

IN THE SUPREME COURT OF THE STATE OF NEVADA

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*Supreme Court Case No.*

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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. TEICHNER, 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**

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## CHRONOLOGICAL INDEX

<b>Description</b>	<b>Date</b>	<b>Vol. Nos.</b>	<b>Bates Nos.</b>
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<b>Description</b>	<b>Date</b>	<b>Vol. Nos.</b>	<b>Bates Nos.</b>
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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

<b>Description</b>	<b>Date</b>	<b>Vol. Nos.</b>	<b>Bates Nos.</b>
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

<b>Description</b>	<b>Date</b>	<b>Vol. Nos.</b>	<b>Bates Nos.</b>
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

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## 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:

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Second Judicial District Court  
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*Respondent*

/s/ Cinda Towne  
An employee of PISANELLI BICE PLLC

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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.

  
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 : yviloria

# Exhibit 9

CV12-02222  
DC-09900061780-022  
ALBERT THOMAS ETAL. VS. MEI - 2 Pages  
District Court 11/26/2014 10:03 AM  
Washoe County  
1550-4  
KJONER

CODE: 1550

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ACTING CLERK OF THE COURT

BY DEPUTY

*Jaqueline Bryant*

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

ALBERT THOMAS, individually; et al.,  
Plaintiffs,  
vs.  
MEI-GSR Holdings, LLC, a Nevada Limited  
Liability Company, et al.,  
Defendants.

Case No. CV12-02222  
Dept. No. 10

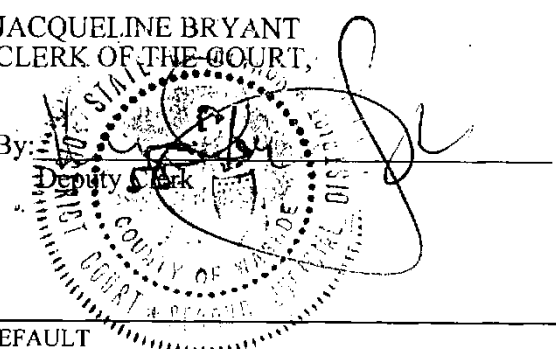
DEFAULT

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 26<sup>th</sup> day of November, 2014.

JACQUELINE BRYANT  
CLERK OF THE COURT,

By: *[Signature]*  
Deputy Clerk



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)

20  
21 Jarrad C. Miller  
(Print Name)

22 Plaintiff  
23 (for)

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

# Exhibit 10

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

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

#### 12 **I. FINDINGS OF FACT**

- 13 1. Plaintiff Albert Thomas is a competent adult and is a resident of the State of  
14 California.
- 15 2. Plaintiff Jane Dunlap is a competent adult and is a resident of the State of California.
- 16 3. Plaintiff John Dunlap is a competent adult and is a resident of the State of California.
- 17 4. Plaintiff Barry Hay is a competent adult and is a resident of the State of California.
- 18 5. Plaintiff Marie-Annie Alexander, as Trustee of the Marie-Annie Alexander Living  
19 Trust, is a competent adult and is a resident of the State of California.
- 20 6. Plaintiff Melissa Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa  
21 Vagujheyli 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a  
22 resident of the State of Nevada.
- 23 7. Plaintiff George Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa  
24 Vagujheyli 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a  
25 resident of the State of Nevada.
- 26 8. Plaintiff D'Arcy Nunn is a competent adult and is a resident of the State of California.
- 27 9. Plaintiff Henry Nunn is a competent adult and is a resident of the State of California.
- 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 Ordovery is a competent adult and is a resident of the State of  
12 Connecticut.  
13           16.   Plaintiff William A. Henderson is a competent adult and is a resident of the State of  
14 California.  
15           17.   Plaintiff Christine E. Henderson is a competent adult and is a resident of the State of  
16 California.  
17           18.   Plaintiff Loren D. Parker is a competent adult and is a resident of the State of  
18 Washington.  
19           19.   Plaintiff Suzanne C. Parker is a competent adult and is a resident of the State of  
20 Washington.  
21           20.   Plaintiff Michael Izady is a competent adult and is a resident of the State of New  
22 York.  
23           21.   Plaintiff Steven Takaki is a competent adult and is a resident of the State of  
24 California.  
25           22.   Plaintiff Farad Torabkhan is a competent adult and is a resident of the State of New  
26 York.  
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- 1           23.    Plaintiff Sahar Tavakol is a competent adult and is a resident of the State of New  
2   York.
- 3           24.    Plaintiff M&Y Holdings is a Nevada Limited Liability Company with its principal  
4   place of business in Nevada.
- 5           25.    Plaintiff JL&YL Holdings, LLC is a Nevada Limited Liability Company with its  
6   principal place of business in Nevada.
- 7           26.    Plaintiff Sandi Raines is a competent adult and is a resident of the State of Minnesota.
- 8           27.    Plaintiff R. Raghuram is a competent adult and is a resident of the State of California.
- 9           28.    Plaintiff Usha Raghuram is a competent adult and is a resident of the State of  
10   California.
- 11           29.    Plaintiff Lori K. Tokutomi is a competent adult and is a resident of the State of  
12   California.
- 13           30.    Plaintiff Garrett Tom is a competent adult and is a resident of the State of California.
- 14           31.    Plaintiff Anita Tom is a competent adult and is a resident of the State of California.
- 15           32.    Plaintiff Ramon Fadrilan is a competent adult and is a resident of the State of  
16   California.
- 17           33.    Plaintiff Faye Fadrilan is a competent adult and is a resident of the State of California.
- 18           34.    Plaintiff Peter K. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a  
19   competent adult and is a resident of the State of California.
- 20           35.    Plaintiff Monica L. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a  
21   competent adult and is a resident of the State of California.
- 22           36.    Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.
- 23           37.    Plaintiff Elias Shamieh is a competent adult and is a resident of the State of  
24   California.
- 25           38.    Plaintiff Nadine's Real Estate Investments, LLC, is a North Dakota Limited Liability  
26   Company.  
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1           39.   Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of  
2 Hawaii.  
3           40.   Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of  
4 Hawaii.  
5           41.   Plaintiff Kenneth Riche is a competent adult and is a resident of the State of  
6 Wisconsin.  
7           42.   Plaintiff Maxine Riche is a competent adult and is a resident of the State of  
8 Wisconsin.  
9           43.   Plaintiff Norman Chandler is a competent adult and is a resident of the State of  
10 Alabama.  
11           44.   Plaintiff Benton Wan is a competent adult and is a resident of the State of California.  
12           45.   Plaintiff Timothy Kaplan is a competent adult and is a resident of the State of  
13 California.  
14           46.   Plaintiff Silkscape Inc. is a California Corporation.  
15           47.   Plaintiff Peter Cheng is a competent adult and is a resident of the State of California.  
16           48.   Plaintiff Elisa Cheng is a competent adult and is a resident of the State of California.  
17           49.   Plaintiff Greg A. Cameron is a competent adult and is a resident of the State of  
18 California.  
19           50.   Plaintiff TMI Property Group, LLC is a California Limited Liability Company.  
20           51.   Plaintiff Richard Lutz is a competent adult and is a resident of the State of California.  
21           52.   Plaintiff Sandra Lutz is a competent adult and is a resident of the State of California.  
22           53.   Plaintiff Mary A. Kossick is a competent adult and is a resident of the State of  
23 California.  
24           54.   Plaintiff Melvin H. Cheah is a competent adult and is a resident of the State of  
25 California.  
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1           55.     Plaintiff Di Shen is a competent adult and is a resident of the State of Texas.  
2           56.     Plaintiff Ajit Gupta is a competent adult and is a resident of the State of California.  
3           57.     Plaintiff Seema Gupta is a competent adult and is a resident of the State of California.  
4           58.     Plaintiff Fredrick Fish is a competent adult and is a resident of the State of Minnesota.  
5           59.     Plaintiff Lisa Fish is a competent adult and is a resident of the State of Minnesota.  
6           60.     Plaintiff Robert A. Williams is a competent adult and is a resident of the State of  
7 Minnesota.  
8           61.     Plaintiff Jacquelin Pham is a competent adult and is a resident of the State of  
9 California.  
10          62.     Plaintiff May Ann Hom, as Trustee of the May Ann Hom Trust, is a competent adult  
11 and is a resident of the State of California.  
12          63.     Plaintiff Michael Hurley is a competent adult and is a resident of the State of  
13 Minnesota.  
14          64.     Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.  
15          65.     Plaintiff Duane Windhorst is a competent adult and is a resident of the State of  
16 Minnesota.  
17          66.     Plaintiff Marilyn Windhorst is a competent adult and is a resident of the State of  
18 Minnesota.  
19          67.     Plaintiff Vinod Bhan is a competent adult and is a resident of the State of California.  
20          68.     Plaintiff Anne Bhan is a competent adult and is a resident of the State of California.  
21          69.     Plaintiff Guy P. Browne is a competent adult and is a resident of the State of  
22 California.  
23          70.     Plaintiff Garth Williams is a competent adult and is a resident of the State of  
24 California.  
25          71.     Plaintiff Pamela Y. Aratani is a competent adult and is a resident of the State of  
26 California.  
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1           72.     Plaintiff Darleen Lindgren is a competent adult and is a resident of the State of  
2 Minnesota.  
3           73.     Plaintiff Laverne Roberts is a competent adult and is a resident of the State of  
4 Nevada.  
5           74.     Plaintiff Doug Mecham is a competent adult and is a resident of the State of Nevada.  
6           75.     Plaintiff Chrisine Mecham is a competent adult and is a resident of the State of  
7 Nevada.  
8           76.     Plaintiff Kwangsoo Son is a competent adult and is a resident of Vancouver, British  
9 Columbia.  
10          77.     Plaintiff Soo Yeun Moon is a competent adult and is a resident of Vancouver, British  
11 Columbia.  
12          78.     Plaintiff Johnson Akindodunse is a competent adult and is a resident of the State of  
13 California.  
14          79.     Plaintiff Irene Weiss, as Trustee of the Weiss Family Trust, is a competent adult and  
15 is a resident of the State of Texas.  
16          80.     Plaintiff Pravesh Chopra is a competent adult and is a resident of the State of  
17 California.  
18          81.     Plaintiff Terry Pope is a competent adult and is a resident of the State of Nevada.  
19          82.     Plaintiff Nancy Pope is a competent adult and is a resident of the State of Nevada.  
20          83.     Plaintiff James Taylor is a competent adult and is a resident of the State of California.  
21          84.     Plaintiff Ryan Taylor is a competent adult and is a resident of the State of California.  
22          85.     Plaintiff Ki Ham is a competent adult and is a resident of Surry B.C.  
23          86.     Plaintiff Young Ja Choi is a competent adult and is a resident of Coquitlam, B.C.  
24          87.     Plaintiff Sang Dae Sohn is a competent adult and is a resident of Vancouver, B.C.  
25          88.     Plaintiff Kuk Hyung ("Connie") is a competent adult and is a resident of Coquitlam,  
26 B.C.  
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1           89.   Plaintiff Sang ("Mike") Yoo is a competent adult and is a resident of Coquitlam, B.C.  
2           90.   Plaintiff Brett Menmuir, as Trustee of the Cayenne Trust, is a competent adult and is  
3 a resident of the State of Nevada.  
4           91.   Plaintiff William Miner, Jr., is a competent adult and is a resident of the State of  
5 California.  
6           92.   Plaintiff Chanh Truong is a competent adult and is a resident of the State of  
7 California.  
8           93.   Plaintiff Elizabeth Anders Mecua is a competent adult and is a resident of the State of  
9 California.  
10          94.   Plaintiff Shepherd Mountain, LLC is a Texas Limited Liability Company with its  
11 principal place of business in Texas.  
12          95.   Plaintiff Robert Brunner is a competent adult and is a resident of the State of  
13 Minnesota.  
14          96.   Plaintiff Amy Brunner is a competent adult and is a resident of the State of  
15 Minnesota.  
16          97.   Plaintiff Jeff Riopelle is a competent adult and is a resident of the State of California.  
17          98.   Plaintiff Patricia M. Moll is a competent adult and is a resident of the State of Illinois.  
18          99.   Plaintiff Daniel Moll is a competent adult and is a resident of the State of Illinois.  
19          100.   The people and entities listed above represent their own individual interests. They are  
20 not suing on behalf of any entity including the Grand Sierra Unit Home Owner's Association. The  
21 people and entities listed above are jointly referred to herein as "the Plaintiffs".  
22          101.   Defendant MEI-GSR Holdings, LLC ("MEI-GSR") is a Nevada Limited Liability  
23 Company with its principal place of business in Nevada.  
24          102.   Defendant Gage Village Commercial Development, LLC ("Gage Village") is a  
25 Nevada Limited Liability Company with its principal place of business in Nevada.  
26  
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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).  
26  
27  
28

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.  
27  
28

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

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

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

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

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

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

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

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

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

24           130. Defendants MEI-GSR and/or Gage Village have attempted to purchase, and  
25 purchased, units devalued by their own actions, at nominal, distressed prices when Individual Unit  
26  
27  
28

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  
27  
28

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

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

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

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

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

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

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

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

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

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

## II. CONCLUSIONS OF LAW

- 1
- 2 A. The Court has jurisdiction over MEI-GSR, Gage Village, the Unit Owner's Association
- 3 and the Plaintiffs.
- 4
- 5 B. The appointment of a receiver is appropriate when: (1) the plaintiff has an interest in
- 6 the property; (2) there is potential harm to that interest in property; and (3) no other
- 7 adequate remedies exist to protect the interest. *See generally Bowler v. Leonard*, 70
- 8 Nev. 370, 269 P.2d 833 (1954). *See also* NRS 32.010. The Court appointed a receiver
- 9 to oversee the Unit Owner's Association on January 7, 2015. The Court concludes that
- 10 MEI-GSR and/or Gage Village have operated the Unit Owner's Association in a way
- 11 inconsistent with the best interests of all of the unit owners. The continued
- 12 management of the Unit Owner's Association by the receiver is appropriate under the
- 13 circumstances of this case and will remain in effect absent additional direction from the
- 14 Court.
- 15
- 16 C. Negligent misrepresentation is when "[o]ne who, in the course of his business,
- 17 profession or employment, or in any other action in which he has a pecuniary interest,
- 18 supplies false information for the guidance of others in their business transactions, is
- 19 subject to liability for pecuniary loss caused to them by their justifiable reliance upon
- 20 the information, if he fails to exercise reasonable care or competence in obtaining or
- 21 communicating the information." *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d
- 22 1382, 1387 (1998) (quoting *Restatement (Second) of Torts* § 552(1) (1976)). Intentional
- 23 misrepresentation is when "a false representation made with knowledge or belief that it
- 24 is false or without a sufficient basis of information, intent to induce reliance, and
- 25 damage resulting from the reliance. *Lubbe v. Barba*, 91 Nev. 596, 599, 540 P.2d 115,
- 26
- 27
- 28

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  
27  
28

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  
28



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  
28

1 orchestrated action between it and MEI-GSR to the detriment of the individual unit  
2 owners as alleged in the Eleventh Cause of Action.

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

9 N. The Plaintiffs are entitled to both equitable and legal relief. "As federal courts have  
10 recognized, the long-standing distinction between law and equity, though abolished in  
11 procedure, continues in substance, *Coca-Cola Co. v. Dixi-Cola Labs.*, 155 F.2d 59, 63  
12 (4th Cir. 1946); 30A C.J.S. *Equity* § 8 (2007). A judgment for damages is a legal  
13 remedy, whereas other remedies, such as avoidance or attachment, are equitable  
14 remedies. See 30A *Equity* § 1 (2007)." *Cadle Co. v. Woods & Erickson, LLP*, 131  
15 Nev. Adv. Op. 15, 345 P.3d 1049, 1053 (2015).

16 O. "[W]here default is entered as a result of a discovery sanction, the non-offending party  
17 'need only establish a *prima facie* case in order to obtain the default." *Foster*, 227 P.3d  
18 at 1049 (*citing Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 94, 787 P.2d 777,  
19 781 (1990)). "[W]here a district court enters a default, the facts alleged in the pleadings  
20 will be deemed admitted. Thus, during a NRCP 55(b)(2) prove-up hearing, the district  
21 court shall consider the allegations deemed admitted to determine whether the non-  
22 offending party has established a *prima facie* case for liability." *Foster*, 227 P.3d at  
23 1049-50. A *prima facie* case requires only "sufficiency of evidence in order to send the  
24 question to the jury." *Id.* 227 P.3d at 1050 (*citing Vancheri v. GNLV Corp.*, 105 Nev.  
25 417, 420, 777 P.2d 366, 368 (1989)). The Plaintiffs have met this burden regarding all  
26 of their causes of action.  
27  
28

- 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

### 20 **III. JUDGMENT**

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

#### 23 **Monetary Relief:**

- 24 1. Against MEI-GSR in the amount of \$442,591.83 for underpaid revenues to Unit owners;  
25 2. Against MEI-GSR in the amount of \$4,152,669.13 for the rental of units of owners who had no  
26 rental agreement;  
27 3. Against MEI-GSR in the amount of \$1,399,630.44 for discounting owner's rooms without  
28 credits;

- 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
- 28

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

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

4 **Punitive Damages:**

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

21 DATED this 9 day of October, 2015.

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

**CERTIFICATE OF SERVICE**

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

Jonathan Tew, Esq.

Jarrad Miller, Esq.

Stan Johnson, Esq.

Mark Wray, Esq.

**DATED** this 9 day of October, 2015.

  
SHEILA MANSFIELD  
Judicial Assistant

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

# Exhibit 11

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.<sup>1</sup>

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 <sup>1</sup> 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.<sup>2</sup> 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 <sup>2</sup> 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.<sup>3</sup> The Recommendation 7:1-2; 8:25-26; 9:1-6,  
8 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  
9 determined that the Defendant should be compelled to produce the documents encompassed by  
10 Request Nos. 23, 24, 53, 68, 70 and 77, but did not establish a time frame for production. The  
11 Recommendation 17:16-22; 20:21-25; 24:1-4; 28:1-17; 29:1-6, 21-22; 30:1-9; 30:25-26.

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 <sup>3</sup> 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.

1 NRCP 34(a) provides in relevant part:

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

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

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

13 NRCP 26(b) permits discovery

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

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

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

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

24 The Court will affirm the Recommendation because Commissioner Ayres correctly  
25 determined the Defendants should be compelled to produce documents responsive to Request Nos.  
26 23, 68 and 70 for the entire four and a half year time frame. Commissioner Ayres correctly found  
27 that each disputed category in the PJRFP was a supplementation of earlier requests for production of  
28 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.

15  
16  
17  
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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Clerk of the Court  
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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  
10 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
11 **IN AND FOR THE COUNTY OF WASHOE**

12 ALBERT THOMAS, individually; *et al.*,  
13 Plaintiffs,

14 vs.

Case No. CV12-02222  
Dept. No. 10

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

25 Defendants.

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

27 Plaintiffs Albert Thomas *et al.*, by and through their counsel of record, the law firm of  
28 Robertson, Johnson, Miller & Williamson, hereby move the Court for an order: (1) directing the  
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



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

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

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

22 As such, Plaintiffs respectfully request that in furtherance of this Court's sanctions, and  
23 to provide complete sanctions relief prior to a final judgment, Plaintiffs be allowed to prove up  
24 additional damages from the date of the Dismissal through the date that a receiver implements  
25 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").

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

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

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

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

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

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."<sup>1</sup> 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

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28 <sup>1</sup> *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 NRCP 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  
the needs of the case, the amount in controversy, limitations on parties’ resources,  
and the importance of the issues at stake in the litigation.

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

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

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

1           **IV. CONCLUSION**

2           This Court entered serious sanctions orders against the Defendants for truly  
3 unprecedented discovery and litigation abuses. The Defendants demonstrated no respect for the  
4 judicial machinery prior to this Court's sanctions orders and FFCLJ. After the Dismissal, the  
5 Defendants could have respected this Court's FFCLJ findings that they committed numerous  
6 torts and contract abuses. This is especially true since Plaintiffs immediately appealed the  
7 Dismissal, and the Defendants could have been held accountable once again. Instead, the  
8 Defendants immediately announced their disagreement with this Court's findings and continued  
9 their unlawful conduct for the nearly three (3) years the appeal was pending.

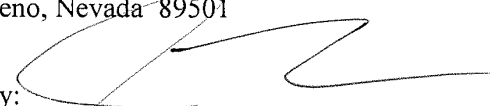
10          Plaintiffs request that the Court hold the Defendants accountable and afford Plaintiffs  
11 complete relief under the Court's sanctions orders and FFCLJ. Complete relief is justified under  
12 the Court's prior orders and is necessary to fully redress the Defendants' misconduct. Further,  
13 since the Defendants elected not to maintain the status quo while this case was on appeal, the  
14 Supreme Court's reversal places the Defendants in active and ongoing violation of the Court's  
15 sanctions orders and the FFCLJ. This must be corrected and accounted for. The Defendants  
16 could have avoided this very situation by acting within the law, and instead have now placed the  
17 Court in the position of having to again hold them to justice. For these reasons, Plaintiffs  
18 respectfully request that the Court grant their Motion.

19                                   **AFFIRMATION**

20          Pursuant to NRS § 239B.030, the undersigned does hereby affirm that the preceding  
21 document does not contain the social security number of any person.

22          RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of December, 2018

23                                   ROBERTSON, JOHNSON,  
24                                   MILLER & WILLIAMSON  
25                                   50 West Liberty Street, Suite 600  
26                                   Reno, Nevada 89501

26                   By:   
27                                   Jarrad C. Miller, Esq.  
28                                   Jonathan J. Tew, Esq.  
                                  Attorneys for Plaintiffs



1 **CERTIFICATE OF SERVICE**


2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson,  
3 Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of  
4 18, and not a party within this action. I further certify that on the 27<sup>th</sup> day of December, 2018, I  
5 caused to be deposited in the U.S. Mail, first-class postage fully prepaid the foregoing **MOTION**  
6 **FOR SUPPLEMENTAL DAMAGES PROVE-UP HEARING** with the Clerk of the Court by  
7 using the ECF system which served the following parties electronically:

8 H. Stan Johnson, Esq.  
9 Steven B. Cohen, Esq.  
10 Cohen-Johnson, LLC  
11 255 E. Warm Springs Road, Suite 100  
12 Las Vegas, NV 89119  
13 Facsimile: (702) 823-3400  
14 Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com)  
15 *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](mailto:notices@banhkruptcyreno.com)  
*Attorneys for Receiver*

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

17 Gayle A. Kern, Esq.  
18 Kern & Associates, Ltd.  
19 5421 Kietzke Lane, Suite 200  
20 Reno, NV 89511  
21 Facsimile: (775) 324-6173  
22 Email: [gaylekern@kernltd.com](mailto:gaylekern@kernltd.com)  
23 *Attorneys for Defendants*

24   
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,

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

No. 69184

**FILED**

FEB 01 2016

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

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.

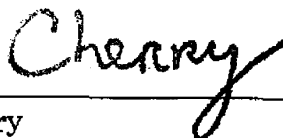
On December 22, 2015, this court entered an order to show cause directing appellants to show cause why the appeal should not be dismissed as premature. *See Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991); *Rae v. All American Life & 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.



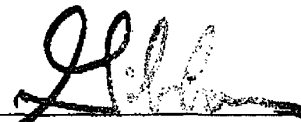
J.

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

CERTIFIED COPY  
This document is a full, true and correct copy of  
the original on file and of record in my office.  
DATE: February 26, 1976  
Supreme Court Clerk, State of Nevada ★  
By Dan J. 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  
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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  
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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  
COMMERICAL 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

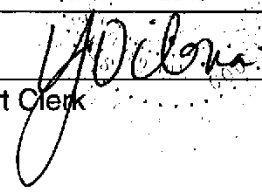
By: Rory Wunsch  
Deputy Clerk

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

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  
COMMERICAL 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



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

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

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

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

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

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

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

**Expenditures** filed 5/21/20.<sup>1</sup> This motion is denied.


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

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

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

4 The procedures required under section 6.10(a) were not followed prior to the remodeling expenses  
5 being incurred. The Court declines to find the remodeling expenses are "extraordinary  
6 expenditures" which would permit reimbursement under Section 6.10(b).  
7

8 Dated this 26th day January, 2023.

9  
10   
11 Hon. Elizabeth Gonzalez, (Ret.)  
12 Sr. District Court Judge  
13  
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**CERTIFICATE OF SERVICE**

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

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.

  
\_\_\_\_\_

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

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

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

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

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

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

**Defendants' Motion for Instructions Re Reimbursement of 2020 Capital Expenditures** filed 6/24/21.<sup>1</sup> This motion is denied.

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

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

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

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

7 The procedures required under section 6.10(a) were not followed prior to the 2020 expenses being  
8 incurred. The Court declines to find the 2020 expenses are "extraordinary expenditures" which  
9 would permit reimbursement under Section 6.10(b).  
10

11  
12 Dated this 26th day January, 2023.

13   
14 \_\_\_\_\_  
15 Hon. Elizabeth Gonzalez, (Ret.)  
16 Sr. District Court Judge  
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ORDER - 2

**CERTIFICATE OF SERVICE**

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

DALE KOTCHKA-ALANES

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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.

---

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

Jordan T. Smith, Esq., Bar No. 12097  
[JTS@pisanellibice.com](mailto:JTS@pisanellibice.com)

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David C. McElhinney, Esq., Bar No. 0033  
[david.mcelhinney@meruelogroup.com](mailto:david.mcelhinney@meruelogroup.com)

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

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

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

**IN AND FOR THE COUNTY OF WASHOE**

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

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

**FINAL JUDGMENT**



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

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

Plaintiff(s),

v.

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

Defendant(s).

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

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

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

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

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

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

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

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

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

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

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

14  
15 Dated this 2<sup>nd</sup> day of February, 2023

16  
17   
18 THE HONORABLE ELIZABETH G. GONZALEZ  
(RET.)

19 Respectfully submitted by:

20 PISANELLI BICE PLLC

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

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

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

16 BENCH TRIAL

17 TUESDAY, JUNE 6, 2023

18 APPEARANCES:

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

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

23

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

<p style="text-align: right;">Page 14</p> <p>1 those that you --</p> <p>2 MR. MILLER: No. I agree with the changed</p> <p>3 documents.</p> <p>4 THE COURT: Okay. Are there any others,</p> <p>5 Mr. McElhinney, on your list?</p> <p>6 MR. MCELHINNEY: No. No further exhibits.</p> <p>7 THE COURT: So at this time, based upon the</p> <p>8 stipulation, I've admitted Exhibits 1 through 129. 130</p> <p>9 through 139, we will deal with if they are offered.</p> <p>10 Anything else on a housekeeping basis,</p> <p>11 Ms. Clerk?</p> <p>12 MR. MCELHINNEY: I don't believe so, Your</p> <p>13 Honor.</p> <p>14 THE COURT: I'm looking at Gracie not you.</p> <p>15 MR. MCELHINNEY: Oh, I'm sorry.</p> <p>16 THE CLERK: Your Honor, if counsel could</p> <p>17 e-mail me their exhibit list and that would be so much</p> <p>18 easier.</p> <p>19 THE COURT: Could you email the exhibit list</p> <p>20 to the clerk, please, somebody who knows what they're</p> <p>21 doing? I have a couple of people who look like they</p> <p>22 might know the answer to that question. Great. Good</p> <p>23 job. Okay. That would be the people when I say counsel</p> <p>24 and support staff. Thank you.</p>	<p style="text-align: right;">Page 16</p> <p>1 of us speak at a time.</p> <p>2 Also, given the acoustics in this room which</p> <p>3 remind me of the last courtroom I was in as a judge, the</p> <p>4 sound is not very good. So it's critical that you use</p> <p>5 your microphones. So I certainly appreciate the support</p> <p>6 of Mr. Russo in assisting us in getting everybody miked</p> <p>7 up and Gracie in helping us, but it's going to be really</p> <p>8 important that you use those microphones.</p> <p>9 If it turns out that somebody else on your</p> <p>10 team needs to speak, please let them use the microphones</p> <p>11 so we can make sure that we get them so you have an</p> <p>12 accurate record for the next portion of your proceedings</p> <p>13 which will be in front of the Nevada Supreme Court.</p> <p>14 Also, it's really important you not have</p> <p>15 personal attacks today. I know this is a contentious</p> <p>16 case. I know we have contentious issue before me, but</p> <p>17 that doesn't mean we can't all be professional. So I</p> <p>18 encourage you to try and remember that as we're going</p> <p>19 through this process without making any personal attacks.</p> <p>20 If at any time someone who is not examining a</p> <p>21 witness needs to get up and leave or go to the restroom,</p> <p>22 take a phone call or just leave for the day, please feel</p> <p>23 free to do it. It will not bother me. I do not take</p> <p>24 offense. So if you want to get up and leave and it's not</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. MILLER: I don't believe they have the</p> <p>2 email or exhibit list that we just provided you with,</p> <p>3 right?</p> <p>4 THE COURT: Who does?</p> <p>5 MR. MILLER: Ms. Collings?</p> <p>6 THE COURT: Ms. Collings, could you send that</p> <p>7 to Gracie?</p> <p>8 MS. COLLINGS: Absolutely.</p> <p>9 THE COURT: Gracie will give you her e-mail.</p> <p>10 THE CLERK: It's</p> <p>11 Gracie.dawson@washoecourts.US. And that's courts plural.</p> <p>12 THE COURT: Any more housekeeping after we</p> <p>13 get the exhibit list?</p> <p>14 THE CLERK: No, Your Honor.</p> <p>15 THE COURT: All right. Counsel, one of the</p> <p>16 things that I always strive to do when I was a judge was</p> <p>17 to make sure only one person talks at a time. It is</p> <p>18 critical for the court reporter's purpose that only one</p> <p>19 of us speak at a time.</p> <p>20 If you need to make an objection, I certainly</p> <p>21 understand. All you've got to do is stand up. I'm going</p> <p>22 to know you're making an objection. I'll wait until</p> <p>23 somebody finishes or the other person will pause, but</p> <p>24 it's really important for Nicole's purposes that only one</p>	<p style="text-align: right;">Page 17</p> <p>1 your witness, we'll see you later. If you have a mike</p> <p>2 on, please leave the mikes here before you go the</p> <p>3 restroom.</p> <p>4 All right. Do I have any questions before I</p> <p>5 go to my first real order of business of the day?</p> <p>6 MR. MCELHINNEY: No questions, Your Honor.</p> <p>7 THE COURT: You guys haven't tried a case in</p> <p>8 front of me. Eisenberg has been in my courtroom many</p> <p>9 times but you all haven't.</p> <p>10 Any questions, Ms. Collings or Ms. Miller you</p> <p>11 have of me about process?</p> <p>12 MR. MILLER: No, Your Honor.</p> <p>13 THE COURT: Okay. If you have any questions</p> <p>14 during the day, I'd rather you ask so we can clarify it</p> <p>15 right then instead of waiting three days later to try and</p> <p>16 figure out what I meant when I said something because I</p> <p>17 remember a lot better right when I said it than I will</p> <p>18 three days later.</p> <p>19 I anticipate we're going to have a tough time</p> <p>20 getting this case done in the time we're allotted given</p> <p>21 what I read in your trial briefs. Does anyone mind</p> <p>22 starting at 8:30 for the rest of the mornings?</p> <p>23 MR. MCELHINNEY: Fine with defense, Your</p> <p>24 Honor.</p>



<p style="text-align: right;">Page 18</p> <p>1 MR. MILLER: No objection, Your Honor.</p> <p>2 THE COURT: Ms. Collings, is that okay with</p> <p>3 you?</p> <p>4 MS. COLLINGS: That's fine with me.</p> <p>5 THE COURT: Mr. Eisenberg, I know you're not</p> <p>6 planning to speak most of the time, but can we start at</p> <p>7 8:30?</p> <p>8 MR. EISENBERG: That's fine, Your Honor.</p> <p>9 THE COURT: Gracie, is that okay with you,</p> <p>10 and the court reporter?</p> <p>11 THE CLERK: Yes.</p> <p>12 THE COURT REPORTER: That's fine.</p> <p>13 THE COURT: We will plan to start, Russo, at</p> <p>14 8:30. I don't know if you're assigned for the whole week</p> <p>15 or not, but we're going to try and start at 8:30 so we</p> <p>16 can get through that.</p> <p>17 If anybody needs a bathroom break and it's</p> <p>18 your witness, just do this symbol to break or tell me:</p> <p>19 Judge, I need to take a break, and then we're going to</p> <p>20 take a break. There's not a jury here. I don't have to</p> <p>21 worry about giving breaks and getting the jurors back.</p> <p>22 I have two motions in limine that are</p> <p>23 pending: One filed by defendant, one by plaintiffs.</p> <p>24 I've read both. I don't need any defendant. The</p>	<p style="text-align: right;">Page 20</p> <p>1 is overlap between the conduct as subsequent orders were</p> <p>2 issued.</p> <p>3 THE COURT: Which is why I set them all</p> <p>4 together.</p> <p>5 MR. MILLER: Thank you, Your Honor. So there</p> <p>6 is some redundancy between the motions as subsequent</p> <p>7 orders were granted. Importantly, contempt implies to</p> <p>8 keywords that we'll probably hear over and over:</p> <p>9 Disobedience or resistance to the orders, the appointment</p> <p>10 order which is the January 7th, 2015 order which is</p> <p>11 Exhibit 115 will no doubt be reviewed ad nauseam during</p> <p>12 these proceedings.</p> <p>13 That appointment order dictates that the</p> <p>14 defendants shall cooperate and not interfere with the</p> <p>15 receiver, so those buzzwords cooperate and not interfere</p> <p>16 will ultimately probably be referred to repeatedly during</p> <p>17 these proceedings.</p> <p>18 The legal standard that the plaintiffs have</p> <p>19 is to prove by clear and convincing evidence the</p> <p>20 contempt. In the event that the contempt order claims</p> <p>21 inability to comply with the orders, the contempt order</p> <p>22 is to satisfy the burden by categorically showing in</p> <p>23 detail why the contempt order could not comply or cannot</p> <p>24 comply with the order. And our pretrial brief provides</p>
<p style="text-align: right;">Page 19</p> <p>1 defendants' motion is denied. The plaintiffs' motion is</p> <p>2 denied in part.</p> <p>3 Ms. Kern may testify to the extent of her</p> <p>4 declaration that was previously filed in this matter, but</p> <p>5 since there are no reports or records like there would be</p> <p>6 with a treating physician, she cannot go beyond the scope</p> <p>7 of that declaration.</p> <p>8 All right. So your opening, Mr. Miller.</p> <p>9 MR. MILLER: Your Honor, I have a very brief</p> <p>10 opening. The court granted the seven motions for order</p> <p>11 to show cause pursuant to NRS 220.103 which applies to</p> <p>12 disobedience or resistance to any lawful writ, order,</p> <p>13 rule or process issued by the court or judge at chambers.</p> <p>14 The evidence will demonstrate that the</p> <p>15 contentious conduct can be reduced to four categories of</p> <p>16 conduct that demonstrate a failure to cooperate with the</p> <p>17 clear dictates of the orders.</p> <p>18 The four areas of conduct that I believe</p> <p>19 we'll be covering is one: The refusal to implement the</p> <p>20 receiver's fees; two: Refusal to turn over the rental</p> <p>21 proceeds; three: The unauthorized withdrawal from the</p> <p>22 reserves and preparation of reserves; and four: Stopping</p> <p>23 the rental activity of plaintiffs' units. Because of the</p> <p>24 long duration of the pendency of the seven motions, there</p>	<p style="text-align: right;">Page 21</p> <p>1 the case law for these statements, but I just wanted to</p> <p>2 give the general legal background before we go forward.</p> <p>3 In the words of the defendants, the issues in</p> <p>4 these hearings is in quotes: "Whether the subject orders</p> <p>5 were sufficiently clear and definite; two: If so,</p> <p>6 whether defendants' compliance was possible; and three:</p> <p>7 Whether defendants actually complied with the order."</p> <p>8 And that's defendants' statements from their opposition</p> <p>9 to motion for order to show cause dated April 19th, 2023.</p> <p>10 Defendants -- we believe that the evidence</p> <p>11 will demonstrate that the defendants have violated the</p> <p>12 January 7th, 2015 appointment order, Exhibit 115; the</p> <p>13 findings of fact conclusions of law, Exhibit 116; the</p> <p>14 December 24th, 2020 order, which is Exhibit 119; five</p> <p>15 orders issued on January 4th, 2020, which are Exhibits</p> <p>16 120 to 124; the November 14th, 2022 order which is</p> <p>17 Exhibit 126.</p> <p>18 However, the court ordered that all of the</p> <p>19 violations relate to the appointment order which again,</p> <p>20 Your Honor, is Exhibit 115. Because we're going to</p> <p>21 repeatedly look at this order, I would ask the court if</p> <p>22 you could refer to Exhibit 115. At this point, can I</p> <p>23 provide the court with the court's copies and --</p> <p>24 THE COURT: That would be lovely.</p>

<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>

<p style="text-align: right;">Page 26</p> <p>1 this document.</p> <p>2 Next going to page three, line 15, and this</p> <p>3 is under the same general powers to take control. It</p> <p>4 states: All accounts receivable, payments, rents, again,</p> <p>5 including all statements and records of deposit, advances</p> <p>6 and pre-paid contracts or rents again, if applicable,</p> <p>7 including any deposits with utility and/or government</p> <p>8 entities relating to the property.</p> <p>9 Next turning to page five, lines 17 to 19,</p> <p>10 under the powers of the receiver for collection, it</p> <p>11 states: To demand, collect, and receive all dues,</p> <p>12 fees -- this is very important -- reserves, rents, and</p> <p>13 revenues derived from the property.</p> <p>14 Next turning to page six, lines 11 to 14,</p> <p>15 it's titled, Receiver Funds Payment Disbursements. A:</p> <p>16 To pay and discharge out of the property's rents, again,</p> <p>17 a defined term, and/or GSR monthly dues, collections, all</p> <p>18 the reasonable and necessary expenses of the receivership</p> <p>19 and the costs and expenses of operation and maintenance</p> <p>20 of the property. So Mr. Teichner's payments pursuant to</p> <p>21 this document pursuant to this order and the court's</p> <p>22 subsequent orders were to be derived from the rents.</p> <p>23 Turning to page eight, lines 1 through six,</p> <p>24 titled, "Order in Aid of Receiver", it is further ordered</p>	<p style="text-align: right;">Page 28</p> <p>1 and failure to rent units or the plaintiffs' units.</p> <p>2 Each motion for order to show cause has</p> <p>3 numerous exhibits that were attached by the plaintiffs as</p> <p>4 evidence in support of the claimed violations. I'm just</p> <p>5 going to touch on a few items of evidence for each motion</p> <p>6 for order to show cause which we believe summarily</p> <p>7 demonstrate the contempt in this action.</p> <p>8 And for all intents and purposes, Your Honor,</p> <p>9 with each witness and as I go through any of the evidence</p> <p>10 in this case, my intent is to start with the oldest</p> <p>11 motion and work from that date, November 27th, 2021, all</p> <p>12 the way towards the most recent motion chronologically</p> <p>13 seems to be the most simple to me, so I'm just going to</p> <p>14 try not to jump around.</p> <p>15 So with regard to the 9-27-21 motion for</p> <p>16 order to show cause, Exhibit 42 thereto is an email from</p> <p>17 Ms. Sharp to the judge at the time, and it states:</p> <p>18 Defendant sent the reserve studies -- some additional</p> <p>19 language in there that isn't really relevant -- before</p> <p>20 these documents were reviewed by the receiver</p> <p>21 notwithstanding the direct request from the receiver,</p> <p>22 counsel, the undersigned, that they not do so. In</p> <p>23 quotes. Defendants have expressed their opposition that</p> <p>24 the receiver does not have authority to interfere with</p>
<p style="text-align: right;">Page 27</p> <p>1 defendants and their agents, servants and employees and</p> <p>2 those acting in concert with them and each of them shall</p> <p>3 not engage in or perform directly or indirectly any or</p> <p>4 all of the following acts. A: Interfering with the</p> <p>5 receiver directly or indirectly in the management or</p> <p>6 operation of the property.</p> <p>7 Going further down on page eight, starting at</p> <p>8 line 16 and again, this is another critical provision.</p> <p>9 It is further ordered that the defendants and any other</p> <p>10 person or entity who may have possession, custody and</p> <p>11 control of any property including any of their agents,</p> <p>12 representatives, assignees of employees, shall do the</p> <p>13 following.</p> <p>14 And if you go to E, which starts on page</p> <p>15 nine, lines one to two, it specifically states: Turn</p> <p>16 over to the receiver all rents, dues, revenues -- I'm</p> <p>17 sorry -- reserves and revenues derived from the property</p> <p>18 wherever and whatsoever mode maintained. That provision,</p> <p>19 we believe that the plaintiffs show, is repeatedly</p> <p>20 violated by the evidence or we believe the evidence shows</p> <p>21 that that provision is repeatedly violated or has been.</p> <p>22 Again, Your Honor, we'll be looking at the</p> <p>23 refusal to implement the receiver's calculated fees, the</p> <p>24 refusal to turn over the rents, mishandling the reserves,</p>	<p style="text-align: right;">Page 29</p> <p>1 the determination of the reserves.</p> <p>2 With regard to the second motion for order to</p> <p>3 show cause, which was filed November 19th, 2021, Exhibit</p> <p>4 119 thereto or Exhibit 119 in the record is the court's</p> <p>5 December 24, 2020 order, and it states in there, in</p> <p>6 quotes: Receiver shall recalculate the DUF, the hotel</p> <p>7 expense fees, shared facilities fees to include only</p> <p>8 those expenses that are specifically provided in the</p> <p>9 governing documents.</p> <p>10 Exhibit 64, which was Exhibit 1 to the</p> <p>11 underlying briefing, Exhibit 64 in these hearings is a</p> <p>12 receiver letter to the court stating the impropriety of</p> <p>13 the special assessment not informing the -- discusses not</p> <p>14 informing the receiver about the special assessment, and</p> <p>15 then it states in quotes, "Defendants have implemented a</p> <p>16 budget for 2022 and sent the notices of the 2022 fee</p> <p>17 units to the unit owners without having informed the</p> <p>18 receiver until after the fact."</p> <p>19 The third motion for order to show cause</p> <p>20 dated February 1st, 2022, there's an email to that or an</p> <p>21 exhibit attached to that motion which is Exhibit 68 to</p> <p>22 these proceedings, and it's an email from Ms. Stefanie</p> <p>23 Sharp, the defendant's counsel, confirming the actions of</p> <p>24 the defendants.</p>

<p style="text-align: right;">Page 30</p> <p>1 THE COURT: She's the receiver's counsel?</p> <p>2 MR. MILLER: Yes, the receiver's counsel.</p> <p>3 THE COURT: Thank you.</p> <p>4 MR. MILLER: Confirming that the actions of</p> <p>5 the defendants were not authorized and in her opinion</p> <p>6 violated the court's order. Motion for order to show</p> <p>7 cause dated April 25th, 2022 is an e-mail or Exhibit 76</p> <p>8 to that motion is an email from Ms. Stefanie Sharp which</p> <p>9 indicates that the receiver did not approve the applied</p> <p>10 fees and that nothing can be done because no rents have</p> <p>11 been turned over to the receiver.</p> <p>12 The fifth motion for order to show cause</p> <p>13 dated December 28th, 2022, demonstrates that despite the</p> <p>14 recent issuance or the issuance of the court's January</p> <p>15 4th, 2022 order approving receiver's fees, the courts</p> <p>16 November 14th, 2022 order denying reconsideration of the</p> <p>17 January 4th, 2022 orders, Exhibit 82 demonstrates that</p> <p>18 the defendants applied their own fees regardless</p> <p>19 disregarding the fees approved by the court.</p> <p>20 With regard to the sixth motion for order to</p> <p>21 show cause dated December 29, 2022 which concerns the</p> <p>22 issuance of the defendants issuing a new reserve study</p> <p>23 and a \$44 million-dollar special assessment, Exhibit 91</p> <p>24 in the record demonstrates that Ms. Sharp, counsel for</p>	<p style="text-align: right;">Page 32</p> <p>1 court at the end of this case to issue a warrant for the</p> <p>2 25 days imprisonment.</p> <p>3 As the case law suggests, the parties in</p> <p>4 civil contempt hold the keys to their own jail cell</p> <p>5 meaning we believe that the court's order of imprisonment</p> <p>6 should be contingent on the defendants' continued failure</p> <p>7 to comply with the court's orders.</p> <p>8 We would ask that the court order the</p> <p>9 imprisonment not occur so long as one: Funding of all</p> <p>10 amounts taken from the reserves in the last three years</p> <p>11 be deposited into an account exclusively controlled by</p> <p>12 the receiver within ten days; two: The immediate and</p> <p>13 continued turnover to the receiver on a daily basis of</p> <p>14 all incoming gross rents for plaintiffs' and defendants'</p> <p>15 units, and three: The prompt, within five days of the</p> <p>16 receiver's demand application of all fees, reserves as</p> <p>17 directed and determined by the receiver on the outgoing</p> <p>18 monthly statements.</p> <p>19 And again, we believe that the law supports</p> <p>20 that the court can issue an order requiring those things,</p> <p>21 and if they do not occur under the timetable set by the</p> <p>22 court not -- and my time tables are just suggestions --</p> <p>23 that the warrant be issued for the 25-day imprisonment</p> <p>24 of.</p>
<p style="text-align: right;">Page 31</p> <p>1 the receiver, confirmed that the receiver did not approve</p> <p>2 the reserve study.</p> <p>3 And then the seventh and most recent motion</p> <p>4 for order to show cause which is dated May 2nd, 2023,</p> <p>5 Exhibit 102 therefore is an email from defense counsel</p> <p>6 confirming that the units would continue to be rented,</p> <p>7 but the monthly statements thereafter after the exhibit,</p> <p>8 the first one being Exhibit 103, demonstrate that there</p> <p>9 was no rental activity of the units, that the defendants</p> <p>10 had stopped renting the units.</p> <p>11 And again, Your Honor, there's multiple</p> <p>12 exhibits to each motion, but those are just some of the</p> <p>13 key exhibits that demonstrate a lack of cooperation and</p> <p>14 interference with the receivership.</p> <p>15 Your Honor, at the end of this proceeding, we</p> <p>16 are going to ask that the defendants be held in contempt</p> <p>17 of court pursuant to NRS 22.100 which provides that if a</p> <p>18 person is found guilty of contempt, a fine may be imposed</p> <p>19 on the person not exceeding \$500 or the person may be</p> <p>20 imprisoned not exceeding 25 days or both.</p> <p>21 We would submit to the court that the \$500</p> <p>22 fine, given the economy of scale in this case would have</p> <p>23 no meaning, that only the imposition of imprisonment</p> <p>24 would serve a purpose in this case. And we will ask the</p>	<p style="text-align: right;">Page 33</p> <p>1 THE COURT: So, Mr. Miller, I'm going to stop</p> <p>2 you for a second. Assume I agree with you and that I</p> <p>3 think the \$500 is probably, under the circumstances of</p> <p>4 this particular case, has absolutely no impact in</p> <p>5 changing conduct. How on earth am I going to put a</p> <p>6 corporate defendant in jail?</p> <p>7 MR. MILLER: We provide the case law to</p> <p>8 support putting the corporate defendant in the jail. It</p> <p>9 is in our trial statement and we cite --</p> <p>10 THE COURT: I've got it. I understand that.</p> <p>11 MR. MILLER: Yeah. So the records in the</p> <p>12 State of Nevada demonstrate that Mr. Alex Murillo is the</p> <p>13 manager of the defendant entities. We have deposition</p> <p>14 transcript from Mr. Alex Murillo demonstrating that he is</p> <p>15 the ultimate decision maker. We believe that likely,</p> <p>16 Mr. Brady's testimony will confirm that Mr. Murillo is</p> <p>17 the ultimate decision maker.</p> <p>18 The case law that we've submitted in</p> <p>19 connection with our trial brief supports that the</p> <p>20 decision maker of an entity is the person who is</p> <p>21 responsible for contemptuous actions, but we may, through</p> <p>22 these proceedings, learn that some other corporate</p> <p>23 employee was the decision maker that required the</p> <p>24 contentious or ordered the contemptuous conduct. But the</p>

