 70, are you
 16 familiar with this document?
 17 A It's dated January 13th, 2021. I'm sorry.
 18 Q Are you at --
 19 A January 13th, 2021.
 20 Q Yes.
 21 A Yeah. Yeah, okay.
 22 Q And this is a letter from Associa North to
 23 the plaintiffs or homeowners. Is that correct?
 24 A Yes.

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1 Q Did you see this letter prior to it going out
2 to the plaintiffs?

3 A No.

4 Q Were you provided with a copy of this letter?

5 A No, not that I recall. No.

6 Q Okay. Where it has paragraph two, it states:
7 "The special assessment due date August 1st, 2021 only
8 has been rescinded." Is that accurate or were both the
9 special assessments rescinded?

10 A Both were rescinded.

11 Q It says: "The task to reverse the special
12 assessments and late fees will take some time but is in
13 the process and will be completed as soon as possible."
14 Do you recall if those orders had specific
15 deadlines by which the assessments were to be rescinded?

16 A I do, but I don't remember what it was.

17 Q Exhibit 122 gives ten days to rescind the
18 special assessment. Does that refresh your recollection?

19 A Yes.

20 Q Okay. And then so this is almost ten days
21 after the order to rescind the special assessment, send
22 the notice of special assessment, and yet it states that
23 the process of rescinding the special assessment will
24 take some time. Does that comply with the court's

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1 orders?

2 A I'm sorry. It will take some time? Is that
3 what --

4 Q Well, the court under these orders said that
5 there had to be a notice of the special assessment being
6 withdrawn and that it had to be refunded within ten days.

7 A Right.

8 Q Yet this letter only references one special
9 assessment being rescinded not both; correct? And then
10 rather than immediately or doing the reversal within the
11 ten days, it states: "The task to reverse the special
12 assessment and late fees will take some time but is in
13 the process and will be completed as soon as possible."
14 So does that comply with the ten-day deadline
15 to rescind the special assessment?

16 A No.

17 Q And then I apologize for doing this out of
18 order, but now we're jumping back ahead to the prior
19 order or prior motion for order to show cause. And let
20 me have you take a look at Exhibit 77. Exhibit 77 is an
21 owner account statement dated April 18th, 2022.

22 MR. MCELHINNEY: Your Honor, I understand
23 you've previously overruled my objection, but I want a
24 standing objection as to foundation for these statements.

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1 And the fact that they're stipulated into evidence, I
2 don't believe satisfies the foundational requirement.

3 THE COURT: Absolutely, it does. Okay. You
4 and I may disagree about that, but it's in evidence.
5 Anybody can read from it, including me. That was a hint
6 to Mr. Miller.

7 MR. MILLER: I didn't get it.

8 THE COURT: That's okay. Keep going.

9 Q (BY MR. MILLER:) So back to Exhibit 76. Do
10 you believe that this owner account statement 77 that has
11 a daily use fee of \$38.07, are these -- Do you believe
12 these to be the statements that your counsel memorialized
13 as not complying with the court's orders?

14 A Yes.

15 Q Okay. And in fact, if we looked back at that
16 Exhibit 122, the statement in there that states those
17 fees in place prior to the court's September 27th, 2021
18 order shall remain in place, the April 18th, 2022
19 statements increased the daily use fee again, don't they,
20 to \$3,807?

21 A Okay. So --

22 Q So the January statement is 66.

23 A Right.

24 Q And in that January statement, the daily use

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1 fee was \$32.47.

2 A Yes.

3 Q But then if you jump ahead to April, the
4 daily use fee is increased again to \$38.07. Is that
5 correct?

6 A Yes. I just want to make sure are we talking
7 about the same -- Yes. It's the same unit owner.

8 Q Oh, that's a good point. The same type of
9 unit. I'm sorry. I didn't --

10 A I'm looking at exhibit -- I'm looking at the
11 November 8th, 2021 and April 18th, 2022, and it's the
12 same unit owner, but I don't know the other one you were
13 referring to.

14 Q Okay. So if you're in Exhibit 77, are you?
15 Are you holding Exhibit 77? So the first page of that is
16 April 18th, 2022. Right?

17 A Right.

18 Q And on April 18th, 2022, we have a daily use
19 fee of \$38.07. Correct?

20 A Correct.

21 Q In that same exhibit, flip back to January
22 18th of 2022 for the same unit, unit 1886. And at that
23 time, the daily use fee was \$32.47. Do you see that?

24 A Are we talking about the same exhibit number?

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1 Q Yes, Exhibit 77. Exhibit 77 has an April
2 unit owners' statement, a March-April unit owners'
3 statement, a February unit owners' statement and a
4 January unit owners' statement and a December unit
5 owners' statement for the same unit. Do you see that?
6 A Yes.
7 Q Okay. So if we look at April 18th, 2022, the
8 daily use fee is \$38.07 --
9 A Yes.
10 Q -- correct? And if we look back at January
11 18th, 2022, the daily use fee is \$32.47. Do you see
12 that?
13 A Correct.
14 Q So the daily use fee was increased between
15 January 18th and April 18th from \$32 to \$38. Is that
16 correct?
17 A Correct.
18 Q Did you authorize that increase?
19 A No.
20 Q Does that increase conflict with your
21 calculations of the daily use fee?
22 A No.
23 Q How so?
24 A I'm sorry?

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1 Q Didn't you calculate the daily use fee --
2 Well, you calculated the daily use fee between \$22 and
3 \$25 per unit; correct?
4 A Between yes, between \$22.02 and \$25.65, the
5 ranges.
6 Q Okay. So does the \$38 daily use fee conflict
7 with your calculation?
8 A Conflict. Yes.
9 Q Yes. Okay. And in fact, if we look back at
10 the December 2nd, 2021 invoice for the same unit, it has
11 \$32.47 for the daily use fee; correct?
12 A Yes.
13 Q So December, you've got \$32. The court in
14 January reaffirms that your fees are to apply and
15 approves your fees. They're now applied. But yet in
16 April, they increase it again. Is that correct?
17 A Yes.
18 Q Did those increases without your approval
19 interfere with your ability to implement compliance with
20 the governing documents?
21 A Yes.
22 Q Let me have you refer to Exhibit 78. Was
23 there a time when you demanded that the defendants
24 deposit their rents into the bank account of the UOA

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1 association?
2 A Well, in this document, which is my report in
3 March of 2022, I said: Upon receipt of the payment for
4 all rents from GSR, I will turn the deposit -- I would in
5 turn deposit the amount of the payment into the UOA bank
6 account.
7 Q Did they turn over the rents for you to
8 deposit into the UOA bank account?
9 A No.
10 Q Okay. And just for a little context on this,
11 do you remember -- Let's go back to 2019. All of 2019.
12 In 2019, the defendants simply paid your bill, correct,
13 as it was submitted monthly?
14 A Yes.
15 Q And do you recall in 2019 when the plaintiffs
16 were owed balances under the monthly statements, the
17 defendants sent the plaintiffs checks for those amounts
18 due; is that correct?
19 A Yes.
20 Q Okay. Can you speak into the microphone? I
21 can hear you, but I'm not sure everybody else can.
22 A Yes. Sorry.
23 Q So when the defendants were cooperating with
24 your instructions to pay your bill and pay the plaintiffs

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1 the rents that were owed under the monthly statements,
2 was there a need for you to take over the bank account or
3 take over the rents physically?
4 A No, there wasn't a need.
5 Q Because they were doing what you told them to
6 do. Is that correct?
7 A I should clarify something, if I may. Our
8 fees -- My fees and my attorney's fees when she came on
9 board were being paid by the UOA. My understanding has
10 been that those fees were paid from UOA dues that were
11 assessed back from the rents that were -- that came from
12 GSR. Eventually, the UOA ran out of funds and couldn't
13 pay me anymore, so I think technically, the UOA should be
14 reimbursed for the fees that it paid me.
15 Q So you --
16 A That's my observation.
17 Q Okay. So you bring up an interesting point,
18 and that is under the receiver order, it states -- and at
19 page six of Exhibit 115, line 12: To pay and discharge
20 out of the property's rents and/or GSR UOA monthly dues
21 collections.
22 So if there were sufficient dues to pay your
23 rents, you could take them from there, right?
24 A Yes, that is correct. That is correct.

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1 Q But the order says: Rents and/or rents. So
2 once you're out of dues, you need to pay it from the
3 rents; is that correct?
4 A Yes. Yeah. And I assume when they say when
5 it says "dues," it means the UOA dues that it collects
6 from the unit owners.
7 Q Okay. So going back to Exhibit 78, which is
8 March of 2022, why did you at that time demand that the
9 rents go into the UOA bank account? Because your bills
10 weren't being paid?
11 A Well, that was the only account that was
12 available for me. I tried to open an account. I wanted
13 to get an employee ID number. I tried about five
14 different times with the IRS going back and forth. They
15 didn't understand what an EIN number is for a receiver in
16 a receivership.
17 And I kept having to resubmit more
18 information to them, and eventually, they just stopped
19 contacting me, and I didn't try to contact them again.
20 So I then was trying to find a bank that would open an
21 account without an employee identification number, and I
22 couldn't. I could not find one.
23 So eventually, just so you know, just so
24 eventually when I opened an account most recently, I had

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1 to use the UOA's ID number, employee ID number in order
2 to open an account. But again, I don't see any problem
3 with that because the rents that are collected are --
4 it's how I use those rents, it's just a conduit. The
5 rents come in, the payments go out after the fees are
6 applied after the payments for my fees and my attorney's
7 fees are paid, so it's that account is just a conduit.
8 It's not an account that collects income. The income is
9 still reportable by the individual unit owners.
10 Q And do you believe that was your decision to
11 make as a receiver?
12 A To open a separate account?
13 Q Yes.
14 A Yes. And by the way, I couldn't do that. I
15 -- the Associa contacted the representative at the bank
16 that they use and they said they couldn't open a separate
17 account for me under their, you know, under the UOA's
18 name.
19 Q So when you made this demand for the turnover
20 of the rents into the UOA account as demonstrated in
21 Exhibit 78, did the defendants comply with that request?
22 A No.
23 Q And not complying with that request, did that
24 interfere with your ability to proceed in accordance with

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1 the governing documents?
2 A Yes. Correct.
3 Q We're going to move forward to the fifth
4 motion for order to show cause which was filed December
5 28th, 2022. Mr. Teichner, are you familiar with the
6 court's November 14th, 2022 order which is Exhibit 126?
7 A Yes, I've seen this. Yes.
8 Q Okay. Did anyone between January 4th of 2022
9 and the issuance of this November 14th, 2022 order from
10 the GSR ever indicate to you that they didn't want to
11 comply or wouldn't comply with the January 4, 2022 orders
12 because they had sought reconsideration of the January
13 4th, 2022 orders?
14 A Yes.
15 Q Okay. So during that time period, do you
16 have some recollection that someone told you they
17 wouldn't comply with the orders because they were seeking
18 reconsideration of them?
19 A Because they were.
20 Q They were seeking reconsideration of the --
21 A Right.
22 Q -- January -- Okay.
23 A Yes.
24 Q And then do you understand that the November

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1 14th, 2022 order that you just read almost entirely
2 denies reconsideration of those January 4, 2022 orders?
3 A Yes.
4 Q Okay. Let me have you refer to Exhibit 82.
5 So Exhibit 82 is a November 18th, 2022 owner account
6 statement for Unit 1762. So this is a different unit
7 than what we've been talking about in the prior exhibits.
8 Do you see the daily use fee in this November
9 18, 2022 statement it's \$38.07? Do you see that?
10 A Yes.
11 MR. MCELHINNEY: Objection, foundation.
12 THE COURT: Overruled.
13 Q (BY MR. MILLER:) So after these statements
14 were issued after the November 14th, 2022 affirming
15 order; is that correct?
16 A Correct.
17 Q And yet the daily use fee still hasn't
18 changed to your calculation of the daily use fee. Is
19 that correct?
20 A Correct.
21 Q Do you believe that Exhibit 82 should have
22 applied your calculation of the daily use fee?
23 A Yes.
24 Q By not applying your calculation of the daily

Page 150

1 use fee, did the defendants interfere with your duties to
 2 implement the governing documents?

3 A Yes.

4 Q And just to resolve any doubt, if we turn to
 5 Exhibit 83, the next one -- Can you turn to that?

6 MR. MCELHINNEY: Same objection, Your Honor.
 7 THE COURT: Overruled.
 8 MR. MCELHINNEY: Foundation.

9 Q (BY MR. MILLER:) Even the following month,
 10 the defendant still applied the \$38.07, is that correct,
 11 as the daily use fee?

12 A Yes. Yes.

13 Q Yes? Let me have you turn to Exhibit 86.
 14 This is an internal email from Reed Brady to various
 15 individuals associated with the defendants, and it's
 16 dated March 24, 2022. And the second or the third line
 17 in the first paragraph states: "Currently, he does not
 18 have a bank account, so he instructed that we would send
 19 it into the UOA bank account."
 20 Do you remember any specific conversations
 21 that you had with Mr. Brady about that? If you don't,
 22 that's --

23 A I may have. It was okay to facilitate
 24 receiving the rents and getting them into a separate bank

Page 151

1 account.

2 Q Okay. And did Mr. Brady express any concern
 3 to you in your conversations with him about doing that?

4 A Well, this was an email. I don't believe --
 5 I may have, but I don't believe I received a response. I
 6 may have though.

7 Q Okay. We're next going to draw our attention
 8 to the Motion for Order to Show Cause filed December
 9 29th, 2022. Let me have you refer to Exhibit 90. Are
 10 you familiar with this document?

11 A Somewhat.

12 Q So going back over what we've just covered or
 13 we've covered as I understand this morning, you'll recall
 14 that the defendants had previously done a reserve study
 15 and issued was it a \$24 million-dollar special assessment
 16 under that reserve study, and then January 4th, 2022, the
 17 court issued a series of orders saying no, Mr. Teichner
 18 does the reserve study. And it revoked the special
 19 assessment that was issued under that prior reserve
 20 study. Do you recall going over that testimony this
 21 morning?

22 A Yes. \$26 million, by the way.
 23 Q \$26 million?
 24 A Yeah.

Page 152

1 Q Okay. So then if we look at Exhibit 90, is
 2 that another reserve study that was prepared, it looks
 3 like, or it was year beginning 1-1-2023?

4 A Yes.

5 Q So did they try to do the same thing again
 6 where they obtained another reserve study without your
 7 oversight?

8 A Correct.

9 Q Correct? And you had no input over that
 10 reserve study?

11 A Correct.

12 Q Let me have you turn to Exhibit 91.

13 A I should clarify. When you say I had no
 14 input, again, my attorney, Ms. Sharp, spoke with
 15 Ms. Betterley at the Reserve Consultants or whatever the
 16 heck -- I forgot the name -- about the fact that the
 17 reserve study was not done properly, and I believe it was
 18 before this reserve study was issued. I believe it was
 19 last year in 2022. So but the reserve study was done, I
 20 guess, because it was time for one to be done, but again,
 21 we didn't agree with it. And I believe that there was an
 22 email or some communication that it should not have been
 23 issued.

24 Q We're going to cover those emails, so thank

Page 153

1 you for that overview. So looking at Exhibit 91, if you
 2 turn to page two of that exhibit, it's an email from me
 3 to your counsel dated December 16th, 2022, and it states:
 4 "Stefanie, I hope all is well. Attached,
 5 please find a copy of documents we received concerning
 6 the reserves prepared by Better Reserve Consultants for
 7 year beginning 2023. The documents blatantly violate the
 8 governing documents and various court orders. Before we
 9 file the appropriate motion, can you please advise if the
 10 receiver participated in the preparation of the documents
 11 and approved the documents?"

12 If you turn to page one, the previous page,
 13 there's a response there from your counsel, and it's
 14 dated December 16th, 2022.

15 Can you read her response for me?

16 A "Good afternoon. I can confirm that the
 17 receiver DID NOT -- and that's in bold capital letters --
 18 participate in any way in the preparation of the
 19 documents attached hereto and DID NOT approve of the
 20 documents attached hereto. Neither the receiver nor I
 21 have seen the attached prior to your email."

22 Q Do you recall if this reserve study also
 23 called for a special assessment?

24 A Do I recall a reserve study after the special

Page 154

1 assessment?

2 Q Do you recall if under this special reserve

3 study that you didn't participate in that the defendants

4 also sought another special assessment?

5 A Correct.

6 Q And do you recall the amount of that special

7 assessment?

8 A The amount?

9 Q Yes.

10 A Not offhand.

11 Q Okay. Regardless, you didn't approve of the

12 reserve study or any special assessment?

13 A No.

14 Q Do you recall learning that the defendants

15 had withdrawn funds from the reserve accounts without

16 your authorization or approval?

17 A Yes.

18 Q When do you first recall that occurring?

19 A I don't remember the date.

20 MR. MILLER: Your Honor, can we take a short

21 break?

22 THE COURT: Yes.

23 MR. MILLER: Like five minutes?

24 THE COURT: Okay. Five minutes.

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1 (Recess.)

2 THE COURT: Sir, you're still under oath.

3 Keep going, Mr. Miller.

4 Q (BY MR. MILLER:) Mr. Teichner, on January

5 9th, 2023, you provided receiver's response to

6 plaintiff's motions for order to show cause. And in that

7 document, you state:

8 "Accordingly" -- and this is page three, line

9 20 -- "the total withdrawals from the reserve bank

10 accounts in 2022 through November is \$12,892,660.18."

11 Does that sound accurate to you?

12 A Yes.

13 Q So between those dates in 2022, did the

14 defendants withdraw that amount, the \$12 million-dollar

15 amount that I just stated without your approval?

16 A Correct. Yes.

17 Q Do you believe you should have approved of

18 any expenses that came out of the reserve account?

19 A Yes.

20 Q Is it your understanding that you're in

21 charge with approving and/or denying expenses from the

22 reserve accounts?

23 A Yes.

24 Q Did withdrawing the \$12,892,660 from the

Page 156

1 reserve accounts in 2022 interfere with your ability to

2 implement compliance with the governing documents?

3 A Yes.

4 Q Mr. Teichner, let me have you refer to

5 Exhibit 102. Are you familiar with this email? It's an

6 email from David McElhinney to your counsel, and it's

7 dated April 5th, 2023.

8 A Yes.

9 Q Can you please read the last three lines of

10 that email after "Statutory provisions"?

11 A The last?

12 Q I can read it for you.

13 A The last three lines is middle of the

14 sentence.

15 Q Okay. It states: "Defendants therefore will

16 perform the above-described services under protest with a

17 reservation of rights and without waiving any issues or

18 arguments on appeal from the December 5th, 2022 order,

19 the final judgment or any other appealable rulings."

20 Do you understand this concern that concerned

21 continuing to rent the plaintiffs' units through the

22 receivership?

23 A Yes.

24 Q Okay. So was it your understanding through

Page 157

1 your counsel or reviewing this email that after April

2 5th, 2023, the defendants would continue to rent the

3 plaintiffs' units under the unit rental program?

4 A Yes.

5 Q Let me have you turn to Exhibit 103. And

6 Exhibit 103 is an April 20th, 2023 owner account

7 statement. Do you see that?

8 A Yes.

9 MR. MCELHINNEY: Objection, foundation.

10 THE COURT: Overruled.

11 Q (BY MR. MILLER:) And does that owner account

12 statement show that there was no rental activity for the

13 stated time period?

14 A Yes.

15 Q Did you ever, as a receiver, authorize the

16 defendants to discontinue the rental of plaintiffs'

17 units?

18 A No.

19 Q And in fact, would you have instructed them

20 not to discontinue the rental of plaintiffs' units?

21 A Correct.

22 Q Also on this statement, there's a 2022 actual

23 expense true-up, and it adds another \$15,019.17 to the

24 amounts owed by the plaintiffs. Did you authorize that?

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1 A No.

2 Q Even under -- Looking at the statement again,

3 even under the application of defendants' fees for the

4 past few years as we've gone over repeatedly today, does

5 this statement show that this unit owner is still owed

6 \$5,916.29?

7 A Yes.

8 Q Okay. So even applying the defendants' fees

9 that are significantly larger than your amounts are still

10 owed under these accountings?

11 A Well, this again, just to be clear, this is

12 due to the owner.

13 Q Yes. So even when they go for years applying

14 their fees which are much greater than your calculation

15 of fees, the plaintiffs are still owed money, is that

16 correct, even under these accounts?

17 A I'm sorry. This is due to the unit owner?

18 Q Yes. So what I'm saying is if you go back

19 all these years since January of 2020, the proper fees

20 were applied, and they continuously apply their fees;

21 correct? The higher fees, we've gone over the daily use

22 fee repeatedly because it's the easiest one to recognize.

23 A Right.

24 Q So even using their daily use fee, which is

Page 159

1 greater than what you believe is required under the

2 governing documents, the plaintiffs are still owed money?

3 A Correct.

4 Q Correct. Do you know why the amounts owed in

5 this case, it says \$59,018.29 is owed even under their

6 accounting and even that amount still isn't paid to the

7 unit owner? Have you ever asked the defendants about

8 that?

9 A No.

10 MR. MILLER: Your Honor, I have no further

11 questions.

12 THE COURT: Ask the witness.

13 Mr. McElhinney?

14 MR. MCELHINNEY: Thank you, Your Honor. With

15 the court's permission, may I set up the stand over there

16 so I can get closer to the witness?

17 THE COURT: You can do whatever you like,

18 Mr. McElhinney.

19 MR. MCELHINNEY: Thank you.

20 THE COURT: And, sir, can I have the

21 demonstrative exhibit back? There was one that had the

22 yellow highlights all over it. It was a single sheet. I

23 think it's over on that side. And then did you have

24 another loose one that was 140?

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1 THE WITNESS: Oh, yes.

2 THE COURT: I need to give that back to the

3 clerk. We'll give it back to the clerk. What are you

4 doing over here?

5 MR. SMITH: Giving the exhibits to give to

6 the witness.

7 THE COURT: That's a lovely thing to do,

8 Jordan. They have different numbers. Thank you, Jordan.

9

10

CROSS-EXAMINATION

11

12 BY MR. MCELHINNEY:

13 Q Good afternoon, Mr. Teichner.

14 A Good afternoon.

15 Q We have met before; correct?

16 A Of course.

17 Q And you understand I'm counsel for several of

18 the defendants in the GSR, Gage Village and MEI-GSR.

19 Okay?

20 A Yes.

21 Q Take me through the history. You were

22 appointed January 25, 2019; correct?

23 A Correct.

24 Q And prior to you, Mr. Proctor was the

Page 161

1 receiver?

2 A Yes.

3 Q Now, you were ordered fairly early on to come

4 up with new calculations for DUF, SFUE and HE and

5 reserves; correct?

6 MR. MILLER: Objection, Your Honor, vague and

7 ambiguous as to the time frame.

8 THE COURT: Overruled. You can answer.

9 MR. MCELHINNEY: Judge, I'm happy to

10 rephrase.

11 A Well, yes. I understand your question, but

12 you have to be a little bit more specific. You said

13 shortly thereafter?

14 Q (BY MR. MCELHINNEY:) After you were -- Let

15 me back up maybe a little bit more. Before you were

16 appointed and when Mr. Proctor was in place, he

17 calculated the DUF, SFUE, HE and reserves; correct?

18 A Correct.

19 Q And what did he rely upon when he was setting

20 up reserves?

21 MR. MILLER: Objection, calls for

22 speculation.

23 THE COURT: Overruled. You can answer if you

24 know.

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1 THE WITNESS: Various documents, printouts
 2 that I saw that he requested from GSR --
 3 Q (BY MR. MCELHINNEY:) What did he rely upon
 4 the independent third-party --
 5 THE COURT: You've got to let him finish his
 6 answer.
 7 Would you finish your answer, please?
 8 THE WITNESS: I'm trying to understand when.
 9 That's kind of a general question what did he rely upon.
 10 And I saw some of the documents when I met with him that
 11 he relied upon that he said he relied upon, and he
 12 actually gave me copies of some of them.
 13 Q (BY MR. MCELHINNEY:) And did he rely upon
 14 the independent third-party reserve studies in reaching
 15 his reserve calculation?
 16 MR. MILLER: Objection, assumes facts not in
 17 evidence.
 18 THE COURT: Overruled.
 19 You can answer.
 20 THE WITNESS: He relied on reserve studies
 21 that had been done, yes.
 22 Q (BY MR. MCELHINNEY:) Okay.
 23 A And he actually called for new reserve
 24 studies.

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1 Q Okay. And bear with me a second here. Would
 2 but turn to -- Now, you have a new set of books. Would
 3 you turn to Exhibit 8, which will be in book number one.
 4 I lied. It's in book number two. Are you with me?
 5 A Yes.
 6 Q And you see this is a letter from Mr. Proctor
 7 dated January 5, 2016, and it is addressed to the
 8 Honorable Elliot Sattler. Is that correct?
 9 A Correct.
 10 MR. MILLER: Your Honor, I'm not tracking
 11 this exhibit. If it's Exhibit 8, I've got something
 12 different.
 13 THE COURT: In the defendant's book or your
 14 book? Remember, he's in his book.
 15 MR. MILLER: I'm in his book.
 16 THE COURT: Mr. McElhinney, can you please go
 17 consult with -- Thank you, Ms. Collings.
 18 MS. COLLINGS: Thank you, Your Honor.
 19 THE COURT: You can keep going now,
 20 Mr. McElhinney. We straightened that out.
 21 Q (BY MR. MCELHINNEY:) Thank you, Your Honor.
 22 Turn to page 7 of Exhibit 8, would you, please.
 23 A Okay.
 24 Q Do you see the paragraph A entitled,

Page 164

1 "Reserves"?
 2 A Yes.
 3 Q Would you go down to the second sentence that
 4 begins: "Those elements have been detailed in the
 5 reserve study." Do you see -- Are you with me where I'm
 6 reading? Do you see it? He says:
 7 "Those elements have been detailed in the
 8 reserve study performed by Reserve Advisors as of August
 9 2014 and are allocated based upon square footage. We
 10 have placed reliance upon the reserve study with a shared
 11 facilities unit reserves and the hotel reserves as it was
 12 prepared by a professional independent third-party and is
 13 cited by the governing documents and GSR management as a
 14 basis for allocation and distribution determination."
 15 Did I read that correctly?
 16 A Yes, you did.
 17 Q Does it appear to you from that reading that
 18 Mr. Proctor was not only relying upon the reserve study,
 19 but he regarded them as reliable?
 20 A Correct.
 21 Q Okay. And, sir, when you first started as
 22 receiver, did you regard the reserve studies as reliable?
 23 A I didn't necessarily believe it was reliable
 24 because there was a point when those reserve studies

Page 165

1 really needed to be looked at in terms of applying the
 2 governing documents.
 3 At that time, my focus was not on the reserve
 4 studies. I did speak with Ms. Betterley a couple of
 5 times. I had some concerns. But at that point in time,
 6 well, I can't say when the -- I think 2016 was the last
 7 reserve study I think I had seen when I became -- when I
 8 was appointed as receiver, and then there were the annual
 9 updates. After that, I didn't rely on them.
 10 I think what happened was that the reserve
 11 amounts what I did rely upon were the reserves that were
 12 made based on those reserve studies at the time. So the
 13 answer, it's kind of a long-winded answer, but I accepted
 14 that. Let's just put it that way at the time.
 15 Q Okay. You didn't -- for a period of time
 16 when you were first appointed, you weren't challenging
 17 whether or not the reserve studies were flawed. Is that
 18 fair to say?
 19 A Right. That wasn't until I hired Ms. Sharp,
 20 who I had heard really took a look and see if those
 21 reserve studies were in compliance with the governing
 22 documents because again, I didn't feel I was necessarily
 23 qualified from a legal standpoint about whether the
 24 reserve studies were in compliance. I had questions

Page 166

1 about the CC&R's and the reserve and how the reserve
2 studies were applied, but I didn't want to make any
3 determinations without legal counsel.

4 Q All right. So let me stay on top as best I
5 can because I pulled this over a little bit. You're
6 appointed. You actually are given an office at Grand
7 Sierra, are you not?

8 A Temporarily. Yeah. Temporarily.

9 Q During that first year from your appointment,
10 how much time do you think you spent at Grand Sierra?

11 A I didn't spend much time at all. I probably
12 spent -- over the period of time that we had the office
13 until it was given to somebody else -- well, I had that
14 office and my assistant had that office, but some of the
15 meetings I had were not in that office. Some of the
16 meetings were at GSR. So if you're just specifically
17 talking about that office, but if you're talking about
18 how much time did I spend at GSR, that's a different
19 answer.

20 Q How much time did you spend at GSR?

21 A Up until I stopped spending time there?

22 Q Yes, sir.

23 A Oh, gosh. I don't know. Probably -- I have
24 no idea. I would say at least 30, 40 hours total at

Page 167

1 least.

2 Q And during those times where you were at GSR,
3 were you meeting with their finance people and their
4 accounting people?

5 A Part of the time, yes.

6 Q And were you reviewing documents at the GSR
7 to assist you with your calculations for DUF, SFUE and
8 HE?

9 A Part of the time, yes.

10 Q All right. And you arrived at some numbers
11 in 2020, did you not, some calculations?

12 A Yes.

13 Q And those numbers were very close to Grand
14 Sierra's numbers, were they not, pretty much in agreement
15 with the numbers that the GSR had calculated?

16 MR. MILLER: Objection, Your Honor. This
17 assumes facts not in evidence. There's a very detailed
18 record on what occurred.

19 THE COURT: Overruled. Overruled.

20 THE WITNESS: If you're talking about the
21 numbers on which the charges were based, I went -- the
22 budgets, in other words, most of those items I had
23 approved after discussing with the people at GSR.

24 After again, explanations, I checked some of

Page 168

1 those figures, and there were some that I did not accept,
2 but much of those figures, I did. And that continued
3 until I got legal counsel who went through the governing
4 documents and determined that no, a lot of those amounts
5 should not apply, and that's when that was all revised.

6 Q Okay. So stick with me for a minute here.
7 Early on when you were spending time at the Grand Sierra
8 and meeting with their accounting and finance people, if
9 you told them there was a category you didn't agree with,
10 did they remove it at your instruction?

11 A Well, when you say did they remove it, they
12 had the budget. I was the one who excluded those.

13 Q Understood. Did they find you on it? Did
14 they argue with you about it when you wanted to remove
15 those items?

16 A No. I think the people who were there at the
17 time were pretty cooperative.

18 Q Okay. And did you feel that you had arrived
19 at calculations in 2020 that were in compliance with the
20 governing documents?

21 A Well, that was my -- yes. I expressed that
22 the four days of hearings in 2021.

23 Q And at that hearing, you were being
24 challenged by Mr. Miller that those figures were not

Page 169

1 accurate; correct?

2 A I would say in essence, yes. I don't know if
3 he specifically mentioned which figures those are, but he
4 had issues with the way those were computed, yes.

5 Q Did he tell you if you didn't change your
6 numbers, he was going to seek to remove you as receiver?

7 A Well, I think he filed a motion to that
8 effect.

9 Q Okay. And did you get emails from him as
10 well that made those suggestions?

11 A Possibly. I don't recall, but possibly.

12 Q Okay. And that was impetus for you to go
13 back and redo your calculations?

14 A No, no. What I did was that's when I hired
15 counsel to assist me with calculating it. I don't know
16 if the amounts were recalculated. I know from that point
17 on, the calculations were -- the methodology that was
18 used and the expense items that were included were
19 changed from what I had originally done, but I think that
20 was going forward. I don't think it was retroactive.

21 Q Understood. So our timeline is you came up
22 with numbers in 2020, and we ended up in front of Judge
23 Sattler for three or four days' hearings, and at the
24 conclusion of that, then you went back to the drawing

Page 170

1 board and came up with your numbers of August of 2021?

2 A Well, yeah. I don't know if I would say we

3 went back to the drawing board, but the figures I came up

4 with for 2021 were done based on what again my -- of

5 course my legal counsel and I consulted on this because

6 we didn't agree on every little item. But once we were

7 able to agree on every item, then that's when I

8 calculated the fees for 2021.

9 Q Whose idea was it to change your numbers, the

10 numbers from 2020 to the numbers of August 2021? Was

11 that your idea or your attorney's idea?

12 A Well, I think it was both of ours. I mean,

13 we consulted on this and, I mean, I certainly took her

14 advice and her legal interpretation of the governing

15 documents. But when we got down to some specific expense

16 items, that's when we had to discuss those and decide

17 which items should be included and which shouldn't. And

18 we didn't -- Eventually, we came to a meeting of the

19 minds on some of those specific items.

20 Q Okay. Did you come to a meeting of the minds

21 of all of the items or were there some that you remained

22 in disagreement on?

23 A No. No, all of them. All of them. Yeah.

24 Q So explain for me, if you would, why is there

Page 171

1 such a difference between your 2020 calculations and the

2 substantial reduction in your August 2021 numbers?

3 A Well, first of all, the figures are different

4 figures. The budget is different. That's one reason.

5 Q I don't understand what you mean, the budget

6 is different.

7 A Well, you're applying -- You're applying a

8 different year's budget for 2020 than you were for 2021.

9 Q Sure.

10 A So that's one of the reasons. And the other

11 reason is because some of the expenses that I included

12 originally expenditures that I included originally my

13 legal counsel said no, those don't comply with the

14 CC&R's. And again, we discussed all of those and came to

15 an agreement.

16 Q So let me make sure I understand your

17 testimony. So the difference between your 2020

18 calculations and your August 2021 calculations were due

19 to expenses that were removed from the 2020 calculations.

20 Is that fair?

21 THE COURT: The objection is?

22 MR. MILLER: Yes, Your Honor. I'd like to

23 object to this whole line of questioning on the grounds

24 of relevancy. Whether or not how he calculated his fees,

Page 172

1 whether or not they agree with --

2 THE COURT: Please don't make a speaking

3 objection. So the issue is relevance?

4 MR. MILLER: The issue is relevance, Your

5 Honor.

6 THE COURT: Overruled.

7 MR. MILLER: We're here to determine whether

8 or not there's a violation of court orders.

9 THE COURT: Overruled. Thank you.

10 Continue.

11 MR. MCELHINNEY: Did you rule on the

12 objection, Your Honor?

13 THE COURT: I overruled it.

14 MR. MCELHINNEY: Thank you.

15 THE COURT: That's why I said continue.

16 Q (BY MR. MCELHINNEY:) Sorry. So do I

17 understand that correctly? The difference between your

18 2020 calculations and your August 2021 calculations was

19 due to the elimination of expenses?

20 A I believe so. Again, when I calculated those

21 2020 calculations, when I formed those 2020 calculations,

22 I believe those were based on the prior year's budget

23 before my legal counsel came on board. So I believe the

24 answer to your question is yes.

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1 Q Okay. So you have your 2020 calculations.

2 You get an attorney. The attorney tells you there are

3 expenses -- her reading of the shared facilities -- I'm

4 sorry. Her reading of the Seventh Amended CC&R's

5 indicate to her that there are expenses that you included

6 that shouldn't be in there and you changed it. Is that a

7 fair characterization?

8 A I think that -- yeah, that's a proper

9 characterization.

10 Q Okay. You're familiar with the Seventh

11 Amended CC&R's; correct?

12 A Yes.

13 Q And in arriving at your calculations, you

14 follow the express terms of the Seventh Amended CC&Rs, do

15 you not?

16 A Yes.

17 Q Okay. Let's look -- Give me an example

18 before we take a look at the Seventh Amended CC&Rs, give

19 me an example of what expense you've eliminated from your

20 2020 calculations to your August 2021 calculations.

21 MR. MILLER: Objection, Your Honor.

22 Relevance.

23 THE COURT: Overruled. You may answer.

24 THE WITNESS: I don't know. I'd have to go

Page 174

1 back and look.

2 Q (BY MR. MCELHINNEY:) Look back at what?

3 A I'd have to go back and look at what

4 eliminated. I don't recall. I don't want to give an

5 example and be incorrect.

6 Q Do you remember as an example pool expenses

7 being discussed that your --

8 A Well, if they were, I don't remember if they

9 were, but if they were, those were definitely eliminated.

10 There were some expenses that were not part of the shared

11 facility unit that were eliminated that, in other words,

12 some other -- some outside expenses outside the shared

13 facility units should not have even been allocated to the

14 shared facility units because they had nothing to do with

15 that, and that would include some of the hotel -- some of

16 the other areas in the hotel.

17 Q Can you share those with me?

18 A I'm sorry?

19 Q What our areas of the hotel?

20 A Well, some of the lobbies and some of the

21 other areas were not really part of the shared facility

22 units. And they again, according to the CC&R's and the

23 way my attorney interpreted them and had to explain to me

24 why then those expenses that had to do with other areas

Page 175

1 of the hotel were not allocatable to the shared facility

2 units and not allocatable to the unit owners because

3 that's not what the CC&R's specifically said.

4 Q And that was -- Could you take me through the

5 CC&Rs and tell me what categories of expenses are not

6 allowed that were reflected in your 20 --

7 A I'd have to see what -- I can't say offhand.

8 There was sort of a catchall in the CC&R's regarding the

9 expenses, and I think it's -- I want to say Section 10

10 something of the CC&R's. I could be wrong. I haven't

11 looked at the CC&R's for a while, so I don't know

12 offhand. I can't remember offhand.

13 Q Let's give it a try. I'd like you to look at

14 Exhibit 1, please, which is in the CC&R's. If you

15 remember, when you were -- because this is your call, as

16 I understand it, Mr. Teichner. You're the receiver. You

17 have to decide what categories of expenses belong -- are

18 properly charged to the unit owners. Do I understand

19 that correctly?

20 A Right.

21 Q So you need to be familiar with the CC&R's so

22 you know what charges should be going to the unit owners;

23 correct?

24 A Right.

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1 Q Okay. Can you tell me -- and I don't want to

2 be unfair, but can you tell me what sections of the

3 CC&R's, Exhibit 1, you relied upon in deciding what

4 categories of expenses could be charged to the unit

5 owners?

6 A I can't tell you because that is a document I

7 prepared for the court back in June or July of 2021 and

8 that we went over, and I don't have a copy of that with

9 me. Had I known, I would have brought a copy, but I

10 specifically delineated which items I included and gave

11 my justification for including those. So I would have to

12 refer to that document in order to be able to properly

13 answer your question.

14 MR. MCELHINNEY: Okay. Court's indulgence,

15 please.

16 THE COURT: Absolutely.

17 MR. MCELHINNEY: I think that's Exhibit 140,

18 isn't it?

19 MR. MILLER: His calculation of fees.

20 MR. MCELHINNEY: Correct.

21 MR. MILLER: I believe so.

22 THE COURT: I took 140 away from him. Thank

23 you, Jordan.

24 Sir, here is your beat-up copy of 140. Don't

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1 make it any worse.

2 Q (BY MR. MCELHINNEY:) So, Mr. Teichner, what

3 you have in front of you is Exhibit 140 which is

4 receiver's analysis and calculation of daily use fee,

5 shared facilities unit expense fee and hotel expense fee

6 with request to approve updated fees and for court to set

7 effective date for new fees. It looks like it was filed

8 August 16th, 2021.

9 Have I adequately or correctly identified

10 that document?

11 A Yes.

12 Q All right. Now, looking at that document,

13 can you tell me what portions of the Seventh Amended

14 CC&R's you relied upon in determining what costs should

15 be allocated to the unit owners?

16 A So what portion of the CC&R's or what -- I'm

17 sorry. Can you repeat that question?

18 Q Sure. My question had originally been I was

19 looking at your 2020 numbers and your 2021 numbers, and

20 we talked about why the big difference. And you said

21 there were expenses that were eliminated from your 2020

22 calculations, and that's why your 2021 calculations were

23 lower. I asked you what expenses had been eliminated,

24 and I thought you said if you saw Exhibit 140, you would

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1 be able to answer my questions. I might have
2 misunderstood.

3 A I don't remember saying that. I said there
4 was a document that I prepared for you for the hearings,
5 and in you thought '21, and the document that I prepared,
6 it was either presented June or July, I believe, of 2021
7 at the hearings.

8 THE COURT: So, Mr. McElhinney, can you do me
9 a huge favor and go up and push the microphone closer to
10 him?

11 MR. MCELHINNEY: Yes.

12 THE COURT: You are tall enough to reach over
13 there and have long enough arms. I can't reach.

14 THE COURT: Sir, you've got to keep your
15 voice up so that the court reporter and the clerk can
16 hear you.

17 Q (BY MR. MCELHINNEY:) Two of the items that I
18 heard you say you had eliminated were the pool expense;
19 is that correct?

20 A Yes.

21 Q You felt that was not a responsibility of the
22 unit owners; correct?

23 A I don't know about the responsibility of
24 them.

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1 Q That was a bad question. You feel that any
2 expenses related to the pool should not be the
3 responsibility of the unit owners?

4 A Correct.

5 Q And you also mentioned the front lobby;
6 correct?

7 A Yes.

8 Q Let's go to Section 4.3. Do you have an
9 understanding of we talked about the shared facility
10 unit. Are you familiar with the public shared facility
11 easements that are described on page 14 of the Seventh
12 Amended CC&R's, and it's Section 43 E.?

13 A Okay.

14 Q So if we look at Paragraph E., it talks about
15 subject to the restrictions and conditions contained in
16 this declaration, the hotel management company, the
17 association, the unit owners, hotel units, residential
18 units and commercial units shall have the following
19 perpetual easements over and across, upon and through the
20 shared facilities unit, common elements and future
21 expansion.

22 Do you see that language?

23 A Yes.

24 Q So if I was looking at a map of those

Page 180

1 easements, what would I see are those easements that run
2 far outside of the condominiums?

3 A Yes, I would assume.

4 Q Okay. And where are the shared facilities
5 unit in the hotel?

6 A Where was it?

7 Q Where are they? I mean, I gathered a shared
8 facility unit is a reference to multiple locations on the
9 property.

10 A Well, I believe that that applies to the
11 floors 7th through 14 where the condominium units are
12 housed.

13 Q Say that again. I apologize.

14 A Where the condominium units are housed in the
15 building.

16 Q In the Summit Tower?

17 A In the tower, yeah.

18 Q Right. So where are the shared facilities
19 unit within that -- Are you saying they're just within
20 that tower?

21 A I believe so. I mean, let's look at the
22 definition of shared facility unit.

23 Q Why don't we look at a couple of definitions.
24 Go to page three, which is condominium property. What do

Page 181

1 you understand condominium property to entail? Again, if
2 I was looking at the map, what would I see?

3 A Again, it's the -- Well, it gives a
4 definition here. So do you want me to read this or --

5 Q I'm interested in your understanding. If you
6 can read that and then share your understanding. Here's
7 what I'm trying to envision. If I looked at a map, based
8 upon this description, what would I see? Would it be
9 just that Summit Tower or would it be easements running
10 all over the hotel property?

11 A It would be the easements. It says the
12 easements rights belonging to therefore and the fixtures
13 for mutual use meant for enjoyment of the owners.

14 Q What it reads is a portion of the real
15 property and space within the parcel. Now what is the
16 parcel?

17 A Well, that's -- Let's see. The entire tract
18 of real estate described in the first recital of this
19 declaration.

20 Q So you agree with me that parcel is far
21 greater than just the condominiums, correct, in the
22 Summit Tower?

23 A That may be the case.

24 Q Well, I don't want to say that may be the

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1 case. Let's look at --

2 A Well, I don't know offhand. I'd have to see

3 the map of the parcel.

4 Q The parcel is defined as the entire tract of

5 real estate described in the first recitals of this

6 declaration; correct?

7 A Okay.

8 Q And is that all the property? All the

9 acreage?

10 A It may be.

11 Q Well, sir, you're assigned the task --

12 A Look. I don't recall. Again, we have to

13 look at other parts of this document definition of a

14 shared facility units, for example, which is there's

15 specific exhibits with what the shared facility units

16 diagram and what the shared facility units contain. And

17 I think most of the references in this document pertains

18 to the shared facility. And I don't want to get into a

19 legal argument with you. If we need to get into a legal

20 argument about this, I will -- Maybe we can call my

21 attorney to testify.

22 Q I don't mean to be having an argument with

23 you, sir.

24 A I'm saying I can't -- I'm not qualified to

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1 get into legal arguments with you about this. All I know

2 is what the interpretation -- and it was very clear to

3 me. I questioned it -- believe me -- with my attorney,

4 and she made it very clear what items need to be included

5 and why and what sections of the CC&Rs pertains to the

6 items that are included in the expenses for the shared

7 facility unit.

8 So again, we're going over a document that I

9 went over a few years ago and again, when my attorney

10 came on board and so I can't -- I can't -- there's

11 references and cross-references in this document that

12 ultimately determined what the shared facility unit or

13 expenses that applied to the SFUE, the shared facility

14 unit expenses. And again, those expenses were determined

15 to be restricted primarily to the -- I don't want to say

16 the property, but that which is characterized as the

17 shared facility units.

18 Q Turn back to page 14, if you would. And

19 that's Section 4.3E.

20 A Can I just mention one thing?

21 Q Yes, sir.

22 A If my application of these fees in Exhibit

23 140 were not correct, GSR, UOA did not object to these.

24 These were approved by the court. They were not objected

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1 to. They were approved by the court.

2 Now we're going over -- now what you're doing

3 just is you're rehashing something that was approved,

4 rehashing application of fees that were already approved.

5 These allocations were already approved by both sides,

6 defendants and approved by the court.

7 THE COURT: Sir, he's trying to convince me

8 that he thinks the orders are wrong, so he's going

9 through the whole process to show me why he thinks the

10 orders are wrong.

11 And he and I will have a discussion about

12 what the impact, if any, of that is later. But that's

13 what he's trying to do in this process, and I'm going to

14 let him have the latitude to do it, so be patient with

15 him.

16 THE WITNESS: Okay.

17 Q (BY MR. MCELHINNEY:) Mr. Teichner, what I'm

18 getting at is pursuant to court order, your fee

19 calculations cannot deviate from the governing documents

20 and any expenses included in the fees charged must

21 explicitly track the governing documents. That's a

22 December -- that's a Christmas Eve order of 2020. Do you

23 agree with that?

24 A I can't disagree with it.

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1 Q Is that how you conducted your calculations

2 following the governing documents?

3 A Yes.

4 Q So you can understand why I'm asking you

5 questions about trying to get to the source of why there

6 was such a difference between your 2020 and 2021

7 calculations to see what expenses you decided were not

8 appropriate under the CC&R's?

9 A Right.

10 Q That's really where I'm going.

11 A I understand. And I can't tell you without

12 going -- if I had my file with all of the different

13 calculations that I did and the reasons for that, which

14 many of which were provided to me by my counsel, then I

15 could probably answer your question.

16 I can't go -- I can't specifically answer

17 your questions because I already went through all of this

18 with my counsel, and what came up here in Exhibit 140 is

19 what we determined.

20 And we both agree that that was in compliance

21 with the interpretation of the CC&R's from our

22 standpoint, the legal interpretation, my standpoint for

23 accepting what she interpreted. Not that I'm an

24 attorney, but at least we discussed it so that any

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1 difference we had in opinion, we could talk about and
 2 which we did. And like I said, a few relatively minor
 3 items that we decided to agree upon and change.

4 Q Look at page 15, Roman numeral four, small
 5 Roman numeral four. Let me ask you a question real quick
 6 before we get to that. Currently, your calculations are
 7 that the plaintiffs get half of the daily resort fee;
 8 correct?

9 A Correct.

10 Q And what is that daily resort fee for?

11 MR. MILLER: Objection, assumes facts not in
 12 evidence. That's pursuant to court order.

13 THE COURT: Overruled.

14 THE WITNESS: Well, that's a good question
 15 because that amount keeps increasing. All hotels
 16 increase that daily resort fee, and it's supposed to
 17 cover the facilities that supposedly are available to the
 18 rentals or the customers of the hotel.

19 Q (BY MR. MCELHINNEY:) Sorry I interrupted
 20 you. Go ahead.

21 A I'm just saying that it really is -- It's
 22 supposed to be a fee for the -- that the renters or that
 23 the customers pay for the use of certain facilities of
 24 the hotel. And supposedly, it's an amount based on some

Page 187

1 calculations, and so it's really just another revenue
 2 generation.

3 Q Half of which you shared with the plaintiffs?

4 A Yes.

5 Q Okay. And does that include -- Does that
 6 daily resort fee include use of the pool? Would that be
 7 one of the elements that go into that cost?

8 A Again, it's for all of the facility, so I
 9 would assume so.

10 Q And so when a guest stays in the room, they
 11 get to use that pool in theory for free although they're
 12 paying a daily resort fee?

13 A Well, again, that's a question. Is it really
 14 for free, yeah.

15 Q And when the unit owners are occupying their
 16 unit, they get to use the pool for free as well, do they
 17 not?

18 A They use it when they pay a resort fee and
 19 then they use it. Yeah.

20 Q Okay. Now, looking at small Roman numeral
 21 one on page 15, the unit owners -- and by the way, these
 22 CC&R's are covenants that run with the land; correct?
 23 This literally defines the unit owners interest in their
 24 unit. Agreed?

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1 A Yes.

2 Q So if we look at Roman numeral four, the unit
 3 owners have a nonexclusive easement to use and enjoy
 4 portions of the shared facilities unit which from time to
 5 time are made available by the owner of the shared
 6 facilities unit by for the use of the unit owners of the
 7 hotel units, residential units, commercial units, hotels,
 8 guests, etcetera; correct? Wouldn't that include the
 9 pool? Isn't that a nonexclusive easement to use and
 10 enjoy portions of the shared facilities unit?

11 A It doesn't say pool. It says the shared
 12 facility unit which is -- does not include the pool.

13 Q Where do you see it doesn't include the pool?
 14 It doesn't say that, right?

15 A Well, I don't think anywhere it says that it
 16 includes the pool in the CC&R's.

17 Q Which I guess brings up another question. If
 18 it's not expressly identified in the governing document,
 19 you don't allow it? And let me be more specific to be
 20 fair. Because the pool is not specifically named as part
 21 of the non-exclusive easement for use and enjoyment of
 22 portions of shared facilities unit, you don't allow the
 23 unit owners to be responsible for costs related to the
 24 pool?

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1 A Well, it's not -- again, it's not within the
 2 confines of the definition -- again, I don't believe it's
 3 within the confines of the definition of shared -- what
 4 the shared facility unit is. I don't think it's included
 5 in the confines of that. It wouldn't be included in the
 6 pool, for example.

7 Q It would or wouldn't?

8 A Would not.

9 Q And why?

10 A Well, I'm looking at the definition of shared
 11 facility units. And I don't believe I see anything there
 12 that would include a pool or any other outside facilities
 13 or benefits facilities that the hotel customers could
 14 use. I'm looking at the definition of shared facilities.

15 Q Look at the definition of public shared
 16 facilities, if you would, on page five. Would that be an
 17 area that would include the area of the pool?

18 A Okay.

19 Q Would that include an area like the pool?

20 A Public shared facilities. Well, it just says
 21 that it's subject to the public shared facilities
 22 easement for access by hotel management company and unit
 23 owners, so I don't see where that includes the pool.

24 Q Okay.

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1 THE COURT: Sir, do you need a break? Are
2 you doing okay?
3 THE WITNESS: I'm okay. I'm fine.
4 THE COURT: All right.
5 Q (BY MR. MCELHINNEY:) Turn to page 18 of the
6 Seventh Amended CC&R's, Exhibit 1, please.
7 A Okay.
8 Q And do you see Section C at the very bottom
9 of that page?
10 A Yes.
11 Q It reads: "Each unit and all portions of the
12 common element shall be maintained at a level of service
13 and quality generally considered to be first class and
14 equal to or better than the level of service and quality
15 prevailing from time to time at other full-service hotels
16 in Northern Nevada."
17 Do you see that?
18 A Yes.
19 Q If you look halfway down that page, there's a
20 description of it talks about public shared facilities or
21 property outside of the condominium property including.
22 Are you with me?
23 A Which line down?
24 Q Down about one-third of the way of that long

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1 paragraph. And it starts out: "As with the decisions to
2 replace or refurbish FF&E located within the individual
3 units in accordance with Sections 4.5. "
4 A Yes.
5 Q It talks about furnishing, fixtures,
6 equipment, facilities and adorning or servicing the
7 public shared facilities or property outside of the
8 condominium property including, without limitation, the
9 lobby. Do you see that?
10 A Yes.
11 Q So you didn't include the lobby as an expense
12 that could be charged under the CC&R's?
13 A This says the furnishings, fixtures,
14 equipment and facilities adorning or servicing the public
15 shared facilities or property outside the condominium
16 property without limitation: Lobby, front desk,
17 concierge reception area, fixtures. So they're talking
18 about the public shared facilities including certain
19 furnishing, fixtures and so on outside of the condominium
20 property. That's a public shared facility.
21 Q Correct. And does that section talk about
22 the unit owners being responsible for their share of the
23 expense of those areas?
24 A I'm looking for that. Where does it say

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1 that?
2 Q It's in that same paragraph. Says
3 collectively building FF&E must be replaced, repaired or
4 refurbished as deemed necessary by the declarant or the
5 hotel management company as the case may be at the
6 expense of the unit owners, and in each instance, that
7 the declarant or the hotel manager company as the case
8 may be makes a determination that such a building FF&E is
9 in need of replacement for purposes of replacing building
10 FF&E due to wear and tear, age, etcetera, refurbishing
11 renovation of the condominiums. Each unit owner will be
12 required to participate in such building FF&E replacement
13 program."
14 Did I read that correctly?
15 A Yes.
16 Q And that includes the lobby; is that correct?
17 A Okay. I don't necessarily disagree with
18 this. It says what it says. But I believe that these
19 are the types of expenses that are included in the
20 reserves not as part of the charge for the -- We have to
21 go back and look at Section 9, that whole area of Section
22 9 again because that defines what's included in the
23 shared facilities unit charges and also defines what's
24 included in the reserves. So I believe that these are

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1 part of the reserve charges which do include certain
2 areas outside of the condominium property.
3 Q So I guess I misunderstood you earlier. I
4 thought you said lobby charges should not be included in
5 the expenses allocated to the unit owners. Did I
6 misunderstand that testimony?
7 A No.
8 Q Did you say that's correct?
9 A You did not misunderstand. You did not
10 misunderstand.
11 Q Okay. But you're saying you think these are
12 expenses that are taken care of in the reserves?
13 A I believe so.
14 Q Okay. Let's shift gears. GSR UOA.
15 A This section doesn't state where those
16 expenses are supposed to be. We're talking about the
17 public shared facilities now.
18 Q Yes, sir.
19 A Okay. So again, I think you have to take
20 this in connection with that whole Section 9.
21 Q Right.
22 A Again, I'm getting into the legal aspects of
23 this, and again, this has already been gone through.
24 Q Well, I guess my problem, Mr. Teichner, is I

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1 can't find a court order that says your 2021 numbers are
2 in compliance with governing documents.

3 MR. MILLER: Objection, assumes facts not in
4 evidence.

5 THE COURT: Overruled.

6 Q (BY MR. MCELHINNEY:) I read the order. I
7 mean, it approves your fee, but it doesn't say anything
8 about them complying with the governing documents. Who
9 do I need to talk to see if your 2021 numbers comply with
10 the governing documents?

11 A Well, if the court approved -- Look. I don't
12 know what to tell you. I mean, the court approved my
13 fees. So if the approved fees that are not in compliance
14 with governing documents, then that's an error on the
15 part of the court. I mean, the defendants approved my
16 fees and the plaintiffs approved my calculation.

17 Q Sir, you're mistaken about that. The
18 defendants did not approve your fees. We objected to it.

19 A Well, then, I don't remember any objections
20 that the defendants filed to retain my fees. If there
21 was an objection, I'm not aware of one.

22 Q There was an objection, and I'll find it for
23 you.

24 A Okay.

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1 Q But let's move on, if we may. Let me just
2 ask the question again. Who do I need to talk to to see
3 if your 2021 calculations comply with the governing
4 documents?

5 A Who do you need to talk to?

6 Q Yes, sir.

7 A Well, then, I would defer that to my
8 attorney.

9 Q Okay. Thank you. The GSR UOA, what is the
10 nature of that entity?

11 A It's basically to manage the units in terms
12 of -- Well, basically, it's in charge of the units as a
13 management company, it provides -- it pays the expenses,
14 it obtains insurance for the units.

15 Q What assets? It's like a homeowner's
16 association? What assets does it have?

17 A Only cash receivables, a little bit of
18 equipment, I believe.

19 Q You agree with me that GSR UOA doesn't own
20 the rent from the unit, does it?

21 A Own the rents? No.

22 Q Who owns the rent?

23 A Well, the unit owners own the rents.

24 Q The who is responsible under the governing

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1 documents to collect the rent?

2 A Under the governing documents? Well, I only
3 -- I have to go by the January 7th, 2015 order which says
4 that I'm responsible as receiver. The receiver is
5 responsible for collecting the rents.

6 Q I'm asking who owns the rents. Well, that's
7 not what I asked, was it? Who is responsible under the
8 governing documents to collect the rents?