<p style="text-align: right;">Page 34</p> <p>1 court absolutely has authority to hold the decision maker</p> <p>2 for the corporate entity responsible for the</p> <p>3 imprisonment.</p> <p>4 THE COURT: Okay. And you're also entitled</p> <p>5 to any attorneys' fees related to all of your motions</p> <p>6 related to applications for order to show cause; correct?</p> <p>7 MR. MILLER: Yes, Your Honor.</p> <p>8 THE COURT: If you're successful.</p> <p>9 MR. MILLER: There is an issue there, Your</p> <p>10 Honor.</p> <p>11 MR. SMITH: Your Honor, I didn't hear your</p> <p>12 last comment.</p> <p>13 THE COURT: You're also entitled to all of</p> <p>14 the attorneys' fees related to the contempt proceedings,</p> <p>15 because that's what the statute was amended to because</p> <p>16 everybody was frustrated about it. How many years ago,</p> <p>17 Mr. Smith? Ten years? Fifteen that they amended the</p> <p>18 statute?</p> <p>19 MR. SMITH: Sounds about right, Your Honor.</p> <p>20 MR. MILLER: Yes, Your Honor. There are</p> <p>21 significant issues there that would need to be discussed</p> <p>22 if that was the court's remedy given that we've already</p> <p>23 moved and been awarded attorneys' fees for many of these</p> <p>24 much of the briefing that occurred pursuant to the</p>	<p style="text-align: right;">Page 36</p> <p>1 THE COURT: Thank you.</p> <p>2 Mr. McElhinney? Please remember to use your</p> <p>3 microphone.</p> <p>4 MR. MCELHINNEY: Your Honor, may I approach</p> <p>5 the podium?</p> <p>6 THE COURT: You may.</p> <p>7 MR. MCELHINNEY: And as I recall, I get</p> <p>8 feedback as I walk up to it, so bear with me.</p> <p>9 THE COURT: There's also, if you don't want</p> <p>10 to use that lectern, there's one of the smaller ones that</p> <p>11 you can move around if that's easier for you.</p> <p>12 MR. MCELHINNEY: That would be great. Thank</p> <p>13 you.</p> <p>14 THE COURT: Okay. Thank you. And do have</p> <p>15 your lapel mike is on?</p> <p>16 MR. MCELHINNEY: I do.</p> <p>17 THE COURT: All right.</p> <p>18 MR. MCELHINNEY: Your Honor, this is a trial</p> <p>19 that involves seven separate motions for order to show</p> <p>20 cause. Those seven motions span nearly two years. That</p> <p>21 creates challenges in and of itself. The earliest was</p> <p>22 filed September 27th, 2021; the most recent filed May 10,</p> <p>23 2023, and that was the supplement. And that's a</p> <p>24 challenge because we had, during the course of that time,</p>
<p style="text-align: right;">Page 35</p> <p>1 court's recent orders, and then we believe we're entitled</p> <p>2 to our attorneys' fees under the provisions of the</p> <p>3 contracts. So the award of attorneys' fees in connection</p> <p>4 with these proceedings is also about as meaningful as the</p> <p>5 \$500 fine.</p> <p>6 THE COURT: Okay.</p> <p>7 MR. MILLER: But, yeah. I guess we'll</p> <p>8 address those if we get there, right?</p> <p>9 THE COURT: That is correct. If I find there</p> <p>10 are clear and unambiguous orders that have been violated</p> <p>11 and we get there.</p> <p>12 MR. MILLER: Yes. Thank you, Your Honor.</p> <p>13 Your Honor, I could read you the case law now that</p> <p>14 relates to these.</p> <p>15 THE COURT: Please don't.</p> <p>16 MR. MILLER: Yeah. Okay. Thank you.</p> <p>17 Finally, Your Honor, as you're aware, the</p> <p>18 parties have stipulated to the admissibility of all of</p> <p>19 the exhibits that were attached to the underlying motion</p> <p>20 practice. All of those exhibits are evidence that can be</p> <p>21 considered by the court in its ruling, we believe, and we</p> <p>22 are hopeful that that will serve to expedite these</p> <p>23 proceedings. And we appreciate your taking over this</p> <p>24 monumental task of going through all of these motions.</p>	<p style="text-align: right;">Page 37</p> <p>1 not only new judges but we had changed circumstances and</p> <p>2 we had new orders coming in, some of which were not</p> <p>3 addressed in the early motions, some of which were</p> <p>4 addressed in the later motions.</p> <p>5 The subjects addressed in the seven motions</p> <p>6 include plaintiffs' allegations that defendants refused</p> <p>7 to hand over net rental income often using the term,</p> <p>8 "total rent" in reference to net rental income; recently,</p> <p>9 a demand that we hand over gross rental income, refusal</p> <p>10 to withdraw alleged unauthorized independent third-party</p> <p>11 reserve studies and special assessments.</p> <p>12 The plaintiffs have alleged that we've</p> <p>13 applied allegedly inflated excessive fees and costs in</p> <p>14 violation of the governing documents in violation of</p> <p>15 court orders. That's why we felt it was so important to</p> <p>16 have Ms. Kern's testimony here today to demonstrate to</p> <p>17 Your Honor that our calculations are not excessive,</p> <p>18 they're not inflated, and they're not in violation of the</p> <p>19 governing documents, allegations that we made</p> <p>20 unauthorized withdrawals from reserve accounts that</p> <p>21 include reimbursements for capital expenditures, not</p> <p>22 allowed them the governing documents according to the</p> <p>23 allegations of plaintiffs.</p> <p>24 And then in plaintiffs' supplement filed most</p>

<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>

<p style="text-align: right;">Page 42</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 44</p> <p>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.</p> <p>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.</p> <p>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&amp;Rs may not be 21 modified in any manner as long as the receiver is in 22 place.</p> <p>23 I submit to you that court orders have 24 modified the governing documents by placing the GSR UOA</p>
<p style="text-align: right;">Page 43</p> <p>1 increases.</p> <p>2 Seventh amended CC&amp;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&amp;R's. That is the Seventh 9 Amendment CC&amp;R's is our Exhibit 1. I'm referring to page 10 D1 and page two.</p> <p>11 The CC&amp;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.</p> <p>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.</p> <p>23 When you look at that document -- and I 24 believe that's Exhibit 2 in our list of exhibits -- it</p>	<p style="text-align: right;">Page 45</p> <p>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.</p> <p>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.</p> <p>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.</p>

<p style="text-align: right;">Page 46</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 48</p> <p>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.</p> <p>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.</p> <p>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&amp;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.</p> <p>24 I believe the evidence will show that the</p>
<p style="text-align: right;">Page 47</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p style="text-align: right;">Page 49</p> <p>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&amp;R's.</p> <p>5 And we will spend time talking about why 6 defendants performed the mandatory functions of the 7 governing documents to be carried out.</p> <p>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 --</p> <p>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.</p> <p>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</p>



<p style="text-align: right;">Page 50</p> <p>1 contempt proceedings. Those are damages. And you're</p> <p>2 aware of our position. I mean, we --</p> <p>3 THE COURT: I am aware of your position.</p> <p>4 MR. MCELHINNEY: Compensability damages were</p> <p>5 awarded quite some time ago. Additionally, I see and</p> <p>6 heard today that plaintiffs seek affirmative relief from</p> <p>7 the court that is not set forth -- that is not</p> <p>8 appropriate under the contempt proceedings.</p> <p>9 They're asking that the receiver open an</p> <p>10 account to be controlled exclusively by the receiver and</p> <p>11 that all gross rents for the plaintiffs and defendants</p> <p>12 units be turned over to him. That is affirmative relief</p> <p>13 that would have to be sought by separate motion that</p> <p>14 wouldn't be an appropriate award in these proceedings. I</p> <p>15 believe that's all I have, Your Honor. I appreciate your</p> <p>16 time. Thank you.</p> <p>17 THE COURT: Thank you. Does anyone need a</p> <p>18 break before begin with witnesses?</p> <p>19 MR. SMITH: Your Honor, I would like a</p> <p>20 two-minute break, if we can.</p> <p>21 THE COURT: Yes, we may have a short recess.</p> <p>22 We'll be in recess for five minutes.</p> <p>23 (Recess.)</p> <p>24 THE COURT: I've been asked to remember to</p>	<p style="text-align: right;">Page 52</p> <p>1 witness. But when we have treating physicians, we have</p> <p>2 their records. So it's very difficult, Mr. Smith.</p> <p>3 MR. SMITH: So it's Your Honor's ruling that</p> <p>4 if she's not offering expert testimony, she can offer</p> <p>5 facts outside of her declaration.</p> <p>6 THE COURT: No. She is limited to her</p> <p>7 declaration.</p> <p>8 MR. SMITH: And that is the basis for my</p> <p>9 objection with regard to the plaintiffs' evidence. If</p> <p>10 the defense in a show cause hearing is prevented from</p> <p>11 showing all of the facts to show cause outside of the</p> <p>12 declarations then the plaintiffs must also be precluded</p> <p>13 from offering any facts or evidence outside the terse</p> <p>14 facts they've put in their declarations to get this</p> <p>15 contempt proceeding in motion in the first place.</p> <p>16 So separate and apart from the jurisdictional</p> <p>17 arguments we made in our motion to limine, which I</p> <p>18 understand Your Honor denied, they should also similarly</p> <p>19 be limited to offering any facts outside of those</p> <p>20 declarations.</p> <p>21 The declarations, as we've argued, contain</p> <p>22 very little factual information and certainly not</p> <p>23 sufficient facts to invoke contempt in the first place.</p> <p>24 And so if Ms. Kern and the defense are limited to the</p>
<p style="text-align: right;">Page 51</p> <p>1 use my microphone, so I'm going to use my microphone.</p> <p>2 First witness?</p> <p>3 MR. SMITH: All actually, Your Honor, if I</p> <p>4 may before we get started with the evidence, you</p> <p>5 mentioned the next possible step for all of the parties</p> <p>6 here is heading over to Carson City on appeal.</p> <p>7 THE COURT: It is not the next possible step.</p> <p>8 You're already in that step, Mr. Smith. The Supreme</p> <p>9 Court has issued an order to show cause whether you're</p> <p>10 really supposed to be there or not, so of course.</p> <p>11 MR. SMITH: That is right. We're already</p> <p>12 there. I think we should be there, but we'll certainly</p> <p>13 be there again once this proceeding is over with.</p> <p>14 And so at this point, particularly in light</p> <p>15 of the court's ruling on plaintiffs' motion in limine</p> <p>16 with regard to Ms. Kern, there's an additional objection</p> <p>17 possibly even if it should be more properly considered a</p> <p>18 motion in limine as well with regard to plaintiffs'</p> <p>19 evidence, and that is if I understand Your Honor's ruling</p> <p>20 on this motion to limine related to Ms. Kern is that</p> <p>21 Ms. Kern and the defense are limited to presenting facts</p> <p>22 in Ms. Kern's declaration. So separate and apart from --</p> <p>23 THE COURT: That's because the brief said</p> <p>24 it's like a treating physician. She can be a percipient</p>	<p style="text-align: right;">Page 53</p> <p>1 facts offered in their declarations, the same ruling must</p> <p>2 apply to the plaintiffs. They should be limited likewise</p> <p>3 to the facts set forth in their declarations,</p> <p>4 particularly when there are other problems with their</p> <p>5 declarations that we outline mostly in our reply brief in</p> <p>6 support of our motion in limine, for example, the</p> <p>7 September 27th, Mr. Miller's declaration is not submitted</p> <p>8 under penalty of perjury. The November 19th, 2021</p> <p>9 declaration also not submitted under penalty of perjury.</p> <p>10 February 1st, 2022 declaration is not signed before a</p> <p>11 justice, judge or clerk of the court or any other justice</p> <p>12 of the peace or notary. And that's not submitted under</p> <p>13 penalty of perjury. And likewise the April 25th, 2022</p> <p>14 declaration is not submitted under penalty of perjury.</p> <p>15 So these are deficient declarations in the</p> <p>16 first place in the middle of facts that are in there to</p> <p>17 begin with are not competent. So I'm just asking for the</p> <p>18 same ruling to be applied to the plaintiffs that Your</p> <p>19 Honor applied to the defense.</p> <p>20 THE COURT: I understand your position,</p> <p>21 Mr. Smith.</p> <p>22 Would you like to respond, Mr. Miller?</p> <p>23 MR. MILLER: Yes, Your Honor. Plaintiffs</p> <p>24 intend to solicit testimony that perfectly tracks the</p>

<p style="text-align: right;">Page 54</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 56</p> <p>1 THE COURT: The motion is denied. The  2 witness? Who are our witness?</p> <p>3 MR. MILLER: Your Honor, the plaintiffs would  4 like to call Mr. Teichner.</p> <p>5 THE COURT: Mr. Teichner, if you would come  6 first, please.</p> <p>7 Sir, if you'd raise your right hand, please.  8 (The witness was sworn.)</p> <p>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?</p> <p>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.</p> <p>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?</p> <p>18 MR. MILLER: Either way. 39 through 120, I  19 believe, or 130. It's those two binders.</p> <p>20 THE CLERK: Thank you.</p> <p>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</p>
<p style="text-align: right;">Page 55</p> <p>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.</p> <p>4 THE COURT: Mr. Smith, anything else?</p> <p>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.</p> <p>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.</p> <p>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."</p> <p>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.</p>	<p style="text-align: right;">Page 57</p> <p>1 binder.</p> <p>2 THE WITNESS: Sure.</p> <p>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.</p> <p>6 THE WITNESS: We okay.</p> <p>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.</p> <p>10 THE WITNESS: Sure.</p> <p>11</p> <p>12 DIRECT EXAMINATION</p> <p>13 BY MR. MILLER:</p> <p>14 Q Mr. Teichner, you've been appointed as  15 receiver in this action; is that correct?</p> <p>16 A Yes.</p> <p>17 Q And you're still the receiver in this action?</p> <p>18 A Yes.</p> <p>19 Q And have you continuously been the receiver  20 since approximately January of 2019?</p> <p>21 A Correct.</p> <p>22 Q Are you familiar -- Let me have you look at  23 Exhibit 115.</p> <p>24 A 115?</p>

<p style="text-align: right;">Page 58</p> <p>1 Q Yes.</p> <p>2 A I have it.</p> <p>3 Q Exhibit 115 is the order appointing receiver</p> <p>4 and directing defendants' compliance. Is that the</p> <p>5 document that you have in front of you?</p> <p>6 A Yes.</p> <p>7 Q Okay. And do you understand that that's the</p> <p>8 document that primarily dictates the terms of your</p> <p>9 receivership of you being the receiver in this action?</p> <p>10 A Yes.</p> <p>11 Q So have you referred to this document many</p> <p>12 times?</p> <p>13 A Yes.</p> <p>14 Q Do you feel comfortable with the document?</p> <p>15 A Yes.</p> <p>16 Q Understanding its terms? Okay. This</p> <p>17 morning, I slowly read into the record -- probably at the</p> <p>18 annoyance of the court and everybody -- the portions of</p> <p>19 this critical document. Was there anything that I read</p> <p>20 into the record that you didn't understand?</p> <p>21 A No.</p> <p>22 Q Okay. And can I summarize that you as</p> <p>23 receiver are in charge with implementing compliance with</p> <p>24 the governing documents?</p>	<p style="text-align: right;">Page 60</p> <p>1 Q Just so you're familiar with it.</p> <p>2 A Yes.</p> <p>3 Q So, Mr. Teichner, what are you empowered to</p> <p>4 do as receiver in this case?</p> <p>5 A Well, do you want me to go down all of the</p> <p>6 different aspects of what --</p> <p>7 Q Generally, if you can tell us what you're</p> <p>8 empowered to do.</p> <p>9 A Well, I'm empowered to essentially take</p> <p>10 control of the GSR UOA, the assets, to receive rents, to</p> <p>11 pay bills.</p> <p>12 Q What about calculating fees?</p> <p>13 A Oh, yes. Calculating fees, sure. I don't</p> <p>14 know if that's specifically in this order, but the fees</p> <p>15 are certainly associated with the collection of the</p> <p>16 rents. The when you say the fees, that's the DUF, SFUE,</p> <p>17 HE, and reserves, I believe.</p> <p>18 Q Okay. And do you believe that you're in</p> <p>19 charge of calculating those fees as a result of</p> <p>20 implementing compliance with the governing documents?</p> <p>21 A Yes.</p> <p>22 Q Are you familiar with the appointment order?</p> <p>23 If you turn to page eight starting at line 16.</p> <p>24 A Yes.</p>
<p style="text-align: right;">Page 59</p> <p>1 A Yes.</p> <p>2 Q And you understand that the governing</p> <p>3 documents are the CC&amp;Rs?</p> <p>4 MR. MCELHINNEY: Objection, Your Honor.</p> <p>5 Leading the witness.</p> <p>6 THE COURT: Can you rephrase your question?</p> <p>7 Q (BY MR. MILLER:) What are governing</p> <p>8 documents, Mr. Teichner?</p> <p>9 A CC&amp;R's, the rental unit agreement. There's</p> <p>10 the maintenance agreement.</p> <p>11 Q Okay. Thank you, Mr. Teichner. Do you</p> <p>12 understand that as receiver, you have been charged with</p> <p>13 or empowered to control the reserves and the rents?</p> <p>14 MR. MCELHINNEY: Objection, leading the</p> <p>15 witness.</p> <p>16 THE COURT: Can you rephrase your question,</p> <p>17 please.</p> <p>18 Q (BY MR. MILLER:) Your Honor, or</p> <p>19 Mr. Teichner, can I have you refer to page five of the</p> <p>20 appointment order of Exhibit 115, lines 17 to 19.</p> <p>21 A I have it.</p> <p>22 Q Are you familiar with that? Read that</p> <p>23 revision of the document.</p> <p>24 A Read it?</p>	<p style="text-align: right;">Page 61</p> <p>1 Q Is it your understanding that you're charged</p> <p>2 with the powers of receiver to take over the rents?</p> <p>3 A Yes.</p> <p>4 Q To take over the reserves?</p> <p>5 A Yes.</p> <p>6 Q Have you recently demanded the rents?</p> <p>7 A Yes.</p> <p>8 Q Have you been provided with the rents?</p> <p>9 A No.</p> <p>10 Q Do you know why not?</p> <p>11 A Only because there's been some motions or</p> <p>12 that I guess have prevented my being able to receive the</p> <p>13 rents from the defendants. I've certainly mentioned that</p> <p>14 in some motions and replies that I filed with the court</p> <p>15 and at least a couple of letters I sent to the court.</p> <p>16 Q So you have demanded the rents; is that</p> <p>17 correct?</p> <p>18 A Well, when you say "demanded," I don't know</p> <p>19 if that's the word, the appropriate word, but I've said</p> <p>20 that I haven't received them and I need to receive them</p> <p>21 in order to be in compliance with this document, the</p> <p>22 January 7th, 2015 document.</p> <p>23 Q All right. Do you recall calculating the</p> <p>24 daily use fee?</p>

<p style="text-align: right;">Page 62</p> <p>1 THE COURT: Hold on a second.</p> <p>2 Q (BY MR. MILLER:) In this action?</p> <p>3 THE COURT: We've got some technical issues,</p> <p>4 so --</p> <p>5 MR. MILLER: Your Honor, I'm going to have</p> <p>6 him refer to 124 next.</p> <p>7 THE COURT: Hold on. We have some technical</p> <p>8 issues.</p> <p>9 MR. MILLER: I was just thinking he could</p> <p>10 start getting there.</p> <p>11 THE COURT: Thank you so much for your help.</p> <p>12 Mr. Miller, you may continue.</p> <p>13 Q (BY MR. MILLER:) Thank you, Your Honor.</p> <p>14 Mr. Teichner, would you refer to Exhibit 124.</p> <p>15 A Okay. I have it.</p> <p>16 Q You have that? Are you familiar with this</p> <p>17 document? Have you seen it? It's titled, "Order</p> <p>18 Approving Receiver's Request to Approve Updated Fees"?</p> <p>19 A Yes.</p> <p>20 Q And do you understand that on August 16th,</p> <p>21 2021, did you provide the court with an analysis of fees</p> <p>22 for the daily use fee and the hotel fees?</p> <p>23 MR. MCELHINNEY: Objection, leading the</p> <p>24 witness.</p>	<p style="text-align: right;">Page 64</p> <p>1 does that refresh your recollection as to what you</p> <p>2 submitted to the court?</p> <p>3 A Yes.</p> <p>4 Q So did you prepare fees in connection with</p> <p>5 the condominium units?</p> <p>6 A Yes.</p> <p>7 Q And those were submitted approximately August</p> <p>8 16th, 2021?</p> <p>9 A Yes.</p> <p>10 Q Okay. And then it looks like you did a</p> <p>11 supplement September or an errata September 17th, 2021?</p> <p>12 A Yeah.</p> <p>13 MR. MCELHINNEY: Your Honor, I don't mean to</p> <p>14 have a continuing objection, but I'd like to know what</p> <p>15 this witness knows instead of being leaded.</p> <p>16 THE COURT: I agree. I've asked him to</p> <p>17 rephrase the question. Can you not lead. Who, what,</p> <p>18 where, when, how and why.</p> <p>19 MR. MILLER: Yes, Your Honor. Thank you.</p> <p>20 THE COURT: Thank you.</p> <p>21 Q (BY MR. MILLER:) The September 17th, 2021</p> <p>22 fee calculations, what did those include?</p> <p>23 A What do they include?</p> <p>24 Q Yeah.</p>
<p style="text-align: right;">Page 63</p> <p>1 THE COURT: Can you rephrase your question,</p> <p>2 please?</p> <p>3 Q (BY MR. MILLER:) What did you provide the</p> <p>4 court with on approximately August 16th, 2021?</p> <p>5 A I can't say because I would have to see on</p> <p>6 that date, I just --</p> <p>7 Q Yeah, that's fair enough. You're on Exhibit</p> <p>8 124; is that correct? Do you have that in front of you?</p> <p>9 A 124? Yes.</p> <p>10 Q So please read page one, line 20 to line 25.</p> <p>11 Maybe that will refresh your recollection as to what was</p> <p>12 provided to the court.</p> <p>13 A Before the court is receiver's analysis and</p> <p>14 calculation of daily use fees, shared facility unit</p> <p>15 expense fee, and hotel expense fee with requests to prove</p> <p>16 updated fees to the court to set effective date for new</p> <p>17 fees found August 15th, 2021.</p> <p>18 Receiver analysis. Defendants filed</p> <p>19 defendant's objection to receiver's analysis and</p> <p>20 calculation of daily use fees, shared facilities, unit</p> <p>21 expense fees and for the court to set effective date for</p> <p>22 new fees on September 17th, 2021. Plaintiffs filed</p> <p>23 plaintiffs' response --</p> <p>24 Q That's good, Mr. Teichner. Thank you. So</p>	<p style="text-align: right;">Page 65</p> <p>1 A Well, the calculation for the DUF, it was a</p> <p>2 combination of the SFUE shared facility unit expense and</p> <p>3 hotel expense, so I calculated the per-unit charge.</p> <p>4 Sorry. The charge per square foot per unit.</p> <p>5 Q Did you calculate the daily use fee?</p> <p>6 A Yes.</p> <p>7 Q Do you recall what your calculations for the</p> <p>8 daily use fee were?</p> <p>9 A No, but it was based on, I think, three</p> <p>10 levels of square footage, ranges of square footage.</p> <p>11 MR. MILLER: Your Honor, I do not intend to</p> <p>12 have this marked as an exhibit, but it's already in the</p> <p>13 record. It's the receiver's analysis and calculation of</p> <p>14 daily use fee filed 8-16-2021. Can I use this to refresh</p> <p>15 his recollection as to what the daily use fee is?</p> <p>16 THE COURT: Any objection?</p> <p>17 MR. MCELHINNEY: No objection.</p> <p>18 THE COURT: It may be used that way.</p> <p>19 MR. MILLER: Thank you.</p> <p>20 THE COURT: Don't give it to me since it's</p> <p>21 not admitted for purposes of today.</p> <p>22 And, sir, that's given to you to refresh your</p> <p>23 recollection. If you could review it.</p> <p>24 THE WITNESS: Sorry, Your Honor?</p>

<p style="text-align: right;">Page 66</p> <p>1 THE COURT: It's for you to review.</p> <p>2 THE WITNESS: Yes.</p> <p>3 THE COURT: After you refresh your</p> <p>4 recollection, if you could turn it over and then not look</p> <p>5 at it while you answer the questions he's going to ask</p> <p>6 you next.</p> <p>7 THE WITNESS: Okay, Your Honor.</p> <p>8 THE COURT: Okay.</p> <p>9 THE WITNESS: Yes, Your Honor.</p> <p>10 THE COURT: Is there something in particular</p> <p>11 you want to refresh his recollection related to?</p> <p>12 Q (BY MR. MILLER:) Yes, Your Honor.</p> <p>13 Mr. Teichner, can you refresh your</p> <p>14 recollection as to what your calculations were for the</p> <p>15 daily use fee on a daily basis?</p> <p>16 THE COURT: After you have refreshed your</p> <p>17 recollection, please let us know and then turn over the</p> <p>18 piece of paper.</p> <p>19 THE WITNESS: You mentioned on a daily basis?</p> <p>20 Q (BY MR. MILLER:) Yes. It's the daily use</p> <p>21 fee, so --</p> <p>22 A Well, again, that's three levels of the daily</p> <p>23 use fee.</p> <p>24 Q Perfect. And I'm just going to ask you what</p>	<p style="text-align: right;">Page 68</p> <p>1 proceedings.</p> <p>2 A I may or may not refer to the document.</p> <p>3 Q You can look at the document to remember and</p> <p>4 again, this should probably come from the court to</p> <p>5 remember.</p> <p>6 THE COURT: Here you go, sir. Here's a pen.</p> <p>7 So you can actually do something a little more simple.</p> <p>8 You can look at the document, write down the answer to</p> <p>9 the question, then look up, tell us you've refreshed your</p> <p>10 memory, but you have to refer to your notes. Or you can</p> <p>11 admit the document and we can read from it.</p> <p>12 MR. MILLER: Your Honor, I'd like to move for</p> <p>13 the admission of --</p> <p>14 THE COURT: Next in order?</p> <p>15 MR. MILLER: Yes. Actually --</p> <p>16 THE COURT: I am assuming that you were up to</p> <p>17 140 based on our discussion earlier today.</p> <p>18 MR. MILLER: Yes.</p> <p>19 THE COURT: Would you like to offer 140?</p> <p>20 MR. MILLER: Yes, Your Honor.</p> <p>21 THE COURT: Sir, can I borrow that document</p> <p>22 really quick? The one you're looking at. Can I borrow</p> <p>23 it?</p> <p>24 THE WITNESS: Sorry?</p>
<p style="text-align: right;">Page 67</p> <p>1 those amounts were.</p> <p>2 A For the --</p> <p>3 MR. MCELHINNEY: Your Honor, objection. Your</p> <p>4 instructions to the witness was after you've reviewed it,</p> <p>5 turn it over and testify from your own memory as opposed</p> <p>6 to reading the document.</p> <p>7 THE COURT: That is correct. I can't have</p> <p>8 you reading the document. But if you need a notepad so</p> <p>9 you can take notes with the refreshing of your</p> <p>10 recollection, I'd be happy to hand you this little</p> <p>11 notepad. There you go, sir. My arms aren't quite long</p> <p>12 enough.</p> <p>13 Q (BY MR. MILLER:) Mr. Teichner, would</p> <p>14 referring, looking at the document, you provided three</p> <p>15 different daily use fee numbers, correct, for different</p> <p>16 sized units in your report. Is that correct?</p> <p>17 A Yes.</p> <p>18 Q Do you recall what those three numbers were?</p> <p>19 A No, I don't exactly. No.</p> <p>20 Q Okay. Can you refresh yourself? Can you</p> <p>21 look at the document to refresh your recollection as to</p> <p>22 what the dollar amounts were that you calculated for the</p> <p>23 daily use fee under those reports that you submitted to</p> <p>24 the court? This is going to be very important in these</p>	<p style="text-align: right;">Page 69</p> <p>1 THE COURT: The one you're refreshing your</p> <p>2 recollection on, can I borrow it? No, not the paper.</p> <p>3 That document. This one. Yes, thank you.</p> <p>4 Gracie, can you mark this as 140?</p> <p>5 THE CLERK: Yes, Your Honor.</p> <p>6 THE COURT: Any objection to the admission of</p> <p>7 140?</p> <p>8 MR. MCELHINNEY: No objection.</p> <p>9 THE COURT: Thank you. Give me a minute,</p> <p>10 sir, and I'll give it back to you. She has to put a</p> <p>11 sticker on it.</p> <p>12 THE WITNESS: Yes.</p> <p>13 THE CLERK: Exhibit 140 marked.</p> <p>14 THE COURT: Thank you.</p> <p>15 Any objection to the admission of 140?</p> <p>16 MR. MCELHINNEY: No objection, Your Honor.</p> <p>17 THE COURT: 140 will be admitted.</p> <p>18 Q (BY MR. MILLER:) Mr. Teichner, if you turn</p> <p>19 to page nine of that document, or actually, turn to page</p> <p>20 12 which is the last numbered page of the document.</p> <p>21 A Yes.</p> <p>22 Q And then go to Exhibit 1, which is the next</p> <p>23 page.</p> <p>24 A Okay.</p>

<p style="text-align: right;">Page 70</p> <p>1 Q What is Exhibit 1?</p> <p>2 A The title is: GSR's Expenses Attributable to</p> <p>3 the Shared Facilities Unit for the Daily Use Fee."</p> <p>4 Q And on the bottom right corner or actually, I</p> <p>5 guess if you're holding it up, top right corner, does it</p> <p>6 say: Total daily use fee charges?</p> <p>7 A Total?</p> <p>8 Q Total daily use fee charges? Does it state</p> <p>9 that?</p> <p>10 A It says: Daily DUF charges. Is that what</p> <p>11 you're referring to?</p> <p>12 Q Yes.</p> <p>13 A Yeah. Okay.</p> <p>14 Q And the numbers below that statement, there's</p> <p>15 three different numbers there. Are those your daily use</p> <p>16 fee calculations?</p> <p>17 A Yes.</p> <p>18 Q And are those the only daily use fee</p> <p>19 calculations that you've done in this case that were</p> <p>20 approved by the court?</p> <p>21 A Yes.</p> <p>22 Q Can you read the three amounts for me into</p> <p>23 the record of the daily use fee calculations?</p> <p>24 A For units less than 800 square feet, the</p>	<p style="text-align: right;">Page 72</p> <p>1 calculations to the court, would it have been your</p> <p>2 instruction that your calculation of the daily use fee go</p> <p>3 into the monthly statements?</p> <p>4 A Yes.</p> <p>5 Q Okay. And then did you -- Let me ask you to</p> <p>6 turn to the second page of 59. Do you see the line that</p> <p>7 says: Contracted hotel fees?</p> <p>8 A Yes.</p> <p>9 Q Did you also prepare a calculation of the</p> <p>10 contracted hotel fees?</p> <p>11 A Yes.</p> <p>12 Q And are those contracted hotel fees also</p> <p>13 reflected in Exhibit 140 which is receiver's calculation</p> <p>14 of fees?</p> <p>15 A Yes.</p> <p>16 Q Let me have you refer to Exhibit 124.</p> <p>17 A I have it.</p> <p>18 Q What's your understanding of Exhibit 124?</p> <p>19 It's titled --</p> <p>20 THE COURT: We already did this.</p> <p>21 Q (BY MR. MILLER:) Okay. Is it your</p> <p>22 understanding that your calculated daily use fee was</p> <p>23 approved by the court?</p> <p>24 A Yes.</p>
<p style="text-align: right;">Page 71</p> <p>1 daily use DUF is \$25.63. For units 800 to 1,500 square</p> <p>2 feet, the amount is \$22.05. And over 1,500 square feet:</p> <p>3 \$25.66.</p> <p>4 Q Mr. Teichner, let me have you refer to</p> <p>5 Exhibit 59.</p> <p>6 A Okay.</p> <p>7 Q Do you recognize Exhibit 59 to be an owner</p> <p>8 account statement?</p> <p>9 A Yes.</p> <p>10 Q What are the owner account statements? What</p> <p>11 does this document do?</p> <p>12 A Well, they show the amount of rents received,</p> <p>13 the daily use fees, and then show amounts that are</p> <p>14 charged against those for the expenses, the expenses I</p> <p>15 referred to, the SFUE and HE expenses, and the reserves.</p> <p>16 Q Okay. Mr. Teichner, in looking at the</p> <p>17 document, you see the columns that are titled, "Daily use</p> <p>18 fee"?</p> <p>19 A Yes.</p> <p>20 Q Do you understand that column to be where</p> <p>21 your calculated daily use fee charges would have gone?</p> <p>22 A Yes.</p> <p>23 Q Okay. So if it were based upon your</p> <p>24 calculations on a certain date after you provided the</p>	<p style="text-align: right;">Page 73</p> <p>1 Q Now, Mr. Teichner, that was just some</p> <p>2 background. Now I'm going to the questions I'm going to</p> <p>3 ask you now, we're going to go back to basically</p> <p>4 September 27th, 2021, which is the date we filed the</p> <p>5 first motion for order to show cause. Are you familiar</p> <p>6 at all with plaintiffs' first motion for order to show</p> <p>7 cause?</p> <p>8 A Not -- I'd have to be refreshed on that.</p> <p>9 Q Okay. I believe the exhibits will do that.</p> <p>10 Let me have you turn to Exhibit 39.</p> <p>11 A I have it.</p> <p>12 Q The bottom of Exhibits 39 is an email from</p> <p>13 Sean Clark to Richard Teichner. Are you familiar with</p> <p>14 this document?</p> <p>15 A Yes.</p> <p>16 Q Can you read the second-to-last sentence in</p> <p>17 the document, which has a four in front of it?</p> <p>18 A Where?</p> <p>19 Q The very bottom of the document.</p> <p>20 A Yes.</p> <p>21 Q The second-to-last line. Can you read that?</p> <p>22 A The second to last line?</p> <p>23 Q Yes, please. It has a four in front of it.</p> <p>24 A Where it says "The reserves"? Okay. The</p>

<p style="text-align: right;">Page 74</p> <p>1 reserves -- "The reserves" and have you determine which</p> <p>2 reserve study you are using 2014 or 2016.</p> <p>3 Q Okay. Do you recall a point in this case</p> <p>4 where you had to determine which reserves to use or which</p> <p>5 reserve study to use?</p> <p>6 A Yes.</p> <p>7 Q Okay. And do you recall that being your</p> <p>8 decision or the defendants' decision?</p> <p>9 A That was my decision.</p> <p>10 Q Okay. Let me ask you to turn to Exhibit 40.</p> <p>11 A Okay.</p> <p>12 Q So a little over halfway down into this</p> <p>13 document, it's an email from Sean Clark to Richard</p> <p>14 Teichner. And it says: "Recalculation and determination</p> <p>15 of expenses and reserves."</p> <p>16 Are you familiar with this email?</p> <p>17 A Well, it was a long time ago, but yes. I</p> <p>18 mean, now that I read it, yes.</p> <p>19 Q And at that time, did the defendants -- Did</p> <p>20 you ever have any communications with the defendants</p> <p>21 wherein they recognized that it was your duty to</p> <p>22 determine the reserves?</p> <p>23 A Well, there was some point in time, I just</p> <p>24 don't recall when.</p>	<p style="text-align: right;">Page 76</p> <p>1 Exhibit 42.</p> <p>2 A I have it.</p> <p>3 Q Referring to the bottom of 42, it states:</p> <p>4 From Stefanie Sharp. Who is Stefanie Sharp?</p> <p>5 A From Stefanie Sharp to.</p> <p>6 Q My question is: Who is Stefanie Sharp?</p> <p>7 A Who is she? She's the counsel that I</p> <p>8 retained in this matter.</p> <p>9 Q Okay. And this email that starts at the</p> <p>10 bottom is dated Wednesday, September 15th, 2021. Is that</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 Q Going to page two, can you read the first</p> <p>14 paragraph of her email?</p> <p>15 A Starting with: Good afternoon?</p> <p>16 Q Sure.</p> <p>17 A "Good afternoon, Justice Saitta. The purpose</p> <p>18 of this email is to address the issue which was recently</p> <p>19 arisen with respect to the reserve studies for the</p> <p>20 hotel-condominium units. As stated in the receiver's</p> <p>21 report for August and for the purpose of background</p> <p>22 without informing the receiver of his counsel beforehand,</p> <p>23 a notice of special reserve assessment dated August 24th,</p> <p>24 2021 and the reserve studies was sent to the unit owners</p>
<p style="text-align: right;">Page 75</p> <p>1 Q Okay. But you have a recollection that they</p> <p>2 understood that you would be in charge of calculating the</p> <p>3 reserves?</p> <p>4 A Well, the way I had left it with them if</p> <p>5 we're going back this far to when Mr. Clark was the</p> <p>6 director of finance -- I'm getting some feedback.</p> <p>7 THE COURT: I turned it off.</p> <p>8 THE WITNESS: Was that I was going to review</p> <p>9 what they did. I was going to look at the reserve study</p> <p>10 and review what they did in the reserve study, and I had</p> <p>11 questions about it which I posed, I think at the time, I</p> <p>12 posed it to GSR or somebody at GSR. And it wasn't until</p> <p>13 I retained my own attorney that I got confirmation that</p> <p>14 the reserve studies were flawed.</p> <p>15 Q Okay. So was it your intent to prepare</p> <p>16 reserve studies that were not flawed?</p> <p>17 A Did they do that?</p> <p>18 Q Was it your intent to do that, to have</p> <p>19 reserves applied to the property that weren't flawed?</p> <p>20 A Well, yes, to redo the reserve study, but to</p> <p>21 have them redone. And that was eventually, I believe the</p> <p>22 court determined that that would be done effective for</p> <p>23 the year 2020 not before.</p> <p>24 Q Mr. Teichner, let me have you refer to</p>	<p style="text-align: right;">Page 77</p> <p>1 along with a schedule containing the amount of assessment</p> <p>2 due to unit owners based on the square footage of the</p> <p>3 respective unit types."</p> <p>4 "Defendants set the reserve studies and the</p> <p>5 notice of special reserve assessment before those</p> <p>6 documents were reviewed by the receiver and</p> <p>7 notwithstanding the direct request from the receiver</p> <p>8 through the undersigned that they not to do so. And then</p> <p>9 (receiver and the undersigned did not have any</p> <p>10 conversations with Ms. Betterley of Reserve Consultants</p> <p>11 regarding the content of the reserve studies. Telephone</p> <p>12 and email communications between counsel and the receiver</p> <p>13 and Ms. Betterley were limited to ascertaining the</p> <p>14 reserve studies would be completed after Ms. Betterley</p> <p>15 reviewed the governing documents and after her having</p> <p>16 access to a contact person at GSR to perform the site</p> <p>17 visits.) Defendants have expressed their position that</p> <p>18 the receiver does not have the authority to interfere in</p> <p>19 a determination of the reserve study."</p> <p>20 Q Thank you, Mr. Teichner. Do you believe</p> <p>21 those statements are accurate?</p> <p>22 A By Ms. Sharp?</p> <p>23 Q Yes.</p> <p>24 A Yes.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q And you agree with what you just read into 2 the record?</p> <p>3 A Yes.</p> <p>4 Q Let me have you turn to Exhibit 44.</p> <p>5 A I have it.</p> <p>6 Q Are you familiar with this document?</p> <p>7 A Yes.</p> <p>8 Q Have you seen this document before?</p> <p>9 A Yes.</p> <p>10 Q And this is a notice of special reserve 11 assessment dated August 24th, 2021. Is that correct?</p> <p>12 A Yes.</p> <p>13 Q Is it your understanding that this document 14 was sent to the plaintiffs?</p> <p>15 A Yes.</p> <p>16 Q Can I have you turn to page two. What's the 17 total amount of special assessment that was sought?</p> <p>18 A Total amount for the three years 20 -- 2020 19 through 2023?</p> <p>20 Q Yes.</p> <p>21 A \$26 million dollars.</p> <p>22 Q \$26 million? Did you authorize this 23 special --</p> <p>24 A No.</p>	<p style="text-align: right;">Page 80</p> <p>1 A Yes.</p> <p>2 Q Do you see where it states: Accounts?</p> <p>3 A Yes.</p> <p>4 Q Can you read the language below where it 5 states: Accounts?</p> <p>6 A Both bullet points?</p> <p>7 Q Yes, please.</p> <p>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.</p> <p>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."</p> <p>23 "That the receiver be authorized to disperse 24 one-half of the net rents to the plaintiffs and one-half</p>
<p style="text-align: right;">Page 79</p> <p>1 Q -- assessment?</p> <p>2 A No.</p> <p>3 Q Did you instruct the defendants not to send 4 special assessment?</p> <p>5 A I didn't know that it was being sent until 6 after it was sent.</p> <p>7 Q Okay. So this was sent without your approval 8 or review?</p> <p>9 A Yes.</p> <p>10 Q Did you, after receiving it, express to the 11 defendants that you thought the special assessment was 12 improper?</p> <p>13 A Either I or Ms. Sharp did.</p> <p>14 Q Let me have you turn to Exhibit 46, 15 Mr. Teichner.</p> <p>16 A Forty?</p> <p>17 Q Forty-six. Sorry.</p> <p>18 A Forty-six?</p> <p>19 Q Yes.</p> <p>20 A Okay.</p> <p>21 Q And this document is an email from Stefanie 22 Sharp to Justice Saitta; is that correct?</p> <p>23 A Yes.</p> <p>24 Q And it's dated September 15th, 2021?</p>	<p style="text-align: right;">Page 81</p> <p>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."</p> <p>6 Q Thank you, Mr. Teichner. Do you agree with 7 all of the statements that you've just read?</p> <p>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.</p> <p>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?</p> <p>23 A Yes.</p> <p>24 Q So if you have the calculation of fees, is it</p>



<p style="text-align: right;">Page 82</p> <p>1 easy to determine what the net rents are by applying</p> <p>2 those fees?</p> <p>3 A Yes.</p> <p>4 Q Okay. And do you know if your fees were ever</p> <p>5 applied to the owner account statements?</p> <p>6 A I'm sorry?</p> <p>7 Q Do you know if your fees were ever applied to</p> <p>8 the owner account statements?</p> <p>9 A The fees that I calculated?</p> <p>10 Q The fees that are demonstrated in Exhibit 140</p> <p>11 were approved by the court. Do you recall if those were</p> <p>12 ever placed on the owner account statements? If you</p> <p>13 don't know, we'll get there.</p> <p>14 A What was done was a revision of the net fees,</p> <p>15 and that was calculated and with an amount that would be</p> <p>16 due to the unit owners. And at the time, again, the only</p> <p>17 monthly statements I get are the plaintiffs' monthly</p> <p>18 statements.</p> <p>19 But at the time, there was an adjustment to</p> <p>20 the plaintiffs' accounts for that for the differential in</p> <p>21 the fee charges were calculated. There was -- We did a</p> <p>22 calculation, and we sent that onto GSR, and there was an</p> <p>23 adjustment made at that time to the balances of the</p> <p>24 specific unit owners' plaintiffs' units.</p>	<p style="text-align: right;">Page 84</p> <p>1 A Just that one paragraph?</p> <p>2 Q Yes.</p> <p>3 A "On March 20th, 2020, at 1:47 p.m.,</p> <p>4 McElhinney, David C. wrote: And the plaintiffs in their</p> <p>5 most recent motion for instructions to receiver are</p> <p>6 asking for the following particular instructions, and I</p> <p>7 would appreciate your thoughts as to those instructions."</p> <p>8 Q Next paragraph. Can you read the next</p> <p>9 paragraph?</p> <p>10 A Number one?</p> <p>11 Q Yeah.</p> <p>12 A "Charged defendants and plaintiffs the same</p> <p>13 reserve amounts as dictated by the existing orders. This</p> <p>14 strikes me as a bit too restrictive. The charges for</p> <p>15 reserves should be left to the sound discretion of</p> <p>16 Teichner in accordance with the governing documents which</p> <p>17 is what he has been doing. Do you agree?"</p> <p>18 Q Do you believe it's accurate that the</p> <p>19 reserves should be left to your sound discretion under</p> <p>20 the governing documents?</p> <p>21 A That I have discretion?</p> <p>22 Q Yes.</p> <p>23 A Yes.</p> <p>24 Q Okay. Thank you. Let me have you turn to</p>
<p style="text-align: right;">Page 83</p> <p>1 Q Okay. Going back to the email that is 46,</p> <p>2 you asked for access, read-only access to the reserve</p> <p>3 accounts. Is that correct?</p> <p>4 A Yes.</p> <p>5 Q Do you know why the access for you to look at</p> <p>6 the accounts was denied? Did defendants give you any</p> <p>7 explanation?</p> <p>8 A Did I have access to them?</p> <p>9 Q It states -- if you read that first</p> <p>10 paragraph.</p> <p>11 A Yes.</p> <p>12 Q "Again, as noted in the receiver's report</p> <p>13 from the month of August, the receiver requested that he</p> <p>14 have read-only access to the reserve accounts so that he</p> <p>15 can monitor the activity in those accounts. However,</p> <p>16 defendants denied this request."</p> <p>17 Do you know why the request was denied?</p> <p>18 A No.</p> <p>19 Q Let me have you turn to Exhibit 47.</p> <p>20 A Okay.</p> <p>21 Q Exhibit 47, can you read from where it says:</p> <p>22 On March 20th, 2020, which is just --</p> <p>23 A Did you say 45 or 47?</p> <p>24 Q Forty-seven. Sorry.</p>	<p style="text-align: right;">Page 85</p> <p>1 Exhibit 50.</p> <p>2 A I have it.</p> <p>3 Q Have you ever seen this email before?</p> <p>4 A I'm sorry?</p> <p>5 Q Have you ever seen this document before?</p> <p>6 A I believe so, but I can't remember</p> <p>7 specifically.</p> <p>8 Q Do you recall in April of 2021, was it your</p> <p>9 position that a reserve study needed to be done?</p> <p>10 A Yeah.</p> <p>11 Q Is that a yes?</p> <p>12 A Yes.</p> <p>13 Q Okay. And do you know if that was conveyed</p> <p>14 to the defendants that it was your position that a</p> <p>15 reserve study needed to be done?</p> <p>16 A May you repeat the question? I was reading</p> <p>17 this.</p> <p>18 Q Did you convey to the defendants around that</p> <p>19 time in April of 2021 that it was your position as</p> <p>20 receiver that a reserve study needed to be done,</p> <p>21 performed?</p> <p>22 A Well, I may have, but I don't know</p> <p>23 specifically. Just to clarify that reserve studies</p> <p>24 updates were done every year, and then every I believe it</p>