9 A Under the governing documents. I'm not sure.

10 Q Take a look at Exhibit 2, please.

11 A Exhibit 2?

12 Q Yes, sir. That should be the 2007 UOA
13 agreement.

14 A Okay.

15 Q Can you look at that and tell me who is
16 responsible for collecting the rent?

17 A I'm not sure I know what you're referring to.

18 Q Is it fair to say you're not familiar with
19 the 2007 unit rental agreement?

20 A Sorry. Say that again.

21 Q Is it fair to say you're not familiar with
22 the contents of the 2007 unit rental agreement?

23 A The unit rental agreement?

24 Q Yes, sir.

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1 A Well, I've seen it many times.

2 Q Well, you're responsible to implement the
3 governing documents; correct?

4 A Correct.

5 Q And I'm asking you who collects the rent, and
6 we've had this pause as you read the document. I just
7 thought you'd be familiar with it is all.

8 MR. MILLER: Your Honor, the question
9 misstates the evidence in the case.

10 THE COURT: Overruled.

11 THE WITNESS: All I see here -- I'm still
12 trying to find what you're referring to. "During the
13 term of this agreement, owner agrees that the company
14 shall have the sole exclusive right to rent the unit to
15 guests subject to the terms and conditions of this
16 agreement."

17 Q Who is the company?

18 A Huh?

19 Q Who is the company?

20 A It's the Grand Sierra Operating Corp.

21 Q That was a predecessor to my client, MEI-GSR;
22 correct?

23 A Right.

24 Q Do you have an understanding that it's

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1 MEI-GSR Holding substituted in for the company?
2 A Okay.
3 Q Well, I'm not asking -- I'm not telling you.
4 I'm asking you if that's your understanding.
5 A Well, yes.
6 Q Okay. So you agree with me that GSR UOA is
7 not a party to the UOA agreement; correct?
8 A Correct.
9 Q Okay. And so you are appointed receiver only
10 over the GSR UOA; correct?
11 A Yes.
12 Q And you're responsible for collecting your
13 rent. That's contrary to that governing document, is it
14 not?
15 MR. MILLER: Objection, calls for a legal
16 conclusion.
17 THE COURT: Overruled.
18 THE WITNESS: No, no, it's not. I don't see
19 -- I just read during the terms of this agreement, owner
20 agrees that the company shall have a sole and exclusive
21 right to rent the property. It doesn't say to collect
22 the rent. It says to rent the property.
23 So I don't know if your point is that the
24 January 7th, 2015 order is incorrect. It's in conflict

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1 with the governing documents. I guess that's your
2 conclusion because the appointment order says that the
3 receiver shall collect the rents. Collect the rents.
4 Q (BY MR. MCELHINNEY:) Collect the rents of
5 who?
6 A Well, of the unit owners.
7 Q Does the order say that you collect the rents
8 of property that falls outside the receivership property?
9 A I don't have the exact wording.
10 Q I guess my question is: How do you know
11 that's not referring to the rents of the GSR UOA?
12 A Well, the GSR UOA doesn't have any rents.
13 Q So you just assume from the order that they
14 must be referring to the MEI-GSR rents?
15 A That's been my understanding and that's been
16 the understanding of everything that I've come across
17 during the course of my appointment as receiver.
18 Q So what's happening here as I understand
19 it -- this is a question -- is the GSR UOA is
20 substituting in place of MEI-GSR into the unit rental
21 agreement. Is that your understanding? In other words,
22 you're taking over the collection of the rent, you're now
23 a party to the rental agreement, and you're going to
24 enforce it for the benefit of the unit owner?

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1 A Yes. And it's not that the UOA is collecting
2 the rents. It's the rents are collected by GSR, but then
3 they have to be turned over to the receiver in order so
4 the receiver can distribute those rents to the unit
5 owner.
6 Q Do you regard that as a modification of the
7 unit rental agreement, that is that GSR is now collecting
8 those rents?
9 A Yes and no because the unit rental agreement
10 doesn't specifically -- all it says is the company shall
11 have the sole and exclusive right to rent the units. To
12 rent the units so that, in other words, GSR rents all of
13 the hotel units, all of the hotel rooms including the
14 ones that are owned by the unit owners. It rents them
15 all. But that's all it does. It rents them.
16 Q The GSR UOA does?
17 A No, no. GSR.
18 Q The company?
19 A The company.
20 Q Sorry. When you say GSR, you're talking
21 about MEI-GSR doing business as?
22 A Yes. Yes.
23 Q Okay.
24 A Yes. That's what this says: That they went

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1 -- they have an exclusive right. Nobody else -- the
2 hotel rents the units. They have the right to rent the
3 units, okay. But beyond that, as far as who collects the
4 rents and who receives the rents in order to facilitate
5 the implementation of the receivership, that's set forth
6 in the January 7th, 2015 order.
7 Q But that had previously been a function of
8 the MEI-GSR. They collected the rent, they deducted the
9 DUF, the expenses, and then split the net revenue amongst
10 the hotel and the unit owners. Fair?
11 A That's what they've been doing.
12 Q Correct. And the only point I'm trying to
13 make is GSR has now taken over that role. And I asked
14 you: Do you regard that as a modification of the unit
15 rental agreement? Because it used to be the company.
16 Now it's GSR UOA.
17 A We're not communicating. I'm sorry. I'm
18 saying that all this unit rental agreement says is that
19 the hotel has the right, the company has the right to
20 rent the units, rent the rooms, period. That's what
21 their right is. They have an exclusive right to rent the
22 rooms. Beyond that, there's no modification.
23 There's a supplementation now that the
24 receivership is in place, there's now a supplementation

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1 to this -- not a modification, a supplementation to this
2 that the receiver now is the one who collects the rents,
3 collects them, not rents the units, although there is an
4 order that I'm supposed to rent the units, but that's
5 another issue right now.

6 But according to this, all the company does
7 is authorized to do is to rent the units. Beyond that,
8 what supplements this since the receivership has been
9 implemented is that the receiver now is the one to
10 collect those rents that the hotel -- that the hotel
11 rents out that the hotel receives by renting out the
12 units. So I don't see -- I don't see an issue here. I'm
13 sorry. I don't see an issue.

14 Q I didn't ask you if you saw an issue. I
15 asked if you regarded it as a modification of the
16 agreement.

17 A No, I said it's a supplementation. It's not
18 a -- You can call it a modification. It's a matter of
19 semantics. Whatever you want to call it. It's one or
20 the other. But the point is, is that it does -- It does
21 add to what this section on page three of the unit rental
22 agreements, paragraph two, it's in addition since the
23 receivership has been in existence, subsequent to this
24 document that all the -- what the order now is that since

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1 there's a receivership now in place, the receiver
2 receives -- collects the rents. Not rents out the units,
3 but collects the rents.

4 Q You agree there is an order saying that you
5 are to start renting the units?

6 A That order? Sorry.

7 Q There's a court order that says that you are
8 to continue to rent the units. Do you know that?

9 A That's the most recent order. I said that's
10 another subject.

11 Q Okay. Do you have the wherewithal to rent
12 these units? Could you do it effectively?

13 A No.

14 Q Okay. I appreciate that candor. What order
15 says that my clients cannot withdraw money from the
16 reserve accounts without your approval?

17 A I believe that there's a couple. I think the
18 finding of fact and conclusions of law and judgment has
19 something about receiver having some type of authority
20 over the reserves, and there was another order besides, I
21 think, besides the January 4th, 2022 one of those orders
22 that mentions that I as receiver or that the receiver has
23 control over the reserve. So in that respect then, I as
24 receiver would be the one who decides what can be

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1 withdrawn and what cannot be withdrawn.

2 Q So is there an order in existence that says
3 we cannot withdraw money from the reserve accounts
4 expressly states unambiguously that we cannot withdraw
5 money from the reserve accounts without your approval?

6 A Well, I think if the receiver has control
7 over it, then I believe that includes not GSR not having
8 the authority to withdraw anything without the receiver's
9 approval.

10 Q Okay. My question is a very specific one
11 though.

12 MR. MILLER: Objection, asked and answered.
13 THE COURT: Overruled.

14 Q (BY MR. MCELHINNEY:) The plaintiffs are
15 seeking to hold my clients in contempt because we
16 withdrew money from the reserve accounts. And I
17 understand it was done without your approval.

18 What I'm asking is, is there an order that
19 you're aware of that expressly and unambiguously says we
20 have to have your approval before we can withdraw money
21 from our reserve accounts?

22 MR. MILLER: Objection, asked and answered.
23 THE COURT: Overruled.

24 THE WITNESS: I don't think there's any --

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1 No, I don't think there's anything that specifically
2 addresses whether or not you can withdraw amounts, but
3 there is, I believe, I don't want to -- I'm not sure if
4 there's something that says that you have to reimburse or
5 anything that says you have to reimburse reserves. I
6 don't remember that. There may have been.

7 But if there were such an order -- and I
8 don't remember if there was -- then I think that would
9 essentially say that you don't have -- that the GSR does
10 not have the authority to withdraw. But if there's no
11 such order then no, there's nothing specific.

12 Q (BY MR. MCELHINNEY:) And as you sit here
13 today, you can't identify an order that specifically
14 says --

15 A Not offhand. No.

16 Q Okay. Thank you. Now the order that we've
17 been referring to frequently here is the January 7th,
18 2015 appointment order; correct?

19 A Yes.

20 Q First of all, when did you first ask the
21 court to allow you to take over the reserve accounts?
22 Have you ever?

23 A I don't believe that happened until one of
24 the orders on January 4th, 2022.

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1 Q So let's go through those because I want to
2 see which order you think says that. Bear with me just a
3 second here. Pick up binder number three, if you would,
4 please, and let's take a look at Exhibit 23. Does this
5 order contain any language that says the receiver is
6 taking over the reserve accounts?

7 A Is this order granting the plaintiffs' motion
8 for --

9 Q Yes, sir.

10 A I'm sorry. Are you referring to page four,
11 paragraph or lines 20 to 22?

12 Q Perhaps I misunderstood your testimony. I
13 thought you had said that you thought one of the January
14 4, 2022 orders ordered us to turn the reserve accounts
15 over to you. Did I misunderstand your testimony?

16 A No. That's what -- correct.

17 Q That is correct?

18 A That's -- you're understanding me correctly.

19 Q Okay. So I'm trying to find which one of
20 those orders grants it because I'm not aware of that.

21 A Yeah, I don't know. I don't have it in front
22 of me unless you can point them to me.

23 Q I don't think it exists, so I can't point you
24 to it.

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1 THE COURT: So why don't we look at the order
2 of the receiver.

3 THE WITNESS: What it says here -- again, on
4 line -- this was signed by Judge Saitta. It's an order
5 granting plaintiffs' motion to receiver. It says: Next,
6 plaintiffs have moved the court to instruct the receiver
7 to reject the reserve study completed by the defendants
8 without any input from receiver and order and oversee a
9 set reserve study. The court has explicitly found the
10 receiver will determine a reasonable amount of FF&E for
11 hotel reserve fees.

12 So this talks about -- it goes on to talk
13 about the reserve study. And it's further ordered that
14 the receiver should not utilize the defendants' reserve
15 study calculating those fees that should be assessed to
16 the plaintiffs. The said receiver shall order, oversee
17 and implement the new reserve study which is in
18 accordance with the governing documents.

19 Q Let me ask you another question,
20 Mr. Teichner. The court had commented and directed me to
21 the January 7th, 2015 order. And I'm looking at -- So
22 would you look at -- Bear with me here.

23 THE COURT: Page nine, lines one to two.
24 MR. MCELHINNEY: Say again, Your Honor.

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1 THE COURT: Page nine lines one to two.
2 MR. MCELHINNEY: I don't understand, Your
3 Honor. Page nine, line 22 of what?

4 THE COURT: For the record, in Plaintiffs'
5 Exhibit 115 on page eight -- and sorry I'm getting
6 feedback. I'll try and figure it out. Page eight, line
7 16 through 18:

8 It is further ordered that the defendants and
9 any other person or entity who may have possession,
10 custody and control of any property, including assignees
11 and employees shall be the following.

12 Skip ahead to page nine, lines one through
13 two: Such party shall turn over to the receiver all
14 rents, dues, reserves and revenues derived from the
15 property wherever and in whatsoever mode maintained.

16 Q (BY MR. MCELHINNEY:) Does that answer your
17 question, Mr. Teichner? Did you ever make demand for the
18 reserves? I appreciate the fact the court's directing me
19 to language that says we are to turn it over to you.
20 Have you ever addressed that with my client to turn over
21 all of the reserves?

22 A I don't think it means specifically turn over
23 all of the funds. I think it means to turn over the
24 determination of reserving, but of course that would be

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1 done with somebody who is specifically an expert in
2 determining reserves. That's why we tried to actually
3 tried to hire another reserve study outfit and had some
4 resistance somewhere. I don't recall what the reason
5 was.

6 Q So let me ask you this. Are you qualified to
7 take over the reserves?

8 A Well, qualified to take over the funds in the
9 for the reserves, yes. I mean, that's just a matter of
10 having funds.

11 Q And does the GSR UOA have its own budget and
12 its own reserves?

13 A Well, it has its own budget. It's the
14 reserves that it has is -- based on my understanding --
15 is based on the reserve studies that had been performed.
16 And GSR is the one who then has determined what the
17 charges are to fund the reserves each year.

18 Q I've asked the question, and I apologize I
19 don't remember the answer. Have you ever said to my
20 clients: Turn over the reserve accounts to me?

21 A Again, you'd have to be specific. Are you
22 talking about the funds or the --

23 Q The accounts and the funds that are in there.
24 A The money? No. I was receiving -- Let's

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1 see. I was receiving bank statements to monitor what was
 2 being done until such time.

3 **Q And that is all you requested?**

4 THE COURT: Mr. McElhinney -- Sir, could you
 5 finish your answer, please? You were receiving bank
 6 statements until?

7 THE WITNESS: Yes.

8 THE COURT: Do you want to finish your
 9 answer?

10 THE WITNESS: That's all.

11 THE COURT: Until when?

12 THE WITNESS: Until when? Oh, I think boy,
 13 until fairly recently. Fairly recently. I can't -- I
 14 don't remember exactly up to what point. In fact, they
 15 still may be -- I still may be getting them, and there's
 16 what we receive every month are -- it's a shared facility
 17 mechanism where GSR puts various documents that they need
 18 to provide to me as receiver and put it into the shared
 19 facility mechanisms and then they put the bank statements
 20 in that shared facility mechanism every month from what I
 21 can recall. To answer your question, Your Honor, is that
 22 it's up to date.

23 THE COURT: And the shared facility you're
 24 referring to is a Cloud-based data storage area?

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1 THE WITNESS: I believe it's Cloud-based.

2 THE COURT: Okay. Thank you.

3 Mr. McElhinney? Sorry. I just don't like it
 4 when you cut off witnesses, and I was trying to make sure
 5 I got the whole answer.

6 **Q (BY MR. MCELHINNEY:) I apologize, Your**
 7 **Honor. And I apologize to Mr. Teichner.**
 8 **So that order is from January 7th, 2015. Did**
 9 **Mr. Proctor, to your knowledge, ever demand that my**
 10 **client turn over the reserves to him?**

11 A Not to my knowledge. I don't know much of
 12 what he did.

13 **Q And to date, you have not demanded that my**
 14 **clients turn over the reserve accounts or money; correct?**

15 A Correct.

16 **Q Why not?**

17 A As long as I am able to monitor, I don't see
 18 why I should have to open separate accounts and be the
 19 one who actually collects the amounts that are the totals
 20 that are received from the unit owners every month and
 21 pay out any expenditures or payable expenditures. That's
 22 something that is just an added burden and an added
 23 expense to the receivership which I don't think has ever
 24 been necessary.

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1 **Q Take a look at Exhibit 27. I'm switching**
 2 **gears with you again. It's the order granting**
 3 **plaintiff's motion to stay special assessment.**

4 A I have it.

5 **Q Now according to that order, on page three,**
 6 **line 20, it states: Thus, when the appointment order was**
 7 **issued -- and it talks about the January 7, 2015 order --**
 8 **all authority vested in the GSR UOA's board of directors,**
 9 **managers, the declarant and other decision makers was**
 10 **transferred to the receiver and the board of directors**
 11 **managers, the declarant and other decision makers were**
 12 **diverted of such authority.**

13 **Did I read that correctly?**

14 A Yes.

15 **Q Was that your understanding of the January**
 16 **7th, 2015 order? Up until this order was entered, was**
 17 **that your understanding that the minute that order**
 18 **issued, you took over all functions of the board of the**
 19 **GSR UOA?**

20 A No.

21 **Q And that wasn't implemented, was it? In**
 22 **fact, you attended board meetings and that board was**
 23 **still making decisions and those sorts of things;**
 24 **correct?**

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1 A Well, I'm sorry. Did you say the board made
 2 decisions?

3 **Q Yes, sir.**

4 A Well, those decisions were also -- There was,
 5 at one of the earlier board meetings, it may have been
 6 the first one that I attended, I said to them that the
 7 ultimate decisions are based on my authority even though
 8 the board would still stand. I was still the one they
 9 had to approve decisions made by the board.

10 **Q Was the entry of this order, Exhibit 27, this**
 11 **language that: Upon the appointment order in 2015, all**
 12 **authority vested that had been vested in the board of**
 13 **directors, managers, declarant and others was transferred**
 14 **to you, was that the first you learned of that when it**
 15 **showed up in this order on January 4, 2022?**

16 A No. The way I interpreted this is that I, at
 17 that time, I became substituted for the board and the
 18 board was no longer -- no longer existed, at least during
 19 that since then.

20 **Q But you attended meetings with the board;**
 21 **correct?**

22 A I did attend meetings until such time I
 23 took over and became the board.

24 **Q And when was that?**

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1 A Well, it was either in this order or another
 2 order.
 3 Q Okay. So the point I'm trying to make is
 4 before this order came out, there was still a board that
 5 was intact and functioning; correct?
 6 A Yes.
 7 Q In other words, you hadn't taken over all
 8 functions of the board; correct?
 9 A Well, all functions, probably not.
 10 Q They were still meeting, they were still
 11 voting on things, but you had the final say-so?
 12 A Correct.
 13 Q Okay. But since this order has been entered,
 14 the board no longer exists. You are the board?
 15 A Correct. Well, I have been. I'm not --
 16 Right now, there's no board at all.
 17 Q You agree with me that this proposition came
 18 as a surprise to Justice Saitta? Do you remember being
 19 at a hearing? I don't remember if you were there July
 20 2nd, 2021 where -- It's Exhibit 13 in your book. Why
 21 don't we take a look at it real quick. Are you with me
 22 on Exhibit 13?
 23 A Yes.
 24 Q Do you recall being at this hearing in front

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1 of Justice Saitta when I believe it was John Two was
 2 arguing that immediately upon the issuance of the January
 3 5th, 2015 order, you replaced --
 4 THE COURT: Mr. McElhinney, you've got to
 5 speak up.
 6 MR. MCELHINNEY: I apologize. I might have
 7 turned off my mike.
 8 THE COURT: Is your mike on or did you run
 9 out of batteries?
 10 MR. MCELHINNEY: Can you hear me? No?
 11 THE COURT: You ran out of batteries.
 12 MR. MCELHINNEY: Can we take a break, Your
 13 Honor?
 14 THE COURT: Mr. Smith is going to swap with
 15 you.
 16 (Brief recess.)
 17 Q (BY MR. MCELHINNEY:) Were you at this
 18 hearing, Mr. Teichner?
 19 A No. In fact, page two says that Stefanie
 20 Sharp was there in my stead.
 21 Q Okay. Let's look at page 31 of the
 22 transcript. The court is responding on line 23. She
 23 says: Frankly, the UOA should have the ability to
 24 continue their business. Their operations have not been

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1 suspended by any order of the court that I can find.
 2 Do you see that language?
 3 A Yes.
 4 Q Does it appear to you from that context that
 5 Justice Saitta did not regard the January 15 order as
 6 immediately replacing the board?
 7 MR. MILLER: Objection, calls for
 8 speculation.
 9 THE COURT: Overruled.
 10 Q (BY MR. MCELHINNEY:) We can read some more,
 11 if you like. Continue on to page 32 as an example.
 12 Justice Saitta says:
 13 I have to agree with Mr. Two. I think that
 14 the receiver is supposed to be, at the very least,
 15 overseeing the management, okay. I think that is what
 16 the order says. I may modify that, by the way, just so
 17 you know what is likely to be coming down the road. But
 18 for now, I need the most recent report from the receiver.
 19 I need the reserve study from the entities, and I
 20 strongly believe that the governing board of this
 21 association should be left to do their business, and that
 22 is what this meeting is about.
 23 Do you see that language?
 24 A Yes.

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1 Q Does it appear to you from that language that
 2 Justice Saitta believes that the board is still intact as
 3 of the date of this hearing, July 20, 2021? We can read
 4 on if you like.
 5 A I don't know. I can't interpret that one way
 6 or the other.
 7 Q Turn to page 34, line three. The court says:
 8 Well, I'm ordering him to attend, Mr. Two. And she's
 9 talking about you attending the board meeting. I can't
 10 -- No one in the course of the six years since that order
 11 has been in place has suggested by way of motion or any
 12 other form of legal pleading that the receiver, whether
 13 it was Mr. Proctor or Mr. Teichner, was failing to comply
 14 with that order by not taking over --
 15 THE COURT: Keep your voice up.
 16 Q (BY MR. MCELHINNEY:) -- by not taking over
 17 the UOA.
 18 A Yes.
 19 Q Does it appear to you that she's not agreeing
 20 with the proposition that the 2015 order -- I see we're
 21 getting flashing, Your Honor. I'm low on batteries.
 22 THE COURT: We're breaking in about 40
 23 minutes.
 24 Mr. McElhinney, try again.

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1 Mr. Teichner, what time can you come back
 2 tomorrow? Can you come back at 8:30 or can you come back
 3 at 9:00? Which is better for you?
 4 THE WITNESS: 9:00.
 5 THE COURT: Instead of 8:30, we'll resume at
 6 9:00 because I have to accommodate witnesses. We will
 7 finish the cross-examination. We will charge up every
 8 little thing we can find for these.
 9 In the meantime, Counsel -- You can step
 10 down, sir. He's done with you for the day.
 11 THE WITNESS: Thank you.
 12 (The proceedings concluded at 4:21 p.m.)
 13 -oOo-
 14
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1 STATE OF NEVADA)
 2 COUNTY OF WASHOE) ss.
 3
 4 I, NICOLE J. HANSEN, Certified Court
 5 Reporter in and for the State of Nevada, do hereby
 6 certify:
 7 That the foregoing proceedings were taken by
 8 me at the time and place therein set forth; that the
 9 proceedings were recorded stenographically by me and
 10 thereafter transcribed via computer under my supervision;
 11 that the foregoing is a full, true and correct
 12 transcription of the proceedings to the best of my
 13 knowledge, skill and ability.
 14 I further certify that I am not a relative
 15 nor an employee of any attorney or any of the parties,
 16 nor am I financially or otherwise interested in this
 17 action.
 18 I declare under penalty of perjury under the
 19 laws of the State of Nevada that the foregoing statements
 20 are true and correct.
 21 Dated this June 14, 2023.
 22
 23 Nicole J. Hansen

 24 Nicole J. Hansen, CCR #446, RPR, CRR, RMR

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2 Sunshine Litigation Services
151 Country Estates Cr.
3 Reno, Nevada 89511
(775) 323-3411
4 Court Reporter

5

6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE HONORABLE ELIZABETH GONZALEZ (RET.)

--oOo--

9

10 ALBERT THOMAS, individually; Case No. CV12-02222
et al.,
11 Dept. No. 10
Plaintiffs,
12 vs.

13 MEI-GSR HOLDINGS, LLC, a Nevada
Limited Liability Company
14 Defendant.
15

16

17

18 TRANSCRIPT OF PROCEEDINGS

19 CONTEMPT TRIAL - DAY 2

20 WEDNESDAY, JUNE 7, 2023

21

22

23

24 Reported By: PEGGY B. HOOGS, CCR 160, RDR, CRR

Page 2

1 APPEARANCES:
 2 For the Plaintiffs: JARRAD C. MILLER, ESQ.
 BRIANA N. COLLINGS, ESQ.
 3 ROBERTSON, JOHNSON, MILLER &
 WILLIAMSON
 4 50 W. Liberty St., Suite 600
 Reno, Nevada
 5
 6 ROBERT L. EISENBERG, ESQ.
 LEMONS, GRUNDY & EISENBERG
 6005 Plumas Street, Third Floor
 Reno, Nevada
 7
 8
 9 For the Defendant: DAVID C. McELHINNEY, ESQ.
 MERUELO GROUP, LLC
 10 2535 Las Vegas Boulevard South
 Las Vegas, Nevada
 11
 12 JORDAN T. SMITH, ESQ.
 PISANELLI BICE PLLC
 400 South 7th Street
 Las Vegas, Nevada 89101
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24

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Page 4

1 -oOo-
 2 RENO, NEVADA; WEDNESDAY, JUNE 7, 2023; 9:00 A.M.
 3 -oOo-
 4
 5 THE COURT: CV12-0222, Thomas vs. MEI-GSR,
 6 Day 2 of our continued hearing.
 7 Mr. Teichner, come on in. We're going to swear
 8 you in since it's a new day.
 9 If anybody wants to stand up while we go
 10 through the days, I know the acoustics in this room are
 11 very poor. We're going to all do our best to make sure
 12 we speak up and we make sure that all of the microphone
 13 charges were charged overnight, so hopefully we will not
 14 run out of batteries again today, but we'll see how
 15 things go.
 16
 17 RICHARD TEICHNER,
 18 having been first duly sworn,
 19 was examined and testified as follows:
 20
 21 THE COURT: Mr. McElhinney, are you ready?
 22 MR. McELHINNEY: I'm ready, Your Honor.
 23 ////
 24 ////

Page 5

1 CROSS-EXAMINATION
 2 BY MR. McELHINNEY:
 3 Q Mr. Teichner, would you open to --
 4 First of all, good morning.
 5 A Good morning.
 6 Q Nice to see you again.
 7 Would you turn to Exhibit 6 in the book in
 8 front of you. It should be in Book No. 1.
 9 A Okay.
 10 Q Mr. Teichner, I've been looking at this order.
 11 This is the Order Appointing Receiver and Directing the
 12 Defendants' Compliance, and there are a number of things
 13 that you are allowed to control, take control of, in this
 14 order, such as, if you look at page 2 of Exhibit 6, line
 15 22 and 25, you're entitled to take control of all
 16 records, correspondence, insurance policies, books,
 17 accounts of or relating to the property, computers,
 18 software, passwords.
 19 Have you taken control of any of those things,
 20 sir?
 21 A No.
 22 Q Have you asked to take control of any of those
 23 things?
 24 A No. It hasn't been necessary. I'm entitled to

Page 6

1 it, but it doesn't mean I'm required to.

2 Q And that's the way you read that order? You're

3 not required to take control of those things, but you

4 have that option?

5 A I have the powers and responsibilities that

6 you'll be authorized and have power to do that, but I

7 don't interpret that as that I must.

8 Q And I heard you yesterday. If I understood

9 correctly, you have not asked to take control of the

10 reserve accounts either; correct?

11 A Correct.

12 Q And that's something that you have the power to

13 do, but you don't necessarily have to do.

14 Is that the way you read this order?

15 A Yes.

16 Q Do you think we are in violation of this order

17 because we have not turned over office equipment,

18 records, correspondence, those sorts of things?

19 A That the defendants are in violation?

20 Q Yes, sir.

21 A No.

22 Q Do you think we're in violation of this order

23 because we have not turned over the reserve accounts for

24 your control?

Page 7

1 A No. Because I haven't asked for them.

2 Q Okay. Thank you.

3 We had talked before about who owes the rental

4 income.

5 Do you recall me asking you about that?

6 A Yes.

7 Q And I think you had said the unit owners owe

8 the rental income.

9 Who is in charge of gathering the rent?

10 A Well, when you say, "gathering," can you be

11 more specific?

12 Q Yes, sir.

13 Collecting the rent from the people staying in

14 the rooms.

15 A The hotel.

16 Q Okay. And that would be MEI-GSR?

17 A Yes.

18 Q And then is MEI-GSR in charge of doing the

19 calculations to distribute the net rent to the individual

20 unit owners?

21 MR. MILLER: Objection.

22 THE COURT: Overruled.

23 THE WITNESS: Well, they have done that. I

24 don't know if -- my response would be that they have been

Page 8

1 doing that. They've continued to do that, but given the

2 more recent orders where they -- those recent orders have

3 indicated that I am to calculate the fees, collect the

4 rents. It doesn't say net rents, it says gross rents.

5 Then from that point on, I would say that in

6 my -- what I have suggested is that I would collect the

7 rents as receiver. I would calculate the fees, give

8 those amounts to GSR accounting department, and then they

9 would distribute the checks based on my calculations of

10 the net rents.

11 That would be the -- that would be the most

12 practical procedure, because for me to actually

13 distribute the checks, it would just add another expense

14 to the receivership.

15 BY MR. McELHINNEY:

16 Q Okay. And I appreciate the fact there are

17 current orders that say you are to calculate the DUF,

18 SFUE, HE and reserves.

19 What I'm talking about right now is, in terms

20 of the 2007 Unit Rental Agreement, who is responsible for

21 doing those calculations and distributing that rental

22 money?

23 A I don't think that's covered in the unit

24 agreement. We talked about that yesterday, and I said

Page 9

1 all that says is that the rents get paid to the hotel.

2 In essence, that's what it says. It doesn't say that the

3 hotel collects the rents.

4 Q Would you turn to Exhibit 2, please, and that's

5 the Unit Rental Agreement.

6 A I have it.

7 Q Bear with me.

8 Turn to page 5 of Exhibit 2 for me, please, and

9 look at paragraph d as in David.

10 Do you see where it says, "The company shall

11 collect rent from all guests and shall provide all

12 accounting services necessary for the collection of such

13 rental revenues"?

14 A Yes.

15 Q And so you agree with that language in the Unit

16 Rental Agreement, that it is MEI-GSR who collects the

17 rents?

18 A Correct.

19 Q So in terms of the orders that have come out,

20 the order that you are to calculate the expenses and

21 subtract that from the rent, is that a modification of

22 the Unit Rental Agreement?

23 A Well, like I said yesterday, I think it's --

24 you can call it a modification. You can call it a

Page 10

1 supplementation. It's a matter of semantics.

2 Q Okay. I recall that testimony.

3 Did I interrupt you? Because I can see the

4 judge looking at me right now. Did I interrupt you?

5 A No, no.

6 Q I apologize if I did.

7 THE COURT: We're not on video, so the supreme

8 court won't see it.

9 BY MR. McELHINNEY:

10 Q According to the Seventh Amended CC&Rs, who has

11 possession of the reserve accounts?

12 A I'd have to look at the CC&Rs.

13 Q You don't know without looking?

14 A Correct.

15 Q Let's talk about the reserve study.

16 When did you first understand that you were

17 exclusively in charge of ordering and overseeing the

18 reserve studies?

19 A Correct.

20 Q I'm asking, when did you first understand that?

21 A I believe that was when -- again, I don't

22 remember if it was one of the January 4, 2022, orders or

23 one of the previous orders.

24 Q Look at, if you would, in Book No. 3, Exhibit

Page 11

1 23. Tell me when you're there.

2 A I have it.

3 Q Turn to page 4 of Exhibit 23, please.

4 A Okay.

5 Q And the language says starting at line 22, "The

6 Court has explicitly found that the receiver will

7 determine a reasonable amount of FF&E, shared facilities

8 and hotel reserve fees," and then it references the

9 Findings of Fact, Conclusions of Law at page 22, line 25

10 through 26.

11 This implies that the receiver will also be

12 tasked with ordering and overseeing the reserve study as

13 that study will dictate the FF&E, shared facilities and

14 hotel reserve fees. Thus, the receiver alone has the

15 authority to direct and audit the reserve study, not the

16 defendants.

17 Did I read that correctly?

18 A Yes.

19 Q Is that the first time you learned that you had

20 exclusive control over ordering and overseeing the

21 independent reserve studies?

22 A I don't believe so, no.

23 Q When did you first learn that?

24 A When I -- I guess when I first looked at -- I

Page 12

1 know there is, in the Findings of Fact, Conclusions of

2 Law and Judgment, a provision in there about receiver

3 having some -- some type of authority over the reserves.

4 And then there was some other document that was before

5 this order -- and I don't recall what document that was

6 offhand -- that mentioned about having some type of

7 influence or control with reserves.

8 Q Prior to Exhibit 23, do you think there was an

9 order that put you in exclusive control of ordering and

10 overseeing the reserve studies?

11 A I'd have to read the exact language, but it did

12 mention something to that effect. I don't know if it was

13 exclusive, but there was something to that effect, again,

14 in the Findings of Fact and some other document that I

15 don't control.

16 Q Okay. Take a minute and look at it because I

17 need to know if there's any order that says that.

18 So let's look at -- bear with me a second.

19 Look at Exhibit 7, which is in Book 1.

20 A Number 7?

21 Q Yes, sir.

22 I'm going to direct us to a page that I think

23 you're talking about, and if I have you on the wrong

24 page, you tell me.

Page 13

1 A I'm on Exhibit 7.

2 Q Okay. Take a look at page 22 of Exhibit 7.

3 A Okay.

4 Q Bottom of the page, paragraph 3, is that the

5 language you're talking about that you think gave you

6 control to order and oversee the reserve study?

7 A No. All that says is that the receiver

8 determines the reasonable amount of --

9 Q FF&E, shared facilities and hotel reserves?

10 A Yeah.

11 Q So that provision doesn't say you have control

12 over the reserve study; right?

13 A No.

14 Q And if you look again at Exhibit 23, it's

15 telling us, isn't it, that it was determined that you had

16 sole exclusive power to oversee the reserve study because

17 it is implied in that language that we just looked at in

18 the Findings of Fact, Conclusions of Law and Judgment;

19 correct?

20 A Let's look at the exact wording again.

21 Q Yes, sir.

22 So go to Exhibit 23, page 4.

23 A Okay. At the bottom; right?

24 Q Yes, sir. Starting at line 22. You can read

Page 14

1 that out loud or to yourself. Tell me if that isn't --

2 A "The Court has explicitly found that the

3 receiver will determine a reasonable amount of FF&E,

4 shared facilities and hotel reserve fees."

5 And then it says in parentheses, "Findings of

6 Fact, Conclusions of Law and Judgment filed October 9,

7 2015."

8 And then it goes on to say, "This implies the

9 receiver will also be tasked with ordering and overseeing

10 the reserve study as that study would dictate the FF&E,

11 shared facilities and hotel reserve fees. Thus, the

12 receiver alone has the authority to direct and audit the

13 reserve study, not the defendants."

14 Q So the stuff that is in parentheses that you

15 just read out loud, "Findings of Fact, Conclusions of Law

16 and Judgment, October 9, 2015, page 22, lines 25-26,"

17 that's what we just read that said you were to calculate

18 the FF&E and reserves for the hotel and shared facility;

19 correct?

20 A Well, that's true.

21 Q So the only thing I want to make sure I'm not

22 missing is, prior to this order, Exhibit 23, there was no

23 order that said you had exclusive control to order and

24 oversee the reserve studies.

Page 15

1 Do I understand that correctly?

2 A Again, I would have to look at the Findings of

3 Fact, Conclusions of Law, the exact language in that

4 document.

5 Q We just did. You read it out loud.

6 Is there another portion you'd like to read?

7 A What I read is -- you say in this particular --

8 THE COURT: He wants you to go back to

9 Exhibit 7 and tell him if there's anything else that uses

10 the word "exclusive."

11 THE WITNESS: In this particular order --

12 THE COURT: Exhibit 7. He wants you to look at

13 Exhibit 7 and see if there's anything in Exhibit 7 that

14 told you you have the exclusive authority.

15 THE WITNESS: Right.

16 THE COURT: I think that's what he's asking.

17 BY MR. McELHINNEY:

18 Q That says you have any authority to order and

19 oversee a reserve study, whether it's exclusive or

20 otherwise.

21 Is it in the Findings of Fact, Conclusions of

22 Law and Judgment?

23 A Okay. Again, I'm not sure what your question

24 is, though.

Page 16

1 Q My question -- let me back up.

2 I want to make sure I'm not missing an earlier

3 order.

4 It appears to me that Exhibit 23 is the very

5 first order that came along that said you have the

6 exclusive authority to order and oversee the reserve

7 studies. I want to make sure I'm not missing an earlier

8 record that said you had that authority.

9 A I can't say for sure, but that may be the case,

10 but I don't know if there was a previous order.

11 This order is -- this is one of the January 4,

12 2022, orders. I would have to go back and look at any of

13 the previous orders, but, again, I can't say for sure.

14 Q Okay. I appreciate that.

15 Was it your idea that you wanted to take over

16 exclusive control of the independent third-party studies,

17 or was that somebody else's idea?

18 A Well, again I think that it was not until I

19 hired my attorney, who took a look at the reserves -- the

20 reserve studies and said there's a lot of flaws in those

21 reserve studies.

22 As I mentioned yesterday, I had spoken with

23 Ms. Betterley, and I had some concerns about the reserves

24 at that time, and, in fact, I had called her maybe --

Page 17

1 well, I may have spoken with her two or three times -- I

2 don't know -- but I had called her again, and she never

3 called me back the last time I had called her, because I

4 still had some concerns about it.

5 So when I engaged or retained the attorney, my

6 attorney, she's the one who took a careful look at the

7 reserves and the reserve studies and said that it's

8 flawed in many respects, and she tried to communicate

9 with Ms. Betterley with no success. She did talk to her

10 once or twice but was unable to get her to move, and, in

11 fact, you may recall that we had attempted to get -- and

12 I think it was -- I think it was agreed to by both

13 parties, Defendants and Plaintiffs -- to get -- to get a

14 new consulting firm to do the reserve studies, and it was

15 never -- the agreement was never signed. I think

16 Mr. Vaughan was supposed to sign the agreement, and he

17 never did. That's my recollection.

18 Q Was there anything preventing you from going

19 out and getting your own independent reserve study?

20 A Well, I think we -- my attorney wanted to make

21 sure that it was approved by both sides, that we got

22 approval from both sides, both Defendants and Plaintiffs.

23 Q Before we move on, I want to make sure I

24 understand your testimony.

Page 18

1 **Was it your attorney who recommended to you**
2 **that you should take over control of the ordering and**
3 **overseeing of the independent third-party reserve**
4 **studies?**

5 A Well, when you say, "take over control," we
6 weren't going to do the reserve studies. That needs to
7 be done by a professional organization that specializes
8 in that, but we were going to have the input as to what
9 types of expenditures, capital expenditures, need to be
10 included in that reserve study.

11 **Q Stay with me for a minute. I'm asking you a**
12 **particular question.**

13 **Whose idea was it, yours or your attorney's,**
14 **that you should take over the exclusive right to order**
15 **and oversee the reserve studies? Your idea or your**
16 **attorney's?**

17 A When you say, "take over," I'm not sure what
18 you mean by that, because reserve studies are based on
19 expenditures and projections that GSR has for its capital
20 expenditures, so input from those -- from GSR needs to be
21 obtained in order to be able to do the reserve studies
22 properly.

23 The question is, are the correct capital
24 expenditures being included in the reserve studies?

Page 19

1 Taking over the reserve studies doesn't mean that we know
2 what all the capital expenditures are. We have to get
3 that input from GSR. We don't have access to all their
4 accounting records and underlying documents to be able to
5 actually determine which items are appropriate. What we
6 do is we get that information from them, review it, ask
7 questions, ask for any documents that we think are
8 necessary based on what appropriately should be included
9 in the reserves.

10 We're not going to do -- in other words, we're
11 not going to prepare the reserve studies from scratch.
12 That's an outside firm that's going to gather that
13 information. We have to get involved in the input of
14 those expenditures to make sure that they're proper
15 expenditures in compliance with the governing documents.

16 **Q Understood.**

17 **So when did you first ask GSR to provide you**
18 **with that information so you could get started on**
19 **ordering an independent third-party reserve study?**

20 A Well, it really goes back to when we asked for
21 backup for the expenditures, the costs -- the capital
22 expenditures that GSR wanted to include in the months
23 that they were seeking to get reimbursed for.

24 I completed an Excel spreadsheet and went over

Page 20

1 that with Mr. Brady and determined what I felt should not
2 be included, and he gave me some responses. We went back
3 and forth a little bit, and there's notes on that Excel
4 spreadsheet. That was going to be used as a basis before
5 my attorney ever got involved. That was going to be used
6 as a basis for what was to be included in the reserve
7 studies.

8 **Q Okay. Did you and Mr. Brady reach agreement as**
9 **to what items would stay and what items would be taken**
10 **out?**

11 A It was never resolved, and I don't -- to be
12 honest with you, I don't really recall. I think I
13 mentioned yesterday that Mr. Miller's previous associate,
14 Mr. Tew, had some input on that and --

15 **Q Some input on what?**

16 A On the Excel spreadsheet that indicated which
17 items I thought should not be included, and that was not
18 resolved.

19 And I think sometime shortly thereafter -- I
20 don't remember exact time frame, but sometime shortly
21 thereafter is when I retained my attorney, and then she
22 got involved on which items should and should not be
23 included based on the governing documents.

24 **Q So the meetings you're talking about with**

Page 21

1 **Mr. Brady, that was back in 2020?**

2 A I don't recall exactly.

3 **Q So my question is a little more particular.**
4 **Exhibit 23 says you will be tasked with**
5 **ordering and overseeing the reserve study.**
6 **Have you started that process?**

7 A No. We're waiting to get paid, to be honest
8 with you.

9 **Q So you refused to do it because you weren't**
10 **getting paid; is that a fair characterization?**

11 A You could say, "refused," but, yes, I'm not
12 going to work for nothing since I haven't been paid since
13 last October of 2021.

14 **Q Are the reserve studies required under the**
15 **CC&Rs?**

16 A Is what required? I'm sorry.

17 **Q The reserve studies.**

18 A I don't know. They might be.

19 **Q Isn't that how they set their budgets for the**
20 **reserves?**

21 A Yeah, I believe so.

22 **Q So you've been assigned the task of doing the**
23 **reserve study. You've refused to do it because you're**
24 **not being paid.**

Page 22

1 **What did you expect my client to do in order to**
2 **comply with the Seventh Amended CC&Rs?**
3 A I don't understand what you mean by what do I
4 expect your client to do. I'm not sure what -- I don't
5 know what I expected.
6 **Q There is an order that you are supposed to**
7 **order and oversee the reserve study.**
8 **Is that agreed?**
9 A Yes. And we attempted to get a new consultant
10 to do that.
11 **Q And you agree with me that's an essential**
12 **function under the Seventh Amended CC&Rs? It's one of**
13 **the ways they set their budget; correct?**
14 A Okay. Yes.
15 **Q And you're refusing to do it.**
16 **What did you expect my client to do in order to**
17 **meet that obligation?**
18 A I still don't understand the question. I don't
19 expect your client to do anything. I'm not sure I --
20 **Q So if my client does nothing, then my client is**
21 **not in compliance with the Seventh Amended CC&Rs, would**
22 **you agree?**
23 A I don't agree or disagree, because the reserve
24 study is done by an independent organization, and they're

Page 23

1 the ones who decide which items should be included. The
2 input comes from GSR. They're the ones who does the
3 reserve study and makes the decision, is my
4 understanding. So GSR may give them all kinds of data,
5 but they come up with the reserve study based on what
6 they think is the way it should be prepared.
7 **Q Let me ask you about that.**
8 **So the independent party who does the reserve**
9 **study, they're familiar with the CC&Rs, are they not?**
10 MR. MILLER: Objection.
11 THE COURT: Overruled.
12 BY MR. McELHINNEY:
13 **Q And so when you were meeting with**
14 **Ms. Betterley, she was the person doing the independent**
15 **reserve study for my client, GSR; correct?**
16 A Yes.
17 **Q And you were telling her what items should go**
18 **in or out of that reserve study?**
19 A We attempted to, yes, but she cut us off.
20 **Q And she was telling you -- what did she tell**
21 **you?**
22 A Well, I didn't -- I did not talk to her. I
23 only spoke with her a couple times before my attorney got
24 involved and starting getting into specifics with her,

Page 24

1 and then she did not return -- I don't know how many
2 times my attorney spoke with her, maybe two -- twice, and
3 after that she was unable to speak with her any longer,
4 and that's when we tried to get another consulting firm
5 involved.
6 **Q Tell me about that. Who did you talk to?**
7 A Who did we talk to?
8 **Q Yes, sir. You said you --**
9 A There was -- there was an email sent to both
10 Defendants and Plaintiffs to choose who would be
11 accepted, and it was sent out to see if there was -- if
12 you both could agree on who to engage to do the reserve
13 study, and I don't remember whether you both agreed on
14 someone or not, but there was a firm, again, that we
15 tried to -- tried to get onboard, and the agreement was
16 sent to Mr. Vaughan at that time, who's in charge of the
17 board, and it was never signed, my understanding.
18 So the point is that the same organization,
19 Reserve -- I don't remember the exact name -- Better
20 Reserve Consultants or something like that continued to
21 do the reserve study.
22 **Q And you regard that reserve study done by**
23 **Betterley as flawed and untrustworthy?**
24 A Fraud?

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1 **Q As flawed.**
2 A Oh, flawed. I'm sorry. I thought that was a
3 little strong.
4 Well, I do because my attorney does, and, yes,
5 I do, because she and I have went over the reasons.
6 **Q But my recollection from your testimony**
7 **yesterday is you can't tell me what those reasons are.**
8 A No. You'd have to get -- you'd have to ask
9 her.
10 **Q Why?**
11 A Because I don't recall all the reasons. You
12 know, I don't recall the reasons. It's as simple as
13 that.
14 **Q Okay. Did you review any documents in**
15 **preparation for your testimony here yesterday or today?**
16 A I just reviewed all the filings. I didn't go
17 through all -- I have thousands and thousands and
18 thousands of documents since 2019. No, I did not review
19 them.
20 **Q Okay.**
21 THE COURT: I have tens of thousands of
22 documents from '20, '21.
23 THE WITNESS: I said thousands.
24 /////

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1 BY MR. McELHINNEY:
2 Q Now, Exhibit 23, sticking with that for a
3 minute, page 5 -- I'm looking at line 11 -- "Plaintiffs
4 further object to the Defendants' reserve study because
5 it has included expenses which are clearly erroneous --"
6 and then it cites to the -- the plaintiffs cite to their
7 motion, and they say, "-- noting public pool expenses
8 that were included while the governing documents and
9 court orders exclude any revenue-generating expenses."
10 Do you see that?
11 A Give me the lines again.
12 Q Yes, sir. I'm sorry.
13 Your Honor, in Exhibit 23, line 12 -- line 11.
14 It starts out, "Plaintiffs further object."
15 A Are we on page 5?
16 Q Yes, sir. Are you on Exhibit 23?
17 A 22. Sorry.
18 Okay. I've got it now.
19 Q Do you see where it says, "Plaintiffs further
20 object to Defendants' reserve study because it has
21 included expenses which are erroneous, noting public pool
22 expenses that were included while the governing documents
23 and court orders exclude any revenue-generating
24 expenses"? Do you see that?

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1 A You're on line 22?
2 Q I'm on line 11.
3 A Yes, I see that. Okay.
4 Q Do you agree with that representation about
5 public pool expenses?
6 THE COURT: Sir, if you need to read in front
7 or behind to give yourself context in the document,
8 please feel free to do so.
9 THE WITNESS: I do agree with the
10 representation.
11 BY MR. McELHINNEY:
12 Q Okay. And can you direct me where in the
13 Seventh Amended CC&Rs it says you have to exclude
14 revenue-generating expenses?
15 A No.
16 Q Why?
17 A First of all, I don't have the CC&Rs in front
18 of me at the moment.
19 Q It's Exhibit 1. You can take a look at it if
20 you'd like. It will be in Book No. 1.
21 A Your question again? I'm sorry.
22 Q You said you agree with the statement in that
23 Exhibit 23 that says public pool expenses that were
24 included -- I'm going to paraphrase -- the public pool

Page 28

1 expenses cannot be included because the governing
2 documents and court orders exclude any revenue-generating
3 expenses.
4 My question was, where in the CC&Rs do you see
5 that we cannot charge the unit owners expenses from
6 revenue-generating areas of the business?
7 A Well, I don't think it says that. I think what
8 it does say is what can be included, not what cannot be
9 included. So I think if you look to see what can be
10 included -- and, again, if we look at -- I think I
11 mentioned this yesterday -- Section 9 of the CC&Rs --
12 wait a minute. Am I looking at the right --
13 Q Exhibit 1 are the CC&Rs.
14 THE COURT: Mr. McElhinney, can you help him
15 look and make sure he's on the right thing.
16 MR. McELHINNEY: Absolutely.
17 THE WITNESS: I thought it was Article 9.
18 BY MR. McELHINNEY:
19 Q You may be in the wrong book. We're looking
20 for 6.9.
21 A So, yeah, 6.9 talks about what items are
22 included in the various types of charges to the unit
23 owners.
24 Q Is that the only section in the CC&Rs that

Page 29

1 talks about what items are included in the CC&Rs?
2 A I don't know. It may -- I don't think so, but
3 my point is that I think this is -- this section is what
4 governs. There might be other sections here, but this
5 specifically says -- talks specifically about the shared
6 facility unit expense, the hotel expense and the
7 reserves.
8 Q So as an example, turn to page 15 of the CC&Rs,
9 please.
10 A Okay.
11 Q At paragraph IV, "A nonexclusive easement to
12 use and enjoy portions of the shared facilities unit
13 which from time to time are made available by the owner
14 of the shared facilities unit for use by the unit owners
15 of the hotel units, residential units and commercial
16 units and the hotel guests subject to such rules and
17 regulations, restrictions, scheduling requirements, fees,
18 costs and use charges as may be adopted or imposed from
19 time to time by the shared facilities unit owner,
20 including without limitation each unit owner's
21 proportionate share of the shared facilities expenses as
22 more particularly described in Section 6.9 below."
23 A Right.
24 Q Why is that not inclusive of the pool?

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1 MR. MILLER: Objection. Your Honor.
 2 Irrelevant.
 3 THE COURT: Overruled.
 4 You can answer.
 5 BY MR. McELHINNEY:
 6 Q Do you understand my question?
 7 A Yes. And, again, all I can say is that I think
 8 that the shared facility unit is restricted to the
 9 condominium tower. That's the shared facility units.
 10 It's in the condominium tower.
 11 Q I want to make sure I understand what you're
 12 saying.
 13 The only expenses for which the plaintiff unit
 14 owners are responsible are the shared facilities areas
 15 within the condominium tower. Is that your testimony?
 16 A Yes, that are within the tower and that the --
 17 that relate to the tower. So, for example, there are
 18 certain expenses that are common expenses to the whole
 19 hotel, but an allocation has to be made for those
 20 expenses that apply to the tower.
 21 So there's different formulas that -- when I
 22 went through and determined what the charges are, the
 23 document -- 140 that we were looking at yesterday, that
 24 exhibit --

Page 31

1 Q Yes.
 2 A -- those include allocations of various
 3 expenses that were not exclusively attributable to the
 4 tower but that the tower shares in.
 5 For example, there's water that -- a certain
 6 amount of water is pumped into the tower, I guess, for
 7 lack of a better term, and so we determined how much
 8 water is used by the -- by those who use the tower or the
 9 floors in the tower that use the water, and they based it
 10 on some formula that I don't remember exactly what the
 11 formulae are, but we went through -- for each of these
 12 types of expenses that were allocated to the units in
 13 that Exhibit 140, we went through and did an allocation
 14 of those expenses that are attributable to the units in
 15 the tower.
 16 Q Okay. So looking at page 15, Roman numeral IV
 17 of Exhibit 1, what do you think that's referring to:
 18 "The nonexclusive easement to use and enjoy portions of
 19 the shared facilities unit which from time to time are
 20 made available by the owner of the shared facilities
 21 unit"?
 22 And who is that, by the way? Who's the owner
 23 of the shared facilities unit?
 24 A I believe the hotel is.

Page 32

1 Q MEI-GSR; correct?
 2 A Yeah.
 3 Q "...for use by the unit owners and the hotel
 4 guests."
 5 What do you think that's referencing? Just
 6 things that are in the tower?
 7 A Well, and the condominium units. Again, it has
 8 to do with an allocation of expenses.
 9 Q I understand the allocation principle. What
 10 I'm trying to figure out is, are there expenses outside,
 11 such as the pool area or the lobby or the front desk or
 12 the mezzanine that there's refurbishing going on -- are
 13 the unit owners responsible for that according to your
 14 interpretation of the CC&Rs?
 15 A No.
 16 Q Okay.
 17 A Again, you keep asking me about my
 18 interpretation, and I keep telling you that my
 19 interpretation is based on my attorney's interpretation,
 20 and if you want -- you'll have to question her for her
 21 legal reasons for what she arrived at.
 22 Q Well, sir, the reason I'm asking you is because
 23 you're in charge of implementing the CC&Rs, not your
 24 attorney. That's why I'm asking you these questions.

Page 33

1 A I understand but -- that's why I hired an
 2 attorney, because I'm not an attorney, and I can't make
 3 legal conclusions, especially in situations like this.
 4 Q I see.
 5 A We already went through this at the hearings --
 6 by the way, I misspoke when I said these hearings, these
 7 four days of hearings, were in 2021. They were in 2020.
 8 I just wanted to clarify that.
 9 But we went through all this at the hearings,
 10 at those hearings, about what was flawed in what I came
 11 up with originally, before I hired an attorney, in
 12 determining what types of costs should go into the shared
 13 facilities unit expense and the hotel expense.
 14 And this was addressed in those hearings, and
 15 based on those hearings and based on my then hiring an
 16 attorney because of those hearings, because of the
 17 conclusions that were reached at those hearings that my
 18 calculations based on my legal interpretation of the
 19 CC&Rs were incorrect. So that's why I hired an attorney,
 20 one of the reasons I hired an attorney, and had her go
 21 through, for one, the CC&Rs and determine what items are
 22 appropriately charged for the shared facilities unit
 23 expenses and the hotel expenses.
 24 Q Look at Exhibit 38. I'm going to shift gears

Page 34

1 with you here. Book No. 4, Exhibit 37.
2 A 37?
3 Q Yes, sir.
4 THE COURT: 37, you said?
5 MR. McELHINNEY: Yes. I apologize.
6 THE COURT: That's all right.
7 The email; right?
8 MR. McELHINNEY: Yes, that's correct, Your
9 Honor.
10 BY MR. McELHINNEY:
11 Q Are you with me?
12 A Yes.
13 Q Now, this email is written by your attorney to
14 the Honorable Nancy Saitta, dated December 15, 2021; is
15 that correct?
16 A Exhibit 37?
17 Q It's Exhibit 38, and I apologize. I said both,
18 so the confusion is my fault. It's 38.
19 A I have it now.
20 Q Okay. Do you recognize this email?
21 A Yes. I think we addressed it yesterday.
22 Q In this email your attorney sent to Justice
23 Saitta, it says, "In the receiver's opinion, various
24 portions of the September 7, 2015, order gave you

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1 authority to open an account and collect rents."
2 Is that correct?
3 A Yes.
4 Q Did you author this email, or did Ms. Sharp
5 author this email?
6 A My attorney authored it.
7 Q Did you review it before she sent it?
8 A I don't -- actually, before yesterday, I don't
9 recall seeing this email. I may have seen it, but I
10 don't recall. I didn't recall seeing it.
11 Q Do you agree with its contents? Does it
12 accurately reflect the request you're making of the
13 Court?
14 A Referring to about requesting read-only access?
15 Q That's a fair question.
16 I'm talking about the second bullet-pointed,
17 which says, "That the Court approved the opening of an
18 account for the receivership and ordered the following,"
19 and then there's three bullet points of the following.
20 Do you agree with those?
21 A I mentioned yesterday that what I don't agree
22 with is that the net -- that the rents net of the total
23 charges, the fee charges -- DUF, SFUE and HE fees -- be
24 deposited in the bank account. I mentioned yesterday the

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1 gross rents should be deposited to the bank account.
2 Q When did you make that determination?
3 A When did I make the determination?
4 Q Yes, sir.
5 A I don't know when, but, again, every -- all the
6 orders say rents. Nothing says net rents.
7 Q Is your testimony all of the orders say rents,
8 not net rents?
9 A Well, the -- okay. The orders -- what I'm
10 referring to is both the January 7, 2015, order and the
11 most recent order from Her Honor, Judge Gonzalez, says
12 rents, it doesn't say net rents, and it only makes sense
13 to me that I should receive the total rents.
14 I then determine what the charges are because
15 I'm the one who is supposed to determine what the fee
16 charges are the reserve charges to the unit owners and
17 then give that net amount to the accounting department of
18 GSR to make the disbursements to the unit owners.
19 Q Yes, sir.
20 But that's not what you requested or what your
21 attorney requested on September 15, 2021, is it?
22 A Correct.
23 Q She talked about the rents, identifying them as
24 net of the total charges.

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1 A Well, from a practical standpoint -- let me
2 just -- I mean, I think we're getting into too much
3 detail here, because from a practical standpoint, from my
4 standpoint practically, it doesn't matter because I'm the
5 one who's going to calculate the fee charges, and so
6 if -- the point is I don't want to wait to get the rents
7 until -- the net rents until I get the fee charges, then
8 the net rents come to me, and then, in turn, the checks
9 have to be disbursed to the various unit owners.
10 I think from a practical standpoint, it makes
11 more sense that I get the gross rents, I determine what
12 the fees are, give an Excel spreadsheet to your
13 accounting department, and then they distribute the
14 checks, from a practical standpoint. Otherwise, it
15 doesn't really matter to me.
16 Q But, sir, my client is on trial for contempt
17 for failure to follow orders. There are orders that are
18 saying you're supposed to calculate net rent and we pay
19 you the net rent.
20 Do you deny that?
21 A I'm sorry. What order says that?
22 Q The January -- --
23 A I'm sorry. Are you talking about the order
24 from Judge Saitta, Justice Saitta?

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1 Q Yeah. The January 4, 2022, order that says we
 2 are supposed to pay you -- exactly what this particular
 3 exhibit says, that we are to pay you the net rents after
 4 you subtract the DUF, SFUE and HE fees combined and
 5 reserves.
 6 A I understand, but what I'm saying is, first of
 7 all -- okay. So let's just assume that that modifies the
 8 January 7, 2015, order.
 9 Q It does, doesn't it?
 10 A Let's assume it does.
 11 Q Okay.
 12 A Okay. But then later, more recently, an order
 13 came out from Her Honor Gonzalez, Judge Gonzalez. It
 14 does not say net rents. It says rents.
 15 Now, I don't know if -- I can't make any
 16 assumption one way or the other what is meant there, but
 17 since the original January 7, 2015, order says rents --
 18 it doesn't say net rents -- and since the most recent
 19 order says rents, not net rents, I'm saying that it
 20 should be total rents and that I would determine what the
 21 fee charges are, let the accounting department at GSR
 22 know what the net rents are. They would distribute the
 23 checks.
 24 Again, it doesn't really matter to me one way

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1 or the other. It could be done either way. I'm just
 2 saying that I would prefer getting -- having the gross
 3 rents first and then determining what the fee charges are
 4 and let the accounting department know what the net rents
 5 are because I have to determine what the net rents are
 6 anyway.
 7 Q Okay. So sticking with Exhibit 38, what is the
 8 authority that's cited in this email to support the
 9 request for net rents?
 10 A There's nothing cited.
 11 Q Take a look at the bottom of the page of
 12 Exhibit 38, page 1, continuing onto page 2.
 13 What is that a quote from, sir?
 14 A I'm sorry?
 15 Q What is that a quote from? You see the
 16 language where it starts --
 17 A "All funds" -- are you saying, "All funds
 18 collected"?
 19 Q No.
 20 Let's look at Exhibit 38, the very bottom of
 21 the page where it says in caps, "IT IS FURTHER ORDERED."
 22 A Okay.
 23 Q And then that continues to the second page.
 24 A I believe that's from the January 7, 2015,

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1 order.
 2 Q Exactly. So I want to make sure I understand.
 3 Your attorney is writing and sending an email
 4 to Justice Saitta saying that you want the rents net of
 5 the total costs including reserves, and she's citing the
 6 January 7, 2015, order as her authority for that
 7 position.
 8 Did I state that correctly?
 9 A Well, she's citing authority, but the authority
 10 that she's citing doesn't say net rents.
 11 Q She says net rents.
 12 A Yes, I understand that. I understand that.
 13 Q Okay. And by the way, have you calculated
 14 reserves yet?
 15 A Have I calculated -- I'm sorry. Calculated
 16 what?
 17 Q Have you calculated the reserves yet?
 18 A No.
 19 Q Did you do that for 2021?
 20 A No.
 21 Q Have you calculated any fees for 2020?
 22 A No. We don't have a proper reserve study.
 23 Q How about 2022?
 24 A No.

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1 Q 2023?
 2 A No.
 3 Q Are your numbers for 2021 good anymore under
 4 the CC&Rs?
 5 A I don't understand that question.
 6 Q Your budget numbers for 2021, when you
 7 calculated those, those were budget numbers; is that
 8 accurate? In other words, you projected forward, saying
 9 here's what I think the expenses are going be for the
 10 DUF, the SFUE and the HE.
 11 A Again, this was covered already. This was --
 12 in Exhibit 140, I've explained how those different
 13 expenditures and the allocation of expenditures were
 14 arrived at. It was approved by the Court, and whether or
 15 not the defendants approved it, it's immaterial because
 16 the Court approved it. So in all due respect, those
 17 amounts are cast in concrete for now.
 18 Q I understand your position, but according to
 19 the CC&Rs --
 20 And you're supposed to be sure those get
 21 implemented; do I understand that correctly?
 22 A That the expenses are implemented?
 23 Q That the Seventh Amended CC&Rs, the express
 24 terms of the Seventh Amended CC&Rs, are implemented

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1 appropriately.

2 A Correct.

3 Q So what happens to your 2021 numbers when the

4 year 2021 ends? What are you supposed to do in

5 accordance with the CC&Rs?

6 A I don't understand the question.

7 Q Well, aren't you supposed to do a true-up?

8 A Oh, yes.

9 Q So what should have happened with the 2021

10 numbers at the end of that year, by April 1st of 2022,

11 you should have gone back and done a true-up; isn't that

12 correct?

13 A Oh, yes. True-ups have to be done every year.

14 Q So are your 2021 numbers still valid?

15 A Well, they could be. They may be higher. They

16 may be lower. I can't tell you because I didn't do a

17 true-up, again, for the same reason I haven't done any

18 work, any substantive work, other than what I have --

19 what I've had to do for the UOA and filed various

20 motions, which I've charged for. So, no, it hasn't. No

21 true-ups have been done at all.

22 Q And that reason is because you're not being

23 paid?

24 A Correct.

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1 Q Okay. So one month after your attorney wrote

2 that email to the Court, you actually filed a Motion for

3 Orders & Instructions, didn't you?

4 A Well, I filed a motion for instruction -- a

5 couple motions for instructions.

6 Q Take a look at Exhibit 19, please.

7 A I have it.

8 Q In this document, do you make a request to the

9 Court to open an account and receive net fees?

10 A What page are you on?

11 Q Page 8.

12 A I'm on page 8.

13 Q I'm going to redirect you.

14 Go to page 11, please.

15 A Page 11?

16 Q Yes, sir.

17 A Did you want to read it, or do you want me to

18 read it?

19 Q I don't care if we read it out loud or not.

20 Let me ask you a question about it.

21 Are you requesting net rent or gross rent in

22 that motion?

23 A Net rents.

24 Q And it's for DUF, SFUE, HE and for reserves;

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1 correct?

2 A Yes.

3 Q And you agree with me that while you did 2021

4 fee calculations, you didn't do fee calculations for the

5 reserves; correct?

6 A Correct.

7 Q Okay. And it also says you'll open a separate

8 account over which you'll have sole signatory authority

9 over the account and that all rents net of the total

10 charges -- DUF, SFUE, HE and reserves -- will be

11 deposited; correct?

12 A Correct.

13 Q When did you finally open that account?

14 A Sometime, I would say -- maybe the second week

15 of May of this year.

16 Q Of this year.

17 So you agree with me that an order came out --

18 and we'll look at it in a minute -- on January 4, 2022,

19 ordering you to open that separate account into which you

20 would deposit net rents? Do you agree with that?

21 A Yes.

22 Q And it took you since January 2022 to just get

23 that account opened?

24 A Well, again, I explained the reasons for that.

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1 There's a couple reasons. If you want me to go over them

2 again, I will. In fact, I will.

3 First of all, I attempted multiple times to get

4 an Employee Identification Number from the Internal

5 Revenue Service. This has been going on for months back

6 and forth. Finally, I gave up on that, and I was going

7 to open an account under the GSR UOA, an ID number, at

8 the same bank that the UOA uses, and they told me they

9 can't do that.

10 So then I was trying to find a bank that would

11 accept a receivership account, and I've contacted a

12 number of banks, and the only bank that said they might

13 do it was U.S. Bank, and they said, "We'll have to wait

14 30 days and get a determination from our legal

15 department."

16 So I decided finally, let me -- I'm going to

17 keep calling around. I finally found a bank, which is

18 First Independent Bank. It took a while for them to

19 accept a receivership account, but they finally did.

20 So, yes, it took quite a long time to be able

21 to open an account, and, you know, there was only so much

22 time and work I was going to do. I spent a lot of

23 time -- I had to refile my applications for the EIN

24 because the IRS kept coming back and saying, you have to

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1 do this, you have to do that. And I actually talked to a
2 firm that specializes in this sort of thing, and I think
3 they're in Los Angeles. They told me what to do. I did
4 that. That didn't work.

5 So, again, I had to go through this whole
6 process before I opened -- was able to open a bank
7 account. And I can tell you I didn't charge for a lot of
8 my time to do this because I just didn't think it was
9 fair to charge for all my time, but I charged for some of
10 it.

11 So, anyway, yes, it took a long time to
12 eventually get an account opened.

13 **Q By the way, did you ever send wiring**
14 **instructions to my client for that new account you**
15 **opened?**

16 A I didn't -- no, because I was waiting for the
17 judge, Her Honor, to authorize this, and then you filed
18 the interpleader.

19 So what eventually happened -- my understanding
20 is now that the funds have been released -- and, in fact,
21 I spoke with someone yesterday here at the courthouse in
22 administration to see if they've received the funds yet,
23 and they said they have, but they don't know how to issue
24 it. Those funds, that 135,000 and change, will be

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1 available a week from Thursday or Friday.

2 **Q Did you recently tell my client you were going**
3 **to send him wiring instructions to your new account?**

4 A Did I tell your client?

5 **Q Yes, sir.**

6 A I don't recall. I may have or my attorney may
7 have.

8 **Q By the way, are you still represented by**
9 **Ms. Sharp?**

10 A Yes.

11 **Q Why isn't she here?**

12 A She's found no reason -- saw no reason to be
13 here.

14 **Q She's what?**

15 A She saw no reason to be here.

16 **Q I see.**

17 A Plus, again, to be honest -- again, to be
18 candid, she didn't want to incur more time without having
19 been paid.

20 **Q So she thought it was better to send you over**
21 **here alone?**

22 A Well, I'm not here alone because -- yeah. I'm
23 a big boy.

24 **Q All right. Fair enough.**

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1 **Mr. Teichner, in your motion --**
2 **We're on Exhibit 9.**

3 A Exhibit 9?

4 **Q I'm sorry. Exhibit 19.**
5 **-- you are discussing your fees for 2020; is**
6 **that accurate?**

7 A I'm sorry. Where are you?

8 **Q You know, that's really a sloppy question on my**
9 **part. I apologize.**

10 **Why don't we go back to page 11.**

11 A Page 11.

12 **Q The fees you're discussing here or the**
13 **calculations you're discussing here are for the year**
14 **2020; is that accurate?**

15 As an example, if you look on page 11, line 16,
16 "Therefore, it is prudent to have the fees calculated by
17 the prior receiver remain in place until the Plaintiffs'
18 motion is determined, and if the motion is denied, the
19 revised fees are calculated for 2020 based upon the
20 Court's approval for the methodology for 2021."

21 So do we agree that this motion is addressing
22 2020 calculations?

23 A It's addressing 2020, yes.

24 **Q Okay. Now, in this motion, on pages 10 and 11,**

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1 you use the terminology, "The receiver also requests that
2 the DUF, SFUE and HE currently being charged prior to the
3 entry of the Court's September 29, 2021, order remain in
4 place until the fees for 2020 are calculated and approved
5 by the Court so that only a single account adjustment
6 will be necessary."

7 Do you recall using that language?

8 A Yes.

9 **Q And what were you referring to when you said**
10 **that?**

11 A I think it's self-explanatory, but the point
12 is, the 2021 fees, as have been calculated, will be
13 applied to the year 2020 until revised fees for the year
14 2020 have been calculated or recalculated.

15 **Q When were your 2021 fees approved?**

16 A I'm sorry. Were they approved?

17 **Q When were they approved?**

18 A I don't remember the exact date.

19 **Q January 4, 2022; isn't that; correct?**

20 A If you tell me so, I won't disagree with that.
21 That may have been when they were approved.

22 **Q Look at Exhibit 26, sir. It's in Book 3.**

23 A I'm sorry. 26?

24 **Q 26, yes, sir.**

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1 A I have it.

2 Q Is that the approval of your 2021 fees, sir,
3 court approval?

4 A It is an approval, but I don't know if it's a
5 confirmation of something that's been approved before,
6 because my recollection is that those fees that I had
7 calculated were submitted back in August of 2021, and I
8 don't recall whether there was some other time subsequent
9 to that but before this January 4, 2022, order where they
10 were approved. I can't say, but certainly this order
11 does mention the approval of those.

12 Q So I'm going to give you a hypothetical. I'm
13 going to ask you to assume that's the first order that
14 came out that approved your 2021 fees.

15 A Okay.

16 Q The phrase that you use that says, "The
17 receiver also requests that the DUF, SFUE and HE
18 currently being charged prior to the entry of the Court's
19 September 29, 2021, order remain in place until the fees
20 for 2020 are recalculated and approved by this Court so
21 that only a single account adjustment will be necessary,"
22 that could not have been referencing your 2021 fees that
23 weren't approved until January of 2022; correct?

24 MR. MILLER: Objection. Ambiguous, Your Honor.

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1 THE COURT: Overruled.

2 THE WITNESS: Possibly, if that was the first
3 time.

4 BY MR. McELHINNEY:

5 Q So your testimony under oath today is that what
6 you meant by that phrase was to apply your fees from
7 2021?

8 A I'm sorry. I don't understand the question.

9 Q I want to make sure I understand your
10 testimony, sir, because it's very important.

11 This phrase that I was just identifying that
12 "The receiver also requests that the DUF, SFUE and HE
13 currently being charged prior to the entry of the Court's
14 September 29, 2021, order remain in place until the fees
15 for 2020 are recalculated," your testimony under oath is
16 what you were referring to is your 2021 calculations?

17 A I still -- I don't understand that question.

18 THE COURT: Can you rephrase your question,
19 please.

20 MR. McELHINNEY: I'll rephrase.

21 BY MR. McELHINNEY:

22 Q Based upon your request in your motion,
23 Exhibit 19, filed October 18, 2021, what fees were you
24 asking to be applied until such time as your 2020

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1 calculations were approved by the Court?

2 A I don't know if I was asking -- again, I don't
3 remember what 19 says, but I don't think I was asking for
4 anything to be applied to 2020. I was going to
5 recalculate the 2020 fees as well. That was my intent.

6 Q I don't mean to be confusing you, so let me see
7 if I can't sort of walk us through this minefield.

8 In your Motion for Orders & Instructions filed
9 October 18, 2021, you were asking for the Court's
10 permission to calculate and approve your 2020 fee
11 calculations.

12 Do I understand that correctly?

13 A Yes, but they hadn't been determined yet. The
14 2020 had been determined.

15 Q And until such time as they were approved by
16 the Court, you were asking the Court to apply different
17 fees; correct?

18 A Different than what was applied by GSR?

19 Q Yes, sir.

20 A Yes.

21 Q And what was that?

22 A Well, the intention, again, was for me to
23 calculate the fees for 2020 to replace what GSR had
24 charged for 2020 for the fees that I would recalculate

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1 for 2020.

2 Q And until such time as your 2020 fees were
3 approved by the Court, what fees did you ask the Court to
4 apply?

5 A Well, that's a hypothetical. I don't know what
6 I would ask them to apply. The point is that I wanted to
7 recalculate the 2020 fees, so it's up -- that would be up
8 to the Court, which the Court ultimately decided that I
9 apply the 2021 fees to 2020.

10 Q Let me read this phrase to you again, and I'm
11 going to ask you the simple question afterwards: What
12 were you referring to?

13 MR. MILLER: Your Honor, can we get a cite on
14 where that phrase is coming from? I'd just like to make
15 sure it's the actual statement.

16 THE COURT: Absolutely. Thank you.

17 Let's go back to the exhibits.

18 MR. McELHINNEY: Court's indulgence.

19 THE COURT: Sure.

20 Mr. McElhinney, is this a good place for a
21 break? We've been going an hour and 15 minutes, which is
22 usually my break time if I have jurors.

23 MR. McELHINNEY: I'll be good for a break. Let
24 me finish this up, if I may.

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1 THE COURT: Okay.

2 BY MR. McELHINNEY:

3 Q So the language appears in Exhibit 19, page 8,
4 line 13, and it says --

5 THE COURT: Hold on a second. Let him get
6 there.

7 THE WITNESS: I have it.

8 BY MR. McELHINNEY:

9 Q Line 13 on page 8.

10 You state in your motion, "The receiver also
11 requests that the DUF, SFUE and HE currently being
12 charged prior to the entry of this Court's September 29,
13 2021, order remain in place until the fees for 2020 are
14 recalculated and approved by this Court so that only a
15 single adjustment will be necessary."

16 Do you see where I read that?

17 A Yes.

18 Q What were you referring to?

19 A I don't recall what fees -- the latest fees
20 that would have been determined for 2020, what those
21 were, whether there was some other order or something
22 else that was filed that -- whether it was a motion that
23 I filed or something prior to the September 29, 2021,
24 order that would have mentioned what those fees that were

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1 already in place were. I don't recall what those were.

2 Q Sir, do you find that phrase confusing?

3 A The only reason why it might be confusing -- at
4 least now it's confusing -- is because I don't know what
5 the most recent order was prior to this order.

6 MR. McELHINNEY: This would be a good time to
7 take a break, Your Honor.

8 THE COURT: All right. So, sir, you can step
9 up, get down.

10 Before counsel leave, I have a question
11 because I have heard multiple versions of the same
12 testimony this morning, I have been looking at your
13 docket on your case.

14 On May 1st, there was a Motion to Seal
15 Documents related to the plaintiffs' fee agreements. I
16 ordered an injunction on the Motion for Attorney Fees. I
17 have not seen an opposition to that motion.

18 Is there any objection to the Motion to File
19 Under Seal?

20 MR. SMITH: Is this related to the --

21 THE COURT: You either need to have a mic or
22 your thing.

23 MR. SMITH: I apologize, Your Honor.

24 Is this related to the retainer agreement?

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1 THE COURT: It is.

2 MR. SMITH: So I don't know that we ever got
3 notice that that was submitted to Your Honor.

4 THE COURT: It isn't submitted. That's why I'm
5 asking the question, because you didn't oppose it.

6 MR. SMITH: The question is, do we oppose the
7 motion to seal that? We do.

8 THE COURT: Then why didn't you file an
9 opposition to the motion?

10 MR. SMITH: Again, I don't know that I recall
11 actually seeing if it was submitted or this motion.

12 THE COURT: The Motion to File Under Seal was
13 electronically filed -- and I don't know how service
14 works here --

15 MR. SMITH: I don't either.

16 THE COURT: -- on May 1st at 16:33:47.

17 MR. SMITH: I'll go back and see if I was
18 served with it. I don't recall seeing it.

19 THE COURT: I have an order that referred to
20 it, so one would have thought you had notice of it. When
21 I entered the order, I reviewed it.

22 MR. SMITH: In fact, when I saw that order, I
23 was confused how that happened without being noticed that
24 it was submitted to Your Honor in camera.

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1 THE COURT: It wasn't submitted in camera. I
2 didn't accept an in camera filing. I don't accept in
3 camera because of the issues with being a senior judge on
4 a single case assignment. So I'm not doing anything in
5 camera.

6 It was filed under seal and currently shows
7 Exhibits 1 and 2 in connection with the May 1, 2023,
8 filing.

9 So the question is, are you filing an
10 opposition?

11 MR. SMITH: We'll make an oral opposition in
12 light of that.

13 THE COURT: Tell me what it is.

14 MR. SMITH: There's no privilege that applies.
15 There's no confidentiality that would apply to it, and I
16 don't know how the Supreme Court Rules and retainer
17 agreement satisfies any of the supreme court sealing and
18 filing rules. We all know how stringent those are, and I
19 don't see how that retainer agreement satisfies any of
20 them, and it would be the plaintiffs' burden to establish
21 those.

22 THE COURT: So since you are in the process in
23 Carson City on many other things, I am going to ask you
24 to document that position in writing. How long, since

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1 you're here, do you think it will take you to get it
2 filed?

3 MR. SMITH: We can get something done -- if
4 Friday is acceptable or Monday, I would --

5 THE COURT: How about Monday of next week?

6 MR. SMITH: Monday would be preferable. Thank
7 you.

8 THE COURT: Then once you get his opposition --
9 I can't tell if there's service or not. I don't know how
10 it works there.

11 MR. SMITH: I'll go back and check that.

12 THE COURT: Once you get the opposition, will
13 you do a reply and then do your notice of submission so I
14 can get this on track?

15 MS. COLLINGS: Yes.

16 THE COURT: Thank you, Ms. Collings. I was
17 looking at you. It wasn't Mr. Miller.

18 We'll be in recess for ten minutes.
19 (A recess was taken.)

20 THE COURT: Mr. Smith, you wanted to add
21 something to our prebreak exchange about the Motion to
22 Seal?

23 MR. SMITH: That is correct, Your Honor.
24 On our break, I did a little more digging so I

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1 could clarify what I said and confirm that my memory was
2 somewhat correct.

3 It appears that on May 1, 2023, we received a
4 Notice of Submission of Plaintiffs' fee arrangement, and
5 then I was correct; I don't recall ever seeing, actually,
6 a motion to seal, and from the online docket which I have
7 pulled up here, it looks like --

8 THE COURT: Get back closer to the mic.
9 Thank you.

10 MR. SMITH: Looking at the online docket here,
11 it looks like I was somewhat correct that the Motion to
12 Seal itself was actually sealed, so I don't believe ever
13 actually seeing a copy of the Motion to Seal. So in
14 order to draft opposition by Monday, I need a copy of
15 that Motion to Seal.

16 THE COURT: Ms. Collings, can you email the
17 Motion to Seal without exhibits to Mr. Smith?

18 MS. COLLINGS: Yes, absolutely, Your Honor.
19 I'll do that.

20 MR. SMITH: Which also raises another
21 interesting point to me that occurred.

22 Given that the Motion to Seal was itself sealed
23 and the Notice of Submission was filed, the defense never
24 actually received a copy of the fee arrangement during

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1 the briefing and motion practice before Your Honor ruled.
2 That obviously presents a host of issues, but I do
3 want --

4 THE COURT: There were redacted versions of the
5 filed motion.

6 MR. SMITH: Not that we received given the
7 Motion to Seal. So our side confirmed --

8 THE COURT: Ms. Collings, can you make sure you
9 send him the redacted versions of the fee agreements as
10 well?

11 MS. COLLINGS: Yes, Your Honor. I believe
12 that's what was attached to the Notice of Submission, was
13 the redacted version, and then obviously the Motion to
14 Seal had the unredacted versions that we seek to seal.

15 MR. SMITH: Ms. Collings is correct. The
16 Notice of Submission did include the redacted version.
17 She's correct about that. I should have been more
18 precise that we never had a copy of the unredacted
19 versions during the motion practice.

20 THE COURT: That's true, but I did, and I ruled
21 on it.

22 MR. SMITH: You did, Your Honor, but we
23 obviously were at a bit of a disadvantage not to be able
24 to address the redacted portions, but I understand.

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1 THE COURT: Anything else?

2 MR. SMITH: No, Your Honor. Thank you.

3 THE COURT: See, when I don't have video, my
4 hand signals and my facial expressions, they don't come
5 across, so I'm going to try not to use sarcasm today.
6 Anything else before the witness keeps going?
7 Sir, you can be seated. You're still under
8 oath.

9 Mr. McElhinney, you told me last night you
10 thought you had two hours with this witness. How much
11 longer do you think you've got?

12 MR. McELHINNEY: Hour, hour and a half.

13 THE COURT: Okay. Mr. Veeho and I had the
14 right assessment, then.

15 MR. McELHINNEY: I apologize if I was wrong on
16 my assessment, Your Honor.

17 BY MR. McELHINNEY:

18 **Q Mr. Teichner, we were talking about the phrase**
19 **that you use in your Exhibit 19 Motion for Orders &**
20 **Instructions that you filed on October of 2021 and what**
21 **you meant when you said "The receiver also requests that**
22 **the DUF, SFUE and HE currently being charged prior to the**
23 **entry of the Court's September 29, 2021, order remain in**
24 **place until the fees for 2020 are recalculated and**

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1 approved by the Court," and you told us you didn't
 2 remember as you sit here today.
 3 Is that accurate?
 4 A I don't remember what today? I don't
 5 remember --
 6 Q I had asked you, what did you mean to refer to
 7 in that phrase, and you said you did not recall.
 8 A Well, again, all I can recall about that is
 9 that I believe that the fee charges prior to September --
 10 prior to September 29, 2021, that were in effect and were
 11 ordered by Judge Sattler at the time were Proctor's
 12 figures, figures that Proctor had calculated. That's my
 13 recollection.
 14 In fact, there was a point in time -- and it
 15 may have been back in 2019, but I don't recall -- where I
 16 reapplied -- I was ordered to reapply Proctor's figures,
 17 so that still may have been in effect prior to September
 18 29, 2021. That's my recollection. It's Proctor's
 19 figures.
 20 Q So what you meant by that reference was
 21 Proctor's numbers?
 22 A I believe so.
 23 Q Okay. Did you ever change your representations
 24 and tell the Court you meant something different by the

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1 phrase?
 2 A I'm sorry. Did I ever --
 3 Q Let me back up.
 4 Exhibit 19, page 10.
 5 A Okay. I've got it.
 6 Q Line 14.
 7 A Line 14?
 8 Q Yes, sir.
 9 It reads, "Therefore, Mr. Teichner prefers that
 10 the fees calculated by the prior receiver remain in place
 11 until revised fees are calculated for 2020 based on the
 12 Court's approval of the methodology for 2021."
 13 A There you go. I think that -- I think that
 14 clarifies that it was Proctor's figures.
 15 Q So my question is, did you ever later file
 16 something with the Court where you said that phrase meant
 17 something different?
 18 A I don't believe so.
 19 Q Take a look at Exhibit 32, Book 3.
 20 A This is Receiver's Omnibus Reply to Parties'
 21 Oppositions to the Receiver's Motion for Orders &
 22 Instructions. Okay.
 23 Q Yes, sir.
 24 Turn to page 3, please, of that Exhibit 34.

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1 A Okay.
 2 Q Look at line 14 on page 3 of Exhibit 32.
 3 Actually, start on line 10.
 4 A Line 14 on page 3?
 5 Q Page 3. Come up to line 10 instead of line 14,
 6 where it says, "The Court, in its Order Granting
 7 Receiver's Motion for Orders & Instructions, filed
 8 January 4, 2022..."
 9 And then "(ii) ordered that the 'fees in place
 10 prior to the Court's September 27, 2021, Order shall
 11 remain in place until the fees for 2020 are recalculated
 12 and approved by the Court,' and those fees are the fees
 13 for 2021 approved by the Court."
 14 Do you see that language?
 15 A Yes.
 16 Q Why did you change your position on what that
 17 statement meant? In the earlier exhibit we looked at,
 18 Exhibit 19, you said that phrase meant Proctor's numbers;
 19 correct?
 20 A Yes.
 21 Q And in this motion, you tell us that that
 22 phrase means your 2021 numbers.
 23 I want to know why you changed your position,
 24 sir.

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1 A Because this motion was filed on December 19th
 2 of 2022, which was after the January 4, 2022, order
 3 saying that I recalculate the 2020 fee charges based on
 4 2021. That's why this is --
 5 Q That's -- I didn't mean to interrupt you. Go
 6 ahead.
 7 A I'm sorry?
 8 Q I didn't mean to interrupt. Go ahead.
 9 A Yeah. So certainly that was changed due to the
 10 order of January 4, 2022, where now, instead of Proctor's
 11 figures, I use the 2021 figures for 2020 until the 2020
 12 figures are recalculated.
 13 Q That makes no sense to me, Mr. Teichner, so let
 14 me ask some follow-up questions.
 15 The phrase you used, sir, and did not change
 16 was that "The receiver also requests that the DUF, SFUE
 17 and HE currently being charged prior to the entry of the
 18 Court's September 29, 2021, order remain in place until
 19 the fees for 2020 are recalculated and approved by the
 20 Court."
 21 So in your filing of October of 2021, you said
 22 you meant Proctor's numbers. Yes?
 23 A Yes.
 24 Q And in your filing, Exhibit 32, filed December

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1 19, 2022, you said that exact same phrase meant your 2021
2 fee calculations; is that correct?
3 A One more time. This is -- let me look is that
4 wording one more time.
5 I'm sorry. What page are we on again? My
6 pages keep flipping here.
7 Q I understand.
8 You want to look back at the language that you
9 used in your October --
10 A No. Exhibit 32.
11 Q Okay. Turn to page 3, starting on line 10
12 through line 16.
13 A Again, if I'm reading this correctly, it said
14 that the order found that the -- quote: "Fees in place
15 prior to the Court's September 27, 2021, Order shall
16 remain in place until the fees for 2020 are
17 recalculated...and those fees are the fees approved by
18 the Court."
19 It says above there that "...the Order Granting
20 Receiver's Motion for Orders & Instructions, filed
21 January 4, 2022, found that the Findings of Fact,
22 Conclusions of Law and Order 'directly contradicts the
23 Court's December 24th order, is inequitable, and thus is
24 denied outright...' and ordered that the 'fees in place

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1 prior to the Court's September 27, 2021, Order shall
2 remain in place until the fees for 2020 are recalculated
3 and approved by this Court,' and those fees are the fees
4 for 2021 approved by the Court...accordingly, the
5 reversal of the 2020 fees in September 2021 should have
6 been reversed since the Court's Order Granting Receiver's
7 Motion For Orders & Instructions of January 4, 2022."
8 If I'm reading this correctly, it's saying that
9 the orders and instructions of January 4, 2022, is what
10 governs, and, therefore, the fees that were supposed to
11 be applied were -- according to that order of January 4,
12 2022, it says that the 2021 fees are to be applied to
13 2020 until the 2020 fees are recalculated.
14 That's the way I'm reading this.
15 Q Did Plaintiffs' counsel at some point warn you
16 that this phrase that you used would cause confusion as
17 to what fees should be applied?
18 THE COURT: Plaintiffs' counsel?
19 MR. McELHINNEY: Plaintiffs' counsel, correct,
20 in their filing.
21 THE WITNESS: Not that I recall. I don't know.
22 Maybe, but I don't recall.
23 BY MR. McELHINNEY:
24 Q Let's go to Exhibit 20. It's in Book No. 3.

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1 A Yes, okay.
2 Q Mr. Teichner, four days after you filed your
3 Motion for Orders & Instructions on October 18, 2021 --
4 2022 -- I apologize -- Plaintiffs filed their Joinder to
5 Receiver's Motion for Orders & Instructions filed on
6 October 22, 2021. I screwed up those dates. That will
7 be confusing as heck on the record. The file stamp on it
8 was October 18, 2021, and this Exhibit 20 is file-stamped
9 October 22, 2021.
10 Did you review this document, sir?
11 A Well, I did at the time, yes.
12 Q And do you recall the plaintiffs in this motion
13 cautioning you, "Don't use that language. It's going to
14 cause confusion as to what fees will be applied"?
15 A Don't use what language? Why don't we go to
16 the line -- the page and line number.
17 Q Okay. I'm looking for the page here. Let me
18 find it.
19 Look at page 3, line 14.
20 "The Plaintiffs join in the Receiver's
21 request --"
22 Are you there with me?
23 A Yes.
24 Q "-- join in the Receiver's request with

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1 specific points of clarification. First, the Receiver
2 seeks to continue the prior Receiver's calculations in
3 effect until the new calculations are adopted." And they
4 refer to your motion, page 8, line 13 through 16.
5 And, sir, that is where you use the phrase that
6 we've been talking about, that "The receiver also
7 requests that the DUF, SFUE and HE currently being
8 charged prior to the entry of the Court's September 29,
9 2021, Order remain in place until the fees for 2020 are
10 recalculated."
11 That's the phrase they're talking about.
12 Do you understand that?
13 A Yes.
14 Q And they say, "However, the Court rejected the
15 continued use of the prior Receiver's fees," and then
16 they refer you to the September 29, 2021, order; correct?
17 A Yes.
18 Q And then it says, "This creates the glaring
19 issue of what fees will be applied so that the
20 Defendants' contemptuous practice of misappropriating the
21 Plaintiffs' rental revenue every month is stopped."
22 Do you see that?
23 A Yes.
24 Q So they're recommending you use different

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1 language in your order than actually comes down; is that
 2 correct?

3 A I don't know if that's the way I read --
 4 interpret what they're saying. Again, this is a joinder
 5 agreement, and it -- I mean, what I said in my motion is
 6 what I think applies irrespective of what the plaintiffs
 7 said here, but I'm not sure what they're saying
 8 necessarily. I don't necessarily understand that they're
 9 saying that there's confusion.

10 Q Isn't that exactly what they say?
 11 "This creates the glaring issue of what fees
 12 will be applied so that the Defendants' contemptuous
 13 practice of misappropriating the Plaintiffs' rental
 14 revenue every month is stopped."

15 Isn't that exactly what they said?
 16 A Well, again -- again, it "creates an issue of
 17 what fees will be applied so that the Defendants'
 18 contemptuous practice of misappropriating the Plaintiffs'
 19 rental revenue every month is stopped."
 20 I don't know how to interpret that in the
 21 context of the defendants' contemptuous practice of
 22 misappropriating the plaintiffs' rental revenue every
 23 month. I don't -- I don't understand the connection
 24 there of what that means, and I don't necessarily believe

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1 that means that what I said in my motion is incorrect.

2 Q They have taken your phrase and interpreted it
 3 to mean that you're seeking to return to the prior
 4 receiver's calculations.

5 Isn't that exactly what they say on line 14 and
 6 15, page 3, Exhibit 20?

7 A Yes.

8 Q And so they say that's going to create a
 9 glaring issue of what fees are to be applied.

10 Isn't that what they say?
 11 A Right. But they're not saying what should be
 12 applied, are they?

13 Q Absolutely, they are.
 14 Turn to page 4, line 20.
 15 They say, "To stop this ridiculous pattern and
 16 what has now become an injustice, the Court should
 17 immediately order that the Receiver's new fee
 18 calculations are approved retroactive to January 2020 and
 19 shall be applied for 2020, 2021 and going forward until a
 20 subsequent order from the Court."
 21 Do you see that language, sir?
 22 A Yes. And that's consistent with what I said.
 23 Q Is that what your order -- the order that came
 24 out, is that what that says?

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1 A No. I'm just saying that's consistent with
 2 what I said.

3 Q And I'm asking you what showed up in the order.
 4 Let's get to it, shall we? Turn to Exhibit 25.

5 A I have it.

6 Q Who prepared this order before Justice Saitta
 7 signed it?
 8 A Who prepared it?
 9 Q Yes, sir.
 10 A Who prepared it for the justice to approve or
 11 disapprove, to grant it or not grant it?
 12 Q Yes, sir.
 13 Whose signature appears on page 9 of Exhibit 25
 14 where it says, "Submitted by"?
 15 A "Submitted by Robertson, Johnson, Miller &
 16 Williamson."
 17 Q Why was it that Plaintiffs' counsel was
 18 preparing a proposed order for your motion?
 19 A Are you asking me?
 20 Q Absolutely.
 21 A Why did the plaintiffs --
 22 Q -- prepare a proposed order for your motion?
 23 A I don't know, but it was approved by Justice
 24 Saitta, so it -- I don't -- the why? I don't know why,

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1 but I don't think it makes a difference because it was
 2 approved by the justice.

3 Q You didn't ask them to; correct?
 4 A Oh, no, of course not.
 5 Q Turn to page 8 of Exhibit 25.
 6 A I have it.
 7 Q Line 3.
 8 A Line 3?
 9 Q Yes, sir.
 10 What does it say? Read it out loud, please.
 11 A It says, "Those fees in place..."
 12 Q Yes, sir.
 13 A "Those fees in place prior to the Court's
 14 September 27, 2021, Order shall remain in place until the
 15 fees for 2020 are recalculated and approved by this Court
 16 such that only a single account adjustment will be
 17 necessary."
 18 Q That's the language that you said originally
 19 was a reference to Proctor's numbers.
 20 A Correct.
 21 Q That you later said was a reference to your
 22 2021 fee calculations; correct?
 23 A Yes.
 24 Q And this is the same phrase that Mr. Miller

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1 warned you in his joinder would cause confusion as to
2 what fees should be applied; isn't that true, sir?
3 A Possibly, but that's -- ultimately, the order
4 said that I would use the 2021 fee calculations for 2020
5 so...
6 Q Not this order, though; correct?
7 A No, not this one.
8 Q This order conflicts with the other order;
9 would you agree with that?
10 A Yes. Absolutely.
11 MR. McELHINNEY: Okay. I'm looking through my
12 notes, Your Honor, so Court's indulgence.
13 THE COURT: You might be done?
14 MR. McELHINNEY: I will tell you I'm close.
15 THE COURT: I'm glad to hear that.
16 BY MR. McELHINNEY:
17 Q Look at Exhibit 29 in Book No. 3, please.
18 A Did you say page 3?
19 Q Exhibit 29. It's in Book No. 3.
20 A I have it.
21 Q And this is entitled "Receiver's letter dated
22 November 14, 2022"; correct?
23 A Yes.
24 Q In this letter, if you turn to page 2 -- this

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1 is November 14, 2022. We're now 11 months after entry of
2 the order.
3 You're still talking about calculated net
4 rents; correct?
5 A I'm sorry. Who's talking about that?
6 Q This was your letter that was filed with the
7 Court; is that correct?
8 A I'm sorry. I'm looking at an email from
9 Mr. Miller to Stefanie Sharp.
10 Q Exhibit 29, Book No. 3.
11 A I'm sorry.
12 Q That's okay.
13 A Exhibit 2? There's two exhibits.
14 Q We're just starting with the second page back,
15 so start at the file-stamped page and go to the next
16 page, which is the cover letter of your letter of
17 November 14, 2022; correct?
18 A There's a letter of May 19, 2022.
19 MR. McELHINNEY: May I approach, Your Honor?
20 THE COURT: You may.
21 MR. McELHINNEY: Just helping Mr. Teichner. I
22 want to make sure --
23 BY MR. McELHINNEY:
24 Q Are you on Exhibit 29? I want you to go to --

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1 A Okay.
2 Q Thank you.
3 So you're looking at the very first page, which
4 is your letter on your letterhead to the Honorable
5 Elizabeth Gonzalez dated November 14, 2022.
6 Are you with me?
7 A I see that, yes.
8 Q Turn to page 2 of that letter.
9 A Okay.
10 Q In the very last paragraph that appears at the
11 bottom of that page, you're still talking about
12 calculated net rent, is that correct, in that paragraph?
13 A I'm talking about it but -- yes.
14 Q So at this point, you're still trying to
15 calculate net rents so that you can get paid; correct?
16 A Well, yes. I mean, that only makes sense.
17 Right. That only makes sense.
18 Q Turn to page 4 of that letter, please, third
19 full paragraph.
20 A I'm sorry?
21 Q Third full paragraph on page 4. It's about the
22 middle of the page. It starts out "Certainly."
23 Are you with me?
24 A "Certainly"? The one that starts "Certainly"?

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1 Q Yes.
2 It says, "Certainly, the amount of the net
3 rents would first need to be calculated before the
4 Receiver could inform GSR of the amount that it would
5 need to turn over to the Receiver for past due amounts as
6 well as for the most current month's amount. However,
7 that task, which will involve a considerable --" I think
8 you left out a word "-- amount of time and fees will not
9 be performed by this Receiver without having been paid
10 the substantial outstanding balance owed for over a year
11 and for the ongoing fees that will be incurred for
12 performing future procedures."
13 Did I read that correctly?
14 A Yes.
15 Q So in this paragraph, you're acknowledging that
16 you haven't yet told GSR what the net rent is to pay to
17 you. Do I understand that correctly?
18 A Of course, I haven't.
19 Q Right.
20 So the reason you're not getting paid, sir, is
21 because you're not doing the calculations to tell us what
22 the net rents are to pay you; correct?
23 A Well, I guess that's -- I guess that's true but
24 not because I haven't calculated them, because -- they

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1 haven't been paid -- the rents have not been paid to me
 2 as they were ordered to be paid to me.

3 **Q So, now, what are you talking about? You're**
 4 **now talking about the January 7, 2015, order?**

5 A January 7th? No. I believe it's -- it would
 6 be -- well, that's one order, yes, but let me see.

7 The date of my letter is November 14, 2022, so,
 8 again, according to one of the orders of January 4, 2022,
 9 the receiver's fees are supposed to be paid out of -- I
 10 don't know if it says paid out of net rents or out of
 11 rents but --

12 **Q Let's see if we can find that order, sir.**

13 A All I'm saying in this letter is that we don't
 14 have -- we need to do the work in order to determine what
 15 the net rents are.

16 **Q Here's the point I'm trying to make,**
 17 **Mr. Teichner. Not the point, but my client is being**
 18 **charged with contempt, or we're on trial for contempt.**

19 One of the allegations is we withheld rent from
 20 you intentionally so that you wouldn't do your work, and
 21 that's how we interfered with your work.

22 The fact of the matter is, as I understand your
 23 testimony, the reason you weren't getting rent is because
 24 you hadn't told us what the net rent was.

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1 **Am I misunderstanding that?**

2 A Well, yes and no. And the reason why I say
 3 "yes and no" is because the January 15th order,
 4 irrespective of that, irrespective of -- I haven't told
 5 you what the net rents are. Irrespective of that, the
 6 receiver is supposed to be paid out of rents, and this
 7 goes back, again, to October of 2021 was the last time we
 8 got paid, and I don't know if that was only because
 9 that's when the UOA cash was depleted -- I believe it
 10 was -- but irrespective, the receiver is supposed to be
 11 paid out of rents, period, and the order says -- doesn't
 12 say net rents, the orders says rents, which only makes
 13 sense because the receiver can't do any work unless
 14 they're paid.

15 So all I'm saying in this letter is that we
 16 still need to determine what the net rents are, but we
 17 can't do that, essentially, until we get paid.

18 **Q Sir, did you make demand on my client to "Just**
 19 **pay me rent money while I'm trying to do my calculations**
 20 **for net rent"?**

21 A The receiver is supposed to get paid every
 22 month. The receiver sends a bill every month. If it's
 23 not -- if it's not objected to, then the receiver is
 24 supposed to receive fees out of the rents collected from

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1 the unit owners.

2 **Q Take a look at Exhibit 29, because I'm going to**
 3 **look at what your suggestion was to the Court on**
 4 **November 14, 2022, as to how you should get paid. So go**
 5 **back to Exhibit 29.**

6 A I'm still there.

7 **Q Go to page 4, last paragraph.**

8 **Do you see where it says, "Accordingly, in**
 9 **order to avoid Catch-22..."**

10 A Which line are you on?

11 **Q The last paragraph, almost halfway down?**

12 A Okay. Got it.

13 **Q Okay. It says, "Accordingly, in order to avoid**
 14 **a 'Catch-22' --" you have that in quotes.**

15 **What are you talking about, Catch-22?**

16 A Well, Catch-22 is if you do something one way,
 17 and then it's done the other way.

18 **Q Talk into the microphone, if you would,**
 19 **Mr. Teichner. I can't hear you.**

20 A I'm sorry.

21 Well, in this context, the fact that there's an
 22 interrelationship -- what I'm saying is there's an
 23 interrelationship of being paid outstanding balance and
 24 fees as well as the fees for performing the calculations

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1 and other services and the necessity for those
 2 calculations to be made before the fees could be paid.

3 My suggestion is that GSR remits the amounts of
 4 receiver to be placed in a bank account of the receiver
 5 as recorded -- as ordered to pay the receiver's past fees
 6 and ongoing fees and allow for sufficient funds in
 7 reserve to be able to cover any shortfall that the GSR
 8 UOA could have, if any.

9 So the point I'm making is that if we were to
 10 be paid out of net fees, then we couldn't do the work.
 11 If we couldn't do the work, then we couldn't be paid the
 12 net fees. So in order to avoid that problem, we should
 13 be paid, and maybe I didn't state that in its entirety,
 14 but we should be paid out of the rents like we're
 15 supposed to be paid, out of the rents.

16 So we can go ahead and compute the net rents to
 17 determine the amount that we would have been paid out of
 18 the net rents.

19 **Q And do you cite to any authority in that last**
 20 **paragraph that, hey, I'm allowed to get all rents under**
 21 **the January 7, 2015, order?**

22 A Not in this paragraph, but that's -- that's
 23 what the January 7, 2015, order says.

24 **Q Mr. Teichner, you're an honest man. I'm going**

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1 to ask you a question, and I'm going to ask for your
2 honest answer.

3 Can you see how the conduct of you talking
4 about net rent continuously for at least 11 months since
5 the entry of the order and suddenly talking about all
6 rents would be very confusing to my client?

7 A It could be. I'm not saying it's not confusing
8 to your client, but I think that it's clear, and my point
9 in this letter was that we need to get paid in order to
10 be able to do our work. I mean, that was the point in my
11 letter.

12 Q Turn to Exhibit 37 in Book No. 4.
13 I've got you buried in books there,
14 Mr. Teichner. I'm sorry.

15 A I have it.

16 Q Turn to page 4 of Exhibit 37.
17 A Okay.

18 Q This is an email from you to Reed Brady;
19 correct?

20 A Yes.

21 Q And you say, "Effective immediately, I need you
22 to send me the total rents collected on all of the
23 plaintiff unit owners' units and on all defendant unit
24 owners' units"; correct?

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1 A Yes.

2 Q Is this the first time you've demanded total
3 rents, gross rents, as opposed to net rents?

4 A When you say, "demanded," I never demanded -- I
5 didn't -- I never demanded net rents. I never demanded
6 gross rents.

7 What I've said is that we need to get paid.
8 I've said that in motions I filed with the Court. The
9 point here is, again, that from a practical standpoint, I
10 felt that we -- we'd get the gross rents; we'd pay our
11 fees out of the gross rents like we're supposed to, and
12 then we would -- well, we'd get the gross rents. We'd
13 get our fees, past-due fees, but then with the gross
14 rents that we receive in the future, we would then
15 determine what the net amounts are and then, again, give
16 that to GSR to distribute the checks.

17 As I said earlier in my testimony, from a
18 practical standpoint, it doesn't matter to me one way or
19 the other whether we do it that way or GSR determines
20 what the net rents are based on our figures. We'd have
21 to check them, obviously. We'd have to check that they
22 did it correctly. If we did it, then we wouldn't have to
23 check their work.

24 So from a practical standpoint, it doesn't

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1 matter, but it's probably -- of the two choices, I think
2 it's a better choice for us to collect the gross rents
3 and then determine what the fees are that apply to the
4 rents and give those net figures to GSR to distribute the
5 checks.

6 Q I'm going to repeat my question, Mr. Teichner.
7 Was this email of May 4, 2023, the first time
8 you demanded of my client that they hand over gross
9 rents?

10 A I believe so.

11 Q And up until this point, you had gotten court
12 orders talking about net rents that you were supposed to
13 calculate; correct?

14 A Yes. Other than the January 7, 2015, order,
15 from what I recall. Well, no. Up to that -- no. I'm
16 sorry.

17 This is dated May 4, 2023. I would have to see
18 when Her Honor Judge Gonzalez's order came out that said
19 rents and not net rents, if it was before or after this
20 May 14th email.

21 Q So if there was an earlier order --
22 Do you think Judge Gonzalez said we were to
23 hand over gross rents?

24 A I'm sorry?

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1 Q Do you think that Judge Gonzalez had ordered
2 for us to hand over to you gross rents?

3 A Well, it said rents, and that's consistent with
4 the January 15 -- I'm sorry -- the January 7, 2015, order
5 says rents. It doesn't say net rents.

6 Q But not consistent with the January 4, 2022,
7 order; agreed?

8 A Right.

9 Q You made this demand. Do you think there's now
10 some confusion that's created between the January 4,
11 2022, order and that January 7, 2015, order, as to what
12 "rent" means?

13 A Yes.

14 Q And you address that on page 2 of Exhibit 37,
15 don't you?

16 A Exhibit 37?

17 Q Yes, sir.

18 The very last paragraph starts out, "First, the
19 receiver has no authority to collect rents or disburse
20 net rents to the unit owners who are not parties to the
21 action," etcetera.

22 And then you say, "However, this may be a legal
23 argument that the plaintiffs and defendants need to
24 address and about which filings with the Court for

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1 clarification might need to be sought."
2 You're talking about the conflict between the
3 January 4, 2022, order about net rent and then the
4 January 7, 2015, order that just says rents; correct?
5 A Correct.
6 MR. McELHINNEY: No further questions.
7 Your Honor, may we have a three-minute recess,
8 please?
9 THE COURT: You may.
10 (A recess was taken.)
11 THE COURT: Mr. McElhinney, did you have some
12 additional questions you wanted to ask?
13 MR. McELHINNEY: I do, Your Honor. Thank you.
14 THE COURT: Amazing how I can figure that out.
15 MR. McELHINNEY: Court's indulgence.
16 BY MR. McELHINNEY:
17 **Q Mr. Teichner, during your direct examination --**
18 THE COURT: Mr. McElhinney, turn your mic on.
19 MR. McELHINNEY: I apologize.
20 THE COURT: Thank you.
21 BY MR. McELHINNEY:
22 **Q -- you were asked questions about whether or**
23 **not the defendants' conduct interfered with your ability**
24 **to carry out your functions as trustee or as receiver.**

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1 **Do you recall that testimony?**
2 A Yes. There were a few questions in that
3 regard.
4 **Q I would like for you to describe for me,**
5 **please, each and every activity that my client engaged in**
6 **that interfered with your ability to carry out your**
7 **functions as a receiver.**
8 A Well, I think one is by not paying the
9 receiver's fees.
10 **Q And we've established that the reason you**
11 **weren't getting paid was because you hadn't given them**
12 **the net rent number to pay to you; correct?**
13 MR. MILLER: Objection. Misstates the
14 witness's testimony.
15 THE COURT: Sustained.
16 Could you rephrase your question, please.
17 MR. McELHINNEY: Absolutely.
18 BY MR. McELHINNEY:
19 **Q In your letter of November 14, 2022, you said**
20 **you were kind of caught in a Catch-22.**
21 **Do you recall using that language?**
22 A Yes.
23 **Q And that was because you couldn't do the net**
24 **rent calculations because you weren't getting paid, and**

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1 until you got paid, you couldn't give the net result, so
2 to avoid that Catch-22, you asked that money be paid;
3 correct?
4 A Yes.
5 **Q Okay. So the reason you weren't being paid was**
6 **because you were caught in this Catch-22 situation? You**
7 **weren't --**
8 A Well, that's what I was saying in the letter,
9 but the point is, again, the January 15th -- I'm sorry --
10 the January 7, 2015, order says that the receivers get
11 paid out of the dues or rents, and prior to September of
12 2021, which was the last bill that we got paid, which was
13 in October 2021, we were being paid, and ever since then,
14 with no objections being filed, we were not being paid.
15 **Q Who was paying your bill up until that point?**
16 A Again, I believe it was the UOA that was paying
17 all our fees.
18 **Q So UOA was paying you out of the dues; correct?**
19 A Yeah, but the other -- yes, but the problem
20 with that is the UOA had to keep increasing their dues
21 because of that and ran out of cash, and in order to have
22 avoided that, if GSR would have paid our fees out of
23 rents at some point in time before the funds of the UOA
24 were depleted, that would have never happened.

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1 The UOA was close to bankruptcy until they were
2 able to increase the fees to the unit owners who weren't
3 even getting paid their net rents. So the unit owners
4 were complaining, rightfully so, that they weren't -- not
5 only were they not receiving rents, the net rents that
6 they deserved from GSR, but they also were getting
7 increased fees and assessments because they had to fund
8 in part the operations of the UOA, which included paying
9 our fees.
10 **Q Are the unit owners current on their dues with**
11 **the UOA?**
12 A Not all of them.
13 **Q How about some of the plaintiffs? Are they**
14 **paying?**
15 A I don't know. I'd have to get another schedule
16 of dues in arrears.
17 **Q What are you doing as a receiver over the GSR**
18 **UOA to make sure those fees get collected?**
19 A I'm sorry. What am I doing?
20 **Q Yes, sir.**
21 A Well, at one point in time, I put it into
22 collections.
23 **Q My question, though, sir, is, what are you**
24 **doing to make sure that the dues are being paid into the**

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1 UOA?

2 A I'm -- I'm communicating with Ms. Tarantino,

3 who is an associate, and she is filing at a certain point

4 in time, and she's informing me that she's filing --

5 well, she's filing -- she's putting the fees in

6 collection. She's warning the people about the past-due

7 fees, and then she's putting -- once it reaches a certain

8 point, she then puts those into collection.

9 Q How long have those dues been in arrears?

10 A Well, there's a point in time where they -- it

11 varies. I can't say offhand. I'd have to see an aged

12 accounts receivable schedule from that, but there's a

13 point in time when their units were -- they were going to

14 be put into foreclosure, but that was -- that was

15 stopped.

16 Q Why?

17 A Well, I believe the judge stopped that

18 because -- only because, you know, the UOA is going to be

19 wrapped up one day, hopefully one day soon, hopefully.

20 Q So we talked about not paying you interfered

21 with your ability to do your job as a receiver.

22 What else did we do to interfere with your job

23 as a receiver?

24 A Well, I think each -- I don't remember each --

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1 I'll call them allegations for now -- that Mr. Miller had

2 brought up, but I would have to go through each one of

3 those to see how -- what those were, and then I can

4 explain how those interfered with my ability to do the

5 work.

6 Q Okay. I'm not asking about Mr. Miller's

7 allegations.

8 I'm asking you, as the receiver, how we've

9 interfered with your ability -- we, defendants, have

10 interfered with your ability to carry out your functions

11 as a receiver.

12 A Well, I think -- again, I think the main --

13 well, okay. The defendants have filed a number of

14 motions in objection to my filings on a lot of matters,

15 and I think those motions have delayed the process and

16 interfered with my ability to carry out my duties.

17 And most of those motions, my understanding,

18 have been denied by the Court, so those -- all those

19 motions that were filed that had to do with my duties as

20 a receiver certainly interfered with my ability to carry

21 out my duties.

22 Q So you're saying that some of the motions or

23 oppositions or replies that we filed stopped you from

24 doing something as a receiver?

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1 A Well, they stopped the progress. I'd have to

2 go back and look at each one but --

3 Q You can't think of an example of what you

4 just --

5 A No, I can't.

6 Q Okay. What else? Anything else that we did to

7 interfere with your job as a receiver that you can think

8 of today without Mr. Miller standing up and sort of

9 taking you through step by step?

10 A Well, again, there are a number of procedures

11 that I would need to go through. I mean, that hasn't

12 been worked on for many months. All the routine

13 procedures haven't been done since, I think it was, May

14 of 2022, May or -- no. I'm sorry. I think it was

15 February 2022 was the last time we did all our monthly

16 routine procedures. Those procedures haven't been done,

17 and, again, those haven't been done because we haven't

18 gotten paid.

19 Again, it's all -- it really goes back and

20 relates to our not having been paid, but by not being --

21 our not being able to determine whether the rotation,

22 room rotation, is done properly, whether the comp

23 rooms -- the rooms that are comped more than five times

24 per year have been adhered to, that that order -- I'm

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1 sorry -- I think that's in the rental agreement. All

2 those procedures that we normally have performed have not

3 been -- we've not been able to do those.

4 So I think there's a number of items and

5 procedures that we have not been able to do as a result

6 of not being paid. So all those have -- that relate,

7 obviously, to our not being paid, but that's interfering

8 with a lot of different procedures that we would have

9 normally done and have not been able to do.

10 MR. McELHINNEY: No further questions.

11 THE COURT: Mr. Miller.

12

13 REDIRECT EXAMINATION

14 BY MR. MILLER:

15 Q Mr. Teichner, do you still have a copy of this

16 demonstrative exhibit that we used yesterday?

17 THE COURT: It's D1. Sir, I'll hand you the

18 clerk's copy. Please don't write on it.

19 THE WITNESS: Okay.

20 BY MR. MILLER:

21 Q We've repeatedly talked about these two

22 paragraphs from two competing orders. The first one on

23 the top of D1 is Exhibit 122, and then on the right side

24 is Exhibit 124.

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1 These two paragraphs are competing paragraphs
2 that were from orders issued on the same date but from
3 different motion streams.
4 Do you understand that?
5 A Yes.
6 Q Okay. And while there's competing terms in
7 these two paragraphs --
8 Let's look first at Exhibit 122. You're
9 familiar with that paragraph?
10 A Yes.
11 Q Okay. And this is the paragraph that has the
12 language that says, "Those fees in place prior to the
13 Court's September 27, 2020, Order shall remain in place
14 until the fees for 2020 are recalculated."
15 A Yes.
16 Q Do you know, from looking at the monthly
17 statements that we reviewed yesterday, which were
18 Exhibit 58, Exhibit 66 and Exhibit 77, if that provision
19 of the Court's order was complied with? Did the
20 defendants apply those older, lower fees?
21 A They did not.
22 Q And did they, in fact, actually increase the
23 fees subsequently, after the date of this order, without
24 your approval?