<p style="text-align: right;">Page 86</p> <p>1 was every three years that a complete reserve study was 2 done.</p> <p>3 Q Let me have you read the first paragraph of 4 Exhibit 50 where it states: "Good afternoon, Gentlemen."</p> <p>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."</p> <p>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?</p> <p>16 A Yes.</p> <p>17 Q Okay. Let me have you refer to Exhibit 51.</p> <p>18 A Okay.</p> <p>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?</p> <p>22 A Yes.</p> <p>23 Q To myself and defense counsel. Can you read 24 that email, what your counsel wrote?</p>	<p style="text-align: right;">Page 88</p> <p>1 THE COURT: Sustained. Hold on a second.</p> <p>2 Could you ask a follow-up question?</p> <p>3 MR. MILLER: I did not.</p> <p>4 THE COURT: Could you ask a followup 5 question?</p> <p>6 Q (BY MR. MILLER:) Yes. Mr. Teichner, is 7 there a point you'd like to make about this?</p> <p>8 A I'm sorry?</p> <p>9 Q Is there something you'd like to or a remark 10 that you'd like to make about this?</p> <p>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.</p> <p>20 MR. MCELHINNEY: Objection, move to strike, 21 Your Honor. It's speculative.</p> <p>22 THE COURT: Denied.</p> <p>23 MR. MCELHINNEY: And it's also hearsay.</p> <p>24 THE COURT: Denied.</p>
<p style="text-align: right;">Page 87</p> <p>1 A Yes. It says: Jarrad?</p> <p>2 Q Yes.</p> <p>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.</p> <p>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?</p> <p>12 A No. No.</p> <p>13 Q Did you approve of the reserve study that the 14 defendant sent out?</p> <p>15 A No.</p> <p>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?</p> <p>19 A Yes.</p> <p>20 Q And is it accurate that you or your counsel 21 told them not to send the reserve study out?</p> <p>22 A Yes. If I may expand on this.</p> <p>23 MR. MCELHINNEY: Your Honor, objection.</p> <p>24 There's no question pending.</p>	<p style="text-align: right;">Page 89</p> <p>1 Q (BY MR. MILLER:) Thank you, Mr. Teichner. 2 Can I have you turn to Exhibit 52, please.</p> <p>3 A I have it.</p> <p>4 Q Will you turn to page three of Exhibit 52.</p> <p>5 A I have it.</p> <p>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?</p> <p>9 A Yes.</p> <p>10 Q Can you read the first portion of that email 11 going down approximately to half the page.</p> <p>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.</p> <p>15 THE COURT: Overruled. It's been admitted.</p> <p>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&amp;R's and the assessment notices pursuant to the 23 reserve study."</p> <p>24 "On 8-27-21, we generally stated reserve --</p>

<p style="text-align: right;">Page 90</p> <p>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&amp;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&amp;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</p>	<p style="text-align: right;">Page 92</p> <p>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</p>
<p style="text-align: right;">Page 91</p> <p>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?</p>	<p style="text-align: right;">Page 93</p> <p>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?</p>

<p style="text-align: right;">Page 94</p> <p>1 A No.</p> <p>2 Q Okay, Mr. Teichner, we're going to jump back</p> <p>3 in time to November 19th, 2021. That's when we filed our</p> <p>4 second motion for order to show cause. Let me have you</p> <p>5 turn to Exhibit 119.</p> <p>6 A Okay.</p> <p>7 Q And that document, are you familiar with this</p> <p>8 document? Have you ever seen this before?</p> <p>9 A Yes.</p> <p>10 Q And this is an order granting motion for</p> <p>11 clarification dated 12-24-20. Is that correct?</p> <p>12 A Yes.</p> <p>13 Q Let me have you read from page three, lines</p> <p>14 24 to 26.</p> <p>15 A Starting "Specifically"?</p> <p>16 Q Yes, please.</p> <p>17 A "Specifically, the receiver shall calculate</p> <p>18 the DUF, the hotel expense fees and shared facility fees</p> <p>19 to include only those expenses that are specifically</p> <p>20 provided in the governing documents."</p> <p>21 Q Okay. So after receiving that order, was it</p> <p>22 your understanding that you, the receiver, is the one</p> <p>23 that calculates these fees?</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 96</p> <p>1 A Correct.</p> <p>2 Q Okay. Let me have you turn to Exhibit 59.</p> <p>3 A Yes.</p> <p>4 Q And this is an owner account statement dated</p> <p>5 November 8th, 2021. Is that correct?</p> <p>6 A Yes.</p> <p>7 Q And what was the amount of the daily use fee</p> <p>8 that was being charged in this statement?</p> <p>9 A For one day was \$32.47.</p> <p>10 Q Okay. Did you approve of the increase of the</p> <p>11 daily use fee from September to November going from</p> <p>12 \$24.54 to \$32.47? Did you approve of that?</p> <p>13 A No.</p> <p>14 Q Did that increase conflict with the</p> <p>15 calculations that you had prepared?</p> <p>16 A Yes.</p> <p>17 Q Did applying a daily use fee -- Sorry. Do</p> <p>18 you believe that your daily use fee calculations were</p> <p>19 prepared in compliance with the governing documents?</p> <p>20 A Yes.</p> <p>21 Q Did the court ultimately approve your daily</p> <p>22 use fee as being compliant with the governing documents?</p> <p>23 A Yes.</p> <p>24 Q Okay. So the defendants, did they</p>
<p style="text-align: right;">Page 95</p> <p>1 Q And in fact, going back to January the 7th,</p> <p>2 2015 when you first came into this case, was it your</p> <p>3 understanding that you calculated the fees?</p> <p>4 A Yes.</p> <p>5 Q Let me have you turn to Exhibit 58.</p> <p>6 A I have it.</p> <p>7 Q So this document is an owner account</p> <p>8 statement dated September 9th, 2021. Is that correct?</p> <p>9 A Yes.</p> <p>10 Q And what's the daily use fee that was applied</p> <p>11 in this statement?</p> <p>12 A The period for which the charges applied?</p> <p>13 Q Yes.</p> <p>14 A It was for the month of August 2021.</p> <p>15 Q Okay. But what was the amount of the daily</p> <p>16 use fee that was applied at that time?</p> <p>17 A Well, the total of the column or?</p> <p>18 Q Per day. What was the per-day charge for the</p> <p>19 daily use fee?</p> <p>20 A Well, it varied.</p> <p>21 Q Well, that's but for one day, was it \$24.54?</p> <p>22 A That's the first item, yes.</p> <p>23 Q Okay. So for one day of rental under this</p> <p>24 particular size of unit, the daily use fee was \$24.54?</p>	<p style="text-align: right;">Page 97</p> <p>1 unilaterally make this increase on the charges to the</p> <p>2 plaintiffs?</p> <p>3 A They must have.</p> <p>4 Q In applying their own fees rather than the</p> <p>5 fees that you calculated, did that interfere with your</p> <p>6 implementing the governing documents?</p> <p>7 A I would say so. Yes.</p> <p>8 Q By not applying the fees that you had</p> <p>9 calculated but applying their own fees, did they fail to</p> <p>10 cooperate with your instructions as to what the daily use</p> <p>11 fee is?</p> <p>12 A Yes.</p> <p>13 Q And going back to 58, look at the contracted</p> <p>14 hotel fees.</p> <p>15 A Yes.</p> <p>16 Q And what was the amount of interactive hotel</p> <p>17 fees for September of 2021?</p> <p>18 A \$610.26.</p> <p>19 Q And then turning to 59, what was the amount</p> <p>20 of the contracted hotel fees?</p> <p>21 A \$1,225.63.</p> <p>22 Q So the defendant doubled the contracted hotel</p> <p>23 fees from September to November?</p> <p>24 A On this particular -- for this plaintiff</p>

<p style="text-align: right;">Page 98</p> <p>1 unit, yes.</p> <p>2 Q Did you authorize the doubling of those</p> <p>3 contracted hotel fees?</p> <p>4 A No.</p> <p>5 Q Do you believe that the contracted hotel fees</p> <p>6 reflected in Exhibit 59 at \$1,225.63 exceeded what you</p> <p>7 had calculated for the appropriate contracted hotel fees?</p> <p>8 A Yes.</p> <p>9 Q And did that interfere -- them implementing</p> <p>10 these fees, did that interfere with your implementation</p> <p>11 of the governing documents?</p> <p>12 A Yes.</p> <p>13 THE COURT: Sir, when did you prepare the</p> <p>14 chart that's Exhibit 1 to 140, which is the exhibit that</p> <p>15 you have? When did you prepare the chart that is Exhibit</p> <p>16 1 to Exhibit 140, the document you were using earlier to</p> <p>17 refresh your memory?</p> <p>18 THE WITNESS: I'm sorry?</p> <p>19 THE COURT: Hold on a second. When did you</p> <p>20 prepare that?</p> <p>21 THE WITNESS: When did I prepare this, Your</p> <p>22 Honor?</p> <p>23 THE COURT: Yes, but you've got to speak into</p> <p>24 the microphone.</p>	<p style="text-align: right;">Page 100</p> <p>1 back to Exhibit 59. Do you see at the bottom of Exhibit</p> <p>2 59 on the first page, it states: 2021 special assessment</p> <p>3 due to full reserve study? Do you see that?</p> <p>4 A Yes.</p> <p>5 Q And do you see the amount listed there?</p> <p>6 A Yes.</p> <p>7 Q What is that amount?</p> <p>8 A \$24,387.95.</p> <p>9 Q Did you approve of the defendants making a</p> <p>10 special assessment to this plaintiff for this unit on</p> <p>11 this month for the amount of \$24,387.95?</p> <p>12 A No.</p> <p>13 Q So turning to the second page of Exhibit 59,</p> <p>14 if you look at the bottom of it, do you see where it</p> <p>15 says: Net due to owner or net due from owner?</p> <p>16 A Yes.</p> <p>17 Q Is it your understanding that the defendants</p> <p>18 -- What's your understanding of what this shows where it</p> <p>19 says: Net due to owner or net due from owner?</p> <p>20 A That's the amount when you add up all of the</p> <p>21 items above that, the revenue which is a credit, and then</p> <p>22 the charges, all of the charges including the special</p> <p>23 assessment charge, the result is the \$29,284.13 which</p> <p>24 would be due from the unit owner.</p>
<p style="text-align: right;">Page 99</p> <p>1 THE WITNESS: I believe it was August.</p> <p>2 THE COURT: Speak into the microphone so</p> <p>3 everyone can hear.</p> <p>4 THE WITNESS: August of 2021.</p> <p>5 THE COURT: August.</p> <p>6 THE WITNESS: I believe. I believe so.</p> <p>7 THE COURT: I'm the person with the feedback,</p> <p>8 so I'm turning my microphone off.</p> <p>9 MR. MILLER: Did he answer your -- He's still</p> <p>10 looking it up. Would it be possible for her to read the</p> <p>11 court's question back to the witness? I think he's --</p> <p>12 (Requested portion read by the reporter.)</p> <p>13 THE COURT: Sir, do you know when you</p> <p>14 prepared the document I handed you?</p> <p>15 THE WITNESS: This document? This document?</p> <p>16 Is it the document?</p> <p>17 MR. MILLER: 140.</p> <p>18 THE WITNESS: Yes. And it's August of 2021.</p> <p>19 MR. MILLER: Okay.</p> <p>20 THE COURT: Thank you. Can I have my copy</p> <p>21 back?</p> <p>22 THE WITNESS: In fact, this filing was on the</p> <p>23 of 16th, 2021.</p> <p>24 Q (BY MR. MILLER:) All right. Thank you. So</p>	<p style="text-align: right;">Page 101</p> <p>1 Q And again, you didn't approve of this</p> <p>2 statement, but under this statement, the defendants are</p> <p>3 demanding that the plaintiff unit owner pay \$29,284.13?</p> <p>4 A That's what it says. Yes.</p> <p>5 Q Okay. And then let's go back to Exhibit 58.</p> <p>6 And this is September 9th, 2021; is that correct?</p> <p>7 A Yes.</p> <p>8 Q And under this prior statement, again, issued</p> <p>9 in September as opposed to November, what does it state</p> <p>10 as far as who owes who what? Is there an amount that the</p> <p>11 statement shows owing to or from the unit owner?</p> <p>12 A It shows a credit which would mean an amount</p> <p>13 owed to the unit owner.</p> <p>14 Q Okay. So before the defendants unilaterally</p> <p>15 increased the daily use fee, increased the hotel fees and</p> <p>16 applied a \$24,000 special assessment, the defendants</p> <p>17 under this accounting owed this unit owner \$7,432?</p> <p>18 A Yes.</p> <p>19 Q And then two months later, purportedly, they</p> <p>20 owed \$29,284?</p> <p>21 A Yes.</p> <p>22 Q Does sending owner account statements to the</p> <p>23 plaintiffs then include false numbers, numbers not</p> <p>24 approved by you? Does that interfere with your ability</p>

<p style="text-align: right;">Page 102</p> <p>1 to comply with the governing documents?</p> <p>2 A No.</p> <p>3 Q No, it doesn't.</p> <p>4 Q By sending out a statement to unit owners</p> <p>5 that shows numbers that are not accurate?</p> <p>6 A Not accurate?</p> <p>7 Q That doesn't interfere with your ability to</p> <p>8 do your job? Do you think -- Is that correct?</p> <p>9 A Yes.</p> <p>10 Q As part of being a receiver, do you think</p> <p>11 it's your job to implement compliance with the governing</p> <p>12 documents by sending out statements that have accurate</p> <p>13 information?</p> <p>14 A Of course.</p> <p>15 Q Okay. So if the defendants send out monthly</p> <p>16 statements that don't have accurate information such as</p> <p>17 unapproved special assessment, does that interfere with</p> <p>18 your job?</p> <p>19 MR. MCELHINNEY: Objection, asked and</p> <p>20 answered.</p> <p>21 THE COURT: Overruled.</p> <p>22 THE WITNESS: Yes.</p> <p>23 Q (BY MR. MILLER:) It does interfere with your</p> <p>24 job?</p>	<p style="text-align: right;">Page 104</p> <p>1 actions, the special assessment?</p> <p>2 A Yes.</p> <p>3 Q And in fact, you referred to the special</p> <p>4 assessment as, in quotes, "Manifest impropriety of the</p> <p>5 large special assessment"?</p> <p>6 A Yes.</p> <p>7 Q In the fourth paragraph, you state that GSR</p> <p>8 approved 2021 full reserve study to which the receiver</p> <p>9 has objected indicating that the real reason that there</p> <p>10 was a special assessment for the reserves and that they</p> <p>11 were front loaded is to pay for the remodeling the</p> <p>12 defendants had started in 2021 in which they planned to</p> <p>13 mostly complete in 2022 with which the remaining work to</p> <p>14 be completed by 2024. These remodeling costs have</p> <p>15 already been accounted for in the costs of reserves for</p> <p>16 which the unit owners have been paying every month."</p> <p>17 Can you tell me what you meant by that?</p> <p>18 A Well, yes. The reserve studies that were</p> <p>19 done, albeit not correct, or not in compliance with the</p> <p>20 governing documents, still accounts for future costs and</p> <p>21 expenses that would be -- would include improvements and</p> <p>22 based on what I had seen in the reserve studies that were</p> <p>23 performed, was that those future costs were already</p> <p>24 accounted for and included in the amounts that were being</p>
<p style="text-align: right;">Page 103</p> <p>1 A Yes.</p> <p>2 Q Thank you. Let me have you refer to exhibit</p> <p>3 60. And this is from Stefanie Sharp to myself dated</p> <p>4 November 17th, 2021. Can you read that email?</p> <p>5 A "Good afternoon, Jarred. The receiver did</p> <p>6 not approve the inclusion of the new contracted hotel fee</p> <p>7 or the fee for which -- the fee for 2021 special</p> <p>8 assessment due -- Sorry. For the 2021 special assessment</p> <p>9 due to full reserve study on the most recent statements,</p> <p>10 an example of which is attached."</p> <p>11 Q Thank you. So you agree with that statement</p> <p>12 you did not approve those?</p> <p>13 A Correct.</p> <p>14 Q Thank you. Let me have you turn to Exhibit</p> <p>15 64.</p> <p>16 A Yes.</p> <p>17 Q Specifically, turn to Exhibit 1 within</p> <p>18 Exhibit 64 which is a letter from you dated November</p> <p>19 30th, 2021.</p> <p>20 A Yes.</p> <p>21 Q Are you familiar with this letter?</p> <p>22 A Yes.</p> <p>23 Q Does this letter also confirm to the court on</p> <p>24 November 30th, 2021, that you didn't approve of these</p>	<p style="text-align: right;">Page 105</p> <p>1 charged to the unit owners. In other words, the unit</p> <p>2 owners' charges were based on the reserve studies that</p> <p>3 determined how much would be needed to fund the reserves</p> <p>4 for the future expenses.</p> <p>5 Q So generally, later on, we'll look at the</p> <p>6 withdrawal of over \$3 million dollars by the defendants</p> <p>7 unilaterally and over \$16 million dollars by the</p> <p>8 defendants unilaterally from the reserves. Had those</p> <p>9 reserve -- had those amounts not been withdrawn from the</p> <p>10 reserves, do you know approximately how much should be in</p> <p>11 the reserves right now?</p> <p>12 A No.</p> <p>13 Q Okay. But that's a number that you could</p> <p>14 figure out; is that correct?</p> <p>15 A Yes.</p> <p>16 Q And how would you do that?</p> <p>17 A Well, again, first of all, reserve studies</p> <p>18 would have to be done correctly.</p> <p>19 Q But the reserve studies don't determine what</p> <p>20 can be withdrawn from the reserve account, right? It's</p> <p>21 the CC&amp;R's that dictate what can be withdrawn from the</p> <p>22 reserves; is that correct?</p> <p>23 A Yes.</p> <p>24 Q So how would you do this? Determine what</p>

<p style="text-align: right;">Page 106</p> <p>1 should be in the reserves?</p> <p>2 A Well, there's two factors here. One is how</p> <p>3 much do the reserves need to be funded by charges to the</p> <p>4 unit owners. That's the funding of the reserves. And</p> <p>5 then there's the payments from the reserves for</p> <p>6 legitimate costs that the hotel incurs that are</p> <p>7 attributable to the condominium units.</p> <p>8 Q Okay. Going to page two of this letter that</p> <p>9 is Exhibit 64, can you read the second-to-last paragraph</p> <p>10 that states: "This court is aware"?</p> <p>11 A Do you want me to read this?</p> <p>12 Q Yes, please.</p> <p>13 A "The court should also be aware that the GSR</p> <p>14 has already reimbursed itself from the reimbursement</p> <p>15 accounts from capital expenditures from the period July</p> <p>16 19th July 2019 to December 2020 in the amount of</p> <p>17 \$3,497,527. Although the receiver received the requested</p> <p>18 invoices and other documents supporting the expenditures,</p> <p>19 the reimbursement was not approved by the receiver or by</p> <p>20 the court."</p> <p>21 Q Okay. And read the second-to-last paragraph,</p> <p>22 the one that states: "This court is aware that the GSR</p> <p>23 has been."</p> <p>24 A The court is aware that the GSR has been</p>	<p style="text-align: right;">Page 108</p> <p>1 didn't approve?</p> <p>2 A Well, yes.</p> <p>3 Q Thank you. Let me have you turn to Exhibit</p> <p>4 65.</p> <p>5 A I have it.</p> <p>6 Q And this document is titled: "Receiver's</p> <p>7 Motion for Order and Instructions." Are you familiar</p> <p>8 with that document?</p> <p>9 A Yes.</p> <p>10 Q Can you read page two of the document</p> <p>11 starting with line 22?</p> <p>12 A "By way of this motion, the receiver is</p> <p>13 requesting instructions and orders from the court with</p> <p>14 respect to the following. One: Reserves and reserve</p> <p>15 studies. Two: Calculation of daily use fee, DUF, shared</p> <p>16 facilities expense fees, SFUE, and hotel expense fee, HE,</p> <p>17 for the calendar year 2020, the establishment of a bank</p> <p>18 account for the receivership and the deposit into and</p> <p>19 distribution of rents there from, discrepancies found</p> <p>20 during the analysis of room rotation and rates, Ninth</p> <p>21 Amendment and restatement to condominium-hotel</p> <p>22 declaration of covenants, conditions, restrictions and</p> <p>23 reservations of easements for hotel-condominiums at Grand</p> <p>24 Sierra Resort and communication with receiver. All of</p>
<p style="text-align: right;">Page 107</p> <p>1 assessing fees and charges which it unilaterally</p> <p>2 calculated and that the receiver's position is that these</p> <p>3 actions are in violation of this court's January 6th of</p> <p>4 2015 order -- it should be January 7th, I believe --</p> <p>5 appointing receiver and directing defendants' compliance</p> <p>6 as well as in violation of the finding of facts,</p> <p>7 conclusions of law and judgment entered in this matter.</p> <p>8 Now the defendants have exacerbated the situation by</p> <p>9 preparing their own budget and fees for 2022."</p> <p>10 Q Thank you. And do you believe those</p> <p>11 statements in your letter were accurate? Is that --</p> <p>12 A Yes.</p> <p>13 Q And do you believe the conduct that's</p> <p>14 referenced in that paragraph after your letter, did that</p> <p>15 interfere with your ability to implement compliance with</p> <p>16 the governing documents?</p> <p>17 A Yes.</p> <p>18 Q Were the defendants not cooperating with your</p> <p>19 ability to implement compliance with the governing</p> <p>20 documents?</p> <p>21 A Well, the answer would be yes because of the</p> <p>22 amount that they extracted from the reserves without</p> <p>23 approval.</p> <p>24 Q And the implementation of fees that you</p>	<p style="text-align: right;">Page 109</p> <p>1 the following have been discussed and the receiver's</p> <p>2 monthly reports filed with the court."</p> <p>3 Q So at this point, you specifically asked the</p> <p>4 court to address these issues?</p> <p>5 A Correct.</p> <p>6 Q Okay. And then when did you stop receiving</p> <p>7 payment for your services as receiver?</p> <p>8 A The last payment I received was October 2021,</p> <p>9 which was for the month of September 2021.</p> <p>10 Q So the last payment October 2021.</p> <p>11 A It's been one year and seven months.</p> <p>12 Q Okay.</p> <p>13 THE COURT: Sir, did you receive the funds</p> <p>14 from the clerk's office?</p> <p>15 THE WITNESS: Sorry?</p> <p>16 THE COURT: Did the inter pled funds that</p> <p>17 were deposited into the clerk's account that an order was</p> <p>18 granted to reimburse you for your fees, have you received</p> <p>19 those recently?</p> <p>20 THE WITNESS: Yes.</p> <p>21 THE COURT: Okay.</p> <p>22 THE WITNESS: Yes.</p> <p>23 Q (BY MR. MILLER:) Okay. So last payment was</p> <p>24 October -- until, I mean, the court correctly points out</p>

<p style="text-align: right;">Page 110</p> <p>1 right that you recently have been brought current. Is 2 that correct?</p> <p>3 A Yes.</p> <p>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?</p> <p>7 A October? Yes. I think I received the funds 8 on October 31st, I believe, when they were deposited. 9 Yeah.</p> <p>10 Q And then you didn't receive payment in 11 November of 2021?</p> <p>12 A No, not since then.</p> <p>13 Q Not in December of 2021?</p> <p>14 A No.</p> <p>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?</p> <p>20 A They stopped paying.</p> <p>21 Q They stopped paying, right?</p> <p>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 --</p>	<p style="text-align: right;">Page 112</p> <p>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.</p> <p>5 Q Okay. So approximately how many total condo 6 units are there? Do you know?</p> <p>7 A How many total condominiums?</p> <p>8 Q Yeah.</p> <p>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.</p> <p>12 Q Okay. And how many approximately do you 13 believe that defendants own now?</p> <p>14 A Defendants?</p> <p>15 Q Yeah. Let me ask you a different question. 16 THE COURT: Wait. Let him answer the 17 question.</p> <p>18 THE WITNESS: Maybe somewhere between 630 and 19 640 is an estimate.</p> <p>20 Q (BY MR. MILLER:) Okay. And then the 21 plaintiffs own approximately 90, 95 units?</p> <p>22 A I don't know if they own that many anymore.</p> <p>23 Q Okay. So going back to -- Let's look at just 24 by way of example, 58. Document 58.</p>
<p style="text-align: right;">Page 111</p> <p>1 Q So this was filed October 18th, 2021. And I 2 mean this --</p> <p>3 A Right.</p> <p>4 Q -- which is Exhibit 65; correct?</p> <p>5 A Right.</p> <p>6 Q And then you received your last payment three 7 days after this filing?</p> <p>8 A Within a few days.</p> <p>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?</p> <p>12 A That's correct.</p> <p>13 Q All right. Did you request payment?</p> <p>14 A Sure. Multiple times.</p> <p>15 Q Okay. And was it your understanding that 16 your payment was to come from the rental revenues?</p> <p>17 A Correct.</p> <p>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?</p> <p>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</p>	<p style="text-align: right;">Page 113</p> <p>1 A Yes.</p> <p>2 Q So do the units bring in every month 3 approximately somewhere between \$25- and \$3,500 per unit 4 in rents?</p> <p>5 A Did you say every month?</p> <p>6 Q Yeah. I'm talking about gross rents.</p> <p>7 A Well, sorry. When are you say "per unit," it 8 varies among units.</p> <p>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.</p> <p>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.</p> <p>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?</p> <p>24 A Yes.</p>



<p style="text-align: right;">Page 114</p> <p>1 Q And then you've got a total of over 600</p> <p>2 units, right, that are either plaintiff or</p> <p>3 defendant-owned; correct?</p> <p>4 A Yes.</p> <p>5 Q So I won't be able to do this in my head, but</p> <p>6 so you're taking 600 times \$2,500 a month, right, and</p> <p>7 that's roughly how much you have coming in every month in</p> <p>8 gross rents for the plaintiff and defendants' units?</p> <p>9 MR. MCELHINNEY: Objection.</p> <p>10 Q (BY MR. MILLER:) Worth hundreds of</p> <p>11 thousands, millions of dollars; correct?</p> <p>12 MR. MCELHINNEY: Objection, leading, and I</p> <p>13 think it's contrary to the testimony. He said there was</p> <p>14 slow months where there isn't that much money coming in.</p> <p>15 THE COURT: Overruled. Do you understand the</p> <p>16 question, sir? Do you understand the question, sir?</p> <p>17 THE WITNESS: Yes. I do.</p> <p>18 THE COURT: Okay.</p> <p>19 Q (BY MR. MILLER:) Without question, do a</p> <p>20 sufficient amount of gross rents come in every month for</p> <p>21 these plaintiff and defendant-owned units to easily pay</p> <p>22 your monthly invoices?</p> <p>23 A Yes.</p> <p>24 Q Okay. So as you sit here today, can you</p>	<p style="text-align: right;">Page 116</p> <p>1 800-square-foot unit, so that would be the lowest square</p> <p>2 footage. However, there are more 800 square foot units,</p> <p>3 I believe, than all others as well, so --</p> <p>4 Q All right. Thank you. Did not receiving</p> <p>5 payment for years, over a year, did that inter -- Did not</p> <p>6 being paid for your work, did that interfere with your</p> <p>7 ability to do your work as the receiver?</p> <p>8 A Yes. Not knowing -- certainly. Not knowing</p> <p>9 if I'm ever going to get paid, you know, I need to get</p> <p>10 paid, obviously, and so does my attorney.</p> <p>11 Q So not paying you through the rents, that</p> <p>12 interfered with your ability to do your duties as a</p> <p>13 receiver?</p> <p>14 A Correct.</p> <p>15 Q Do you think that not paying you the amounts</p> <p>16 through the rents that came in was cooperative with the</p> <p>17 receivership order?</p> <p>18 A No.</p> <p>19 Q So getting to the next motion for order to</p> <p>20 show cause, which is dated February 1st, 2021, so now</p> <p>21 we're jumping forward to February 1st, 2021, let me have</p> <p>22 you refer to Exhibit 22.</p> <p>23 THE COURT: 22?</p> <p>24 MR. MILLER: I'm so sorry. Exhibit 122. If</p>
<p style="text-align: right;">Page 115</p> <p>1 think of any explanation as to why you didn't continue to</p> <p>2 receive payment after October 21st, 2021, when the source</p> <p>3 of your payment is the rents?</p> <p>4 A The only way I can answer that is that the</p> <p>5 defendants at one time made an argument that after</p> <p>6 applying all of the fee charges that there was actually</p> <p>7 moneys owed by the unit owners, and I don't agree with</p> <p>8 that. I don't necessarily agree with that because of the</p> <p>9 fee charges that were made. They were overstated.</p> <p>10 Q And isn't there another problem there? What</p> <p>11 about the rent from the defendants' units, the</p> <p>12 defendants' units, the rent that came in for that? Why</p> <p>13 couldn't that have been used to pay your bills?</p> <p>14 A Well, I don't know.</p> <p>15 Q I mean, even if their argument was right,</p> <p>16 which it's not, but even if it was right, there was no</p> <p>17 net revenue due from the plaintiffs' units, you still</p> <p>18 have the revenue from the defendants' units to pay your</p> <p>19 bills. Is that correct?</p> <p>20 A Yes.</p> <p>21 Q Millions of dollars?</p> <p>22 A Yes. By the way, I just might mention that I</p> <p>23 believe that this unit you're looking at here that has</p> <p>24 \$2,600 of rent, I believe that's less than an</p>	<p style="text-align: right;">Page 117</p> <p>1 I said 22. I don't see a clock in here.</p> <p>2 THE COURT: We're going to break at 12:15 and</p> <p>3 come back at about 1:30 so that we can hopefully get</p> <p>4 done. So no, you don't see a clock.</p> <p>5 Q (BY MR. MILLER:) All right. Let me have you</p> <p>6 refer to page 7, lines 22 to 28.</p> <p>7 A Did you say page nine?</p> <p>8 Q Page seven.</p> <p>9 A Seven?</p> <p>10 Q Yeah.</p> <p>11 A Okay.</p> <p>12 Q Do you understand this to be an order issued</p> <p>13 by the court? And it was filed January 4th, 2022, and</p> <p>14 the order is titled: Order Granting Receiver's Order for</p> <p>15 Instructions." But let me have you read page seven</p> <p>16 starting with line 22 to 28.</p> <p>17 A "It is further ordered that the notice of</p> <p>18 special assessments and reserve studies sent to the unit</p> <p>19 owners by defendants on August 24th, 2021, shall be</p> <p>20 immediately withdrawn, that the defendant shall send out</p> <p>21 a notice to all unit owners of said withdrawal within ten</p> <p>22 days of this order, that any amounts paid by unit owners</p> <p>23 pursuant to the notice of special assessment should be</p> <p>24 refunded within ten days of this order and that the</p>

<p style="text-align: right;">Page 118</p> <p>1 receiver has sole authority to order and receive reserve</p> <p>2 studies related to defendants' property and under the</p> <p>3 governing documents."</p> <p>4 Q Okay. Let me have you refer to Exhibit 124.</p> <p>5 A Okay.</p> <p>6 Q Exhibit 124 is entitled, "Order Approving</p> <p>7 Receiver's Request to Approve Updated Fees." And can you</p> <p>8 look at page two and read lines three of five?</p> <p>9 A Are we talking about Exhibit 120?</p> <p>10 Q 124.</p> <p>11 A Still on 124? Okay. I'm on 124.</p> <p>12 Q 124, page two.</p> <p>13 A I'm there.</p> <p>14 Q Lines three to five.</p> <p>15 A Just three to five. All right.</p> <p>16 "It is hereby ordered that the receiver's new</p> <p>17 fee calculation as ordered by the court should</p> <p>18 immediately be applied retroactively retroactive to</p> <p>19 January 20th and going forward until subsequent order</p> <p>20 from the court is issued."</p> <p>21 Q Now prior to this order, as you sit here</p> <p>22 today, was there any reason why the defendants shouldn't</p> <p>23 have applied your fees as soon as you provided them to</p> <p>24 him?</p>	<p style="text-align: right;">Page 120</p> <p>1 the receiver is charged with implementing compliance with</p> <p>2 the governing documents."</p> <p>3 A Okay. "The court finds receivers charged</p> <p>4 with implementing compliance with the governing documents</p> <p>5 as was appointed for recent. See general appointment</p> <p>6 order. Therefore, the court orders receiver to provide a</p> <p>7 report to the court within 90 days from the date of this</p> <p>8 order recommending which items contained within the</p> <p>9 defendants' request for reimbursement of capital</p> <p>10 expenditures can be reimbursements under the governing</p> <p>11 documents and this court's existing orders."</p> <p>12 Q So was it your understanding that you were to</p> <p>13 determine what could be reimbursed from the reserves?</p> <p>14 A Correct.</p> <p>15 Q Not the defendants?</p> <p>16 A Correct.</p> <p>17 Q Okay. And is there a reason -- Did you ever</p> <p>18 prepare this report that was ordered by the court?</p> <p>19 A Well, to answer that, I prepared a schedule</p> <p>20 sometime before this order with various expenses that I</p> <p>21 had questioned. That was never resolved. In fact,</p> <p>22 Mr. Two in your office had told me he had questions and</p> <p>23 concerns beyond what I had questioned about what needed</p> <p>24 to be reimbursed, so --</p>
<p style="text-align: right;">Page 119</p> <p>1 A Not that I know of. No.</p> <p>2 Q Okay. But after January 4th, 2022, you</p> <p>3 actually have an order because they continued to apply</p> <p>4 their own fees that said use the receiver's fees; is that</p> <p>5 correct?</p> <p>6 A Correct.</p> <p>7 Q Let me have you refer to Exhibit 120. And</p> <p>8 Exhibit 120 is an order dated January 4, 2022, titled,</p> <p>9 "Order Granting Plaintiffs' Motion to Stay Special</p> <p>10 Assessment." And let me have you look at page five,</p> <p>11 starting with line ten.</p> <p>12 A Line ten?</p> <p>13 Q Yeah. Page five, line ten? Can you read</p> <p>14 that portion of the order.</p> <p>15 A Yeah. "It is further ordered that defendants</p> <p>16 shall rescind the special assessment refund to any unit</p> <p>17 owners who have paid the special assessment within 20</p> <p>18 days of this order."</p> <p>19 Q All right. Let me have you refer to Exhibit</p> <p>20 123.</p> <p>21 A Yes.</p> <p>22 Q Starting at line 26 on page two, can you read</p> <p>23 that portion of the order to the end of page three where</p> <p>24 it states: "The receiver finds the -- or the court finds</p>	<p style="text-align: right;">Page 121</p> <p>1 Q Were you not getting paid at the time that</p> <p>2 the court issued this order?</p> <p>3 A No.</p> <p>4 Q Okay. Do you believe if you had been getting</p> <p>5 paid monthly that you would have prepared the requested</p> <p>6 report within 90 days as directed by the court's order?</p> <p>7 A Yes, I would have done -- I would have</p> <p>8 prepared an updated one.</p> <p>9 Q Okay. So it's my understanding that no</p> <p>10 report was submitted 90 days from the court order. Is</p> <p>11 that correct?</p> <p>12 A That is correct.</p> <p>13 Q And why was there not a report submitted?</p> <p>14 A Well, I believe two reasons. One was there</p> <p>15 were a lot of pending questions that I had. And</p> <p>16 secondly, like you indicated, I hadn't been paid. I</p> <p>17 didn't know if I was going to get paid. And I wasn't --</p> <p>18 to be perfectly honest, I wasn't going to spend thousands</p> <p>19 of dollars in fees, potential fees, with not having been</p> <p>20 paid since October of 2021. I mean, there's a lot of</p> <p>21 work that needed to be done and wasn't done besides this.</p> <p>22 Q Do you recall at about what point you decided</p> <p>23 I'm not going to keep doing work in this case until I get</p> <p>24 paid?</p>

<p style="text-align: right;">Page 122</p> <p>1 A Not exactly, but I know that because I was</p> <p>2 doing some work afterwards and issuing reports all the</p> <p>3 way through I believe May of 2022 and continued to do</p> <p>4 work for the UOA as necessary that they needed me to</p> <p>5 approve bills, they needed me to, you know, there's a</p> <p>6 number of things. I can't remember all of the things I</p> <p>7 did, but it's all the work that I did since I stopped</p> <p>8 doing the routine work and the work that was still</p> <p>9 necessary to be done is all delineated in the attachments</p> <p>10 to my invoices.</p> <p>11 Q Okay. Let me have you turn to Exhibit 66.</p> <p>12 A Did you say 56 or 66?</p> <p>13 Q Sixty-six. 6-6.</p> <p>14 A 6-6. Let me just add one other thing. My</p> <p>15 attorney wasn't going to do any more work either that was</p> <p>16 necessary, so I couldn't use reserve services other than</p> <p>17 what was absolutely necessary as well.</p> <p>18 Q All right. So Exhibit 66, it's an owner</p> <p>19 account statement dated January 18th, 2022. Is that</p> <p>20 correct?</p> <p>21 A Yes.</p> <p>22 Q In looking at this owner account statement,</p> <p>23 do you -- This is for activity in December. Is that</p> <p>24 correct?</p>	<p style="text-align: right;">Page 124</p> <p>1 Q And Exhibit 122 is an order dated January 4,</p> <p>2 2022 titled, "Order Granting Receiver's Motion for Order</p> <p>3 and Instructions." Can you look at page eight, line 17</p> <p>4 of that document?</p> <p>5 A Page eight. Okay.</p> <p>6 Q Actually, can you read the first paragraph of</p> <p>7 page eight?</p> <p>8 A "It is further ordered that the receiver</p> <p>9 shall recalculate the DUF, SFUE, HE and HE based on the</p> <p>10 same methodology as has been used in calculating the fee</p> <p>11 charges for 2021, subject to a court approval of such</p> <p>12 methodology. Those fees in place prior to the court's</p> <p>13 September 27th, 2021 order shall remain in place until</p> <p>14 the fees for 2020 are recalculated and approved by this</p> <p>15 court such that only a single account adjustment will be</p> <p>16 necessary."</p> <p>17 MR. MILLER: Thank you.</p> <p>18 Your Honor, as a function of the briefing on</p> <p>19 the underlying motion for order to show cause, the two</p> <p>20 exhibits that he recently read into the record, 122 or</p> <p>21 122, that portion of the order that talked about what</p> <p>22 fees to apply, and then before we went on break, he read</p> <p>23 a portion of 124 that also talks about what fees are to</p> <p>24 be applied.</p>
<p style="text-align: right;">Page 123</p> <p>1 MR. MCELHINNEY: Objection, foundation.</p> <p>2 THE COURT: Overruled. Do you know, sir?</p> <p>3 Q (BY MR. MILLER:) Mr. Teichner, from looking</p> <p>4 at this document, can you tell for what period of time</p> <p>5 these fees were applied?</p> <p>6 MR. MCELHINNEY: Your Honor, my objection is</p> <p>7 foundation. I don't even think he's identified this</p> <p>8 document if he has personal knowledge about it.</p> <p>9 THE COURT: Counsel, it's admitted. So it</p> <p>10 says on it: Arrival December 1, departure various dates</p> <p>11 through 12-31, and it has an invoice dated January 18th,</p> <p>12 2022. And it says: Period 12-1-2021 to 12-31-2021.</p> <p>13 Anybody disagree? Okay. Thanks. Is this a</p> <p>14 good time to break for lunch?</p> <p>15 MR. MILLER: Yes. Thank you, Your Honor.</p> <p>16 THE COURT: See you guys at 1:30.</p> <p>17 (Recess.)</p> <p>18 THE COURT: All right, sir. I'd like to</p> <p>19 remind you you're still under oath.</p> <p>20 Let's go, Mr. Miller. Mr. Miller, we don't</p> <p>21 have to go through every document six times.</p> <p>22 Q (BY MR. MILLER:) Seven times? All right.</p> <p>23 Mr. Teichner, can you take a look at Exhibit 122.</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 125</p> <p>1 THE COURT: Yes.</p> <p>2 MR. MILLER: Those two orders were issued on</p> <p>3 the same date, and I've prepared -- it's a demonstrative</p> <p>4 exhibit, but it just has those same paragraphs on the</p> <p>5 same page, so we're not bouncing back and forth between</p> <p>6 those two documents.</p> <p>7 THE COURT: Any objection to demonstrative</p> <p>8 exhibit that we'll mark as D-1?</p> <p>9 MR. MCELHINNEY: It will be demonstrative,</p> <p>10 Your Honor.</p> <p>11 THE COURT: Demonstrative only.</p> <p>12 MR. MCELHINNEY: Give me just a second to</p> <p>13 review.</p> <p>14 MR. MCELHINNEY: No objection, Your Honor.</p> <p>15 THE COURT: Approach the clerk and give her</p> <p>16 one. Hand it to the clerk. D-1. Give it to the</p> <p>17 witness. I'll use the one she has.</p> <p>18 THE CLERK: Exhibit D-1.</p> <p>19 THE COURT: Thank you. It's not admitted.</p> <p>20 It's just marked. All right, guys. Let's keep going.</p> <p>21 Q (BY MR. MILLER:) Okay. Mr. Teichner, so you</p> <p>22 now have in your possession D-1. Do you understand that?</p> <p>23 A Yes.</p> <p>24 Q And the portion of Exhibit 122, which is the</p>

<p style="text-align: right;">Page 126</p> <p>1 last side of the exhibit, is from the motions stream of</p> <p>2 the receiver's motion for order instructions. Do you see</p> <p>3 that? So that's an order in response to your motion for</p> <p>4 instructions. Do you understand that?</p> <p>5 A Yeah.</p> <p>6 Q Okay. And then on the right side, Exhibit</p> <p>7 124 is from the order approving receiver's fees. Do you</p> <p>8 see that?</p> <p>9 A Yes.</p> <p>10 Q Have you read both of these previously as to</p> <p>11 which fees were to be applied post January 4th, 2022?</p> <p>12 A My interpretation has been that the fees that</p> <p>13 were calculated for the year 2022 -- I'm sorry -- 2021</p> <p>14 were supposed to be applied to the year 2020 until such</p> <p>15 time I recalculated the fees for 2020.</p> <p>16 Q Did you do any subsequent recalculation after</p> <p>17 the fees that were approved that are represented in</p> <p>18 receiver's analysis and calculation of daily use fee</p> <p>19 which I believe we marked as Exhibit 140?</p> <p>20 A Yes.</p> <p>21 Q You did a subsequent calculation to the</p> <p>22 receiver's?</p> <p>23 A When you -- The ones that I calculated ?</p> <p>24 Q Yes. The ones that were approved by the</p>	<p style="text-align: right;">Page 128</p> <p>1 recalculation of the fees that had been applied to 2020</p> <p>2 and an adjustment to 2021. That's what the \$1,104,000</p> <p>3 was based on, so to be clear, okay, I didn't recalculate</p> <p>4 the fees based on the Exhibit 140, but what I did a</p> <p>5 recalculation of what the fees should have been based on</p> <p>6 applying the 2021 fees to 2020 and applying them</p> <p>7 obviously to 2021 and back to 2020.</p> <p>8 Q Okay. So again, the fees that are</p> <p>9 represented in Exhibit 140 that we've looked at repeated</p> <p>10 times, those are the only fee calculations that you have</p> <p>11 submitted to the court, right, for the daily use fee in</p> <p>12 the hotel fees?</p> <p>13 A Correct.</p> <p>14 Q Okay. And there hasn't been a subsequent</p> <p>15 calculation of fees since this submittal?</p> <p>16 A Correct.</p> <p>17 Q Under -- in 140. All right. So in looking</p> <p>18 at this demonstrative exhibit, 122 and 124, let's work</p> <p>19 through 122 first. It's stated: It is further ordered</p> <p>20 that the receiver shall recalculate the DUF, SFUE and HE</p> <p>21 based on the same methodology as used in calculating the</p> <p>22 charges for '21, subject to court approval of such</p> <p>23 methodology." And again, we don't have any subsequent</p> <p>24 calculation of fees; is that correct?</p>
<p style="text-align: right;">Page 127</p> <p>1 court.</p> <p>2 A Did I receive those?</p> <p>3 Q No. Did you do a subsequent calculation of</p> <p>4 fees after the fees that you submitted to the court in</p> <p>5 Exhibit 140? So your April 2021 calculation of fees, the</p> <p>6 ones that you submitted the fees to the court. Do you</p> <p>7 have Exhibit 140 in front of you?</p> <p>8 A Yes.</p> <p>9 Q And this is receiver's analysis and</p> <p>10 calculation of daily use fee, right?</p> <p>11 A Right.</p> <p>12 Q What I'm asking you is after these</p> <p>13 calculations, did you do any subsequent calculations that</p> <p>14 were submitted to the court?</p> <p>15 A A separate one.</p> <p>16 Q When?</p> <p>17 A No. No. If you're asking me if I did a</p> <p>18 separate one, the answer is no.</p> <p>19 Q No. Okay. So this calculation of fees,</p> <p>20 which is Exhibit 140, is the only calculations of fees</p> <p>21 that you have submitted since September or -- I'm sorry</p> <p>22 -- August of 2021?</p> <p>23 A Well, subsequent to that, I don't remember</p> <p>24 exact date now, but I submitted to the court a</p>	<p style="text-align: right;">Page 129</p> <p>1 A Correct.</p> <p>2 Q All right. "Those fees in place prior to the</p> <p>3 court's September 27th, 2021 order shall remain in place</p> <p>4 until the fees for 2020 are recalculated and approved by</p> <p>5 this court such that only a single account adjustment</p> <p>6 will be necessary."</p> <p>7 So your fees that were calculated under</p> <p>8 Exhibit 140, are those based upon the numbers for 2020?</p> <p>9 Is that where you -- Is that the data that you used to</p> <p>10 arrive at these 2021 fee calculations?</p> <p>11 A Well, I'm not sure I understand the question</p> <p>12 because the fees that I recalculated --</p> <p>13 Q So what I'm asking --</p> <p>14 A Go on.</p> <p>15 Q What I'm asking you is it says you leave</p> <p>16 those fees in place prior to the court -- prior to</p> <p>17 September 27th, 2021 order shall remain in place until</p> <p>18 the fees for 2020 are recalculated. And what I'm asking</p> <p>19 you is: Are these the -- Is Exhibit 140 data from 2020?</p> <p>20 Is this the subsequent calculation that the order talks</p> <p>21 about?</p> <p>22 A Well, it's based on the budget, the prior</p> <p>23 budget, but the fees that were recalculated would be</p> <p>24 applied to 2021.</p>