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1 A Yes.
2 MR. SMITH: Objection. Beyond the scope.
3 THE COURT: Overruled.
4 BY MR. MILLER:
5 Q And then, Mr. Proctor [sic], go to Exhibit 124,
6 which is the order that states "The receiver's new fee
7 calculations as submitted to the Court should immediately
8 be applied retroactive to January 2020 and going forward
9 until a subsequent order from the Court is issued."
10 Do you know if the defendants applied those
11 approved fees that the Court specifically took the time
12 to approve -- did Defendants ever apply those to the
13 monthly statements? And I'm referring to Exhibit 66 and
14 Exhibit 77, which show subsequent rentals after the
15 issuance of this order.
16 A I believe they did for a period of time, and
17 then they reversed it all. They reversed -- they
18 reversed what they applied. I believe it was -- I don't
19 remember. It may have been in, like, October of 2021.
20 When we did that recalculation of fees and came
21 up with the one million one-oh-four, that's when we found
22 that the fees -- our fees had been applied for a certain
23 period of time and then they were reversed. So we had to
24 reapply them in that calculation. Part of that

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1 calculation that we did, that was in that -- in our -- it
2 was Exhibit 140 yesterday. I'm sorry. It's in another
3 one. It's not in there.
4 In another -- when we prepared the schedule and
5 filed -- I guess it was a motion with the Court, when we
6 came up with the one million one oh four, which I believe
7 is now on appeal with the Supreme Court, that issue, that
8 included our reversal of -- GSR's reversal of the
9 application of the 2021 fees and then a few other
10 adjustments, too.
11 So to answer your question, it was done
12 temporarily, but then they reversed it.
13 Q And you didn't authorize that reversal?
14 A No.
15 Q And the fees that the GSR has continued to
16 apply on the monthly statements since January 4, 2020,
17 you haven't authorized those fees?
18 A No.
19 Q Did GSR ever reach out to you as receiver and
20 say, "Mr. Teichner, which fees do you want us to apply to
21 these statements?"
22 A No.
23 Q And wouldn't that be your decision to make?
24 A Yes.

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1 Q But instead they charged their own fees that
2 were significantly higher than either the pre-September
3 27, 2021, fees that you suggested the Court should apply
4 and fees that were higher than your actual calculation of
5 fees; is that correct?
6 MR. McELHINNEY: Objection. Leading, Your
7 Honor.
8 THE COURT: Rephrase your question, please.
9 BY MR. MILLER:
10 Q So I believe we established that the GSR never
11 reached out to you to ask you which fees you wanted
12 applied after the January 4, 2022, order; is that
13 correct?
14 A Correct.
15 Q And they didn't apply the fees that were in
16 place prior to September 27, 2021, as requested in your
17 motion for order granting instructions; right?
18 A Correct.
19 Q And they didn't apply the fees that you had
20 calculated that the Court had approved; is that correct?
21 MR. McELHINNEY: Objection. Leading the
22 witness.
23 THE COURT: Rephrase your question, please.
24 /////

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1 BY MR. MILLER:
2 Q After January 4, 2020, did the GSR apply their
3 own fees, not your fees?
4 A I'm sorry. After which? 2020, did you say?
5 Q Let me have you look at Exhibit 66.
6 A Excuse me. I don't have -- your binder is up
7 here. Okay.
8 MR. McELHINNEY: Your Honor, do you want me to
9 get my books out of the way?
10 THE COURT: No. I want to leave them there in
11 case you need to go back.
12 THE WITNESS: Okay. I'm there.
13 BY MR. MILLER:
14 Q So Exhibit 66 is an owner account statement
15 dated January 18, 2022; correct?
16 A Yes.
17 Q And that's after these two competing orders
18 were issued; correct?
19 A Yes.
20 Q And if you look at the daily use fee that's
21 applied in this statement, which is 32.47 --
22 Do you see that?
23 A Yes.
24 Q -- does that track either the daily use fee

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1 that was in place prior to September 27, 2021? Does that
2 track that daily use fee?
3 A Are we talking about Proctor's figures?
4 Q Yes. Is that more than Proctor's figures?
5 A I don't recall what Proctor's figures are, so I
6 can't answer absolutely.
7 Q Okay. Then look at Exhibit 58.
8 A I have that.
9 Q And this is a statement from September 9, 2021?
10 A Yes.
11 Q And do you believe this statement to reflect
12 Proctor's daily use fee?
13 A Yes. That 24.54 was his daily use fee, yes.
14 Q So after the January 4, 2022, order, Proctor's
15 fees weren't applied; correct?
16 A Correct.
17 Q And then going back to Exhibit 66, which is the
18 January 18, 2022, statement where it states 32.47 for the
19 daily use fee, that doesn't track your calculation of
20 fees either; correct?
21 A Correct.
22 Q And you did not authorize them to apply an
23 increased daily use fee above either yours or Proctor's
24 calculations?

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1 A No.
2 Q Did you object to the application of those
3 fees?
4 A Did I object?
5 Q Yes.
6 Did you or your counsel express to the
7 defendants, either through a motion or letters or
8 conversations, that "You should be applying my fees to
9 these monthly statements"?
10 A I don't recall anything formally that we --
11 Q Do you remember we went through some letters
12 yesterday that stated that the defendants applied their
13 own fees and not the --
14 A Yes.
15 Q Okay.
16 A Yes. I'm not sure if there was any emails or
17 any letters -- I know there were no letters to Defendants
18 directly. There may have been emails.
19 Q Okay.
20 A But there were -- certainly, I believe in one
21 or two of my letters to the Court, I mention that.
22 Q Okay. Thank you.
23 If either Proctor's fees were applied or your
24 approved fees were applied, is it easy to calculate the

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1 net rents once you know what fees you're applying?
2 A Yes.
3 Q Okay. So if you have no dispute over what net
4 rents are to be applied, it's easy to come up with a
5 certain number?
6 A Yes.
7 Q And then if the defendants had that number and
8 were instructed to put those amounts on the plaintiffs'
9 monthly statements and send out those amounts and pay
10 your receiver fees, is there any reason to take over the
11 rents from the defendants at that time?
12 A Yes.
13 Q To physically take them over?
14 If they're following your instructions -- apply
15 my fees and send the rental payments to the plaintiffs
16 and pay my bills -- do you need to take the money over
17 into your own account from the defendants?
18 A When you say, "the money," you mean the total
19 rents, the gross rents?
20 Q The total rents. If they're following your
21 instructions --
22 A Yes, right. If they followed my instructions
23 and computed the fees correctly, then, no, I would not
24 have to take over the gross rents.

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1 Q Okay. And is that what occurred in 2019? Do
 2 you remember in 2019 you were getting paid, and the
 3 plaintiffs were receiving their rental revenues; is that
 4 correct?
 5 A Right.
 6 Q So it only becomes necessary for you to take
 7 over the rents, physically collect them and take them,
 8 because the defendants won't follow your instructions?
 9 A I would say that's a fair statement.
 10 Q Yesterday there was some questioning about your
 11 2020 calculations, which we ultimately had four days of
 12 hearings on, went through them ad nauseam, and then there
 13 was a recalculation of those fees as a result of those
 14 four days of hearings where we went through the fees in
 15 detail.
 16 Do you recall that?
 17 A Yes.
 18 Q And do you recall that the Court, after hearing
 19 all of that evidence, actually issued an order
 20 specifically stating that the fees needed to be
 21 recalculated in a certain way?
 22 A Yes.
 23 Q Okay. So your recalculation of the fees -- why
 24 did you recalculate the fees after your first fees in

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1 January of 2020? As a result of a court order?
 2 A Yes.
 3 MR. MILLER: Your Honor, this is a copy of
 4 Receiver's Second Status Report dated December 10, 2015,
 5 filed by the prior receiver into this action, and it's
 6 Transaction No. 5273489. This is a document that's in
 7 the record in this case.
 8 THE COURT: And?
 9 MR. MILLER: And I would like to have
 10 Mr. Teichner review this document. I'd like to know if
 11 he has reviewed this document.
 12 THE COURT: Are you going to mark it as an
 13 exhibit, or are you going to attempt to refresh his
 14 recollection and --
 15 MR. MILLER: I would like to mark it as an
 16 exhibit.
 17 THE COURT: The next in order would be 141.
 18 Any objection to 141, Mr. McElhinney?
 19 MR. McELHINNEY: No objection, Your Honor. I
 20 think it's identical to our -- strike that. No
 21 objection.
 22 THE COURT: It will be admitted.
 23 (Exhibit 141 was marked and admitted.)
 24 /////

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1 BY MR. MILLER:
 2 Q Mr. Teichner, can you turn to page 5 of this
 3 letter or this report from your predecessor, Mr. Proctor.
 4 A I have it.
 5 Q Can you read the first two sentences of page 5.
 6 A At the very top?
 7 Q Yes, please.
 8 A "The receiver has received \$510,466 of the TPO
 9 reserve amounts ('reserves'), representing 100 percent of
 10 the reserves collected through October from the TPO for
 11 the period ended August 31, 2015. Those funds have
 12 been --"
 13 Should I go on?
 14 Q Yes, please.
 15 A "Those funds have been deposited into a
 16 receiver-controlled trust account. To date, there have
 17 been no disbursements by the receivership."
 18 Q Okay. Does that indicate to you that the prior
 19 receiver opened up a trust account where he put the
 20 reserve funds into that trust account?
 21 MR. McELHINNEY: Objection. Speculation.
 22 THE COURT: Overruled.
 23 THE WITNESS: Yes.
 24 /////

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1 BY MR. MILLER:
 2 Q Thank you.
 3 And I think we've talked about this before, but
 4 as long as the defendants complied with your instructions
 5 concerning the reserve accounts, did you see any reason
 6 to take over the reserve accounts and put them into a
 7 separate account that you only have control over?
 8 A Yes.
 9 Q So if they're following your instructions, do
 10 you need to put those funds into a separate account that
 11 they can't access?
 12 MR. McELHINNEY: Objection. Leading.
 13 THE COURT: Rephrase your question, please.
 14 BY MR. MILLER:
 15 Q Have the defendants, within the last year and a
 16 half, withdrawn substantial funds from the reserve
 17 accounts without your approval?
 18 A Yes.
 19 Q Do you believe that now that that's occurred,
 20 that it would be appropriate for you to put the reserve
 21 money in a separate account that they can't access?
 22 A I think it would be appropriate. I guess if
 23 the Court -- I would want to -- I would want to get
 24 approval from the Court, but otherwise, yes.

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1 Q Do you understand that you came into this case
2 after it was remanded from the Nevada Supreme Court?
3 A Say that again.
4 Q So you understand that Mr. Proctor was the
5 receiver, and then this case was dismissed by the
6 district court.
7 Do you understand that?
8 A Yes.
9 Q And then there was a two-year period where
10 there was no receiver in place because we were at the
11 Nevada Supreme Court.
12 Do you understand that?
13 A Yes.
14 Q So you came back in as receiver in this case
15 after the defendants had had the ability to do whatever
16 they wanted for two years; is that correct?
17 A Yes.
18 Q And when you came back into the case, do you
19 recall how much was in the reserve accounts?
20 A I don't know if there was anything in the
21 reserve accounts. I know that there was an order to, I
22 think -- I believe to place \$500,000 in each reserve
23 account, if I recall correctly, but I don't think that
24 money had been put in there at the time when I came

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1 onboard.
2 Q So essentially there was no money in the
3 reserve accounts when you came onboard?
4 A That's my -- that's my recollection.
5 Q Do you remember that we litigated the idea of
6 how much they had to put into the reserve accounts?
7 MR. McELHINNEY: Objection, Your Honor.
8 Leading the witness.
9 THE COURT: Rephrase your question.
10 BY MR. MILLER:
11 Q Do you recall the Court ordering the defendants
12 to put, I believe it was over 10 million dollars into the
13 reserve accounts to bring them current because they had
14 drained them?
15 MR. McELHINNEY: Your Honor, I'm much more
16 interested in what Mr. Teichner knows instead of
17 listening to Mr. Miller ask leading questions.
18 THE COURT: What's your objection?
19 MR. McELHINNEY: I apologize. Leading.
20 THE COURT: Would you rephrase your question.
21 BY MR. MILLER:
22 Q Were the defendants required by the Court to
23 place funds into the reserve accounts after you had come
24 in as receiver in this case?

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1 A Yes.
2 Q Do you recall approximately how much it was
3 that they had to put into the empty reserve account after
4 you came into this case?
5 A I don't remember offhand what the amount was.
6 Q Okay.
7 A I don't remember if it was 10 million or what
8 the figure was.
9 Q Millions of dollars?
10 A It was a substantial amount because the reserve
11 account had to be funded in order to be able to pay for
12 the capital expenditures. I also believe that the --
13 MR. McELHINNEY: Objection. No question
14 pending.
15 THE COURT: We're trying to get you out of
16 here. Remember?
17 Mr. Miller, do you have another question?
18 MR. MILLER: I do, Your Honor. Court's
19 indulgence.
20 BY MR. MILLER:
21 Q Mr. Teichner, if you have not, is it possible
22 for you to email or deliver wire instructions to
23 Mr. Brady today for your newly opened account?
24 A Certainly. That would be for future payments

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1 once the judge approves those fees.
2 Q Thank you.
3 A Because I believe an order from Her Honor wants
4 me to -- I think she wants to see the bills now each
5 month, if I recall.
6 Q So to be clear, has the refusal to implement
7 your fees impaired your ability to do your tasks as
8 receiver?
9 A Yes.
10 Q And the withdrawal from the reserve accounts
11 without your permission, has that interfered with your
12 ability to proceed as receiver?
13 A Yes.
14 MR. MILLER: Sorry, Your Honor. I misplaced a
15 binder here.
16 No further questions, Your Honor.
17 THE COURT: Mr. McElhinney, briefly.
18 MR. McELHINNEY: Court's indulgence.
19
20 RE-CROSS-EXAMINATION
21 BY MR. McELHINNEY:
22 Q Mr. Teichner, you said that when we withdrew
23 money from the reserve accounts, that interfered with
24 your ability to carry out your functions as a receiver?

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1 A Yes.

2 Q In what way?

3 A Well, because my functions as a receiver is to
4 determine how much can be withdrawn based on approval of
5 the capital expenditures.

6 MR. McELINNEY: No further questions.

7 THE COURT: Anything further, Mr. Miller?

8 MR. MILLER: No, Your Honor. Thank you.

9 THE COURT: Thank you.

10 Sir, thank you very much. I would leave before
11 they change their minds. Give me those exhibits with the
12 stickers. You have a nice day, sir. You do not have to
13 stay and watch, but you may if you want. The problem is
14 if you stay and watch, they may recall you.

15 THE WITNESS: Okay. Thank you.

16 THE COURT: Anybody else have anything
17 productive before we break for lunch?

18 MR. McELHINNEY: Nothing further for defense
19 right now, Your Honor.

20 MR. MILLER: No, Your Honor.

21 THE COURT: All right. So we will break for
22 lunch until 1:15. Hour and 15 minutes, guys.
23 Have a nice lunch break.
24 (The midday recess was taken.)

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1

2

3 -oOo-

4 RENO, NEVADA; WEDNESDAY, JUNE 7, 2023; 1:15 P.M.

5 -oOo-

6

7 THE COURT: Mr. Miller, your next witness.

8 MR. MILLER: Your Honor, we rest with
9 Mr. Teichner.

10 Mr. Smith, I can tell you wanted to say
11 something.

12 MR. SMITH: Your ears must have been burning,
13 Your Honor. That's correct.

14 Now that the plaintiff has rested, the defense,
15 Mr. McElhinney and myself, would like to make a motion
16 under Rules 50 and 52, a motion for judgment as a matter
17 of law or directed findings.

18 I'm going to handle a couple of jurisdictional
19 arguments. Mr. McElhinney will handle some of the more
20 evidentiary-based arguments.

21 The defense has two jurisdictional arguments
22 for why there should be a directed verdict or judgment as
23 a matter of law given what we've heard so far.
24 The first jurisdictional argument is what Your

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1 Honor has already seen in the motion in limine, that the
2 affidavits were deficient to invoke this Court's
3 jurisdiction to begin a contempt proceeding in the first
4 place.

5 The second one I'd like to focus on today,
6 though, is the impact of the final judgment that's been
7 entered in this case.

8 With the entry of the final judgment, this
9 Court has been divested of jurisdiction to consider
10 contempt proceedings based on interlocutory orders that
11 predate the final judgment.

12 THE COURT: I don't even lose jurisdiction when
13 they file for bankruptcy for contempt proceedings,
14 Mr. Smith.

15 MR. SMITH: Let me see if I can persuade you,
16 Your Honor.

17 THE COURT: All right. I'll keep listening.

18 MR. SMITH: I appreciate that.

19 Unlike criminal contempt, civil contempt, like
20 the one we're here today, is a proceeding between the
21 parties. So there's a difference between criminal
22 contempt, which we're not dealing with today because that
23 would have a whole host of other procedural due process
24 protection.

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1 Civil contempt proceedings are a proceeding
2 between the parties to the main cause. When the main
3 cause is over, every proceeding dependent upon that main
4 cause is concluded, and that applies to contempt
5 proceedings.

6 There's a number of older, I acknowledge, U.S.
7 Supreme Court cases that have addressed similar issues.
8 I would cite *Gompers* -- that's G-o-m-p-e-r-s -- vs. *Buck*
9 *Stove and Range*, 221 U.S. 418, and another U.S. Supreme
10 Court case referred to as *Hartmarx Corp.*, 496 U.S. 384,
11 and those say that a civil contempt proceeding loses
12 jurisdiction or otherwise becomes moot when the main
13 cause is finished, and here there's been a final
14 judgment, and the main cause is concluded.

15 The parties have fought that at the Nevada
16 Supreme Court a little bit, but Your Honor has
17 recognized, in its May 23, 2023, order, that the amended
18 final judgment is a final judgment. So the main cause
19 between the parties is concluded, and when contempt --
20 when the main cause is concluded, other federal courts
21 that are more recent than the U.S. Supreme Court cases
22 I've cited say the general rule is the contempt
23 proceeding becomes mooted when the proceeding at which it
24 arises is terminated.

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1 There's a Petroleos Mexicanos case, I believe,
2 from the Fifth Circuit, 826 F.2d 392; a Consolidated Rail
3 Corp. case, 170 F.3d 591, and those say the same thing:
4 Contempt becomes mooted or loses jurisdiction when the
5 proceeding it arises out of is terminated. And that's
6 especially true in coercive contempt proceedings like
7 we're talking about.

8 Mr. Miller, in his opening, is asking for
9 coercive contempt sanctions. He asked that parties be
10 jailed for a number of days until certain things happen.
11 That is a coercive contempt -- coercive contempt request.

12 Setting aside what Your Honor noted -- how do
13 you jail a corporate defendant in the first place? -- I
14 think that is also something that has failed from the
15 request here, but you have been asked for coercive
16 contempt sanctions here, and those, especially in a civil
17 course of contempt, become mooted when the main case --
18 when the main case is extinguished.

19 And, again, that's because the preliminary
20 orders that we're talking about -- these are all orders
21 that predate the final judgment -- those have been merged
22 now into the final judgment, and so with the merger of
23 those orders into the final judgment and the entry of the
24 final judgment, those orders have been superseded and

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1 extinguished by the final judgment, and this Court has
2 lost jurisdiction to consider coercive civil contempt and
3 civil contempt generally. So we'd make a motion on those
4 grounds.

5 Mr. McElhinney now will address how the
6 plaintiffs have fundamentally failed to meet their burden
7 from an evidentiary standpoint by clear and convincing
8 evidence.

9 THE COURT: Mr. McElhinney.

10 MR. McELHINNEY: Your Honor, we know that,
11 procedurally, the moving party has the burden of showing
12 by clear and convincing evidence that the contemptors
13 violated a specific and definite order of the Court.

14 I believe what I heard Mr. Miller talking about
15 in his opening statement and what he has been discussing
16 throughout these proceedings with Mr. Teichner is that we
17 violated two orders in particular, one being the
18 January 7, 2015, order, the second being the January 4,
19 2022, order that granted the receivers -- I apologize.
20 That's not the correct order, but it is one of the
21 January 4, 2022, orders that required the application of
22 the receiver's 2020 fee calculations retroactive to
23 January of 2020.

24 Clear and convincing evidence means evidence

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1 establishing every factual element to be highly
2 probable or evidence which must be so clear as to leave
3 no substantial doubt. Clear and convincing evidence
4 means evidence sufficient to support a finding of high
5 probability.

6 Generally, an order for civil contempt must be
7 granted on one's disobedience of an order that spells out
8 the details of compliance in clear, specific and
9 unambiguous terms so that such person will readily know
10 exactly what duties or obligations were imposed on him.

11 And I cite case law on page 8 of our trial
12 statement filed with this Court, including Wynn vs.
13 Smith, 117 Nev. 6 at page 17, 16 P.3d 424, and the
14 remaining cites that appear on that page that I'd just
15 like to incorporate by reference.

16 So what we have here, Your Honor, is we have
17 one witness, and that's Mr. Teichner. Mr. Teichner
18 admitted in his testimony that the two orders, Exhibit 25
19 and Exhibit 26, conflict with one another. They are not
20 clear. I think if the receiver, a layperson, cannot
21 understand the orders, then it certainly excuses our
22 behavior, and it would constitute an ambiguous order that
23 simply cannot be used to hold us in contempt.

24 He also testified that he thought the January

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1 2022 orders modified or supplemented the January 7, 2015,
2 order from the standpoint of use of the term "rent."
3 While not defined as "gross rent" means -- lately he
4 takes the position it means gross rents. What he said,
5 though, from January -- well, actually, from October 16,
6 2021, when he filed his motion, all the way through until
7 recently, May of 2023, he said "rent" means net rent. In
8 each and every order, it describes total rent net of DUF,
9 SFUE and HE. I think in that context, it excuses any
10 alleged violation of the January 7, 2015, order.

11 Here's another example: In that 2015 order --
12 it is written by Mr. Miller -- it has a number of
13 potential outcomes or potential powers of the receiver
14 including taking over our computers, passwords,
15 furniture, almost everything imaginable, taking over the
16 entire business, but the point is those rights were not
17 exercised for a period of six, seven or eight years.
18 During the course of that time, the orders were amended
19 or modified, if you will, by the January 2022 orders.

20 We are lulled into a sense of, hey, what we're
21 talking about is net rent here; don't worry about it;
22 nobody has demanded anything different. That's what we
23 complied with. That's what GSR was relying upon, and
24 then it wasn't until May of this year that he says, "Now

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1 I want you to hand over all the rent because, really,
2 that's what the January 7, 2015, order means." And I
3 think that creates ambiguity, confusion and excuses our
4 behavior.
5 I'll also note -- and I think the plaintiff
6 should be judicially estopped from changing their
7 position, really, as should the receiver from changing
8 their position, from talking about net rent for a span of
9 all these years until just recently saying, no, no, no,
10 no, what that order meant was gross rent.
11 The case --
12 THE COURT: Mr. McElhinney, refresh my memory.
13 Has your client deposited what it believes the
14 appropriate amount of rent is with the receiver?
15 MR. McELHINNEY: Have they deposited what?
16 THE COURT: The appropriate amount of rent they
17 believe is due?
18 MR. McELHINNEY: Well, it isn't an issue of
19 depositing -- we have applied the fees that we deem
20 appropriate pursuant to existing court orders, and if
21 there's money due, then it's reflected on the statements.
22 If there's no money due, then it is a negative. Our
23 numbers are actual numbers.
24 In any event, Your Honor, Detwiler stands for

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1 the proposition that, you know, we're ten years into this
2 litigation, and we've never heard from a plaintiff, ever,
3 including this hearing. So to the extent they're
4 claiming --
5 THE COURT: We have heard from several
6 plaintiffs in the last two days that they cannot hear us
7 because of the nature of this courtroom.
8 MR. McELHINNEY: And I apologize for that.
9 THE COURT: It's not your fault. It's all of
10 us.
11 MR. McELHINNEY: I agree, but in terms of sworn
12 testimony, never.
13 THE COURT: I agree.
14 MR. McELHINNEY: So how do we award -- if Your
15 Honor considers a party's actual damages, there's no
16 evidence of actual damages in this case. Nonetheless,
17 they've rested.
18 I don't think they've met their burden of clear
19 and convincing evidence, and we make our motion and stand
20 by it.
21 THE COURT: Mr. Smith wants you to add
22 something.
23 (A discussion was held off the record.)
24 MR. McELHINNEY: Your Honor, another point that

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1 my esteemed client just reminded me of: In January of
2 2022, this receiver was ordered to open a separate
3 account under which he had sole signatory power. That's
4 where the net rent was supposed to go.
5 Now, remember, also, Mr. Teichner admitted he
6 was the one who was supposed to calculate the net rent
7 and then give that to you, and that's what we pay to him.
8 He did not open that account for -- well, since 2022 --
9 THE COURT: So do you know what most people do
10 when that happens? Do you know what they did in the
11 Winnepocket case when that happened?
12 MR. McELHINNEY: I don't.
13 THE COURT: Every month Mr. Smith's firm
14 delivered a check to the (indecipherable). Every month.
15 MR. McELHINNEY: That certainly could have been
16 a suggestion made by the receiver. It never came up.
17 Instead, he kept saying, "I'm working on it, and in the
18 meantime, I'm going to use the UOA account." And we
19 objected. You can't use a nonprofit account. In any
20 event, he didn't comply with the court order.
21 And while on that topic, his inactivity, he
22 never did anything -- when he's ordered to order and
23 oversee the independent third-party reserve study, he
24 just doesn't do it. He doesn't come to the Court and

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1 say, "I'd like to be relieved of my duty under this
2 order." He just doesn't do it, leaving us on the horns
3 of a dilemma of what do we do.
4 And now Mr. Miller, rather than going to the
5 receiver and saying, "I'm going to hold you in contempt
6 because you didn't do what the Court ordered you to do,"
7 he wants to come after us for contempt and say, well, you
8 shouldn't have done it, but it was a business necessity,
9 and it's required under the Seventh Amended CC&Rs, and
10 Mr. Teichner admitted that. It's a business necessity.
11 So I don't think they've met their burden, and
12 that's our motion, Your Honor.
13 THE COURT: Thank you.
14 Mr. Miller. Mr. Eisenberg.
15 MR. MILLER: Thank you, Your Honor.
16 With regard to the jurisdictional arguments, we
17 think that those arguments are fairly accurately
18 addressed by the Nevada Supreme Court in their Motion for
19 Order to Show Cause why this Court continues to have
20 jurisdiction, but aside from that, the order appointing
21 the receiver appoints the receiver under 32.0103 to put
22 the judgment into effect.
23 The Court's December 5, 2022, order
24 specifically contemplates that the receiver will continue

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1 to put into effect the district court's winding-up plan
2 or Your Honor's winding-up plan, and then equally as
3 important, pursuant to the termination agreement for the
4 UOA, that document which was stipulated to by the
5 defendants specifically dictates that the receiver is the
6 one who's going to hold the property as trustee for the
7 UOA until the sale, that the receiver will be the one who
8 will distribute the sale proceeds, and this is a document
9 that is signed and stipulated to by the defendants.

10 I believe their jurisdictional arguments are to
11 some extent disingenuous, but that is for the Court to
12 decide. It does ring of the first time these defendants
13 claimed there was no jurisdiction when, in fact, they
14 stipulated that their claims that were filed in justice
15 court would be transferred to the district court here and
16 then all claims would be tried together, and then once
17 they ended up with a judgment they didn't like, they
18 convinced the district court here that there was no
19 subject matter jurisdiction, and the whole case was
20 dismissed in the Nevada Supreme Court in that instance
21 for several reasons.

22 I think it reminded the defendants that, look,
23 you stipulated to jurisdiction when you transferred the
24 case from justice court and had it tried in district

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1 court with the plaintiffs' claims, and here we have a
2 very analogous situation where they stipulate to a
3 termination agreement and a process for the termination
4 agreement under the receivership but yet now want to
5 argue something different.

6 Aside from the jurisdictional arguments, in
7 looking at the standard of clear and convincing evidence,
8 as Your Honor is aware, all of the exhibits that are
9 attached to the underlying briefing have been admitted
10 into evidence in this case.

11 The testimony of Mr. Teichner, which I think
12 was very positive on the critical issues, is not the only
13 evidence in this case. It's all of the exhibits that are
14 attached to the underlying briefing, which the Court
15 considered in granting the motions for contempt and
16 setting this trial.

17 So, clearly, there has been a substantial
18 amount of evidence submitted other than Mr. Teichner's
19 testimony, and we believe that that evidence, in addition
20 to Mr. Teichner's evidence, demonstrates by clear and
21 convincing evidence that there has been contempt of court
22 under the Court's unambiguous orders.

23 As I addressed in my opening statement, all of
24 Plaintiffs' Motions for Order to Show Cause are supported

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1 by the January 7, 2015, order, and then they're
2 supplemented by additional court orders, as we have seen,
3 but everything goes back to that January 7, 2015, order.
4 And just to summarize -- I'm not going to read the order
5 that we're all so familiar with -- but his job is to
6 implement compliance with the governing documents. The
7 order specifically contemplates collection -- at page
8 18 -- "to demand, collect and receive," and then the next
9 word is so operative, "all" -- "all dues, fees, reserves,
10 rents, revenues derived from the property."

11 And then the Court is also familiar with pages
12 8 and 9 wherein the defendants were required to turn over
13 to the receiver, again, all rents, dues, reserves and
14 revenues derived from the property.

15 So we look at what has occurred -- I'm having a
16 really hard time this week keeping my paperwork together.
17 So we look at what specific violations have been alleged
18 for violation of the Court's orders.

19 The first is -- again, there's basically four
20 categories. The first is refusal to implement the
21 receiver's calculated fees. It can't be disputed that
22 the receiver was charged with determining what the fees
23 are, applying the fees.

24 In this case, we know that the receiver

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1 calculated fees, submitted those fees to the Court, which
2 should have been applied immediately, but we go through
3 the process of those fees being reaffirmed or ordered by
4 the Court to be applied on January 4, 2022, and this is
5 where we have the ambiguity between the two orders, but
6 the point is neither of the fees were applied; right?
7 You didn't apply the lower fees that were ordered by the
8 receiver stream of briefing -- which, by the way, also
9 had a daily use fee very similar to the receiver's -- and
10 then you didn't apply the receiver's fees that were
11 approved by the Court, which by any stretch of logic,
12 that's what you apply; right? You've got specific fees
13 that were calculated by the receiver that were approved
14 by the Court, and yet we get this argument we didn't know
15 what to apply.

16 But the point is, they didn't apply either, and
17 the clear and convincing evidence that comes up over and
18 over and over is the monthly statements. The monthly
19 statements show you didn't -- you didn't leave the fees
20 that were in place prior; you didn't apply the receiver's
21 fees. And then I showed during the evidence that -- or
22 through those fees that even after the January orders,
23 you increased the fees again on your own. So the clear
24 and convincing evidence on not applying the receiver's

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1 fees or letting him implement his fees is in the monthly
2 statements themselves. And then the refusal to turn over
3 rents.

4 And this comes back to the games between net
5 rents, gross rents, but when you look back at the January
6 15th -- Exhibit 115, the January 7, 2015, order, it
7 unambiguously says, "all rents." So the minute the
8 receiver tells you, "Turn over the rents. Release the
9 money to the plaintiffs that's owed to them. Apply my
10 fees," you're not cooperating with the order. You're
11 violating the order.

12 The other interesting thing about that, too, is
13 they didn't turn over the gross rents. They didn't turn
14 over the net rents as calculated under the receiver's
15 fees, but I also pointed out to the Court, even under
16 their calculations, which greatly exceeds the receiver's
17 or the prior ones that were supposed to be applied, those
18 statements still show money owed to the plaintiffs. So,
19 clearly, they tried to raise the fees up high enough to
20 where they would owe the plaintiffs nothing, but they
21 weren't even able to do that with their fees, which
22 doubled what the prior receiver's fees were for the hotel
23 fees. So they couldn't even get there.

24 And you look at the most recent statements --

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1 which I can find in evidence for Your Honor. I know I
2 pointed it out during the -- during Mr. Teichner's
3 testimony, but those statements show 5,000 owed to the
4 receiver. Not only do they not pay the net rents as he's
5 calculated or turn over gross rents, but they don't even
6 turn over the amounts that are owed under their
7 calculations.

8 The next issue, Your Honor, is the withdrawal
9 from the reserves. I mean, if we look at the evidence
10 going back to the January 7, 2015, order, you've got that
11 portion about collection that says, "all reserves."
12 You've got the portion at the end of the order that,
13 again, talks about turning over all reserves. You have
14 the repeated emails, internal emails, of counsel that say
15 that Teichner's in charge of the reserves. Mr. Teichner,
16 have you completed your calculation of the reserves?

17 You've got not one but two motions from the
18 defendants where they ask the Court for instructions from
19 the receiver for him to calculate what should be released
20 from the reserves. And then what do they do? At a time
21 when these motions are pending, where they're asking for
22 instructions because they know they need his permission
23 to take the money out of the reserves, the first time
24 they withdraw about 3.6 million.

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1 We file a Motion for Order to Show Cause
2 immediately. Because of some extraordinary, unfortunate
3 circumstances, that motion sits there, doesn't get ruled
4 on, and then they do it again.

5 I believe the receiver's testimony was they
6 withdrew an additional \$12.8 million from the reserves
7 without his approval. That is simply contempt of court,
8 and for them to argue that that hasn't been demonstrated
9 by clear and convincing evidence, I don't know what else
10 you could put on other than they admitted it's been
11 withdrawn; Mr. Teichner says it's been withdrawn;
12 Mr. Teichner says he didn't approve of it. The orders
13 could not be more clear on who has the authority over it.
14 You've got admissions by the defendants in their motions
15 asking for permission to make the withdrawals.

16 While the final issue is relatively minor in
17 the economies of scale of the millions of dollars we're
18 talking about from three years of not receiving any rent,
19 the last item of contempt is they -- I knew after the
20 termination agreement was signed, you're just going to
21 get them stopping the rental of the units even though
22 there's nothing that says they can do that. All of the
23 orders say that the receiver is still in place.

24 So I immediately send an email saying, I just

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1 want to confirm that you're going to continue to rent the
2 units and we're not going to have to deal with these
3 issues.

4 The defendants respond by saying, the receiver
5 is not going to -- isn't capable of doing this, so we'll
6 rent the units. We'll continue to rent the units.

7 And then we get the statements for the next
8 month. No rental of the units. There is not a single
9 order and they haven't referenced an order that says that
10 they could stop renting the units because there isn't
11 one. In fact, Your Honor issued an order confirming,
12 yes -- I believe the language of your order says that
13 they need to continue renting the units.

14 What do you get? The Court issues the order,
15 and then we still go another, I think, two weeks after
16 the issuance of the order with no rental of the
17 plaintiffs' units. And, again, while this is a much
18 smaller dollar amount, it's just simple contempt of
19 court, which we believe we've demonstrated by clear and
20 convincing evidence with the rental statements that have
21 been submitted showing no rental of the units.

22 So, again, finally, all of the exhibits have
23 been admitted.

24 THE COURT: Not all the exhibits. I haven't

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1 admitted Exhibit 130 through 139.

2 MR. MILLER: I misspoke, Your Honor.

3 All of the exhibits that were attached to the

4 underlying briefing that is the subject of the Motion for

5 Order to Show Cause, so every exhibit that was attached

6 to one of those motions in opposition or a reply have

7 been submitted to this Court as evidence for your

8 consideration.

9 THE COURT: Thank you.

10 Anything else? Mr. Smith? Mr. McElhinney?

11 MR. SMITH: Yes, Your Honor. I'll just briefly

12 respond to the jurisdictional opposition.

13 Mr. Miller first points to the Supreme Court's

14 order to show cause, questioning whether the Supreme

15 Court has jurisdiction and wondering whether there's a

16 final judgment here, but Your Honor and I actually agree

17 there is a final judgment here. The amended final

18 judgment is a final judgment. That's what you wrote in

19 the May 23, 2023, order, so you and I agree there's a

20 final judgment. We have a disagreement on the

21 consequences.

22 THE COURT: But neither you nor I or Polsenberg

23 or Eisenberg, who are the only ones who understand

24 whether there's really a final judgment.

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1 MR. SMITH: Sometimes I wonder if those

2 esteemed colleagues understand it as well or if the

3 supreme court listens to any of us down here to begin

4 with.

5 But at least as of this moment, you and I,

6 those two bright minds, agree there's a final judgment

7 but just disagree about the consequences of that. So

8 there is a final judgment in place, and it's under the

9 case law I cited and that I've argued so far today. That

10 final judgment divests the Court of jurisdiction to

11 consider civil contempt based on interlocutory orders

12 that have since merged into the final judgment.

13 Then Mr. Miller seems to argue the status of

14 the receivership and says that 2015 receivership order

15 invokes NRS 32.0103, but 32.0103 says, "A receiver can be

16 imposed after judgment to carry the judgment in effect."

17 Well, there was no judgment by any definition in 2015, so

18 if that's what the argument is, one would have to

19 question the propriety of imposing the receivership in

20 the first place.

21 What actually happened was a receiver was

22 imposed pendente lite -- excuse my Latin -- until this

23 case is over or to maintain the status quo. Well, this

24 case is now over, and that receivership has terminated.

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1 Then Mr. Miller says, well, we stipulated to

2 this dissolution process, and, therefore, this Court has

3 apparently jurisdiction for contempt and for the

4 receivership, but disagreeing with Mr. Miller's

5 characterization of that --

6 THE COURT: I wouldn't say you stipulated. I

7 would say you elected your remedy, proceeding with the

8 dissolution motion under certain conditions. I certainly

9 understand you and I are going to disagree about that,

10 and you all are going to argue that in Carson City.

11 MR. SMITH: That's correct, but I would like to

12 at least address the point, Your Honor.

13 This wasn't an election of remedies issues. It

14 wasn't stipulated in this process, but I'll assume that

15 premise for this moment without waiving the argument.

16 Even if that were the case, that was done two months

17 prior to the amended final judgment, so even if that did

18 occur, that amended final judgment still ends the case,

19 and everything before that merges into the final

20 judgment.

21 So even if that characterization is correct,

22 which I disagree with, the final judgment entered two

23 months later still merges and divests the Court of

24 jurisdiction and, again, moots this civil contempt

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1 proceeding.

2 And, finally, I'll address the Wynn analogy

3 since Your Honor and I have a little bit of history there

4 and know that case.

5 THE COURT: You couldn't get an account and

6 then went through the trust to try to get one in

7 Delaware, still couldn't get an account, so what did you

8 do?

9 MR. SMITH: Well, I think there's a difference

10 between the size of the money there and the circumstances

11 in that case than this one.

12 Your Honor and I have --

13 THE COURT: Sure.

14 MR. SMITH: Right? I mean --

15 THE COURT: It was a very different amount of

16 money.

17 MR. SMITH: Very different amount of money and

18 no receivership was involved here, and here we have a

19 receiver that's ordered to open a bank account. And I

20 know Your Honor has had other receivership actions. I've

21 never seen a receiver take 18 months to open a bank

22 account.

23 So there's a question about whether we're being

24 ordered to deposit money into a bank account that never

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1 got opened in the first place, and one of the defenses to
2 contempt was it was impossible to comply. It was
3 impossible for the defense to comply with depositing
4 funds into an account that for whatever reason was not
5 opened for 11, 18 months, so compliance with regard to
6 that was literally impossible.

7 So I think the Court lacks jurisdiction. I'll
8 leave it to Mr. McElhinney to address any other
9 evidentiary issues, but, again, on the bank account issue
10 and the receivership, the receivership never opened the
11 bank account that it was ordered to do so, and so all the
12 orders directing Defendants to put money into that
13 account that didn't exist was literally impossible to
14 comply with.

15 THE COURT: Mr. McElhinney, anything else?
16 MR. McELHINNEY: Very briefly, Your Honor.
17 The contempt issue regarding us not renting the
18 units for the month of March, in the termination -- we
19 know according to law, Nevada Revised Statutes 116, that
20 upon recording of the termination agreement, the
21 condominium property no longer exists as a matter of law.
22 The units no longer exist as a matter of law. The
23 plaintiffs' sole interest as a matter of law in the units
24 is the fair market value, not rental interest, nothing

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1 else.

2 We relied upon that statute and in the month of
3 March did not rent those units. On March 14th, Your
4 Honor issued an order that said, receiver, you will
5 continue to rent the units. On April 5th -- we waited
6 for the receiver to see if he was going to do anything.
7 He did nothing. On April 5th, I sent the email to
8 Mr. Miller and Ms. Sharp saying, look, I don't think the
9 receiver is able or even competent to be renting these
10 units. I think that's something that Mr. Teichner agreed
11 to on the witness stand.

12 At that point, we said we would take it over,
13 and within days after my email, we started renting the
14 units again. So do I think that's contemptuous? I do
15 not.

16 And I think that timeline is very important. I
17 think we had reasonable basis not to rent the units that
18 no longer existed in the month of March until we heard
19 further from Your Honor, and you said, "Look, I don't
20 agree with occupancy, that we're limited only to
21 occupancy. I think that leads to economic waste. I'm
22 going to order the continuing rentals of these units,"
23 something we strongly disagree with but we started to
24 comply with in April even though your order said the

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1 receiver was supposed to do it.

2 I think we're making progress with Mr. Miller,
3 and I don't mean this offensively, but he stood in front
4 of the Court on May 24, 2022, and said his orders were
5 harmonious with one another. I think he just admitted
6 that they are ambiguous as to one another. That is a
7 defense to contempt, and we're specifically talking about
8 Exhibit 25, which is the Order Granting Receiver's Motion
9 for Orders & Instructions filed on January 4, 2022, and
10 the Order Approving the Receiver's Request to Approve
11 Updated Fees filed 1/4/2022. They do conflict with one
12 another. One says you will apply the receiver's numbers,
13 calculations for 2021, retroactive to January 2020. The
14 other one says until the receiver's 2020 fees are
15 approved by the Court, you will apply those fees that
16 were in place prior to September 29, 2021.

17 Mr. Teichner said, well, first, I thought that
18 was Proctor's numbers, but later I said it was my 2021
19 numbers, which is an admission of ambiguity. So I don't
20 think they've met the burden of clear and convincing.

21 Withdrawing money out of the reserve accounts,
22 I've asked, and there's no evidence. What order are we
23 talking about that says we need to get his permission to
24 remove money from the reserve accounts? He's not taking

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1 control of the reserve accounts. He never requested to.
2 You have to look at how they bootstrap themselves into
3 this argument.

4 What the receiver was ordered to do originally,
5 the Findings of Fact, Conclusions of Law and Judgment, is
6 he was supposed to calculate the FF&E and the HE and
7 shared facility unit reserves. By order of January 2022,
8 it was implied from that that he should oversee the
9 independent third-party reserve studies.

10 Now they're saying it should be also implied
11 that he is in charge, and you can't withdraw money from
12 the reserve accounts without his permission. There is no
13 order in existence that says that, and it is not fair to
14 hold my client in contempt when they've not identified
15 the order that even stands for that proposition.

16 Thank you, Your Honor.

17 THE COURT: The Rule 50 and 52 motions are
18 denied. There is jurisdiction for the Court to proceed
19 in a postjudgment receivership even though it was after
20 only the compensatory damages portion of the proceeding.
21 I am not going to weigh the evidence on a Rule 50 motion
22 as to whether the ambiguity is one that makes the order
23 not clear, and so for that reason, I'm denying all of
24 your motions related to this.

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1 Now, next witness.

2 MR. McELHINNEY: All right. Given the fact

3 you've denied that motion, Your Honor, we will call a

4 witness, Mr. Reed Brady.

5 THE COURT: Mr. Brady, if you'd come forward,

6 please.

7 Anybody need a break before we go to this?

8 MR. MILLER: Your Honor, could we take a

9 five-minute break? I'd like to talk to opposing counsel,

10 if that's possible.

11 THE COURT: We're going to have a five-minute

12 break.

13 (A recess was taken.)

14 THE COURT: I understand you'd like to take the

15 rest of the afternoon off to continue what are supposedly

16 very productive discussions.

17 MR. MILLER: Jarrad Miller on behalf of the

18 plaintiffs.

19 That is my understanding. The one caveat there

20 is that we understand that the defendants are going to

21 call just one additional witness, Mr. Reed Brady, so that

22 if we are unsuccessful this afternoon in settling this

23 case, we should still be able to finish this week.

24 Is that accurate?

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1 MR. McELHINNEY: That's correct, Your Honor.

2 THE COURT: So can we start at 8:30, Mr. Brady,

3 if we don't settle?

4 MR. BRADY: Yes.

5 THE COURT: I will see you guys here at 8:30 in

6 the morning either to take Mr. Brady's testimony or to

7 put a settlement on the record. How's that?

8 MR. McELINNEY: Agreed.

9 THE COURT: All right. Thank you.

10 (Proceedings concluded at 2:29 p.m.)

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1 STATE OF NEVADA)

2) ss.

3 COUNTY OF WASHOE)

4 I, PEGGY B. HOOGS, Certified Court Reporter in

5 and for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me

7 at the time and place therein set forth; that the

8 proceedings were recorded stenographically by me and

9 thereafter transcribed via computer under my supervision;

10 that the foregoing is a full, true and correct

11 transcription of the proceedings to the best of my

12 knowledge, skill and ability.

13 I further certify that I am not a relative nor

14 an employee of any attorney or any of the parties, nor am

15 I financially or otherwise interested in this action.

16 I declare under penalty of perjury under the

17 laws of the State of Nevada that the foregoing statements

18 are true and correct.

19 Dated this 3rd day of July, 2023.

20

21 /s/ Peggy B. Hoogs

22 _____

23 Peggy B. Hoogs, CCR #160, RDR

24

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IN THE SECOND JUDICIAL DISTRICT COURT
STATE OF NEVADA, COUNTY OF WASHOE
THE HONORABLE ELIZABETH GONZALEZ, OUTSIDE JUDGE

6

ALBERT THOMAS, et al.

7

Plaintiffs,

Case CV12-02222

vs.

8

MEI-GSR HOLDINGS, et al.,

9

Defendants.

10

_____ /

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Pages 1 to 292, inclusive.

12

TRANSCRIPT OF PROCEEDINGS

ORDER TO SHOW CAUSE

13

Thursday, June 8, 2023

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Page 2

1 A P P E A R A N C E S:

2 FOR PLAINTIFFS: ROBERTSON JOHNSON, et al.
 Jarrad Miller, Esq.
 3 Briana Collings, Esq.
 50 W. Liberty St., Ste. 600
 4 Reno, NV 89501
 5 LEMONS GRUNDY & EISENBERG
 Robert Eisenberg, Esq.
 6 6005 Plumas Street
 Reno, Nevada

7

8 FOR DEFENDANTS: PISANELLI BICE
 Jordan T. Smith, Esq.
 400 South 7th St., Ste. 300
 9 Reno, NV
 10 MERUELO GROUP, LLC
 David McElhinney, Esq.
 11 2500 2nd Street
 Executive Offices
 12 Reno, NV 89595-1200
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Page 3

1 I N D E X

2 Examination of Witness Brady:

3 By Mr. McElhinney 4

4 By Mr. Miller 148

5 By the Court 281

6

7 E X H I B I T S

8 Exhibit

9 No. Admitted

10 142 130

11 144 210

12 146 257

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1 RENO, NEVADA -- 6/8/2023 -- 8:30 A.M.
 2 -o0o-

3 THE COURT: Good morning, Mr. Brady.
 4 (Witness sworn.)

5 THE COURT: You may proceed,
 6 Mr. McElhinney.

7 MR. McELHINNEY: Thank you, your Honor.
 8 DIRECT EXAMINATION

9 BY MR. McELHINNEY:

10 **Q. Mr. Brady, good morning.**

11 A. Good morning.

12 **Q. Would you please describe for me your role**
 13 **with GSR.**

14 A. Yes. I'm the executive director of finance
 15 and accounting. I'm over all of accounts
 16 receivable, accounts payable, the GL, revenue audit,
 17 among other things. Cage, count room, inventory
 18 control. I'm mainly oversee -- also over the condo
 19 accounting.

20 **Q. Who is your employer? Is it MEI-GSR?**

21 A. Correct.

22 **Q. How long have you been with -- let me**
 23 **clarify for the court. MEI-GSR is the owner doing**
 24 **business as Grand Sierra Resort. Is that accurate?**

Page 5

1 A. Correct.

2 **Q. So, if I refer to Grand Sierra Resort as**
 3 **"GSR," you'll understand what I'm talking about.**

4 A. Yes.

5 **Q. How long have you been with GSR?**

6 A. Just over six years.

7 **Q. Are you familiar with what's been referred**
 8 **to in this litigation as "governing documents"?**

9 A. Yes.

10 MR. McELHINNEY: Your Honor, may I approach
 11 and give him the Books 1 through 4?

12 THE COURT: You may.

13 BY MR. McELHINNEY:

14 **Q. What are the governing documents, as you**
 15 **understand it?**

16 A. The Seventh Amended CC&Rs, the unit
 17 maintenance agreement and the rental maintenance
 18 agreement.

19 **Q. Would you open Book 1 and look at Exhibit**
 20 **1. Do you recognize that document?**

21 A. Yes.

22 **Q. What is it?**

23 A. It's the Seventh Amended CC&Rs.

24 **Q. Would you just take a moment or just a**

<p style="text-align: right;">Page 6</p> <p>1 couple seconds to flip through it and see if that</p> <p>2 appears to be a true and accurate copy of the</p> <p>3 Seventh Amended CC&Rs.</p> <p>4 A. As far as I can tell, yes.</p> <p>5 Q. How was it that you're familiar with this</p> <p>6 document?</p> <p>7 A. This is what I base pretty much everything</p> <p>8 off of, this and the other two, the governing</p> <p>9 documents, how I calculate our numbers using actual</p> <p>10 numbers, how I calculate the budget, the reserves.</p> <p>11 Pretty much any questions I have about the condo,</p> <p>12 it's in these.</p> <p>13 Q. Would you look at Exhibit 2 and tell me if</p> <p>14 you recognize that as one of the governing</p> <p>15 documents.</p> <p>16 A. Yes.</p> <p>17 Q. And will you flip through that and see if</p> <p>18 that appears to be a true and accurate copy.</p> <p>19 A. Yes.</p> <p>20 Q. And then with look at Exhibit 3, if you</p> <p>21 would, in Book No. 1.</p> <p>22 A. Yes.</p> <p>23 Q. And that is the unit maintenance agreement.</p> <p>24 Is that accurate?</p>	<p style="text-align: right;">Page 8</p> <p>1 questions. We turn over very little documents but</p> <p>2 it's all on them to provide the reserve study to us.</p> <p>3 Q. Okay. Who do you use -- who have you used</p> <p>4 historically for those independent third-party</p> <p>5 reserve studies?</p> <p>6 A. Mari Jo Betterley at the Better Reserves</p> <p>7 Consultants.</p> <p>8 Q. Do you know anything about her business,</p> <p>9 how long she's been in business?</p> <p>10 A. I believe she's been in business for over</p> <p>11 17 years now. She's done over 5,000 reserves. As</p> <p>12 far as I can tell, every time I talk to her she</p> <p>13 knows her stuff.</p> <p>14 Q. Okay. Is she doing reserve studies for</p> <p>15 companies other than GSR?</p> <p>16 A. Yes, and I believe all over the country.</p> <p>17 Q. Okay. And is she doing them for other</p> <p>18 casinos, do you know?</p> <p>19 A. I believe so in Vegas, yes.</p> <p>20 Q. And the GSR operate actively without a</p> <p>21 budget?</p> <p>22 THE COURT: You're referring to GSR, the</p> <p>23 hotel now?</p> <p>24 MR. McELHINNEY: I am, yes. Thank you,</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Correct.</p> <p>2 Q. And does that appear to be a true and</p> <p>3 correct copy of the unit maintenance agreement?</p> <p>4 A. Yes.</p> <p>5 Q. You said a moment ago specifically as to</p> <p>6 the Seventh Amended CC&Rs you rely upon that</p> <p>7 document and these other two documents in making</p> <p>8 your calculations.</p> <p>9 A. Heavily, yes.</p> <p>10 Q. Okay. Let's start with the Seventh Amended</p> <p>11 CC&Rs. What is it about this document that's</p> <p>12 important in carrying out your job responsibilities?</p> <p>13 A. This pretty this document tells me what</p> <p>14 expenses can go into the SFU hotel expenses and the</p> <p>15 reserves.</p> <p>16 The reserve study is done by a third party</p> <p>17 so that they -- I rely on that for the reserves but</p> <p>18 for the hotel expenses and for the SFU shared</p> <p>19 facilities unit expenses, I rely on this.</p> <p>20 Q. Okay. And the independent third-party</p> <p>21 reserve study, is that vital to some aspect of the</p> <p>22 budget?</p> <p>23 A. Yes. It's -- it determines -- it is</p> <p>24 completely third party. They only ask us certain</p>	<p style="text-align: right;">Page 9</p> <p>1 your Honor.</p> <p>2 BY MR. McELHINNEY:</p> <p>3 Q. What would be the effect to GSR if you</p> <p>4 ignored the budget setting requirements set forth in</p> <p>5 the governing documents?</p> <p>6 A. Nothing would get done.</p> <p>7 Q. Tell me more about that.</p> <p>8 A. Without the budget you can't set -- you</p> <p>9 can't set the expenses. Per GAAP and accounting</p> <p>10 principles, I have to. I get audited every year by</p> <p>11 an outside company, Eide Bailly, who is a CPA</p> <p>12 affiliated. They come in and audit my books.</p> <p>13 And the last, you know -- ever since I've</p> <p>14 been in charge, very minimal findings and findings</p> <p>15 that were very small. Nothing -- nothing that meant</p> <p>16 anything.</p> <p>17 Q. You're talking about when the auditors come</p> <p>18 in?</p> <p>19 A. When the auditors come in. So, they give</p> <p>20 thorough -- it's about three months they come in and</p> <p>21 they go through our books heavily.</p> <p>22 I don't know if anybody else has been</p> <p>23 through an audit but it's intense and it's all I'm</p> <p>24 doing for three months is answering questions and</p>

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1 providing data to them. Part of that is the condo.
2 **Q. So, if they came in for an audit and you**
3 **had not prepared a budget, what would be the impact**
4 **on Grand Sierra?**
5 A. There would be fluctuations in our income
6 statement and balance sheets and they would ask why.
7 **Q. Okay. How do you determine the categories**
8 **of items that go into the SFUE and HE calculations?**
9 A. CC&Rs. There's different sections.
10 Section -- the definitions themselves, very
11 important, because that highlights what is
12 condominium property, shared facility unit.
13 And then the CC&Rs are -- these CC&Rs they
14 kinda bounce around all over the place so you can't
15 point to one section and say, oh, yeah, there it is.
16 So, I use Section 4 heavily and then Section 9, and
17 then the exhibits.
18 **Q. All right. Would you look at Exhibit 1.**
19 **Is there a definition in the Seventh**
20 **Amended CC&Rs that defines condominium property? If**
21 **so, would you find it and read it to us.**
22 A. Yes. Page three. "Condominium property, a
23 portion of the real property and space within the
24 parcel, the improvement, and structures erected,

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1 constructed or contained therein, thereon or
2 thereunder, the easements, rights, and
3 appurtenances"--
4 **Q. "Appurtenances."**
5 A. Thank you.
6 "belonging thereto and fixtures intended
7 for the mutual use, benefit, or enjoyment of the
8 owners that is hereby and hereafter submitted and
9 subjected to the provisions of the declaration to
10 the act from time to time."
11 **Q. All right. So, the condominium property by**
12 **that definition, do you interpret that as just the**
13 **Summit Tower?**
14 A. Absolutely not.
15 **Q. Okay. It goes -- now, the Summit Tower,**
16 **please clarify. What is that a reference to, so the**
17 **court understands?**
18 A. The Grand Sierra Resort, the property
19 itself has three different towers. The Summit Tower
20 is Floors 17 through 27 and within there -- Floors
21 17 through 24 are the condo -- where the condo units
22 are, 670 condo units.
23 **Q. So, those would be the units owned by**
24 **Plaintiffs, some by Defendants and some by**

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1 **Non-plaintiffs, correct?**
2 A. Correct.
3 **Q. A total of 670 units?**
4 A. Yes.
5 **Q. So, just to recap, your definition -- the**
6 **definition of condominium property set forth in the**
7 **CC&Rs goes beyond that Floors 17 through 24 of the**
8 **Summit Tower. Is that accurate?**
9 A. That is accurate. It is the whole
10 property, land. Exhibit A actually spells it out.
11 **Q. Okay. And it also is -- part of that**
12 **definition says, "It is a portion of the real**
13 **property and space within the parcel."**
14 **Is "parcel" defined in the CC&Rs?**
15 A. It is.
16 **Q. And on what page?**
17 A. Page four.
18 **Q. And what does the parcel definition say?**
19 A. "The entire tract of real estate described
20 in the first recital of this declaration."
21 **Q. So, what is your understanding of that**
22 **definition? If I were to look at a map, what would**
23 **I look at when you say the word "parcel"?**
24 A. All of the land that is the GSR that goes

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1 from Second Street all the way to Telegraph all the
2 way to Mill.
3 **Q. Okay. So, it is all through the parking**
4 **lot to the very edges?**
5 A. Parking lot, all the way to Grand
6 Adventureland, the RV, the golf. And there's
7 actually a small parcel off Telegraph Street, if you
8 look at the Exhibit A.
9 **Q. What is your understanding of the term**
10 **"shared facilities unit"? And, if it's defined,**
11 **would you share that with us.**
12 A. It is defined. It's on page six and it
13 spells out a lot. Please don't make me read it.
14 **Q. Paraphrase for me, if you would.**
15 A. Sure. It is the -- let's see. So, it
16 says, "Identified on the plat attached to as Exhibit
17 A." So, if you go to Exhibit A, that is -- and you
18 look at the parcels, you can go on the Washoe County
19 Recorder and see the parcels and what it entails.
20 It is pretty much all of the land. Then it
21 goes into detail. So, all additions alterations
22 betterments, improvements. Some examples are -- it
23 says "the condominium property," which we already
24 established prior -- "exterior, interior wall

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1 finishes, the building facade, the roof, roof
2 support elements, insulation, stairways, entrances
3 exits, utility, mechanical, electrical, plumbing
4 telecommunications other systems, including without
5 limitation, wire, pipes, ducts, panels, pumps,
6 cables, television, Internet, heating, ventilation,
7 HVAC, the elevators, trash room, trash chutes, any
8 desk areas, office space, concierge bell desk and
9 other hotel operations located within the
10 condominium property."

11 **Q. One of the challenges in this case is when**
12 **you're reading go slow, because the court reporter's**
13 **taking down what you say, so just keep it at a**
14 **conversational tone. When we read things we tend to**
15 **speed up and I watched the court reporter trying to**
16 **keep up.**

17 A. Got you.

18 THE COURT: When you refer to "Exhibit A,"
19 you're referring to the legal description of the
20 parcel?

21 THE WITNESS: Yes. In the back of the
22 CC&Rs.

23 THE COURT: I was making sure you and I are
24 talking about the same exhibit.

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1 BY MR. McELHINNEY:
2 **Q. Mr. Brady, are the shared facilities units**
3 **also defined in Section 2.3, page nine?**

4 A. Yes.

5 **Q. And do you rely upon that section when**
6 **doing your calculations, et cetera?**

7 A. Yes. Also points to Section 4 too.

8 **Q. All right. Now, my understanding is the**
9 **shared -- do the shared facilities unit include**
10 **public shared facilities?**

11 A. Yes.

12 **Q. What is the distinction between shared**
13 **facilities unit and public shared facilities?**

14 A. It is the egress and ingress and --

15 **Q. Look at page five and see if there's a**
16 **definition of "public shared facilities," please.**

17 A. Yes. "That portion of the shared
18 facilities unit located within the condominium
19 property that is subject to the public shared
20 facilities easement for access and use by the hotel
21 management company and the unit owners."

22 **Q. All right. Now, I want to direct you to**
23 **particular sections and ask you if those are**
24 **sections upon which you rely.**

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1 THE COURT: Sir, can you look at Exhibit A
2 and tell me where the public shared easement is
3 depicted and the plat map.

4 THE WITNESS: So, if you go -- the vicinity
5 is the site.

6 THE COURT: Yep.

7 THE WITNESS: So, that is the site of the
8 building.

9 THE COURT: Okay. Next page.

10 THE WITNESS: I'm sorry.

11 MR. McELHINNEY: Your Honor, you're
12 difficult to hear.

13 THE WITNESS: So, if you go to the legal
14 description, it has the parcel numbers.

15 THE COURT: So, the legal description is
16 the only places he's mentioned are depicted. It's
17 not depicted on the plat map.

18 THE WITNESS: It is not -- well, the site.
19 But if you go to the parcels, you can go to the
20 Washoe County Recorder.

21 THE COURT: When I used to do work
22 involving real property and developers, frequently
23 the easements were indicated on the maps themselves.
24 I'm asking if you see them on the map themselves

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1 besides the legal descriptions.

2 THE WITNESS: On the maps themselves?

3 THE COURT: Yes.

4 THE WITNESS: Just the site map.

5 THE COURT: And where is the easement
6 depicted on the site map, which is only the picture
7 of the building?

8 THE WITNESS: I'm not sure.

9 THE COURT: Okay. Thank you.

10 BY MR. McELHINNEY:
11 **Q. Mr. Brady, look at Section 4.3, subpart**
12 **E-1, and this is in Exhibit 1, page 14.**
13 **Does that section describe the easements?**

14 A. Yes.

15 **Q. Is that a section upon which you relied in**
16 **rendering your calculations?**

17 A. Yes.

18 **Q. And read that out loud for me, please. If**
19 **it's a long section -- let me -- I want to avoid you**
20 **reading endlessly. Is it a long section?**

21 A. Yes.

22 **Q. Let me ask a question.**
23 **Does it describe ingress, egress, and**
24 **access?**

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1 (Witness reviewing document.)
 2 THE WITNESS: I cannot find it.
 3 Can you point it to me.
 4 BY MR. McELHINNEY:
 5 Q. Absolutely. Look at E Roman Numeral 1.
 6 A. Yes. "Public shared facilities easement."
 7 Q. All right. And describe what that is, your
 8 understanding of what that is.
 9 A. It's ingress and egress, so the walkways,
 10 hallways, corridors, hotel lobbies, elevators
 11 stairways, access to and from the hotel units,
 12 residential units and the commercial units for
 13 reasonable pedestrian access over, upon, across
 14 those pedestrian access-ways located outside the
 15 hotel building.
 16 Q. Lemme stop you for a minute.
 17 So, this section actually identifies hotel
 18 lobby, does it not?
 19 A. It does.
 20 Q. Elevators, stairways. It talks about areas
 21 located outside the hotel building itself, correct?
 22 A. Correct.
 23 MR. McELHINNEY: Court's indulgence,
 24 please.

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1 THE COURT: Sure.
 2 BY MR. McELHINNEY:
 3 Q. Now look at Roman Numeral 2. We're still
 4 in 4.3 E -- small Roman Numeral 2.
 5 What does that describe, just generally? I
 6 don't need you to read it to me but tell me your
 7 understanding of it.
 8 A. I'm sorry. 4.3 what?
 9 Q. Roman Numeral 2, page 14.
 10 A. Oh, thank you.
 11 (Witness reviewing document.)
 12 THE WITNESS: "Non-exclusive easements for
 13 the continued existence of the service from any of
 14 the following components or facilities which are
 15 located within the shared facilities unit and/or
 16 parcel."
 17 BY MR. McELHINNEY:
 18 Q. And then that next section sorta describes
 19 utilities, mechanical, electrical, those sorts of
 20 things. Is that correct?
 21 A. Yes. Satellite dishes, transformers,
 22 heaters, utility rooms, delivery of utility
 23 mechanical, telecommunications, television,
 24 Internet.

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1 Q. And then look at -- we're on page 15. Look
 2 at section -- this is 4.3 E Roman Numeral small 2,
 3 capital letter B.
 4 A. Okay.
 5 Q. Did I lose you along that description, or
 6 are you with me?
 7 A. No. I'm with you.
 8 Q. What does that describe in terms of
 9 easements?
 10 A. "Any and all structural components of the
 11 improvements including, without limitation, all
 12 footing, foundations, exterior walls, finishes
 13 roach, roof trusses, support elements and
 14 insulation."
 15 Q. Remember to go slow for me, please.
 16 And then paragraph C what does that
 17 describe? Just briefly?
 18 A. That describes heating, the ventilation,
 19 compressors, air-handlers, HVAC to the condominium
 20 property.
 21 Q. Let's look at page 15, Exhibit 1, small
 22 Roman Numeral 3. That talks about a non-exclusive
 23 easement to use the loading area. What is that?
 24 A. That would be our receiving and warehouse

Page 21

1 area.
 2 Q. Okay. And access between the loading area
 3 and the hotel units, correct?
 4 A. Correct. So, all back of the house.
 5 Q. All right. And then let's look at small
 6 Roman Numeral 4, "The non-exclusive easement to use
 7 and enjoy portions of the shared facilities unit
 8 which from time to time are made available by the
 9 owner of the shared facilities unit for use by the
 10 unit owners of the hotel units."
 11 Do you see that language?
 12 A. I do.
 13 Q. Who is the owner of the shared facilities
 14 unit?
 15 A. Us, GSR.
 16 Q. GSR MEI-GSR?
 17 A. Yes.
 18 Q. And what are they referring to there? How
 19 do you read that for use and enjoyment of portions
 20 of the shared facilities units? What does that
 21 include?
 22 A. That would include the fitness center for
 23 the guests, the pool for the guests, and any area
 24 that is around the property they can walk.

Page 22

1 Q. Okay. And when the unit owners are there
 2 on property, are they allowed to use that pool for
 3 free?
 4 A. Yes.
 5 Q. If a hotel guest is staying in any one of
 6 those units, are they allowed to use the hotel pool
 7 for free?
 8 A. Yes. And the fitness center.
 9 Q. Now, the pool is open to the public,
 10 correct?
 11 A. It is, but it has to be -- they have to
 12 pay.
 13 Q. Okay. And those -- I don't want to get too
 14 far ahead myself, but what costs of the pool are
 15 attributable to the unit owners?
 16 A. I only take the -- I guess you would call
 17 it the non-revenue-generating, so I take the
 18 lifeguards, the security, the EVS, and I believe we
 19 have one or two technicians for the pool.
 20 Q. Okay. So, you don't charge for the people
 21 serving food out there?
 22 A. Absolutely not.
 23 Q. You don't charge for the barmaids that are
 24 running around taking drink orders?

Page 23

1 A. No.
 2 THE COURT: Do we still call them
 3 "barmaids"?
 4 MR. McELHINNEY: I apologize if that was an
 5 offensive reference. It shows my age.
 6 THE COURT: "Cocktail servers," Mr.
 7 McElhinney.
 8 BY MR. McELHINNEY:
 9 Q. Bar personnel, you don't charge for that
 10 either?
 11 A. No.
 12 MR. McELHINNEY: All right, your Honor.
 13 Thank you.
 14 BY MR. McELHINNEY:
 15 Q. I'd like to direct you to Section 4.5 on
 16 page 17 of Exhibit 1. Before we leave, I'll back
 17 you up.
 18 Going back to page 15, if you would, in
 19 sections Roman Numeral 4 where you thought that
 20 included the pool, is there language in there about
 21 the unit owners sharing in the cost of the expenses
 22 related to those facilities?
 23 A. Yes.
 24 (Witness reviewing document.)

Page 24

1 THE WITNESS: Yes.
 2 BY MR. McELHINNEY:
 3 Q. What is that language that talks about the
 4 unit owners being responsible for a proportionate
 5 share?
 6 A. It's about -- it's three sentences from the
 7 bottom, "Owner, including, without limitation, each
 8 unit owner's proportionate share of the shared
 9 facilities expenses as more particularly described
 10 in Section 6.9."
 11 Q. So, is section Roman Numeral 4 on page 14
 12 talking about some of the expenses under 6.9?
 13 A. Yes.
 14 Q. Okay.
 15 A. Well, it's above and beyond.
 16 Q. Okay. Page 17. And this is Section 4.5B
 17 small Roman Numeral 1.
 18 Now, what does it say at the top of the
 19 page in section B? And you can paraphrase. You
 20 don't need to read it.
 21 A. So, this is for maintenance, repairs, and
 22 replacements, and it's by the unit owner.
 23 "Except as otherwise provided in paragraph
 24 A above or paragraph C below, each unit owner shall

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1 be responsible for, at his or her own expense, all
 2 costs and expenses associated with all of the
 3 following items to be installed and maintained as
 4 provided in this declaration or the unit maintenance
 5 agreement."
 6 Q. All right. Now, what we have in Roman
 7 Numeral 1 is a long, long paragraph.
 8 Is this what you would refer to as F, F and
 9 E?
 10 A. Yes.
 11 Q. Okay. Do you see about three-quarters of
 12 the way down that long paragraph in small Roman
 13 Numeral 1 where it begins "In each instance that the
 14 declarant"?
 15 A. Yes.
 16 Q. Would you read that for us, please, and
 17 read slowly for the court reporter.
 18 A. Sure. "In each instance that the declarant
 19 or hotel management company, as the case may be,
 20 makes a determination that the F, F and E is in need
 21 of replacement for purposes of replacing F, F and E
 22 due to wear and tear, age, or to perform general
 23 refurbishment or renovation of the units, each unit
 24 owner of the hotel unit will be required to

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1 participate in each such F, F and E replacement
 2 program and to pay for such unit owner's share of
 3 the cost of such F, F and E replacement program, the
 4 cost for which will be assessed against each hotel
 5 unit based on either a unit-by-unit actual cost
 6 basis, a percentage interest basis, a square footage
 7 basis, or such other reasonable cost allocation as
 8 the declarant or the hotel management company, as
 9 the case may be, shall determine ."

10 Q. Is there a -- who is the declarant?
 11 A. MEI-GSR.

12 Q. And is there a separate hotel management
 13 company?
 14 A. No.

15 Q. Okay. And then go to the bottom of the
 16 page -- we're still on page 17, paragraph one.
 17 Is there a reference in there about whose
 18 determination it is as to what work will be
 19 performed?
 20 A. "The declarant or the hotel management
 21 company may perform such work or purchase such items
 22 at the expense of such unit owner."

23 Q. Is this some of the work that is ongoing in
 24 the Summit Tower now?

Page 27

1 A. Yes.

2 Q. Is some of that the subject of the money
 3 that has been withdrawn from the reserve accounts?
 4 A. Yes. The majority.

5 Q. Okay. We'll talk more about that later.
 6 Tell me about the Four Diamond AAA
 7 standards. What is that?
 8 A. Sure. So, AAA has -- comes out and they
 9 periodically test us. It's kind of a -- they tell
 10 you when they're gonna come but it's kinda
 11 open-ended. They will see if we are four class.
 12 They have very strict regulations for us to
 13 be a four-star or, in their case I believe it's
 14 four-diamond. To be a four-diamond hotel you have
 15 to go through this laundry list of items.
 16 Some examples is you have to have glass
 17 cups in the room, you have to have a shoe rack, you
 18 have to have wood hangers. It just goes on and on.
 19 The front desk has to be a certain way. You have to
 20 be greeted a certain way. There's a laundry list of
 21 items that AAA goes through and tests.

22 Q. Does it include the appearance of the lobby
 23 areas and the easement corridors?
 24 A. Absolutely.

Page 28

1 Q. Look at page 18 of Exhibit 1., sub
 2 paragraph C. It talks about first-class hotel
 3 conditions. Do you see that language?
 4 A. Yes.

5 Q. This reads, "Each unit and all portions of
 6 the common elements shall be maintained, A, at a
 7 level of service and quality generally considered to
 8 be first class and equal to or better than the level
 9 of service and quality prevailing from time to time
 10 at other full-service hotels in Northern Nevada
 11 taking into account the size, location, and
 12 character, of the property."
 13 Did I read that correctly?
 14 A. Yes.

15 Q. Is this part of the section that sorta ties
 16 into the four-diamond rating that you have to
 17 maintain?
 18 A. Yes.

19 Q. Section B reads, "Shall be managed in a
 20 prudent and efficient manner reasonably calculated
 21 to protect and preserve the assets that comprise the
 22 hotel within the discretion of the declarant."
 23 Did I read that correctly?
 24 A. Yes.

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1 Q. "In addition, the public areas of the
 2 project and those areas which are exposed to public
 3 view shall be kept in good appearance in conformity
 4 with the dignity and character of the project by the
 5 association with respect to such parts of the
 6 project required to be maintained by it.
 7 "The hotel management company on behalf of
 8 each unit owner with respect to the windows and
 9 shades, Venetian and other blinds, drapes, curtains
 10 and other window decorations and/or appurtenant to
 11 such unit owner's unit." Did I read that correctly?
 12 A. Yes.

13 Q. I want you to skip down to it says, "As
 14 with the decision to replace or refurbish."
 15 Are you with me?
 16 A. Yes.

17 Q. It reads, As with the decision to replace
 18 or refurbish F,F&E located within individual nits in
 19 accordance with Section 4.5.B-1 above, furnishings,
 20 fixtures, and equipment and facilities adjoining or
 21 servicing the public shared facilities or property
 22 outside of the condominium property, including,
 23 without limitation, lobby and front desk concierge,
 24 reception area, furnishings, fixtures, equipment,

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1 and facilities corridor and hallway furnishings,
2 fixtures, equipment and facilities, elevator
3 furnishings, fixtures, equipment, and facilities,
4 flooring materials, et cetera, becoming a portion of
5 the public shared facilities pursuant to declarant's
6 right to enhance all of or a portion of future
7 expansion, et cetera, collectively the building F,
8 F&E, must be replaced repaired or refurbished as
9 deemed necessary by the declarant or hotel
10 management company."
11 Have I read that correctly except where I
12 said, "et cetera"?
13 A. Yes.
14 Q. And then it says "at the expense of the
15 unit owners," does it not?
16 A. It does.
17 Q. And it says, "and in each instance that the
18 declarant or hotel management company as the case
19 may be, makes a determination that such building F,
20 F&E is in need of replacement for purposes of
21 replacing building F, F&E due to wear and tear, age,
22 or to perform are general refurbishment or
23 renovation of the condominium, each unit owner will
24 be required to participate in such" -- I'm sorry --

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1 "in such building F, F&E replacement program and to
2 pay for such unit owner's share of the cost of such
3 building F,F&E replacement program."
4 Did I read that correctly?
5 A. Yes.
6 Q. And then it talks about how that will be
7 done. "Each hotel unit, based upon either a
8 unit-by-unit actual cost basis, a percentage
9 interest basis, a square footage basis, or such
10 other reasonable cost allocation as the declarant or
11 hotel management company, as the case may be, shall
12 determine." Did I read that accurately?
13 A. Yes.
14 Q. At the very bottom, the very last sentence
15 that begins "the decision of the declarant."
16 Do you see that?
17 A. Yes.
18 Q. Will you read that out loud.
19 A. "The decision of the declarant or the hotel
20 management company, as the case may be, as it
21 relates to the above building F, F&E replacement
22 provisions shall be conclusive and binding on unit
23 owners. In the event of a dispute concerning the
24 replacement or refurbishment of the building F, F&E,

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1 the decision of the declarant shall be binding upon
2 all parties to the dispute."
3 Q. Is this a section that you rely upon, Mr.
4 Brady, in determining your SFU, share facility unit
5 expense and hotel expense?
6 A. Yes.
7 Q. Is there any language in the Seventh
8 Amended CC&Rs that says you cannot charge costs on a
9 square footage basis?
10 A. No. It actually encourages it.
11 Q. That you cannot charge any costs related to
12 the pool?
13 A. No.
14 Q. In fact, you've identified a section here
15 that you think is a specific reference to the pool,
16 correct?
17 A. Correct.
18 Q. And is there any language in the Seventh
19 Amended CC&Rs that says the declarant cannot charge
20 any expenses related to revenue-generating
21 facilities?
22 A. No, there's not.
23 Q. But my understanding from your description
24 of the pool is anything that's revenue-generating as

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1 part of that pool, you don't -- you don't hold the
2 unit owners accountable for that, such as delivering
3 food, delivering alcohol.
4 A. Correct. That's not in the CC&Rs.
5 Q. Take us through looking at section 6.9 and
6 6.10 in Exhibit 1. How do you go about establishing
7 a budget from year to year? Take us through the
8 progress of that as required under the Seventh
9 Amended CC&Rs. It should be page 37 and 40.
10 A. Sure. So, on or before November 15th of
11 each year I have to prepare a budget. And the way I
12 prepare a budget is based on the CC&Rs. I have a
13 worksheet, by the departments, by each department
14 and the expenses.
15 And what I do is I go back taking our
16 actual numbers and go back 12 months, a rolling 12.
17 So, I use actual numbers to determine what the next
18 year's number's going to be because that, you know
19 -- in accordance with GAAP and accounting principles
20 that is a sound way to determine your budget. Your
21 past usually determines your future, right?
22 Q. So, let me understand. So, as an example,
23 if you set a budget for 2023, you would look back at
24 your actual numbers for 2022?

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1 A. Correct. So, I usually do it in October
 2 and so I will use September -- so, in this case in
 3 October of 2022 I would use September of 2022 and go
 4 back 12 months, what we call "a rolling 12."
 5 Q. So, you'd go back to October 2021 and then
 6 roll forward 12 months?
 7 A. Correct.
 8 Q. And that would then provide your budget for
 9 2023?
 10 A. Correct.
 11 Q. Are the actual numbers you're using audited
 12 numbers?
 13 A. Yes. Yes.
 14 Q. And so --
 15 A. Well -- I'm sorry.
 16 Q. Go ahead.
 17 A. They -- prior to -- if I'm doing 2022, then
 18 2021 was audited. We don't get audited for 2022
 19 until the first quarter of 2023.
 20 Q. And once those numbers are audited, do you
 21 go back and make any changes if the auditors say,
 22 These numbers are wrong?
 23 A. Correct. So, once the numbers -- once
 24 usually on -- in March Eide Bailly gives us a final

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1 letter of any findings, which usually are none. And
 2 they pretty much give the approval saying that we've
 3 audited these numbers, and it goes to the bank and
 4 it goes to different parties that need the audited
 5 numbers.
 6 And then once they give the approval, then
 7 based on the CC&Rs I have to go back and true-up the
 8 budgeted numbers that I did. And then I have to
 9 apply it to the statements of the unit owners,
 10 whether that's up or down.
 11 Q. So, I'm going to take you through an
 12 example so I can understand better.
 13 Let's say 2022 is over and you now know --
 14 you had your budget for 2022 that you set in
 15 November of 2021. Am I right so far?
 16 A. Yes.
 17 Q. And then at the end of 2022 you know what
 18 your actual numbers were for 2022, so you go back
 19 and sorta compare that to the budget that you had
 20 set in 2021.
 21 A. Correct. I use the same exact budget
 22 worksheet and I just replace the old numbers with
 23 the new numbers, and then any differences between
 24 the budgeted and the actuals is what I would apply

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1 to their statements.
 2 In 2021, because 2020 was COVID, they
 3 actually got a credit to their statements, and after
 4 COVID we came out and expenses skyrocketed, labor
 5 shortage, gas, inflation, their expenses actually
 6 went up in 2023 for 2022. And it's in the statement
 7 on April statement, I believe.
 8 Q. So, are all of those steps required --
 9 expressly required under the CC&Rs?
 10 A. Yes.
 11 Q. Under what sections?
 12 A. Mostly section 6. So, if you go down 6.9
 13 little A and you go down to little five, IV, "On or
 14 before November 15th of each year, the owner of the
 15 shared facilities unit shall notify each of the unit
 16 owners in writing as the proposed annual shared
 17 facilities budget."
 18 So, we send this out -- I prepare the
 19 budget before -- have legal look over it. And then
 20 I will send it to the unit owners to let them know
 21 for the January statement is when it will -- the
 22 numbers will take effect.
 23 Q. Is it fair to say your costs have gone up
 24 over the years since 2021, 2022, 2023?

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1 A. Dramatically. In -- I mean, just alone
 2 labor in 2019 the minimum wage is increasing 75
 3 cents each year for -- till 2024. That's over a 7
 4 percent increase just in labor, just for that
 5 section.
 6 And then with the market coming out of
 7 COVID, you couldn't hire anybody. So, what we had
 8 to do was -- and every other casino -- almost every
 9 other casino, our competitors, which is the big
 10 casinos in Reno -- they drastically raised their
 11 housekeepers. Because we couldn't find
 12 housekeepers. The third parties that we used
 13 drastically increased their expenses. I mean,
 14 across the board expenses went up.
 15 Q. And does that -- do those expenses get
 16 reflected in your budget from year to year?
 17 A. Yes.
 18 Q. There was an example about oil prices, or
 19 something along those lines, how much it cost for a
 20 year in 2021 versus what it cost in a month in 2022.
 21 Do you recall that discussion?
 22 A. Yes. Example is December alone we went up
 23 almost three -- December of 2022 we -- our bill
 24 increased almost threefold from what it was the

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1 prior year.

2 **Q. For what?**

3 A. For gas. But utilities across the board,

4 gas mainly.

5 **Q. Do you recall what you paid for gas in one**

6 **month in December of 2022?**

7 A. It was almost a million dollars.

8 **Q. And what had it cost you the entire year**

9 **before that?**

10 A. The entire year it fluctuates. In the

11 winter it goes higher but, again, the year before I

12 was -- I believe it was roughly between two hundred

13 and \$300,000 was our highest that we ever paid in

14 prior years when it's cold, you know, or heat goes

15 up.

16 **Q. Okay. Are these requirements that you've**

17 **been talking about setting the budget, are they**

18 **mandatory under the CC&Rs?**

19 A. Yes.

20 **Q. Let's talk about the reserves for a minute.**

21 **How do you determine what capital**

22 **expenditures will be made in any given year?**

23 A. So, at the beginning of -- so, Federal

24 Reserve Consultants, Mari Jo, is the person who does

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1 our reserves. She will contact us right around

2 usually August, one, asking, Do you need a reserve

3 study again, and we say, Yes. We've used her for

4 the last six years.

5 She will go and say, Okay, we need to start

6 the reserve process. Okay. So, she needs to know

7 the balances of what the accounts are, what has gone

8 into the accounts on a yearly basis. And then also

9 she goes, I need your budget, you know, your capital

10 budget going forward, just a rough estimate.

11 **Q. And my understanding is that report, the**

12 **on-site report comes out every five years.**

13 A. The on-site report mandatory by the CC&Rs

14 has to be on-site. Every other year is just a --

15 they call it an "off-site," but she still comes on

16 property.

17 Every five years she goes throughout the

18 building and takes the pictures. If you look at the

19 reserve, those are her pictures, not ours. She

20 takes pictures of everything. She asks -- we take

21 her around the whole property. It's almost an

22 all-day event and we're just showing her and she's

23 asking questions.

24 **Q. When did -- if you know, when did the**

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1 **renovation in the Summit Tower first show up in an**

2 **independent third-party reserve report?**

3 A. So, the reserve study is -- it goes out 30

4 years. So, technically, if we don't know when we're

5 going to the -- if GSR doesn't know when we will

6 remodel, there's a -- Better Reserve uses a

7 calculation that -- I don't know where they got

8 it -- but they say on average a hotel will renovate

9 the rooms somewhere between five to ten years, let's

10 say.

11 So, if we don't know when we will renovate

12 she actually determines it and she goes out 30

13 years. There's a schedule that they do that goes

14 out 30 years on where the reserves should be at the

15 end of each year.

16 **Q. So, if -- as an example, look at the 2019**

17 **reserve study that it projects out 30 years forward**

18 **and anticipated costs. Do I understand that?**

19 A. Yes. So, in 2016 it would project out to

20 2036 -- 2046.

21 **Q. And so a question: Does Betterley tell you**

22 **when she thinks units need to be remodeled or**

23 **refurbished?**

24 A. She does not tell us, but on the -- she has

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1 to determine when it will be, because she has to

2 produce the reserve numbers, you know. We have to

3 have adequate reserves in order for us to remodel

4 these rooms or the majority of the property per the

5 CC&Rs.

6 **Q. Do you dictate to Betterley what categories**

7 **of expenses are included in the budget?**

8 A. No.

9 **Q. Do you know is she familiar with your**

10 **CC&Rs?**

11 A. Yes.

12 **Q. Under Exhibit 1 and Sections 6.9 and 6.10,**

13 **who makes the determination of what needs**

14 **replacement or renovation?**

15 A. He declarant, GSR.

16 **Q. And that would be whether GSR is referred**

17 **to as a shared facilities unit owner or the**

18 **declarant, correct?**

19 A. Correct.

20 **Q. Let's shift gears. Look at Exhibit 2, 2007**

21 **rental agreement.**

22 **What is important about this document in**

23 **carrying out your job responsibilities?**

24 A. This pretty much sets us, if they sign this

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1 unit rental agreement, we are the sole company,
2 hotel management that rents the rooms.
3 Q. So, company -- the word "Company," who is
4 that a reference to in this document?
5 A. MEI-GSR.
6 Q. Now, it indicates in there that these are
7 agreements that are voluntarily entered into.
8 Do I understand that correctly?
9 A. That is correct.
10 Q. So, the obligation to rent units is only --
11 the obligation for MEI-GSR to rent units is only as
12 to those unit owners that voluntarily entered into
13 this agreement. Is that correct?
14 A. Correct. Currently everyone is in the
15 unit, but before -- in the past there was that were
16 not in the unit rental agreement but -- so they
17 would rent them on their own. They would still have
18 to go through us, they would still get all the
19 expenses, but their revenue would be theirs.
20 Q. Okay. The defendant MEI-GSR -- well,
21 that's not true. Some of the defendants own some of
22 these units. Is that accurate?
23 A. Yes.
24 Q. And I hesitated because I think it maybe

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1 Gage Development and maybe AMGSR?
2 THE COURT: Related entities.
3 MR. McELHINNEY: I don't know if they're
4 related entities or not, your Honor.
5 THE WITNESS: Affiliated. Yes.
6 BY MR. McELHINNEY:
7 Q. Okay. So, have they entered into unit
8 rental agreements?
9 A. We rent them. Have they entered into unit
10 rental agreements? I mean, we don't have signed
11 documents, but since they are ours, we rent them and
12 they're technically ours.
13 Q. It would be silly, wouldn't it, to enter
14 into a rental unit agreement with yourself?
15 A. Correct. Yes.
16 THE COURT: So, we can separate the
17 entities.
18 MR. McELHINNEY: I don't think so, your
19 Honor. That's not applicable in this instance.
20 THE COURT: That's a business court judge
21 statement.
22 BY MR. McELHINNEY:
23 Q. Under the agreement I think you told us
24 that MEI-GSR has the sole and exclusive right to

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1 rent the units, correct?
2 A. Correct.
3 Q. So, would you agree with me that, if
4 there's an order that says a receiver will start
5 renting the units, that would be a modification of
6 the unit rental agreement?
7 A. Absolutely.
8 Q. And then it says "the manner in which the
9 net rent is to be calculated," correct?
10 A. Yes.
11 Q. Would you look at that, please. Look at
12 page eight of the unit rental agreement, Exhibit 2.
13 A. Yes.
14 Q. So, that describes the manner in which it
15 is to be calculated. In looking at small --
16 paragraph B, small Roman Numeral 2, you deduct from
17 the gross rent the daily use fees for each night
18 that a guest uses a unit. Is that accurate?
19 A. That is correct.
20 Q. And small Roman Numeral 3, "To the extent
21 there's a balance of net rent revenue available
22 after the foregoing deductions, it shall be
23 allocated 50 percent to the company and 50 percent
24 to the owner as rent."

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1 A. Correct.
2 Q. And then paragraph C, "Payment of rent to
3 the owner, the owner's rent less the amounts payable
4 to the owner under the CC&Rs for association
5 assessments and assessments for shared facilities
6 expenses and hotel expenses under the unit
7 maintenance agreement for the F, F, and E reserve
8 and the annual interior deep-cleaning."
9 You don't charge for the interior
10 deep-cleaning anymore?
11 A. That's correct.
12 Q. That was determined, you can't do that.
13 That was regarded as a double billing, or something
14 to that effect?
15 A. Correct.
16 Q. Okay. So, in that description of payments,
17 does that include -- that includes the expense for
18 the SFUE, correct?
19 A. Correct.
20 Q. The HE?
21 A. Correct.
22 Q. And reserves.
23 A. Correct.
24 Q. Let's go to Exhibit 3, please, which is the

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1 unit maintenance agreement.
2 Now, backing up to the unit rental
3 agreement, you use that formula when you're
4 determining the balance of net rent.
5 Is that fair to say?
6 A. Yes.
7 Q. You use the formula set forth on page eight
8 of the unit rental agreement?
9 A. Yes.
10 Q. Okay. Now, unit maintenance agreement.
11 What is it about this document that's important to
12 you in carrying out your job responsibilities?
13 A. This -- one of the main things here is that
14 this spells out what the daily use fee is gonna be,
15 the expenses that go into the daily use fee.
16 Q. And do you follow that formula for your
17 calculations of the daily use fee?
18 A. Yes.
19 Q. Okay. Is there a -- I'm gonna direct you
20 to turn to page six in Exhibit 3.
21 Is there an acknowledgment in this document
22 that the unit owners sign as to any representations
23 with respect to economic benefits for ownership of
24 the units?

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1 A. Section 14 is owners' acknowledgments.
2 Q. Would you read the portion out loud about
3 the economic and tax benefits starting at the
4 beginning of that sentence, if you can find it.
5 A. "Owner's acknowledgments. Owner
6 understands and acknowledges that execution of this
7 agreement is a mandatory requirement of ownership of
8 the unit.
9 "Owner further acknowledges, represents and
10 warranties that neither the company nor manager or
11 any of the representative officers, representatives,
12 employees, agents, subsidiaries, parent, the company
13 and affiliates has, one, made any statements or
14 representations with respect to the economic or tax
15 benefits of ownership of the unit; two, assigns the
16 economic benefits to be derived from the managerial
17 efforts of the company or manager or from
18 participation in the unit management program, or,
19 three, make any suggestion, implication, statement
20 or representation that owner is not permitted to
21 rent the unit directly or to use other reservation
22 agents to rent the unit."
23 Q. Will you keep the mic closer to you.
24 I'll take you back to Exhibit 2, the unit

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1 rental agreement, and direct you to page 13 of that
2 document.
3 A. Okay.
4 Q. Paragraph 18, would you read that slowly
5 for us, please. It's in bold lettering, is it not?
6 A. It is.
7 Q. Okay. Go ahead.
8 A. "No guaranteed rental. Owner acknowledges
9 that there are no rental income guarantees of any
10 nature, no pooling agreements whatsoever, and no
11 representations other than what is contained in this
12 agreement.
13 "Neither the company nor manager guarantees
14 that owner will receive any minimum payments under
15 this agreement or that owner will receive rental
16 income equivalent to that generated by any other
17 unit in the hotel."
18 Q. Thank you. We've talked about the Seventh
19 Amended CC&Rs, the unit rental agreement, and unit
20 maintenance agreement.
21 What is your understanding of the
22 receiver's relationship to the governing documents?
23 A. That he has to comply with them --
24 Q. Okay.

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1 A. -- and oversee.
2 Q. He's ordered to implement compliance
3 amongst all unit owners with the governing
4 documents, correct, January 7, 2015, appointment
5 order?
6 A. Correct.
7 Q. Is it your understanding that he has
8 discretion whether or not to deviate from the
9 governing documents?
10 A. He does not.
11 Q. That's set forth in the Christmas Eve order
12 2020, Exhibit 10?
13 A. Correct.
14 Q. What is the very first time to your
15 knowledge that the receiver requested court
16 permission to open an account and collect rents from
17 the units?
18 A. I believe that was January of 2021.
19 Q. Let's look at Exhibit 38 and Book No. 4.
20 The court will correct me if I'm wrong, but my
21 recollection from the receiver was he testified that
22 this email from Stefanie Sharp to the Honorable
23 Nancy Saita was the first time they had requested to
24 collect net rents from the unit owners.

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1 MR. MILLER: Objection, misstates witness
2 testimony.
3 THE COURT: Overruled. You may answer.
4 BY MR. McELHINNEY:
5 Q. If you look at Exhibit 38, does this
6 refresh your recollection as to the first time the
7 receiver said, I want to start to collect the net
8 rent?
9 MR. MILLER: Objection, leading.
10 BY MR. McELHINNEY:
11 Q. Fine.
12 When is the first time in your recollection
13 that the receiver sought to start collecting rents
14 from the unit owners?
15 A. September 15th, 2021.
16 Q. And you're looking at Exhibit 38.
17 A. I am.
18 Q. Is that the first time you became aware of
19 this request?
20 A. Yes.
21 Q. And what was it that the receiver was
22 requesting? Now, we get into a little weird rule
23 here but it's important. If you're going to read
24 from the document, tell me you're reading from the

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1 document. If you read it and it refreshes your
2 recollection, close the book and tell me what your
3 recollection is.
4 Take a look at it and see if that refreshes
5 your recollection before you begin to testify,
6 please.
7 (Witness reviewing document.)
8 BY MR. McELHINNEY:
9 Q. Have you finished looking at that document?
10 A. Yes.
11 Q. Does that refresh your recollection?
12 A. Yes.
13 Q. What was it that Ms. Sharp was requesting
14 on behalf of the receiver on September 15th, 2021?
15 A. To collect net rents. The receiver had to
16 open a bank account and he wanted net rents.
17 Q. Okay. And net rents after deducting what?
18 A. The DUF. And then you do a 50 percent
19 revenue split and then you deduct the hotel
20 expenses, the shared facility unit expenses and the
21 reserves.
22 Q. Okay. Do I understand correctly that this
23 is the first time you're aware of that the receiver
24 had asked to take over that function?

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1 A. Yes.
2 Q. And what was the authority that Ms. Sharp
3 cites in that document that authorizes him taking
4 control of the net rents?
5 A. The January 2015.
6 Q. The January 2015 order appointing the
7 receiver, correct?
8 A. Correct.
9 Q. After Ms. Sharp sent her email to Justice
10 Saita about taking over the net rent, did the
11 receiver file a motion shortly after that?
12 A. Yes, in October.
13 Q. Would you look at in Book 2, Exhibit 19.
14 Looking at Exhibit 19, "Receiver Motion for Orders
15 and Instructions," have you seen this motion before?
16 A. Yes.
17 Q. And what is it that the receiver is
18 requesting in this motion?
19 A. I believe he was requesting clarification.
20 Q. Say again.
21 A. He was requesting clarification.
22 Q. Turn to page -- bear with me. Turn to page
23 eight.
24 A. Yes.

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1 Q. Starting on line ten it reads, "The
2 receiver requests that this court order that the
3 receiver is to recalculate the charges for DUF, SFUE
4 and HE for 2020 based on the same methodology that
5 has been used in calculating fee charges for 2021,
6 once the court approves that methodology."
7 Do you see that?
8 A. Yes.
9 Q. So, in this motion is it your understanding
10 he's asking for the court to order that the receiver
11 recalculate his 2020 fee calculations?
12 A. Yes. Once the 2021 is approved.
13 Q. Right. So, what brought that about? He
14 had -- I want to back up a little bit.
15 You were here when Mr. Teichner was coming
16 to the property to calculate his 2020 fee
17 calculations, were you not?
18 A. Yes.
19 Q. And tell me about that. Did -- about him
20 coming to the property, what was that experience
21 like? What were the discussions between the two of
22 you?
23 A. It was between me, Katelyn, the CFO at the
24 time, and Sean Clark, who was the previous director

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1 of finance, who was leaving. But we would have
2 discussions about what should be included and what
3 should not be included based on the CC&Rs. He
4 removed some stuff.
5 **Q. Tell me more about that, when you say "he**
6 **removed stuff."**
7 A. Prior to 2020 we had our own worksheet that
8 we did for the budget and the actuals, the true-ups
9 after the year ends.
10 So, he would determine if it was accurate
11 and then we would -- then we all came to a decision,
12 mostly him, and he created a worksheet and came up
13 with new numbers.
14 **Q. And were some of the categories of expenses**
15 **or some of the numbers changed at his direction?**
16 A. Yes.
17 **Q. Was it your understanding that there was a**
18 **meeting of the minds between the two of you when he**
19 **first calculated his 2020 numbers?**
20 MR. MILLER: Objection, calls for
21 speculation.
22 THE COURT: Overruled. You can answer.
23 THE WITNESS: Yes. We met -- I think he
24 started in 2019, so it took, you know, over a year

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1 to get these numbers calculated.
2 BY MR. McELHINNEY:
3 **Q. At the time that you were working with Mr.**
4 **Teichner, were you sharing with him or were others**
5 **in your presence sharing with him the sections in**
6 **the CC&Rs that we've been referring to here today?**
7 A. Yes.
8 **Q. Did it appear to you that Mr. Teichner was**
9 **in agreement with your scope of what was covered**
10 **under the CC&Rs?**
11 A. 100 percent.
12 **Q. Okay. And then are you aware of what**
13 **happened after that? Eventually you know his**
14 **numbers were deemed inappropriate.**
15 A. Correct. We had a -- I believe the
16 plaintiffs filed an order arguing the new numbers
17 and, actually, I believe they said he was incapable.
18 **Q. Meaning Mr. Teichner was incapable?**
19 A. Mr. Teichner was incapable.
20 Then there was -- in May, I believe, there
21 was a four-day hearing. At that time he did not
22 have representation and in my belief he was berated
23 by the plaintiffs, and I think that's what led him
24 to getting counsel.

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1 **Q. Okay.**
2 A. I think it was even suggested.
3 **Q. And then in the Christmas Eve 2020 order,**
4 **his 2020 calculations were deemed to be**
5 **inappropriate and he was instructed to recalculate**
6 **his fees. Is that accurate?**
7 A. That is correct.
8 **Q. After Mr. Teichner retained counsel, did it**
9 **appear to you that he took a different scope of**
10 **reading of the CC&Rs than he had taken when you were**
11 **working with him earlier?**
12 A. Absolutely. It was 180-degree turn.
13 **Q. Okay. And have you looked at his**
14 **calculations? I think it's Exhibit 140.**
15 A. Yes, I have.
16 **Q. Do you have a copy of that up there with**
17 **you?**
18 A. I do.
19 **Q. In looking at the calculations that he set**
20 **forth in Exhibit 140, can you tell why his numbers**
21 **changed so drastically from 2020 to 2021?**
22 A. Yes. If we look at shared facilities and
23 hotel expenses -- I don't have the Exhibit 140.
24 THE COURT: Hold on a second.

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1 THE WITNESS: Sure. This witness -- please
2 be gentle with it and don't write on it.
3 BY MR. McELHINNEY:
4 **Q. Yes, don't write on it, please.**
5 A. I will not. And I'll try to be very loving
6 to it. So, if you go to Exhibit 2.
7 **Q. Exhibit 2 attached to Exhibit 140?**
8 A. Yes. This is his calculation of the SFU
9 expenses and hotel expenses. It is very -- there's
10 not a lot of expenses here.
11 His interpretation of the CC&Rs was that it
12 was only within the condo floors that you can charge
13 expenses. So, big example here is there is very
14 little -- one, no accounting expenses at all.
15 So, even though we audit all the numbers in
16 the accounting department, we send out the
17 statements, we calculate the budgets, we set the
18 reserve, the third-party, independent reserve study,
19 we're doing all the work.
20 **Q. And there's no accounting expenses at all**
21 **in his budget?**
22 A. At all.
23 **Q. In his calculation, rather.**
24 A. Correct. There's no EVS.

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1 Q. No what?
2 A. Environmental services. It's public area
3 maintenance. It's also called -- to clean the
4 property --
5 Q. Okay.
6 A. -- the whole property. There's no EVS in
7 here. There's no security to keep the guests safe.
8 There's no warehouse or inventory. Inventory
9 receiving.
10 Q. Let me ask a question.
11 A. Sure.
12 Q. Why would a unit owner have to pay a
13 portion of warehouse expense?
14 A. Sure. So, the warehouse is where we store
15 -- we buy in bulk. So, all the amenities that go
16 into the room, those are not -- those get stored so
17 we can get a very cheap price.
18 They actually come from China, so they get
19 shipped over here the lowest price possible and get
20 stored so we can buy in bulk so it's the lowest
21 price to us and the unit owners.
22 Q. Okay.
23 A. Also, the receiving dock is where all the
24 supplies come in. You want new towels, it comes in

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1 there. You want new supplies, it all comes in
2 there. So, there's none of that in here.
3 Q. Is there any charge for human resources?
4 A. No.
5 Q. And is a portion of the human resources
6 attributable to those units?
7 A. Absolutely. They're the ones that hire the
8 housekeepers. We have over 2,000 employees. A
9 majority -- the biggest department -- one of the
10 biggest departments is housekeeping, front desk,
11 reservations, and the other department --
12 engineering that takes care of the whole property.
13 Q. When you compare your calculations to his
14 calculations, is there a ratio of difference between
15 the two of them?
16 A. Yeah. His are probably three to four times
17 less than what we had.
18 Q. Do his cost allocations conform with the
19 governing documents?
20 A. Yes. He uses the same square footage that
21 I use in mine.
22 Q. In terms of the categories of expenses that
23 he's charging, though, is that in conformity with
24 the Seventh Amended CC&Rs?

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1 A. No.
2 MR. MILLER: Leading and calls for legal
3 conclusion.
4 THE COURT: Overruled.
5 BY MR. McELHINNEY:
6 Q. Go ahead.
7 A. No.
8 Q. You heard the testimony from Mr. Teichner,
9 right, because you're the corporate representative
10 here?
11 A. Yes.
12 Q. Did it sound to you like -- who
13 recalculated those numbers that led to the
14 difference between his 2020 numbers and 2021
15 numbers?
16 A. It appeared to me that his legal counsel
17 interpreted the CC&Rs and told him what should be
18 included and what should not be included.
19 Q. Okay. And you've been doing this for six
20 years, correct?
21 A. Correct.
22 Q. You've been working with the Seventh
23 Amended CC&Rs and the other two governing documents,
24 correct?

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1 A. Correct.
2 Q. Are your calculations in accordance with
3 the governing documents?
4 A. I believe 100 percent, yes.
5 Q. Now, I'm going to bring us back to we had
6 been talking about Ms. Sharp's September 15th, 2021,
7 email to Justice Saita and we had talked about
8 Exhibit 19, which I think you were on that page with
9 me.
10 Again, to summarize, in that motion he's
11 asking the court to authorize him to recalculate his
12 2020 numbers that had been invalidated in the
13 Christmas Eve 2020 order. Is that accurate?
14 A. That is accurate.
15 Q. In this motion does he make a request as to
16 what fees he would like to have the court apply
17 prior to him completing his 2020 fee calculations?
18 Look at page eight, line 13.
19 A. I'm sorry. Repeat the question.
20 Q. Did he make a request to the court in this
21 motion as to what fees he wanted the court to apply
22 pending him completing the 2020 fee calculations?
23 A. Yes. He wanted to apply his 2021
24 calculations once the court approves the

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1 methodology.

2 Q. Read for me starting on line 13 where it

3 says "The receiver also requests."

4 A. "The receiver also requests that the DUF,

5 the SFUE and HE currently being charged prior to the

6 entry of the court's September 29th, 2021, order

7 remain in place until the fees for 2020 are

8 recalculated and approved by this court so that only

9 a single account adjustment will be necessary."

10 Q. Now, do you understand what he meant when

11 he used that phrase?

12 A. It was my -- kinda confusing, but at the

13 time we were using Proctor's numbers because the

14 court -- the December 2021 order said that we can't

15 use his numbers.

16 Q. Okay. I'll slow you down a little bit.

17 Look at Exhibit 19, page 10, line 14.

18 He actually says that his preference is

19 that the fees calculated by the prior receiver,

20 Mr. Proctor, remain in place until revised fees are

21 calculated for 2020 based upon the court's approval

22 of the methodology that he used for his 2021

23 calculations, correct?

24 A. Correct.

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1 Q. Okay. Did this motion eventually result in

2 the entry of an order?

3 A. Yes, I believe so.

4 Q. Look -- turn to Book 3, please, which is

5 Exhibit No. 25. It should be an Order Granting

6 Receiver's Motion for Orders and Instructions.

7 A. Yes.

8 Q. When was this order entered? What's the

9 file stamp?

10 A. It looks like January 4th, 2022.

11 Q. Okay. Turn to page three, line 12. It

12 says, "The appointment order provides the receiver

13 authority to take control of all accounts

14 receivable, payments, rents, including all

15 statements and records of deposits, advances, and

16 prepaid contracts or rents."

17 Do you see that language?

18 A. I do.

19 Q. And if you go to line 16, it says, "The

20 receiver has informed the parties of his intent to

21 open a separate account into which all rents and

22 other proceeds from the units will be deposited and

23 now request the court's permission to open such

24 account." Do you see that language?

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1 A. I do.

2 Q. When he's referring to "all rents," what

3 was it that the receiver was requesting?

4 A. We had long conversations on this and it

5 was net rents.

6 Q. Net rents.

7 So, his reference -- the court's reference

8 here to "all rents" is a reference to net rents.

9 A. Correct.

10 Q. Turn to page four of the order, line 22.

11 The motion further requests the court approve the

12 opening of an account for the receivership with the

13 receiver having sole signatory authority over the

14 account and order that all rents received by the

15 defendants currently and in the future generated

16 from either all 670 condominium units or the

17 plaintiff-owned units net of the total charges for,

18 DUF, SFUE, HE, fees for reserves combined are to be

19 deposited into the account.

20 Did I read that correctly?

21 A. Yes.

22 Q. So, again, his reference to "all rents" is

23 a reference to net rents.

24 Do I understand that correctly?

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1 A. Yes.

2 Q. Turn to page six of the order, line 22. It

3 reads "Indeed, the appointment order also expressly

4 calls for the receiver to collect proceeds from the

5 property" -- parentheses -- "defined as the 670

6 condominium units" -- closed paren -- "including but

7 not limited to rent earned therefrom."

8 It cites to a page number and line numbers

9 of the appointment order.

10 "It logically follows, then, that the

11 receiver may open a separate account for the

12 receivership in which it may hold all rents from the

13 property as defined by the receivership order,"

14 correct?

15 A. Correct.

16 Q. So, in this order what is defined as "all

17 rents"? Turn to page eight at line six, where it

18 reads "The receiver shall open a separate account on

19 which receiver has sole signatory authority and into

20 which all rents received by the defendants currently

21 for all 670 condominium units net a total charge for

22 DUF, SFUE and HE fees and reserves are to be

23 deposited." Did I read that correctly?

24 A. Yes.

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1 Q. So, again, a reference in this order to
2 "all rents" is net rents, correct?
3 A. Correct.
4 Q. Page eight of the same Exhibit 25, "It is
5 further ordered that the receiver shall recalculate
6 the DUF, SFUE and HE based on the same methodology
7 as has been used in calculating the fees charges for
8 2021."
9 So, what he's talking about, what the court
10 is talking about there is him recalculating his 2020
11 fees. Is that accurate?
12 MR. MILLER: Objection, leading.
13 THE COURT: Rephrase your question.
14 BY MR. McELHINNEY:
15 Q. This order when it's ordering the receiver
16 to recalculate the DUF and SFUE and HE, for what
17 year is that calculation being required?
18 A. He's supposed to recalculate 2020 using the
19 2021 methodology.
20 Q. All right. And then on page eight starting
21 at line three we see the language again, "Those fees
22 in place prior to the court's September 27th, 2021,
23 order" -- now, I -- "shall remain in place until the
24 fees for 2020 are recalculated and approved by this

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1 court such that only a single account adjustment
2 will be necessary."
3 Now, we talked about the fact that when he
4 filed his motion in October, he thought that phrase
5 meant return to Proctor's numbers, correct?
6 A. Correct.
7 Q. However, what happened on September 29th,
8 2021?
9 A. Proctor's numbers were stricken from the
10 record.
11 Q. So, the requirement to go back to Proctor's
12 numbers was ordered removed from that December --
13 that Christmas Eve 2020 order.
14 Is that accurate?
15 A. Correct.
16 Q. So, as you're reading this provision, tell
17 me about -- are you confused or is it clear to you?
18 A. It is clear as mud. I was thoroughly
19 confused.
20 Q. Okay. So, what did you do?
21 A. So, we -- I met with counsel. We went over
22 all the majority of the orders to see which numbers
23 were in place. We couldn't use his numbers because
24 he referenced that we had used Proctor's numbers in

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1 October and his numbers were not actually approved
2 until this order in January. So, we couldn't --
3 THE COURT: January --
4 BY MR. McELHINNEY:
5 Q. So, let me show you -- or let me clarify.
6 There is a January 4th, 2022, order that
7 approved his 2021 fees, correct?
8 A. Correct.
9 Q. So, those fees were not approved prior to
10 January 4th, 2022.
11 A. No. In October it even expressly -- we
12 just read that he wanted -- he asked the court to
13 approve them.
14 Q. Okay. So, this phrase, "Those fees in
15 place prior to the court's September 27th, 2021,
16 order shall remain in place until the fees for 2020
17 are recalculated," we know it can't be a reference
18 to his 2021 numbers because they were not approved
19 in September 27th, 2021, correct?
20 A. Correct.
21 Q. Can't be a reference to Proctor's numbers
22 because those had been outlawed by the findings of
23 fact, conclusions of law, and order -- which, your
24 Honor, is Exhibit 16 -- and that was entered

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1 September 29th, 2021, correct?
2 A. Correct.
3 Q. And his 2020 numbers had been deemed
4 invalid in the court's Christmas Eve 2020 order,
5 correct?
6 A. Correct.
7 Q. So, what fees are left for you to apply if
8 you follow that directive of the court?
9 A. The only fees that are left are our fees
10 that we calculated. But we did take into account
11 during the May -- the four-day trial there was
12 stipulations where, you know, VIPs or valet,
13 transportation, certain stuff couldn't be part of
14 the DUF.
15 So, we took that into account and removed
16 that and we started using our numbers, because those
17 were the only numbers that me and the counsel came
18 up with that we could use. There was no other
19 numbers we could use.
20 Q. There were no other numbers that really fit
21 within this description that you found confusing --
22 A. Yes.
23 Q. -- in this order.
24 A. And based on the CC&Rs.

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1 Q. Okay. Yeah. Your calculations, to be
2 clear -- I think you've given us that testimony --
3 the calculations that you employed are, in your
4 opinion, in absolute compliance with the governing
5 documents.
6 A. Correct.
7 Q. So, when Mr. Miller is saying things like
8 you're hyper-inflating your fees or going rogue and
9 doing your own calculations, how do you respond to
10 that?
11 A. We're taking actuals. It's 100 percent
12 false. Every budget that we do or anything like
13 that, if the receiver wants to see the numbers and I
14 think he's requested it before -- we have a shared
15 file, like he said, that we upload data every month
16 to him.
17 So, I've been in full cooperation with him
18 and I've actually reached out multiple times asking
19 if there's anything I could do and either he says
20 "no" or he says "I haven't been paid."
21 Q. Okay.
22 THE COURT: You agree he was not paid after
23 October 2019, right?
24 THE WITNESS: He gets paid by the GSR UOA,

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1 which we have no control over, so I'm not
2 100 percent sure.
3 BY MR. McELHINNEY:
4 Q. So, early on, to respond to your Honor's
5 question, who was paying the receiver early on?
6 A. The -- it's called GSR UOA, but there's no
7 affiliation with GSR. I have no affiliation with
8 the UOA.
9 Q. The UOA is a standalone nonprofit
10 corporation?
11 A. Yes.
12 Q. And MEI is its own separate entity?
13 A. Correct.
14 Q. So, he was being paid by dues by GSR UOA,
15 or do you know?
16 A. By dues, and then I believe by assessments.
17 Q. Okay.
18 A. I believe that was revoked in one of the
19 court orders.
20 Q. At some point why did the GSR UOA stop
21 paying him, if you know?
22 A. They ran out of money, from what I heard.
23 Q. Did the board pass a special assessment to
24 try and get him paid?

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1 A. They did, and we paid our portion.
2 Q. How much was your portion? When I say
3 "your portion" --
4 A. GSR's yes.
5 It was roughly 80,000. And per the court
6 order we were supposed to get paid back and we never
7 got paid back.
8 Q. So, the special assessment was for
9 \$100,000, correct?
10 A. Correct.
11 Q. And did anybody else pay other than the
12 defendant-owned units?
13 A. I'm not 100 percent sure, because I'm not
14 over the UOA. I heard one other did but it wasn't a
15 plaintiff. I believe it was a -- a non-plaintiff.
16 Q. So, when it came time to try and pay the
17 receiver, none of the plaintiffs paid --
18 A. No.
19 Q. -- the special assessment?
20 A. No.
21 Q. And the defendant-owned units paid \$80,000.
22 A. Correct.
23 Q. And then later that special assessment was
24 ordered to be set aside, to be rescinded, correct?

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1 A. Correct. And paid back.
2 Q. And did that happen, do you know?
3 A. No.
4 Q. Okay. But that would have been a function
5 of the GSR UOA, correct?
6 A. Correct.
7 Q. And did the defendants ever get their money
8 back, the \$80,000, that they had paid?
9 A. No.
10 Q. Where did that money go, if you know?
11 Don't speculate.
12 A. I don't know.
13 Q. Okay. In Exhibit 25 there's actually a
14 portion of that order on page eight that says on
15 line 19, "Defendant shall funnel all communications
16 with the receiver through Reed Brady." Is that
17 correct?
18 A. That is correct.
19 Q. And did you have communications with Mr.
20 Teichner after the entry of this order on
21 January 4th, 2022?
22 A. Very little. I was asking him if he needed
23 anything. I asked him if he opened an account. I
24 asked him during the budget time or the reserves,

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1 Have you done a reserve, I have to get the budget
 2 out. And he said that, No, I haven't done anything
 3 because I haven't got paid.