<p style="text-align: right;">Page 130</p> <p>1 Q Okay. But they were calculated from the 2020 2 budget?</p> <p>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.</p> <p>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."</p> <p>15 Did you understand that provision?</p> <p>16 A Yes.</p> <p>17 Q And do you believe that your fees were to be 18 applied after January 4, 2020?</p> <p>19 A Applied to what year?</p> <p>20 Q Well, the order states retroactively to 21 January 2020.</p> <p>22 A Right.</p> <p>23 Q Okay.</p> <p>24 A Until the fees for 2020 were to be</p>	<p style="text-align: right;">Page 132</p> <p>1 60 --</p> <p>2 A 66.</p> <p>3 Q Correct. And there's a daily use fee that's 4 charged on those statements. What is it?</p> <p>5 A It's the charge on the statement?</p> <p>6 Q Yes.</p> <p>7 A Are you talking about for did you say daily 8 use fee or?</p> <p>9 Q Yes, the daily use fee.</p> <p>10 A Just want to make sure I understand what 11 you're asking.</p> <p>12 Q Yes.</p> <p>13 A \$876.69 is the total. Per day is \$32.47.</p> <p>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?</p> <p>17 A No.</p> <p>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?</p> <p>21 A Yes.</p> <p>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</p>
<p style="text-align: right;">Page 131</p> <p>1 recomputed.</p> <p>2 Q And they haven't been, right? Because --</p> <p>3 A Correct.</p> <p>4 Q Okay. Very good. Let's look at Exhibit 66.</p> <p>5 A Yes, sir.</p> <p>6 Q Are you there yet?</p> <p>7 A Yes.</p> <p>8 Q Exhibit 66 is owner account statement dated 9 January 18th, 2022. Is that correct?</p> <p>10 A Yes.</p> <p>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?</p> <p>14 A This was for the month of December 2021?</p> <p>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.</p> <p>18 A Yes.</p> <p>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.</p> <p>22 A What was the date that these were charged? I 23 don't --</p> <p>24 Q The January 18th, 2022 statement is Exhibit</p>	<p style="text-align: right;">Page 133</p> <p>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?</p> <p>4 A Right. Yes.</p> <p>5 Q They have told you that?</p> <p>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.</p> <p>9 Q Okay. Let me ask you to take a look at 10 Exhibit 58.</p> <p>11 A I have it.</p> <p>12 Q Exhibit 58 is the statement dated September 13 9th, 2021; correct?</p> <p>14 A Right.</p> <p>15 Q So if we look in September, for 2021, what 16 was the daily use fee then? Was it \$24.54?</p> <p>17 A Well, that's the first item, yes, per day.</p> <p>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?</p> <p>24 A Right.</p>

<p style="text-align: right;">Page 134</p> <p>1 Q And then if we turn to Exhibit 59, we see</p> <p>2 that the daily use fee increased to \$32.47. Is that</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q So neither your recalculated fees or the fees</p> <p>6 that were applied prior to September 27th, 2021 were</p> <p>7 applied on June 18th when they issued the new statements.</p> <p>8 Is that correct?</p> <p>9 A Yes.</p> <p>10 Q So either way, the lowered fees that more</p> <p>11 accurately tracked your fees were not applied?</p> <p>12 A Correct.</p> <p>13 Q And do you believe not applying your fees</p> <p>14 interfered with your ability to implement the governing</p> <p>15 documents?</p> <p>16 MR. MCELHINNEY: Objection to the question,</p> <p>17 Your Honor. I think he's leading the witness.</p> <p>18 THE COURT: Rephrase your question, please.</p> <p>19 Q (BY MR. MILLER:) Did not applying the fees</p> <p>20 interfere with your duties?</p> <p>21 MR. MCELHINNEY: Same objection, Your Honor.</p> <p>22 THE COURT: Overruled.</p> <p>23 THE WITNESS: Correct. Yes.</p> <p>24 Q (BY MR. MILLER:) Thank you. Let me have you</p>	<p style="text-align: right;">Page 136</p> <p>1 receivership is insolvent. Nothing can be done because</p> <p>2 there are no funds to do so or to operate the</p> <p>3 receivership. No rents have been turned over to date."</p> <p>4 "The receiver is more than willing to</p> <p>5 implement the court's orders once the fees and mine are</p> <p>6 paid and the assessments are refunded and there are fees</p> <p>7 available to operate the receivership including payments</p> <p>8 of net rents to the plaintiffs and the non-plaintiff</p> <p>9 owners."</p> <p>10 And by the way, that's not correct. It</p> <p>11 shouldn't be to non-plaintiffs who are not involved in</p> <p>12 this as we found out later.</p> <p>13 Q Thank you, Mr. Teichner. Do you believe that</p> <p>14 accurately summarizes the status of the receivership at</p> <p>15 that time? Is there anything about your counsel's email</p> <p>16 that you disagree with?</p> <p>17 A No.</p> <p>18 Q And I actually made a mistake here. I have</p> <p>19 to go back to the last motion for one additional exhibit.</p> <p>20 Let me have you go back to or refer to Exhibit 70.</p> <p>21 A Yes.</p> <p>22 Q Do you recall that we referred -- that I</p> <p>23 previously referred you to the Exhibit 122 order granting</p> <p>24 receiver's fees which withdrew or ordered the withdrawal</p>
<p style="text-align: right;">Page 135</p> <p>1 refer to Exhibit 68.</p> <p>2 A That's 58.</p> <p>3 Q No, I want to refer to 68 this time.</p> <p>4 A 68. I have it.</p> <p>5 Q Are you familiar with this email?</p> <p>6 A Yes.</p> <p>7 Q Can you read just the first portion on the</p> <p>8 top of the page which is an email from Stefanie Sharp,</p> <p>9 your counsel, to myself, and it's dated January 24th,</p> <p>10 2022.</p> <p>11 A "Good afternoon, Jarrad. Receiver did not</p> <p>12 authorize the issuance of the statements including the</p> <p>13 January 16th, 2022 statement."</p> <p>14 Q We're going to move onto the fourth motion</p> <p>15 for order to show cause which was filed 4-25-2022. Let</p> <p>16 me have you refer to Exhibit 76.</p> <p>17 A Seventy-six?</p> <p>18 Q Yes. And again, this is an email from your</p> <p>19 counsel, Stefanie Sharp, dated April 22nd, 2022, to</p> <p>20 myself. Can you read that email for me?</p> <p>21 A "Good afternoon, Jarrad. Please see the</p> <p>22 email I just sent earlier this afternoon. The receiver</p> <p>23 did not approve the statements. The defendants refuse to</p> <p>24 apply the court order fees to all 670 units, thus the</p>	<p style="text-align: right;">Page 137</p> <p>1 of a special assessment? Do you recall that?</p> <p>2 A Yes.</p> <p>3 Q And there were two special assessments at</p> <p>4 that time; correct? There was a special assessment</p> <p>5 issued by the defendants for improvements for additional</p> <p>6 funding to the reserves, and then was there also a second</p> <p>7 special assessment that was issued to pay your fees</p> <p>8 rather than payment from the rents as ordered by the</p> <p>9 court?</p> <p>10 A Yes.</p> <p>11 Q And you understood that pursuant to those</p> <p>12 January 4th, 2020 orders, both of those special</p> <p>13 assessments were withdrawn. Is that correct?</p> <p>14 A Yes.</p> <p>15 Q Okay. So if we refer to Exhibit 70, are you</p> <p>16 familiar with this document?</p> <p>17 A It's dated January 13th, 2021. I'm sorry.</p> <p>18 Q Are you at --</p> <p>19 A January 13th, 2021.</p> <p>20 Q Yes.</p> <p>21 A Yeah. Yeah, okay.</p> <p>22 Q And this is a letter from Associa North to</p> <p>23 the plaintiffs or homeowners. Is that correct?</p> <p>24 A Yes.</p>

<p style="text-align: right;">Page 138</p> <p>1 Q Did you see this letter prior to it going out</p> <p>2 to the plaintiffs?</p> <p>3 A No.</p> <p>4 Q Were you provided with a copy of this letter?</p> <p>5 A No, not that I recall. No.</p> <p>6 Q Okay. Where it has paragraph two, it states:</p> <p>7 "The special assessment due date August 1st, 2021 only</p> <p>8 has been rescinded." Is that accurate or were both the</p> <p>9 special assessments rescinded?</p> <p>10 A Both were rescinded.</p> <p>11 Q It says: "The task to reverse the special</p> <p>12 assessments and late fees will take some time but is in</p> <p>13 the process and will be completed as soon as possible."</p> <p>14 Do you recall if those orders had specific</p> <p>15 deadlines by which the assessments were to be rescinded?</p> <p>16 A I do, but I don't remember what it was.</p> <p>17 Q Exhibit 122 gives ten days to rescind the</p> <p>18 special assessment. Does that refresh your recollection?</p> <p>19 A Yes.</p> <p>20 Q Okay. And then so this is almost ten days</p> <p>21 after the order to rescind the special assessment, send</p> <p>22 the notice of special assessment, and yet it states that</p> <p>23 the process of rescinding the special assessment will</p> <p>24 take some time. Does that comply with the court's</p>	<p style="text-align: right;">Page 140</p> <p>1 And the fact that they're stipulated into evidence, I</p> <p>2 don't believe satisfies the foundational requirement.</p> <p>3 THE COURT: Absolutely, it does. Okay. You</p> <p>4 and I may disagree about that, but it's in evidence.</p> <p>5 Anybody can read from it, including me. That was a hint</p> <p>6 to Mr. Miller.</p> <p>7 MR. MILLER: I didn't get it.</p> <p>8 THE COURT: That's okay. Keep going.</p> <p>9 Q (BY MR. MILLER:) So back to Exhibit 76. Do</p> <p>10 you believe that this owner account statement 77 that has</p> <p>11 a daily use fee of \$38.07, are these -- Do you believe</p> <p>12 these to be the statements that your counsel memorialized</p> <p>13 as not complying with the court's orders?</p> <p>14 A Yes.</p> <p>15 Q Okay. And in fact, if we looked back at that</p> <p>16 Exhibit 122, the statement in there that states those</p> <p>17 fees in place prior to the court's September 27th, 2021</p> <p>18 order shall remain in place, the April 18th, 2022</p> <p>19 statements increased the daily use fee again, don't they,</p> <p>20 to \$3,807?</p> <p>21 A Okay. So --</p> <p>22 Q So the January statement is 66.</p> <p>23 A Right.</p> <p>24 Q And in that January statement, the daily use</p>
<p style="text-align: right;">Page 139</p> <p>1 orders?</p> <p>2 A I'm sorry. It will take some time? Is that</p> <p>3 what --</p> <p>4 Q Well, the court under these orders said that</p> <p>5 there had to be a notice of the special assessment being</p> <p>6 withdrawn and that it had to be refunded within ten days.</p> <p>7 A Right.</p> <p>8 Q Yet this letter only references one special</p> <p>9 assessment being rescinded not both; correct? And then</p> <p>10 rather than immediately or doing the reversal within the</p> <p>11 ten days, it states: "The task to reverse the special</p> <p>12 assessment and late fees will take some time but is in</p> <p>13 the process and will be completed as soon as possible."</p> <p>14 So does that comply with the ten-day deadline</p> <p>15 to rescind the special assessment?</p> <p>16 A No.</p> <p>17 Q And then I apologize for doing this out of</p> <p>18 order, but now we're jumping back ahead to the prior</p> <p>19 order or prior motion for order to show cause. And let</p> <p>20 me have you take a look at Exhibit 77. Exhibit 77 is an</p> <p>21 owner account statement dated April 18th, 2022.</p> <p>22 MR. MCELHINNEY: Your Honor, I understand</p> <p>23 you've previously overruled my objection, but I want a</p> <p>24 standing objection as to foundation for these statements.</p>	<p style="text-align: right;">Page 141</p> <p>1 fee was \$32.47.</p> <p>2 A Yes.</p> <p>3 Q But then if you jump ahead to April, the</p> <p>4 daily use fee is increased again to \$38.07. Is that</p> <p>5 correct?</p> <p>6 A Yes. I just want to make sure are we talking</p> <p>7 about the same -- Yes. It's the same unit owner.</p> <p>8 Q Oh, that's a good point. The same type of</p> <p>9 unit. I'm sorry. I didn't --</p> <p>10 A I'm looking at exhibit -- I'm looking at the</p> <p>11 November 8th, 2021 and April 18th, 2022, and it's the</p> <p>12 same unit owner, but I don't know the other one you were</p> <p>13 referring to.</p> <p>14 Q Okay. So if you're in Exhibit 77, are you?</p> <p>15 Are you holding Exhibit 77? So the first page of that is</p> <p>16 April 18th, 2022. Right?</p> <p>17 A Right.</p> <p>18 Q And on April 18th, 2022, we have a daily use</p> <p>19 fee of \$38.07. Correct?</p> <p>20 A Correct.</p> <p>21 Q In that same exhibit, flip back to January</p> <p>22 18th of 2022 for the same unit, unit 1886. And at that</p> <p>23 time, the daily use fee was \$32.47. Do you see that?</p> <p>24 A Are we talking about the same exhibit number?</p>

<p style="text-align: right;">Page 142</p> <p>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?</p>	<p style="text-align: right;">Page 144</p> <p>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</p>
<p style="text-align: right;">Page 143</p> <p>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</p>	<p style="text-align: right;">Page 145</p> <p>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.</p>



<p style="text-align: right;">Page 146</p> <p>1 Q But the order says: Rents and/or rents. So</p> <p>2 once you're out of dues, you need to pay it from the</p> <p>3 rents; is that correct?</p> <p>4 A Yes. Yeah. And I assume when they say when</p> <p>5 it says "dues," it means the UOA dues that it collects</p> <p>6 from the unit owners.</p> <p>7 Q Okay. So going back to Exhibit 78, which is</p> <p>8 March of 2022, why did you at that time demand that the</p> <p>9 rents go into the UOA bank account? Because your bills</p> <p>10 weren't being paid?</p> <p>11 A Well, that was the only account that was</p> <p>12 available for me. I tried to open an account. I wanted</p> <p>13 to get an employee ID number. I tried about five</p> <p>14 different times with the IRS going back and forth. They</p> <p>15 didn't understand what an EIN number is for a receiver in</p> <p>16 a receivership.</p> <p>17 And I kept having to resubmit more</p> <p>18 information to them, and eventually, they just stopped</p> <p>19 contacting me, and I didn't try to contact them again.</p> <p>20 So I then was trying to find a bank that would open an</p> <p>21 account without an employee identification number, and I</p> <p>22 couldn't. I could not find one.</p> <p>23 So eventually, just so you know, just so</p> <p>24 eventually when I opened an account most recently, I had</p>	<p style="text-align: right;">Page 148</p> <p>1 the governing documents?</p> <p>2 A Yes. Correct.</p> <p>3 Q We're going to move forward to the fifth</p> <p>4 motion for order to show cause which was filed December</p> <p>5 28th, 2022. Mr. Teichner, are you familiar with the</p> <p>6 court's November 14th, 2022 order which is Exhibit 126?</p> <p>7 A Yes, I've seen this. Yes.</p> <p>8 Q Okay. Did anyone between January 4th of 2022</p> <p>9 and the issuance of this November 14th, 2022 order from</p> <p>10 the GSR ever indicate to you that they didn't want to</p> <p>11 comply or wouldn't comply with the January 4, 2022 orders</p> <p>12 because they had sought reconsideration of the January</p> <p>13 4th, 2022 orders?</p> <p>14 A Yes.</p> <p>15 Q Okay. So during that time period, do you</p> <p>16 have some recollection that someone told you they</p> <p>17 wouldn't comply with the orders because they were seeking</p> <p>18 reconsideration of them?</p> <p>19 A Because they were.</p> <p>20 Q They were seeking reconsideration of the --</p> <p>21 A Right.</p> <p>22 Q -- January -- Okay.</p> <p>23 A Yes.</p> <p>24 Q And then do you understand that the November</p>
<p style="text-align: right;">Page 147</p> <p>1 to use the UOA's ID number, employee ID number in order</p> <p>2 to open an account. But again, I don't see any problem</p> <p>3 with that because the rents that are collected are --</p> <p>4 it's how I use those rents, it's just a conduit. The</p> <p>5 rents come in, the payments go out after the fees are</p> <p>6 applied after the payments for my fees and my attorney's</p> <p>7 fees are paid, so it's that account is just a conduit.</p> <p>8 It's not an account that collects income. The income is</p> <p>9 still reportable by the individual unit owners.</p> <p>10 Q And do you believe that was your decision to</p> <p>11 make as a receiver?</p> <p>12 A To open a separate account?</p> <p>13 Q Yes.</p> <p>14 A Yes. And by the way, I couldn't do that. I</p> <p>15 -- the Associa contacted the representative at the bank</p> <p>16 that they use and they said they couldn't open a separate</p> <p>17 account for me under their, you know, under the UOA's</p> <p>18 name.</p> <p>19 Q So when you made this demand for the turnover</p> <p>20 of the rents into the UOA account as demonstrated in</p> <p>21 Exhibit 78, did the defendants comply with that request?</p> <p>22 A No.</p> <p>23 Q And not complying with that request, did that</p> <p>24 interfere with your ability to proceed in accordance with</p>	<p style="text-align: right;">Page 149</p> <p>1 14th, 2022 order that you just read almost entirely</p> <p>2 denies reconsideration of those January 4, 2022 orders?</p> <p>3 A Yes.</p> <p>4 Q Okay. Let me have you refer to Exhibit 82.</p> <p>5 So Exhibit 82 is a November 18th, 2022 owner account</p> <p>6 statement for Unit 1762. So this is a different unit</p> <p>7 than what we've been talking about in the prior exhibits.</p> <p>8 Do you see the daily use fee in this November</p> <p>9 18, 2022 statement it's \$38.07? Do you see that?</p> <p>10 A Yes.</p> <p>11 MR. MCELHINNEY: Objection, foundation.</p> <p>12 THE COURT: Overruled.</p> <p>13 Q (BY MR. MILLER:) So after these statements</p> <p>14 were issued after the November 14th, 2022 affirming</p> <p>15 order; is that correct?</p> <p>16 A Correct.</p> <p>17 Q And yet the daily use fee still hasn't</p> <p>18 changed to your calculation of the daily use fee. Is</p> <p>19 that correct?</p> <p>20 A Correct.</p> <p>21 Q Do you believe that Exhibit 82 should have</p> <p>22 applied your calculation of the daily use fee?</p> <p>23 A Yes.</p> <p>24 Q By not applying your calculation of the daily</p>

<p style="text-align: right;">Page 150</p> <p>1 use fee, did the defendants interfere with your duties to</p> <p>2 implement the governing documents?</p> <p>3 A Yes.</p> <p>4 Q And just to resolve any doubt, if we turn to</p> <p>5 Exhibit 83, the next one -- Can you turn to that?</p> <p>6 MR. MCELHINNEY: Same objection, Your Honor.</p> <p>7 THE COURT: Overruled.</p> <p>8 MR. MCELHINNEY: Foundation.</p> <p>9 Q (BY MR. MILLER:) Even the following month,</p> <p>10 the defendant still applied the \$38.07, is that correct,</p> <p>11 as the daily use fee?</p> <p>12 A Yes. Yes.</p> <p>13 Q Yes? Let me have you turn to Exhibit 86.</p> <p>14 This is an internal email from Reed Brady to various</p> <p>15 individuals associated with the defendants, and it's</p> <p>16 dated March 24, 2022. And the second or the third line</p> <p>17 in the first paragraph states: "Currently, he does not</p> <p>18 have a bank account, so he instructed that we would send</p> <p>19 it into the UOA bank account."</p> <p>20 Do you remember any specific conversations</p> <p>21 that you had with Mr. Brady about that? If you don't,</p> <p>22 that's --</p> <p>23 A I may have. It was okay to facilitate</p> <p>24 receiving the rents and getting them into a separate bank</p>	<p style="text-align: right;">Page 152</p> <p>1 Q Okay. So then if we look at Exhibit 90, is</p> <p>2 that another reserve study that was prepared, it looks</p> <p>3 like, or it was year beginning 1-1-2023?</p> <p>4 A Yes.</p> <p>5 Q So did they try to do the same thing again</p> <p>6 where they obtained another reserve study without your</p> <p>7 oversight?</p> <p>8 A Correct.</p> <p>9 Q Correct? And you had no input over that</p> <p>10 reserve study?</p> <p>11 A Correct.</p> <p>12 Q Let me have you turn to Exhibit 91.</p> <p>13 A I should clarify. When you say I had no</p> <p>14 input, again, my attorney, Ms. Sharp, spoke with</p> <p>15 Ms. Betterley at the Reserve Consultants or whatever the</p> <p>16 heck -- I forgot the name -- about the fact that the</p> <p>17 reserve study was not done properly, and I believe it was</p> <p>18 before this reserve study was issued. I believe it was</p> <p>19 last year in 2022. So but the reserve study was done, I</p> <p>20 guess, because it was time for one to be done, but again,</p> <p>21 we didn't agree with it. And I believe that there was an</p> <p>22 email or some communication that it should not have been</p> <p>23 issued.</p> <p>24 Q We're going to cover those emails, so thank</p>
<p style="text-align: right;">Page 151</p> <p>1 account.</p> <p>2 Q Okay. And did Mr. Brady express any concern</p> <p>3 to you in your conversations with him about doing that?</p> <p>4 A Well, this was an email. I don't believe --</p> <p>5 I may have, but I don't believe I received a response. I</p> <p>6 may have though.</p> <p>7 Q Okay. We're next going to draw our attention</p> <p>8 to the Motion for Order to Show Cause filed December</p> <p>9 29th, 2022. Let me have you refer to Exhibit 90. Are</p> <p>10 you familiar with this document?</p> <p>11 A Somewhat.</p> <p>12 Q So going back over what we've just covered or</p> <p>13 we've covered as I understand this morning, you'll recall</p> <p>14 that the defendants had previously done a reserve study</p> <p>15 and issued was it a \$24 million-dollar special assessment</p> <p>16 under that reserve study, and then January 4th, 2022, the</p> <p>17 court issued a series of orders saying no, Mr. Teichner</p> <p>18 does the reserve study. And it revoked the special</p> <p>19 assessment that was issued under that prior reserve</p> <p>20 study. Do you recall going over that testimony this</p> <p>21 morning?</p> <p>22 A Yes. \$26 million, by the way.</p> <p>23 Q \$26 million?</p> <p>24 A Yeah.</p>	<p style="text-align: right;">Page 153</p> <p>1 you for that overview. So looking at Exhibit 91, if you</p> <p>2 turn to page two of that exhibit, it's an email from me</p> <p>3 to your counsel dated December 16th, 2022, and it states:</p> <p>4 "Stefanie, I hope all is well. Attached,</p> <p>5 please find a copy of documents we received concerning</p> <p>6 the reserves prepared by Better Reserve Consultants for</p> <p>7 year beginning 2023. The documents blatantly violate the</p> <p>8 governing documents and various court orders. Before we</p> <p>9 file the appropriate motion, can you please advise if the</p> <p>10 receiver participated in the preparation of the documents</p> <p>11 and approved the documents?"</p> <p>12 If you turn to page one, the previous page,</p> <p>13 there's a response there from your counsel, and it's</p> <p>14 dated December 16th, 2022.</p> <p>15 Can you read her response for me?</p> <p>16 A "Good afternoon. I can confirm that the</p> <p>17 receiver DID NOT -- and that's in bold capital letters --</p> <p>18 participate in any way in the preparation of the</p> <p>19 documents attached hereto and DID NOT approve of the</p> <p>20 documents attached hereto. Neither the receiver nor I</p> <p>21 have seen the attached prior to your email."</p> <p>22 Q Do you recall if this reserve study also</p> <p>23 called for a special assessment?</p> <p>24 A Do I recall a reserve study after the special</p>

<p style="text-align: right;">Page 154</p> <p>1 assessment?</p> <p>2 Q Do you recall if under this special reserve</p> <p>3 study that you didn't participate in that the defendants</p> <p>4 also sought another special assessment?</p> <p>5 A Correct.</p> <p>6 Q And do you recall the amount of that special</p> <p>7 assessment?</p> <p>8 A The amount?</p> <p>9 Q Yes.</p> <p>10 A Not offhand.</p> <p>11 Q Okay. Regardless, you didn't approve of the</p> <p>12 reserve study or any special assessment?</p> <p>13 A No.</p> <p>14 Q Do you recall learning that the defendants</p> <p>15 had withdrawn funds from the reserve accounts without</p> <p>16 your authorization or approval?</p> <p>17 A Yes.</p> <p>18 Q When do you first recall that occurring?</p> <p>19 A I don't remember the date.</p> <p>20 MR. MILLER: Your Honor, can we take a short</p> <p>21 break?</p> <p>22 THE COURT: Yes.</p> <p>23 MR. MILLER: Like five minutes?</p> <p>24 THE COURT: Okay. Five minutes.</p>	<p style="text-align: right;">Page 156</p> <p>1 reserve accounts in 2022 interfere with your ability to</p> <p>2 implement compliance with the governing documents?</p> <p>3 A Yes.</p> <p>4 Q Mr. Teichner, let me have you refer to</p> <p>5 Exhibit 102. Are you familiar with this email? It's an</p> <p>6 email from David McElhinney to your counsel, and it's</p> <p>7 dated April 5th, 2023.</p> <p>8 A Yes.</p> <p>9 Q Can you please read the last three lines of</p> <p>10 that email after "Statutory provisions"?</p> <p>11 A The last?</p> <p>12 Q I can read it for you.</p> <p>13 A The last three lines is middle of the</p> <p>14 sentence.</p> <p>15 Q Okay. It states: "Defendants therefore will</p> <p>16 perform the above-described services under protest with a</p> <p>17 reservation of rights and without waiving any issues or</p> <p>18 arguments on appeal from the December 5th, 2022 order,</p> <p>19 the final judgment or any other appealable rulings."</p> <p>20 Do you understand this concern that concerned</p> <p>21 continuing to rent the plaintiffs' units through the</p> <p>22 receivership?</p> <p>23 A Yes.</p> <p>24 Q Okay. So was it your understanding through</p>
<p style="text-align: right;">Page 155</p> <p>1 (Recess.)</p> <p>2 THE COURT: Sir, you're still under oath.</p> <p>3 Keep going, Mr. Miller.</p> <p>4 Q (BY MR. MILLER:) Mr. Teichner, on January</p> <p>5 9th, 2023, you provided receiver's response to</p> <p>6 plaintiff's motions for order to show cause. And in that</p> <p>7 document, you state:</p> <p>8 "Accordingly" -- and this is page three, line</p> <p>9 20 -- "the total withdrawals from the reserve bank</p> <p>10 accounts in 2022 through November is \$12,892,660.18."</p> <p>11 Does that sound accurate to you?</p> <p>12 A Yes.</p> <p>13 Q So between those dates in 2022, did the</p> <p>14 defendants withdraw that amount, the \$12 million-dollar</p> <p>15 amount that I just stated without your approval?</p> <p>16 A Correct. Yes.</p> <p>17 Q Do you believe you should have approved of</p> <p>18 any expenses that came out of the reserve account?</p> <p>19 A Yes.</p> <p>20 Q Is it your understanding that you're in</p> <p>21 charge with approving and/or denying expenses from the</p> <p>22 reserve accounts?</p> <p>23 A Yes.</p> <p>24 Q Did withdrawing the \$12,892,660 from the</p>	<p style="text-align: right;">Page 157</p> <p>1 your counsel or reviewing this email that after April</p> <p>2 5th, 2023, the defendants would continue to rent the</p> <p>3 plaintiffs' units under the unit rental program?</p> <p>4 A Yes.</p> <p>5 Q Let me have you turn to Exhibit 103. And</p> <p>6 Exhibit 103 is an April 20th, 2023 owner account</p> <p>7 statement. Do you see that?</p> <p>8 A Yes.</p> <p>9 MR. MCELHINNEY: Objection, foundation.</p> <p>10 THE COURT: Overruled.</p> <p>11 Q (BY MR. MILLER:) And does that owner account</p> <p>12 statement show that there was no rental activity for the</p> <p>13 stated time period?</p> <p>14 A Yes.</p> <p>15 Q Did you ever, as a receiver, authorize the</p> <p>16 defendants to discontinue the rental of plaintiffs'</p> <p>17 units?</p> <p>18 A No.</p> <p>19 Q And in fact, would you have instructed them</p> <p>20 not to discontinue the rental of plaintiffs' units?</p> <p>21 A Correct.</p> <p>22 Q Also on this statement, there's a 2022 actual</p> <p>23 expense true-up, and it adds another \$15,019.17 to the</p> <p>24 amounts owed by the plaintiffs. Did you authorize that?</p>

<p style="text-align: right;">Page 158</p> <p>1 A No.</p> <p>2 Q Even under -- Looking at the statement again,</p> <p>3 even under the application of defendants' fees for the</p> <p>4 past few years as we've gone over repeatedly today, does</p> <p>5 this statement show that this unit owner is still owed</p> <p>6 \$5,916.29?</p> <p>7 A Yes.</p> <p>8 Q Okay. So even applying the defendants' fees</p> <p>9 that are significantly larger than your amounts are still</p> <p>10 owed under these accountings?</p> <p>11 A Well, this again, just to be clear, this is</p> <p>12 due to the owner.</p> <p>13 Q Yes. So even when they go for years applying</p> <p>14 their fees which are much greater than your calculation</p> <p>15 of fees, the plaintiffs are still owed money, is that</p> <p>16 correct, even under these accounts?</p> <p>17 A I'm sorry. This is due to the unit owner?</p> <p>18 Q Yes. So what I'm saying is if you go back</p> <p>19 all these years since January of 2020, the proper fees</p> <p>20 were applied, and they continuously apply their fees;</p> <p>21 correct? The higher fees, we've gone over the daily use</p> <p>22 fee repeatedly because it's the easiest one to recognize.</p> <p>23 A Right.</p> <p>24 Q So even using their daily use fee, which is</p>	<p style="text-align: right;">Page 160</p> <p>1 THE WITNESS: Oh, yes.</p> <p>2 THE COURT: I need to give that back to the</p> <p>3 clerk. We'll give it back to the clerk. What are you</p> <p>4 doing over here?</p> <p>5 MR. SMITH: Giving the exhibits to give to</p> <p>6 the witness.</p> <p>7 THE COURT: That's a lovely thing to do,</p> <p>8 Jordan. They have different numbers. Thank you, Jordan.</p> <p>9</p> <p>10</p> <p>11 CROSS-EXAMINATION</p> <p>12 BY MR. MCELHINNEY:</p> <p>13 Q Good afternoon, Mr. Teichner.</p> <p>14 A Good afternoon.</p> <p>15 Q We have met before; correct?</p> <p>16 A Of course.</p> <p>17 Q And you understand I'm counsel for several of</p> <p>18 the defendants in the GSR, Gage Village and MEI-GSR.</p> <p>19 Okay?</p> <p>20 A Yes.</p> <p>21 Q Take me through the history. You were</p> <p>22 appointed January 25, 2019; correct?</p> <p>23 A Correct.</p> <p>24 Q And prior to you, Mr. Proctor was the</p>
<p style="text-align: right;">Page 159</p> <p>1 greater than what you believe is required under the</p> <p>2 governing documents, the plaintiffs are still owed money?</p> <p>3 A Correct.</p> <p>4 Q Correct. Do you know why the amounts owed in</p> <p>5 this case, it says \$59,018.29 is owed even under their</p> <p>6 accounting and even that amount still isn't paid to the</p> <p>7 unit owner? Have you ever asked the defendants about</p> <p>8 that?</p> <p>9 A No.</p> <p>10 MR. MILLER: Your Honor, I have no further</p> <p>11 questions.</p> <p>12 THE COURT: Ask the witness.</p> <p>13 Mr. McElhinney?</p> <p>14 MR. MCELHINNEY: Thank you, Your Honor. With</p> <p>15 the court's permission, may I set up the stand over there</p> <p>16 so I can get closer to the witness?</p> <p>17 THE COURT: You can do whatever you like,</p> <p>18 Mr. McElhinney.</p> <p>19 MR. MCELHINNEY: Thank you.</p> <p>20 THE COURT: And, sir, can I have the</p> <p>21 demonstrative exhibit back? There was one that had the</p> <p>22 yellow highlights all over it. It was a single sheet. I</p> <p>23 think it's over on that side. And then did you have</p> <p>24 another loose one that was 140?</p>	<p style="text-align: right;">Page 161</p> <p>1 receiver?</p> <p>2 A Yes.</p> <p>3 Q Now, you were ordered fairly early on to come</p> <p>4 up with new calculations for DUF, SFUE and HE and</p> <p>5 reserves; correct?</p> <p>6 MR. MILLER: Objection, Your Honor, vague and</p> <p>7 ambiguous as to the time frame.</p> <p>8 THE COURT: Overruled. You can answer.</p> <p>9 MR. MCELHINNEY: Judge, I'm happy to</p> <p>10 rephrase.</p> <p>11 A Well, yes. I understand your question, but</p> <p>12 you have to be a little bit more specific. You said</p> <p>13 shortly thereafter?</p> <p>14 Q (BY MR. MCELHINNEY:) After you were -- Let</p> <p>15 me back up maybe a little bit more. Before you were</p> <p>16 appointed and when Mr. Proctor was in place, he</p> <p>17 calculated the DUF, SFUE, HE and reserves; correct?</p> <p>18 A Correct.</p> <p>19 Q And what did he rely upon when he was setting</p> <p>20 up reserves?</p> <p>21 MR. MILLER: Objection, calls for</p> <p>22 speculation.</p> <p>23 THE COURT: Overruled. You can answer if you</p> <p>24 know.</p>

<p style="text-align: right;">Page 162</p> <p>1 THE WITNESS: Various documents, printouts</p> <p>2 that I saw that he requested from GSR --</p> <p>3 Q (BY MR. MCELHINNEY:) What did he rely upon</p> <p>4 the independent third-party --</p> <p>5 THE COURT: You've got to let him finish his</p> <p>6 answer.</p> <p>7 Would you finish your answer, please?</p> <p>8 THE WITNESS: I'm trying to understand when.</p> <p>9 That's kind of a general question what did he rely upon.</p> <p>10 And I saw some of the documents when I met with him that</p> <p>11 he relied upon that he said he relied upon, and he</p> <p>12 actually gave me copies of some of them.</p> <p>13 Q (BY MR. MCELHINNEY:) And did he rely upon</p> <p>14 the independent third-party reserve studies in reaching</p> <p>15 his reserve calculation?</p> <p>16 MR. MILLER: Objection, assumes facts not in</p> <p>17 evidence.</p> <p>18 THE COURT: Overruled.</p> <p>19 You can answer.</p> <p>20 THE WITNESS: He relied on reserve studies</p> <p>21 that had been done, yes.</p> <p>22 Q (BY MR. MCELHINNEY:) Okay.</p> <p>23 A And he actually called for new reserve</p> <p>24 studies.</p>	<p style="text-align: right;">Page 164</p> <p>1 "Reserves"?</p> <p>2 A Yes.</p> <p>3 Q Would you go down to the second sentence that</p> <p>4 begins: "Those elements have been detailed in the</p> <p>5 reserve study." Do you see -- Are you with me where I'm</p> <p>6 reading? Do you see it? He says:</p> <p>7 "Those elements have been detailed in the</p> <p>8 reserve study performed by Reserve Advisors as of August</p> <p>9 2014 and are allocated based upon square footage. We</p> <p>10 have placed reliance upon the reserve study with a shared</p> <p>11 facilities unit reserves and the hotel reserves as it was</p> <p>12 prepared by a professional independent third-party and is</p> <p>13 cited by the governing documents and GSR management as a</p> <p>14 basis for allocation and distribution determination."</p> <p>15 Did I read that correctly?</p> <p>16 A Yes, you did.</p> <p>17 Q Does it appear to you from that reading that</p> <p>18 Mr. Proctor was not only relying upon the reserve study,</p> <p>19 but he regarded them as reliable?</p> <p>20 A Correct.</p> <p>21 Q Okay. And, sir, when you first started as</p> <p>22 receiver, did you regard the reserve studies as reliable?</p> <p>23 A I didn't necessarily believe it was reliable</p> <p>24 because there was a point when those reserve studies</p>
<p style="text-align: right;">Page 163</p> <p>1 Q Okay. And bear with me a second here. Would</p> <p>2 but turn to -- Now, you have a new set of books. Would</p> <p>3 you turn to Exhibit 8, which will be in book number one.</p> <p>4 I lied. It's in book number two. Are you with me?</p> <p>5 A Yes.</p> <p>6 Q And you see this is a letter from Mr. Proctor</p> <p>7 dated January 5, 2016, and it is addressed to the</p> <p>8 Honorable Elliot Sattler. Is that correct?</p> <p>9 A Correct.</p> <p>10 MR. MILLER: Your Honor, I'm not tracking</p> <p>11 this exhibit. If it's Exhibit 8, I've got something</p> <p>12 different.</p> <p>13 THE COURT: In the defendant's book or your</p> <p>14 book? Remember, he's in his book.</p> <p>15 MR. MILLER: I'm in his book.</p> <p>16 THE COURT: Mr. McElhinney, can you please go</p> <p>17 consult with -- Thank you, Ms. Collings.</p> <p>18 MS. COLLINGS: Thank you, Your Honor.</p> <p>19 THE COURT: You can keep going now,</p> <p>20 Mr. McElhinney. We straightened that out.</p> <p>21 Q (BY MR. MCELHINNEY:) Thank you, Your Honor.</p> <p>22 Turn to page 7 of Exhibit 8, would you, please.</p> <p>23 A Okay.</p> <p>24 Q Do you see the paragraph A entitled,</p>	<p style="text-align: right;">Page 165</p> <p>1 really needed to be looked at in terms of applying the</p> <p>2 governing documents.</p> <p>3 At that time, my focus was not on the reserve</p> <p>4 studies. I did speak with Ms. Betterley a couple of</p> <p>5 times. I had some concerns. But at that point in time,</p> <p>6 well, I can't say when the -- I think 2016 was the last</p> <p>7 reserve study I think I had seen when I became -- when I</p> <p>8 was appointed as receiver, and then there were the annual</p> <p>9 updates. After that, I didn't rely on them.</p> <p>10 I think what happened was that the reserve</p> <p>11 amounts what I did rely upon were the reserves that were</p> <p>12 made based on those reserve studies at the time. So the</p> <p>13 answer, it's kind of a long-winded answer, but I accepted</p> <p>14 that. Let's just put it that way at the time.</p> <p>15 Q Okay. You didn't -- for a period of time</p> <p>16 when you were first appointed, you weren't challenging</p> <p>17 whether or not the reserve studies were flawed. Is that</p> <p>18 fair to say?</p> <p>19 A Right. That wasn't until I hired Ms. Sharp,</p> <p>20 who I had heard really took a look and see if those</p> <p>21 reserve studies were in compliance with the governing</p> <p>22 documents because again, I didn't feel I was necessarily</p> <p>23 qualified from a legal standpoint about whether the</p> <p>24 reserve studies were in compliance. I had questions</p>

<p style="text-align: right;">Page 166</p> <p>1 about the CC&amp;R's and the reserve and how the reserve</p> <p>2 studies were applied, but I didn't want to make any</p> <p>3 determinations without legal counsel.</p> <p>4 Q All right. So let me stay on top as best I</p> <p>5 can because I pulled this over a little bit. You're</p> <p>6 appointed. You actually are given an office at Grand</p> <p>7 Sierra, are you not?</p> <p>8 A Temporarily. Yeah. Temporarily.</p> <p>9 Q During that first year from your appointment,</p> <p>10 how much time do you think you spent at Grand Sierra?</p> <p>11 A I didn't spend much time at all. I probably</p> <p>12 spent -- over the period of time that we had the office</p> <p>13 until it was given to somebody else -- well, I had that</p> <p>14 office and my assistant had that office, but some of the</p> <p>15 meetings I had were not in that office. Some of the</p> <p>16 meetings were at GSR. So if you're just specifically</p> <p>17 talking about that office, but if you're talking about</p> <p>18 how much time did I spend at GSR, that's a different</p> <p>19 answer.</p> <p>20 Q How much time did you spend at GSR?</p> <p>21 A Up until I stopped spending time there?</p> <p>22 Q Yes, sir.</p> <p>23 A Oh, gosh. I don't know. Probably -- I have</p> <p>24 no idea. I would say at least 30, 40 hours total at</p>	<p style="text-align: right;">Page 168</p> <p>1 those figures, and there were some that I did not accept,</p> <p>2 but much of those figures, I did. And that continued</p> <p>3 until I got legal counsel who went through the governing</p> <p>4 documents and determined that no, a lot of those amounts</p> <p>5 should not apply, and that's when that was all revised.</p> <p>6 Q Okay. So stick with me for a minute here.</p> <p>7 Early on when you were spending time at the Grand Sierra</p> <p>8 and meeting with their accounting and finance people, if</p> <p>9 you told them there was a category you didn't agree with,</p> <p>10 did they remove it at your instruction?</p> <p>11 A Well, when you say did they remove it, they</p> <p>12 had the budget. I was the one who excluded those.</p> <p>13 Q Understood. Did they find you on it? Did</p> <p>14 they argue with you about it when you wanted to remove</p> <p>15 those items?</p> <p>16 A No. I think the people who were there at the</p> <p>17 time were pretty cooperative.</p> <p>18 Q Okay. And did you feel that you had arrived</p> <p>19 at calculations in 2020 that were in compliance with the</p> <p>20 governing documents?</p> <p>21 A Well, that was my -- yes. I expressed that</p> <p>22 the four days of hearings in 2021.</p> <p>23 Q And at that hearing, you were being</p> <p>24 challenged by Mr. Miller that those figures were not</p>
<p style="text-align: right;">Page 167</p> <p>1 least.</p> <p>2 Q And during those times where you were at GSR,</p> <p>3 were you meeting with their finance people and their</p> <p>4 accounting people?</p> <p>5 A Part of the time, yes.</p> <p>6 Q And were you reviewing documents at the GSR</p> <p>7 to assist you with your calculations for DUF, SFUE and</p> <p>8 HE?</p> <p>9 A Part of the time, yes.</p> <p>10 Q All right. And you arrived at some numbers</p> <p>11 in 2020, did you not, some calculations?</p> <p>12 A Yes.</p> <p>13 Q And those numbers were very close to Grand</p> <p>14 Sierra's numbers, were they not, pretty much in agreement</p> <p>15 with the numbers that the GSR had calculated?</p> <p>16 MR. MILLER: Objection, Your Honor. This</p> <p>17 assumes facts not in evidence. There's a very detailed</p> <p>18 record on what occurred.</p> <p>19 THE COURT: Overruled. Overruled.</p> <p>20 THE WITNESS: If you're talking about the</p> <p>21 numbers on which the charges were based, I went -- the</p> <p>22 budgets, in other words, most of those items I had</p> <p>23 approved after discussing with the people at GSR.</p> <p>24 After again, explanations, I checked some of</p>	<p style="text-align: right;">Page 169</p> <p>1 accurate; correct?</p> <p>2 A I would say in essence, yes. I don't know if</p> <p>3 he specifically mentioned which figures those are, but he</p> <p>4 had issues with the way those were computed, yes.</p> <p>5 Q Did he tell you if you didn't change your</p> <p>6 numbers, he was going to seek to remove you as receiver?</p> <p>7 A Well, I think he filed a motion to that</p> <p>8 effect.</p> <p>9 Q Okay. And did you get emails from him as</p> <p>10 well that made those suggestions?</p> <p>11 A Possibly. I don't recall, but possibly.</p> <p>12 Q Okay. And that was impetus for you to go</p> <p>13 back and redo your calculations?</p> <p>14 A No, no. What I did was that's when I hired</p> <p>15 counsel to assist me with calculating it. I don't know</p> <p>16 if the amounts were recalculated. I know from that point</p> <p>17 on, the calculations were -- the methodology that was</p> <p>18 used and the expense items that were included were</p> <p>19 changed from what I had originally done, but I think that</p> <p>20 was going forward. I don't think it was retroactive.</p> <p>21 Q Understood. So our timeline is you came up</p> <p>22 with numbers in 2020, and we ended up in front of Judge</p> <p>23 Sattler for three or four days' hearings, and at the</p> <p>24 conclusion of that, then you went back to the drawing</p>