4 **Q. Okay. Following your conversations with**
 5 **Mr. Teichner, what was your understanding of what he**
 6 **was doing in regards to the net reserves or the net**
 7 **rent?**

8 A. In 2022 or --

9 **Q. Let's say any time after entry of these**
 10 **orders, the January 4, 2022, in your conversations**
 11 **with him.**

12 A. Nothing.

13 **Q. Okay. Did you ever have discussions with**
 14 **him about, Are you going to calculate the net rent?**

15 A. Yes. Multiple times I reached out to him
 16 because, again, per the CC&Rs I have to get a budget
 17 out. I have to do the reserves. We are a business.
 18 We have to keep on going. We can't stop.

19 So, I have to do -- I had to do something.
 20 I cannot wait on the receiver to, you know, not do
 21 his job, I guess, but, yes, he was not doing
 22 anything, as far as I know.

23 **Q. Were you withholding rent from him?**

24 A. No. Multiple times I asked him and the

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1 first time that he ever said -- and it was always
 2 net rents.

3 And I told him, one, you need to open an
 4 account. Have you opened an account. He said, No,
 5 I can't open an account for -- I think his testimony
 6 was he had a problem with his EIN or getting a tax
 7 identification number, so he never opened an
 8 account.

9 Also, I said, Have you calculated the net
 10 rents. You need to calculate the net rents. He
 11 said, I have not calculated the net rents. I asked
 12 for 2020 actuals, I asked for 2021 actuals because
 13 at that time during 2022, it's now 2021 actuals. We
 14 can't use 2021 budget.

15 **Q. And that's the true-up process you**
 16 **described earlier?**

17 A. Yes. That's the true-up process we do
 18 every year. Per the CC&Rs you have to do a true-up.
 19 So I couldn't use the 2021 budgeted numbers anymore
 20 because they're gone. They're irrelevant. He has
 21 to do the actuals.

22 Then I asked him, Do you have a 2022 budget
 23 and, then, again, I asked him, Do you have a 2023
 24 budget, and all the answer were, No.

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1 THE COURT: I think it's time for a break.
 2 MR. McELHINNEY: It would be a good time.
 3 (Recess taken.)

4 THE COURT: I'd like to remind you you're
 5 still under oath, sir.

6 You may continue, Mr. McElhinney.

7 MR. McELHINNEY: Thank you, your Honor.

8 BY MR. McELHINNEY:

9 **Q. Mr. Brady, I want to recap a little bit.**
 10 **We're getting ready to shift gears.**

11 **My understanding you had described your**
 12 **meetings with Mr. Teichner where he was coming to**
 13 **the GSR, correct?**

14 A. Yes.

15 **Q. On those occasions during the discussions**
 16 **were you guys going through the governing documents?**

17 A. Yes.

18 **Q. And any estimate of how many hours you**
 19 **spent either with Mr. Teichner at the property or**
 20 **communicating with him off property about his**
 21 **methodology and calculations?**

22 A. I don't know how many hours. He said forty
 23 hours there, which is probably accurate. And then
 24 he did a lot of work on -- in his office, I believe,

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1 or wherever he's stationed, and we were in constant
 2 contact. So I couldn't give an exact but it was a
 3 lot.

4 **Q. Okay. And you had told us that you felt**
 5 **you reached a meeting of the minds between GSR and**
 6 **Mr. Teichner as to the methodology for reaching his**
 7 **calculations?**

8 A. Yes. We had many discussions back and
 9 forth, whether, you know, he agreed or we didn't
 10 agree. But in the end it was we were in agreement
 11 and he was in agreement and he was -- he felt
 12 comfortable with the numbers.

13 **Q. So, we were talking about the Exhibit 25,**
 14 **which is the January 4th, 2022, order that talks**
 15 **about he requested that the DUF, HE and SFUE being**
 16 **charged prior to the court's order remained in place**
 17 **until the fees for 2020 are recalculated.**

18 **You said that you went back and applied --**
 19 **what numbers did you apply?**

20 A. We applied our numbers. But when I say
 21 "our numbers," it was the numbers that we originally
 22 came up with with Mr. Teichner, but there were some
 23 -- during the May trial. And then when the judge
 24 came out, there were several things that the judge

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1 specifically said we cannot apply this to the DUF or
2 to the SFU or the HE. So, we took his original
3 numbers that were thrown out and we changed them
4 based on what the judge said.
5 We felt those were the most accurate based
6 on the CC&Rs of what Mr. Teichner reviewed with us
7 extensively, that we went over based on the
8 governing documents. So, we felt that we satisfied
9 the judge in that until Mr. Teichner could come up
10 with his own.
11 But at that time he got legal counsel and
12 his whole interpretation of the CC&Rs the governing
13 documents changed drastically.
14 Q. Okay. Did you or your counsel tell the
15 court that you did not understand the language and
16 that you tried to get clarification?
17 A. Yes.
18 Q. You're familiar with -- let's look at
19 Exhibit 28, which is in Book 3. By the way, before
20 we look closer at Exhibit 28, Mr. Proctor was the
21 first receiver appointed in this case.
22 Are you aware of that?
23 A. Yes.
24 Q. And then who paid Mr. Proctor for his

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1 receiver fees?
2 A. The GSR UOA.
3 Q. And do you know how much he was paid?
4 A. I believe approximately \$50,000.
5 Q. 50,000?
6 A. Yes.
7 Q. So, was he paid in full?
8 A. Yes, as far as I know.
9 Q. In terms of Mr. Teichner, when he wouldn't
10 give you the net unit rental numbers, did we
11 eventually interplead money with the court to get
12 him paid?
13 A. We did, \$135,000.
14 Q. And was that your understanding of payment
15 of his fees and his attorney's fees?
16 A. Yes.
17 Q. Okay. So, as far as you know, as we sit
18 here today the receiver has been paid in full, at
19 least effective -- I'm not sure what the date was,
20 but probably end of March 2023, thereabouts?
21 A. Yes. But also the -- we also paid \$80,000
22 to the GSR UOA for the assessment, and I can only
23 assume that went to pay the bills for Mr. Teichner.
24 Q. Okay. So, that's in addition to the

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1 \$135,000 that we interplead with the court?
2 A. Correct.
3 Q. Okay. Let's look at Exhibit 28.
4 Have you seen this document before,
5 Defendants' Surrebuttal to Plaintiffs' May 24th,
6 2022, Rebuttal Oral Argument Regarding Plaintiffs'
7 Motion for Order to Show Cause Regarding Contempt.
8 Is that correct?
9 A. Yes.
10 Q. Turn to page two, line ten. It says, "To
11 summarize, Plaintiffs contend the first order
12 stating that the receiver 2021 calculation shall be
13 applied retroactive to January 2020 is harmonious
14 with the second order stating that until such time
15 as the receiver recalculates his 2020 calculations
16 and the court approves the same, those fees in place
17 before the court's 9/27/2021 order shall remain in
18 place. These orders are contradictory."
19 Do you see that?
20 A. Yes.
21 Q. So, this -- your attorneys are trying to
22 address the contradiction between those two orders.
23 Is that your understanding?
24 A. Yes.

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1 MR. McELHINNEY: Your Honor, I want to
2 acknowledge, because I don't want to unnecessarily
3 confuse the court, sometimes the reference is to the
4 order of September 29th, 2021; other times it's
5 September 27th, 2021.
6 The reality is there's only one order
7 around that time and it was September 29th, 2021.
8 That's what is contained in the receiver motion, but
9 it didn't -- I think it's a typo, probably, that
10 showed up in the order.
11 And, again, if Mr. Miller disagrees, he can
12 certainly correct me.
13 THE COURT: He doesn't disagree. He agrees
14 with you.
15 MR. McELHINNEY: Okay. That's good news.
16 We're making progress.
17 BY MR. McELHINNEY:
18 Q. All right. Did the plaintiffs acknowledge
19 at that time, around the time that we had filed this
20 motion -- let's even be more precise.
21 At the hearing on May 24th -- I'll direct
22 you to an exhibit here in a moment. At the hearing
23 on May 24th, 2022, did the plaintiffs acknowledge
24 that there was a conflict between these two orders?

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1 A. No. I think they said they can be read
2 harmoniously.

3 Q. Let's look at Exhibit 28 -- bear with me.
4 The court's indulgence. Look at Exhibit 35. It's
5 in Book No. 4.

6 Turn to page thirty. I'll represent to you
7 that -- were you present at this hearing?

8 A. Yes.

9 Q. The -- do you recall Mr. Tew arguing on
10 behalf of Plaintiffs?

11 A. Yes.

12 Q. And do you recall him saying that the two
13 orders actually can be read in harmony with one
14 another?

15 A. Yes.

16 Q. And if you look at page thirty, line 18, do
17 you see where he's saying, "and this is how it's
18 read in harmony"?

19 A. Yes.

20 MR. McELHINNEY: Your Honor, I'm not going
21 to belabor the point.

22 THE COURT: Great.

23 BY MR. McELHINNEY:

24 Q. Do you feel -- at this point have you given

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1 us all the detail you can about your calculations
2 for the DUF, SFUE, HE and reserves? We talked about
3 it previously. You've identified that you used the
4 same methodology that you and Mr. Teichner had
5 agreed to.

6 Are there any other details that you want
7 to provide to the court at this point?

8 A. Just that we use actuals. There's no
9 fluffing the numbers. There's no -- everything is
10 actuals.

11 Q. All right.

12 A. And we get audited at the end of the year
13 by an outside company and we very have minimal
14 findings. They were just small findings with really
15 no monetary value at all.

16 Q. Okay. I want to now start to look at the
17 conflicting language that appears in the two orders.
18 Will you look at Exhibit 26, please.
19 Looking at Exhibit 26, this is referring to
20 Mr. Teichner's 2021 fee calculations.
21 Is that accurate.

22 A. Yes.

23 Q. And what is the instruction of the court in
24 this order? Look at page two, probably starting at

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1 line three. I can read it in the interest of time.

2 It says, "The receiver's new fee
3 calculations as submitted to the court should
4 immediately be applied retroactive to January 2020
5 and going forward until a subsequent order from the
6 court is issued. The amounts owed to the plaintiffs
7 under those fee calculations shall be paid to
8 Plaintiffs within 30 days in accordance with the
9 governing documents." Do you see that language?

10 A. Yes.

11 Q. And then it discusses "The receiver should
12 be permitted to calculate the 2020 fee calculations
13 using the same methodology, and once those
14 calculations are completed, the receiver can
15 reconcile the unit owner accounts to reflect the
16 difference between the 2020 and 2021 fee
17 calculations. And after defendants produce actual
18 documents, et cetera, then there can be sort of a
19 finalization of the fees."

20 Can you reconcile that language with the
21 language that appears in Exhibit 25?

22 A. No.

23 Q. And that is the exact argument that was
24 being made by your counsel at both the May 24th

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1 hearing and then in their surrebuttal opposition
2 where they are identifying those two orders as
3 conflicting with one another.

4 A. Yes.

5 Q. Did you -- now, at the hearing in May of
6 2022 Plaintiffs' position was, no, those two orders
7 are totally harmonious. You recall that?

8 A. Yes.

9 Q. Did you hear Mr. Miller stand up yesterday
10 and say that those two orders are ambiguous?

11 A. Yes.

12 Q. Had you ever heard him say that before?

13 A. No.

14 Q. Shifting gears, receiver -- he has
15 acknowledged to you in his conversations with you
16 that "rent" meant net rent. You've given us that
17 testimony already, I believe. Is that accurate?

18 A. That is accurate until, I believe it was
19 May 23 he changed it to "gross."

20 Q. Look at Exhibit 29, which should be in Book
21 No. 3. Do you see his letter of November 14th,
22 2022?

23 A. Yes.

24 Q. Turn to page three.

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1 (Witness reviewing document.)
2 BY MR. McELHINNEY:
3 Q. These are not numbered pleading paper, so
4 I'll direct you about halfway down the last full
5 sentence that appears on that page. It says, "For
6 example, the first sentence on page two, lines four,
7 10 to 14 states, that the receivership is over all
8 condominium units and requires that the rents
9 received from all 670 condominium units net of total
10 charges for DUF, SFUE and HE fees and reserves be
11 turned over to the receiver and deposited into the
12 receivership account," correct?
13 A. Correct.
14 Q. Did I read that correctly?
15 A. Yes.
16 Q. Even as of -- so, this is 11 months after
17 entry of the June 4th, 2022, order. He's still
18 talking to you about net rents. Is that accurate?
19 A. Yes.
20 Q. By the way, has he ever, as you sit here
21 today, given you the reserve numbers for 2020?
22 A. No.
23 Q. How about for 2021?
24 A. No.

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1 Q. So, even though the order requires him to
2 determine net rent using the DUF, SFUE, HE and
3 reserves, he's never even given you the reserves.
4 A. No.
5 Q. Turn to page four of Exhibit 29, and this,
6 again, is still part of the November 14th, 2022,
7 order. Third full sentence that starts "Certainly,
8 the amount of the net rents," are you with me?
9 A. Yes.
10 Q. "Certainly, the amount of the net rents
11 would first need to be calculated before the
12 receiver could inform GSR of the amount that it
13 would need to turn over to the receiver for past-due
14 amounts as well as for the most current month's
15 amount." Did I read that correctly?
16 A. Yes.
17 Q. Is that consistent with the conversations
18 you were having with Mr. Teichner?
19 A. Yes.
20 Q. And he was telling you, I'm not gonna do it
21 because?
22 A. He was not getting paid.
23 MR. McELHINNEY: Court's indulgence, your
24 Honor.

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1 THE COURT: How much longer with this
2 witness?
3 MR. McELHINNEY: Another hour at least.
4 THE COURT: Okay.
5 MR. McELHINNEY: Probably a bit longer.
6 BY MR. McELHINNEY:
7 Q. This is still part of Exhibit 29. If you
8 go -- if you go back, he has some exhibits that were
9 included with that filing, go to Exhibit 5. It's
10 really at the very back of that exhibit and it's
11 June 27th, 2022.
12 A. Okay.
13 Q. Turn to page two of that letter. And the
14 receiver says, very last paragraph, "Once the court
15 rules on the pending motions, objections, and
16 replies and decides whether or not the revised fee
17 charges are to be applied to GSR and the" -- it says
18 "OTPOs," and I think he means other third-party
19 owners -- "then I will be able to perform the
20 recalculations, obtain the net rents for GSR, and
21 disburse the funds as set forth above. However, I
22 must be assured that I will receive the net rents"
23 -- I'm sorry. "However, I must be assured that I
24 will receive the net rents from GSR as recalculated

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1 so that my fees and my counsel fees, both the
2 current amounts and the amounts to perform the
3 additional work, will be paid forthwith."
4 Do you see that?
5 A. Yes.
6 Q. And did I read it correctly?
7 A. Yes.
8 Q. That's consistent with the conversations
9 you were having with Mr. Teichner?
10 A. Yes.
11 Q. I want to make sure I understand your
12 testimony. Up until September 15th, 2021, to your
13 knowledge the receiver never demanded that the GSR
14 hand over rental income. Is that correct?
15 A. Correct.
16 Q. And when he made that first demand, it was
17 actually the email from his attorney to Justice
18 Saita. That was September 15th, 2021. It was to
19 hand over net rent revenue by subtracting the DUF,
20 HE and SFUE and reserves?
21 A. Correct.
22 Q. Once the January 4th, 2022, order was
23 issued ordering him to calculate the 2020 DUF, SFUE
24 and HE, did he admit to you that it was up to him to

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1 do those calculations and let you know what the net
2 rent was that needed to be handed over?
3 A. Yes.
4 Q. And to this day has Mr. Teichner ever given
5 you those net rental numbers for either 2020 or
6 2021?
7 A. No, nor has he given me a bank account.
8 Q. That came up the other day. You had an
9 exchange with Mr. Miller just recently in May of
10 2023 where he said, I've got my account open -- Mr.
11 Teichner -- I'm sorry. I apologize.
12 A. Yes. That was the same where he said --
13 the first time I heard that he demanded the gross
14 rents and that he said he did open up an account and
15 more to come.
16 Q. Okay. And did he say that he was gonna
17 send you wiring instructions for that account?
18 A. He said, I'll send you the bank
19 information.
20 Q. Okay. And did you ever receive it?
21 A. Not to this day, no.
22 Q. Until you had received that email, had he
23 ever demanded gross rent from you before?
24 A. Never.

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1 Q. And what's the authority he cites for
2 saying, You have to give me gross rent?
3 A. The January 2015.
4 Q. Right. That's the exact same order he
5 relied upon when he was demanding net rent for a
6 year and a half or more, correct?
7 A. Correct.
8 Q. Let's look at Exhibit 37 in Book No. 4.
9 Go to page four of that exhibit, please.
10 Is this email you received from Mr. Teichner on
11 May 4th, 2023, wherein he demanded total rents?
12 A. Yes.
13 Q. So, in the past his reference to "total
14 rents" was a reference to net rents, correct?
15 A. Always. Yes.
16 Q. This is the first time he's referring to
17 "total rents" as being gross rents, correct?
18 A. Yes.
19 Q. And citing the exact same authority that he
20 had cited that justified net rents, correct?
21 A. Correct.
22 Q. You sent an email back to Mr. Teichner on
23 May 5th. Is that correct? Look at page three of
24 the exhibit.

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1 A. That's correct.
2 Q. And in this email you say, "I have some
3 questions about this latest demand. In October of
4 2021 you filed a motion with the court specifically
5 requesting the court approve your request to open an
6 account and order that all rents, including DRF,
7 received by GSR, net of the total charges for the
8 DUF, SFUE, and HE fees and for reserves combined are
9 to be deposited."
10 Now, I just read something that reminded me
11 of something. "DRF" is daily resort fee?
12 A. Correct.
13 Q. What is the DRF? What is it for?
14 A. It is for access to the pool. It is for --
15 you get waters in your room. You get telephone.
16 It's spelled out. GSR internet. You get access to
17 the fitness centers. And 50 percent goes to the
18 unit owners.
19 Q. So, that's treated as cash and 50 percent
20 of the rent goes to the unit owners.
21 A. Correct. But the 50 percent of the rent is
22 less than the DUF. This is strictly just -- we
23 don't take anything out. They get 50 percent of the
24 resort fee.

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1 Q. Okay. Continuing reading, "The plaintiffs
2 even filed a joinder agreeing with your request. On
3 January 4th, 2022, pursuant to your motion and
4 request, the court entered its order that the
5 receiver shall open a separate account on which
6 receiver has sole signatory authority and into which
7 all rents received by defendants currently net of
8 the total charges for DUF, SFUE, HE fees and
9 reserves are to be deposited.
10 "Since the entry of that order, you and I
11 have exchanged emails on several occasions and have
12 discussed your obligation to calculate those rents
13 and reserves in order to determine the net rent we
14 were to hand over to you for deposit into the
15 separate account. In fact, you have even
16 acknowledged on multiple occasions in writing to me
17 and to the court that the amount of the net rents
18 would first need to be calculated before the
19 receiver could inform GSR of the amount that it
20 would need to turn over to the receiver for past-due
21 amounts as well as for the current month's amount.
22 "I had been waiting for you to complete
23 your calculations. Now it appears in your latest
24 email that you're changing your position and now you

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1 want to ignore those court-ordered obligations and,
 2 instead, have us hand over all the rent. I'm
 3 confused about the receiver's change in position
 4 from what it previously represented to the court and
 5 defendants.
 6 "Please explain your change in position and
 7 why you don't think you are any longer required to
 8 provide us with the net rental numbers as the court
 9 has ordered you to do." Do you see that?
 10 A. Yes.
 11 Q. Then go to the very bottom of page and he
 12 responds to your email, correct?
 13 A. He did.
 14 Q. This is an email from Richard Teichner to
 15 Mr. Brady. And in there what order is he citing as
 16 his authority to make you hand over all the rent?
 17 A. The January 7th, 2015, order.
 18 Q. The same order he was citing when he
 19 demanded that you hand over net rent, correct?
 20 A. Correct.
 21 Q. In that email the receiver -- I'll go to
 22 the bottom of his email, first full paragraph --
 23 actually, the last full paragraph. First the
 24 receiver has no authority to collect rents or

Page 95

1 disburse net rents to the unit owners -- sorry.
 2 I think he left out a word "who are not
 3 parties to the action and, therefore, not for all
 4 670 units. Second, this order conflicts with both
 5 the court's January 7th, 2015, order, which
 6 clearly says, 'rents' and nowhere says or implies
 7 net rents. And with the court's January 26th, 2023,
 8 order, however, this may be a legal argument that
 9 the plaintiffs and defendants need to address and
 10 about which filings with the court for clarification
 11 might need to be sought."
 12 Do you see that language?
 13 A. Yes.
 14 Q. Bottom of the page, still on page two of
 15 Exhibit 37, "I recommend that the apparent conflict
 16 between the January 7th, 2015, order and the
 17 January 26, 2023, order be resolved as soon as
 18 possible so that, once the revised fees and reserve
 19 charges are calculated, after the receiver and his
 20 counsel are completely confident that we will be
 21 paid for future services, the rents" -- parenthesis
 22 -- "or net rents -- closed parenthesis -- "can be
 23 paid to the plaintiff and defendant unit owners."
 24 Did I read that correctly?

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1 A. Yes.
 2 Q. Did you hear Mr. Teichner during his
 3 testimony say that he felt changing from net rents
 4 to a gross rents demand was creating confusion --
 5 A. Yes.
 6 Q. -- that required clarification?
 7 A. Yes.
 8 Q. You're aware that in some of the orders
 9 from January 4th it was determined that the receiver
 10 upon his appointment in 2015 he replaced all
 11 authority to manage and control the GSR UOA -- I
 12 worded that horribly -- but he put himself in power
 13 in place of the board of directors, managers,
 14 officers, and declarants and it all vested in the
 15 receiver. Are you aware of that?
 16 A. Yes.
 17 Q. And I don't think we need to go through it.
 18 I think we can probably stipulate. It appears in
 19 the January 4th, 2022, Order Granting Receiver's
 20 Motion for Instructions to Receiver, which is
 21 Exhibit 23 at page four, lines three through five,
 22 in the January 4th, 2022, Order Granting Receiver's
 23 Motion for Orders and Instructions as Exhibit 25,
 24 page five, 26, lines 26 through 28, and the

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1 January 4th, 2022, Order Granting Plaintiffs' Motion
 2 to Stay Special Assessment. That is Exhibit 27,
 3 page three, lines 20 through 23.
 4 Was this language confusing to you?
 5 A. Yes.
 6 Q. In what way?
 7 A. I guess that it gave full authority but --
 8 Q. Had it ever been brought up before?
 9 A. No.
 10 Q. What is a declarant -- it says in the order
 11 that all of the management and control of the GSR
 12 UOA is transferred away from the board of directors,
 13 managers, officers, and declarant to the receiver.
 14 What -- the declarant is MEI-GSR?
 15 A. Correct.
 16 Q. And it's a distinct, standalone entity from
 17 the GSR UOA, correct?
 18 A. Correct. We have nothing to do with the
 19 UOA.
 20 Q. What does the declarant have to do with the
 21 board of directors or management of the GSR UOA?
 22 A. We pay dues and --
 23 Q. Well, you pay dues in your capacity as unit
 24 owners, correct?

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1 A. Correct.

2 Q. Not in your capacity as a declarant under

3 the Seventh Amended CC&Rs.

4 A. That is correct.

5 Q. Let's talk about the receiver's claiming a

6 right to order and overseeing reserve studies.

7 When did you become aware that the receiver

8 was claiming entitlement to oversee the reserve

9 studies?

10 A. I believe that was the same,

11 September 2021.

12 Q. September 15th, 2021, email from Stefanie

13 Sharp to Justice Saita?

14 A. Correct.

15 Q. That's the first time -- is that the first

16 time you ever heard the receiver was making that

17 claim?

18 A. Yes.

19 Q. And then it showed up in the order, Exhibit

20 23, the Order Granting Plaintiffs' Motion for

21 Instructions to the Receiver, at page four, line 22

22 through 24. Do you agree with that representation?

23 A. Yes.

24 Q. Did you understand that to be the order of

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1 the court from January 7th, 2015? I mean, is

2 there a provision that says he's to take over the

3 ordering and the overseeing of the third-party

4 independent reserve studies?

5 A. No, not that I'm aware of.

6 Q. Did the receiver ever say to you, I want to

7 take over the reserve accounts?

8 A. No.

9 Q. Has the receiver ever said to you, You

10 can't withdraw money from the reserve accounts

11 without my permission?

12 A. No.

13 Q. Is there an order that says you can't

14 withdraw money from the reserve accounts without the

15 receiver's permission?

16 A. Not that I'm aware of.

17 Q. And who is in control? Whose name is on

18 the reserve accounts?

19 A. The declarant, MEI-GSR.

20 Q. Okay.

21 THE COURT: Can I ask a question? Did you

22 ever read the order appointing the receiver from

23 2015?

24 THE WITNESS: Yes, a while ago. And

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1 whatever the order that came out that -- the lines

2 that they --

3 THE COURT: You understand what that says

4 about the reserve fees?

5 THE WITNESS: Yes.

6 THE COURT: And what do you think that

7 means?

8 THE WITNESS: At the time overseeing the

9 reserves, overseeing the reserves is, I believe,

10 there may be a line in there about take over the

11 reserves, but in the -- until the 2021 order,

12 September 2021 order there was never any -- from the

13 plaintiffs, defendants, or receivers, anything about

14 the reserves. Again, the reserves are a

15 third-party, independent --

16 THE COURT: I'm not talking about the

17 reserve study, but the dollars, the money that's in

18 the reserve fund.

19 THE WITNESS: Yeah. It is to be used per

20 the CC&Rs for renovation to remodel the units,

21 rooms, to make it a four-diamond property.

22 THE COURT: Where did you get that

23 impression?

24 THE WITNESS: From the CC&Rs.

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1 THE COURT: Okay. So, you thought that you

2 could use it for any purpose, regardless of the

3 order appointing the receiver and what it says?

4 THE WITNESS: I thought? No. Everything

5 that I do I go through legal counsel.

6 THE COURT: Okay. Thank you. That's all

7 right. We're not on video, so that didn't do it,

8 but I understand what you just said.

9 BY MR. McELHINNEY:

10 Q. Mr. Brady, the court asked you, So you just

11 think you can use that reserve account for anything

12 you want. What do you use the reserve account for?

13 A. We don't use it for anything. We use it to

14 pay bills. The majority of the reserves that were

15 taken out were for the Summit remodel.

16 Q. So, the Summit remodel, that includes some

17 of the floors of the plaintiff-owned units, correct?

18 A. The majority of the floors, yes.

19 Q. So, the renovation you're doing is actually

20 to the plaintiffs' units and some Non-plaintiff and

21 defendant units as well, correct?

22 A. Correct.

23 Q. That was instructed in the independent

24 third-party reserve study, correct?

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1 A. Correct.

2 Q. Is that independent, third-party reserve

3 study sent to the union others?

4 A. Yes.

5 Q. Did you ever get an objection from anybody

6 about the special assessments that were laid out in

7 that special -- in that independent, third-party

8 reserve report?

9 A. Not from the unit owners themselves. From

10 Plaintiffs, I think they filed an order, and we

11 actually had one or two unit owners pay the special

12 assessment, which we had to -- the order that

13 reversed the special assessment, we had to pay back

14 within 20 days, I believe, and we did that.

15 Q. We'll talk about those special assessments

16 and unwinding them in a moment.

17 So, I just want to understand better. The

18 money you pull out of the reserves, that isn't

19 distributed to ownership in any fashion, is it?

20 A. No. It's to directly pay the bills,

21 invoices.

22 Q. So, these are actual invoices that are

23 being used for the renovation of the Summit Tower

24 including the plaintiffs' units?

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1 A. Correct. So, for example, the furniture,

2 fixtures, and equipment for Floors 17 through 22,

3 which is strictly all the condo units, it is roughly

4 \$15 million for all of the F, F and E.

5 We had to put a 50 percent deposit down on

6 that, which came to about 7.2 million straight

7 invoice that we had to wire to the company. And we

8 used the reserves for that since it was strictly for

9 the condo units.

10 Q. Are these repairs as described in the F, F

11 and E in the Seventh Amended CC&Rs?

12 A. Absolutely.

13 Q. Is this a markup? When you pull the money

14 out of the reserves, do you make an administrative

15 markup for the benefit of GSR?

16 A. No. We have invoices -- actual invoices

17 that we use that we actually paid and then get

18 refunded. And based on if it's an F, F, E or SFU or

19 hotel common elements, we will only take a certain

20 percentage and based on the floors too. So, it's

21 only strictly to the condo units themselves, F, F

22 and E, the shared facility and the hotel.

23 And it's either -- since we're doing this

24 remodel, which is over \$24 million just for the

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1 Summit rooms alone, that doesn't include the

2 corridors or anything like that. We are using

3 actual invoices for that. We use actual invoices

4 for everything.

5 Q. Okay. Do you have any idea -- I don't want

6 you to wild-guess -- buy how much money has MEI-GSR

7 spent on the GSR since they acquired ownership?

8 THE COURT: The entire property?

9 MR. McELHINNEY: Correct.

10 THE WITNESS: Over -- since 2012 we have

11 spent over \$500 million.

12 BY MR. McELHINNEY:

13 Q. And --

14 A. -- in capital improvements. That's not

15 wear and tear or replacements or anything like that.

16 Q. Okay. And that includes improvements to

17 the pool?

18 A. To the pool, yes.

19 Q. The pool that the unit owners get to use.

20 A. Correct.

21 Q. In regards to which the plaintiffs get half

22 of that DRF that is related to their right to use

23 the pool, correct?

24 A. Correct.

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1 Q. How about the lobby area?

2 A. Totally remodeled the lobby area. Totally

3 remodeled the porte cochere. The entrance, we

4 remodeled all the way down. We are currently

5 remodeling the elevators. That alone is \$2.4

6 million to renovate just one part of the elevators.

7 We have three different banks. It's called

8 a modernization of elevators. They're old. The

9 property is from 1975 so it's -- there's a lot of

10 upkeep for this property.

11 Q. Is this part of keeping up with the AAA

12 four-diamond rating?

13 A. Yes.

14 Q. Are these shared unit facilities easements?

15 A. Yes. The porte cochere, the front lobby,

16 the easements in and out, the elevators, any -- the

17 walkways to the pool, walkways to the fitness center

18 and then the back of house too to the warehouse, to

19 the laundry.

20 Q. Okay. I'm going to pull us back to the

21 issue that I had been addressing a moment ago, which

22 was receivers being ordered to order and oversee

23 reserve studies. He has an exclusive right to do

24 that.

Page 106

1 A. Yes.

2 Q. Has the receiver carried out that function?

3 A. No.

4 Q. And what did you do -- did you ask him

5 whether or not he would perform that function?

6 A. Just to be clear, he's to oversee the

7 reserve study. It's an independent party that has

8 to do the reserve study. They have to be licensed.

9 It's a requirement.

10 And in the CC&Rs it says "independent" so

11 he's only overseeing the reserve studies just like,

12 you know, we are -- we would still have to help out

13 because they would ask for certain stuff.

14 He's not calculating the reserves. It's

15 not up to him. It's to the independent party. So

16 just to clarify that, but, no, he has not.

17 Q. That's a good point to follow up on to make

18 sure I understand it.

19 So, the independent reserve study sets out

20 the capital expenditures anticipated for 30 years

21 out, correct?

22 A. Yes.

23 Q. And then he makes a recommendation as to

24 the balance that should be in those reserve

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1 accounts.

2 A. Yes. By year.

3 Q. You don't decide that. The independent

4 third party does.

5 A. Correct. And it gets updated every year.

6 Q. There were meetings with Mrs. Betterley and

7 Stefanie Sharp and the receiver.

8 Were you present for those meetings?

9 A. I was not.

10 Q. Okay. But to date has the receiver carried

11 out that duty to order and oversee a new reserve

12 study?

13 A. No.

14 Q. What did you do when he refused to do it?

15 A. Per the CC&Rs I have to get out a budget,

16 so we -- after I talked with Legal and we determined

17 that we should move ahead with our reserve study,

18 because per the CC&Rs I have to get something out.

19 Also, for our books that I get audited

20 every year, I need to have my books straight, so in

21 order for that to happen the reserve study had to be

22 done.

23 Q. So, the reserve study is mandated under the

24 Seventh Amended CC&Rs, correct?

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1 A. Correct.

2 Q. And it's a matter of business necessity, it

3 has to be done.

4 A. Yes.

5 Q. I may have asked you this. When you meet

6 with Betterley, do you tell her what category of

7 expenses are to be included in her reserve study?

8 MR. MILLER: Asked and answered?

9 THE COURT: Sustained.

10 THE WITNESS: No.

11 BY MR. McELHINNEY:

12 Q. There was a September 21 withdrawal of

13 \$3,562,441.28. Is that correct?

14 A. Yes. What date?

15 Q. September 2021. Does that sound right?

16 A. Yes.

17 Q. Okay. And what was that for?

18 A. That was for -- the majority of that,

19 again, was for the Summit remodel.

20 Q. Okay. So, that, again, are the units owned

21 by the plaintiffs, defendants and non-plaintiffs,

22 correct?

23 A. Correct. And for the corridors.

24 Q. Do you have any estimate of how many

Page 109

1 plaintiffs' rooms have actually been renovated to

2 date?

3 A. To date I believe not -- not plaintiffs

4 themselves. I know third-party owners, roughly 18

5 have been done.

6 Q. Okay. And so there's more work to be done.

7 Is that accurate?

8 A. Oh, yes. Through -- we're going to start

9 up in -- the end of this year, I believe, in

10 October, and we'll finish it in 2024.

11 But, again, these companies don't --

12 unfortunately, they don't, you know, just say, Oh,

13 yeah, you can pay us later. There's millions of

14 dollars of deposits that we have to put down.

15 Again, the seven million was just for furniture and

16 fixtures alone for Floors 17 through 22.

17 Q. I want to cover something now, because it

18 showed up in one of the court's orders.

19 The court at some point had denied the

20 request for reimbursement for capital expenditures

21 because they were extraordinary -- she did not

22 regard them as extraordinary expenses.

23 Are you familiar with the term

24 "extraordinary expenses" as it is used in the

Page 110

1 Seventh Amended CC&Rs?
2 A. Not really, no.
3 Q. Let's look at from Section 6.9.
4 A. It's in 6.9 B.
5 Q. What is that a reference to? What's your
6 understanding of extraordinary expenses?
7 A. It says "Extraordinary expenditures not
8 originally included in the annual estimate which may
9 become necessary during the year shall be charged
10 first against such portions of any specific
11 contingency reserve or shared facilities reserve."
12 Q. So, were the expenditures that the
13 \$24 million remodel of the Summit towers, that was
14 in the budget originally, was it not?
15 A. Yes.
16 Q. So, that's not an extraordinary expense and
17 unanticipated expense that had to be added later.
18 A. No.
19 Q. Do I understand that correctly?
20 A. Correct.
21 Q. Is that true? With the pool expenditures
22 and with the other expenditures where you pulled
23 money out of the reserves?
24 A. Correct. Those were all in the reserve

Page 111

1 study.
2 Q. And they were all then part of the original
3 budget?
4 A. Correct.
5 Q. And that budget gets sent to the unit
6 owners in advance?
7 A. With the November statement.
8 Q. Okay. There was a withdrawal, my
9 understanding, of \$13 million. I don't have a date
10 for that.
11 A. I think we did one in August. That was the
12 seven million dollars, one in 2022 -- 7.2., and then
13 I believe we did another one in September or
14 November. And I don't have the ...
15 Q. Were those withdrawals also part of the \$24
16 million renovation?
17 A. That and other items, yes.
18 Q. What were the other items? Can you
19 remember those?
20 A. Not off the top of my head. I mean, the
21 majority was for the Summit rooms and Summit
22 corridors. Yeah, I can't remember. I know we did
23 some IT stuff that we capitalized. I'm not
24 100 percent sure at this time.

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1 Q. Were all those for actual invoices?
2 A. Yes.
3 Q. There's no markup, actual invoices?
4 A. No.
5 Q. With no distribution to ownership?
6 A. No.
7 Q. I've asked you this question before and I
8 want to ask it again. Is there a court order of
9 which you're aware that says the receiver is in
10 control of the reserve accounts?
11 MR. MILLER: Objection, asked and answered.
12 THE COURT: Overruled.
13 THE WITNESS: Say it again.
14 BY MR. McELHINNEY:
15 Q. Is there a court order of which you are
16 aware that says the receiver is in control of the
17 reserve accounts?
18 A. Not that I'm aware of.
19 Q. That the -- is there an order of which
20 you're aware that says the GSR may not take any
21 reimbursement from the reserve accounts without
22 first getting the receiver's approval?
23 A. Not that I'm aware of.
24

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1 THE COURT: I'll interrupt again.
2 What do you think it means when the order
3 says, "It is further ordered that defendants and any
4 other person or entity who may have possession,
5 custody, or control of any property including any of
6 their agents, representatives, assignees, and
7 employees shall do the following: Turn over to the
8 receiver all rents, dues, reserves, and revenues
9 derived from the property wherever and in whatsoever
10 mode maintained"? What do you think that means?
11 THE WITNESS: Turn over all -- where? I'm
12 sorry. Is there an exhibit?
13 THE COURT: From the 2015 appointment
14 order, sir.
15 THE WITNESS: Okay. What do I take that
16 as?
17 THE COURT: I'm asking what you think that
18 means.
19 THE WITNESS: If the -- the receiver has
20 the ability to do it, but the receiver has never
21 done it or never asked until recently.
22 So, it was my understanding that, if the
23 receiver wanted to do it, they -- he would have
24 reached out to me and then I would have talked it

Page 114

1 over with Legal and we would have gone from there.
2 THE COURT: Okay.
3 BY MR. McELHINNEY:
4 Q. Mr. Brady, that order that the court is
5 asking you about has all kinds of powers of the
6 receiver. He can take control of your computers,
7 your passwords --
8 THE COURT: Not MEI-GSR, only the unit
9 owners association. It was clear because of gaming
10 issues, right?
11 MR. McELHINNEY: I don't think that's right
12 at all, your Honor. I mean, this order is so
13 contrary to law and confusing as to its scope.
14 THE COURT: So, why didn't you appeal the
15 order? It's appealable under 3A.
16 MR. McELHINNEY: It wasn't even enforced
17 for six and a half years.
18 THE COURT: Never mind.
19 MR. McELHINNEY: I have all kinds of
20 reasons, your Honor.
21 THE COURT: We're not on that issue. We're
22 asking this witness questions.
23 BY MR. McELHINNEY:
24 Q. Her honor is suggesting that it was only

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1 the GSR UOA's computers that the receiver had a
2 right to take control over. I'm on page two of the
3 order.
4 "It is further ordered that to enforce
5 compliance with the governing documents the receiver
6 shall have the following powers and responsibilities
7 and shall be authorized and empowered to, No. 1,
8 review and/or take control."
9 You'll agree with me for the first six and
10 a half years he was reviewing but never sought to
11 take control. Would you agree?
12 A. Yes.
13 Q. And, then, all records, correspondence,
14 insurance policies, books, accounts of or relating
15 to the property which refer to the property in
16 ongoing construction, et cetera, all office
17 equipment used by Defendants in connection with
18 development, improvements, leasing, sales, marketing
19 and other conveyances."
20 That isn't limited just to the GSR UOA, is
21 it, sir?
22 MR. MILLER: Objection, leading.
23 THE COURT: Rephrase your question.
24

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1 BY MR. McELHINNEY:
2 Q. When I asked you earlier about the receiver
3 had all kinds of powers to take control of
4 computers, passwords, and information and equipment,
5 the court interjected and said that was only as to
6 the MEI UOA. Is that your understanding of the
7 order?
8 A. No.
9 Q. It says to all property, correct?
10 A. Correct.
11 Q. Did the receiver ever come to you and
12 demand to take control of those things?
13 A. Never.
14 Q. Has anyone suggested you violated this
15 court order because you didn't turn those things
16 over to the receiver?
17 A. No.
18 Q. You're aware of the fact that we filed
19 motions for permission to withdraw money out of the
20 reserves in May 21 of 2020. Are you aware of that?
21 A. Yes.
22 Q. And in that motion we said, "We acknowledge
23 that the January 7th, 2015, order appointing the
24 receiver charges the receiver with accounting for

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1 all income and expenses associated with the
2 compliance with the governing documents."
3 So, we asked the court to instruct the
4 receiver for those reimbursements, correct?
5 A. To look over the backup for it, yes.
6 Q. Right. And we didn't get an order until
7 three years later. Does that sound accurate to you?
8 A. Yes. I went -- we went extensively over
9 all of the invoices with Mr. Teichner. He had
10 several questions. I answered them.
11 And then, as far as I knew, he was fine
12 with it and then I believe he sent it to the court
13 to get approval and it never got -- and then three
14 years later.
15 Q. Okay. Then we filed another motion
16 June 24th, 2021, entitled, Defendants' Motion for
17 Instructions Regarding Reimbursement of the 2020
18 Capital Expenditures. Therein we sought
19 reimbursement 1,614,000 in round numbers.
20 And we acknowledged that same authority of
21 the receiver being charged with accounting for all
22 income and expenses associated with compliance with
23 the governing documents, so we, once again, asked
24 for the court to instruct the receiver to reimburse

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1 Defendants for those totals.
2 In either of those motions do we talk about
3 an order that says we have to have the receiver's
4 permission before we can withdraw money from those
5 accounts?
6 A. No.
7 Q. Didn't the receiver tell us he won't make
8 those calculations and determinations because he's
9 not being paid?
10 A. The -- that was --
11 Q. Did he ever tell you when you gave him the
12 numbers and calculations that he wasn't gonna do
13 that because he wasn't being paid?
14 A. The numbers and the calculations for the
15 reserves?
16 Q. For the -- yes, the reserves, capital
17 expenditure withdrawals you wanted to make.
18 A. I don't think he ever -- I don't think he
19 ever said that he would not --
20 Q. All right. And take a look at Exhibit 33,
21 which should be in Book No. 3. Your counsel has
22 filed a motion to compel the receiver to prepare the
23 report on Defendants' request for reimbursement of
24 capital expenditures, correct?

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1 A. Correct.
2 Q. And wasn't there an order issued that he
3 was supposed to do those calculations within a
4 certain period of time or supposed to approve our
5 calculations within a certain period of time?
6 A. Yes.
7 Q. And, sir, it wasn't until January 26, 2023,
8 that we finally got an order from the court denying
9 the June 24th, 2021, motion wherein the court
10 found that the requested expenses for 2020 don't
11 fall within the definition of common elements.
12 What's your response to that?
13 A. I disagree.
14 Q. It is -- is "common elements" even a term
15 used in the Seventh Amended CC&Rs?
16 A. Not in the CC&Rs. It was in the reserve
17 study. But common elements, in my eyes, is -- I
18 don't know if there's a definition of it in the
19 CC&Rs. I'm not --
20 Q. I don't believe there is. I haven't found
21 it.
22 A. Okay. Then, it was used in the reserves.
23 It was "common elements" and it was interchangeable
24 with, I believe, hotel -- "hotel expense."

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1 Q. So, is it your contention that all of the
2 requested expenses fall squarely under the Seventh
3 Amended CC&Rs?
4 A. Yes.
5 Q. And then the court also found that the
6 procedures required under Section 6.10A were not
7 followed prior to the 2020 expenses being incurred.
8 Do you agree with that?
9 A. No.
10 Q. What procedures were followed prior to
11 incurring those expenses?
12 A. We send out the yearly reserve study on the
13 November statements -- with the November statements
14 every year which details out all the expenditures
15 that we would have throughout the year.
16 Q. You send them separate from that a budget
17 or is that encapsulated?
18 A. We do that with the budget and what the new
19 reserve studies will be or reserve amounts will be,
20 and strictly pulls the numbers from the reserve
21 study itself.
22 Q. And then the court says in the same order
23 that she declined to find the 2020 expenses are
24 extraordinary expenditures, which would permit

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1 reimbursement under Section 6.10B.
2 Do you agree with that?
3 A. No. They were not extraordinary. They
4 were budgeted.
5 Q. Right. And we filed a motion for
6 reconsideration of both the May 2020 and the
7 June 2021 orders.
8 On March 28th, 2023, the court entered an
9 order granting the motion to the limited extent that
10 the defendants seek leave to file the motions for
11 reconsideration in, quotes, in all other respects
12 the relief sought by the motion will be addressed
13 after a full briefing on the motions for
14 reconsideration, end quote.
15 Your Honor, I think that's already been
16 done. I mean, in the past we have had the court
17 either grant the reconsideration and then grant the
18 relief sought or grant the relief and deny the
19 relief sought."
20 I've never seen an order, at least in my
21 experience, that grants the leave but then says I'm
22 not gonna order until it's fully briefed. So, I
23 guess --
24 THE COURT: That's how I did it in the

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1 Second Judicial District Court for 18 years.

2 MR. McELHINNEY: I submit it's already been

3 fully briefed. I don't know if Mr. Miller agrees or

4 disagrees.

5 MR. MILLER: Disagrees.

6 THE COURT: So, only one agreement today.

7 MR. McELHINNEY: Okay, I got it.

8 BY MR. McELHINNEY:

9 Q. Turn to Exhibit 5 in Binder No. 1, please.

10 I'll represent to you, Mr. Brady, this is

11 the motion for appointment of receiver that the

12 plaintiffs had filed October 16, 2014.

13 I'm gonna direct you to page eight and it's

14 under "Conclusion." Beginning on line 24, "The

15 appointment of James S. Proctor as receiver, No.

16 1" -- let me read the paragraph just before.

17 "Accordingly, the defendants are not

18 complying with the governing documents. Plaintiffs

19 respectfully request the entry of the order attached

20 hereto as Exhibit 18, the order granting the

21 following relief: The appointment of the James S.

22 Proctor as receiver over Defendant GSR UOA

23 association, a Nevada nonprofit corporation, over

24 Defendant MEI-GSR Holding LLC, a Nevada

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1 limited-liability company, for the limited purposes

2 of monitoring and controlling, if the receiver in

3 his sole discretion deems necessary, the operations,

4 rental, maintenance, fee, due, and reserve

5 collections of all condominium units governed by the

6 GSR UOA owned by the plaintiffs or defendants in

7 this action, the property."

8 Did I read that correctly?

9 A. Yes.

10 Q. So, certainly what was contemplated by the

11 plaintiffs in the filing of this motion was to give

12 the receiver power over the MEI-GSR. They actually

13 asked for an appointment over him so that they could

14 monitor and control, if the receiver in his sole

15 discretion deemed necessary, the operation, rental

16 maintenance, due, fee, due and reserve collections

17 of all condominium units governed by the GSR UOA,"

18 correct?

19 A. Correct.

20 MR. MILLER: Relevance.

21 THE COURT: Overruled.

22 BY MR. McELHINNEY:

23 Q. Okay. They contemplated originally the

24 receiver being over GSR UOA and MEI-GSR, correct?

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1 A. Yes.

2 Q. They said in their moving papers they

3 needed him appointed over the MEI-GSR so that he

4 could monitor and control those things noted in

5 their report, including rent, maintenance, and

6 reserve collections, correct?

7 A. Correct.

8 Q. And he was to do so at his sole discretion

9 as he deems necessary, correct?

10 A. Correct.

11 Q. So, do I understand it, six and a half

12 years after issuance of the 2015 order had the

13 receiver ever come to you and said, I want to take

14 control of your reserves?

15 A. No.

16 Q. Up until September 15, 2021, had he ever

17 come to you and said, I want to take control of your

18 rents?

19 A. No.

20 Q. And when he did finally come in September

21 of 2015, he said, I want to take control of your net

22 rents. Do I understand that correctly?

23 A. Yes.

24 Q. And the first time he ever changed that

Page 125

1 from net rents to gross rents was May of 2023.

2 A. Correct.

3 Q. Let's talk about the special assessments.

4 How are we doing time-wise?

5 THE COURT: It's 11:30.

6 MR. McELHINNEY: I have a shot at being

7 done by noon.

8 THE COURT: That was a nod of the head no.

9 It doesn't come through when we're just with the

10 reporter. I don't believe it.

11 MR. McELHINNEY: I mean with my direct.

12 BY MR. McELHINNEY:

13 Q. Special assessments. The first one was for

14 the \$100,000. That was issued by the UOA, correct?

15 A. Correct.

16 Q. Had nothing to do with MEI-GSR, AMG GSR or

17 Gage Village?

18 A. No. Totally separate entity.

19 Q. All right. So, to the extent that that

20 special assessment had to be unwound timely, et

21 cetera, that wasn't your job.

22 A. No.

23 Q. That would have been the job of the GSR

24 UOA.

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1 A. Yes.

2 Q. Now, you told us earlier that there might

3 have been one other non-plaintiff who made, but it

4 was the defendant-owned units who paid their share.

5 They paid \$80,000 roughly.

6 A. Correct.

7 Q. Okay. And the order in setting aside those

8 special assessments said that everybody would be

9 reimbursed within a certain period of time. As I

10 recall, it was 30 days.

11 Do you know was the GSR UOA ever

12 reimbursed?

13 A. Sorry. MEI ever reimbursed? No, we were

14 never reimbursed.

15 Q. Was that -- do you know was that timely

16 rescinded by the GSR UOA, the special assessment, or

17 do you know?

18 A. Was it timely rescinded?

19 Q. Yes. So, the court order was you have to

20 rescind the special assessment. Was that done?

21 A. By the GSR UOA?

22 Q. Yes.

23 A. I think there was a letter saying that they

24 would not be able to -- from the Associa, which is

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1 the GSR UOA, that said they would not be able to

2 fulfill that obligation, if I remember from

3 yesterday.

4 Q. And that was because they didn't have

5 enough money to reimburse the money back to the

6 people who paid the special assessment, correct?

7 A. Correct.

8 Q. The second special assessment was issued by

9 MEI-GSR designed to reimburse the reserves for the

10 costs associated with the current ongoing

11 \$24 million renovation. Is that correct?

12 A. And other things, yes.

13 Q. Okay. And how many unit owners paid that

14 special assessment?

15 A. Unit owners? One.

16 Q. And was that a plaintiff?

17 A. No.

18 Q. And has that non-plaintiff unit owner been

19 reimbursed in full by defendants?

20 A. Yes.

21 Q. So, that special assessment over which the

22 defendants have control -- and when I say

23 "defendants," I'm excluding GSR UOA because we don't

24 represent them -- that special assessment has been

Page 128

1 rescinded.

2 A. Yes, according to the order.

3 Q. And money reimbursed, correct?

4 A. Correct.

5 Q. I want you to turn -- this is Book No. 3 --

6 Exhibit 32.

7 In Exhibit 32, that's the receiver's

8 omnibus reply to the parties' oppositions to the

9 receiver's motions and orders for instructions.

10 Do you see that?

11 A. Yes.

12 Q. On page four of this document the receiver

13 sets forth his calculations -- now, you correct me

14 if you read it differently. But the way I read it

15 is he's calculating the delta between the fees that

16 we are applying using his 2020 methodology and his

17 2021 calculations, and he comes up with

18 \$1,103,950.99. Is that correct?

19 A. Yes.

20 Q. And is that how you read that? That's what

21 that number represents?

22 A. Yes.

23 Q. Now, at some point we had challenged that

24 number and the court entered an order saying you

Page 129

1 gotta pay the 1,103,950, correct?

2 A. Correct.

3 Q. We posted a bond, didn't we?

4 A. We did.

5 Q. So, that amount has been tendered to the

6 court in the form of a bond taking care of the

7 delta.

8 So, in essence, with that bond in place we

9 have applied the receiver's 2021 numbers from

10 January 2020 to December 31st -- I think it's

11 December 21, 2022, but I may be corrected. It may

12 be 2021. No. I think it's 2022.

13 Do you agree with that? If you need to

14 look at the exhibits that are attached to help,

15 maybe it can shed light on it because, honestly, I'm

16 not sure.

17 THE COURT: Exhibit 1 to the receiver's

18 omnibus reply, which I'm not sure what the exhibit

19 number is in these proceedings.

20 THE WITNESS: Repeat the question.

21 BY MR. McELHINNEY:

22 Q. I'm trying to figure out. I know he

23 started his calculations January 1, 2020. I'm just

24 not sure how far forward he comes with his

Page 130

1 calculation.

2 A. It appears to be 12/31/21.

3 Q. Okay.

4 MR. McELHINNEY: May I approach, your

5 Honor?

6 THE COURT: You may.

7 Next in order?

8 MR. McELHINNEY: Yes.

9 THE COURT: No. 142. Any objection?

10 MR. MILLER: No, your Honor.

11 THE COURT: 142 will be admitted.

12 (Exhibit 142 admitted.)

13 BY MR. McELHINNEY:

14 Q. I don't have a file-stamped copy, although,

15 if you turn to the back -- if you go to Exhibit A,

16 you'll see the supersedeas bond is file-stamped

17 April 4th, 2023. Can you confirm that, please.

18 (Witness reviewing document.)

19 THE WITNESS: The last page?

20 BY MR. McELHINNEY:

21 Q. It's -- look at Exhibit A.

22 A. Oh, yes, April 4th, 2023.

23 Q. And that documents our having posted with

24 the court a bond for \$1,103,950.99.

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1 Is that accurate?

2 A. That's correct.

3 Q. I want to move on to one final topic, and

4 that is the alleged failure of the defendants to

5 rent the Plaintiffs' units in March of 2023.

6 When was the termination agreement

7 recorded? Do you recall?

8 A. I believe it was the beginning of

9 March 2023.

10 Q. Okay. I'm showing February 28th, 2023.

11 Does that sound right?

12 A. Yes.

13 Q. Now, was there a discussion -- are you

14 familiar with NRS 116 and the provisions that are in

15 there?

16 A. No, not really.

17 Q. Okay. On May 14, 2023, the court entered

18 an order that the receiver was to continue to rent

19 the units. Are you familiar with that order?

20 A. Yes.

21 Q. From March 14 to the end of that month, did

22 you have any contact with the receiver at all?

23 A. No.

24 Q. Did you attempt to reach out to him to find

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1 out what he was going to do about renting the units?

2 A. I believe so.

3 Q. And what response did you get?

4 A. The "I haven't been paid."

5 Q. And so at some point did you sit down with

6 management and with counsel and make a decision,

7 look, we're gonna go ahead and rent these units,

8 these former units, under protest?

9 A. Yes.

10 Q. When, Mr. Brady, did we start renting those

11 units?

12 A. I believe April -- after we stopped renting

13 them?

14 Q. Yes.

15 A. I believe it was April 4th or 5th of

16 2023.

17 Q. What is your understanding of the reason

18 why you stopped renting the units in March of 2023

19 after the recording of the termination agreement?

20 A. The condominium was dissolved, and that

21 includes the unit rental agreement, the CC&Rs,

22 pretty much everything, and the UOA.

23 Q. Okay. Did it also extinguish the units?

24 A. Yes.

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1 MR. McELHINNEY: Court's indulgence,

2 please. Your Honor, could we take a 10-minute

3 break?

4 THE COURT: Why don't we take our lunch

5 break and we'll return at 1:00.

6 (Lunch recess taken.)

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1 AFTERNOON SESSION
2 THE COURT: Would you like to continue your
3 direct examination.
4 MR. McELHINNEY: Yes, your Honor. Thank
5 you.
6 BY MR. McELHINNEY:
7 Q. Mr. Brady, when you were going through
8 direct examination earlier today, I had asked you if
9 all the withdrawals from the capital reserve
10 accounts for capital expenditures were related to
11 the 2024 Summit renovation. Do you recall that?
12 A. Yes.
13 Q. And you said yes, but there was some other
14 things. Do you recall that testimony?
15 A. Yes.
16 Q. What were you referencing to when you said
17 "other things"?
18 A. Other capital expenditures. Everything
19 that we pulled from the reserves were capital
20 expenditures.
21 You specifically asked about the Summit
22 rooms and, no, they were not all for the Summit
23 rooms but they were all capital expenditures.
24 Q. So, capital expenditures for other items

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1 that you don't necessarily recall as you sit here
2 today?
3 A. Yes.
4 Q. Were they all based upon actual invoices?
5 A. All invoices based on the CC&Rs and the
6 reserve study.
7 Q. Okay. Thank you.
8 There's a total of 670 unit, correct?
9 A. Yes.
10 Q. And what percentage of those 670 units are
11 owned by Defendants?
12 A. By Defendants? 560.
13 Q. And about how many of them are owned by
14 Plaintiffs?
15 A. Ninety-three, I believe.
16 Q. And then there are another certain numbers
17 that are owned by Non-plaintiffs. Is that accurate?
18 A. Correct.
19 Q. And if I add up all those numbers, I have
20 the 670 units.
21 A. Correct.
22 Q. When I'm looking at reserves, money that is
23 in the reserve accounts that is attributable to the
24 Defendants' units, what percentage of the money in

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1 the reserve account is attributable to the
2 Defendant-owned units?
3 A. Roughly 84 percent of it.
4 Q. So, if I'm looking at a \$16 million account
5 balance in the reserves, 84 percent of that money is
6 attributable to the Defendant-owned units.
7 A. Correct. It was funded by the
8 Defendant-owned units.
9 Q. Okay. And then what percentage of the
10 money in this reserve account is attributable to the
11 Plaintiffs' units?
12 A. It's 93, so it was roughly 13, 14 percent.
13 Q. Okay. So, out of -- if I use a number of
14 \$19 million that was withdrawn out of the reserve
15 accounts from a dollars-and-cents perspective, what
16 dollar amount would be attributable to the
17 plaintiffs' units?
18 A. I believe we only withdrew about 16 or
19 17 million, is what I believe it was.
20 Q. Okay. Let's do 16 million.
21 A. It would be roughly.
22 Q. What would be the dollar value attributable
23 to the Plaintiffs' units?
24 A. 1.5, 2 million.