<p style="text-align: right;">Page 170</p> <p>1 board and came up with your numbers of August of 2021?</p> <p>2 A Well, yeah. I don't know if I would say we</p> <p>3 went back to the drawing board, but the figures I came up</p> <p>4 with for 2021 were done based on what again my -- of</p> <p>5 course my legal counsel and I consulted on this because</p> <p>6 we didn't agree on every little item. But once we were</p> <p>7 able to agree on every item, then that's when I</p> <p>8 calculated the fees for 2021.</p> <p>9 Q Whose idea was it to change your numbers, the</p> <p>10 numbers from 2020 to the numbers of August 2021? Was</p> <p>11 that your idea or your attorney's idea?</p> <p>12 A Well, I think it was both of ours. I mean,</p> <p>13 we consulted on this and, I mean, I certainly took her</p> <p>14 advice and her legal interpretation of the governing</p> <p>15 documents. But when we got down to some specific expense</p> <p>16 items, that's when we had to discuss those and decide</p> <p>17 which items should be included and which shouldn't. And</p> <p>18 we didn't -- Eventually, we came to a meeting of the</p> <p>19 minds on some of those specific items.</p> <p>20 Q Okay. Did you come to a meeting of the minds</p> <p>21 of all of the items or were there some that you remained</p> <p>22 in disagreement on?</p> <p>23 A No. No, all of them. All of them. Yeah.</p> <p>24 Q So explain for me, if you would, why is there</p>	<p style="text-align: right;">Page 172</p> <p>1 whether or not they agree with --</p> <p>2 THE COURT: Please don't make a speaking</p> <p>3 objection. So the issue is relevance?</p> <p>4 MR. MILLER: The issue is relevance, Your</p> <p>5 Honor.</p> <p>6 THE COURT: Overruled.</p> <p>7 MR. MILLER: We're here to determine whether</p> <p>8 or not there's a violation of court orders.</p> <p>9 THE COURT: Overruled. Thank you.</p> <p>10 Continue.</p> <p>11 MR. MCELHINNEY: Did you rule on the</p> <p>12 objection, Your Honor?</p> <p>13 THE COURT: I overruled it.</p> <p>14 MR. MCELHINNEY: Thank you.</p> <p>15 THE COURT: That's why I said continue.</p> <p>16 Q (BY MR. MCELHINNEY:) Sorry. So do I</p> <p>17 understand that correctly? The difference between your</p> <p>18 2020 calculations and your August 2021 calculations was</p> <p>19 due to the elimination of expenses?</p> <p>20 A I believe so. Again, when I calculated those</p> <p>21 2020 calculations, when I formed those 2020 calculations,</p> <p>22 I believe those were based on the prior year's budget</p> <p>23 before my legal counsel came on board. So I believe the</p> <p>24 answer to your question is yes.</p>
<p style="text-align: right;">Page 171</p> <p>1 such a difference between your 2020 calculations and the</p> <p>2 substantial reduction in your August 2021 numbers?</p> <p>3 A Well, first of all, the figures are different</p> <p>4 figures. The budget is different. That's one reason.</p> <p>5 Q I don't understand what you mean, the budget</p> <p>6 is different.</p> <p>7 A Well, you're applying -- You're applying a</p> <p>8 different year's budget for 2020 than you were for 2021.</p> <p>9 Q Sure.</p> <p>10 A So that's one of the reasons. And the other</p> <p>11 reason is because some of the expenses that I included</p> <p>12 originally expenditures that I included originally my</p> <p>13 legal counsel said no, those don't comply with the</p> <p>14 CC&amp;R's. And again, we discussed all of those and came to</p> <p>15 an agreement.</p> <p>16 Q So let me make sure I understand your</p> <p>17 testimony. So the difference between your 2020</p> <p>18 calculations and your August 2021 calculations were due</p> <p>19 to expenses that were removed from the 2020 calculations.</p> <p>20 Is that fair?</p> <p>21 THE COURT: The objection is?</p> <p>22 MR. MILLER: Yes, Your Honor. I'd like to</p> <p>23 object to this whole line of questioning on the grounds</p> <p>24 of relevancy. Whether or not how he calculated his fees,</p>	<p style="text-align: right;">Page 173</p> <p>1 Q Okay. So you have your 2020 calculations.</p> <p>2 You get an attorney. The attorney tells you there are</p> <p>3 expenses -- her reading of the shared facilities -- I'm</p> <p>4 sorry. Her reading of the Seventh Amended CC&amp;R's</p> <p>5 indicate to her that there are expenses that you included</p> <p>6 that shouldn't be in there and you changed it. Is that a</p> <p>7 fair characterization?</p> <p>8 A I think that -- yeah, that's a proper</p> <p>9 characterization.</p> <p>10 Q Okay. You're familiar with the Seventh</p> <p>11 Amended CC&amp;R's; correct?</p> <p>12 A Yes.</p> <p>13 Q And in arriving at your calculations, you</p> <p>14 follow the express terms of the Seventh Amended CC&amp;Rs, do</p> <p>15 you not?</p> <p>16 A Yes.</p> <p>17 Q Okay. Let's look -- Give me an example</p> <p>18 before we take a look at the Seventh Amended CC&amp;Rs, give</p> <p>19 me an example of what expense you've eliminated from your</p> <p>20 2020 calculations to your August 2021 calculations.</p> <p>21 MR. MILLER: Objection, Your Honor.</p> <p>22 Relevance.</p> <p>23 THE COURT: Overruled. You may answer.</p> <p>24 THE WITNESS: I don't know. I'd have to go</p>

<p style="text-align: right;">Page 174</p> <p>1 back and look.</p> <p>2 Q (BY MR. MCELHINNEY:) Look back at what?</p> <p>3 A I'd have to go back and look at what</p> <p>4 eliminated. I don't recall. I don't want to give an</p> <p>5 example and be incorrect.</p> <p>6 Q Do you remember as an example pool expenses</p> <p>7 being discussed that your --</p> <p>8 A Well, if they were, I don't remember if they</p> <p>9 were, but if they were, those were definitely eliminated.</p> <p>10 There were some expenses that were not part of the shared</p> <p>11 facility unit that were eliminated that, in other words,</p> <p>12 some other -- some outside expenses outside the shared</p> <p>13 facility units should not have even been allocated to the</p> <p>14 shared facility units because they had nothing to do with</p> <p>15 that, and that would include some of the hotel -- some of</p> <p>16 the other areas in the hotel.</p> <p>17 Q Can you share those with me?</p> <p>18 A I'm sorry?</p> <p>19 Q What our areas of the hotel?</p> <p>20 A Well, some of the lobbies and some of the</p> <p>21 other areas were not really part of the shared facility</p> <p>22 units. And they again, according to the CC&amp;R's and the</p> <p>23 way my attorney interpreted them and had to explain to me</p> <p>24 why then those expenses that had to do with other areas</p>	<p style="text-align: right;">Page 176</p> <p>1 Q Okay. Can you tell me -- and I don't want to</p> <p>2 be unfair, but can you tell me what sections of the</p> <p>3 CC&amp;R's, Exhibit 1, you relied upon in deciding what</p> <p>4 categories of expenses could be charged to the unit</p> <p>5 owners?</p> <p>6 A I can't tell you because that is a document I</p> <p>7 prepared for the court back in June or July of 2021 and</p> <p>8 that we went over, and I don't have a copy of that with</p> <p>9 me. Had I known, I would have brought a copy, but I</p> <p>10 specifically delineated which items I included and gave</p> <p>11 my justification for including those. So I would have to</p> <p>12 refer to that document in order to be able to properly</p> <p>13 answer your question.</p> <p>14 MR. MCELHINNEY: Okay. Court's indulgence,</p> <p>15 please.</p> <p>16 THE COURT: Absolutely.</p> <p>17 MR. MCELHINNEY: I think that's Exhibit 140,</p> <p>18 isn't it?</p> <p>19 MR. MILLER: His calculation of fees.</p> <p>20 MR. MCELHINNEY: Correct.</p> <p>21 MR. MILLER: I believe so.</p> <p>22 THE COURT: I took 140 away from him. Thank</p> <p>23 you, Jordan.</p> <p>24 Sir, here is your beat-up copy of 140. Don't</p>
<p style="text-align: right;">Page 175</p> <p>1 of the hotel were not allocatable to the shared facility</p> <p>2 units and not allocatable to the unit owners because</p> <p>3 that's not what the CC&amp;R's specifically said.</p> <p>4 Q And that was -- Could you take me through the</p> <p>5 CC&amp;Rs and tell me what categories of expenses are not</p> <p>6 allowed that were reflected in your 20 --</p> <p>7 A I'd have to see what -- I can't say offhand.</p> <p>8 There was sort of a catchall in the CC&amp;R's regarding the</p> <p>9 expenses, and I think it's -- I want to say Section 10</p> <p>10 something of the CC&amp;R's. I could be wrong. I haven't</p> <p>11 looked at the CC&amp;R's for a while, so I don't know</p> <p>12 offhand. I can't remember offhand.</p> <p>13 Q Let's give it a try. I'd like you to look at</p> <p>14 Exhibit 1, please, which is in the CC&amp;R's. If you</p> <p>15 remember, when you were -- because this is your call, as</p> <p>16 I understand it, Mr. Teichner. You're the receiver. You</p> <p>17 have to decide what categories of expenses belong -- are</p> <p>18 properly charged to the unit owners. Do I understand</p> <p>19 that correctly?</p> <p>20 A Right.</p> <p>21 Q So you need to be familiar with the CC&amp;R's so</p> <p>22 you know what charges should be going to the unit owners;</p> <p>23 correct?</p> <p>24 A Right.</p>	<p style="text-align: right;">Page 177</p> <p>1 make it any worse.</p> <p>2 Q (BY MR. MCELHINNEY:) So, Mr. Teichner, what</p> <p>3 you have in front of you is Exhibit 140 which is</p> <p>4 receiver's analysis and calculation of daily use fee,</p> <p>5 shared facilities unit expense fee and hotel expense fee</p> <p>6 with request to approve updated fees and for court to set</p> <p>7 effective date for new fees. It looks like it was filed</p> <p>8 August 16th, 2021.</p> <p>9 Have I adequately or correctly identified</p> <p>10 that document?</p> <p>11 A Yes.</p> <p>12 Q All right. Now, looking at that document,</p> <p>13 can you tell me what portions of the Seventh Amended</p> <p>14 CC&amp;R's you relied upon in determining what costs should</p> <p>15 be allocated to the unit owners?</p> <p>16 A So what portion of the CC&amp;R's or what -- I'm</p> <p>17 sorry. Can you repeat that question?</p> <p>18 Q Sure. My question had originally been I was</p> <p>19 looking at your 2020 numbers and your 2021 numbers, and</p> <p>20 we talked about why the big difference. And you said</p> <p>21 there were expenses that were eliminated from your 2020</p> <p>22 calculations, and that's why your 2021 calculations were</p> <p>23 lower. I asked you what expenses had been eliminated,</p> <p>24 and I thought you said if you saw Exhibit 140, you would</p>



<p style="text-align: right;">Page 178</p> <p>1 be able to answer my questions. I might have 2 misunderstood.</p> <p>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.</p> <p>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?</p> <p>11 MR. MCELHINNEY: Yes.</p> <p>12 THE COURT: You are tall enough to reach over 13 there and have long enough arms. I can't reach.</p> <p>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.</p> <p>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?</p> <p>20 A Yes.</p> <p>21 Q You felt that was not a responsibility of the 22 unit owners; correct?</p> <p>23 A I don't know about the responsibility of 24 them.</p>	<p style="text-align: right;">Page 180</p> <p>1 easements, what would I see are those easements that run 2 far outside of the condominiums?</p> <p>3 A Yes, I would assume.</p> <p>4 Q Okay. And where are the shared facilities 5 unit in the hotel?</p> <p>6 A Where was it?</p> <p>7 Q Where are they? I mean, I gathered a shared 8 facility unit is a reference to multiple locations on the 9 property.</p> <p>10 A Well, I believe that that applies to the 11 floors 7th through 14 where the condominium units are 12 housed.</p> <p>13 Q Say that again. I apologize.</p> <p>14 A Where the condominium units are housed in the 15 building.</p> <p>16 Q In the Summit Tower?</p> <p>17 A In the tower, yeah.</p> <p>18 Q Right. So where are the shared facilities 19 unit within that -- Are you saying they're just within 20 that tower?</p> <p>21 A I believe so. I mean, let's look at the 22 definition of shared facility unit.</p> <p>23 Q Why don't we look at a couple of definitions. 24 Go to page three, which is condominium property. What do</p>
<p style="text-align: right;">Page 179</p> <p>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?</p> <p>4 A Correct.</p> <p>5 Q And you also mentioned the front lobby; 6 correct?</p> <p>7 A Yes.</p> <p>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&amp;R's, and it's Section 43 E.?</p> <p>13 A Okay.</p> <p>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.</p> <p>22 Do you see that language?</p> <p>23 A Yes.</p> <p>24 Q So if I was looking at a map of those</p>	<p style="text-align: right;">Page 181</p> <p>1 you understand condominium property to entail? Again, if 2 I was looking at the map, what would I see?</p> <p>3 A Again, it's the -- Well, it gives a 4 definition here. So do you want me to read this or --</p> <p>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?</p> <p>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.</p> <p>14 Q What it reads is a portion of the real 15 property and space within the parcel. Now what is the 16 parcel?</p> <p>17 A Well, that's -- Let's see. The entire tract 18 of real estate described in the first recital of this 19 declaration.</p> <p>20 Q So you agree with me that parcel is far 21 greater than just the condominiums, correct, in the 22 Summit Tower?</p> <p>23 A That may be the case.</p> <p>24 Q Well, I don't want to say that may be the</p>

<p style="text-align: right;">Page 182</p> <p>1 case. Let's look at --</p> <p>2 A Well, I don't know offhand. I'd have to see</p> <p>3 the map of the parcel.</p> <p>4 Q The parcel is defined as the entire tract of</p> <p>5 real estate described in the first recitals of this</p> <p>6 declaration; correct?</p> <p>7 A Okay.</p> <p>8 Q And is that all the property? All the</p> <p>9 acreage?</p> <p>10 A It may be.</p> <p>11 Q Well, sir, you're assigned the task --</p> <p>12 A Look. I don't recall. Again, we have to</p> <p>13 look at other parts of this document definition of a</p> <p>14 shared facility units, for example, which is there's</p> <p>15 specific exhibits with what the shared facility units</p> <p>16 diagram and what the shared facility units contain. And</p> <p>17 I think most of the references in this document pertains</p> <p>18 to the shared facility. And I don't want to get into a</p> <p>19 legal argument with you. If we need to get into a legal</p> <p>20 argument about this, I will -- Maybe we can call my</p> <p>21 attorney to testify.</p> <p>22 Q I don't mean to be having an argument with</p> <p>23 you, sir.</p> <p>24 A I'm saying I can't -- I'm not qualified to</p>	<p style="text-align: right;">Page 184</p> <p>1 to. They were approved by the court.</p> <p>2 Now we're going over -- now what you're doing</p> <p>3 just is you're rehashing something that was approved,</p> <p>4 rehashing application of fees that were already approved.</p> <p>5 These allocations were already approved by both sides,</p> <p>6 defendants and approved by the court.</p> <p>7 THE COURT: Sir, he's trying to convince me</p> <p>8 that he thinks the orders are wrong, so he's going</p> <p>9 through the whole process to show me why he thinks the</p> <p>10 orders are wrong.</p> <p>11 And he and I will have a discussion about</p> <p>12 what the impact, if any, of that is later. But that's</p> <p>13 what he's trying to do in this process, and I'm going to</p> <p>14 let him have the latitude to do it, so be patient with</p> <p>15 him.</p> <p>16 THE WITNESS: Okay.</p> <p>17 Q (BY MR. MCELHINNEY:) Mr. Teichner, what I'm</p> <p>18 getting at is pursuant to court order, your fee</p> <p>19 calculations cannot deviate from the governing documents</p> <p>20 and any expenses included in the fees charged must</p> <p>21 explicitly track the governing documents. That's a</p> <p>22 December -- that's a Christmas Eve order of 2020. Do you</p> <p>23 agree with that?</p> <p>24 A I can't disagree with it.</p>
<p style="text-align: right;">Page 183</p> <p>1 get into legal arguments with you about this. All I know</p> <p>2 is what the interpretation -- and it was very clear to</p> <p>3 me. I questioned it -- believe me -- with my attorney,</p> <p>4 and she made it very clear what items need to be included</p> <p>5 and why and what sections of the CC&amp;Rs pertains to the</p> <p>6 items that are included in the expenses for the shared</p> <p>7 facility unit.</p> <p>8 So again, we're going over a document that I</p> <p>9 went over a few years ago and again, when my attorney</p> <p>10 came on board and so I can't -- I can't -- there's</p> <p>11 references and cross-references in this document that</p> <p>12 ultimately determined what the shared facility unit or</p> <p>13 expenses that applied to the SFUE, the shared facility</p> <p>14 unit expenses. And again, those expenses were determined</p> <p>15 to be restricted primarily to the -- I don't want to say</p> <p>16 the property, but that which is characterized as the</p> <p>17 shared facility units.</p> <p>18 Q Turn back to page 14, if you would. And</p> <p>19 that's Section 4.3E.</p> <p>20 A Can I just mention one thing?</p> <p>21 Q Yes, sir.</p> <p>22 A If my application of these fees in Exhibit</p> <p>23 140 were not correct, GSR, UOA did not object to these.</p> <p>24 These were approved by the court. They were not objected</p>	<p style="text-align: right;">Page 185</p> <p>1 Q Is that how you conducted your calculations</p> <p>2 following the governing documents?</p> <p>3 A Yes.</p> <p>4 Q So you can understand why I'm asking you</p> <p>5 questions about trying to get to the source of why there</p> <p>6 was such a difference between your 2020 and 2021</p> <p>7 calculations to see what expenses you decided were not</p> <p>8 appropriate under the CC&amp;R's?</p> <p>9 A Right.</p> <p>10 Q That's really where I'm going.</p> <p>11 A I understand. And I can't tell you without</p> <p>12 going -- if I had my file with all of the different</p> <p>13 calculations that I did and the reasons for that, which</p> <p>14 many of which were provided to me by my counsel, then I</p> <p>15 could probably answer your question.</p> <p>16 I can't go -- I can't specifically answer</p> <p>17 your questions because I already went through all of this</p> <p>18 with my counsel, and what came up here in Exhibit 140 is</p> <p>19 what we determined.</p> <p>20 And we both agree that that was in compliance</p> <p>21 with the interpretation of the CC&amp;R's from our</p> <p>22 standpoint, the legal interpretation, my standpoint for</p> <p>23 accepting what she interpreted. Not that I'm an</p> <p>24 attorney, but at least we discussed it so that any</p>

<p style="text-align: right;">Page 186</p> <p>1 difference we had in opinion, we could talk about and</p> <p>2 which we did. And like I said, a few relatively minor</p> <p>3 items that we decided to agree upon and change.</p> <p>4 Q Look at page 15, Roman numeral four, small</p> <p>5 Roman numeral four. Let me ask you a question real quick</p> <p>6 before we get to that. Currently, your calculations are</p> <p>7 that the plaintiffs get half of the daily resort fee;</p> <p>8 correct?</p> <p>9 A Correct.</p> <p>10 Q And what is that daily resort fee for?</p> <p>11 MR. MILLER: Objection, assumes facts not in</p> <p>12 evidence. That's pursuant to court order.</p> <p>13 THE COURT: Overruled.</p> <p>14 THE WITNESS: Well, that's a good question</p> <p>15 because that amount keeps increasing. All hotels</p> <p>16 increase that daily resort fee, and it's supposed to</p> <p>17 cover the facilities that supposedly are available to the</p> <p>18 rentals or the customers of the hotel.</p> <p>19 Q (BY MR. MCELHINNEY:) Sorry I interrupted</p> <p>20 you. Go ahead.</p> <p>21 A I'm just saying that it really is -- It's</p> <p>22 supposed to be a fee for the -- that the renters or that</p> <p>23 the customers pay for the use of certain facilities of</p> <p>24 the hotel. And supposedly, it's an amount based on some</p>	<p style="text-align: right;">Page 188</p> <p>1 A Yes.</p> <p>2 Q So if we look at Roman numeral four, the unit</p> <p>3 owners have a nonexclusive easement to use and enjoy</p> <p>4 portions of the shared facilities unit which from time to</p> <p>5 time are made available by the owner of the shared</p> <p>6 facilities unit by for the use of the unit owners of the</p> <p>7 hotel units, residential units, commercial units, hotels,</p> <p>8 guests, etcetera; correct? Wouldn't that include the</p> <p>9 pool? Isn't that a nonexclusive easement to use and</p> <p>10 enjoy portions of the shared facilities unit?</p> <p>11 A It doesn't say pool. It says the shared</p> <p>12 facility unit which is -- does not include the pool.</p> <p>13 Q Where do you see it doesn't include the pool?</p> <p>14 It doesn't say that, right?</p> <p>15 A Well, I don't think anywhere it says that it</p> <p>16 includes the pool in the CC&amp;R's.</p> <p>17 Q Which I guess brings up another question. If</p> <p>18 it's not expressly identified in the governing document,</p> <p>19 you don't allow it? And let me be more specific to be</p> <p>20 fair. Because the pool is not specifically named as part</p> <p>21 of the non-exclusive easement for use and enjoyment of</p> <p>22 portions of shared facilities unit, you don't allow the</p> <p>23 unit owners to be responsible for costs related to the</p> <p>24 pool?</p>
<p style="text-align: right;">Page 187</p> <p>1 calculations, and so it's really just another revenue</p> <p>2 generation.</p> <p>3 Q Half of which you shared with the plaintiffs?</p> <p>4 A Yes.</p> <p>5 Q Okay. And does that include -- Does that</p> <p>6 daily resort fee include use of the pool? Would that be</p> <p>7 one of the elements that go into that cost?</p> <p>8 A Again, it's for all of the facility, so I</p> <p>9 would assume so.</p> <p>10 Q And so when a guest stays in the room, they</p> <p>11 get to use that pool in theory for free although they're</p> <p>12 paying a daily resort fee?</p> <p>13 A Well, again, that's a question. Is it really</p> <p>14 for free, yeah.</p> <p>15 Q And when the unit owners are occupying their</p> <p>16 unit, they get to use the pool for free as well, do they</p> <p>17 not?</p> <p>18 A They use it when they pay a resort fee and</p> <p>19 then they use it. Yeah.</p> <p>20 Q Okay. Now, looking at small Roman numeral</p> <p>21 one on page 15, the unit owners -- and by the way, these</p> <p>22 CC&amp;R's are covenants that run with the land; correct?</p> <p>23 This literally defines the unit owners interest in their</p> <p>24 unit. Agreed?</p>	<p style="text-align: right;">Page 189</p> <p>1 A Well, it's not -- again, it's not within the</p> <p>2 confines of the definition -- again, I don't believe it's</p> <p>3 within the confines of the definition of shared -- what</p> <p>4 the shared facility unit is. I don't think it's included</p> <p>5 in the confines of that. It wouldn't be included in the</p> <p>6 pool, for example.</p> <p>7 Q It would or wouldn't?</p> <p>8 A Would not.</p> <p>9 Q And why?</p> <p>10 A Well, I'm looking at the definition of shared</p> <p>11 facility units. And I don't believe I see anything there</p> <p>12 that would include a pool or any other outside facilities</p> <p>13 or benefits facilities that the hotel customers could</p> <p>14 use. I'm looking at the definition of shared facilities.</p> <p>15 Q Look at the definition of public shared</p> <p>16 facilities, if you would, on page five. Would that be an</p> <p>17 area that would include the area of the pool?</p> <p>18 A Okay.</p> <p>19 Q Would that include an area like the pool?</p> <p>20 A Public shared facilities. Well, it just says</p> <p>21 that it's subject to the public shared facilities</p> <p>22 easement for access by hotel management company and unit</p> <p>23 owners, so I don't see where that includes the pool.</p> <p>24 Q Okay.</p>

<p style="text-align: right;">Page 190</p> <p>1 THE COURT: Sir, do you need a break? Are</p> <p>2 you doing okay?</p> <p>3 THE WITNESS: I'm okay. I'm fine.</p> <p>4 THE COURT: All right.</p> <p>5 Q (BY MR. MCELHINNEY:) Turn to page 18 of the</p> <p>6 Seventh Amended CC&amp;R's, Exhibit 1, please.</p> <p>7 A Okay.</p> <p>8 Q And do you see Section C at the very bottom</p> <p>9 of that page?</p> <p>10 A Yes.</p> <p>11 Q It reads: "Each unit and all portions of the</p> <p>12 common element shall be maintained at a level of service</p> <p>13 and quality generally considered to be first class and</p> <p>14 equal to or better than the level of service and quality</p> <p>15 prevailing from time to time at other full-service hotels</p> <p>16 in Northern Nevada."</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q If you look halfway down that page, there's a</p> <p>20 description of it talks about public shared facilities or</p> <p>21 property outside of the condominium property including.</p> <p>22 Are you with me?</p> <p>23 A Which line down?</p> <p>24 Q Down about one-third of the way of that long</p>	<p style="text-align: right;">Page 192</p> <p>1 that?</p> <p>2 Q It's in that same paragraph. Says</p> <p>3 collectively building FF&amp;E must be replaced, repaired or</p> <p>4 refurbished as deemed necessary by the declarant or the</p> <p>5 hotel management company as the case may be at the</p> <p>6 expense of the unit owners, and in each instance, that</p> <p>7 the declarant or the hotel manager company as the case</p> <p>8 may be makes a determination that such a building FF&amp;E is</p> <p>9 in need of replacement for purposes of replacing building</p> <p>10 FF&amp;E due to wear and tear, age, etcetera, refurbishing</p> <p>11 renovation of the condominiums. Each unit owner will be</p> <p>12 required to participate in such building FF&amp;E replacement</p> <p>13 program."</p> <p>14 Did I read that correctly?</p> <p>15 A Yes.</p> <p>16 Q And that includes the lobby; is that correct?</p> <p>17 A Okay. I don't necessarily disagree with</p> <p>18 this. It says what it says. But I believe that these</p> <p>19 are the types of expenses that are included in the</p> <p>20 reserves not as part of the charge for the -- We have to</p> <p>21 go back and look at Section 9, that whole area of Section</p> <p>22 9 again because that defines what's included in the</p> <p>23 shared facilities unit charges and also defines what's</p> <p>24 included in the reserves. So I believe that these are</p>
<p style="text-align: right;">Page 191</p> <p>1 paragraph. And it starts out: "As with the decisions to</p> <p>2 replace or refurbish FF&amp;E located within the individual</p> <p>3 units in accordance with Sections 4.5. "</p> <p>4 A Yes.</p> <p>5 Q It talks about furnishing, fixtures,</p> <p>6 equipment, facilities and adorning or servicing the</p> <p>7 public shared facilities or property outside of the</p> <p>8 condominium property including, without limitation, the</p> <p>9 lobby. Do you see that?</p> <p>10 A Yes.</p> <p>11 Q So you didn't include the lobby as an expense</p> <p>12 that could be charged under the CC&amp;R's?</p> <p>13 A This says the furnishings, fixtures,</p> <p>14 equipment and facilities adorning or servicing the public</p> <p>15 shared facilities or property outside the condominium</p> <p>16 property without limitation: Lobby, front desk,</p> <p>17 concierge reception area, fixtures. So they're talking</p> <p>18 about the public shared facilities including certain</p> <p>19 furnishing, fixtures and so on outside of the condominium</p> <p>20 property. That's a public shared facility.</p> <p>21 Q Correct. And does that section talk about</p> <p>22 the unit owners being responsible for their share of the</p> <p>23 expense of those areas?</p> <p>24 A I'm looking for that. Where does it say</p>	<p style="text-align: right;">Page 193</p> <p>1 part of the reserve charges which do include certain</p> <p>2 areas outside of the condominium property.</p> <p>3 Q So I guess I misunderstood you earlier. I</p> <p>4 thought you said lobby charges should not be included in</p> <p>5 the expenses allocated to the unit owners. Did I</p> <p>6 misunderstand that testimony?</p> <p>7 A No.</p> <p>8 Q Did you say that's correct?</p> <p>9 A You did not misunderstand. You did not</p> <p>10 misunderstand.</p> <p>11 Q Okay. But you're saying you think these are</p> <p>12 expenses that are taken care of in the reserves?</p> <p>13 A I believe so.</p> <p>14 Q Okay. Let's shift gears. GSR UOA.</p> <p>15 A This section doesn't state where those</p> <p>16 expenses are supposed to be. We're talking about the</p> <p>17 public shared facilities now.</p> <p>18 Q Yes, sir.</p> <p>19 A Okay. So again, I think you have to take</p> <p>20 this in connection with that whole Section 9.</p> <p>21 Q Right.</p> <p>22 A Again, I'm getting into the legal aspects of</p> <p>23 this, and again, this has already been gone through.</p> <p>24 Q Well, I guess my problem, Mr. Teichner, is I</p>

<p style="text-align: right;">Page 194</p> <p>1 can't find a court order that says your 2021 numbers are 2 in compliance with governing documents.</p> <p>3 MR. MILLER: Objection, assumes facts not in 4 evidence.</p> <p>5 THE COURT: Overruled.</p> <p>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?</p> <p>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.</p> <p>17 Q Sir, you're mistaken about that. The 18 defendants did not approve your fees. We objected to it.</p> <p>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.</p> <p>22 Q There was an objection, and I'll find it for 23 you.</p> <p>24 A Okay.</p>	<p style="text-align: right;">Page 196</p> <p>1 documents to collect the rent?</p> <p>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.</p> <p>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?</p> <p>9 A Under the governing documents. I'm not sure.</p> <p>10 Q Take a look at Exhibit 2, please.</p> <p>11 A Exhibit 2?</p> <p>12 Q Yes, sir. That should be the 2007 UOA 13 agreement.</p> <p>14 A Okay.</p> <p>15 Q Can you look at that and tell me who is 16 responsible for collecting the rent?</p> <p>17 A I'm not sure I know what you're referring to.</p> <p>18 Q Is it fair to say you're not familiar with 19 the 2007 unit rental agreement?</p> <p>20 A Sorry. Say that again.</p> <p>21 Q Is it fair to say you're not familiar with 22 the contents of the 2007 unit rental agreement?</p> <p>23 A The unit rental agreement?</p> <p>24 Q Yes, sir.</p>
<p style="text-align: right;">Page 195</p> <p>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?</p> <p>5 A Who do you need to talk to?</p> <p>6 Q Yes, sir.</p> <p>7 A Well, then, I would defer that to my 8 attorney.</p> <p>9 Q Okay. Thank you. The GSR UOA, what is the 10 nature of that entity?</p> <p>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.</p> <p>15 Q What assets? It's like a homeowner's 16 association? What assets does it have?</p> <p>17 A Only cash receivables, a little bit of 18 equipment, I believe.</p> <p>19 Q You agree with me that GSR UOA doesn't own 20 the rent from the unit, does it?</p> <p>21 A Own the rents? No.</p> <p>22 Q Who owns the rent?</p> <p>23 A Well, the unit owners own the rents.</p> <p>24 Q The who is responsible under the governing</p>	<p style="text-align: right;">Page 197</p> <p>1 A Well, I've seen it many times.</p> <p>2 Q Well, you're responsible to implement the 3 governing documents; correct?</p> <p>4 A Correct.</p> <p>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.</p> <p>8 MR. MILLER: Your Honor, the question 9 misstates the evidence in the case.</p> <p>10 THE COURT: Overruled.</p> <p>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."</p> <p>17 Q Who is the company?</p> <p>18 A Huh?</p> <p>19 Q Who is the company?</p> <p>20 A It's the Grand Sierra Operating Corp.</p> <p>21 Q That was a predecessor to my client, MEI-GSR; 22 correct?</p> <p>23 A Right.</p> <p>24 Q Do you have an understanding that it's</p>

<p style="text-align: right;">Page 198</p> <p>1 MEI-GSR Holding substituted in for the company?</p> <p>2 A Okay.</p> <p>3 Q Well, I'm not asking -- I'm not telling you.</p> <p>4 I'm asking you if that's your understanding.</p> <p>5 A Well, yes.</p> <p>6 Q Okay. So you agree with me that GSR UOA is</p> <p>7 not a party to the UOA agreement; correct?</p> <p>8 A Correct.</p> <p>9 Q Okay. And so you are appointed receiver only</p> <p>10 over the GSR UOA; correct?</p> <p>11 A Yes.</p> <p>12 Q And you're responsible for collecting your</p> <p>13 rent. That's contrary to that governing document, is it</p> <p>14 not?</p> <p>15 MR. MILLER: Objection, calls for a legal</p> <p>16 conclusion.</p> <p>17 THE COURT: Overruled.</p> <p>18 THE WITNESS: No, no, it's not. I don't see</p> <p>19 -- I just read during the terms of this agreement, owner</p> <p>20 agrees that the company shall have a sole and exclusive</p> <p>21 right to rent the property. It doesn't say to collect</p> <p>22 the rent. It says to rent the property.</p> <p>23 So I don't know if your point is that the</p> <p>24 January 7th, 2015 order is incorrect. It's in conflict</p>	<p style="text-align: right;">Page 200</p> <p>1 A Yes. And it's not that the UOA is collecting</p> <p>2 the rents. It's the rents are collected by GSR, but then</p> <p>3 they have to be turned over to the receiver in order so</p> <p>4 the receiver can distribute those rents to the unit</p> <p>5 owner.</p> <p>6 Q Do you regard that as a modification of the</p> <p>7 unit rental agreement, that is that GSR is now collecting</p> <p>8 those rents?</p> <p>9 A Yes and no because the unit rental agreement</p> <p>10 doesn't specifically -- all it says is the company shall</p> <p>11 have the sole and exclusive right to rent the units. To</p> <p>12 rent the units so that, in other words, GSR rents all of</p> <p>13 the hotel units, all of the hotel rooms including the</p> <p>14 ones that are owned by the unit owners. It rents them</p> <p>15 all. But that's all it does. It rents them.</p> <p>16 Q The GSR UOA does?</p> <p>17 A No, no. GSR.</p> <p>18 Q The company?</p> <p>19 A The company.</p> <p>20 Q Sorry. When you say GSR, you're talking</p> <p>21 about MEI-GSR doing business as?</p> <p>22 A Yes. Yes.</p> <p>23 Q Okay.</p> <p>24 A Yes. That's what this says: That they went</p>
<p style="text-align: right;">Page 199</p> <p>1 with the governing documents. I guess that's your</p> <p>2 conclusion because the appointment order says that the</p> <p>3 receiver shall collect the rents. Collect the rents.</p> <p>4 Q (BY MR. MCELHINNEY:) Collect the rents of</p> <p>5 who?</p> <p>6 A Well, of the unit owners.</p> <p>7 Q Does the order say that you collect the rents</p> <p>8 of property that falls outside the receivership property?</p> <p>9 A I don't have the exact wording.</p> <p>10 Q I guess my question is: How do you know</p> <p>11 that's not referring to the rents of the GSR UOA?</p> <p>12 A Well, the GSR UOA doesn't have any rents.</p> <p>13 Q So you just assume from the order that they</p> <p>14 must be referring to the MEI-GSR rents?</p> <p>15 A That's been my understanding and that's been</p> <p>16 the understanding of everything that I've come across</p> <p>17 during the course of my appointment as receiver.</p> <p>18 Q So what's happening here as I understand</p> <p>19 it -- this is a question -- is the GSR UOA is</p> <p>20 substituting in place of MEI-GSR into the unit rental</p> <p>21 agreement. Is that your understanding? In other words,</p> <p>22 you're taking over the collection of the rent, you're now</p> <p>23 a party to the rental agreement, and you're going to</p> <p>24 enforce it for the benefit of the unit owner?</p>	<p style="text-align: right;">Page 201</p> <p>1 -- they have an exclusive right. Nobody else -- the</p> <p>2 hotel rents the units. They have the right to rent the</p> <p>3 units, okay. But beyond that, as far as who collects the</p> <p>4 rents and who receives the rents in order to facilitate</p> <p>5 the implementation of the receivership, that's set forth</p> <p>6 in the January 7th, 2015 order.</p> <p>7 Q But that had previously been a function of</p> <p>8 the MEI-GSR. They collected the rent, they deducted the</p> <p>9 DUF, the expenses, and then split the net revenue amongst</p> <p>10 the hotel and the unit owners. Fair?</p> <p>11 A That's what they've been doing.</p> <p>12 Q Correct. And the only point I'm trying to</p> <p>13 make is GSR has now taken over that role. And I asked</p> <p>14 you: Do you regard that as a modification of the unit</p> <p>15 rental agreement? Because it used to be the company.</p> <p>16 Now it's GSR UOA.</p> <p>17 A We're not communicating. I'm sorry. I'm</p> <p>18 saying that all this unit rental agreement says is that</p> <p>19 the hotel has the right, the company has the right to</p> <p>20 rent the units, rent the rooms, period. That's what</p> <p>21 their right is. They have an exclusive right to rent the</p> <p>22 rooms. Beyond that, there's no modification.</p> <p>23 There's a supplementation now that the</p> <p>24 receivership is in place, there's now a supplementation</p>

<p style="text-align: right;">Page 202</p> <p>1 to this -- not a modification, a supplementation to this</p> <p>2 that the receiver now is the one who collects the rents,</p> <p>3 collects them, not rents the units, although there is an</p> <p>4 order that I'm supposed to rent the units, but that's</p> <p>5 another issue right now.</p> <p>6 But according to this, all the company does</p> <p>7 is authorized to do is to rent the units. Beyond that,</p> <p>8 what supplements this since the receivership has been</p> <p>9 implemented is that the receiver now is the one to</p> <p>10 collect those rents that the hotel -- that the hotel</p> <p>11 rents out that the hotel receives by renting out the</p> <p>12 units. So I don't see -- I don't see an issue here. I'm</p> <p>13 sorry. I don't see an issue.</p> <p>14 Q I didn't ask you if you saw an issue. I</p> <p>15 asked if you regarded it as a modification of the</p> <p>16 agreement.</p> <p>17 A No, I said it's a supplementation. It's not</p> <p>18 a -- You can call it a modification. It's a matter of</p> <p>19 semantics. Whatever you want to call it. It's one or</p> <p>20 the other. But the point is, is that it does -- It does</p> <p>21 add to what this section on page three of the unit rental</p> <p>22 agreements, paragraph two, it's in addition since the</p> <p>23 receivership has been in existence, subsequent to this</p> <p>24 document that all the -- what the order now is that since</p>	<p style="text-align: right;">Page 204</p> <p>1 withdrawn and what cannot be withdrawn.</p> <p>2 Q So is there an order in existence that says</p> <p>3 we cannot withdraw money from the reserve accounts</p> <p>4 expressly states unambiguously that we cannot withdraw</p> <p>5 money from the reserve accounts without your approval?</p> <p>6 A Well, I think if the receiver has control</p> <p>7 over it, then I believe that includes not GSR not having</p> <p>8 the authority to withdraw anything without the receiver's</p> <p>9 approval.</p> <p>10 Q Okay. My question is a very specific one</p> <p>11 though.</p> <p>12 MR. MILLER: Objection, asked and answered.</p> <p>13 THE COURT: Overruled.</p> <p>14 Q (BY MR. MCELHINNEY:) The plaintiffs are</p> <p>15 seeking to hold my clients in contempt because we</p> <p>16 withdrew money from the reserve accounts. And I</p> <p>17 understand it was done without your approval.</p> <p>18 What I'm asking is, is there an order that</p> <p>19 you're aware of that expressly and unambiguously says we</p> <p>20 have to have your approval before we can withdraw money</p> <p>21 from our reserve accounts?</p> <p>22 MR. MILLER: Objection, asked and answered.</p> <p>23 THE COURT: Overruled.</p> <p>24 THE WITNESS: I don't think there's any --</p>
<p style="text-align: right;">Page 203</p> <p>1 there's a receivership now in place, the receiver</p> <p>2 receives -- collects the rents. Not rents out the units,</p> <p>3 but collects the rents.</p> <p>4 Q You agree there is an order saying that you</p> <p>5 are to start renting the units?</p> <p>6 A That order? Sorry.</p> <p>7 Q There's a court order that says that you are</p> <p>8 to continue to rent the units. Do you know that?</p> <p>9 A That's the most recent order. I said that's</p> <p>10 another subject.</p> <p>11 Q Okay. Do you have the wherewithal to rent</p> <p>12 these units? Could you do it effectively?</p> <p>13 A No.</p> <p>14 Q Okay. I appreciate that candor. What order</p> <p>15 says that my clients cannot withdraw money from the</p> <p>16 reserve accounts without your approval?</p> <p>17 A I believe that there's a couple. I think the</p> <p>18 finding of fact and conclusions of law and judgment has</p> <p>19 something about receiver having some type of authority</p> <p>20 over the reserves, and there was another order besides, I</p> <p>21 think, besides the January 4th, 2022 one of those orders</p> <p>22 that mentions that I as receiver or that the receiver has</p> <p>23 control over the reserve. So in that respect then, I as</p> <p>24 receiver would be the one who decides what can be</p>	<p style="text-align: right;">Page 205</p> <p>1 No, I don't think there's anything that specifically</p> <p>2 addresses whether or not you can withdraw amounts, but</p> <p>3 there is, I believe, I don't want to -- I'm not sure if</p> <p>4 there's something that says that you have to reimburse or</p> <p>5 anything that says you have to reimburse reserves. I</p> <p>6 don't remember that. There may have been.</p> <p>7 But if there were such an order -- and I</p> <p>8 don't remember if there was -- then I think that would</p> <p>9 essentially say that you don't have -- that the GSR does</p> <p>10 not have the authority to withdraw. But if there's no</p> <p>11 such order then no, there's nothing specific.</p> <p>12 Q (BY MR. MCELHINNEY:) And as you sit here</p> <p>13 today, you can't identify an order that specifically</p> <p>14 says --</p> <p>15 A Not offhand. No.</p> <p>16 Q Okay. Thank you. Now the order that we've</p> <p>17 been referring to frequently here is the January 7th,</p> <p>18 2015 appointment order; correct?</p> <p>19 A Yes.</p> <p>20 Q First of all, when did you first ask the</p> <p>21 court to allow you to take over the reserve accounts?</p> <p>22 Have you ever?</p> <p>23 A I don't believe that happened until one of</p> <p>24 the orders on January 4th, 2022.</p>

<p style="text-align: right;">Page 206</p> <p>1 Q So let's go through those because I want to</p> <p>2 see which order you think says that. Bear with me just a</p> <p>3 second here. Pick up binder number three, if you would,</p> <p>4 please, and let's take a look at Exhibit 23. Does this</p> <p>5 order contain any language that says the receiver is</p> <p>6 taking over the reserve accounts?</p> <p>7 A Is this order granting the plaintiffs' motion</p> <p>8 for --</p> <p>9 Q Yes, sir.</p> <p>10 A I'm sorry. Are you referring to page four,</p> <p>11 paragraph or lines 20 to 22?</p> <p>12 Q Perhaps I misunderstood your testimony. I</p> <p>13 thought you had said that you thought one of the January</p> <p>14 4, 2022 orders ordered us to turn the reserve accounts</p> <p>15 over to you. Did I misunderstand your testimony?</p> <p>16 A No. That's what -- correct.</p> <p>17 Q That is correct?</p> <p>18 A That's -- you're understanding me correctly.</p> <p>19 Q Okay. So I'm trying to find which one of</p> <p>20 those orders grants it because I'm not aware of that.</p> <p>21 A Yeah, I don't know. I don't have it in front</p> <p>22 of me unless you can point them to me.</p> <p>23 Q I don't think it exists, so I can't point you</p> <p>24 to it.</p>	<p style="text-align: right;">Page 208</p> <p>1 THE COURT: Page nine lines one to two.</p> <p>2 MR. MCELHINNEY: I don't understand, Your</p> <p>3 Honor. Page nine, line 22 of what?</p> <p>4 THE COURT: For the record, in Plaintiffs'</p> <p>5 Exhibit 115 on page eight -- and sorry I'm getting</p> <p>6 feedback. I'll try and figure it out. Page eight, line</p> <p>7 16 through 18:</p> <p>8 It is further ordered that the defendants and</p> <p>9 any other person or entity who may have possession,</p> <p>10 custody and control of any property, including assignees</p> <p>11 and employees shall be the following.</p> <p>12 Skip ahead to page nine, lines one through</p> <p>13 two: Such party shall turn over to the receiver all</p> <p>14 rents, dues, reserves and revenues derived from the</p> <p>15 property wherever and in whatsoever mode maintained.</p> <p>16 Q (BY MR. MCELHINNEY:) Does that answer your</p> <p>17 question, Mr. Teichner? Did you ever make demand for the</p> <p>18 reserves? I appreciate the fact the court's directing me</p> <p>19 to language that says we are to turn it over to you.</p> <p>20 Have you ever addressed that with my client to turn over</p> <p>21 all of the reserves?</p> <p>22 A I don't think it means specifically turn over</p> <p>23 all of the funds. I think it means to turn over the</p> <p>24 determination of reserving, but of course that would be</p>
<p style="text-align: right;">Page 207</p> <p>1 THE COURT: So why don't we look at the order</p> <p>2 of the receiver.</p> <p>3 THE WITNESS: What it says here -- again, on</p> <p>4 line -- this was signed by Judge Saitta. It's an order</p> <p>5 granting plaintiffs' motion to receiver. It says: Next,</p> <p>6 plaintiffs have moved the court to instruct the receiver</p> <p>7 to reject the reserve study completed by the defendants</p> <p>8 without any input from receiver and order and oversee a</p> <p>9 set reserve study. The court has explicitly found the</p> <p>10 receiver will determine a reasonable amount of FF&amp;E for</p> <p>11 hotel reserve fees.</p> <p>12 So this talks about -- it goes on to talk</p> <p>13 about the reserve study. And it's further ordered that</p> <p>14 the receiver should not utilize the defendants' reserve</p> <p>15 study calculating those fees that should be assessed to</p> <p>16 the plaintiffs. The said receiver shall order, oversee</p> <p>17 and implement the new reserve study which is in</p> <p>18 accordance with the governing documents.</p> <p>19 Q Let me ask you another question,</p> <p>20 Mr. Teichner. The court had commented and directed me to</p> <p>21 the January 7th, 2015 order. And I'm looking at -- So</p> <p>22 would you look at -- Bear with me here.</p> <p>23 THE COURT: Page nine, lines one to two.</p> <p>24 MR. MCELHINNEY: Say again, Your Honor.</p>	<p style="text-align: right;">Page 209</p> <p>1 done with somebody who is specifically an expert in</p> <p>2 determining reserves. That's why we tried to actually</p> <p>3 tried to hire another reserve study outfit and had some</p> <p>4 resistance somewhere. I don't recall what the reason</p> <p>5 was.</p> <p>6 Q So let me ask you this. Are you qualified to</p> <p>7 take over the reserves?</p> <p>8 A Well, qualified to take over the funds in the</p> <p>9 for the reserves, yes. I mean, that's just a matter of</p> <p>10 having funds.</p> <p>11 Q And does the GSR UOA have its own budget and</p> <p>12 its own reserves?</p> <p>13 A Well, it has its own budget. It's the</p> <p>14 reserves that it has is -- based on my understanding --</p> <p>15 is based on the reserve studies that had been performed.</p> <p>16 And GSR is the one who then has determined what the</p> <p>17 charges are to fund the reserves each year.</p> <p>18 Q I've asked the question, and I apologize I</p> <p>19 don't remember the answer. Have you ever said to my</p> <p>20 clients: Turn over the reserve accounts to me?</p> <p>21 A Again, you'd have to be specific. Are you</p> <p>22 talking about the funds or the --</p> <p>23 Q The accounts and the funds that are in there.</p> <p>24 A The money? No. I was receiving -- Let's</p>