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1 Q. 1.5 to 2 million, somewhere in there?
2 A. Yes, off the top of my head.
3 Q. To be clear, were the plaintiffs -- had the
4 plaintiffs been paying the reserve contribution?
5 A. When you say "pay" they've been -- we --
6 GSR MEI has taken it from their rental revenue less
7 the DUF their 50 percent of the rental revenue. And
8 then we've taken a portion of it, whatever's left we
9 take and fund the reserves.
10 Q. They're not writing you a check to cover
11 the references you're holding from their rent?
12 A. Correct.
13 Q. Why are you withholding it versus them
14 paying you a check?
15 A. Per CC&Rs it's -- if -- so, we take the
16 DUF, 50 percent, add 50 percent of the resort fee
17 minus the SFU expenses, and then if there's any left
18 over, it goes towards the reserves.
19 Q. My question more particularly is why aren't
20 we making them write the checks?
21 MR. MILLER: Leading.
22 THE COURT: Overruled.
23 THE WITNESS: They have not -- any balances
24 that they owed have not been -- there's probably --

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1 since 2020 there's been about a handful that have
2 actually paid any balances due.
3 MR. McELHINNEY: Since what year?
4 MR. MILLER: Objection, assumes facts not
5 in evidence.
6 THE COURT: Overruled.
7 BY MR. McELHINNEY:
8 Q. Do you know currently the number of
9 plaintiff unit owners that owe money to the GSR?
10 A. The last I looked, it was 47.
11 Q. Forty-seven out of what? Ninety-two?
12 A. Ninety-three.
13 THE COURT: And that's based on the
14 calculations you did and the second special
15 assessment you did.
16 THE WITNESS: Not the -- the second special
17 assessment was reversed, so this is just based on
18 our calculations that we've used based on the orders
19 that we -- based on Legal and what's determined our
20 expenses are.
21 THE COURT: Based on your analysis.
22 THE WITNESS: Our expenses based on Mr.
23 Teichner's original expenses, which changes from the
24 judge.

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1 BY MR. McELHINNEY:
2 Q. I think we maybe covered this, but did the
3 receiver ever move to enjoin you from withdrawing
4 money from the reserve accounts?
5 A. No.
6 Q. You have in front of you, Mr. Brady, the
7 Defendants' copy trial Binder No. 3 of 4.
8 A. Yes.
9 Q. I'd like to go through some invoices with
10 you that Plaintiffs' counsel showed to the receiver.
11 Please turn to Exhibit 66.
12 I may or may not have these in
13 chronological order. I'll tackle them in the order
14 they appear in the book.
15 Can you look at this invoice and tell me do
16 you recognize it?
17 A. Yes.
18 Q. Do you provide the numbers that go into
19 this owner's account statement that gets generated
20 into the statement?
21 A. Yes.
22 Q. Can you look at the daily use fee and tell
23 me if that is a fee that was calculated by the GSR?
24 A. Yes, it was.

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1 Q. Okay. And how did you arrive at that
2 number? This invoice is January 18th, 2022.
3 A. So, this was for the period of
4 December 2021, so we would have compiled the budget
5 in November 2020. We would use, again, previous 12
6 months. But since the previous 12 months they were
7 COVID, we substituted three of the months from 2019,
8 and I believe Mr. Teichner did the same in his
9 calculations.
10 So, we would have used those and they would
11 have gone out to the unit owners November of 2020
12 statements and along with the reserve studies, and
13 those is how we calculated 2021's.
14 Q. Are those calculations consistent with your
15 2020 calculations that you arrived at with Mr.
16 Teichner except for the items that you said you
17 backed out because the court said you couldn't use
18 them?
19 A. Correct. So, we used Mr. Teichner's
20 original plan, his worksheet that was -- originally
21 said we couldn't use, based on there was, I believe,
22 five different factors -- four factors.
23 So, we, you know -- and then since saying
24 go back to Proctor's numbers, but they were stricken

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1 from the record. So, during this time we adjusted
2 the original Teichner numbers from 2020 and we
3 changed everything that the judge said was wrong
4 that he specifically laid out what was wrong. We
5 adjusted those off and we have been using those
6 numbers ever since, and that was these numbers too.
7 Q. And these numbers are consistent with the
8 governing documents.
9 A. Absolutely.
10 Q. Exhibit 77 is an invoice from April 18th,
11 2022. I'll ask you the same question.
12 Are the numbers generated on this statement
13 numbers that you generated?
14 A. Yes.
15 Q. Based on the formula and same methodology
16 that you previously described?
17 A. Correct.
18 Q. And looking at these numbers, can you tell
19 me how you arrived at those numbers?
20 A. So, for these numbers -- this is April 2022
21 -- so, in -- this was for March 2022. Again,
22 November -- October, November I create the budget
23 for the previous 12 months using actuals, same
24 worksheet again that Mr. Teichner came up with for

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1 the 2020 numbers but less -- backed out, again, all
2 of the things that were noted by -- I think this was
3 the December 2020 order but used same calculations
4 sent out to all of the unit owners and the budget
5 for 2022 along with the reserves.
6 **Q. So, are these numbers different from the**
7 **numbers that appear in the earlier exhibit we looked**
8 **at, Exhibit 66?**
9 A. Yes.
10 **Q. And tell me why.**
11 A. Every year we have to come up with a budget
12 per the CC&Rs.
13 **Q. And that's consistent with the Seventh**
14 **Amended CC&Rs, correct?**
15 A. Correct.
16 **Q. Turn to Exhibit 82, if you would, please.**
17 **Same questions. This is an owner's account**
18 **statement, it looks like, for the period October 1,**
19 **2022, to October 31, 2022. I see numbers on there.**
20 **Did you generate these numbers appearing on**
21 **this statement?**
22 A. Yes.
23 **Q. Did you use the same methodology that you**
24 **had described already?**

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1 A. Yes. Since these are 2022, yes.
2 **Q. Are these numbers different from the last**
3 **two statements that we've looked at and, if so, why?**
4 A. They're different from the first statement
5 because the first statement was 2021. And then the
6 last statement was 2022 and this was 2022, so they
7 are the same.
8 **Q. So, they are -- I see consistency between**
9 **those two exhibits, then.**
10 A. Yes.
11 **Q. Okay. Again, these calculations are in**
12 **accordance with the Seventh Amended CC&Rs?**
13 A. And the unit maintenance agreement because
14 of the DUF.
15 **Q. Very well. Go to Exhibit 87. This is on**
16 **owner account statement for the period November 1,**
17 **2022, to November 30th, 2022.**
18 **Did you generate the numbers appearing on**
19 **this invoice or statement?**
20 A. Yes.
21 **Q. And tell me how you arrived at these**
22 **numbers. And if they're different from the prior**
23 **invoices or statements, tell me why.**
24 A. You said this was for December 14, 2022,

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1 right?
2 **Q. Right. I was looking for the period --**
3 **A. Yes, for November 2022.**
4 **Q. Yes.**
5 A. This would be the same as the first two
6 because, again, this is 2022. So, it doesn't change
7 throughout the year.
8 **Q. All right. Let's go to Exhibit 88. This**
9 **is an account statement dated September 9th, 2021,**
10 **for the period August 20, 2021, to August 30, 2021.**
11 **Did you generate these numbers on this**
12 **invoice?**
13 A. No.
14 **Q. Who generated these numbers?**
15 A. These are Proctor's numbers.
16 **Q. Okay. So, was this during a period that we**
17 **were ordered to follow Proctor's numbers?**
18 A. So, when the orders came out Christmas Eve
19 of 2020, it was said to go back to Proctor's numbers
20 until Mr. Teichner can redo his numbers or look into
21 his numbers.
22 So, we were using Proctor's numbers until
23 September of 2021 when it was stricken from the
24 court that we couldn't use Proctor's numbers.

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1 **Q. Very well. What I'm looking at here are**
2 **numbers -- did you generate this statement but you**
3 **used Proctor's numbers? Is that your testimony?**
4 A. That is correct.
5 **Q. Okay. And then, finally, Exhibit 89, which**
6 **is a statement dated October 14th, 2021, for the**
7 **period September 1, 2021, through September 30th,**
8 **2021, did you generate these numbers?**
9 A. I did.
10 **Q. And what numbers are you applying on this**
11 **invoice?**
12 A. These were the budget numbers from 2020
13 that we would have applied if the order did not come
14 out on Christmas Eve to use Proctor's numbers, so
15 these were the numbers that we used from -- that we
16 did from November 2020.
17 So, it would have been September 2020 all
18 the way back to October of 2019 but, again, we had
19 to -- we were closed for three months due to COVID
20 so we had to use three months from 2019, March,
21 April, May.
22 **Q. I'm going to take you back to Exhibit 77.**
23 **Take a look at that invoice, please. It shows net**
24 **due to owner \$4,387.01. Do you see that?**

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1 A. I do.

2 Q. Do I understand that correctly, that is

3 money that is due back to the unit owner?

4 A. That is correct.

5 Q. Did you pay that money back to the unit

6 owner?

7 A. We did not.

8 Q. Why?

9 A. Two reasons. One, for the plaintiffs we

10 have been paid five times since 2020 any money owed.

11 So, their accounts have literally never been up to

12 date and in line so -- on that factor.

13 And then on the second factor, we are

14 seasonality. We are very busy in the summer and

15 lose steam in about -- right around October through

16 April we kinda lose steam, less revenue comes in.

17 So, it was because of that fact we --

18 because of those two factors and after talking with

19 Legal, we decided not to do a paid-out because it

20 would come back and we would have to take it out of

21 the rental revenue and at some point they would owe

22 us.

23 Q. I think you told us a moment ago that there

24 are 46 plaintiffs who owe you money.

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1 A. Forty-seven.

2 Q. Forty-seven.

3 A. As of the end of may.

4 Q. So, I want to make sure I understand your

5 testimony.

6 You're withholding rent money because

7 during the quiet months -- do I understand

8 correctly -- the rental income won't be enough to

9 cover their obligations of DUF, SFUE, HE and

10 reserves. Do I understand that correctly?

11 A. That is correct.

12 Q. So, you have to use that money that you owe

13 them to actually pay their share of the costs

14 because they're not writing you checks.

15 Do I understand that correctly?

16 A. Correct. They have -- again, there's only

17 been five instances, not five -- five instances that

18 they've ever cut us a check.

19 Q. All right. And how likely is it from your

20 experience that these positive numbers dropped to

21 negative numbers during that October-April time

22 period?

23 A. More than likely they will drop, not all,

24 some because there is ten different categories of

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1 different types of rooms. Some rooms will

2 absolutely drop and will never, you know, hit the

3 due-to unit owner, and some are -- will stay

4 negative, but they'll get almost to zero. So, the

5 likelihood is very likely for most.

6 Q. And if you distributed that money that you

7 owe them now based upon your experience, how likely

8 is it that they will pay you when they go negative

9 and owe you money?

10 A. Well, if you take five instances from 2020,

11 so that's, you know, 24, that's 27 months, times

12 that by 93 unit owners, not very likely at all.

13 Q. Okay. Even extremely unlikely.

14 Would you agree?

15 A. I would agree.

16 MR. McELHINNEY: Court's indulgence,

17 please.

18 THE COURT: Sure.

19 BY MR. McELHINNEY:

20 Q. Did GSR ever intend to violate a court

21 order?

22 A. No.

23 Q. Would GSR knowingly ever violate a court

24 order?

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1 A. No.

2 MR. McELHINNEY: No further questions, your

3 Honor.

4 THE COURT: Mr. Miller.

5 CROSS-EXAMINATION

6 BY MR. MILLER:

7 Q. Just because we looked at Exhibit 88, can

8 you refer to that document again.

9 A. Yes, sir.

10 Q. So, in referring to Exhibit 88, turn to the

11 second page and look at the contracted hotel fees.

12 A. Yes.

13 Q. And do you see the amount of \$463.12?

14 A. I do.

15 Q. Do you understand that to be the amount

16 that Proctor calculated as the contracted hotel

17 fees?

18 A. Yes.

19 Q. Do you know if that number was ever

20 challenged by your counsel at that time going back

21 when those were originally calculated?

22 A. Back in 2015?

23 Q. Yeah.

24 A. I don't know. I'm sorry.

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1 Q. So, you don't know if anybody protested
2 those as being too high or too low?
3 A. I'm not sure, no.
4 Q. Now, let's turn to Exhibit 87. I believe
5 you stated that these are the contracted hotel fees
6 that you had calculated for 2022. Is that correct?
7 A. Yes.
8 Q. And in the amount there, is that \$981.02?
9 A. Yes.
10 Q. So, your contracted hotel fees are more
11 than double what Proctor, or slightly -- very close
12 to double what Proctor calculated in that?
13 A. I don't know what type of room it is. I
14 don't know if it was the same room.
15 Q. Look at the statement.
16 A. What was the first exhibit? Exhibit 88?
17 THE COURT: Unit 1886.
18 THE WITNESS: Thank you, your Honor.
19 MR. McELHINNEY: No further questions.
20 THE COURT: At all?
21 MR. MILLER: Well, no. There's no question
22 pending.
23 MR. McELHINNEY: I think he's allowed to
24 give an explanation.

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1 THE COURT: He is on redirect. Write it
2 down. It was Exhibit 87 and 88.
3 MR. McELHINNEY: I just remember you saying
4 not to interrupt the witness.
5 BY MR. MILLER:
6 Q. Turn to page six, and this is the
7 appointment order that we continue to talk about,
8 Exhibit 115.
9 A. Okay. Yes.
10 Q. Let me have you -- I'll just read it to
11 you. Starting at line 12 it says, "To pay and
12 discharge out of the properties' rents and/or GSR
13 UOA monthly dues collections, all the reasonable and
14 necessary expenses of the receivership."
15 Do you see that?
16 A. I do.
17 Q. Do you understand that Mr. Teichner was to
18 be paid out of the rents?
19 A. If it was -- yes and no, because --
20 Q. How no? Explain the "no" part.
21 A. Sure. Well, there was another order that
22 said -- I believe it was brought up -- the
23 Defendants's brought up that in 2016 it said that it
24 was per the receiver's discretion.

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1 Q. Do you understand that our first two
2 motions for order to show cause -- or maybe even the
3 first three motions for order to show cause -- were
4 entered before we had any of the January 4th, 2022,
5 order? You understand that?
6 A. Correct.
7 Q. Okay.
8 A. The first time he -- first time he ever
9 said he wanted the rents was in September of 2021.
10 Q. That's not my question.
11 A. Okay.
12 Q. Okay. Do you understand, then, that Mr.
13 Teichner was to be paid out of the rents?
14 A. At his discretion, yes.
15 Q. Okay. Thank you.
16 And do you think he didn't want to get
17 paid?
18 A. Again, the GSR, the UOA pays him, not GSR,
19 and we have nothing to do with the UOA.
20 Q. Who -- what entity was it that took in the
21 rents? What entity was holding the rents when the
22 units would be rented?
23 A. MEI-GSR.
24 Q. And you represent MEI-GSR, correct?

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1 A. I do.
2 Q. You represented the entity that took in the
3 rents and held those rents, the same rents that were
4 supposed to pay Mr. Teichner. Is that correct?
5 A. Yes, based on his calculations. He had to
6 give me the net rents.
7 Q. Not to be paying his fees. What order says
8 that Mr. Teichner has to give you the net rents to
9 be paid his fees?
10 A. What order?
11 Q. Yeah.
12 A. A lot of orders.
13 Q. So, you're telling me that you believe
14 there's an order somewhere in existence that Mr.
15 Teichner has to give you any calculations whatsoever
16 to be paid his fees out of the rents.
17 A. Yes. I believe there were several orders.
18 Q. I would like to see it. I mean, if you can
19 refer to a specific order, because I haven't seen
20 one.
21 A. I don't know the exhibits off the top of my
22 head. I'm sorry.
23 Q. We're talking about the payment of Mr.
24 Teichner's fees from the rents.

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1 You understand that, correct?

2 A. I understand that, yes.

3 Q. The entity that you represent was in

4 possession of all those rents, right?

5 A. They were?

6 Q. Is there any reason why when he submitted

7 his last invoice that wasn't paid, I believe in

8 November of 2019, that you, representing GSR and

9 sitting on all those rents that come in, the rents

10 for Defendant-owned units and Plaintiff-owned units,

11 is there any reason why you couldn't have written a

12 check to pay his invoice so he could continue to

13 work? From the rents.

14 A. Again, GSR UOA, that's who paid him, not

15 GSR.

16 Q. All right. Let's look at page eight of the

17 same document and then I'll read to you lines 16 to

18 18. It states, "It is further ordered that

19 Defendants and any other person or entity who may

20 have possession, custody or control of any property,

21 including any of the their agents, representatives,

22 assignees and employees shall do the following."

23 "Any," not -- okay. Before we go on to the

24 next, do you understand what that says, "Any

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1 defendant" and that would include MEI-GSR.

2 Is that correct?

3 A. That's correct.

4 Q. All right. So, let's go to the top of page

5 nine, subsection E. It states, "Turn over to the

6 receiver" -- do you see the word "all" --

7 A. I do.

8 Q. -- "all rents, dues, reserves and revenues

9 derived from the property wherever and in whatever

10 mode maintained."

11 So, when we go back to 2021 when Mr.

12 Teichner was not being paid for his invoices -- and

13 he submitted his invoices, correct?

14 A. Not to us, no.

15 Q. Did he submit them to your counsel? Were

16 they filed with the court?

17 A. I -- I'm unaware of that. I don't know.

18 Q. Do you believe it's safe to assume that his

19 invoices were filed with the court in this action?

20 MR. McELHINNEY: Objection, speculation.

21 THE COURT: Sustained. Rephrase the

22 question.

23 BY MR. MILLER:

24 Q. Assuming his invoices were filed with the

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1 court, do you believe that MEI-GSR was in possession

2 of Mr. Teichner's invoices?

3 A. Truthfully, I'm not 100 percent sure. I've

4 never seen them.

5 Q. Okay. So, at that point, when he submits

6 his invoices, do you agree that under the

7 appointment order any defendants have a duty to turn

8 over to the receiver all rents under this

9 appointment order? Do you dispute the language of

10 that order?

11 A. Again, I go with my legal counsel. I

12 talked it over with my legal counsel.

13 Q. Tell me what your legal counsel told you

14 about that. The attorney-client privilege has been

15 waived here. Tell me what you can recall about your

16 legal counsel telling you whether or not all rents

17 need to be turned over to the receiver.

18 MR. SMITH: Your Honor, I'm not trying to

19 tag team. I'm aware of the sanction, which is a

20 whole separate issue. I'm aware of our attempt to

21 reinstate that so there's a clawback provision.

22 This is oral testimony. Another point on

23 that is the sanction was imposed in the first place,

24 presumably -- I disagree with it -- but to even the

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1 playing field based on misconduct with the

2 underlying judgment.

3 We're now in a contempt proceeding where

4 there's jurisdiction for it or not which is

5 collateral to any misconduct which may or may not

6 have occurred leading to the sanction. So, I don't

7 believe it's even appropriate to apply that prior

8 waiver to the extent it's still in place in this

9 collateral proceeding, No. 1.

10 Because, again, the misconduct -- alleged

11 misconduct for which it was imposed doesn't affect

12 this proceeding, so it seems an unfair and a

13 violation of due process to apply that sanction

14 here.

15 No. 2, it applies to documents your Honor

16 pointed out that there was a clawback process. That

17 clawback process doesn't really work here in a

18 courtroom.

19 And, No. 3, I'd like to avoid a Harvey

20 Whittemore situation where I have to instruct the

21 witness not to answer and just take a writ and this

22 proceeding doesn't get done for two years.

23 THE COURT: Two years or three years?

24 MR. SMITH: It might have been three at

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1 that point, your Honor.
2 So, I don't think that prior sanction
3 applies to this proceeding.
4 No. 2, I don't it applies to oral
5 testimony.
6 And, No. 3, if it does, I'm going to be
7 forced to instruct the witness not to answer and
8 this proceeding won't finish.
9 THE COURT: Mr. Miller?
10 MR. MILLER: I believe, your Honor, you
11 would determine whether or not the proceeding will
12 finish.
13 But the attorney-client privilege has been
14 clearly waived in this case. There are numerous
15 instances where we're going to go through, even
16 today, where the internal emails of counsel directly
17 conflict with the positions that they've made, even
18 today, even during these hearings, such as the
19 inclusion of the pool expenses into the expenses.
20 So, I believe that the record demonstrates
21 it has been waived, the court's ruled it's been
22 waived. There's ample evidence to show we've got
23 statements from counsel that directly conflict with
24 representations that have been made. So, I believe

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1 the door has been opened and that he should answer
2 that line of questioning, but I would defer to
3 Mr. Eisenberg as well.
4 THE COURT: Mr. Eisenberg, anything to add
5 before I rule?
6 MR. EISENBERG: Can I speak to Mr. Miller
7 for a moment?
8 (Sotto voce discussion between counsel.)
9 MR. MILLER: Your Honor, even during these
10 proceedings Mr. Brady has repeatedly stated that he
11 relied upon counsel for certain positions and this
12 would be one of those positions certainly at issue
13 in these contempt proceedings.
14 THE COURT: I certainly understand your
15 position. However, my position is that the
16 documents that were subject to the sanction order to
17 the extent they relate to a witness' testimony, the
18 testimony is fair game.
19 However, if it does not relate to a
20 specific document that has been previously produced
21 as a result of the sanction order, I'm going to
22 allow the defendants to stand on an attorney-client
23 privilege.
24 I understand the defendants are,

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1 essentially, relying upon advice of counsel with
2 this witness as to why he did some things or like
3 the receiver relied on the advice of counsel why he
4 did things and changed things. That's the situation
5 we're in and we will deal with as I'm evaluating
6 credibility.
7 MR. MILLER: Thank you, your Honor.
8 To be clear, I have a little -- I
9 understand your instruction --
10 THE COURT: Unless you have a document.
11 MR. MILLER: Thank you, your Honor, unless
12 I have a document.
13 BY MR. MILLER:
14 **Q. Going back to November of 2021 when Mr.**
15 **Teichner's invoices first stopped being paid, is my**
16 **recollection from his testimony, going back at that**
17 **time could you in your position at MEI-GSR holding**
18 **all the rents for both the plaintiffs and the**
19 **defendants' units, could you have written a check**
20 **from the rents to Mr. Teichner at that time so that**
21 **he would continue working on this case?**
22 A. Me personally, no, I could not have without
23 approval from a lot of levels of approval. So, no,
24 I could just not write a check, unfortunately.

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1 **Q. If someone above you would have approved**
2 **that expense, could you have written the check to**
3 **Mr. Teichner paying him for his services and**
4 **deducting that from the rental proceeds that were**
5 **collected from the units for that time period?**
6 A. Yes. We would have needed a W-9 from Mr.
7 Teichner, because I don't think we've ever paid him
8 personally through GSR. So, yeah, if I get a check
9 request and properly approval, I would be able to
10 pay. Yes.
11 **Q. Who would you have had gotten approval**
12 **from?**
13 A. We have a list of approvers company-wide,
14 so depending on the dollar amount, it goes to the GM
15 and then to Mr. Armona and it would probably have to
16 be -- since this is a legal case, it would have to
17 be approved by legal counsel.
18 **Q. Is Mr. Meruelo at the apex of that**
19 **approval?**
20 A. He is not.
21 **Q. Mr. Armona is at the apex of that approval?**
22 A. Over a certain dollar amount, yes, he's the
23 apex.
24 **Q. Is there anybody above Mr. Armona?**

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1 A. No.

2 Q. Okay. And is Mr. Armona also a manager of

3 MEI-GSR Holdings?

4 A. When you say "manager" ...

5 Q. So, my understanding is that MEI-GSR

6 Holdings LLC is an LLC, correct?

7 A. Correct.

8 Q. And LLCs have managers.

9 Are you familiar with that term?

10 A. Yeah.

11 Q. Is it your understanding that Mr. Armona is

12 the manager of MEI-GSR Holdings?

13 A. I believe, yes. I believe he has --

14 actually, I'm not 100 percent sure. I'm sorry.

15 Q. Okay. We have a document for that we'll

16 get to later.

17 A. Okay. We pay a management fee to Meruelo

18 Group because they are -- they manage us.

19 Q. If MEI-GSR stopped paying you, would you

20 continue to work for them?

21 A. Yes, most likely.

22 Q. For how long would you continue to work

23 without payment?

24 A. I'm not sure. I like GSR, so not --

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1 couldn't answer that hypothetical.

2 Q. Okay. If we go back to page six, we read

3 the provision from lines 12 to 14 about the receiver

4 being paid from the rents, correct?

5 A. Yes.

6 Q. And is there anything ambiguous in that to

7 you?

8 A. This order itself, no, but there was many

9 orders after this.

10 Q. That wasn't the question.

11 And this is important because this is a

12 legal proceeding, right? We have certain standards.

13 So, if I ask you a question about something

14 like that, if you can answer the question, that

15 would be great. Because I'm just asking you about

16 this paragraph.

17 And my understanding is that you just

18 confirmed that there's nothing ambiguous about that

19 paragraph.

20 A. Truthfully, I haven't read the whole order

21 in a while so, without reading the whole order, I

22 can't honestly answer.

23 Mr. Miller, I'm sorry I'm frustrating you.

24 Q. No, you're not frustrating me.

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1 A. I'm trying to answer the questions as

2 honestly as possible.

3 Q. I'll ask you the question again: As to

4 that paragraph that we just looked at, in reading

5 that paragraph that talks about how he gets paid

6 from the rents, is there anything ambiguous in that

7 paragraph?

8 A. It's GSR UOA monthly fees. No.

9 Q. Thank you. And then we went back to page

10 nine of the order and we looked at the top of page

11 nine, lines one and two. And that's the part about

12 any defendant having a duty to turn over to the

13 receiver all rents, dues, reserves and revenues.

14 Is there anything ambiguous to you about

15 those two lines of this order?

16 A. Dues, I'm not sure what -- that would be

17 the only thing. I don't know what dues are.

18 Q. All right. Then, let's limit that.

19 Is there anything ambiguous in this section

20 that we just referred to about "turn over to the

21 receiver all rents, reserves," just those two

22 things? Is there anything ambiguous about turning

23 over all rents and all reserves?

24 A. No.

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1 Q. Is there any reason why MEI-GSR couldn't

2 turn over all rents and all reserves to the

3 receiver?

4 A. Yeah. He didn't open a bank account.

5 Q. That's not what I asked you. That's not

6 the question.

7 So, under this order -- do you see under

8 this order, the language of this, is there any

9 reason why under the language of this order that

10 we're looking at, these two lines, that MEI-GSR

11 couldn't have turned over the rents and the

12 reserves?

13 A. Truthfully, this was back in 2015. I don't

14 know, Mr. Miller.

15 Q. Okay.

16 A. I honestly don't know.

17 Q. You have no clear reason why they couldn't

18 turn over the rents and reserves?

19 A. Back in 2015, I'm not sure.

20 Q. How about today? As we sit here today is

21 there any reason why MEI-GSR can't turn over all

22 rents and reserves to the receiver?

23 A. Yeah. There's a couple of reasons.

24 Q. Please state them.

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1 A. No bank account.

2 **Q. All right. Let me stop you there before we**

3 **go on. I'm --**

4 A. Can --

5 THE COURT: We're going to write them down

6 and give you a whole list so we don't forget.

7 THE WITNESS: No. 2, there's many orders

8 that said that he would calculate it and come back

9 to us. He never calculated it.

10 No. 3, we don't know what the reserves are.

11 He's never done the reserves. The receiver has not

12 done his job, so I cannot do my job.

13 MR. MILLER: Your Honor, this is a new

14 document that has not been marked as an exhibit.

15 THE CLERK: Exhibit 143 is marked.

16 THE COURT: Any objection to 143?

17 MR. McELHINNEY: I've never seen it, your

18 Honor.

19 THE COURT: Take a moment and decide if you

20 have an objection.

21 Don't read from it. You can read it to

22 yourself if you want to.

23 MR. McELHINNEY: I would not stipulate to

24 it.

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1 THE COURT: So, you have an objection?

2 MR. McELHINNEY: I'm not familiar with this

3 document.

4 THE COURT: Mr. Miller, has the document

5 ever been produced?

6 MR. MILLER: Yes. It was emailed from

7 Stefanie Sharp to David McElhinney and Jarrad Miller

8 on May 5th, 2023, titled "Rent collections of unit

9 owners." It includes account information for the

10 account opened by the receiver.

11 THE COURT: I thought you had stipulated to

12 all emails that you had exchanged among yourselves.

13 MR. MILLER: I heard from Mr. Brady this

14 morning that there was no account, that he doesn't

15 have any account information or no access to it. He

16 just said he has no access.

17 THE COURT: That's not what I'm asking.

18 As part of what I was doing in the

19 exhibit-admitting process, I asked you what did you

20 stipulate to and you guys told me you stipulated to

21 all the emails. This is not an email?

22 MR. McELHINNEY: It is an encrypted message

23 that I've never seen.

24 THE COURT: Encrypted?

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1 MR. McELHINNEY: Yes, it was sent

2 encrypted.

3 THE COURT: It has your email address on

4 it?

5 MR. McELHINNEY: It does.

6 MR. MILLER: Yes.

7 THE COURT: Okay. Is it's been offered and

8 objected to, and there's a process you have to

9 follow.

10 MR. McELHINNEY: All right.

11 MR. MILLER: Your Honor, this is an email

12 from the counsel for Stefanie Sharp, the counsel for

13 the receiver. It's to Mr. McElhinney and myself and

14 it's from May 5th, 2023.

15 THE COURT: So, you can't lay the

16 foundation by argument.

17 MR. MILLER: Okay.

18 THE COURT: You have to do it testimony or

19 stipulation.

20 MR. MILLER: I believe it's subject to our

21 existing stipulation for all emails. Mr. McElhinney

22 is disputing that's the case, so, I guess, I could

23 call Mr. Mr. McElhinney.

24 THE COURT: He says he didn't get it. He

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1 told me a minute ago he didn't receive it. He's

2 never seen it before.

3 MR. McELHINNEY: Your Honor, let me be

4 clear. If it's an encrypted message, I may have

5 received it but I don't open them. I'm highly

6 suspicious of them. I'll go under oath.

7 If I knew she had sent wiring instructions,

8 I would have sent that to Mr. Brady. I did not open

9 an encrypted message from anybody. I don't as a

10 practice.

11 MR. MILLER: Okay. We'll move on.

12 THE COURT: Mr. Brady, does the one you

13 have a sticker on it or not?

14 THE WITNESS: No.

15 THE COURT: Keep that document that you

16 have. It has writing on it. You have information

17 on how to give the receiver money so he can get

18 rents.

19 MR. MILLER: We blew it again, your Honor.

20 It's been redacted.

21 THE COURT: Never mind. I was just trying

22 to be helpful. So, that didn't work either, sir.

23 We'll figure out how to get it to you.

24 MR. MILLER: Mr. McElhinney would need to

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1 open an encrypted message.
2 THE COURT: He won't, so can you give a
3 copy to the witness yourself.
4 MR. MILLER: Yes. Thank you.
5 THE COURT: How do you know it's encrypted?
6 MR. McELHINNEY: It says it on the email
7 itself.
8 THE COURT: I don't even know what that
9 means.
10 MR. McELHINNEY: You know, I'm not sure I
11 do either.
12 THE COURT: I'm not that tech savvy. I
13 don't know what an encrypted message is.
14 MR. McELHINNEY: I don't know either. To
15 me it has spam or it has "something's wrong" written
16 all over it and I have visions of shutting down my
17 computer.
18 THE COURT: I just had a question. Keep
19 going, please, Mr. Miller. We'll figure this out
20 later.
21 MR. MILLER: All right, thank you.
22 BY MR. MILLER:
23 Q. Mr. Brady, do the CC&Rs dictate what goes
24 into the reserves?

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1 A. Yes.
2 Q. Okay. Do the CC&Rs dictate what goes into
3 a reserve study?
4 A. What goes into the reserve study?
5 Q. Yeah. What components can go into the
6 reserve study.
7 A. Yeah.
8 Q. Okay. So, in order to do a proper reserve
9 study, you have to comply with the underlying CC&Rs.
10 Is that correct?
11 A. The third-party independent has to --
12 Q. Whomever --
13 A. -- comply.
14 Q. Whoever prepares the reserve study has to
15 comply. Is that correct?
16 A. That is my understanding, yes.
17 Q. Okay. And I'm doing it just as much as you
18 are, and I'll try not to do it, but we're talking
19 over each other, which is the No. 1 rule.
20 A. Understood.
21 Q. Let me have you refer to Exhibit 40. Have
22 you ever had the opportunity to review Exhibit 40?
23 A. I don't think in its entirety, no.
24 Q. I believe you stated that you'd been at the

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1 GSR for six years. Is that correct?
2 A. Yes.
3 Q. Okay. Do you recall during your time at
4 the GSR during your six years anyone indicating to
5 you that Mr. Teichner has the authority to determine
6 what goes into the reserves and the reserve studies?
7 A. From what I remember, he has authority to
8 oversee the reserve studies based on the CC&Rs.
9 Q. So, it's ultimately the reserves and
10 reserve study is under his authority.
11 Is that correct?
12 A. To oversee what is the independent company
13 that is actually doing the reserve study.
14 Q. So, he's the one who determines if the
15 independent study has followed the CC&Rs?
16 A. Yeah. He would have to work with
17 independent study because they follow the CC&Rs too,
18 so yes.
19 Q. Let me have you refer to Exhibit 45.
20 Are you familiar with this document? It's
21 an email from your counsel, David McElhinney to Ann
22 Hall dated July 9th, 2020.
23 A. I have not.
24 Q. "Starting with reimbursement of capital

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1 expenditures, one of the issues Miller raises in
2 that a declaration was not provided to verify
3 support the spreadsheet that Katherine prepared. We
4 can prepare a declaration for Katherine's signature,
5 or, as we argued in the reply, Teichner can do the
6 verification as the receiver."
7 Now, this is the important part: "Also,
8 another area of concern is that the CC&Rs identify
9 the hotel expenses as those appearing on Exhibit E
10 to the CC&Rs. Exhibit E does not identify the pool
11 or the front desk. Katherine relied on the reserve
12 study to identify which reserve expenses go in."
13 Now, this is important: "The problem is
14 that the reserve study does not exactly square with
15 the CC&Rs. The same problem exists with the common
16 elements. We did add in the argument that Teichner
17 has the authority to determine whether the expenses
18 are supported and properly attributable to the
19 reserves."
20 THE COURT: Is that an objection?
21 MR. SMITH: I want to put on the record we
22 still maintain our objection to the use of any
23 attorney-client privilege communications that we've
24 been ordered to produce. I understand it's been

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1 previously ruled on.
2 We're not waiving anything by sitting
3 silent based on that prior order.
4 THE COURT: I understand that you are
5 preserving your objection for purposes of appellate
6 review.
7 MR. MILLER: Thank you.
8 BY MR. MILLER:
9 Q. So, after reading this email, do you
10 understand that even your own counsel has determined
11 that Mr. Teichner is the one that determines if
12 items are properly attributable to the reserves?
13 A. With the independent third party? Sure, he
14 can --
15 Q. Where do -- where does it state that in
16 there?
17 A. Per the CC&Rs it's definitely stated that
18 an independent third party has to do it.
19 Q. Okay.
20 A. Now, independent third-party also is
21 supposed to look over the governing documents and
22 follow them. If there's any arguments between the
23 two, then that would be between them.
24 Q. Okay.

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1 A. I believe back in 2020 he did not have any
2 issues with the reserve study.
3 Q. Who?
4 A. Mr. Teichner. He never brought up to my
5 attention, as far as I know, to Katelyn's attention.
6 Q. Okay. Let me have you turn to Exhibit 46.
7 A. Yes.
8 Q. Exhibit 46 is an email from Stefanie Sharp
9 to Justice Saita dated September 15th, 2021.
10 Do you see that?
11 A. Yes.
12 Q. Are you familiar with this email?
13 A. I've read over it a couple times.
14 Q. Okay. Going to the first paragraph where
15 it says "Accounts," it says "As noted in the
16 receiver's report for the month of August, the
17 receiver requested that he have read-only access to
18 the reserve account so that he can monitor the
19 activity in those accounts. However, Defendants
20 denied this request."
21 Do you know why that request was denied to
22 even give him access to look at what's in the
23 reserve accounts?
24 A. We uploaded statements, so he had the

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1 statements for the reserve accounts in our shared
2 file.
3 Q. So, MEI-GSR in this case, as a result of
4 reviewing room key data and room key statements, was
5 determined to have committed fraud.
6 Do you understand that by sending out false
7 statements showing that there was no room rental
8 activity when, in fact, GSR was renting the rooms
9 and keeping all the revenue. Do you understand that
10 occurred in this case?
11 MR. McELHINNEY: Objection, your Honor,
12 contrary to evidence and I don't believe there's any
13 evidence in the record to support that
14 representation.
15 THE COURT: Can you rephrase your question.
16 BY MR. MILLER:
17 Q. Do you understand that the court has
18 determined in this case that GSR-MEI has committed
19 fraud?
20 A. I --
21 MR. McELHINNEY: Let me pose an objection.
22 I understand there's punitive damages in this case.
23 I don't remember as I sit here if there was
24 specifically a finding of fraud.

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1 THE COURT: Yes.
2 MR. McELHINNEY: Okay. Is that in the
3 findings of fact, conclusions of law?
4 THE COURT: It is. Both of them.
5 MR. McELHINNEY: Thank you, your Honor.
6 THE COURT: The ones I did and the one
7 Sattler did.
8 THE WITNESS: I'm not 100 percent sure, to
9 tell you the truth. Since I've been here there's --
10 that I know of there's been no fraud since I've
11 taken over.
12 BY MR. MILLER:
13 Q. Well, that's interesting, when you have
14 multiple court orders that say you're supposed to
15 apply receiver's fees and then you issue your own
16 fees. Is that not fraud, sending out -- when you're
17 under a receivership and you're supposed to apply
18 receiver's fees, but yet you send out statements
19 with your own fees, isn't that fraud?
20 A. Well --
21 Q. You're purporting that you --
22 THE COURT: Let him finish.
23 THE WITNESS: No. Mr. Miller -- the
24 plaintiffs are not the only ones in this, as we have

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1 110 unit owners. So, it is an obligation that I
2 have to do that I get audited for that I have to
3 send out statements per the CC&Rs.
4 It's not the plaintiffs that I'm only, you
5 know, gearing this towards. It's for all the unit
6 owners, for all the 110 third-party unit owners that
7 I send the statements out to.
8 So, because the receiver was not doing his
9 job, it has to be business as usual on my part. We
10 are a 24/7, seven days a week, 365 days a year
11 property. It doesn't stop, unfortunately. I wish
12 it would but, unfortunately, it does not stop.
13 BY MR. MILLER:
14 Q. Okay. So, going back to my original line
15 of questioning, you understand that in this action
16 the court has determined that MEI-GSR has committed
17 fraud.
18 A. Again --
19 MR. McELHINNEY: Your Honor, I'll pose an
20 objection. This is a default. The court, based
21 upon the allegations, concluded that there was
22 fraud, made a finding of fraud based on default.
23 THE COURT: Actually, my finding of fraud
24 was based upon a review of deposition testimony and

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1 I made an independent finding based upon that as
2 part of my findings.
3 BY MR. MILLER:
4 Q. Do you understand, as a result of those
5 actions, that the court deemed it necessary to
6 appoint a receiver in this case?
7 A. The 2015 order, I know a receiver was
8 deemed. I don't know why the whole -- I don't --
9 before 2015 that's the order I read. I'm not privy
10 to the whole proceedings. I'm sorry.
11 Q. Okay. So, if you have an action where
12 fraud has been committed and the court deems it
13 necessary to appoint a receiver so the defendants
14 don't continue to do the same type of action, does
15 it make any sense to you to not allow the receiver
16 to access the account electronically so he can make
17 sure that the bank statements that you're sending
18 him are accurate?
19 A. He has never once objected to the
20 statements. He was actually given statements --
21 eventually was given statements that were mailed to
22 him. So, it would have been impossible for us to
23 alter those letters.
24 Q. I find that -- I find your answer

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1 interesting for this reason.
2 We just went over in this email where he's
3 requested read access. He's requested, he actually
4 requests, I want read access to the reserve
5 accounts, and that's been denied.
6 So, literally what you've just said
7 contradicts this very email where he is saying, I
8 want read access, so I can access those accounts.
9 A. But is this an order or --
10 Q. No. This is an email from his counsel.
11 A. Okay. And I talked it over with my
12 counsel, Mr. Miller, and I -- for whatever reason,
13 we decided to go with statements.
14 Q. Okay.
15 A. I can't remember the exact reason. This is
16 back in 2021. I apologize.
17 Q. No problem. Let's go down into this email
18 further. It states, "The court approved the opening
19 of an account for the receiver and ordered the
20 following: That the rents for the plaintiff-owned
21 units, including the daily resort fees, net of the
22 total charges for the DUF, SFUE, and HE fees
23 combined and reserves, be deposited into a bank
24 account for the receiver." Do you see that?

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1 A. I do.
2 Q. Why is the receiver having to ask the court
3 to do this? Why aren't you guys just doing it as a
4 result of him asking for it?
5 A. This is the first time he's ever asked for
6 it.
7 Q. So, why wasn't it done following this?
8 A. He's never opened a bank account, never
9 provided me with the net rent. I can't do anything
10 unless he provides it based on this. There was a
11 lot of interaction after this between me and Mr.
12 Teichner about how this is going to be set up.
13 And it was always the net -- he would
14 calculate the net rent. He would open up an
15 account. So, there's nothing I could do unless he
16 opens up an account and calculates the net rent.
17 Q. Okay. We'll get to that.
18 Turn to Exhibit 47. This is another email
19 from your counsel, David Mr. McElhinney, dated
20 March 20th, 2020. And going into the first
21 paragraph, it states, "The charges for reserves
22 should be left to the sound discretion of Teichner
23 in accordance with the governing documents, which is
24 what he has been doing. Do you agree?"

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1 Do you see that?

2 A. In one?

3 Q. Yes.

4 (Witness reviewing document.)

5 THE WITNESS: Yes, that's what it says.

6 BY MR. MILLER:

7 Q. All right. Do you dispute that statement?

8 A. Yes, I do.

9 Q. In what way?

10 A. Again, the reserves are a third party. It

11 can't be Mr. Teichner. He's not qualified. He can

12 oversee it. I 100 percent agree with that.

13 Q. Okay.

14 A. To this day he still hasn't so --

15 Q. And that goes back to that concept that,

16 unlike you, Mr. Teichner actually wants to be paid

17 to do work. Is that correct?

18 A. Correct. But the difference is he gets

19 paid from the UOA, not the GSR MEI.

20 Q. Do we need to go back over Exhibit 115,

21 wherein there it states he gets paid from the rents?

22 Do you understand?

23 A. Correct, or UOA dues.

24 Q. Rents or dues. So, he gets paid from the

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1 rents, we established.

2 A. Or dues.

3 Q. MEI-GSR holds the rents, right? Didn't we

4 establish that?

5 A. Per the CC&Rs and unit maintenance

6 agreement, yes, you're absolutely correct.

7 Q. And we also established that under Exhibit

8 115, the appointment order, that the defendants have

9 a duty to turn over the rents to the receiver. Yes?

10 A. Based on him opening an account --

11 Q. Okay.

12 A. -- and based on him providing the net

13 revenue.

14 Q. And you don't get that anywhere from the

15 appointment order, do you? It's nowhere in that

16 Exhibit 115. Is that correct?

17 A. Mr. Miller, there's so many conflicting

18 orders, like it is very hard to read them. And I

19 have to go to Legal almost, you know, every week

20 just to figure out what is going on and to keep

21 track. Again, this has been going on for God knows

22 how many years.

23 Q. Let's turn to the second page of Exhibit

24 47, paragraph six. Again, we're referring to the

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1 internal email of your counsel. It states, "take

2 over the actual reserve accounts and monthly

3 collections to ensure timely funding of the reserves

4 and compliance with the governing documents. The

5 receiver has this authority in the appointment

6 order."

7 It states "He doesn't have to take over the

8 bank accounts if he sees no reason to do so." And

9 then "We should leave this to his discretion."

10 Do you see that?

11 A. Yes.

12 Q. So, he can take over those accounts if he

13 demands them.

14 A. Sure.

15 Q. All right. If he can take over the

16 accounts if he demands them, then doesn't he have

17 control over any withdrawals coming out of the

18 accounts?

19 A. He never took over the accounts. He

20 just -- until recently he asked.

21 Q. Okay.

22 A. He asked for read-only access.

23 Q. Let me have you turn to Exhibit 56.

24 Are you tax with the document?

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1 A. No. Page two, I am.

2 Q. To summarize page two, you had email

3 exchanges with Mr. Teichner on May 5th.

4 Is that correct?

5 A. Yes, sir.

6 Q. And did he demand the gross rents?

7 A. He did. That was the very first time.

8 Q. And did you argue with him turning over the

9 gross rents in your emails?

10 A. I've argued that we've always said from

11 then, from 2020 or September 2021 until then, that

12 it's been net rents. This is the first time he's

13 ever said "gross rents."

14 Q. That wasn't my question.

15 My question is, In accordance with -- he

16 even cites to it, Exhibit 115, the appointment

17 order, authority to collect all rents. He demands

18 the rents.

19 Do you respond by saying, "Yes, I'll turn

20 over all rents in order in accordance with your

21 authority"?

22 A. I'll have to read it. I'm not 100 percent

23 sure. I didn't think I responded back to him.

24 Q. Keep turning to page four. This is an

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1 email from you May 5th, 2023, to Mr. Teichner.
2 "I have some questions about this latest
3 demand." Do you see that?
4 A. Yes.
5 Q. So, in response to him demanding all rents,
6 did you say, Yes, I'll turn over all rents" or did
7 you respond to him by saying, No, you have a duty to
8 calculate net rents? Is that -- we can read through
9 your email again.
10 MR. McELHINNEY: Objection, that question
11 mischaracterizes what's set forth in the exhibit.
12 THE COURT: Sustained.
13 Rephrase your question.
14 BY MR. MILLER:
15 Q. You understand that Mr. Teichner demanded
16 the gross rents, correct?
17 A. Yes, I understand that.
18 Q. All right. And then the email that we're
19 looking at here, which is page four in Exhibit 56,
20 what was your response to his demand for the gross
21 rents?
22 A. I had some questions because this was the
23 first time that he went from net rents, which we
24 have been agreeing on since September of 2021 and

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1 even earlier, we've -- rents has always been net
2 rents.
3 Then all of a sudden here he comes out of
4 nowhere and says "gross rents" so, yes, I had many
5 questions for him because I don't know, you know --
6 I needed clarification.
7 Q. Okay. So, these actually go back in order.
8 If we look at page five of this -- and this is Mr.
9 Teichner to you stating "Read, effective immediately
10 I need for you to send me the total rents collected
11 on all of the plaintiff unit owners' units and on
12 all the defendant unit owners' units."
13 And was your response to that, "Yes, I will
14 send you those rents"?
15 A. No. I had questions.
16 Q. Okay. Is it -- if you're under a
17 receivership and the receivership order
18 unambiguously says that Mr. Teichner is entitled to
19 all rents, are you interfering or not cooperating
20 with the receiver when you question his demand to
21 turn over the rents?
22 A. If he just said, Hey, pay me \$2 million, am
23 I supposed to turn around and say, Yes? I have
24 questions. Me and him have always communicated.

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1 I'm actually the only one that can communicate with
2 him, is between me and him. We've had these
3 conversations back and forth a thousand times.
4 So, I need to clarification. I just can't
5 jump into something without clarifying. I talked it
6 over with my legal counsel and we determined we had
7 questions. We need clarification.
8 Q. So, is it your position here today that
9 tomorrow, in accordance with his demand, that you
10 turn over all of the gross rents for the plaintiffs'
11 and defendants' units, that you will comply with
12 that demand and deposit the money into the account
13 numbers that you now have?
14 A. I'm sorry. Repeat the question.
15 Q. We've looked at the appointment order. We
16 know that it says you have to turn over all rents.
17 Mr. Teichner in this email has unequivocally in no
18 uncertain terms said to turn over all rents for
19 plaintiff and defendant units.
20 My question to you is, Tomorrow, now that
21 you have the account information, which your counsel
22 has had for nearly a month, are you going to start
23 transferring those rents into Mr. Teichner's
24 accounts?

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1 MR. McELHINNEY: Your Honor, I'll object on
2 relevancy. I don't think this is a subject of the
3 motion for order to show cause.
4 THE COURT: It is not, but I'd like to hear
5 the answer.
6 THE WITNESS: Again, I have no sole
7 authority to issue anything. Again, you would have
8 to go through the approval. And I believe we filed
9 against this. We have filed against gross from the
10 very beginning.
11 The ambiguous, he changed his -- he has
12 said "net rents" the whole time and we've been in
13 communications about turning over net rents. But
14 he's never opened a bank account until May 5th,
15 2023. He's had a year and five months to open a
16 bank account.
17 We've never -- until recently we've
18 received a bank account. I'm trying not to -- I've
19 actually been very cooperative with Mr. Teichner.
20 We have a good relationship.
21 So, I've reached out to him many times
22 saying, What do you need from us? So, the fact that
23 he just changed, he went 180 degrees, yeah, I have
24 to question it and I would have to get with my legal

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1 counsel and determine what the best course of action
2 is.
3 BY MR. MILLER:
4 Q. Let me ask you a simple question.
5 When Mr. Teichner makes a demand on the GSR
6 that is squarely within the appointment order, such
7 as demanding the turnover of the rents in this case
8 and you question his request or delay responding to
9 his request, does that interfere with Mr. Teichner's
10 ability to do his work?
11 A. No.
12 Q. It doesn't?
13 A. No.
14 Q. Does it create additional --
15 A. One, he has provided no numbers for any of
16 the fees, so I don't know how he would be able to
17 calculate anything. He has done no work.
18 So, for him to just get the gross revenues
19 of all of units and then sit on it for how long,
20 please -- because it took him 14 months to open an
21 account. So, I don't know if we keep on just
22 feeding him net rent. I don't -- I still oppose the
23 gross rent -- net rent, how long would it be before
24 you would get paid, we would get paid? I don't

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1 know. I don't know that answer.
2 Q. Do you know when Mr. Teichner provided his
3 receiver's calculation of fees that were filed and
4 provided to the defendants and those fees still
5 weren't applied and haven't been applied, not one
6 time under Mr. Teichner's testimony, do you think
7 that Mr. Teichner may have gotten to the end of his
8 rope on the net fees argument when you just don't
9 apply what he's calculated?
10 MR. McELHINNEY: Objection, speculation.
11 THE COURT: Overruled.
12 THE WITNESS: No, I don't think he got to
13 the individual -- again, as soon as the 2020 fees --
14 2021 fees went into place on January 4th, by April
15 those fees are gone because you have to do a true-up
16 for the CC&Rs. You absolutely have to.
17 BY MR. MILLER:
18 Q. You bring up an interesting issue.
19 THE COURT: Let him finish.
20 THE WITNESS: Thank you, your Honor.
21 BY MR. MILLER:
22 Q. Do you understand when Proctor's
23 calculation of fees were approved by the court?
24 A. 2016, I believe.

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1 Q. Okay. And do you understand that Proctor's
2 calculation of fees were applied by the court from
3 2016 to the end of 2019?
4 A. And then they're stricken from the record
5 in September of 2021, so did ...
6 Q. That's --
7 A. Yes, I do understand that and I -- he was
8 not -- they were not following the CC&Rs or the
9 governing documents.
10 Q. Whose job is it to implement compliance
11 with the governing documents? As we sit here today,
12 whose job is it?
13 A. To oversee the governing documents, the
14 receiver --
15 Q. Yes.
16 A. -- and mine too.
17 Q. No.
18 Do you believe that the receiver authority
19 stripped MEI-GSR's ability to oversee and implement
20 the governing documents?
21 A. Stripped -- I mean, with a unit owner
22 maintenance agreement, there's certain things that
23 we have to do that the receiver won't do. We have
24 to collect the rents, we have to do that, so I hope

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1 it didn't strip our ...
2 Q. I think this is the fundamental problem,
3 right? You're operating under the assumption that
4 MEI-GSR still has the ability to make decisions over
5 Mr. Teichner concerning the application of the
6 governing documents. Is that correct?
7 A. No.
8 Q. Then, why wouldn't you apply his fees as
9 soon as they were provided to you?
10 A. The order it goes back -- used the fees
11 prior to February 27th until he recalculates them.
12 Q. What about the other order, the other
13 January order that specifically says to apply
14 Mr. Proctor -- or Mr. Teichner's calculated fees
15 until new fees are approved by the court?
16 A. There was seven orders and they were very
17 conflicting so ...
18 Q. All right.
19 MR. MILLER: Can I have the court provide
20 you with Demonstrative D-1.
21 THE COURT: We'll go another 15 minutes
22 before we break.
23 BY MR. MILLER:
24 Q. I'm just trying to save everybody time

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1 here. Rather than having to pull Exhibit 122 and
2 look at the key paragraph, which is Exhibit 122 is
3 the paragraph out of the, Order Granting Receiver's
4 Motion for Order and Instructions dated January 4th,
5 2022, lines eight, one to five, do you understand
6 that?
7 A. Yes, sir.
8 Q. Okay. So, do you believe that paragraph
9 comes out of that document?
10 A. Yes.
11 Q. Okay. And then the bottom right side of
12 the same document, this is out of that paragraph is
13 out of Exhibit 124, which is Order Approving
14 Receiver's Fees, January 4th 2022. And that's lines
15 three to 15. Do you see that?
16 A. Yes.
17 Q. And if I understood your testimony earlier,
18 if we're looking at the paragraph from Exhibit
19 122 -- and let me know if I'm wrong -- but it's your
20 understanding that as a result of a subsequent court
21 order you could no longer apply the language of
22 Exhibit 122. Is that right?
23 Because the court came back and in
24 connection with the same order that sanctioned your

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1 counsel for manipulating -- or your employer for
2 manipulating the receiver and in that same order the
3 court decided --
4 MR. McELHINNEY: Mischaracterizes the
5 contents of the order.
6 THE COURT: Rephrase your question.
7 MR. MILLER: Yes, your Honor.
8 BY MR. MILLER:
9 Q. So, is it your understanding as a result of
10 the court granting an order striking a portion of
11 this Exhibit 122 order, the portion about going back
12 and applying Mr. Proctor's fees, that that could no
13 longer be done?
14 A. Applying Proctor's fees?
15 Q. Yes.
16 A. That's when these were very conflicting
17 orders, so I got with legal counsel and that's what
18 we determined, yes.
19 Q. Okay. So, you determined in looking at the
20 language from Exhibit 122 that, as a result of that
21 subsequent order from Justice Saita saying, No, you
22 can't apply Proctor's fees, that you couldn't do
23 what's in this order. Is that right?
24 A. We did do this order. It says, "Those fees

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1 in place prior to the court's September 27th,
2 2021, order, shall remain in place," until he
3 recalculated 2020 --
4 Q. Did --
5 A. -- and in 2027 Proctor -- it was stricken
6 by Judge Saita that we can't use Proctor's numbers.
7 So, the only logical numbers that we came
8 up with after we -- I conferred with counsel was
9 that we had to use the only numbers that were left,
10 which were our numbers that originally were from Mr.
11 Teichner but changed due to the fact of Sattler's
12 orders that came out in December 24th, 2020 --
13 December 24th, 2020, I believe.
14 Q. So, then, "remain in place until fees for
15 2020 are recalculated and approved by this court."
16 Do you see that last sentence?
17 A. Yes.
18 Q. So, what happened? You've got an order
19 issued the same day, January 4th, 2022, right, where
20 the court actually approved Mr. Teichner's fees?
21 Do you see that? So, we're looking on the
22 right-hand side, Exhibit 124. Let me read you what
23 the court says.
24 "It is hereby ordered that the receiver's

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1 new fee calculations as submitted to the court
2 should immediately be applied retroactive to
3 January 2020 and going forward until a subsequent
4 order of the court."
5 So, are those not the fees -- this is the
6 first time the court's approved fees, correct?
7 A. Which order should I follow?
8 Q. They were issued on the same date, right,
9 as a result of two different motion streams? Do you
10 understand that?
11 A. I absolutely do. Yes.
12 Q. Okay. And you've got one order that is
13 saying use the old fees until there are fees that
14 are approved, right?
15 MR. McELHINNEY: Objection,
16 mischaracterizes what is says.
17 THE COURT: Overruled. You may answer it.
18 THE WITNESS: I don't know what the
19 question was. I'm sorry.
20 BY MR. MILLER:
21 Q. All right. Let me read it to you.
22 "Those fees in place prior to the court's
23 September 27th, 2021, order shall remain in place
24 until the fees for 2020 are recalculated and

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1 approved by this court such that only a single
2 account adjustment will be necessary."
3 A. Correct.
4 Q. And then that same day the court approves
5 fees. The court approves Mr. Teichner's fees.
6 Do you not understand that?
7 MR. McELHINNEY: Objection, your Honor.
8 They approved his 2021 fees. It's just a critical
9 part of the order he's leaving out.
10 THE COURT: I understand what you're
11 saying. The witness has the demonstrative exhibit
12 in front of him. Thank you.
13 BY MR. MILLER:
14 Q. So, the 2021 fee calculations, right, that
15 Mr. Teichner did that were submitted and approved by
16 the court --
17 A. Yes.
18 Q. -- would the data for those calculations
19 have come from 2020? From the prior year?
20 A. Correct. They would have come from -- they
21 would have come from 2020 for 2021. The order was
22 January 4, 2022.
23 Q. Thank you.
24 So, you have an order specifically

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1 approving Mr. Teichner's calculation of fees with
2 data from 2020. Why do you not apply those fees?
3 It's a report that he prepared that does an analysis
4 of the fees and you choose not to apply those fees.
5 A. I believe we put a bond up for the
6 difference between 2020 and 2021. So, no, again,
7 went to legal counsel, very confusing, still
8 confused.
9 Q. Is it really confusing when you have
10 specific calculations in a report that provide an
11 analysis of the calculations submitted by the
12 receiver for approval that you don't apply those
13 fees?
14 A. Again, these are 2021 fees. Per the CC&Rs
15 I cannot apply 2021 fees to 2022, when he took 2020
16 numbers.
17 Q. But whose decision was it? Whose decision
18 was it to apply -- when to apply the fees? Was it
19 Mr. Teichner or yourself? One question.
20 A. It was Teichner's for 2021.
21 Q. Thank you. And has Mr. Teichner ever asked
22 you, Why weren't my fees applied?
23 A. No.
24 Q. So, we won't look at any emails here today

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1 where Mr. Teichner's attorney writes saying, They're
2 still not applying the fees, there's nothing we can
3 do.
4 A. There's nothing they could --
5 Q. Okay.
6 A. Couldn't they file a motion? I mean, he
7 never came to me and strictly said -- if he did, I
8 would advise him saying I talked to legal counsel
9 and this is --
10 Q. Did you analyze Mr. Teichner's fees, the
11 calculations?
12 A. Yes.
13 Q. And did you disagree with those
14 calculations?
15 A. Absolutely.
16 Q. And did you have any conversations with any
17 person at any time wherein you looked for a reason
18 to not apply them because you didn't like them?
19 A. It's not that I didn't like them. We
20 fought over these, went back and forth. And I
21 didn't agree with any of this. And I went to my
22 legal counsel -- and, again, I just can't -- I just
23 can't do something without talking to my legal or
24 talking to, you know -- talking to my team.