<p style="text-align: right;">Page 210</p> <p>1 see. I was receiving bank statements to monitor what was 2 being done until such time.</p> <p>3 Q And that is all you requested?</p> <p>4 THE COURT: Mr. McElhinney -- Sir, could you 5 finish your answer, please? You were receiving bank 6 statements until?</p> <p>7 THE WITNESS: Yes.</p> <p>8 THE COURT: Do you want to finish your 9 answer?</p> <p>10 THE WITNESS: That's all.</p> <p>11 THE COURT: Until when?</p> <p>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.</p> <p>23 THE COURT: And the shared facility you're 24 referring to is a Cloud-based data storage area?</p>	<p style="text-align: right;">Page 212</p> <p>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.</p> <p>4 A I have it.</p> <p>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.</p> <p>13 Did I read that correctly?</p> <p>14 A Yes.</p> <p>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?</p> <p>20 A No.</p> <p>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?</p>
<p style="text-align: right;">Page 211</p> <p>1 THE WITNESS: I believe it's Cloud-based.</p> <p>2 THE COURT: Okay. Thank you.</p> <p>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.</p> <p>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?</p> <p>11 A Not to my knowledge. I don't know much of 12 what he did.</p> <p>13 Q And to date, you have not demanded that my 14 clients turn over the reserve accounts or money; correct?</p> <p>15 A Correct.</p> <p>16 Q Why not?</p> <p>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.</p>	<p style="text-align: right;">Page 213</p> <p>1 A Well, I'm sorry. Did you say the board made 2 decisions?</p> <p>3 Q Yes, sir.</p> <p>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.</p> <p>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?</p> <p>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.</p> <p>20 Q But you attended meetings with the board; 21 correct?</p> <p>22 A I did attended meetings until such time I 23 took over and became the board.</p> <p>24 Q And when was that?</p>

<p style="text-align: right;">Page 214</p> <p>1 A Well, it was either in this order or another</p> <p>2 order.</p> <p>3 Q Okay. So the point I'm trying to make is</p> <p>4 before this order came out, there was still a board that</p> <p>5 was intact and functioning; correct?</p> <p>6 A Yes.</p> <p>7 Q In other words, you hadn't taken over all</p> <p>8 functions of the board; correct?</p> <p>9 A Well, all functions, probably not.</p> <p>10 Q They were still meeting, they were still</p> <p>11 voting on things, but you had the final say-so?</p> <p>12 A Correct.</p> <p>13 Q Okay. But since this order has been entered,</p> <p>14 the board no longer exists. You are the board?</p> <p>15 A Correct. Well, I have been. I'm not --</p> <p>16 Right now, there's no board at all.</p> <p>17 Q You agree with me that this proposition came</p> <p>18 as a surprise to Justice Saitta? Do you remember being</p> <p>19 at a hearing? I don't remember if you were there July</p> <p>20 2nd, 2021 where -- It's Exhibit 13 in your book. Why</p> <p>21 don't we take a look at it real quick. Are you with me</p> <p>22 on Exhibit 13?</p> <p>23 A Yes.</p> <p>24 Q Do you recall being at this hearing in front</p>	<p style="text-align: right;">Page 216</p> <p>1 suspended by any order of the court that I can find.</p> <p>2 Do you see that language?</p> <p>3 A Yes.</p> <p>4 Q Does it appear to you from that context that</p> <p>5 Justice Saitta did not regard the January 15 order as</p> <p>6 immediately replacing the board?</p> <p>7 MR. MILLER: Objection, calls for</p> <p>8 speculation.</p> <p>9 THE COURT: Overruled.</p> <p>10 Q (BY MR. MCELHINNEY:) We can read some more,</p> <p>11 if you like. Continue on to page 32 as an example.</p> <p>12 Justice Saitta says:</p> <p>13 I have to agree with Mr. Two. I think that</p> <p>14 the receiver is supposed to be, at the very least,</p> <p>15 overseeing the management, okay. I think that is what</p> <p>16 the order says. I may modify that, by the way, just so</p> <p>17 you know what is likely to be coming down the road. But</p> <p>18 for now, I need the most recent report from the receiver.</p> <p>19 I need the reserve study from the entities, and I</p> <p>20 strongly believe that the governing board of this</p> <p>21 association should be left to do their business, and that</p> <p>22 is what this meeting is about.</p> <p>23 Do you see that language?</p> <p>24 A Yes.</p>
<p style="text-align: right;">Page 215</p> <p>1 of Justice Saitta when I believe it was John Two was</p> <p>2 arguing that immediately upon the issuance of the January</p> <p>3 5th, 2015 order, you replaced --</p> <p>4 THE COURT: Mr. McElhinney, you've got to</p> <p>5 speak up.</p> <p>6 MR. MCELHINNEY: I apologize. I might have</p> <p>7 turned off my mike.</p> <p>8 THE COURT: Is your mike on or did you run</p> <p>9 out of batteries?</p> <p>10 MR. MCELHINNEY: Can you hear me? No?</p> <p>11 THE COURT: You ran out of batteries.</p> <p>12 MR. MCELHINNEY: Can we take a break, Your</p> <p>13 Honor?</p> <p>14 THE COURT: Mr. Smith is going to swap with</p> <p>15 you.</p> <p>16 (Brief recess.)</p> <p>17 Q (BY MR. MCELHINNEY:) Were you at this</p> <p>18 hearing, Mr. Teichner?</p> <p>19 A No. In fact, page two says that Stefanie</p> <p>20 Sharp was there in my stead.</p> <p>21 Q Okay. Let's look at page 31 of the</p> <p>22 transcript. The court is responding on line 23. She</p> <p>23 says: Frankly, the UOA should have the ability to</p> <p>24 continue their business. Their operations have not been</p>	<p style="text-align: right;">Page 217</p> <p>1 Q Does it appear to you from that language that</p> <p>2 Justice Saitta believes that the board is still intact as</p> <p>3 of the date of this hearing, July 20, 2021? We can read</p> <p>4 on if you like.</p> <p>5 A I don't know. I can't interpret that one way</p> <p>6 or the other.</p> <p>7 Q Turn to page 34, line three. The court says:</p> <p>8 Well, I'm ordering him to attend, Mr. Two. And she's</p> <p>9 talking about you attending the board meeting. I can't</p> <p>10 -- No one in the course of the six years since that order</p> <p>11 has been in place has suggested by way of motion or any</p> <p>12 other form of legal pleading that the receiver, whether</p> <p>13 it was Mr. Proctor or Mr. Teichner, was failing to comply</p> <p>14 with that order by not taking over --</p> <p>15 THE COURT: Keep your voice up.</p> <p>16 Q (BY MR. MCELHINNEY:) -- by not taking over</p> <p>17 the UOA.</p> <p>18 A Yes.</p> <p>19 Q Does it appear to you that she's not agreeing</p> <p>20 with the proposition that the 2015 order -- I see we're</p> <p>21 getting flashing, Your Honor. I'm low on batteries.</p> <p>22 THE COURT: We're breaking in about 40</p> <p>23 minutes.</p> <p>24 Mr. McElhinney, try again.</p>

<p style="text-align: right;">Page 218</p> <p>1 Mr. Teichner, what time can you come back</p> <p>2 tomorrow? Can you come back at 8:30 or can you come back</p> <p>3 at 9:00? Which is better for you?</p> <p>4 THE WITNESS: 9:00.</p> <p>5 THE COURT: Instead of 8:30, we'll resume at</p> <p>6 9:00 because I have to accommodate witnesses. We will</p> <p>7 finish the cross-examination. We will charge up every</p> <p>8 little thing we can find for these.</p> <p>9 In the meantime, Counsel -- You can step</p> <p>10 down, sir. He's done with you for the day.</p> <p>11 THE WITNESS: Thank you.</p> <p>12 (The proceedings concluded at 4:21 p.m.)</p> <p>13 -o0o-</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 220</p> <p>1 HEALTH INFORMATION PRIVACY &amp; SECURITY: CAUTIONARY NOTICE</p> <p>2 Litigation Services is committed to compliance with applicable federal</p> <p>3 and state laws and regulations ("Privacy Laws") governing the</p> <p>4 protection and security of patient health information. Notice is</p> <p>5 hereby given to all parties that transcripts of depositions and legal</p> <p>6 proceedings, and transcript exhibits, may contain patient health</p> <p>7 information that is protected from unauthorized access, use and</p> <p>8 disclosure by Privacy Laws. Litigation Services requires that access,</p> <p>9 maintenance, use, and disclosure (including but not limited to</p> <p>10 electronic database maintenance and access, storage, distribution/</p> <p>11 dissemination and communication) of transcripts/exhibits containing</p> <p>12 patient information be performed in compliance with Privacy Laws.</p> <p>13 No transcript or exhibit containing protected patient health</p> <p>14 information may be further disclosed except as permitted by Privacy</p> <p>15 Laws. Litigation Services expects that all parties, parties'</p> <p>16 attorneys, and their HIPAA Business Associates and Subcontractors will</p> <p>17 make every reasonable effort to protect and secure patient health</p> <p>18 information, and to comply with applicable Privacy Law mandates,</p> <p>19 including but not limited to restrictions on access, storage, use, and</p> <p>20 disclosure (sharing) of transcripts and transcript exhibits, and</p> <p>21 applying "minimum necessary" standards where appropriate. It is</p> <p>22 recommended that your office review its policies regarding sharing of</p> <p>23 transcripts and exhibits - including access, storage, use, and</p> <p>24 disclosure - for compliance with Privacy Laws.</p> <p>25 © All Rights Reserved. Litigation Services (rev. 6/1/2019)</p>
<p style="text-align: right;">Page 219</p> <p>1 STATE OF NEVADA )</p> <p>2 COUNTY OF WASHOE ) ss.</p> <p>3</p> <p>4 I, NICOLE J. HANSEN, Certified Court</p> <p>5 Reporter in and for the State of Nevada, do hereby</p> <p>6 certify:</p> <p>7 That the foregoing proceedings were taken by</p> <p>8 me at the time and place therein set forth; that the</p> <p>9 proceedings were recorded stenographically by me and</p> <p>10 thereafter transcribed via computer under my supervision;</p> <p>11 that the foregoing is a full, true and correct</p> <p>12 transcription of the proceedings to the best of my</p> <p>13 knowledge, skill and ability.</p> <p>14 I further certify that I am not a relative</p> <p>15 nor an employee of any attorney or any of the parties,</p> <p>16 nor am I financially or otherwise interested in this</p> <p>17 action.</p> <p>18 I declare under penalty of perjury under the</p> <p>19 laws of the State of Nevada that the foregoing statements</p> <p>20 are true and correct.</p> <p>21 Dated this June 14, 2023.</p> <p>22</p> <p>23 Nicole J. Hansen</p> <p>24 -----</p> <p>Nicole J. Hansen, CCR #446, RPR, CRR, RMR</p>	

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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

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16

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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

<div>Page 2</div> <div> <p>1 APPEARANCES:</p> <p>2 For the Plaintiffs: JARRAD C. MILLER, ESQ. BRIANA N. COLLINGS, ESQ. 3 ROBERTSON, JOHNSON, MILLER &amp; WILLIAMSON 4 50 W. Liberty St., Suite 600 Reno, Nevada</p> <p>5</p> <p>6 ROBERT L. EISENBERG, ESQ. LEMONS, GRUNDY &amp; EISENBERG 6005 Plumas Street, Third Floor Reno, Nevada</p> <p>7</p> <p>8</p> <p>9 For the Defendant: DAVID C. McELHINNEY, ESQ. MERUELO GROUP, LLC 2535 Las Vegas Boulevard South Las Vegas, Nevada</p> <p>10</p> <p>11</p> <p>12 JORDAN T. SMITH, ESQ. PISANELLI BICE PLLC 400 South 7th Street Las Vegas, Nevada 89101</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> </div>	<div>Page 4</div> <div> <p>1 -oOo-</p> <p>2 RENO, NEVADA; WEDNESDAY, JUNE 7, 2023; 9:00 A.M.</p> <p>3 -oOo-</p> <p>4</p> <p>5 THE COURT: CV12-0222, Thomas vs. MEI-GSR,</p> <p>6 Day 2 of our continued hearing.</p> <p>7 Mr. Teichner, come on in. We're going to swear</p> <p>8 you in since it's a new day.</p> <p>9 If anybody wants to stand up while we go</p> <p>10 through the days, I know the acoustics in this room are</p> <p>11 very poor. We're going to all do our best to make sure</p> <p>12 we speak up and we make sure that all of the microphone</p> <p>13 charges were charged overnight, so hopefully we will not</p> <p>14 run out of batteries again today, but we'll see how</p> <p>15 things go.</p> <p>16</p> <p>17 RICHARD TEICHNER,</p> <p>18 having been first duly sworn,</p> <p>19 was examined and testified as follows:</p> <p>20</p> <p>21 THE COURT: Mr. McElhinney, are you ready?</p> <p>22 MR. McELHINNEY: I'm ready, Your Honor.</p> <p>23</p> <p>24</p> </div>
<div>Page 3</div> <div> <p>1 INDEX</p> <p>2 WITNESSES FOR THE PLAINTIFFS PAGE</p> <p>3 RICHARD TEICHNER</p> <p>4 Cross-Examination by Mr. McElhinney 5</p> <p>Redirect Examination by Mr. Miller 93</p> <p>5 Recross-Examination by Mr. McElhinney 109</p> <p>6</p> <p>7 EXHIBITS MARKED ADMITTED</p> <p>8</p> <p>141 Teichner report 103 103</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> </div>	<div>Page 5</div> <div> <p>1 CROSS-EXAMINATION</p> <p>2 BY MR. McELHINNEY:</p> <p>3 Q Mr. Teichner, would you open to --</p> <p>4 First of all, good morning.</p> <p>5 A Good morning.</p> <p>6 Q Nice to see you again.</p> <p>7 Would you turn to Exhibit 6 in the book in</p> <p>8 front of you. It should be in Book No. 1.</p> <p>9 A Okay.</p> <p>10 Q Mr. Teichner, I've been looking at this order.</p> <p>11 This is the Order Appointing Receiver and Directing the</p> <p>12 Defendants' Compliance, and there are a number of things</p> <p>13 that you are allowed to control, take control of, in this</p> <p>14 order, such as, if you look at page 2 of Exhibit 6, line</p> <p>15 22 and 25, you're entitled to take control of all</p> <p>16 records, correspondence, insurance policies, books,</p> <p>17 accounts of or relating to the property, computers,</p> <p>18 software, passwords.</p> <p>19 Have you taken control of any of those things,</p> <p>20 sir?</p> <p>21 A No.</p> <p>22 Q Have you asked to take control of any of those</p> <p>23 things?</p> <p>24 A No. It hasn't been necessary. I'm entitled to</p> </div>

<p style="text-align: right;">Page 6</p> <p>1 it, but it doesn't mean I'm required to.</p> <p>2 Q And that's the way you read that order? You're</p> <p>3 not required to take control of those things, but you</p> <p>4 have that option?</p> <p>5 A I have the powers and responsibilities that</p> <p>6 you'll be authorized and have power to do that, but I</p> <p>7 don't interpret that as that I must.</p> <p>8 Q And I heard you yesterday. If I understood</p> <p>9 correctly, you have not asked to take control of the</p> <p>10 reserve accounts either; correct?</p> <p>11 A Correct.</p> <p>12 Q And that's something that you have the power to</p> <p>13 do, but you don't necessarily have to do.</p> <p>14 Is that the way you read this order?</p> <p>15 A Yes.</p> <p>16 Q Do you think we are in violation of this order</p> <p>17 because we have not turned over office equipment,</p> <p>18 records, correspondence, those sorts of things?</p> <p>19 A That the defendants are in violation?</p> <p>20 Q Yes, sir.</p> <p>21 A No.</p> <p>22 Q Do you think we're in violation of this order</p> <p>23 because we have not turned over the reserve accounts for</p> <p>24 your control?</p>	<p style="text-align: right;">Page 8</p> <p>1 doing that. They've continued to do that, but given the</p> <p>2 more recent orders where they -- those recent orders have</p> <p>3 indicated that I am to calculate the fees, collect the</p> <p>4 rents. It doesn't say net rents, it says gross rents.</p> <p>5 Then from that point on, I would say that in</p> <p>6 my -- what I have suggested is that I would collect the</p> <p>7 rents as receiver. I would calculate the fees, give</p> <p>8 those amounts to GSR accounting department, and then they</p> <p>9 would distribute the checks based on my calculations of</p> <p>10 the net rents.</p> <p>11 That would be the -- that would be the most</p> <p>12 practical procedure, because for me to actually</p> <p>13 distribute the checks, it would just add another expense</p> <p>14 to the receivership.</p> <p>15 BY MR. McELHINNEY:</p> <p>16 Q Okay. And I appreciate the fact there are</p> <p>17 current orders that say you are to calculate the DUF,</p> <p>18 SFUE, HE and reserves.</p> <p>19 What I'm talking about right now is, in terms</p> <p>20 of the 2007 Unit Rental Agreement, who is responsible for</p> <p>21 doing those calculations and distributing that rental</p> <p>22 money?</p> <p>23 A I don't think that's covered in the unit</p> <p>24 agreement. We talked about that yesterday, and I said</p>
<p style="text-align: right;">Page 7</p> <p>1 A No. Because I haven't asked for them.</p> <p>2 Q Okay. Thank you.</p> <p>3 We had talked before about who owes the rental</p> <p>4 income.</p> <p>5 Do you recall me asking you about that?</p> <p>6 A Yes.</p> <p>7 Q And I think you had said the unit owners owe</p> <p>8 the rental income.</p> <p>9 Who is in charge of gathering the rent?</p> <p>10 A Well, when you say, "gathering," can you be</p> <p>11 more specific?</p> <p>12 Q Yes, sir.</p> <p>13 Collecting the rent from the people staying in</p> <p>14 the rooms.</p> <p>15 A The hotel.</p> <p>16 Q Okay. And that would be MEI-GSR?</p> <p>17 A Yes.</p> <p>18 Q And then is MEI-GSR in charge of doing the</p> <p>19 calculations to distribute the net rent to the individual</p> <p>20 unit owners?</p> <p>21 MR. MILLER: Objection.</p> <p>22 THE COURT: Overruled.</p> <p>23 THE WITNESS: Well, they have done that. I</p> <p>24 don't know if -- my response would be that they have been</p>	<p style="text-align: right;">Page 9</p> <p>1 all that says is that the rents get paid to the hotel.</p> <p>2 In essence, that's what it says. It doesn't say that the</p> <p>3 hotel collects the rents.</p> <p>4 Q Would you turn to Exhibit 2, please, and that's</p> <p>5 the Unit Rental Agreement.</p> <p>6 A I have it.</p> <p>7 Q Bear with me.</p> <p>8 Turn to page 5 of Exhibit 2 for me, please, and</p> <p>9 look at paragraph d as in David.</p> <p>10 Do you see where it says, "The company shall</p> <p>11 collect rent from all guests and shall provide all</p> <p>12 accounting services necessary for the collection of such</p> <p>13 rental revenues"?</p> <p>14 A Yes.</p> <p>15 Q And so you agree with that language in the Unit</p> <p>16 Rental Agreement, that it is MEI-GSR who collects the</p> <p>17 rents?</p> <p>18 A Correct.</p> <p>19 Q So in terms of the orders that have come out,</p> <p>20 the order that you are to calculate the expenses and</p> <p>21 subtract that from the rent, is that a modification of</p> <p>22 the Unit Rental Agreement?</p> <p>23 A Well, like I said yesterday, I think it's --</p> <p>24 you can call it a modification. You can call it a</p>

<p style="text-align: right;">Page 10</p> <p>1 supplementation. It's a matter of semantics.</p> <p>2 Q Okay. I recall that testimony.</p> <p>3 Did I interrupt you? Because I can see the</p> <p>4 judge looking at me right now. Did I interrupt you?</p> <p>5 A No, no.</p> <p>6 Q I apologize if I did.</p> <p>7 THE COURT: We're not on video, so the supreme</p> <p>8 court won't see it.</p> <p>9 BY MR. McELHINNEY:</p> <p>10 Q According to the Seventh Amended CC&amp;Rs, who has</p> <p>11 possession of the reserve accounts?</p> <p>12 A I'd have to look at the CC&amp;Rs.</p> <p>13 Q You don't know without looking?</p> <p>14 A Correct.</p> <p>15 Q Let's talk about the reserve study.</p> <p>16 When did you first understand that you were</p> <p>17 exclusively in charge of ordering and overseeing the</p> <p>18 reserve studies?</p> <p>19 A Correct.</p> <p>20 Q I'm asking, when did you first understand that?</p> <p>21 A I believe that was when -- again, I don't</p> <p>22 remember if it was one of the January 4, 2022, orders or</p> <p>23 one of the previous orders.</p> <p>24 Q Look at, if you would, in Book No. 3, Exhibit</p>	<p style="text-align: right;">Page 12</p> <p>1 know there is, in the Findings of Fact, Conclusions of</p> <p>2 Law and Judgment, a provision in there about receiver</p> <p>3 having some -- some type of authority over the reserves.</p> <p>4 And then there was some other document that was before</p> <p>5 this order -- and I don't recall what document that was</p> <p>6 offhand -- that mentioned about having some type of</p> <p>7 influence or control with reserves.</p> <p>8 Q Prior to Exhibit 23, do you think there was an</p> <p>9 order that put you in exclusive control of ordering and</p> <p>10 overseeing the reserve studies?</p> <p>11 A I'd have to read the exact language, but it did</p> <p>12 mention something to that effect. I don't know if it was</p> <p>13 exclusive, but there was something to that effect, again,</p> <p>14 in the Findings of Fact and some other document that I</p> <p>15 don't control.</p> <p>16 Q Okay. Take a minute and look at it because I</p> <p>17 need to know if there's any order that says that.</p> <p>18 So let's look at -- bear with me a second.</p> <p>19 Look at Exhibit 7, which is in Book 1.</p> <p>20 A Number 7?</p> <p>21 Q Yes, sir.</p> <p>22 I'm going to direct us to a page that I think</p> <p>23 you're talking about, and if I have you on the wrong</p> <p>24 page, you tell me.</p>
<p style="text-align: right;">Page 11</p> <p>1 23. Tell me when you're there.</p> <p>2 A I have it.</p> <p>3 Q Turn to page 4 of Exhibit 23, please.</p> <p>4 A Okay.</p> <p>5 Q And the language says starting at line 22, "The</p> <p>6 Court has explicitly found that the receiver will</p> <p>7 determine a reasonable amount of FF&amp;E, shared facilities</p> <p>8 and hotel reserve fees," and then it references the</p> <p>9 Findings of Fact, Conclusions of Law at page 22, line 25</p> <p>10 through 26.</p> <p>11 This implies that the receiver will also be</p> <p>12 tasked with ordering and overseeing the reserve study as</p> <p>13 that study will dictate the FF&amp;E, shared facilities and</p> <p>14 hotel reserve fees. Thus, the receiver alone has the</p> <p>15 authority to direct and audit the reserve study, not the</p> <p>16 defendants.</p> <p>17 Did I read that correctly?</p> <p>18 A Yes.</p> <p>19 Q Is that the first time you learned that you had</p> <p>20 exclusive control over ordering and overseeing the</p> <p>21 independent reserve studies?</p> <p>22 A I don't believe so, no.</p> <p>23 Q When did you first learn that?</p> <p>24 A When I -- I guess when I first looked at -- I</p>	<p style="text-align: right;">Page 13</p> <p>1 A I'm on Exhibit 7.</p> <p>2 Q Okay. Take a look at page 22 of Exhibit 7.</p> <p>3 A Okay.</p> <p>4 Q Bottom of the page, paragraph 3, is that the</p> <p>5 language you're talking about that you think gave you</p> <p>6 control to order and oversee the reserve study?</p> <p>7 A No. All that says is that the receiver</p> <p>8 determines the reasonable amount of --</p> <p>9 Q FF&amp;E, shared facilities and hotel reserves?</p> <p>10 A Yeah.</p> <p>11 Q So that provision doesn't say you have control</p> <p>12 over the reserve study; right?</p> <p>13 A No.</p> <p>14 Q And if you look again at Exhibit 23, it's</p> <p>15 telling us, isn't it, that it was determined that you had</p> <p>16 sole exclusive power to oversee the reserve study because</p> <p>17 it is implied in that language that we just looked at in</p> <p>18 the Findings of Fact, Conclusions of Law and Judgment;</p> <p>19 correct?</p> <p>20 A Let's look at the exact wording again.</p> <p>21 Q Yes, sir.</p> <p>22 So go to Exhibit 23, page 4.</p> <p>23 A Okay. At the bottom; right?</p> <p>24 Q Yes, sir. Starting at line 22. You can read</p>

<p style="text-align: right;">Page 14</p> <p>1 that out loud or to yourself. Tell me if that isn't --</p> <p>2 A "The Court has explicitly found that the</p> <p>3 receiver will determine a reasonable amount of FF&amp;E,</p> <p>4 shared facilities and hotel reserve fees."</p> <p>5 And then it says in parentheses, "Findings of</p> <p>6 Fact, Conclusions of Law and Judgment filed October 9,</p> <p>7 2015."</p> <p>8 And then it goes on to say, "This implies the</p> <p>9 receiver will also be tasked with ordering and overseeing</p> <p>10 the reserve study as that study would dictate the FF&amp;E,</p> <p>11 shared facilities and hotel reserve fees. Thus, the</p> <p>12 receiver alone has the authority to direct and audit the</p> <p>13 reserve study, not the defendants."</p> <p>14 Q So the stuff that is in parentheses that you</p> <p>15 just read out loud, "Findings of Fact, Conclusions of Law</p> <p>16 and Judgment, October 9, 2015, page 22, lines 25-26,"</p> <p>17 that's what we just read that said you were to calculate</p> <p>18 the FF&amp;E and reserves for the hotel and shared facility;</p> <p>19 correct?</p> <p>20 A Well, that's true.</p> <p>21 Q So the only thing I want to make sure I'm not</p> <p>22 missing is, prior to this order, Exhibit 23, there was no</p> <p>23 order that said you had exclusive control to order and</p> <p>24 oversee the reserve studies.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q My question -- let me back up.</p> <p>2 I want to make sure I'm not missing an earlier</p> <p>3 order.</p> <p>4 It appears to me that Exhibit 23 is the very</p> <p>5 first order that came along that said you have the</p> <p>6 exclusive authority to order and oversee the reserve</p> <p>7 studies. I want to make sure I'm not missing an earlier</p> <p>8 record that said you had that authority.</p> <p>9 A I can't say for sure, but that may be the case,</p> <p>10 but I don't know if there was a previous order.</p> <p>11 This order is -- this is one of the January 4,</p> <p>12 2022, orders. I would have to go back and look at any of</p> <p>13 the previous orders, but, again, I can't say for sure.</p> <p>14 Q Okay. I appreciate that.</p> <p>15 Was it your idea that you wanted to take over</p> <p>16 exclusive control of the independent third-party studies,</p> <p>17 or was that somebody else's idea?</p> <p>18 A Well, again I think that it was not until I</p> <p>19 hired my attorney, who took a look at the reserves -- the</p> <p>20 reserve studies and said there's a lot of flaws in those</p> <p>21 reserve studies.</p> <p>22 As I mentioned yesterday, I had spoken with</p> <p>23 Ms. Betterley, and I had some concerns about the reserves</p> <p>24 at that time, and, in fact, I had called her maybe --</p>
<p style="text-align: right;">Page 15</p> <p>1 Do I understand that correctly?</p> <p>2 A Again, I would have to look at the Findings of</p> <p>3 Fact, Conclusions of Law, the exact language in that</p> <p>4 document.</p> <p>5 Q We just did. You read it out loud.</p> <p>6 Is there another portion you'd like to read?</p> <p>7 A What I read is -- you say in this particular --</p> <p>8 THE COURT: He wants you to go back to</p> <p>9 Exhibit 7 and tell him if there's anything else that uses</p> <p>10 the word "exclusive."</p> <p>11 THE WITNESS: In this particular order --</p> <p>12 THE COURT: Exhibit 7. He wants you to look at</p> <p>13 Exhibit 7 and see if there's anything in Exhibit 7 that</p> <p>14 told you you have the exclusive authority.</p> <p>15 THE WITNESS: Right.</p> <p>16 THE COURT: I think that's what he's asking.</p> <p>17 BY MR. McELHINNEY:</p> <p>18 Q That says you have any authority to order and</p> <p>19 oversee a reserve study, whether it's exclusive or</p> <p>20 otherwise.</p> <p>21 Is it in the Findings of Fact, Conclusions of</p> <p>22 Law and Judgment?</p> <p>23 A Okay. Again, I'm not sure what your question</p> <p>24 is, though.</p>	<p style="text-align: right;">Page 17</p> <p>1 well, I may have spoken with her two or three times -- I</p> <p>2 don't know -- but I had called her again, and she never</p> <p>3 called me back the last time I had called her, because I</p> <p>4 still had some concerns about it.</p> <p>5 So when I engaged or retained the attorney, my</p> <p>6 attorney, she's the one who took a careful look at the</p> <p>7 reserves and the reserve studies and said that it's</p> <p>8 flawed in many respects, and she tried to communicate</p> <p>9 with Ms. Betterley with no success. She did talk to her</p> <p>10 once or twice but was unable to get her to move, and, in</p> <p>11 fact, you may recall that we had attempted to get -- and</p> <p>12 I think it was -- I think it was agreed to by both</p> <p>13 parties, Defendants and Plaintiffs -- to get -- to get a</p> <p>14 new consulting firm to do the reserve studies, and it was</p> <p>15 never -- the agreement was never signed. I think</p> <p>16 Mr. Vaughan was supposed to sign the agreement, and he</p> <p>17 never did. That's my recollection.</p> <p>18 Q Was there anything preventing you from going</p> <p>19 out and getting your own independent reserve study?</p> <p>20 A Well, I think we -- my attorney wanted to make</p> <p>21 sure that it was approved by both sides, that we got</p> <p>22 approval from both sides, both Defendants and Plaintiffs.</p> <p>23 Q Before we move on, I want to make sure I</p> <p>24 understand your testimony.</p>



<p style="text-align: right;">Page 18</p> <p>1 Was it your attorney who recommended to you</p> <p>2 that you should take over control of the ordering and</p> <p>3 overseeing of the independent third-party reserve</p> <p>4 studies?</p> <p>5 A Well, when you say, "take over control," we</p> <p>6 weren't going to do the reserve studies. That needs to</p> <p>7 be done by a professional organization that specializes</p> <p>8 in that, but we were going to have the input as to what</p> <p>9 types of expenditures, capital expenditures, need to be</p> <p>10 included in that reserve study.</p> <p>11 Q Stay with me for a minute. I'm asking you a</p> <p>12 particular question.</p> <p>13 Whose idea was it, yours or your attorney's,</p> <p>14 that you should take over the exclusive right to order</p> <p>15 and oversee the reserve studies? Your idea or your</p> <p>16 attorney's?</p> <p>17 A When you say, "take over," I'm not sure what</p> <p>18 you mean by that, because reserve studies are based on</p> <p>19 expenditures and projections that GSR has for its capital</p> <p>20 expenditures, so input from those -- from GSR needs to be</p> <p>21 obtained in order to be able to do the reserve studies</p> <p>22 properly.</p> <p>23 The question is, are the correct capital</p> <p>24 expenditures being included in the reserve studies?</p>	<p style="text-align: right;">Page 20</p> <p>1 that with Mr. Brady and determined what I felt should not</p> <p>2 be included, and he gave me some responses. We went back</p> <p>3 and forth a little bit, and there's notes on that Excel</p> <p>4 spreadsheet. That was going to be used as a basis before</p> <p>5 my attorney ever got involved. That was going to be used</p> <p>6 as a basis for what was to be included in the reserve</p> <p>7 studies.</p> <p>8 Q Okay. Did you and Mr. Brady reach agreement as</p> <p>9 to what items would stay and what items would be taken</p> <p>10 out?</p> <p>11 A It was never resolved, and I don't -- to be</p> <p>12 honest with you, I don't really recall. I think I</p> <p>13 mentioned yesterday that Mr. Miller's previous associate,</p> <p>14 Mr. Tew, had some input on that and --</p> <p>15 Q Some input on what?</p> <p>16 A On the Excel spreadsheet that indicated which</p> <p>17 items I thought should not be included, and that was not</p> <p>18 resolved.</p> <p>19 And I think sometime shortly thereafter -- I</p> <p>20 don't remember exact time frame, but sometime shortly</p> <p>21 thereafter is when I retained my attorney, and then she</p> <p>22 got involved on which items should and should not be</p> <p>23 included based on the governing documents.</p> <p>24 Q So the meetings you're talking about with</p>
<p style="text-align: right;">Page 19</p> <p>1 Taking over the reserve studies doesn't mean that we know</p> <p>2 what all the capital expenditures are. We have to get</p> <p>3 that input from GSR. We don't have access to all their</p> <p>4 accounting records and underlying documents to be able to</p> <p>5 actually determine which items are appropriate. What we</p> <p>6 do is we get that information from them, review it, ask</p> <p>7 questions, ask for any documents that we think are</p> <p>8 necessary based on what appropriately should be included</p> <p>9 in the reserves.</p> <p>10 We're not going to do -- in other words, we're</p> <p>11 not going to prepare the reserve studies from scratch.</p> <p>12 That's an outside firm that's going to gather that</p> <p>13 information. We have to get involved in the input of</p> <p>14 those expenditures to make sure that they're proper</p> <p>15 expenditures in compliance with the governing documents.</p> <p>16 Q Understood.</p> <p>17 So when did you first ask GSR to provide you</p> <p>18 with that information so you could get started on</p> <p>19 ordering an independent third-party reserve study?</p> <p>20 A Well, it really goes back to when we asked for</p> <p>21 backup for the expenditures, the costs -- the capital</p> <p>22 expenditures that GSR wanted to include in the months</p> <p>23 that they were seeking to get reimbursed for.</p> <p>24 I completed an Excel spreadsheet and went over</p>	<p style="text-align: right;">Page 21</p> <p>1 Mr. Brady, that was back in 2020?</p> <p>2 A I don't recall exactly.</p> <p>3 Q So my question is a little more particular.</p> <p>4 Exhibit 23 says you will be tasked with</p> <p>5 ordering and overseeing the reserve study.</p> <p>6 Have you started that process?</p> <p>7 A No. We're waiting to get paid, to be honest</p> <p>8 with you.</p> <p>9 Q So you refused to do it because you weren't</p> <p>10 getting paid; is that a fair characterization?</p> <p>11 A You could say, "refused," but, yes, I'm not</p> <p>12 going to work for nothing since I haven't been paid since</p> <p>13 last October of 2021.</p> <p>14 Q Are the reserve studies required under the</p> <p>15 CC&amp;Rs?</p> <p>16 A Is what required? I'm sorry.</p> <p>17 Q The reserve studies.</p> <p>18 A I don't know. They might be.</p> <p>19 Q Isn't that how they set their budgets for the</p> <p>20 reserves?</p> <p>21 A Yeah, I believe so.</p> <p>22 Q So you've been assigned the task of doing the</p> <p>23 reserve study. You've refused to do it because you're</p> <p>24 not being paid.</p>

<p style="text-align: right;">Page 22</p> <p>1           What did you expect my client to do in order to</p> <p>2   comply with the Seventh Amended CC&amp;Rs?</p> <p>3           A I don't understand what you mean by what do I</p> <p>4   expect your client to do. I'm not sure what -- I don't</p> <p>5   know what I expected.</p> <p>6           Q There is an order that you are supposed to</p> <p>7   order and oversee the reserve study.</p> <p>8           Is that agreed?</p> <p>9           A Yes. And we attempted to get a new consultant</p> <p>10   to do that.</p> <p>11          Q And you agree with me that's an essential</p> <p>12   function under the Seventh Amended CC&amp;Rs? It's one of</p> <p>13   the ways they set their budget; correct?</p> <p>14          A Okay. Yes.</p> <p>15          Q And you're refusing to do it.</p> <p>16          What did you expect my client to do in order to</p> <p>17   meet that obligation?</p> <p>18          A I still don't understand the question. I don't</p> <p>19   expect your client to do anything. I'm not sure I --</p> <p>20          Q So if my client does nothing, then my client is</p> <p>21   not in compliance with the Seventh Amended CC&amp;Rs, would</p> <p>22   you agree?</p> <p>23          A I don't agree or disagree, because the reserve</p> <p>24   study is done by an independent organization, and they're</p>	<p style="text-align: right;">Page 24</p> <p>1   and then she did not return -- I don't know how many</p> <p>2   times my attorney spoke with her, maybe two -- twice, and</p> <p>3   after that she was unable to speak with her any longer,</p> <p>4   and that's when we tried to get another consulting firm</p> <p>5   involved.</p> <p>6          Q Tell me about that. Who did you talk to?</p> <p>7          A Who did we talk to?</p> <p>8          Q Yes, sir. You said you --</p> <p>9          A There was -- there was an email sent to both</p> <p>10   Defendants and Plaintiffs to choose who would be</p> <p>11   accepted, and it was sent out to see if there was -- if</p> <p>12   you both could agree on who to engage to do the reserve</p> <p>13   study, and I don't remember whether you both agreed on</p> <p>14   someone or not, but there was a firm, again, that we</p> <p>15   tried to -- tried to get onboard, and the agreement was</p> <p>16   sent to Mr. Vaughan at that time, who's in charge of the</p> <p>17   board, and it was never signed, my understanding.</p> <p>18          So the point is that the same organization,</p> <p>19   Reserve -- I don't remember the exact name -- Better</p> <p>20   Reserve Consultants or something like that continued to</p> <p>21   do the reserve study.</p> <p>22          Q And you regard that reserve study done by</p> <p>23   Betterley as flawed and untrustworthy?</p> <p>24          A Fraud?</p>
<p style="text-align: right;">Page 23</p> <p>1   the ones who decide which items should be included. The</p> <p>2   input comes from GSR. They're the ones who does the</p> <p>3   reserve study and makes the decision, is my</p> <p>4   understanding. So GSR may give them all kinds of data,</p> <p>5   but they come up with the reserve study based on what</p> <p>6   they think is the way it should be prepared.</p> <p>7          Q Let me ask you about that.</p> <p>8          So the independent party who does the reserve</p> <p>9   study, they're familiar with the CC&amp;Rs, are they not?</p> <p>10          MR. MILLER: Objection.</p> <p>11          THE COURT: Overruled.</p> <p>12   BY MR. McELHINNEY:</p> <p>13          Q And so when you were meeting with</p> <p>14   Ms. Betterley, she was the person doing the independent</p> <p>15   reserve study for my client, GSR; correct?</p> <p>16          A Yes.</p> <p>17          Q And you were telling her what items should go</p> <p>18   in or out of that reserve study?</p> <p>19          A We attempted to, yes, but she cut us off.</p> <p>20          Q And she was telling you -- what did she tell</p> <p>21   you?</p> <p>22          A Well, I didn't -- I did not talk to her. I</p> <p>23   only spoke with her a couple times before my attorney got</p> <p>24   involved and starting getting into specifics with her,</p>	<p style="text-align: right;">Page 25</p> <p>1          Q As flawed.</p> <p>2          A Oh, flawed. I'm sorry. I thought that was a</p> <p>3   little strong.</p> <p>4          Well, I do because my attorney does, and, yes,</p> <p>5   I do, because she and I have went over the reasons.</p> <p>6          Q But my recollection from your testimony</p> <p>7   yesterday is you can't tell me what those reasons are.</p> <p>8          A No. You'd have to get -- you'd have to ask</p> <p>9   her.</p> <p>10          Q Why?</p> <p>11          A Because I don't recall all the reasons. You</p> <p>12   know, I don't recall the reasons. It's as simple as</p> <p>13   that.</p> <p>14          Q Okay. Did you review any documents in</p> <p>15   preparation for your testimony here yesterday or today?</p> <p>16          A I just reviewed all the filings. I didn't go</p> <p>17   through all -- I have thousands and thousands and</p> <p>18   thousands of documents since 2019. No, I did not review</p> <p>19   them.</p> <p>20          Q Okay.</p> <p>21          THE COURT: I have tens of thousands of</p> <p>22   documents from '20, '21.</p> <p>23          THE WITNESS: I said thousands.</p> <p>24   /////</p>

<p style="text-align: right;">Page 26</p> <p>1 BY MR. McELHINNEY:</p> <p>2 Q Now, Exhibit 23, sticking with that for a</p> <p>3 minute, page 5 -- I'm looking at line 11 -- "Plaintiffs</p> <p>4 further object to the Defendants' reserve study because</p> <p>5 it has included expenses which are clearly erroneous --"</p> <p>6 and then it cites to the -- the plaintiffs cite to their</p> <p>7 motion, and they say, "-- noting public pool expenses</p> <p>8 that were included while the governing documents and</p> <p>9 court orders exclude any revenue-generating expenses."</p> <p>10 Do you see that?</p> <p>11 A Give me the lines again.</p> <p>12 Q Yes, sir. I'm sorry.</p> <p>13 Your Honor, in Exhibit 23, line 12 -- line 11.</p> <p>14 It starts out, "Plaintiffs further object."</p> <p>15 A Are we on page 5?</p> <p>16 Q Yes, sir. Are you on Exhibit 23?</p> <p>17 A 22. Sorry.</p> <p>18 Okay. I've got it now.</p> <p>19 Q Do you see where it says, "Plaintiffs further</p> <p>20 object to Defendants' reserve study because it has</p> <p>21 included expenses which are erroneous, noting public pool</p> <p>22 expenses that were included while the governing documents</p> <p>23 and court orders exclude any revenue-generating</p> <p>24 expenses"? Do you see that?</p>	<p style="text-align: right;">Page 28</p> <p>1 expenses cannot be included because the governing</p> <p>2 documents and court orders exclude any revenue-generating</p> <p>3 expenses.</p> <p>4 My question was, where in the CC&amp;Rs do you see</p> <p>5 that we cannot charge the unit owners expenses from</p> <p>6 revenue-generating areas of the business?</p> <p>7 A Well, I don't think it says that. I think what</p> <p>8 it does say is what can be included, not what cannot be</p> <p>9 included. So I think if you look to see what can be</p> <p>10 included -- and, again, if we look at -- I think I</p> <p>11 mentioned this yesterday -- Section 9 of the CC&amp;Rs --</p> <p>12 wait a minute. Am I looking at the right --</p> <p>13 Q Exhibit 1 are the CC&amp;Rs.</p> <p>14 THE COURT: Mr. McElhinney, can you help him</p> <p>15 look and make sure he's on the right thing.</p> <p>16 MR. McELHINNEY: Absolutely.</p> <p>17 THE WITNESS: I thought it was Article 9.</p> <p>18 BY MR. McELHINNEY:</p> <p>19 Q You may be in the wrong book. We're looking</p> <p>20 for 6.9.</p> <p>21 A So, yeah, 6.9 talks about what items are</p> <p>22 included in the various types of charges to the unit</p> <p>23 owners.</p> <p>24 Q Is that the only section in the CC&amp;Rs that</p>
<p style="text-align: right;">Page 27</p> <p>1 A You're on line 22?</p> <p>2 Q I'm on line 11.</p> <p>3 A Yes, I see that. Okay.</p> <p>4 Q Do you agree with that representation about</p> <p>5 public pool expenses?</p> <p>6 THE COURT: Sir, if you need to read in front</p> <p>7 or behind to give yourself context in the document,</p> <p>8 please feel free to do so.</p> <p>9 THE WITNESS: I do agree with the</p> <p>10 representation.</p> <p>11 BY MR. McELHINNEY:</p> <p>12 Q Okay. And can you direct me where in the</p> <p>13 Seventh Amended CC&amp;Rs it says you have to exclude</p> <p>14 revenue-generating expenses?</p> <p>15 A No.</p> <p>16 Q Why?</p> <p>17 A First of all, I don't have the CC&amp;Rs in front</p> <p>18 of me at the moment.</p> <p>19 Q It's Exhibit 1. You can take a look at it if</p> <p>20 you'd like. It will be in Book No. 1.</p> <p>21 A Your question again? I'm sorry.</p> <p>22 Q You said you agree with the statement in that</p> <p>23 Exhibit 23 that says public pool expenses that were</p> <p>24 included -- I'm going to paraphrase -- the public pool</p>	<p style="text-align: right;">Page 29</p> <p>1 talks about what items are included in the CC&amp;Rs?</p> <p>2 A I don't know. It may -- I don't think so, but</p> <p>3 my point is that I think this is -- this section is what</p> <p>4 governs. There might be other sections here, but this</p> <p>5 specifically says -- talks specifically about the shared</p> <p>6 facility unit expense, the hotel expense and the</p> <p>7 reserves.</p> <p>8 Q So as an example, turn to page 15 of the CC&amp;Rs,</p> <p>9 please.</p> <p>10 A Okay.</p> <p>11 Q At paragraph IV, "A nonexclusive easement to</p> <p>12 use and enjoy portions of the shared facilities unit</p> <p>13 which from time to time are made available by the owner</p> <p>14 of the shared facilities unit for use by the unit owners</p> <p>15 of the hotel units, residential units and commercial</p> <p>16 units and the hotel guests subject to such rules and</p> <p>17 regulations, restrictions, scheduling requirements, fees,</p> <p>18 costs and use charges as may be adopted or imposed from</p> <p>19 time to time by the shared facilities unit owner,</p> <p>20 including without limitation each unit owner's</p> <p>21 proportionate share of the shared facilities expenses as</p> <p>22 more particularly described in Section 6.9 below."</p> <p>23 A Right.</p> <p>24 Q Why is that not inclusive of the pool?</p>

<p style="text-align: right;">Page 30</p> <p>1 MR. MILLER: Objection. Your Honor.</p> <p>2 Irrelevant.</p> <p>3 THE COURT: Overruled.</p> <p>4 You can answer.</p> <p>5 BY MR. McELHINNEY:</p> <p>6 Q Do you understand my question?</p> <p>7 A Yes. And, again, all I can say is that I think</p> <p>8 that the shared facility unit is restricted to the</p> <p>9 condominium tower. That's the shared facility units.</p> <p>10 It's in the condominium tower.</p> <p>11 Q I want to make sure I understand what you're</p> <p>12 saying.</p> <p>13 The only expenses for which the plaintiff unit</p> <p>14 owners are responsible are the shared facilities areas</p> <p>15 within the condominium tower. Is that your testimony?</p> <p>16 A Yes, that are within the tower and that the --</p> <p>17 that relate to the tower. So, for example, there are</p> <p>18 certain expenses that are common expenses to the whole</p> <p>19 hotel, but an allocation has to be made for those</p> <p>20 expenses that apply to the tower.</p> <p>21 So there's different formulas that -- when I</p> <p>22 went through and determined what the charges are, the</p> <p>23 document -- 140 that we were looking at yesterday, that</p> <p>24 exhibit --</p>	<p style="text-align: right;">Page 32</p> <p>1 Q MEI-GSR; correct?</p> <p>2 A Yeah.</p> <p>3 Q "...for use by the unit owners and the hotel</p> <p>4 guests."</p> <p>5 What do you think that's referencing? Just</p> <p>6 things that are in the tower?</p> <p>7 A Well, and the condominium units. Again, it has</p> <p>8 to do with an allocation of expenses.</p> <p>9 Q I understand the allocation principle. What</p> <p>10 I'm trying to figure out is, are there expenses outside,</p> <p>11 such as the pool area or the lobby or the front desk or</p> <p>12 the mezzanine that there's refurbishing going on -- are</p> <p>13 the unit owners responsible for that according to your</p> <p>14 interpretation of the CC&amp;Rs?</p> <p>15 A No.</p> <p>16 Q Okay.</p> <p>17 A Again, you keep asking me about my</p> <p>18 interpretation, and I keep telling you that my</p> <p>19 interpretation is based on my attorney's interpretation,</p> <p>20 and if you want -- you'll have to question her for her</p> <p>21 legal reasons for what she arrived at.</p> <p>22 Q Well, sir, the reason I'm asking you is because</p> <p>23 you're in charge of implementing the CC&amp;Rs, not your</p> <p>24 attorney. That's why I'm asking you these questions.</p>
<p style="text-align: right;">Page 31</p> <p>1 Q Yes.</p> <p>2 A -- those include allocations of various</p> <p>3 expenses that were not exclusively attributable to the</p> <p>4 tower but that the tower shares in.</p> <p>5 For example, there's water that -- a certain</p> <p>6 amount of water is pumped into the tower, I guess, for</p> <p>7 lack of a better term, and so we determined how much</p> <p>8 water is used by the -- by those who use the tower or the</p> <p>9 floors in the tower that use the water, and they based it</p> <p>10 on some formula that I don't remember exactly what the</p> <p>11 formulae are, but we went through -- for each of these</p> <p>12 types of expenses that were allocated to the units in</p> <p>13 that Exhibit 140, we went through and did an allocation</p> <p>14 of those expenses that are attributable to the units in</p> <p>15 the tower.</p> <p>16 Q Okay. So looking at page 15, Roman numeral IV</p> <p>17 of Exhibit 1, what do you think that's referring to:</p> <p>18 "The nonexclusive easement to use and enjoy portions of</p> <p>19 the shared facilities unit which from time to time are</p> <p>20 made available by the owner of the shared facilities</p> <p>21 unit"?</p> <p>22 And who is that, by the way? Who's the owner</p> <p>23 of the shared facilities unit?</p> <p>24 A I believe the hotel is.</p>	<p style="text-align: right;">Page 33</p> <p>1 A I understand but -- that's why I hired an</p> <p>2 attorney, because I'm not an attorney, and I can't make</p> <p>3 legal conclusions, especially in situations like this.</p> <p>4 Q I see.</p> <p>5 A We already went through this at the hearings --</p> <p>6 by the way, I misspoke when I said these hearings, these</p> <p>7 four days of hearings, were in 2021. They were in 2020.</p> <p>8 I just wanted to clarify that.</p> <p>9 But we went through all this at the hearings,</p> <p>10 at those hearings, about what was flawed in what I came</p> <p>11 up with originally, before I hired an attorney, in</p> <p>12 determining what types of costs should go into the shared</p> <p>13 facilities unit expense and the hotel expense.</p> <p>14 And this was addressed in those hearings, and</p> <p>15 based on those hearings and based on my then hiring an</p> <p>16 attorney because of those hearings, because of the</p> <p>17 conclusions that were reached at those hearings that my</p> <p>18 calculations based on my legal interpretation of the</p> <p>19 CC&amp;Rs were incorrect. So that's why I hired an attorney,</p> <p>20 one of the reasons I hired an attorney, and had her go</p> <p>21 through, for one, the CC&amp;Rs and determine what items are</p> <p>22 appropriately charged for the shared facilities unit</p> <p>23 expenses and the hotel expenses.</p> <p>24 Q Look at Exhibit 38. I'm going to shift gears</p>

<p style="text-align: right;">Page 34</p> <p>1 with you here. Book No. 4, Exhibit 37.</p> <p>2 A 37?</p> <p>3 Q Yes, sir.</p> <p>4 THE COURT: 37, you said?</p> <p>5 MR. McELHINNEY: Yes. I apologize.</p> <p>6 THE COURT: That's all right.</p> <p>7 The email; right?</p> <p>8 MR. McELHINNEY: Yes, that's correct, Your</p> <p>9 Honor.</p> <p>10 BY MR. McELHINNEY:</p> <p>11 Q Are you with me?</p> <p>12 A Yes.</p> <p>13 Q Now, this email is written by your attorney to</p> <p>14 the Honorable Nancy Saitta, dated December 15, 2021; is</p> <p>15 that correct?</p> <p>16 A Exhibit 37?</p> <p>17 Q It's Exhibit 38, and I apologize. I said both,</p> <p>18 so the confusion is my fault. It's 38.</p> <p>19 A I have it now.</p> <p>20 Q Okay. Do you recognize this email?</p> <p>21 A Yes. I think we addressed it yesterday.</p> <p>22 Q In this email your attorney sent to Justice</p> <p>23 Saitta, it says, "In the receiver's opinion, various</p> <p>24 portions of the September 7, 2015, order gave you</p>	<p style="text-align: right;">Page 36</p> <p>1 gross rents should be deposited to the bank account.</p> <p>2 Q When did you make that determination?</p> <p>3 A When did I make the determination?</p> <p>4 Q Yes, sir.</p> <p>5 A I don't know when, but, again, every -- all the</p> <p>6 orders say rents. Nothing says net rents.</p> <p>7 Q Is your testimony all of the orders say rents,</p> <p>8 not net rents?</p> <p>9 A Well, the -- okay. The orders -- what I'm</p> <p>10 referring to is both the January 7, 2015, order and the</p> <p>11 most recent order from Her Honor, Judge Gonzalez, says</p> <p>12 rents, it doesn't say net rents, and it only makes sense</p> <p>13 to me that I should receive the total rents.</p> <p>14 I then determine what the charges are because</p> <p>15 I'm the one who is supposed to determine what the fee</p> <p>16 charges are the reserve charges to the unit owners and</p> <p>17 then give that net amount to the accounting department of</p> <p>18 GSR to make the disbursements to the unit owners.</p> <p>19 Q Yes, sir.</p> <p>20 But that's not what you requested or what your</p> <p>21 attorney requested on September 15, 2021, is it?</p> <p>22 A Correct.</p> <p>23 Q She talked about the rents, identifying them as</p> <p>24 net of the total charges.</p>
<p style="text-align: right;">Page 35</p> <p>1 authority to open an account and collect rents."</p> <p>2 Is that correct?</p> <p>3 A Yes.</p> <p>4 Q Did you author this email, or did Ms. Sharp</p> <p>5 author this email?</p> <p>6 A My attorney authored it.</p> <p>7 Q Did you review it before she sent it?</p> <p>8 A I don't -- actually, before yesterday, I don't</p> <p>9 recall seeing this email. I may have seen it, but I</p> <p>10 don't recall. I didn't recall seeing it.</p> <p>11 Q Do you agree with its contents? Does it</p> <p>12 accurately reflect the request you're making of the</p> <p>13 Court?</p> <p>14 A Referring to about requesting read-only access?</p> <p>15 Q That's a fair question.</p> <p>16 I'm talking about the second bullet-pointed,</p> <p>17 which says, "That the Court approved the opening of an</p> <p>18 account for the receivership and ordered the following,"</p> <p>19 and then there's three bullet points of the following.</p> <p>20 Do you agree with those?</p> <p>21 A I mentioned yesterday that what I don't agree</p> <p>22 with is that the net -- that the rents net of the total</p> <p>23 charges, the fee charges -- DUF, SFUE and HE fees -- be</p> <p>24 deposited in the bank account. I mentioned yesterday the</p>	<p style="text-align: right;">Page 37</p> <p>1 A Well, from a practical standpoint -- let me</p> <p>2 just -- I mean, I think we're getting into too much</p> <p>3 detail here, because from a practical standpoint, from my</p> <p>4 standpoint practically, it doesn't matter because I'm the</p> <p>5 one who's going to calculate the fee charges, and so</p> <p>6 if -- the point is I don't want to wait to get the rents</p> <p>7 until -- the net rents until I get the fee charges, then</p> <p>8 the net rents come to me, and then, in turn, the checks</p> <p>9 have to be disbursed to the various unit owners.</p> <p>10 I think from a practical standpoint, it makes</p> <p>11 more sense that I get the gross rents, I determine what</p> <p>12 the fees are, give an Excel spreadsheet to your</p> <p>13 accounting department, and then they distribute the</p> <p>14 checks, from a practical standpoint. Otherwise, it</p> <p>15 doesn't really matter to me.</p> <p>16 Q But, sir, my client is on trial for contempt</p> <p>17 for failure to follow orders. There are orders that are</p> <p>18 saying you're supposed to calculate net rent and we pay</p> <p>19 you the net rent.</p> <p>20 Do you deny that?</p> <p>21 A I'm sorry. What order says that?</p> <p>22 Q The January -- --</p> <p>23 A I'm sorry. Are you talking about the order</p> <p>24 from Judge Saitta, Justice Saitta?</p>

<p style="text-align: right;">Page 38</p> <p>1 Q Yeah. The January 4, 2022, order that says we</p> <p>2 are supposed to pay you -- exactly what this particular</p> <p>3 exhibit says, that we are to pay you the net rents after</p> <p>4 you subtract the DUF, SFUE and HE fees combined and</p> <p>5 reserves.</p> <p>6 A I understand, but what I'm saying is, first of</p> <p>7 all -- okay. So let's just assume that that modifies the</p> <p>8 January 7, 2015, order.</p> <p>9 Q It does, doesn't it?</p> <p>10 A Let's assume it does.</p> <p>11 Q Okay.</p> <p>12 A Okay. But then later, more recently, an order</p> <p>13 came out from Her Honor Gonzalez, Judge Gonzalez. It</p> <p>14 does not say net rents. It says rents.</p> <p>15 Now, I don't know if -- I can't make any</p> <p>16 assumption one way or the other what is meant there, but</p> <p>17 since the original January 7, 2015, order says rents --</p> <p>18 it doesn't say net rents -- and since the most recent</p> <p>19 order says rents, not net rents, I'm saying that it</p> <p>20 should be total rents and that I would determine what the</p> <p>21 fee charges are, let the accounting department at GSR</p> <p>22 know what the net rents are. They would distribute the</p> <p>23 checks.</p> <p>24 Again, it doesn't really matter to me one way</p>	<p style="text-align: right;">Page 40</p> <p>1 order.</p> <p>2 Q Exactly. So I want to make sure I understand.</p> <p>3 Your attorney is writing and sending an email</p> <p>4 to Justice Saitta saying that you want the rents net of</p> <p>5 the total costs including reserves, and she's citing the</p> <p>6 January 7, 2015, order as her authority for that</p> <p>7 position.</p> <p>8 Did I state that correctly?</p> <p>9 A Well, she's citing authority, but the authority</p> <p>10 that she's citing doesn't say net rents.</p> <p>11 Q She says net rents.</p> <p>12 A Yes, I understand that. I understand that.</p> <p>13 Q Okay. And by the way, have you calculated</p> <p>14 reserves yet?</p> <p>15 A Have I calculated -- I'm sorry. Calculated</p> <p>16 what?</p> <p>17 Q Have you calculated the reserves yet?</p> <p>18 A No.</p> <p>19 Q Did you do that for 2021?</p> <p>20 A No.</p> <p>21 Q Have you calculated any fees for 2020?</p> <p>22 A No. We don't have a proper reserve study.</p> <p>23 Q How about 2022?</p> <p>24 A No.</p>
<p style="text-align: right;">Page 39</p> <p>1 or the other. It could be done either way. I'm just</p> <p>2 saying that I would prefer getting -- having the gross</p> <p>3 rents first and then determining what the fee charges are</p> <p>4 and let the accounting department know what the net rents</p> <p>5 are because I have to determine what the net rents are</p> <p>6 anyway.</p> <p>7 Q Okay. So sticking with Exhibit 38, what is the</p> <p>8 authority that's cited in this email to support the</p> <p>9 request for net rents?</p> <p>10 A There's nothing cited.</p> <p>11 Q Take a look at the bottom of the page of</p> <p>12 Exhibit 38, page 1, continuing onto page 2.</p> <p>13 What is that a quote from, sir?</p> <p>14 A I'm sorry?</p> <p>15 Q What is that a quote from? You see the</p> <p>16 language where it starts --</p> <p>17 A "All funds" -- are you saying, "All funds</p> <p>18 collected"?</p> <p>19 Q No.</p> <p>20 Let's look at Exhibit 38, the very bottom of</p> <p>21 the page where it says in caps, "IT IS FURTHER ORDERED."</p> <p>22 A Okay.</p> <p>23 Q And then that continues to the second page.</p> <p>24 A I believe that's from the January 7, 2015,</p>	<p style="text-align: right;">Page 41</p> <p>1 Q 2023?</p> <p>2 A No.</p> <p>3 Q Are your numbers for 2021 good anymore under</p> <p>4 the CC&amp;Rs?</p> <p>5 A I don't understand that question.</p> <p>6 Q Your budget numbers for 2021, when you</p> <p>7 calculated those, those were budget numbers; is that</p> <p>8 accurate? In other words, you projected forward, saying</p> <p>9 here's what I think the expenses are going be for the</p> <p>10 DUF, the SFUE and the HE.</p> <p>11 A Again, this was covered already. This was --</p> <p>12 in Exhibit 140, I've explained how those different</p> <p>13 expenditures and the allocation of expenditures were</p> <p>14 arrived at. It was approved by the Court, and whether or</p> <p>15 not the defendants approved it, it's immaterial because</p> <p>16 the Court approved it. So in all due respect, those</p> <p>17 amounts are cast in concrete for now.</p> <p>18 Q I understand your position, but according to</p> <p>19 the CC&amp;Rs --</p> <p>20 And you're supposed to be sure those get</p> <p>21 implemented; do I understand that correctly?</p> <p>22 A That the expenses are implemented?</p> <p>23 Q That the Seventh Amended CC&amp;Rs, the express</p> <p>24 terms of the Seventh Amended CC&amp;Rs, are implemented</p>

<p style="text-align: right;">Page 42</p> <p>1 appropriately.</p> <p>2 A Correct.</p> <p>3 Q So what happens to your 2021 numbers when the</p> <p>4 year 2021 ends? What are you supposed to do in</p> <p>5 accordance with the CC&amp;Rs?</p> <p>6 A I don't understand the question.</p> <p>7 Q Well, aren't you supposed to do a true-up?</p> <p>8 A Oh, yes.</p> <p>9 Q So what should have happened with the 2021</p> <p>10 numbers at the end of that year, by April 1st of 2022,</p> <p>11 you should have gone back and done a true-up; isn't that</p> <p>12 correct?</p> <p>13 A Oh, yes. True-ups have to be done every year.</p> <p>14 Q So are your 2021 numbers still valid?</p> <p>15 A Well, they could be. They may be higher. They</p> <p>16 may be lower. I can't tell you because I didn't do a</p> <p>17 true-up, again, for the same reason I haven't done any</p> <p>18 work, any substantive work, other than what I have --</p> <p>19 what I've had to do for the UOA and filed various</p> <p>20 motions, which I've charged for. So, no, it hasn't. No</p> <p>21 true-ups have been done at all.</p> <p>22 Q And that reason is because you're not being</p> <p>23 paid?</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 44</p> <p>1 correct?</p> <p>2 A Yes.</p> <p>3 Q And you agree with me that while you did 2021</p> <p>4 fee calculations, you didn't do fee calculations for the</p> <p>5 reserves; correct?</p> <p>6 A Correct.</p> <p>7 Q Okay. And it also says you'll open a separate</p> <p>8 account over which you'll have sole signatory authority</p> <p>9 over the account and that all rents net of the total</p> <p>10 charges -- DUF, SFUE, HE and reserves -- will be</p> <p>11 deposited; correct?</p> <p>12 A Correct.</p> <p>13 Q When did you finally open that account?</p> <p>14 A Sometime, I would say -- maybe the second week</p> <p>15 of May of this year.</p> <p>16 Q Of this year.</p> <p>17 So you agree with me that an order came out --</p> <p>18 and we'll look at it in a minute -- on January 4, 2022,</p> <p>19 ordering you to open that separate account into which you</p> <p>20 would deposit net rents? Do you agree with that?</p> <p>21 A Yes.</p> <p>22 Q And it took you since January 2022 to just get</p> <p>23 that account opened?</p> <p>24 A Well, again, I explained the reasons for that.</p>
<p style="text-align: right;">Page 43</p> <p>1 Q Okay. So one month after your attorney wrote</p> <p>2 that email to the Court, you actually filed a Motion for</p> <p>3 Orders &amp; Instructions, didn't you?</p> <p>4 A Well, I filed a motion for instruction -- a</p> <p>5 couple motions for instructions.</p> <p>6 Q Take a look at Exhibit 19, please.</p> <p>7 A I have it.</p> <p>8 Q In this document, do you make a request to the</p> <p>9 Court to open an account and receive net fees?</p> <p>10 A What page are you on?</p> <p>11 Q Page 8.</p> <p>12 A I'm on page 8.</p> <p>13 Q I'm going to redirect you.</p> <p>14 Go to page 11, please.</p> <p>15 A Page 11?</p> <p>16 Q Yes, sir.</p> <p>17 A Did you want to read it, or do you want me to</p> <p>18 read it?</p> <p>19 Q I don't care if we read it out loud or not.</p> <p>20 Let me ask you a question about it.</p> <p>21 Are you requesting net rent or gross rent in</p> <p>22 that motion?</p> <p>23 A Net rents.</p> <p>24 Q And it's for DUF, SFUE, HE and for reserves;</p>	<p style="text-align: right;">Page 45</p> <p>1 There's a couple reasons. If you want me to go over them</p> <p>2 again, I will. In fact, I will.</p> <p>3 First of all, I attempted multiple times to get</p> <p>4 an Employee Identification Number from the Internal</p> <p>5 Revenue Service. This has been going on for months back</p> <p>6 and forth. Finally, I gave up on that, and I was going</p> <p>7 to open an account under the GSR UOA, an ID number, at</p> <p>8 the same bank that the UOA uses, and they told me they</p> <p>9 can't do that.</p> <p>10 So then I was trying to find a bank that would</p> <p>11 accept a receivership account, and I've contacted a</p> <p>12 number of banks, and the only bank that said they might</p> <p>13 do it was U.S. Bank, and they said, "We'll have to wait</p> <p>14 30 days and get a determination from our legal</p> <p>15 department."</p> <p>16 So I decided finally, let me -- I'm going to</p> <p>17 keep calling around. I finally found a bank, which is</p> <p>18 First Independent Bank. It took a while for them to</p> <p>19 accept a receivership account, but they finally did.</p> <p>20 So, yes, it took quite a long time to be able</p> <p>21 to open an account, and, you know, there was only so much</p> <p>22 time and work I was going to do. I spent a lot of</p> <p>23 time -- I had to refile my applications for the EIN</p> <p>24 because the IRS kept coming back and saying, you have to</p>

<p style="text-align: right;">Page 46</p> <p>1 do this, you have to do that. And I actually talked to a</p> <p>2 firm that specializes in this sort of thing, and I think</p> <p>3 they're in Los Angeles. They told me what to do. I did</p> <p>4 that. That didn't work.</p> <p>5 So, again, I had to go through this whole</p> <p>6 process before I opened -- was able to open a bank</p> <p>7 account. And I can tell you I didn't charge for a lot of</p> <p>8 my time to do this because I just didn't think it was</p> <p>9 fair to charge for all my time, but I charged for some of</p> <p>10 it.</p> <p>11 So, anyway, yes, it took a long time to</p> <p>12 eventually get an account opened.</p> <p>13 Q By the way, did you ever send wiring</p> <p>14 instructions to my client for that new account you</p> <p>15 opened?</p> <p>16 A I didn't -- no, because I was waiting for the</p> <p>17 judge, Her Honor, to authorize this, and then you filed</p> <p>18 the interpleader.</p> <p>19 So what eventually happened -- my understanding</p> <p>20 is now that the funds have been released -- and, in fact,</p> <p>21 I spoke with someone yesterday here at the courthouse in</p> <p>22 administration to see if they've received the funds yet,</p> <p>23 and they said they have, but they don't know how to issue</p> <p>24 it. Those funds, that 135,000 and change, will be</p>	<p style="text-align: right;">Page 48</p> <p>1 Mr. Teichner, in your motion --</p> <p>2 We're on Exhibit 9.</p> <p>3 A Exhibit 9?</p> <p>4 Q I'm sorry. Exhibit 19.</p> <p>5 -- you are discussing your fees for 2020; is</p> <p>6 that accurate?</p> <p>7 A I'm sorry. Where are you?</p> <p>8 Q You know, that's really a sloppy question on my</p> <p>9 part. I apologize.</p> <p>10 Why don't we go back to page 11.</p> <p>11 A Page 11.</p> <p>12 Q The fees you're discussing here or the</p> <p>13 calculations you're discussing here are for the year</p> <p>14 2020; is that accurate?</p> <p>15 As an example, if you look on page 11, line 16,</p> <p>16 "Therefore, it is prudent to have the fees calculated by</p> <p>17 the prior receiver remain in place until the Plaintiffs'</p> <p>18 motion is determined, and if the motion is denied, the</p> <p>19 revised fees are calculated for 2020 based upon the</p> <p>20 Court's approval for the methodology for 2021."</p> <p>21 So do we agree that this motion is addressing</p> <p>22 2020 calculations?</p> <p>23 A It's addressing 2020, yes.</p> <p>24 Q Okay. Now, in this motion, on pages 10 and 11,</p>
<p style="text-align: right;">Page 47</p> <p>1 available a week from Thursday or Friday.</p> <p>2 Q Did you recently tell my client you were going</p> <p>3 to send him wiring instructions to your new account?</p> <p>4 A Did I tell your client?</p> <p>5 Q Yes, sir.</p> <p>6 A I don't recall. I may have or my attorney may</p> <p>7 have.</p> <p>8 Q By the way, are you still represented by</p> <p>9 Ms. Sharp?</p> <p>10 A Yes.</p> <p>11 Q Why isn't she here?</p> <p>12 A She's found no reason -- saw no reason to be</p> <p>13 here.</p> <p>14 Q She's what?</p> <p>15 A She saw no reason to be here.</p> <p>16 Q I see.</p> <p>17 A Plus, again, to be honest -- again, to be</p> <p>18 candid, she didn't want to incur more time without having</p> <p>19 been paid.</p> <p>20 Q So she thought it was better to send you over</p> <p>21 here alone?</p> <p>22 A Well, I'm not here alone because -- yeah. I'm</p> <p>23 a big boy.</p> <p>24 Q All right. Fair enough.</p>	<p style="text-align: right;">Page 49</p> <p>1 you use the terminology, "The receiver also requests that</p> <p>2 the DUF, SFUE and HE currently being charged prior to the</p> <p>3 entry of the Court's September 29, 2021, order remain in</p> <p>4 place until the fees for 2020 are calculated and approved</p> <p>5 by the Court so that only a single account adjustment</p> <p>6 will be necessary."</p> <p>7 Do you recall using that language?</p> <p>8 A Yes.</p> <p>9 Q And what were you referring to when you said</p> <p>10 that?</p> <p>11 A I think it's self-explanatory, but the point</p> <p>12 is, the 2021 fees, as have been calculated, will be</p> <p>13 applied to the year 2020 until revised fees for the year</p> <p>14 2020 have been calculated or recalculated.</p> <p>15 Q When were your 2021 fees approved?</p> <p>16 A I'm sorry. Were they approved?</p> <p>17 Q When were they approved?</p> <p>18 A I don't remember the exact date.</p> <p>19 Q January 4, 2022; isn't that; correct?</p> <p>20 A If you tell me so, I won't disagree with that.</p> <p>21 That may have been when they were approved.</p> <p>22 Q Look at Exhibit 26, sir. It's in Book 3.</p> <p>23 A I'm sorry. 26?</p> <p>24 Q 26, yes, sir.</p>



<p style="text-align: right;">Page 50</p> <p>1 A I have it.</p> <p>2 Q Is that the approval of your 2021 fees, sir,</p> <p>3 court approval?</p> <p>4 A It is an approval, but I don't know if it's a</p> <p>5 confirmation of something that's been approved before,</p> <p>6 because my recollection is that those fees that I had</p> <p>7 calculated were submitted back in August of 2021, and I</p> <p>8 don't recall whether there was some other time subsequent</p> <p>9 to that but before this January 4, 2022, order where they</p> <p>10 were approved. I can't say, but certainly this order</p> <p>11 does mention the approval of those.</p> <p>12 Q So I'm going to give you a hypothetical. I'm</p> <p>13 going to ask you to assume that's the first order that</p> <p>14 came out that approved your 2021 fees.</p> <p>15 A Okay.</p> <p>16 Q The phrase that you use that says, "The</p> <p>17 receiver also requests that the DUF, SFUE and HE</p> <p>18 currently being charged prior to the entry of the Court's</p> <p>19 September 29, 2021, order remain in place until the fees</p> <p>20 for 2020 are recalculated and approved by this Court so</p> <p>21 that only a single account adjustment will be necessary,"</p> <p>22 that could not have been referencing your 2021 fees that</p> <p>23 weren't approved until January of 2022; correct?</p> <p>24 MR. MILLER: Objection. Ambiguous, Your Honor.</p>	<p style="text-align: right;">Page 52</p> <p>1 calculations were approved by the Court?</p> <p>2 A I don't know if I was asking -- again, I don't</p> <p>3 remember what 19 says, but I don't think I was asking for</p> <p>4 anything to be applied to 2020. I was going to</p> <p>5 recalculate the 2020 fees as well. That was my intent.</p> <p>6 Q I don't mean to be confusing you, so let me see</p> <p>7 if I can't sort of walk us through this minefield.</p> <p>8 In your Motion for Orders &amp; Instructions filed</p> <p>9 October 18, 2021, you were asking for the Court's</p> <p>10 permission to calculate and approve your 2020 fee</p> <p>11 calculations.</p> <p>12 Do I understand that correctly?</p> <p>13 A Yes, but they hadn't been determined yet. The</p> <p>14 2020 had been determined.</p> <p>15 Q And until such time as they were approved by</p> <p>16 the Court, you were asking the Court to apply different</p> <p>17 fees; correct?</p> <p>18 A Different than what was applied by GSR?</p> <p>19 Q Yes, sir.</p> <p>20 A Yes.</p> <p>21 Q And what was that?</p> <p>22 A Well, the intention, again, was for me to</p> <p>23 calculate the fees for 2020 to replace what GSR had</p> <p>24 charged for 2020 for the fees that I would recalculate</p>
<p style="text-align: right;">Page 51</p> <p>1 THE COURT: Overruled.</p> <p>2 THE WITNESS: Possibly, if that was the first</p> <p>3 time.</p> <p>4 BY MR. McELHINNEY:</p> <p>5 Q So your testimony under oath today is that what</p> <p>6 you meant by that phrase was to apply your fees from</p> <p>7 2021?</p> <p>8 A I'm sorry. I don't understand the question.</p> <p>9 Q I want to make sure I understand your</p> <p>10 testimony, sir, because it's very important.</p> <p>11 This phrase that I was just identifying that</p> <p>12 "The receiver also requests that the DUF, SFUE and HE</p> <p>13 currently being charged prior to the entry of the Court's</p> <p>14 September 29, 2021, order remain in place until the fees</p> <p>15 for 2020 are recalculated," your testimony under oath is</p> <p>16 what you were referring to is your 2021 calculations?</p> <p>17 A I still -- I don't understand that question.</p> <p>18 THE COURT: Can you rephrase your question,</p> <p>19 please.</p> <p>20 MR. McELHINNEY: I'll rephrase.</p> <p>21 BY MR. McELHINNEY:</p> <p>22 Q Based upon your request in your motion,</p> <p>23 Exhibit 19, filed October 18, 2021, what fees were you</p> <p>24 asking to be applied until such time as your 2020</p>	<p style="text-align: right;">Page 53</p> <p>1 for 2020.</p> <p>2 Q And until such time as your 2020 fees were</p> <p>3 approved by the Court, what fees did you ask the Court to</p> <p>4 apply?</p> <p>5 A Well, that's a hypothetical. I don't know what</p> <p>6 I would ask them to apply. The point is that I wanted to</p> <p>7 recalculate the 2020 fees, so it's up -- that would be up</p> <p>8 to the Court, which the Court ultimately decided that I</p> <p>9 apply the 2021 fees to 2020.</p> <p>10 Q Let me read this phrase to you again, and I'm</p> <p>11 going to ask you the simple question afterwards: What</p> <p>12 were you referring to?</p> <p>13 MR. MILLER: Your Honor, can we get a cite on</p> <p>14 where that phrase is coming from? I'd just like to make</p> <p>15 sure it's the actual statement.</p> <p>16 THE COURT: Absolutely. Thank you.</p> <p>17 Let's go back to the exhibits.</p> <p>18 MR. McELHINNEY: Court's indulgence.</p> <p>19 THE COURT: Sure.</p> <p>20 Mr. McElhinney, is this a good place for a</p> <p>21 break? We've been going an hour and 15 minutes, which is</p> <p>22 usually my break time if I have jurors.</p> <p>23 MR. McELHINNEY: I'll be good for a break. Let</p> <p>24 me finish this up, if I may.</p>

<p style="text-align: right;">Page 54</p> <p>1 THE COURT: Okay.</p> <p>2 BY MR. McELHINNEY:</p> <p>3 Q So the language appears in Exhibit 19, page 8,</p> <p>4 line 13, and it says --</p> <p>5 THE COURT: Hold on a second. Let him get</p> <p>6 there.</p> <p>7 THE WITNESS: I have it.</p> <p>8 BY MR. McELHINNEY:</p> <p>9 Q Line 13 on page 8.</p> <p>10 You state in your motion, "The receiver also</p> <p>11 requests that the DUF, SFUE and HE currently being</p> <p>12 charged prior to the entry of this Court's September 29,</p> <p>13 2021, order remain in place until the fees for 2020 are</p> <p>14 recalculated and approved by this Court so that only a</p> <p>15 single adjustment will be necessary."</p> <p>16 Do you see where I read that?</p> <p>17 A Yes.</p> <p>18 Q What were you referring to?</p> <p>19 A I don't recall what fees -- the latest fees</p> <p>20 that would have been determined for 2020, what those</p> <p>21 were, whether there was some other order or something</p> <p>22 else that was filed that -- whether it was a motion that</p> <p>23 I filed or something prior to the September 29, 2021,</p> <p>24 order that would have mentioned what those fees that were</p>	<p style="text-align: right;">Page 56</p> <p>1 THE COURT: It is.</p> <p>2 MR. SMITH: So I don't know that we ever got</p> <p>3 notice that that was submitted to Your Honor.</p> <p>4 THE COURT: It isn't submitted. That's why I'm</p> <p>5 asking the question, because you didn't oppose it.</p> <p>6 MR. SMITH: The question is, do we oppose the</p> <p>7 motion to seal that? We do.</p> <p>8 THE COURT: Then why didn't you file an</p> <p>9 opposition to the motion?</p> <p>10 MR. SMITH: Again, I don't know that I recall</p> <p>11 actually seeing if it was submitted or this motion.</p> <p>12 THE COURT: The Motion to File Under Seal was</p> <p>13 electronically filed -- and I don't know how service</p> <p>14 works here --</p> <p>15 MR. SMITH: I don't either.</p> <p>16 THE COURT: -- on May 1st at 16:33:47.</p> <p>17 MR. SMITH: I'll go back and see if I was</p> <p>18 served with it. I don't recall seeing it.</p> <p>19 THE COURT: I have an order that referred to</p> <p>20 it, so one would have thought you had notice of it. When</p> <p>21 I entered the order, I reviewed it.</p> <p>22 MR. SMITH: In fact, when I saw that order, I</p> <p>23 was confused how that happened without being noticed that</p> <p>24 it was submitted to Your Honor in camera.</p>
<p style="text-align: right;">Page 55</p> <p>1 already in place were. I don't recall what those were.</p> <p>2 Q Sir, do you find that phrase confusing?</p> <p>3 A The only reason why it might be confusing -- at</p> <p>4 least now it's confusing -- is because I don't know what</p> <p>5 the most recent order was prior to this order.</p> <p>6 MR. McELHINNEY: This would be a good time to</p> <p>7 take a break, Your Honor.</p> <p>8 THE COURT: All right. So, sir, you can step</p> <p>9 up, get down.</p> <p>10 Before counsel leave, I have a question</p> <p>11 because I have heard multiple versions of the same</p> <p>12 testimony this morning, I have been looking at your</p> <p>13 docket on your case.</p> <p>14 On May 1st, there was a Motion to Seal</p> <p>15 Documents related to the plaintiffs' fee agreements. I</p> <p>16 ordered an injunction on the Motion for Attorney Fees. I</p> <p>17 have not seen an opposition to that motion.</p> <p>18 Is there any objection to the Motion to File</p> <p>19 Under Seal?</p> <p>20 MR. SMITH: Is this related to the --</p> <p>21 THE COURT: You either need to have a mic or</p> <p>22 your thing.</p> <p>23 MR. SMITH: I apologize, Your Honor.</p> <p>24 Is this related to the retainer agreement?</p>	<p style="text-align: right;">Page 57</p> <p>1 THE COURT: It wasn't submitted in camera. I</p> <p>2 didn't accept an in camera filing. I don't accept in</p> <p>3 camera because of the issues with being a senior judge on</p> <p>4 a single case assignment. So I'm not doing anything in</p> <p>5 camera.</p> <p>6 It was filed under seal and currently shows</p> <p>7 Exhibits 1 and 2 in connection with the May 1, 2023,</p> <p>8 filing.</p> <p>9 So the question is, are you filing an</p> <p>10 opposition?</p> <p>11 MR. SMITH: We'll make an oral opposition in</p> <p>12 light of that.</p> <p>13 THE COURT: Tell me what it is.</p> <p>14 MR. SMITH: There's no privilege that applies.</p> <p>15 There's no confidentiality that would apply to it, and I</p> <p>16 don't know how the Supreme Court Rules and retainer</p> <p>17 agreement satisfies any of the supreme court sealing and</p> <p>18 filing rules. We all know how stringent those are, and I</p> <p>19 don't see how that retainer agreement satisfies any of</p> <p>20 them, and it would be the plaintiffs' burden to establish</p> <p>21 those.</p> <p>22 THE COURT: So since you are in the process in</p> <p>23 Carson City on many other things, I am going to ask you</p> <p>24 to document that position in writing. How long, since</p>

<p style="text-align: right;">Page 58</p> <p>1 you're here, do you think it will take you to get it 2 filed?</p> <p>3 MR. SMITH: We can get something done -- if 4 Friday is acceptable or Monday, I would --</p> <p>5 THE COURT: How about Monday of next week?</p> <p>6 MR. SMITH: Monday would be preferable. Thank 7 you.</p> <p>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.</p> <p>11 MR. SMITH: I'll go back and check that.</p> <p>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?</p> <p>15 MS. COLLINGS: Yes.</p> <p>16 THE COURT: Thank you, Ms. Collings. I was 17 looking at you. It wasn't Mr. Miller.</p> <p>18 We'll be in recess for ten minutes. 19 (A recess was taken.)</p> <p>20 THE COURT: Mr. Smith, you wanted to add 21 something to our prebreak exchange about the Motion to 22 Seal?</p> <p>23 MR. SMITH: That is correct, Your Honor. 24 On our break, I did a little more digging so I</p>	<p style="text-align: right;">Page 60</p> <p>1 the briefing and motion practice before Your Honor ruled. 2 That obviously presents a host of issues, but I do 3 want --</p> <p>4 THE COURT: There were redacted versions of the 5 filed motion.</p> <p>6 MR. SMITH: Not that we received given the 7 Motion to Seal. So our side confirmed --</p> <p>8 THE COURT: Ms. Collings, can you make sure you 9 send him the redacted versions of the fee agreements as 10 well?</p> <p>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.</p> <p>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.</p> <p>20 THE COURT: That's true, but I did, and I ruled 21 on it.</p> <p>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.</p>
<p style="text-align: right;">Page 59</p> <p>1 could clarify what I said and confirm that my memory was 2 somewhat correct.</p> <p>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 --</p> <p>8 THE COURT: Get back closer to the mic. 9 Thank you.</p> <p>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.</p> <p>16 THE COURT: Ms. Collings, can you email the 17 Motion to Seal without exhibits to Mr. Smith?</p> <p>18 MS. COLLINGS: Yes, absolutely, Your Honor. 19 I'll do that.</p> <p>20 MR. SMITH: Which also raises another 21 interesting point to me that occurred.</p> <p>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</p>	<p style="text-align: right;">Page 61</p> <p>1 THE COURT: Anything else?</p> <p>2 MR. SMITH: No, Your Honor. Thank you.</p> <p>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?</p> <p>7 Sir, you can be seated. You're still under 8 oath.</p> <p>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?</p> <p>12 MR. McELHINNEY: Hour, hour and a half.</p> <p>13 THE COURT: Okay. Mr. Veeho and I had the 14 right assessment, then.</p> <p>15 MR. McELHINNEY: I apologize if I was wrong on 16 my assessment, Your Honor.</p> <p>17 BY MR. McELHINNEY:</p> <p>18 Q Mr. Teichner, we were talking about the phrase 19 that you use in your Exhibit 19 Motion for Orders &amp; 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</p>

<p style="text-align: right;">Page 62</p> <p>1 approved by the Court," and you told us you didn't</p> <p>2 remember as you sit here today.</p> <p>3 Is that accurate?</p> <p>4 A I don't remember what today? I don't</p> <p>5 remember --</p> <p>6 Q I had asked you, what did you mean to refer to</p> <p>7 in that phrase, and you said you did not recall.</p> <p>8 A Well, again, all I can recall about that is</p> <p>9 that I believe that the fee charges prior to September --</p> <p>10 prior to September 29, 2021, that were in effect and were</p> <p>11 ordered by Judge Sattler at the time were Proctor's</p> <p>12 figures, figures that Proctor had calculated. That's my</p> <p>13 recollection.</p> <p>14 In fact, there was a point in time -- and it</p> <p>15 may have been back in 2019, but I don't recall -- where I</p> <p>16 reapplied -- I was ordered to reapply Proctor's figures,</p> <p>17 so that still may have been in effect prior to September</p> <p>18 29, 2021. That's my recollection. It's Proctor's</p> <p>19 figures.</p> <p>20 Q So what you meant by that reference was</p> <p>21 Proctor's numbers?</p> <p>22 A I believe so.</p> <p>23 Q Okay. Did you ever change your representations</p> <p>24 and tell the Court you meant something different by the</p>	<p style="text-align: right;">Page 64</p> <p>1 A Okay.</p> <p>2 Q Look at line 14 on page 3 of Exhibit 32.</p> <p>3 Actually, start on line 10.</p> <p>4 A Line 14 on page 3?</p> <p>5 Q Page 3. Come up to line 10 instead of line 14,</p> <p>6 where it says, "The Court, in its Order Granting</p> <p>7 Receiver's Motion for Orders &amp; Instructions, filed</p> <p>8 January 4, 2022..."</p> <p>9 And then "(ii) ordered that the 'fees in place</p> <p>10 prior to the Court's September 27, 2021, Order shall</p> <p>11 remain in place until the fees for 2020 are recalculated</p> <p>12 and approved by the Court,' and those fees are the fees</p> <p>13 for 2021 approved by the Court."</p> <p>14 Do you see that language?</p> <p>15 A Yes.</p> <p>16 Q Why did you change your position on what that</p> <p>17 statement meant? In the earlier exhibit we looked at,</p> <p>18 Exhibit 19, you said that phrase meant Proctor's numbers;</p> <p>19 correct?</p> <p>20 A Yes.</p> <p>21 Q And in this motion, you tell us that that</p> <p>22 phrase means your 2021 numbers.</p> <p>23 I want to know why you changed your position,</p> <p>24 sir.</p>
<p style="text-align: right;">Page 63</p> <p>1 phrase?</p> <p>2 A I'm sorry. Did I ever --</p> <p>3 Q Let me back up.</p> <p>4 Exhibit 19, page 10.</p> <p>5 A Okay. I've got it.</p> <p>6 Q Line 14.</p> <p>7 A Line 14?</p> <p>8 Q Yes, sir.</p> <p>9 It reads, "Therefore, Mr. Teichner prefers that</p> <p>10 the fees calculated by the prior receiver remain in place</p> <p>11 until revised fees are calculated for 2020 based on the</p> <p>12 Court's approval of the methodology for 2021."</p> <p>13 A There you go. I think that -- I think that</p> <p>14 clarifies that it was Proctor's figures.</p> <p>15 Q So my question is, did you ever later file</p> <p>16 something with the Court where you said that phrase meant</p> <p>17 something different?</p> <p>18 A I don't believe so.</p> <p>19 Q Take a look at Exhibit 32, Book 3.</p> <p>20 A This is Receiver's Omnibus Reply to Parties'</p> <p>21 Oppositions to the Receiver's Motion for Orders &amp;</p> <p>22 Instructions. Okay.</p> <p>23 Q Yes, sir.</p> <p>24 Turn to page 3, please, of that Exhibit 34.</p>	<p style="text-align: right;">Page 65</p> <p>1 A Because this motion was filed on December 19th</p> <p>2 of 2022, which was after the January 4, 2022, order</p> <p>3 saying that I recalculate the 2020 fee charges based on</p> <p>4 2021. That's why this is --</p> <p>5 Q That's -- I didn't mean to interrupt you. Go</p> <p>6 ahead.</p> <p>7 A I'm sorry?</p> <p>8 Q I didn't mean to interrupt. Go ahead.</p> <p>9 A Yeah. So certainly that was changed due to the</p> <p>10 order of January 4, 2022, where now, instead of Proctor's</p> <p>11 figures, I use the 2021 figures for 2020 until the 2020</p> <p>12 figures are recalculated.</p> <p>13 Q That makes no sense to me, Mr. Teichner, so let</p> <p>14 me ask some follow-up questions.</p> <p>15 The phrase you used, sir, and did not change</p> <p>16 was that "The receiver also requests that the DUF, SFUE</p> <p>17 and HE currently being charged prior to the entry of the</p> <p>18 Court's September 29, 2021, order remain in place until</p> <p>19 the fees for 2020 are recalculated and approved by the</p> <p>20 Court."</p> <p>21 So in your filing of October of 2021, you said</p> <p>22 you meant Proctor's numbers. Yes?</p> <p>23 A Yes.</p> <p>24 Q And in your filing, Exhibit 32, filed December</p>

<p style="text-align: right;">Page 66</p> <p>1 19, 2022, you said that exact same phrase meant your 2021</p> <p>2 fee calculations; is that correct?</p> <p>3 A One more time. This is -- let me look is that</p> <p>4 wording one more time.</p> <p>5 I'm sorry. What page are we on again? My</p> <p>6 pages keep flipping here.</p> <p>7 Q I understand.</p> <p>8 You want to look back at the language that you</p> <p>9 used in your October --</p> <p>10 A No. Exhibit 32.</p> <p>11 Q Okay. Turn to page 3, starting on line 10</p> <p>12 through line 16.</p> <p>13 A Again, if I'm reading this correctly, it said</p> <p>14 that the order found that the -- quote: "Fees in place</p> <p>15 prior to the Court's September 27, 2021, Order shall</p> <p>16 remain in place until the fees for 2020 are</p> <p>17 recalculated...and those fees are the fees approved by</p> <p>18 the Court."</p> <p>19 It says above there that "...the Order Granting</p> <p>20 Receiver's Motion for Orders &amp; Instructions, filed</p> <p>21 January 4, 2022, found that the Findings of Fact,</p> <p>22 Conclusions of Law and Order 'directly contradicts the</p> <p>23 Court's December 24th order, is inequitable, and thus is</p> <p>24 denied outright...' and ordered that the 'fees in place</p>	<p style="text-align: right;">Page 68</p> <p>1 A Yes, okay.</p> <p>2 Q Mr. Teichner, four days after you filed your</p> <p>3 Motion for Orders &amp; Instructions on October 18, 2021 --</p> <p>4 2022 -- I apologize -- Plaintiffs filed their Joinder to</p> <p>5 Receiver's Motion for Orders &amp; Instructions filed on</p> <p>6 October 22, 2021. I screwed up those dates. That will</p> <p>7 be confusing as heck on the record. The file stamp on it</p> <p>8 was October 18, 2021, and this Exhibit 20 is file-stamped</p> <p>9 October 22, 2021.</p> <p>10 Did you review this document, sir?</p> <p>11 A Well, I did at the time, yes.</p> <p>12 Q And do you recall the plaintiffs in this motion</p> <p>13 cautioning you, "Don't use that language. It's going to</p> <p>14 cause confusion as to what fees will be applied"?</p> <p>15 A Don't use what language? Why don't we go to</p> <p>16 the line -- the page and line number.</p> <p>17 Q Okay. I'm looking for the page here. Let me</p> <p>18 find it.</p> <p>19 Look at page 3, line 14.</p> <p>20 "The Plaintiffs join in the Receiver's</p> <p>21 request --"</p> <p>22 Are you there with me?</p> <p>23 A Yes.</p> <p>24 Q "-- join in the Receiver's request with</p>
<p style="text-align: right;">Page 67</p> <p>1 prior to the Court's September 27, 2021, Order shall</p> <p>2 remain in place until the fees for 2020 are recalculated</p> <p>3 and approved by this Court,' and those fees are the fees</p> <p>4 for 2021 approved by the Court...accordingly, the</p> <p>5 reversal of the 2020 fees in September 2021 should have</p> <p>6 been reversed since the Court's Order Granting Receiver's</p> <p>7 Motion For Orders &amp; Instructions of January 4, 2022."</p> <p>8 If I'm reading this correctly, it's saying that</p> <p>9 the orders and instructions of January 4, 2022, is what</p> <p>10 governs, and, therefore, the fees that were supposed to</p> <p>11 be applied were -- according to that order of January 4,</p> <p>12 2022, it says that the 2021 fees are to be applied to</p> <p>13 2020 until the 2020 fees are recalculated.</p> <p>14 That's the way I'm reading this.</p> <p>15 Q Did Plaintiffs' counsel at some point warn you</p> <p>16 that this phrase that you used would cause confusion as</p> <p>17 to what fees should be applied?</p> <p>18 THE COURT: Plaintiffs' counsel?</p> <p>19 MR. McELHINNEY: Plaintiffs' counsel, correct,</p> <p>20 in their filing.</p> <p>21 THE WITNESS: Not that I recall. I don't know.</p> <p>22 Maybe, but I don't recall.</p> <p>23 BY MR. McELHINNEY:</p> <p>24 Q Let's go to Exhibit 20. It's in Book No. 3.</p>	<p style="text-align: right;">Page 69</p> <p>1 specific points of clarification. First, the Receiver</p> <p>2 seeks to continue the prior Receiver's calculations in</p> <p>3 effect until the new calculations are adopted." And they</p> <p>4 refer to your motion, page 8, line 13 through 16.</p> <p>5 And, sir, that is where you use the phrase that</p> <p>6 we've been talking about, that "The receiver also</p> <p>7 requests that the DUF, SFUE and HE currently being</p> <p>8 charged prior to the entry of the Court's September 29,</p> <p>9 2021, Order remain in place until the fees for 2020 are</p> <p>10 recalculated."</p> <p>11 That's the phrase they're talking about.</p> <p>12 Do you understand that?</p> <p>13 A Yes.</p> <p>14 Q And they say, "However, the Court rejected the</p> <p>15 continued use of the prior Receiver's fees," and then</p> <p>16 they refer you to the September 29, 2021, order; correct?</p> <p>17 A Yes.</p> <p>18 Q And then it says, "This creates the glaring</p> <p>19 issue of what fees will be applied so that the</p> <p>20 Defendants' contemptuous practice of misappropriating the</p> <p>21 Plaintiffs' rental revenue every month is stopped."</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q So they're recommending you use different</p>