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1 Q. If Mr. Teichner prepares fee calculations,
2 submits them to the court, and you don't apply those
3 calculations, are you interfering with his ability
4 to implement compliance with the governing
5 documents?
6 A. When this came out in 2022 these were for
7 2021 fees. I reached out to him and said, Can I
8 please get 2022 fees, because I can't apply 2021
9 fees to 2022 fees. I didn't want to get in the same
10 boat with Proctor that we weren't following the
11 governing documents.
12 Q. Okay. Let's go back and read the first
13 sentence of Exhibit 124 again. It states, "It is
14 hereby ordered that the receiver's new calculations
15 as submitted to the court should be immediately
16 applied retroactive to January 2020."
17 How do we not do that? You've got fee
18 calculations that are to be retroactively applied to
19 2020. And going forward until subsequent order from
20 the court is issued.
21 A. If I look at the order above --
22 Q. No. I'm asking you about this order.
23 A. Very --
24 Q. Look at this order.

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1 A. It was very --

2 THE COURT: Hold on.

3 MR. MILLER: I'd like to hear the answer to

4 his question, if I may.

5 THE COURT: Ask a different question.

6 MR. MILLER: All right.

7 BY MR. MILLER:

8 Q. Exhibit 124 at the operative paragraph

9 states, "It is hereby ordered that, one, the

10 receiver's new calculations as submitted to the

11 court should immediately be applied retroactive to

12 January 2020."

13 Is there anything ambiguous or confusing

14 about that language in this order?

15 A. I'm sorry. I can't -- there were seven

16 orders that day. I can't take one over the other.

17 Again, talk to my legal counsel, they were just as

18 confused. I'm sorry, Mr. Miller.

19 Q. That was not my question.

20 Did you hear my question?

21 A. Please repeat it.

22 Q. Okay. "It is hereby ordered that, one, the

23 receiver's new fee calculations as submitted to the

24 court should immediately be applied retroactive to

Page 203

1 January 2020 and going forward until subsequent

2 order from the court is issued."

3 Is there anything confusing about that

4 language in this order?

5 A. The only thing that would be confusing is

6 under the governing documents. But from what you

7 just said in that little snippet, no, there's

8 nothing confusing on that particular order.

9 Q. Okay. In fact, could you have applied

10 those fees that the parties paid Mr. Teichner to

11 calculate and that were submitted to the court,

12 could you have applied those fees starting

13 January 8th, 2022?

14 A. Could we have?

15 Q. Yes.

16 A. I'm sure we could have, yes.

17 Q. Very good. Thank you.

18 Let me have you look at Exhibit 119.

19 A. Book No. 4? Okay.

20 Q. On page three starting at line 17 it

21 states, "The defendants' attempt to advance their

22 interpretation of the court's orders to the receiver

23 interfered with the October order taking effect and

24 resulted in unnecessary duplicative litigation."

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1 Do you see that?

2 A. What year is this?

3 Q. December 24th, 2020.

4 (Witness reviewing document.)

5 THE WITNESS: I'm not sure what order this

6 is referring to, the court's order.

7 BY MR. MILLER:

8 Q. It's an order that stands by itself.

9 Do you recall the defendants being

10 sanctioned for trying to -- for interfering with the

11 receiver? Do you recall that occurring in this

12 case?

13 A. I have never interfered with the receiver,

14 no.

15 Q. That wasn't my question.

16 A. And I don't recall. No.

17 Q. Okay. So, no one ever advised you from the

18 GSR that the court entered an order that states,

19 "The defendants attempted to advance their

20 interpretation of the court's orders to the receiver

21 interfered with the October order taking effect and

22 resulted in unnecessarily duplicative litigation."

23 A. One second as I read through it.

24 (Witness reviewing document.)

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1 THE WITNESS: What was your question again?

2 BY MR. MILLER:

3 Q. Were you aware that this had occurred? Had

4 anybody told you back in December of 2020 that

5 MEI-GSR, or the defendants, had already been

6 reprimanded or sanctioned by the court for

7 interfering with the receiver?

8 A. They may have. I don't remember.

9 Q. Do you think it would have been important

10 to know when you were dealing with the receiver

11 after that date that the defendants had already been

12 in trouble for interfering with the receiver?

13 MR. McELHINNEY: I'll object to the line of

14 questions. It sounds like character evidence. If

15 you're bad once, then you must have done it again.

16 I think it's a violation of the rules of evidence.

17 It's not a subject matter of any of the motions or

18 order to show cause. I object.

19 THE COURT: Overruled. You may continue.

20 THE WITNESS: Is this an order by that --

21 the receiver put in or was this an order by the

22 plaintiffs?

23 BY MR. MILLER:

24 Q. This is an order by the judge that lost his

Page 206

1 job because your client --

2 MR. SMITH: Objection --

3 THE COURT: Mr. Miller. Wait. wait.

4 MR. MILLER: All right. Thank you, your

5 Honor. I understand.

6 THE COURT: No personal attacks. There's

7 history in this, and I will go through this when I

8 make my decision but no personal attacks of any

9 sort.

10 MR. MILLER: Yes, your Honor. Thank you.

11 BY MR. MILLER:

12 Q. So, I think I understand that you were not

13 advised that you previously had this issue with

14 dealings with the receiver.

15 A. Personally I've never had any problems with

16 the receiver. We've actually had a great

17 relationship, so the fact that it says that I

18 interfered, I -- I'm not sure.

19 Q. I'm not saying --

20 A. MEI-GSR. Me personally I didn't interfere.

21 I'm sorry.

22 Q. Had you known about that background of the

23 -- prior interference with the receiver, do you

24 think when you were dealing with him in 2021 over

Page 207

1 what fees to apply, would you have just asked him,

2 Should I apply your recent calculations, should I

3 apply the prior Proctor calculations? Did you ask

4 him?

5 A. I believe he was very confused too, because

6 I expressed the confusion with the orders and I

7 believe he was confused too. They are not clear

8 orders, in my eyes, and it's very confusing.

9 Q. He never once told you, Apply the fees that

10 I calculated?

11 A. Once told me personally, no.

12 Q. No? Okay.

13 A. Not that I recall.

14 Q. Now, going down to the next line in this

15 order, it states -- I'm still on page three, line

16 24. It states, "Specifically, the receiver shall

17 recalculate the DUF, the hotel expense fees, and the

18 shared facility fees to include only those expenses

19 that are specifically provided for in the governing

20 documents."

21 Were you aware of this provision of this

22 order?

23 A. Yes. That he was supposed to recalculate?

24 Yes.

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1 Q. You just said that "I'm supposed to

2 recalculate." Is that what you just said?

3 A. That he's supposed to recalculate.

4 Q. Mr. Teichner, right, not the defendants in

5 this action?

6 A. He can't recalculate with the help of the

7 defendants. So, again, he's working with me

8 constantly because he needs actual numbers to do

9 this.

10 So, I work with Mr. Teichner very closely

11 and we did and he came by and he -- we went over a

12 lot of iterations of this. Again, it took him --

13 when was this? 2020?

14 It took him eight months to produce this,

15 so it's not an easy thing to produce this worksheet.

16 It takes a lot of reiterations. And, again, I did

17 not think he was following the governing documents

18 when we did it in 2020 -- 2019 and we calculated

19 2020, we had a great agreement with the governing

20 documents.

21 Then all of a sudden he pivoted when he got

22 his counsel, Stefanie Sharp, after the May court --

23 sorry. I think it was May 2021 -- after that trial

24 he got Stefanie Sharp as his counsel. And then his

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1 whole -- the way he was looking at the governing

2 documents totally did a 180.

3 So, we were fighting them -- him on this

4 the whole time, and he kept on saying, Well, that's

5 how Stefanie Sharp reads it. We went over with

6 Stefanie Sharp, this how she reads it.

7 Q. Did you just say you were fighting with the

8 receiver over his application of fees?

9 A. Fighting? We were going over -- again, we

10 have a good relationship. It wasn't really

11 fighting. It was a discussion to go over.

12 Q. So, you mischaracterized fighting with him

13 over the application of his fees.

14 A. Correct. You can ask Mr. Teichner if we

15 ever fought.

16 Q. Okay. Now, let's go back to -- we were

17 talking about in January of 2020 this is the time

18 that you and Mr. Teichner were cooperating, and you

19 came up with these fees that you thought were

20 correct, right?

21 A. January -- well, it was --

22 Q. They were applied January of 2020?

23 A. They were, so it was all of 2019, correct.

24 Q. And did you understand that we went through

Page 210

1 a four-day evidentiary hearing where the court
2 evaluated whether or not those fees that you thought
3 complied with the governing documents were
4 compliant.

5 A. If I recall, I don't think we had a chance
6 to cross-examine Mr. Teichner so, like, it was
7 between you and Mr. Teichner, as far as I remember.

8 Q. I'll submit to you that's just inaccurate.
9 A. Okay.

10 Q. But, you understand there were four days of
11 hearing approximately on whether or not those fees
12 were accurate or inaccurate.

13 A. I remember Mr. Teichner being very
14 uncomfortable, yes.

15 Q. Okay. This is on order regarding
16 clarification, your Honor.

17 THE COURT: Proposed exhibit?
18 MR. MILLER: Yes, your Honor. I believe
19 we're up to 144.

20 THE COURT: Any objection?
21 MR. McELHINNEY: No objection.
22 THE COURT: 144 is admitted.
23 You have your own copy.
24 THE WITNESS: I do. Thank you, your Honor.

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1 BY MR. MILLER:
2 Q. So, the court ultimately ordered after
3 those hearings, right, that those fees did not
4 conform with the governing documents, that they had
5 to be recalculated. Is that your understanding?
6 And this question is not coming from that document.

7 MR. McELHINNEY: Objection, speculation. I
8 don't think there's been any foundation that he's
9 been at the hearing.

10 THE COURT: Overruled.
11 THE WITNESS: One second. Let me read over
12 this real quick.
13 (Witness reviewing document.)

14 BY MR. MILLER:
15 Q. You understand that the court following
16 those hearings determined that the fee calculations
17 were improper and had to be recalculated so that
18 they were done in accordance with the governing
19 documents. Is that correct?

20 MR. McELHINNEY: Same objection.
21 THE COURT: Overruled.
22 THE WITNESS: Yes.

23 BY MR. MILLER:
24 Q. Okay. And with regard to the daily use

Page 212

1 fee, did the court in its order reference some
2 specific items that should not be included in the
3 daily use fee?

4 A. Yes, they did.

5 Q. Okay. With regard to the item that's
6 stated as "hotel fees" on the monthly invoices, are
7 you familiar with the order that I just provided you
8 with? It's the Order Regarding Clarification.

9 A. I'm familiar, yes.

10 Q. Okay. And this order doesn't indicate to
11 you what items he thought should or should not be
12 included, correct, what items the judge thought
13 should or should not be included in those
14 calculations?

15 A. In this order?
16 Q. Yeah.
17 A. It doesn't specifically say.

18 Q. All right. Because I was confused earlier
19 when you testified that you went back and redid
20 these recent calculations to conform with the
21 court's orders that required that the fees be
22 recalculated. I think you said that repeatedly.

23 A. That I went back?
24 Q. Yeah. I mean, wasn't it your testimony

Page 213

1 that because Mr. Teichner stopped working because he
2 wasn't being paid, but because he stopped working
3 that you had to do these calculations on the monthly
4 statements after Mr. Teichner stopped working and
5 that you believed that you did those accurately in
6 accordance with the court's orders and governing
7 documents? Is that right?

8 A. That was only till 2021 of September.
9 Q. Okay.

10 A. But on December 24th when it said that we
11 had to go back to Proctor's, we charged Proctor's
12 numbers going forward all the way till September
13 when it was stricken from the record.

14 And then the only ones we could use is
15 taking his original -- Teichner's original 2020 and
16 then modifying it based on what Mr. Sattler -- his
17 order specifically said. There's no other numbers
18 that he could have taken.

19 Q. You couldn't have used the numbers in Mr.
20 Teichner's report where you request to use his fees,
21 right, and that wouldn't have made any sense?

22 A. His sense.
23 THE COURT: Is that sarcasm?
24 MR. MILLER: No, your Honor. I'm sorry.

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1 THE WITNESS: His fees were not approved
2 until January 2022, so I'm not sure I follow.
3 BY MR. MILLER:
4 Q. Did he not provide those to you in
5 approximately August of 2021?
6 A. He provided them to, I think, you too, the
7 general counsel. I went over them and he asked for
8 them to be approved.
9 Q. Yeah. If he's asking for fees to be
10 approved, shouldn't they just be approved?
11 A. He never once said, Please apply these.
12 Q. All right. Getting back to this --
13 THE COURT: Is this a good time for a
14 break?
15 MR. MILLER: Just one last question while
16 we're still on the same page.
17 THE COURT: Sure.
18 BY MR. MILLER:
19 Q. So, if I understood your testimony
20 correctly, you went back to the fees that you and
21 Proctor -- you and Teichner put together for the
22 January 2020 time period that were rejected by the
23 court. And then you tried to make those fees
24 compliant with the court's order going forward

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1 because you had no other fees you could use.
2 Is that right?
3 A. There were specific things that the -- like
4 you just mentioned, that the order said that they
5 could not be part of. I believe some of them was
6 the valet could not be part of the DUF, the
7 transportation, and bell desk, so we removed those.
8 Q. Okay.
9 A. There was other orders.
10 Q. This is it (indicating).
11 A. Okay.
12 Q. This is the other order. If we look in
13 this order --
14 MR. McELHINNEY: Objection, your Honor. We
15 should look at the order of October 12th, '20.
16 That's the document. Why Mr. Miller wouldn't show
17 that to him, I don't know.
18 THE COURT: Okay.
19 MR. MILLER: All right.
20 BY MR. MILLER:
21 Q. So, the --
22 THE COURT: Are you approaching with an
23 exhibit?
24 MR. MILLER: Exhibit 31 -- I thought

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1 everybody was on the same page here. Apparently,
2 we're not.
3 BY MR. MILLER:
4 Q. If you can pull up Exhibit 31 -- I'm sorry.
5 Exhibit 131.
6 A. Yes, sir.
7 Q. So, Exhibit 131, do you recognize this as
8 the order where Judge Sattler gives some direction
9 on things that he doesn't like in the daily use fee?
10 A. Yes.
11 Q. Okay. And then there's no mention in there
12 about the SFU or the hotel fees, is there?
13 A. No. I believe that was on the one you just
14 gave me, 144.
15 Q. All right. And if we look at that
16 document, the one I just gave you, the
17 November 2nd, 2020, order, do you see that?
18 A. Yes.
19 Q. This talks about the recalculation of the
20 hotel expense fees, shared facility unit expenses,
21 because you guys took the position that he only
22 wanted the DUF recalculated, so he had to write a
23 subsequent order that says, "No, I meant you have to
24 recalculate the hotel expense fees, shared facility

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1 unit expenses." Do you see that?
2 A. Yes.
3 Q. And he gave no direction in here
4 whatsoever, did he, as to what items he wanted
5 removed?
6 A. He didn't. But he said "per the governing
7 documents."
8 Q. Yes. Exactly.
9 THE COURT: Good place for the break?
10 (Recess taken.)
11 THE COURT: You asked me if you could do
12 your offer of proof related to Ms. Kern, and
13 Mr. Miller was kind enough to accommodate that.
14 MR. McELHINNEY: Your Honor, for
15 perspective, we had identified Ms. Gayle Kern as a
16 witness in this case. Your Honor had -- there had
17 been a motion in limine to prevent her from
18 testifying. We had opposed that.
19 The court had -- on the first day of trial
20 had granted Ms. Kern's ability to testify in part
21 and denied her ability to testify in part. Your
22 Honor, determining that she -- if she testified she
23 would only be allowed to testify to the contents of
24 her declaration that was filed.

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1 THE COURT: I think my exact order was
 2 consistent with the declaration.

3 MR. McELHINNEY: Yes. But I understood you
 4 to say she couldn't cover any subjects outside of
 5 the declaration.

6 THE COURT: That is correct.

7 MR. McELHINNEY: And that's the declaration
 8 of Gayle Kern that was filed March 28th, 2022.

9 Ms. Kern is present in the courtroom at my
 10 request while I make this offer of proof.

11 If allowed to testify, Ms. Kern would tell
 12 you that she was a licensed attorney, licensed to
 13 practice law in the state of Nevada and a
 14 shareholder with the law firm of Leach, Kern,
 15 Gruchow, Anderson and Song.

16 While she's a general practitioner, her
 17 testimony would be that over 38 years of experience
 18 practicing law, most of those years her practice has
 19 concentrated primarily on common interest community
 20 issues, including condominiums very similar to the
 21 condominium hotel business model that exists at the
 22 Grand Sierra Hotel.

23 She is one of less than 200 attorneys in
 24 the U.S. inducted into the College of Community

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1 Association Lawyers and only one of four in the
 2 entire state of Nevada.

3 She has been -- her testimony would be
 4 she's been qualified and has testified as an expert
 5 on common interest community and condominium hotel
 6 litigation matters in the past.

7 She provides lectures and teaches seminars
 8 on a regular basis on topics concerning common
 9 interest community law. She serves on the Community
 10 Association Institute's Legislative Action Committee
 11 which participates in the review and comments on
 12 legislation affecting common interest communities
 13 and regulations promulgated by the ombudsman and
 14 Nevada Real Estate Division.

15 Her testimony would be that she worked with
 16 the Nevada Real Estate Division in the development
 17 of the first standardized community management exam
 18 and she's approved by the Nevada Real Estate
 19 Division to teach classes to train community
 20 managers who, following in their education and
 21 licensing, go into management, common interest
 22 community associations.

23 She's also authorized to provide continuing
 24 education classes to both community managers and

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1 members of the board of directors of common interest
 2 communities. Her testimony would be that she
 3 regularly attends Community Association Institute
 4 national law seminars to keep apprised of new
 5 developments in the common interest community
 6 industry, not only in Nevada but throughout the
 7 country.

8 She currently serves on the Law Seminar
 9 Planning Committee. She would testify that she's a
 10 member of the Nevada State Bar Real Estate section
 11 and subcommittee with common interest communities
 12 and has provided seminars to other attorneys
 13 regarding common interest communities and even
 14 indicated she would be attending an upcoming state
 15 bar conference in June -- this would have been 2022
 16 -- representing the subcommittee.

17 Her testimony would be that she has in the
 18 past represented the Grand Sierra Resort owners --
 19 Union Owners Association, GSR UOA. There's nothing
 20 about that prior representation, she would tell you,
 21 that in any manner affects her ability to provide
 22 accurate and unbiased testimony in this matter.

23 THE COURT: Was there anything else related
 24 to the substantive nature of her testimony, other

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1 than her qualifications, that you wanted to put on
 2 the record?

3 MR. McELHINNEY: Yes, please, your Honor.

4 She would testify that during the course of
 5 her representation of Defendant GSR UOA in this
 6 matter she had -- has had occasion to become
 7 familiar with the Seventh Amended CC&Rs. She
 8 drafted the Eighth Amended CCR&Rs and the Ninth
 9 Amended CC&Rs, and she would testify it was a matter
 10 of necessity in the drafting of those documents to
 11 become very familiar with the contents of the
 12 Seventh Amended CC&Rs.

13 She would testify as to the purpose of the
 14 Seventh Amended CC&Rs. Her testimony would be these
 15 covenants run with the land, literally defining the
 16 scope of the interest -- owner interest in a
 17 particular unit.

18 She would identify particular sections of
 19 the CC&Rs that are of critical importance for the
 20 court to understand the nature and the scope of the
 21 expenses for which the unit owners are responsible.
 22 She would -- her testimony would be to look at
 23 Section 6.9 and 6.10. They spell out the
 24 declarant's and shared facility owner units'

<p style="text-align: right;">Page 222</p> <p>1 responsibility to set budgets, HE and SFUE and 2 reserves. She would talk about the importance of 3 setting those budgets and what it would mean to a 4 company if those budgets didn't get set in violation 5 of the Seventh Amended CC&Rs.</p> <p>6 She would also identify the CC&Rs requiring 7 the ordering of an independent third-party reserve 8 study at least every five years with annual updates. 9 I think her testimony would be these were referred 10 to as "site visits" and "offsite visits."</p> <p>11 She would explain how the independent 12 third-party study is used and why it is vital to 13 setting the budget. She would offer you testimony 14 about her knowledge of Ms. Betterley and Ms. 15 Betterley's competency and number of independent 16 third-party studies she's prepared in the past.</p> <p>17 She would tell us that with Ms. Betterley 18 you cannot dictate to her what items, what 19 categories of expenses go into her report. That's 20 an independent third-party decision that is made 21 exclusively by Ms. Betterley.</p> <p>22 When asked about how do you determine what 23 categories of items go into the SFUE and HE 24 calculations, she would have directed us to the</p>	<p style="text-align: right;">Page 224</p> <p>1 Stefanie Sharp on what the CC&Rs mean and the scope 2 of those CC&Rs and how Ms. Sharp's interpretation of 3 the CC&Rs was overly narrow.</p> <p>4 She would testify about how many CC&Rs she 5 has specifically reviewed for either a UOA or unit 6 owners to help them with the definitions and scope. 7 She would tell us that battles like this between 8 parties is not unusual, where there's seldom an 9 understanding or agreement as to what the cost 10 should be.</p> <p>11 However, she would say, to the extent 12 allowed in her opinion, this case has sort of gone 13 off the rails and the plaintiffs have largely taken 14 control of the operation of the MEI-GSR, dictating 15 what they can charge and who they can charge it to.</p> <p>16 THE COURT: We would stipulate that this 17 case is off the rails.</p> <p>18 MR. McELHINNEY: She would review sections 19 4.3 on pages 14 and 15 of the CC&Rs, Section 20 4.3(e)3, Sections 4.3(e) Roman Numeral 4, Sections 21 4.5, which really goes to the F, F and E for 22 refurbishment and renovation of the units. She 23 would talk to us and identify the importance of 24 4.5(c), which is the building F, F&E, and she would</p>
<p style="text-align: right;">Page 223</p> <p>1 Seventh Amended CC&Rs, paying particular attention 2 to Sections 6.9 and 6.10, shared facilities unit and 3 hotel expense categories.</p> <p>4 She would have given us her understanding 5 and interpretation of condominium property as it is 6 defined in the Seventh Amended CC&Rs and the meaning 7 of "parcel" and how broad that is in its nature and 8 description.</p> <p>9 She would share with us her understanding 10 of the shared facilities unit as defined in Section 11 2.3, page nine, which includes both the public 12 shared facilities to which the unit owners and hotel 13 guests had certain ingress, egress access and other 14 easement rights in the private shared facilities.</p> <p>15 She would share with us her understanding 16 of the public shared facilities as defined on page 17 five, that portion of the shared facilities located 18 within the condominium property that is subject to 19 the public shared facility easement for access and 20 use by the unit owners.</p> <p>21 She would share with us her specific 22 conversations with Stefanie Sharp and Richard 23 Teichner about what should be included in the DUF 24 and SFUE and HE and how she attempted to educate</p>	<p style="text-align: right;">Page 225</p> <p>1 tell us that the current reading of the CC&Rs by Mr. 2 Teichner is far too narrow a reading of that 3 document and it should be more expansive as allowed 4 under the CC&Rs.</p> <p>5 She would have identified under the Seventh 6 Amended CC&Rs who and what entities have the 7 responsibility to prepare the budgets, directing us 8 specifically to 6.9, page 37, six on page 40 and the 9 shared facilities unit owner and declarant being 10 MEI-GSR having the responsibility to prepare a 11 detailed proposed budget for the ensuing calendar 12 year to establish SFUE and HE and reserves for each 13 and every year.</p> <p>14 When asked the question how does GSR 15 determine what capital expenditures will be made in 16 a given year, it is called out in the independent 17 third-party study. It is also up to the sole and 18 absolute discretion of the shared facilities unit 19 owner and the declarant pursuant to the express 20 terms of the Seventh Amended CC&Rs.</p> <p>21 When asked the question who makes the 22 determination of what needs replacement or 23 renovation, that is up to -- she would direct us to 24 sections 6.9(b) and 6.10(b) at pages 38, 41</p>

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1 respectively, saying that it is up to the sole and
2 absolute discretion of the shared facilities unit
3 owner and the declarant.
4 The value of Ms. Gayle Kern's testimony was
5 her expertise, although she learned most of what she
6 was going to express opinions about -- all of which
7 she would express opinions about, she developed
8 those during the course of her representation of GSR
9 UOA.
10 And I believe with her expertise she would
11 have added credibility to the fact that our
12 interpretation of the CC&Rs are accurate and Mr.
13 Teichner's current calculations of CC&Rs are
14 extraordinarily restrictive of the CC&Rs.
15 THE COURT: Thank you, Mr. McElhinney.
16 Anything else to add to your tender?
17 MR. McELHINNEY: Only if I've convinced you
18 to allow me to call Ms. Kern.
19 THE COURT: Is there a response from the
20 plaintiffs.
21 MR. MILLER: Your Honor, our response
22 tracks our motion in limine.
23 THE COURT: Thank you.
24 MR. MILLER: Would you like me to proceed?

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1 Even though we briefed -- actually, we haven't
2 argued this yet.
3 The starting point would be Defendants'
4 trial statement for this very hearing, in quotes,
5 seeks to exclude any expert testimony that
6 plaintiffs attempt to offer at trial if no report
7 was disclosed.
8 And that's the Defendants' trial statement
9 and motion in limine filed March 27th, 2023, page
10 12, lines 11 to 15. So, they're literally seeking
11 to do exactly what the court asked that we not be
12 able to do.
13 And then that also tracks NRC 16.1(e)3(a),
14 which requires a report which is what they have
15 cited and, in fact, argued previously in these
16 proceedings when it concerned punitive damages.
17 So, it's a do-as-I-say-not-as-I-do-type
18 situation. But then equally as important pursuant
19 to 136 Nevada 373, 376, 2020, in quotes, Expert
20 witness testimony that amounts to a legal conclusion
21 is not admissible because it does not help the trier
22 of fact understand the evidence and determine a fact
23 in issue, end quote.
24 And, I mean, Mr. McElhinney's offer of

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1 proof repeatedly references what her legal opinions
2 would be about the application of the CC&Rs and
3 various provisions. It specifically excluded
4 pursuant to case law.
5 The next issue concerning this matter is
6 relevancy. We are here on a -- several motions for
7 order to show cause. The orders are unambiguous in
8 that the receiver is the one who is in charge with
9 governing -- with the governing documents. The
10 receiver is the one that's to prepare these reports,
11 take these actions for the defendants to argue that
12 they disagree with Ms. Sharp, another attorney's
13 interpretation of the CC&Rs is -- it's not a defense
14 to contempt. We're not here to re-litigate decided
15 issues.
16 And that's another thing that's occurred in
17 this action, not once, but twice, the court has --
18 THE COURT: I don't need to hear that.
19 Anything else, Mr. McElhinney?
20 MR. McELHINNEY: Just briefly, your Honor.
21 A percipient witness can be an expert. It
22 happens all the time.
23 THE COURT: Absolutely. But I always have
24 reports or some sort of disclosure document that

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1 tells me what they will say. That's why I limited
2 it to her declaration, because that was a written
3 piece of information that told people what she was
4 gonna say.
5 It's a disclosure issue. I have no
6 criticism of her qualifications, no criticism of her
7 experience. I have a concern about the disclosure.
8 MR. McELHINNEY: Your Honor, the analogy
9 that I use it is a treating physician. Yes, you
10 have access to his medical records, but he could
11 take the stand and express opinions that he
12 formulated in the course of his treatment of that
13 patient that may not be reflected in those medical
14 records. Isn't that exactly what we have here?
15 THE COURT: But they are supported by the
16 information that is in the medical records and
17 that's what he draws his conclusions from. I don't
18 have that here, Mr. McElhinney.
19 I understood the argument and I disagree
20 with the analogy. But to the extent she wants to
21 testify about the information that is in the
22 declaration that you filed in 2022, I would be happy
23 to listen to her. Otherwise, it's outside the scope
24 of what was disclosed.

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1 MR. McELHINNEY: All right. The final
2 point I want to make for the record is this is
3 relevant. Mr. Miller repeatedly in almost every
4 motion has accused us of hyperinflated fees and
5 exaggerated fees designed to punish the plaintiffs
6 and to drive down the value of the units.
7 Her testimony would show, in fact, our
8 calculations are very consistent with the Seventh
9 Amended CC&Rs. Thank you, your Honor.
10 THE COURT: Thank you.
11 Can we return to Mr. Brady now?
12 MR. McELHINNEY: That's fine with me, your
13 Honor. Thank you. I appreciate it.
14 And Mr. Miller, thank you.
15 BY MR. MILLER:
16 Q. Mr. Brady, I believe we were at the point
17 in your testimony where we were discussing Mr.
18 Teichner retaining counsel. Is that correct?
19 A. Yes, I believe so.
20 Q. Is there anything wrong with Mr. Teichner
21 retaining real estate counsel to assist him in going
22 over the CC&Rs?
23 A. No.
24 Q. And, in fact, Mr. Teichner's positions

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1 about what goes into the CC&Rs were a result of the
2 court ordering him to redo the calculations and
3 consulting with counsel. Is that correct?
4 A. The first one -- I can't remember the
5 second -- the retained counsel. I'm not sure about
6 that one but, yes, the first one.
7 Q. I thought I heard you testify that Mr.
8 Teichner's positions drastically changed once he
9 retained counsel.
10 A. Oh, they did.
11 Q. Okay.
12 A. But I don't know if the court ordered him.
13 I thought you said after the court ordered.
14 Q. The court ordered him to recalculate the
15 fees.
16 A. That is correct. Yes.
17 Q. And just so we're clear, the court didn't
18 give any direction in the recalculation of fees as
19 to what the court believed was wrong with the SFU
20 hotel fees, et cetera.
21 A. No. Just said "per the governing
22 documents."
23 Q. Okay. And do you believe that either
24 Ms. Sharp would have any reason to not try to

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1 un-biasedly apply the CC&Rs?
2 A. I don't have any reason, no.
3 Q. She doesn't represent either the plaintiffs
4 or the defendants in this action, correct?
5 A. No.
6 Q. Do you have any reason to believe that
7 Ms. Sharp isn't competent to analyze the CC&Rs?
8 A. Never met her, so I can't answer that.
9 Q. All right.
10 MR. MILLER: I'd like to offer Exhibit 145.
11 THE CLERK: 145, your Honor.
12 THE COURT: Thank you.
13 BY MR. MILLER:
14 Q. Were you ever informed that the court had
15 instructed both Plaintiffs and Defendants to each
16 provide to the court two names to complete an
17 independent reserve study no later than November 12,
18 2021?
19 A. I remember hearing it, yes.
20 Q. Okay. Let me have you turn to Exhibit 121.
21 Let me have you refer to page five, lines 11 to 18.
22 This is an order that the court issued shortly after
23 the November 8th, 2021, status conference wherein
24 it memorializes that the court directed the parties

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1 to submit two names of independent reserve study
2 specialists.
3 But going back to the 1/21 order, page
4 five, lines 11 it says, "Plaintiffs have further
5 objected to the reserve study because it has
6 included expenses which are clearly erroneous" --
7 paren -- "motion at four lines six to 13, noting
8 public pool expenses that were included while the
9 governing documents and court orders exclude any
10 revenue-generating expenses" -- end paren, period --
11 "the reserve study to be limited as directed in the
12 previous court orders and governing documents. The
13 reserve study provided by Defendants clearly shows
14 at least one basic elementary example of expenses
15 which are included but should not be, id.
16 "Accordingly, the court finds that the
17 defendants' reserve study to be flawed and
18 untrustworthy and finds the receiver has the proper
19 and sole authority to oversee and implement a new
20 reserve study."
21 Did anybody show you the language of that
22 order around this time?
23 A. I heard about it, yes.
24 Q. Okay. And was that referring to a

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1 Betterley reserve study?
2 A. Yes, I believe so.
3 Q. Okay. So, after litigating these issues,
4 the court has specifically found that that Betterley
5 reserve study is inherently untrustworthy, I
6 believe.
7 A. Okay.
8 Q. Okay. And, in fact, the court ordered that
9 the plaintiffs and the defendants each provide other
10 reserve studies specialists, right, to pick somebody
11 else because the court found that Ms. Betterley was
12 untrustworthy or that that reserve study was
13 untrustworthy, correct?
14 A. The reserve study, again, is an independent
15 and they base it on the CC&Rs. So, whether the
16 court did say that it was untrustworthy because of
17 certain things, but that doesn't make the whole
18 thing untrustworthy in my eyes.
19 Q. Okay.
20 A. Yes.
21 Q. So, after this order was issued, what did
22 GSR do the following year? Did they go back to
23 Betterley for another reserve study?
24 A. Yes.

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1 Q. After receiving an order from the court
2 saying that the prior one was untrustworthy and that
3 you needed to provide the names of two other reserve
4 advisers, GSR went and used the same reserve study
5 specialist?
6 A. So, I reached out to Mr. Teichner asking if
7 he did a new reserve study, because he is over the
8 UOA and over all this. And he's -- right here,
9 according to here, "finds he is the sole authority
10 to order, oversee and implement."
11 It doesn't say to do the reserve study --
12 that's a third party -- so he has to do that.
13 Again, there are 110 condo unit owners.
14 Ninety-three of those are plaintiffs. The other
15 people I have to abide by the CC&Rs. I have to -- I
16 can't wait. Again, it's a business. I have to keep
17 on going and with our legal counsel. I talked it
18 over with legal counsel and they advised me to use
19 Betterley.
20 MR. SMITH: Mr. Brady, please --
21 THE COURT: Don't tell us what you said to
22 your lawyer unless it's in the document you're
23 looking at and I told you to.
24 MR. SMITH: I move to strike the last

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1 answer by Mr. Brady.
2 THE COURT: Any objection?
3 MR. MILLER: No objection, your Honor.
4 THE COURT: It is stricken. Watch it.
5 THE WITNESS: Will do.
6 BY MR. MILLER:
7 Q. So, despite receiving this order of the
8 court specifically determining that the prior
9 Betterley reserve study was flawed and
10 untrustworthy, the following year you go back to the
11 same reserve study specialist. Is that correct?
12 A. That is correct.
13 Q. Okay. And, in fact, the court specifically
14 found, right, that the inclusion of the pool
15 expenses should not have been in that reserve study.
16 Is that accurate?
17 Do you want me to read those lines to you?
18 (Witness reviewing document.)
19 THE WITNESS: So, it says "any
20 revenue-generating expenses." Per the governing
21 documents, there's nothing in the governing
22 documents, so this is very confusing, that says we
23 have to exclude any revenue-generating expenses.
24 We do not include just because, you know --

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1 but per the governing documents it does not say
2 exclude revenue-generating expenses so, yes, it is a
3 little confusing.
4 BY MR. MILLER:
5 Q. Let me read you lines 11 and 12 again.
6 "Plaintiffs further object to Defendants' reserve
7 study because it includes expenses which are clearly
8 erroneous," motion at four, line six to 13 noting
9 public pool expenses that were included while the
10 governing document and court orders exclude any
11 revenue-generating expenses."
12 So, I mean, it specifically says the pool
13 expenses are an example of this, so why would you --
14 MR. McELHINNEY: Your Honor, let me pose an
15 objection. What this order says is the Plaintiffs'
16 further object to the Defendants' reserve study
17 because it included expenses which are clearly
18 erroneous. That is the plaintiffs' allegation.
19 They cite to their motion noting public
20 pool expenses that were included while the governing
21 documents and court orders excluded any
22 revenue-generating expenses.
23 THE COURT: "Accordingly, the court finds
24 the defendants' reserve study to be flawed and

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1 untrustworthy and finds the receiver has the proper
2 and sole authority to order, oversee... "

3 MR. McELHINNEY: I'll repeat my objection,
4 your Honor. There is no court order that says the
5 public pool expenses can't be included.

6 THE COURT: You don't think "accordingly"
7 refers back to the public pool expenses?

8 MR. McELHINNEY: It refers back to "the
9 study is flawed and untrustworthy." I don't think
10 it specifically refers to pool expenses mentioned in
11 Plaintiffs' motion.

12 THE COURT: Okay. So, I note what you've
13 said. Your objection is overruled.

14 BY MR. MILLER:

15 Q. Do you know if the reserve study you
16 obtained following this court order, did that
17 reserve study also include pool expenses?

18 A. I believe it did from the Better Reserve
19 Consultants. I believe they included it because,
20 again, they consult the CC&Rs. We don't tell them
21 what to put in there. They read the CC&Rs and put
22 it in there.

23 Q. Have you ever had the opportunity to review
24 the Fourteenth Amendment to the CC&Rs? I'm sorry.

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1 I apologize.

2 Have you ever had the opportunity to review
3 the 2014 reserve study for the property?

4 A. No, I don't think I have.

5 Q. Okay. Do you know if that was done by a
6 different service -- has anyone told you that was
7 done by a different service that didn't include the
8 pool expenses?

9 MR. McELHINNEY: Objection, no evidence to
10 support that -- well, strike the objection. Never
11 mind.

12 THE WITNESS: I don't know what we did. I
13 know we've only been using Better Reserve
14 Consultants since 2016.

15 BY MR. MILLER:

16 Q. Do you know if you've ever used Reserve
17 Advisers?

18 A. I'm not sure.

19 Q. That would have been prior to your time?

20 A. Yes.

21 Q. Okay. Let me have you refer to Exhibit 64.
22 Turn to the first page. Are you familiar with this
23 document? It's a letter -- receiver's letter to the
24 court dated November 30th, 2021.

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1 A. Yes. This is his monthly -- I believe I
2 read it but I don't know. I would have to refresh
3 my memory.

4 Q. All right. The first paragraph states,
5 "The purpose of this letter is to update the court
6 about a recent development which occurred after
7 November 5th hearing on the receiver's motion for
8 order and instructions as well as to address what
9 the court notified the parties of the manifest
10 impropriety of the large special assessment for the
11 reserves that have been undertaken by Defendants
12 over the objection of the receiver."

13 So, did anyone provide you a copy of what
14 this letter of November 30th, 2021, telling you that
15 the receiver specifically objects to this reserve
16 study and thinks it's -- and didn't authorize it?

17 A. That is correct.

18 Q. Did you immediately withdraw the special
19 assessment upon receiving this unambiguous notice
20 that the receiver thinks this is wrong?

21 A. I don't think we did. I'm not sure what we
22 reversed --

23 Q. Are you cooperating with the receiver when
24 you charge forward doing things that he specifically

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1 states he thinks is wrong?

2 A. Am I cooperating?

3 Q. Well, under the law the MEI-GSR has a duty
4 to cooperate, as I understand it, with the receiver
5 in implementing the governing documents under his
6 authority. Do you understand that?

7 A. I do understand that.

8 Q. Okay. And when you get a letter from the
9 receiver saying he thinks that something that you've
10 done is wrong and he didn't approve it, are you
11 cooperating with the governing documents when you
12 just charge forward under that same path?

13 A. He never explicitly said to reverse it. He
14 just objected to it, so I --

15 Q. So, if someone tells you that it's a
16 manifest impropriety of a large special assessment
17 with objection from the receiver, that's not telling
18 you that what you're doing is wrong and you should
19 withdraw it?

20 A. Again, I don't have the sole discretion to
21 -- I confer with my legal counsel and we determine
22 that we would not withdraw it. But he never asked
23 me or, as far as I know, this is a letter of the
24 court. He never personally said to take it back or

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1 to not apply it.

2 Q. You don't interpret that first paragraph of

3 meaning that it's wrong and it should be withdrawn?

4 A. Again, there's 110 condo unit owners, 93

5 are plaintiffs but there are non-plaintiffs that we

6 have to keep -- we have to maintain status quo. So,

7 again, it was -- I got with the legal team and

8 decided to let it go.

9 Q. So, this was a conscious decision to let it

10 go.

11 A. I don't know if it was a conscious decision

12 because he never came to us and said to reverse it

13 and take it out or -- so.

14 Q. You said you just got with the legal team

15 and discussed it.

16 A. We did. We discussed it, as far as I

17 remember.

18 Q. And you decided not to withdraw but to

19 charge forward.

20 A. It was on the statement, yes.

21 Q. Let me have you turn to the next page. The

22 second to last paragraph states, "This court is

23 aware that the GSR has been assessing fees and

24 charges which it has unilaterally calculated and

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1 that the receiver's position is that these actions

2 are in violation of this court's January 6th,

3 2015, order appointing receiver and directing

4 defendants's compliance."

5 Did you review that paragraph when he sent

6 this letter?

7 A. I'm sorry. Point it out again.

8 Q. It's the second to last paragraph on the

9 second page.

10 (Witness reviewing document.)

11 THE WITNESS: I'm not sure. All I know is

12 that, before I did any of this, I reached out to him

13 and asked if he completed it. He said no.

14 He had a court order to do it, he didn't do

15 it. So, I don't -- like, the fact that we run a

16 business and we have, you know, other condo owners

17 that are not part of the plaintiffs, we have to

18 remain the status quo. We can't sit there and wait

19 for a receiver not to do his job.

20 And so it was decided -- I talked to Legal

21 and it was decided that we're going to complete the

22 reserve study, and based on the reserve study there

23 was assessments.

24

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1 BY MR. MILLER:

2 Q. All right. So, it sounds like you

3 specifically discussed that the receiver did not

4 agree with the actions you were taking.

5 MR. McELHINNEY: Objection, attorney-client

6 privilege.

7 THE COURT: Sustained.

8 BY MR. MILLER:

9 Q. Let me ask you, After receiving this letter

10 from Mr. Teichner, could you have reversed the

11 special assessment that he was referring to?

12 A. We could have reversed it but, as far as I

13 can remember, one person paid, zero plaintiffs paid.

14 And when it was -- when the order came down that we

15 had to reverse the special assessment, we

16 immediately paid that one person who was not a

17 plaintiff.

18 Q. What I'm asking you is, When he sent you

19 the letter, being the receiver in the case,

20 expressing he didn't agree with this, could you have

21 at that time sent -- withdrawn the special

22 assessment?

23 A. I said we could have.

24 Q. All right. And did it interfere with the

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1 receivership increased costs to have to keep

2 litigating forward to a court order on this issue?

3 A. No.

4 Q. Huh. It did not increase costs?

5 A. If he would have done his job to do the

6 reserves in the first place, we wouldn't be here.

7 Q. And this comes back to the concept that you

8 keep working, even though MEI-GSR is taking in all

9 the rents under a court order to pay the receiver

10 from the rents, but doesn't do so.

11 A. This was November 30th, so he would have

12 been pretty much paid up, one month not paid. So,

13 he had -- as far as from earlier, October 31st was

14 the last statement, I believe, he got paid. So, he

15 had all this time to do his job and he did not.

16 Q. Around this time, correct, is when the

17 receiver started to take positions that were

18 directly contrary to what you were trying to do,

19 right, the special assessment?

20 Is that accurate as reflected in this

21 letter?

22 A. It was actually September 15th is when he

23 asked for -- I believe Stefanie Sharp asked for net

24 rents, so I believe it was around that time.

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1 Q. And then around that same time miraculously
2 he stopped getting paid. How do you explain that?
3 A. Again, it's the UOA that pays him. I heard
4 that they ran out of money because they did a
5 special assessment where we paid \$80,000 to him.
6 I'm not sure when the special assessment came out.
7 I think it was October so --
8 Q. You keep saying it's the UOA that pays him,
9 but where do you find that from a court order? What
10 order says it's the UOA that pays Mr. Teichner?
11 Doesn't it say that he's paid from the
12 rents and the defendants have to turn over the
13 rents? How does that not equate to having to turn
14 over those rents to pay his bills?
15 A. The rents and/or the dues, UOA dues. So,
16 we have never paid. It's always been the UOA. So,
17 again, this is something that is -- I don't know.
18 It's always been paid out of the dues.
19 Q. You're under oath, obviously.
20 A. Yes.
21 Q. Was it a plan to cut off payment to the
22 receiver so he wouldn't be able to do his job?
23 A. No. Because there was special assessment
24 and we paid the \$80,000.

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1 Q. Let me have you refer to Exhibit 122.
2 Refer to page seven, line 22. It states that, "It
3 is further ordered that the notice of special
4 assessment and the reference study sent to the unit
5 owners by Defendants on August 24th, 2021, shall
6 be immediately withdrawn, that the defendants shall
7 send out a notice to all unit owners of said
8 withdrawal within ten days of this order that any
9 amounts paid by unit owners pursuant to the notice
10 of special assessment shall be refunded within ten
11 days of this order, and that the receiver shall have
12 sole authority to order and oversee reserve studies
13 related to defendants' property under the governing
14 documents."
15 So, I know I've seen a letter from Associa
16 Management which inaccurately states that only one
17 special assessment was withdrawn and then also
18 improperly states that it'll take some time to do it
19 rather than doing it within the ten days.
20 But what I don't see anywhere in the file
21 is the letter from the defendants as ordered by the
22 court sending out notice to all of these plaintiffs
23 or unit owners that received this saying that the
24 special assessment has been rescinded.

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1 A. I believe it went out on the statements.
2 And there was only one person that paid and we paid
3 him within the time.
4 Q. So, you're telling me that there's a
5 statement somewhere that says that the special
6 assessment was rescinded?
7 A. There is -- we credited it back, the
8 charge. I believe it was -- when was this?
9 August 24th? I'm guessing it was the September
10 statement.
11 Q. And you believe that satisfies the court's
12 order that the defendants shall send out a notice to
13 all unit owners of said withdraw.
14 A. I mean, we immediately refunded. On the
15 statements we reversed the charges that we did.
16 Q. Let's look what the order says again then.
17 It says --
18 MR. McELHINNEY: Objection, he interrupted
19 the witness.
20 THE COURT: Finish your answer.
21 THE WITNESS: Sure.
22 And within ten days we paid the only unit
23 owner that actually paid, non-plaintiff.
24

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1 BY MR. MILLER:
2 Q. Okay. I'm going back to the order at line
3 22. It says that "the notice of special assessment
4 and the reserve study sent to the unit owners by
5 Defendants on October 24th, 2021, shall be
6 immediately withdrawn, that the defendants shall
7 send out notice to all unit owners of said
8 withdraw."
9 And I don't recall ever seeing the notice
10 of withdraw, that the reserve study that you had
11 sent to them -- which, to be honest with you, would
12 you like to receive that reserve study on a piece of
13 property that you own as seeking -- what was it? --
14 a \$66 million special assessment?
15 A. I don't have the figure in front of me so
16 I'm not really sure. But, again, we don't do the
17 special assessment. That is strictly the
18 independent study.
19 So, to answer your first question, I'm not
20 sure if a notice went out, but I know for sure that
21 it went out on their statements. And I know for
22 sure that we refunded the only person that paid
23 within ten days.
24 Q. As we sit here today it's my understanding

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1 that you need to demonstrate that you've complied
2 with the court orders. We believe it's very
3 material that you comply with the court's order to
4 give notice that this reserve study that saw -- I
5 can't remember. I think it was \$66 million -- was
6 -- all these people were informed that that's
7 invalid. You don't have that nightmare hanging over
8 your head of this unauthorized reserve study that
9 violated the court's orders.

10 So, what I'm asking is you, Do you have a
11 document that states that the CC&R or this reserve
12 study and the special assessment was withdrawn that
13 was sent out to the unit owners in accordance with
14 this -- the court's order?

15 A. I'm -- I don't know.

16 Q. Okay.

17 A. If -- I'm not sure if we sent one or not.

18 Q. Again, not to keep trudging over the same
19 ground, but the last sentence of the same provision,
20 while we're here, it states, "The receiver has sole
21 authority to order and oversee the reserve studies."

22 Do you see that?

23 A. I do see that, yes.

24 Q. Okay.

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1 A. To this day he has not.

2 Q. Let me have you turn to Exhibit 68.
3 Have you ever seen this email before?

4 A. I'm not sure.

5 Q. Were you informed around this time in the
6 end of January -- January 24th that the receiver
7 did not agree with the January 16th, 2020,
8 statements that had been sent out by GSR.

9 A. January 2020 statements?

10 Q. Oh, the January 16th, 2022, statements.
11 Sorry.

12 A. I'm not sure. I don't know if I got this
13 email or not.

14 Q. You're in charge of preparing the
15 statements and sending them out to the unit owners.
16 Is that correct?

17 A. That is correct, yes.

18 Q. All right. And around this time, after
19 those January 16th, 2022, statements were issued,
20 did anyone at MEI-GSR tell you, Look, the receiver
21 doesn't agree with what was done?

22 A. I can't remember. I don't think I ever
23 received anything from the receiver himself.

24 Q. Okay. So, you didn't even know that the

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1 receiver didn't agree with the issuance of those
2 statements containing the old fees and having the
3 special assessment?

4 A. I can't remember.

5 Q. Do you think it would be your counsel's
6 duty to notify you that this is a problem?

7 A. I'm -- it is their duty, but I just can't
8 remember if they did or not.

9 Q. Okay. If the receiver doesn't approve the
10 statements and doesn't think they're proper, could
11 GSR at that time have issued proper statements that
12 comply with the direction of the receiver? Would it
13 have been possible?

14 A. I don't -- I don't know if he's either --
15 ever not authorized to send statements. Per the
16 governing documents, I have to send statements. I
17 don't think he's ever sent statements.

18 I mean, that's -- as a receiver he -- but
19 he hasn't even calculated the numbers so I don't
20 know how he would be able to send statements.
21 Because, again, this is January 24th, so this
22 would have been, I'm guessing, right after the
23 January 4th seven orders that were conflicting. So,
24 again, we were -- we didn't know, because of the

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1 conflicting orders, it was very --

2 Q. Did you ever reach out to the --

3 MR. McELHINNEY: Interrupting the witness.
4 Objection.

5 THE COURT: Did you finish?

6 THE WITNESS: Yeah. I'm good.

7 BY MR. MILLER:

8 Q. At this time did you ever reach out to the
9 receiver and ask him what he wanted you to do as far
10 as issuing the statements? Did you pick up a phone
11 and call him?

12 A. At this time I had several conversations
13 with him, because one of the conversations was, I
14 need your 2023 or 2022 budget. I need your 2022
15 reserves which were not completed.

16 So, I was in contact. Did I ask him
17 directly, no? But he never asked me directly so ...

18 Q. Are you dictating to him what he should do?
19 You're telling him, I need this from you, I need
20 these things from you.

21 Is that what I'm understanding?

22 A. Not dictating. I asked him if he had it
23 done, because per the CC&Rs I have to get a budget
24 out and do a true-up.

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1 Q. Let me have you turn to Exhibit 78. This
2 is the receiver's report from March 1st through
3 March 31, 2022. Have you ever seen this document?
4 A. I believe I have.
5 Q. And do you recall the receiver instructing
6 you that he wanted to put the rents into the GSR UOA
7 account?
8 A. Yes.
9 Q. And whose decision would it have been to
10 put the money into the GSR UOA account, the receiver
11 or your decision?
12 A. It was the receiver's. After that I had a
13 conversation with them. Because it's a
14 not-for-profit organization, we were a little
15 worried about the UOA's bank account, using that, in
16 the order where it strictly said that he needs to
17 open a bank account. So, I reached out to him, or I
18 believe there was an order that was sent stating
19 that fact.
20 Q. Now, let's look at the large paragraph on
21 the second page of this document. It states, "When
22 I informed Mr. Reid that until I receive an EIN for
23 me as a receiver, the bank account of the UOA is
24 going to be used as a conduit for collecting rents

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1 and making the payments as described above, he
2 expressed some concern about whether the nonprofit
3 status of the UOA might be compromised. Although I
4 have had considerable experience with not-for-profit
5 entities, but not having been involved with that
6 area of practice for over 20 years, I do not believe
7 the provisions under the IRS code and the related
8 regulations would apply to the UOA tax status.
9 "However, in order to be certain that no
10 such problems exist, I decided to perform some
11 research to ascertain that using UOA bank accounts
12 would not affect its filing status as an
13 association. And also I contacted UOA's accountant
14 and tax preparer firm to ask them if they believe
15 whether the UOA's filing status would be affected."
16 Did you ever read that provision?
17 A. Well, he informed me to let me know.
18 Q. He let you know.
19 So, after he does this research, tells you
20 that he wants to put it into the UOA account, did
21 MEI-GSR refuse?
22 A. Again, we had concerns. He only mentions
23 one concern. The other concern was the order said
24 that he opens his own account. As a receiver he

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1 opens his own account. So, per the seven confusing
2 orders in January 4th, 2022, one of the things was
3 he opened his own account.
4 So, again, I expressed that to him after I
5 got with the appropriate parties and we expressed
6 that concern. I believe we filed something on this
7 that we didn't think this was right, but I'm not
8 sure on that one.
9 Q. So, you didn't attempt to cooperate with
10 him in his instructions that we're going to put them
11 into the UOA account but, instead, you chose to
12 oppose his request.
13 A. Again, he only cited one. He didn't cite
14 here about the other ones saying that the order said
15 that you personally need to as a receiver.
16 So, again, we were still -- even though he
17 went through all this, it says "I believe," so
18 100 percent -- so based on those conclusions, we --
19 I believe we filed an order but not 100 percent
20 sure.
21 MR. MILLER: May I approach, your Honor?
22 THE COURT: Yes. Next in order?
23 MR. MILLER: Yes. These are the
24 defendants' five motions for reconsideration of the

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1 January 4th, 2022, court orders.
2 THE COURT: We're up to 146.
3 THE CLERK: Yes, your Honor.
4 THE COURT: Please provide a copy to Mr.
5 McElhinney.
6 MR. McELHINNEY: No objection, your Honor.
7 THE COURT: They will be admitted.
8 (Exhibit 146 admitted.)
9 THE COURT: You can continue, Mr. Miller.
10 BY MR. MILLER:
11 Q. Are you familiar with these documents, Mr.
12 Brady?
13 A. Yes. I believe I've read them.
14 Q. So, we've heard, I think repeatedly, how
15 you don't believe that Exhibit 122, the Order
16 Granting Receiver's Motion for Order and
17 Instructions dated January 4th, 2022, and Exhibit 24
18 Order Approving Receiver's Fees dated January 4th,
19 2022, can be read in harmony or conflict with each
20 other, right? Isn't that your position?
21 A. I'll have to look at the exhibits again.
22 I'm sorry. Which ones again? You said 24?
23 Q. Oh, yes. If you want to look at the
24 demonstrative exhibit so we can speed things along.