<p style="text-align: right;">Page 70</p> <p>1 language in your order than actually comes down; is that</p> <p>2 correct?</p> <p>3 A I don't know if that's the way I read --</p> <p>4 interpret what they're saying. Again, this is a joinder</p> <p>5 agreement, and it -- I mean, what I said in my motion is</p> <p>6 what I think applies irrespective of what the plaintiffs</p> <p>7 said here, but I'm not sure what they're saying</p> <p>8 necessarily. I don't necessarily understand that they're</p> <p>9 saying that there's confusion.</p> <p>10 Q Isn't that exactly what they say?</p> <p>11 "This creates the glaring issue of what fees</p> <p>12 will be applied so that the Defendants' contemptuous</p> <p>13 practice of misappropriating the Plaintiffs' rental</p> <p>14 revenue every month is stopped."</p> <p>15 Isn't that exactly what they said?</p> <p>16 A Well, again -- again, it "creates an issue of</p> <p>17 what fees will be applied so that the Defendants'</p> <p>18 contemptuous practice of misappropriating the Plaintiffs'</p> <p>19 rental revenue every month is stopped."</p> <p>20 I don't know how to interpret that in the</p> <p>21 context of the defendants' contemptuous practice of</p> <p>22 misappropriating the plaintiffs' rental revenue every</p> <p>23 month. I don't -- I don't understand the connection</p> <p>24 there of what that means, and I don't necessarily believe</p>	<p style="text-align: right;">Page 72</p> <p>1 A No. I'm just saying that's consistent with</p> <p>2 what I said.</p> <p>3 Q And I'm asking you what showed up in the order.</p> <p>4 Let's get to it, shall we? Turn to Exhibit 25.</p> <p>5 A I have it.</p> <p>6 Q Who prepared this order before Justice Saitta</p> <p>7 signed it?</p> <p>8 A Who prepared it?</p> <p>9 Q Yes, sir.</p> <p>10 A Who prepared it for the justice to approve or</p> <p>11 disapprove, to grant it or not grant it?</p> <p>12 Q Yes, sir.</p> <p>13 Whose signature appears on page 9 of Exhibit 25</p> <p>14 where it says, "Submitted by"?</p> <p>15 A "Submitted by Robertson, Johnson, Miller &amp;</p> <p>16 Williamson."</p> <p>17 Q Why was it that Plaintiffs' counsel was</p> <p>18 preparing a proposed order for your motion?</p> <p>19 A Are you asking me?</p> <p>20 Q Absolutely.</p> <p>21 A Why did the plaintiffs --</p> <p>22 Q -- prepare a proposed order for your motion?</p> <p>23 A I don't know, but it was approved by Justice</p> <p>24 Saitta, so it -- I don't -- the why? I don't know why,</p>
<p style="text-align: right;">Page 71</p> <p>1 that means that what I said in my motion is incorrect.</p> <p>2 Q They have taken your phrase and interpreted it</p> <p>3 to mean that you're seeking to return to the prior</p> <p>4 receiver's calculations.</p> <p>5 Isn't that exactly what they say on line 14 and</p> <p>6 15, page 3, Exhibit 20?</p> <p>7 A Yes.</p> <p>8 Q And so they say that's going to create a</p> <p>9 glaring issue of what fees are to be applied.</p> <p>10 Isn't that what they say?</p> <p>11 A Right. But they're not saying what should be</p> <p>12 applied, are they?</p> <p>13 Q Absolutely, they are.</p> <p>14 Turn to page 4, line 20.</p> <p>15 They say, "To stop this ridiculous pattern and</p> <p>16 what has now become an injustice, the Court should</p> <p>17 immediately order that the Receiver's new fee</p> <p>18 calculations are approved retroactive to January 2020 and</p> <p>19 shall be applied for 2020, 2021 and going forward until a</p> <p>20 subsequent order from the Court."</p> <p>21 Do you see that language, sir?</p> <p>22 A Yes. And that's consistent with what I said.</p> <p>23 Q Is that what your order -- the order that came</p> <p>24 out, is that what that says?</p>	<p style="text-align: right;">Page 73</p> <p>1 but I don't think it makes a difference because it was</p> <p>2 approved by the justice.</p> <p>3 Q You didn't ask them to; correct?</p> <p>4 A Oh, no, of course not.</p> <p>5 Q Turn to page 8 of Exhibit 25.</p> <p>6 A I have it.</p> <p>7 Q Line 3.</p> <p>8 A Line 3?</p> <p>9 Q Yes, sir.</p> <p>10 What does it say? Read it out loud, please.</p> <p>11 A It says, "Those fees in place..."</p> <p>12 Q Yes, sir.</p> <p>13 A "Those fees in place prior to the Court's</p> <p>14 September 27, 2021, Order shall remain in place until the</p> <p>15 fees for 2020 are recalculated and approved by this Court</p> <p>16 such that only a single account adjustment will be</p> <p>17 necessary."</p> <p>18 Q That's the language that you said originally</p> <p>19 was a reference to Proctor's numbers.</p> <p>20 A Correct.</p> <p>21 Q That you later said was a reference to your</p> <p>22 2021 fee calculations; correct?</p> <p>23 A Yes.</p> <p>24 Q And this is the same phrase that Mr. Miller</p>

<p style="text-align: right;">Page 74</p> <p>1 warned you in his joinder would cause confusion as to</p> <p>2 what fees should be applied; isn't that true, sir?</p> <p>3 A Possibly, but that's -- ultimately, the order</p> <p>4 said that I would use the 2021 fee calculations for 2020</p> <p>5 so...</p> <p>6 Q Not this order, though; correct?</p> <p>7 A No, not this one.</p> <p>8 Q This order conflicts with the other order;</p> <p>9 would you agree with that?</p> <p>10 A Yes. Absolutely.</p> <p>11 MR. McELHINNEY: Okay. I'm looking through my</p> <p>12 notes, Your Honor, so Court's indulgence.</p> <p>13 THE COURT: You might be done?</p> <p>14 MR. McELHINNEY: I will tell you I'm close.</p> <p>15 THE COURT: I'm glad to hear that.</p> <p>16 BY MR. McELHINNEY:</p> <p>17 Q Look at Exhibit 29 in Book No. 3, please.</p> <p>18 A Did you say page 3?</p> <p>19 Q Exhibit 29. It's in Book No. 3.</p> <p>20 A I have it.</p> <p>21 Q And this is entitled "Receiver's letter dated</p> <p>22 November 14, 2022"; correct?</p> <p>23 A Yes.</p> <p>24 Q In this letter, if you turn to page 2 -- this</p>	<p style="text-align: right;">Page 76</p> <p>1 A Okay.</p> <p>2 Q Thank you.</p> <p>3 So you're looking at the very first page, which</p> <p>4 is your letter on your letterhead to the Honorable</p> <p>5 Elizabeth Gonzalez dated November 14, 2022.</p> <p>6 Are you with me?</p> <p>7 A I see that, yes.</p> <p>8 Q Turn to page 2 of that letter.</p> <p>9 A Okay.</p> <p>10 Q In the very last paragraph that appears at the</p> <p>11 bottom of that page, you're still talking about</p> <p>12 calculated net rent, is that correct, in that paragraph?</p> <p>13 A I'm talking about it but -- yes.</p> <p>14 Q So at this point, you're still trying to</p> <p>15 calculate net rents so that you can get paid; correct?</p> <p>16 A Well, yes. I mean, that only makes sense.</p> <p>17 Right. That only makes sense.</p> <p>18 Q Turn to page 4 of that letter, please, third</p> <p>19 full paragraph.</p> <p>20 A I'm sorry?</p> <p>21 Q Third full paragraph on page 4. It's about the</p> <p>22 middle of the page. It starts out "Certainly."</p> <p>23 Are you with me?</p> <p>24 A "Certainly"? The one that starts "Certainly"?</p>
<p style="text-align: right;">Page 75</p> <p>1 is November 14, 2022. We're now 11 months after entry of</p> <p>2 the order.</p> <p>3 You're still talking about calculated net</p> <p>4 rents; correct?</p> <p>5 A I'm sorry. Who's talking about that?</p> <p>6 Q This was your letter that was filed with the</p> <p>7 Court; is that correct?</p> <p>8 A I'm sorry. I'm looking at an email from</p> <p>9 Mr. Miller to Stefanie Sharp.</p> <p>10 Q Exhibit 29, Book No. 3.</p> <p>11 A I'm sorry.</p> <p>12 Q That's okay.</p> <p>13 A Exhibit 2? There's two exhibits.</p> <p>14 Q We're just starting with the second page back,</p> <p>15 so start at the file-stamped page and go to the next</p> <p>16 page, which is the cover letter of your letter of</p> <p>17 November 14, 2022; correct?</p> <p>18 A There's a letter of May 19, 2022.</p> <p>19 MR. McELHINNEY: May I approach, Your Honor?</p> <p>20 THE COURT: You may.</p> <p>21 MR. McELHINNEY: Just helping Mr. Teichner. I</p> <p>22 want to make sure --</p> <p>23 BY MR. McELHINNEY:</p> <p>24 Q Are you on Exhibit 29? I want you to go to --</p>	<p style="text-align: right;">Page 77</p> <p>1 Q Yes.</p> <p>2 It says, "Certainly, the amount of the net</p> <p>3 rents would first need to be calculated before the</p> <p>4 Receiver could inform GSR of the amount that it would</p> <p>5 need to turn over to the Receiver for past due amounts as</p> <p>6 well as for the most current month's amount. However,</p> <p>7 that task, which will involve a considerable --" I think</p> <p>8 you left out a word "-- amount of time and fees will not</p> <p>9 be performed by this Receiver without having been paid</p> <p>10 the substantial outstanding balance owed for over a year</p> <p>11 and for the ongoing fees that will be incurred for</p> <p>12 performing future procedures."</p> <p>13 Did I read that correctly?</p> <p>14 A Yes.</p> <p>15 Q So in this paragraph, you're acknowledging that</p> <p>16 you haven't yet told GSR what the net rent is to pay to</p> <p>17 you. Do I understand that correctly?</p> <p>18 A Of course, I haven't.</p> <p>19 Q Right.</p> <p>20 So the reason you're not getting paid, sir, is</p> <p>21 because you're not doing the calculations to tell us what</p> <p>22 the net rents are to pay you; correct?</p> <p>23 A Well, I guess that's -- I guess that's true but</p> <p>24 not because I haven't calculated them, because -- they</p>

<p style="text-align: right;">Page 78</p> <p>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.</p>	<p style="text-align: right;">Page 80</p> <p>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</p>
<p style="text-align: right;">Page 79</p> <p>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</p>	<p style="text-align: right;">Page 81</p> <p>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</p>



<p style="text-align: right;">Page 82</p> <p>1 to ask you a question, and I'm going to ask for your</p> <p>2 honest answer.</p> <p>3 Can you see how the conduct of you talking</p> <p>4 about net rent continuously for at least 11 months since</p> <p>5 the entry of the order and suddenly talking about all</p> <p>6 rents would be very confusing to my client?</p> <p>7 A It could be. I'm not saying it's not confusing</p> <p>8 to your client, but I think that it's clear, and my point</p> <p>9 in this letter was that we need to get paid in order to</p> <p>10 be able to do our work. I mean, that was the point in my</p> <p>11 letter.</p> <p>12 Q Turn to Exhibit 37 in Book No. 4.</p> <p>13 I've got you buried in books there,</p> <p>14 Mr. Teichner. I'm sorry.</p> <p>15 A I have it.</p> <p>16 Q Turn to page 4 of Exhibit 37.</p> <p>17 A Okay.</p> <p>18 Q This is an email from you to Reed Brady;</p> <p>19 correct?</p> <p>20 A Yes.</p> <p>21 Q And you say, "Effective immediately, I need you</p> <p>22 to send me the total rents collected on all of the</p> <p>23 plaintiff unit owners' units and on all defendant unit</p> <p>24 owners' units"; correct?</p>	<p style="text-align: right;">Page 84</p> <p>1 matter, but it's probably -- of the two choices, I think</p> <p>2 it's a better choice for us to collect the gross rents</p> <p>3 and then determine what the fees are that apply to the</p> <p>4 rents and give those net figures to GSR to distribute the</p> <p>5 checks.</p> <p>6 Q I'm going to repeat my question, Mr. Teichner.</p> <p>7 Was this email of May 4, 2023, the first time</p> <p>8 you demanded of my client that they hand over gross</p> <p>9 rents?</p> <p>10 A I believe so.</p> <p>11 Q And up until this point, you had gotten court</p> <p>12 orders talking about net rents that you were supposed to</p> <p>13 calculate; correct?</p> <p>14 A Yes. Other than the January 7, 2015, order,</p> <p>15 from what I recall. Well, no. Up to that -- no. I'm</p> <p>16 sorry.</p> <p>17 This is dated May 4, 2023. I would have to see</p> <p>18 when Her Honor Judge Gonzalez's order came out that said</p> <p>19 rents and not net rents, if it was before or after this</p> <p>20 May 14th email.</p> <p>21 Q So if there was an earlier order --</p> <p>22 Do you think Judge Gonzalez said we were to</p> <p>23 hand over gross rents?</p> <p>24 A I'm sorry?</p>
<p style="text-align: right;">Page 83</p> <p>1 A Yes.</p> <p>2 Q Is this the first time you've demanded total</p> <p>3 rents, gross rents, as opposed to net rents?</p> <p>4 A When you say, "demanded," I never demanded -- I</p> <p>5 didn't -- I never demanded net rents. I never demanded</p> <p>6 gross rents.</p> <p>7 What I've said is that we need to get paid.</p> <p>8 I've said that in motions I filed with the Court. The</p> <p>9 point here is, again, that from a practical standpoint, I</p> <p>10 felt that we -- we'd get the gross rents; we'd pay our</p> <p>11 fees out of the gross rents like we're supposed to, and</p> <p>12 then we would -- well, we'd get the gross rents. We'd</p> <p>13 get our fees, past-due fees, but then with the gross</p> <p>14 rents that we receive in the future, we would then</p> <p>15 determine what the net amounts are and then, again, give</p> <p>16 that to GSR to distribute the checks.</p> <p>17 As I said earlier in my testimony, from a</p> <p>18 practical standpoint, it doesn't matter to me one way or</p> <p>19 the other whether we do it that way or GSR determines</p> <p>20 what the net rents are based on our figures. We'd have</p> <p>21 to check them, obviously. We'd have to check that they</p> <p>22 did it correctly. If we did it, then we wouldn't have to</p> <p>23 check their work.</p> <p>24 So from a practical standpoint, it doesn't</p>	<p style="text-align: right;">Page 85</p> <p>1 Q Do you think that Judge Gonzalez had ordered</p> <p>2 for us to hand over to you gross rents?</p> <p>3 A Well, it said rents, and that's consistent with</p> <p>4 the January 15 -- I'm sorry -- the January 7, 2015, order</p> <p>5 says rents. It doesn't say net rents.</p> <p>6 Q But not consistent with the January 4, 2022,</p> <p>7 order; agreed?</p> <p>8 A Right.</p> <p>9 Q You made this demand. Do you think there's now</p> <p>10 some confusion that's created between the January 4,</p> <p>11 2022, order and that January 7, 2015, order, as to what</p> <p>12 "rent" means?</p> <p>13 A Yes.</p> <p>14 Q And you address that on page 2 of Exhibit 37,</p> <p>15 don't you?</p> <p>16 A Exhibit 37?</p> <p>17 Q Yes, sir.</p> <p>18 The very last paragraph starts out, "First, the</p> <p>19 receiver has no authority to collect rents or disburse</p> <p>20 net rents to the unit owners who are not parties to the</p> <p>21 action," etcetera.</p> <p>22 And then you say, "However, this may be a legal</p> <p>23 argument that the plaintiffs and defendants need to</p> <p>24 address and about which filings with the Court for</p>

<p style="text-align: right;">Page 86</p> <p>1 clarification might need to be sought."</p> <p>2 You're talking about the conflict between the</p> <p>3 January 4, 2022, order about net rent and then the</p> <p>4 January 7, 2015, order that just says rents; correct?</p> <p>5 A Correct.</p> <p>6 MR. McELHINNEY: No further questions.</p> <p>7 Your Honor, may we have a three-minute recess,</p> <p>8 please?</p> <p>9 THE COURT: You may.</p> <p>10 (A recess was taken.)</p> <p>11 THE COURT: Mr. McElhinney, did you have some</p> <p>12 additional questions you wanted to ask?</p> <p>13 MR. McELHINNEY: I do, Your Honor. Thank you.</p> <p>14 THE COURT: Amazing how I can figure that out.</p> <p>15 MR. McELHINNEY: Court's indulgence.</p> <p>16 BY MR. McELHINNEY:</p> <p>17 Q Mr. Teichner, during your direct examination --</p> <p>18 THE COURT: Mr. McElhinney, turn your mic on.</p> <p>19 MR. McELHINNEY: I apologize.</p> <p>20 THE COURT: Thank you.</p> <p>21 BY MR. McELHINNEY:</p> <p>22 Q -- you were asked questions about whether or</p> <p>23 not the defendants' conduct interfered with your ability</p> <p>24 to carry out your functions as trustee or as receiver.</p>	<p style="text-align: right;">Page 88</p> <p>1 until you got paid, you couldn't give the net result, so</p> <p>2 to avoid that Catch-22, you asked that money be paid;</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q Okay. So the reason you weren't being paid was</p> <p>6 because you were caught in this Catch-22 situation? You</p> <p>7 weren't --</p> <p>8 A Well, that's what I was saying in the letter,</p> <p>9 but the point is, again, the January 15th -- I'm sorry --</p> <p>10 the January 7, 2015, order says that the receivers get</p> <p>11 paid out of the dues or rents, and prior to September of</p> <p>12 2021, which was the last bill that we got paid, which was</p> <p>13 in October 2021, we were being paid, and ever since then,</p> <p>14 with no objections being filed, we were not being paid.</p> <p>15 Q Who was paying your bill up until that point?</p> <p>16 A Again, I believe it was the UOA that was paying</p> <p>17 all our fees.</p> <p>18 Q So UOA was paying you out of the dues; correct?</p> <p>19 A Yeah, but the other -- yes, but the problem</p> <p>20 with that is the UOA had to keep increasing their dues</p> <p>21 because of that and ran out of cash, and in order to have</p> <p>22 avoided that, if GSR would have paid our fees out of</p> <p>23 rents at some point in time before the funds of the UOA</p> <p>24 were depleted, that would have never happened.</p>
<p style="text-align: right;">Page 87</p> <p>1 Do you recall that testimony?</p> <p>2 A Yes. There were a few questions in that</p> <p>3 regard.</p> <p>4 Q I would like for you to describe for me,</p> <p>5 please, each and every activity that my client engaged in</p> <p>6 that interfered with your ability to carry out your</p> <p>7 functions as a receiver.</p> <p>8 A Well, I think one is by not paying the</p> <p>9 receiver's fees.</p> <p>10 Q And we've established that the reason you</p> <p>11 weren't getting paid was because you hadn't given them</p> <p>12 the net rent number to pay to you; correct?</p> <p>13 MR. MILLER: Objection. Misstates the</p> <p>14 witness's testimony.</p> <p>15 THE COURT: Sustained.</p> <p>16 Could you rephrase your question, please.</p> <p>17 MR. McELHINNEY: Absolutely.</p> <p>18 BY MR. McELHINNEY:</p> <p>19 Q In your letter of November 14, 2022, you said</p> <p>20 you were kind of caught in a Catch-22.</p> <p>21 Do you recall using that language?</p> <p>22 A Yes.</p> <p>23 Q And that was because you couldn't do the net</p> <p>24 rent calculations because you weren't getting paid, and</p>	<p style="text-align: right;">Page 89</p> <p>1 The UOA was close to bankruptcy until they were</p> <p>2 able to increase the fees to the unit owners who weren't</p> <p>3 even getting paid their net rents. So the unit owners</p> <p>4 were complaining, rightfully so, that they weren't -- not</p> <p>5 only were they not receiving rents, the net rents that</p> <p>6 they deserved from GSR, but they also were getting</p> <p>7 increased fees and assessments because they had to fund</p> <p>8 in part the operations of the UOA, which included paying</p> <p>9 our fees.</p> <p>10 Q Are the unit owners current on their dues with</p> <p>11 the UOA?</p> <p>12 A Not all of them.</p> <p>13 Q How about some of the plaintiffs? Are they</p> <p>14 paying?</p> <p>15 A I don't know. I'd have to get another schedule</p> <p>16 of dues in arrears.</p> <p>17 Q What are you doing as a receiver over the GSR</p> <p>18 UOA to make sure those fees get collected?</p> <p>19 A I'm sorry. What am I doing?</p> <p>20 Q Yes, sir.</p> <p>21 A Well, at one point in time, I put it into</p> <p>22 collections.</p> <p>23 Q My question, though, sir, is, what are you</p> <p>24 doing to make sure that the dues are being paid into the</p>

<p style="text-align: right;">Page 90</p> <p>1 UOA?</p> <p>2 A I'm -- I'm communicating with Ms. Tarantino,</p> <p>3 who is an associate, and she is filing at a certain point</p> <p>4 in time, and she's informing me that she's filing --</p> <p>5 well, she's filing -- she's putting the fees in</p> <p>6 collection. She's warning the people about the past-due</p> <p>7 fees, and then she's putting -- once it reaches a certain</p> <p>8 point, she then puts those into collection.</p> <p>9 Q How long have those dues been in arrears?</p> <p>10 A Well, there's a point in time where they -- it</p> <p>11 varies. I can't say offhand. I'd have to see an aged</p> <p>12 accounts receivable schedule from that, but there's a</p> <p>13 point in time when their units were -- they were going to</p> <p>14 be put into foreclosure, but that was -- that was</p> <p>15 stopped.</p> <p>16 Q Why?</p> <p>17 A Well, I believe the judge stopped that</p> <p>18 because -- only because, you know, the UOA is going to be</p> <p>19 wrapped up one day, hopefully one day soon, hopefully.</p> <p>20 Q So we talked about not paying you interfered</p> <p>21 with your ability to do your job as a receiver.</p> <p>22 What else did we do to interfere with your job</p> <p>23 as a receiver?</p> <p>24 A Well, I think each -- I don't remember each --</p>	<p style="text-align: right;">Page 92</p> <p>1 A Well, they stopped the progress. I'd have to</p> <p>2 go back and look at each one but --</p> <p>3 Q You can't think of an example of what you</p> <p>4 just --</p> <p>5 A No, I can't.</p> <p>6 Q Okay. What else? Anything else that we did to</p> <p>7 interfere with your job as a receiver that you can think</p> <p>8 of today without Mr. Miller standing up and sort of</p> <p>9 taking you through step by step?</p> <p>10 A Well, again, there are a number of procedures</p> <p>11 that I would need to go through. I mean, that hasn't</p> <p>12 been worked on for many months. All the routine</p> <p>13 procedures haven't been done since, I think it was, May</p> <p>14 of 2022, May or -- no. I'm sorry. I think it was</p> <p>15 February 2022 was the last time we did all our monthly</p> <p>16 routine procedures. Those procedures haven't been done,</p> <p>17 and, again, those haven't been done because we haven't</p> <p>18 gotten paid.</p> <p>19 Again, it's all -- it really goes back and</p> <p>20 relates to our not having been paid, but by not being --</p> <p>21 our not being able to determine whether the rotation,</p> <p>22 room rotation, is done properly, whether the comp</p> <p>23 rooms -- the rooms that are comped more than five times</p> <p>24 per year have been adhered to, that that order -- I'm</p>
<p style="text-align: right;">Page 91</p> <p>1 I'll call them allegations for now -- that Mr. Miller had</p> <p>2 brought up, but I would have to go through each one of</p> <p>3 those to see how -- what those were, and then I can</p> <p>4 explain how those interfered with my ability to do the</p> <p>5 work.</p> <p>6 Q Okay. I'm not asking about Mr. Miller's</p> <p>7 allegations.</p> <p>8 I'm asking you, as the receiver, how we've</p> <p>9 interfered with your ability -- we, defendants, have</p> <p>10 interfered with your ability to carry out your functions</p> <p>11 as a receiver.</p> <p>12 A Well, I think -- again, I think the main --</p> <p>13 well, okay. The defendants have filed a number of</p> <p>14 motions in objection to my filings on a lot of matters,</p> <p>15 and I think those motions have delayed the process and</p> <p>16 interfered with my ability to carry out my duties.</p> <p>17 And most of those motions, my understanding,</p> <p>18 have been denied by the Court, so those -- all those</p> <p>19 motions that were filed that had to do with my duties as</p> <p>20 a receiver certainly interfered with my ability to carry</p> <p>21 out my duties.</p> <p>22 Q So you're saying that some of the motions or</p> <p>23 oppositions or replies that we filed stopped you from</p> <p>24 doing something as a receiver?</p>	<p style="text-align: right;">Page 93</p> <p>1 sorry -- I think that's in the rental agreement. All</p> <p>2 those procedures that we normally have performed have not</p> <p>3 been -- we've not been able to do those.</p> <p>4 So I think there's a number of items and</p> <p>5 procedures that we have not been able to do as a result</p> <p>6 of not being paid. So all those have -- that relate,</p> <p>7 obviously, to our not being paid, but that's interfering</p> <p>8 with a lot of different procedures that we would have</p> <p>9 normally done and have not been able to do.</p> <p>10 MR. McELHINNEY: No further questions.</p> <p>11 THE COURT: Mr. Miller.</p> <p>12</p> <p>13 REDIRECT EXAMINATION</p> <p>14 BY MR. MILLER:</p> <p>15 Q Mr. Teichner, do you still have a copy of this</p> <p>16 demonstrative exhibit that we used yesterday?</p> <p>17 THE COURT: It's D1. Sir, I'll hand you the</p> <p>18 clerk's copy. Please don't write on it.</p> <p>19 THE WITNESS: Okay.</p> <p>20 BY MR. MILLER:</p> <p>21 Q We've repeatedly talked about these two</p> <p>22 paragraphs from two competing orders. The first one on</p> <p>23 the top of D1 is Exhibit 122, and then on the right side</p> <p>24 is Exhibit 124.</p>

<p style="text-align: right;">Page 94</p> <p>1           These two paragraphs are competing paragraphs</p> <p>2   that were from orders issued on the same date but from</p> <p>3   different motion streams.</p> <p>4           Do you understand that?</p> <p>5           A Yes.</p> <p>6           Q Okay. And while there's competing terms in</p> <p>7   these two paragraphs --</p> <p>8           Let's look first at Exhibit 122. You're</p> <p>9   familiar with that paragraph?</p> <p>10          A Yes.</p> <p>11          Q Okay. And this is the paragraph that has the</p> <p>12   language that says, "Those fees in place prior to the</p> <p>13   Court's September 27, 2020, Order shall remain in place</p> <p>14   until the fees for 2020 are recalculated."</p> <p>15          A Yes.</p> <p>16          Q Do you know, from looking at the monthly</p> <p>17   statements that we reviewed yesterday, which were</p> <p>18   Exhibit 58, Exhibit 66 and Exhibit 77, if that provision</p> <p>19   of the Court's order was complied with? Did the</p> <p>20   defendants apply those older, lower fees?</p> <p>21          A They did not.</p> <p>22          Q And did they, in fact, actually increase the</p> <p>23   fees subsequently, after the date of this order, without</p> <p>24   your approval?</p>	<p style="text-align: right;">Page 96</p> <p>1   calculation that we did, that was in that -- in our -- it</p> <p>2   was Exhibit 140 yesterday. I'm sorry. It's in another</p> <p>3   one. It's not in there.</p> <p>4           In another -- when we prepared the schedule and</p> <p>5   filed -- I guess it was a motion with the Court, when we</p> <p>6   came up with the one million one oh four, which I believe</p> <p>7   is now on appeal with the Supreme Court, that issue, that</p> <p>8   included our reversal of -- GSR's reversal of the</p> <p>9   application of the 2021 fees and then a few other</p> <p>10   adjustments, too.</p> <p>11          So to answer your question, it was done</p> <p>12   temporarily, but then they reversed it.</p> <p>13          Q And you didn't authorize that reversal?</p> <p>14          A No.</p> <p>15          Q And the fees that the GSR has continued to</p> <p>16   apply on the monthly statements since January 4, 2020,</p> <p>17   you haven't authorized those fees?</p> <p>18          A No.</p> <p>19          Q Did GSR ever reach out to you as receiver and</p> <p>20   say, "Mr. Teichner, which fees do you want us to apply to</p> <p>21   these statements?"</p> <p>22          A No.</p> <p>23          Q And wouldn't that be your decision to make?</p> <p>24          A Yes.</p>
<p style="text-align: right;">Page 95</p> <p>1           A Yes.</p> <p>2           MR. SMITH: Objection. Beyond the scope.</p> <p>3           THE COURT: Overruled.</p> <p>4   BY MR. MILLER:</p> <p>5           Q And then, Mr. Proctor [sic], go to Exhibit 124,</p> <p>6   which is the order that states "The receiver's new fee</p> <p>7   calculations as submitted to the Court should immediately</p> <p>8   be applied retroactive to January 2020 and going forward</p> <p>9   until a subsequent order from the Court is issued."</p> <p>10          Do you know if the defendants applied those</p> <p>11   approved fees that the Court specifically took the time</p> <p>12   to approve -- did Defendants ever apply those to the</p> <p>13   monthly statements? And I'm referring to Exhibit 66 and</p> <p>14   Exhibit 77, which show subsequent rentals after the</p> <p>15   issuance of this order.</p> <p>16          A I believe they did for a period of time, and</p> <p>17   then they reversed it all. They reversed -- they</p> <p>18   reversed what they applied. I believe it was -- I don't</p> <p>19   remember. It may have been in, like, October of 2021.</p> <p>20          When we did that recalculation of fees and came</p> <p>21   up with the one million one-oh-four, that's when we found</p> <p>22   that the fees -- our fees had been applied for a certain</p> <p>23   period of time and then they were reversed. So we had to</p> <p>24   reapply them in that calculation. Part of that</p>	<p style="text-align: right;">Page 97</p> <p>1           Q But instead they charged their own fees that</p> <p>2   were significantly higher than either the pre-September</p> <p>3   27, 2021, fees that you suggested the Court should apply</p> <p>4   and fees that were higher than your actual calculation of</p> <p>5   fees; is that correct?</p> <p>6           MR. McELHINNEY: Objection. Leading, Your</p> <p>7   Honor.</p> <p>8           THE COURT: Rephrase your question, please.</p> <p>9   BY MR. MILLER:</p> <p>10          Q So I believe we established that the GSR never</p> <p>11   reached out to you to ask you which fees you wanted</p> <p>12   applied after the January 4, 2022, order; is that</p> <p>13   correct?</p> <p>14          A Correct.</p> <p>15          Q And they didn't apply the fees that were in</p> <p>16   place prior to September 27, 2021, as requested in your</p> <p>17   motion for order granting instructions; right?</p> <p>18          A Correct.</p> <p>19          Q And they didn't apply the fees that you had</p> <p>20   calculated that the Court had approved; is that correct?</p> <p>21          MR. McELHINNEY: Objection. Leading the</p> <p>22   witness.</p> <p>23          THE COURT: Rephrase your question, please.</p> <p>24   /////</p>

<p style="text-align: right;">Page 98</p> <p>1 BY MR. MILLER:</p> <p>2 Q After January 4, 2020, did the GSR apply their</p> <p>3 own fees, not your fees?</p> <p>4 A I'm sorry. After which? 2020, did you say?</p> <p>5 Q Let me have you look at Exhibit 66.</p> <p>6 A Excuse me. I don't have -- your binder is up</p> <p>7 here. Okay.</p> <p>8 MR. McELHINNEY: Your Honor, do you want me to</p> <p>9 get my books out of the way?</p> <p>10 THE COURT: No. I want to leave them there in</p> <p>11 case you need to go back.</p> <p>12 THE WITNESS: Okay. I'm there.</p> <p>13 BY MR. MILLER:</p> <p>14 Q So Exhibit 66 is an owner account statement</p> <p>15 dated January 18, 2022; correct?</p> <p>16 A Yes.</p> <p>17 Q And that's after these two competing orders</p> <p>18 were issued; correct?</p> <p>19 A Yes.</p> <p>20 Q And if you look at the daily use fee that's</p> <p>21 applied in this statement, which is 32.47 --</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q -- does that track either the daily use fee</p>	<p style="text-align: right;">Page 100</p> <p>1 A No.</p> <p>2 Q Did you object to the application of those</p> <p>3 fees?</p> <p>4 A Did I object?</p> <p>5 Q Yes.</p> <p>6 Did you or your counsel express to the</p> <p>7 defendants, either through a motion or letters or</p> <p>8 conversations, that "You should be applying my fees to</p> <p>9 these monthly statements"?</p> <p>10 A I don't recall anything formally that we --</p> <p>11 Q Do you remember we went through some letters</p> <p>12 yesterday that stated that the defendants applied their</p> <p>13 own fees and not the --</p> <p>14 A Yes.</p> <p>15 Q Okay.</p> <p>16 A Yes. I'm not sure if there was any emails or</p> <p>17 any letters -- I know there were no letters to Defendants</p> <p>18 directly. There may have been emails.</p> <p>19 Q Okay.</p> <p>20 A But there were -- certainly, I believe in one</p> <p>21 or two of my letters to the Court, I mention that.</p> <p>22 Q Okay. Thank you.</p> <p>23 If either Proctor's fees were applied or your</p> <p>24 approved fees were applied, is it easy to calculate the</p>
<p style="text-align: right;">Page 99</p> <p>1 that was in place prior to September 27, 2021? Does that</p> <p>2 track that daily use fee?</p> <p>3 A Are we talking about Proctor's figures?</p> <p>4 Q Yes. Is that more than Proctor's figures?</p> <p>5 A I don't recall what Proctor's figures are, so I</p> <p>6 can't answer absolutely.</p> <p>7 Q Okay. Then look at Exhibit 58.</p> <p>8 A I have that.</p> <p>9 Q And this is a statement from September 9, 2021?</p> <p>10 A Yes.</p> <p>11 Q And do you believe this statement to reflect</p> <p>12 Proctor's daily use fee?</p> <p>13 A Yes. That 24.54 was his daily use fee, yes.</p> <p>14 Q So after the January 4, 2022, order, Proctor's</p> <p>15 fees weren't applied; correct?</p> <p>16 A Correct.</p> <p>17 Q And then going back to Exhibit 66, which is the</p> <p>18 January 18, 2022, statement where it states 32.47 for the</p> <p>19 daily use fee, that doesn't track your calculation of</p> <p>20 fees either; correct?</p> <p>21 A Correct.</p> <p>22 Q And you did not authorize them to apply an</p> <p>23 increased daily use fee above either yours or Proctor's</p> <p>24 calculations?</p>	<p style="text-align: right;">Page 101</p> <p>1 net rents once you know what fees you're applying?</p> <p>2 A Yes.</p> <p>3 Q Okay. So if you have no dispute over what net</p> <p>4 rents are to be applied, it's easy to come up with a</p> <p>5 certain number?</p> <p>6 A Yes.</p> <p>7 Q And then if the defendants had that number and</p> <p>8 were instructed to put those amounts on the plaintiffs'</p> <p>9 monthly statements and send out those amounts and pay</p> <p>10 your receiver fees, is there any reason to take over the</p> <p>11 rents from the defendants at that time?</p> <p>12 A Yes.</p> <p>13 Q To physically take them over?</p> <p>14 If they're following your instructions -- apply</p> <p>15 my fees and send the rental payments to the plaintiffs</p> <p>16 and pay my bills -- do you need to take the money over</p> <p>17 into your own account from the defendants?</p> <p>18 A When you say, "the money," you mean the total</p> <p>19 rents, the gross rents?</p> <p>20 Q The total rents. If they're following your</p> <p>21 instructions --</p> <p>22 A Yes, right. If they followed my instructions</p> <p>23 and computed the fees correctly, then, no, I would not</p> <p>24 have to take over the gross rents.</p>

<p style="text-align: right;">Page 102</p> <p>1 Q Okay. And is that what occurred in 2019? Do</p> <p>2 you remember in 2019 you were getting paid, and the</p> <p>3 plaintiffs were receiving their rental revenues; is that</p> <p>4 correct?</p> <p>5 A Right.</p> <p>6 Q So it only becomes necessary for you to take</p> <p>7 over the rents, physically collect them and take them,</p> <p>8 because the defendants won't follow your instructions?</p> <p>9 A I would say that's a fair statement.</p> <p>10 Q Yesterday there was some questioning about your</p> <p>11 2020 calculations, which we ultimately had four days of</p> <p>12 hearings on, went through them ad nauseam, and then there</p> <p>13 was a recalculation of those fees as a result of those</p> <p>14 four days of hearings where we went through the fees in</p> <p>15 detail.</p> <p>16 Do you recall that?</p> <p>17 A Yes.</p> <p>18 Q And do you recall that the Court, after hearing</p> <p>19 all of that evidence, actually issued an order</p> <p>20 specifically stating that the fees needed to be</p> <p>21 recalculated in a certain way?</p> <p>22 A Yes.</p> <p>23 Q Okay. So your recalculation of the fees -- why</p> <p>24 did you recalculate the fees after your first fees in</p>	<p style="text-align: right;">Page 104</p> <p>1 BY MR. MILLER:</p> <p>2 Q Mr. Teichner, can you turn to page 5 of this</p> <p>3 letter or this report from your predecessor, Mr. Proctor.</p> <p>4 A I have it.</p> <p>5 Q Can you read the first two sentences of page 5.</p> <p>6 A At the very top?</p> <p>7 Q Yes, please.</p> <p>8 A "The receiver has received \$510,466 of the TPO</p> <p>9 reserve amounts ('reserves'), representing 100 percent of</p> <p>10 the reserves collected through October from the TPO for</p> <p>11 the period ended August 31, 2015. Those funds have</p> <p>12 been --"</p> <p>13 Should I go on?</p> <p>14 Q Yes, please.</p> <p>15 A "Those funds have been deposited into a</p> <p>16 receiver-controlled trust account. To date, there have</p> <p>17 been no disbursements by the receivership."</p> <p>18 Q Okay. Does that indicate to you that the prior</p> <p>19 receiver opened up a trust account where he put the</p> <p>20 reserve funds into that trust account?</p> <p>21 MR. McELHINNEY: Objection. Speculation.</p> <p>22 THE COURT: Overruled.</p> <p>23 THE WITNESS: Yes.</p> <p>24 ////</p>
<p style="text-align: right;">Page 103</p> <p>1 January of 2020? As a result of a court order?</p> <p>2 A Yes.</p> <p>3 MR. MILLER: Your Honor, this is a copy of</p> <p>4 Receiver's Second Status Report dated December 10, 2015,</p> <p>5 filed by the prior receiver into this action, and it's</p> <p>6 Transaction No. 5273489. This is a document that's in</p> <p>7 the record in this case.</p> <p>8 THE COURT: And?</p> <p>9 MR. MILLER: And I would like to have</p> <p>10 Mr. Teichner review this document. I'd like to know if</p> <p>11 he has reviewed this document.</p> <p>12 THE COURT: Are you going to mark it as an</p> <p>13 exhibit, or are you going to attempt to refresh his</p> <p>14 recollection and --</p> <p>15 MR. MILLER: I would like to mark it as an</p> <p>16 exhibit.</p> <p>17 THE COURT: The next in order would be 141.</p> <p>18 Any objection to 141, Mr. McElhinney?</p> <p>19 MR. McELHINNEY: No objection, Your Honor. I</p> <p>20 think it's identical to our -- strike that. No</p> <p>21 objection.</p> <p>22 THE COURT: It will be admitted.</p> <p>23 (Exhibit 141 was marked and admitted.)</p> <p>24 ////</p>	<p style="text-align: right;">Page 105</p> <p>1 BY MR. MILLER:</p> <p>2 Q Thank you.</p> <p>3 And I think we've talked about this before, but</p> <p>4 as long as the defendants complied with your instructions</p> <p>5 concerning the reserve accounts, did you see any reason</p> <p>6 to take over the reserve accounts and put them into a</p> <p>7 separate account that you only have control over?</p> <p>8 A Yes.</p> <p>9 Q So if they're following your instructions, do</p> <p>10 you need to put those funds into a separate account that</p> <p>11 they can't access?</p> <p>12 MR. McELHINNEY: Objection. Leading.</p> <p>13 THE COURT: Rephrase your question, please.</p> <p>14 BY MR. MILLER:</p> <p>15 Q Have the defendants, within the last year and a</p> <p>16 half, withdrawn substantial funds from the reserve</p> <p>17 accounts without your approval?</p> <p>18 A Yes.</p> <p>19 Q Do you believe that now that that's occurred,</p> <p>20 that it would be appropriate for you to put the reserve</p> <p>21 money in a separate account that they can't access?</p> <p>22 A I think it would be appropriate. I guess if</p> <p>23 the Court -- I would want to -- I would want to get</p> <p>24 approval from the Court, but otherwise, yes.</p>

<p style="text-align: right;">Page 106</p> <p>1 Q Do you understand that you came into this case</p> <p>2 after it was remanded from the Nevada Supreme Court?</p> <p>3 A Say that again.</p> <p>4 Q So you understand that Mr. Proctor was the</p> <p>5 receiver, and then this case was dismissed by the</p> <p>6 district court.</p> <p>7 Do you understand that?</p> <p>8 A Yes.</p> <p>9 Q And then there was a two-year period where</p> <p>10 there was no receiver in place because we were at the</p> <p>11 Nevada Supreme Court.</p> <p>12 Do you understand that?</p> <p>13 A Yes.</p> <p>14 Q So you came back in as receiver in this case</p> <p>15 after the defendants had had the ability to do whatever</p> <p>16 they wanted for two years; is that correct?</p> <p>17 A Yes.</p> <p>18 Q And when you came back into the case, do you</p> <p>19 recall how much was in the reserve accounts?</p> <p>20 A I don't know if there was anything in the</p> <p>21 reserve accounts. I know that there was an order to, I</p> <p>22 think -- I believe to place \$500,000 in each reserve</p> <p>23 account, if I recall correctly, but I don't think that</p> <p>24 money had been put in there at the time when I came</p>	<p style="text-align: right;">Page 108</p> <p>1 A Yes.</p> <p>2 Q Do you recall approximately how much it was</p> <p>3 that they had to put into the empty reserve account after</p> <p>4 you came into this case?</p> <p>5 A I don't remember offhand what the amount was.</p> <p>6 Q Okay.</p> <p>7 A I don't remember if it was 10 million or what</p> <p>8 the figure was.</p> <p>9 Q Millions of dollars?</p> <p>10 A It was a substantial amount because the reserve</p> <p>11 account had to be funded in order to be able to pay for</p> <p>12 the capital expenditures. I also believe that the --</p> <p>13 MR. McELHINNEY: Objection. No question</p> <p>14 pending.</p> <p>15 THE COURT: We're trying to get you out of</p> <p>16 here. Remember?</p> <p>17 Mr. Miller, do you have another question?</p> <p>18 MR. MILLER: I do, Your Honor. Court's</p> <p>19 indulgence.</p> <p>20 BY MR. MILLER:</p> <p>21 Q Mr. Teichner, if you have not, is it possible</p> <p>22 for you to email or deliver wire instructions to</p> <p>23 Mr. Brady today for your newly opened account?</p> <p>24 A Certainly. That would be for future payments</p>
<p style="text-align: right;">Page 107</p> <p>1 onboard.</p> <p>2 Q So essentially there was no money in the</p> <p>3 reserve accounts when you came onboard?</p> <p>4 A That's my -- that's my recollection.</p> <p>5 Q Do you remember that we litigated the idea of</p> <p>6 how much they had to put into the reserve accounts?</p> <p>7 MR. McELHINNEY: Objection, Your Honor.</p> <p>8 Leading the witness.</p> <p>9 THE COURT: Rephrase your question.</p> <p>10 BY MR. MILLER:</p> <p>11 Q Do you recall the Court ordering the defendants</p> <p>12 to put, I believe it was over 10 million dollars into the</p> <p>13 reserve accounts to bring them current because they had</p> <p>14 drained them?</p> <p>15 MR. McELHINNEY: Your Honor, I'm much more</p> <p>16 interested in what Mr. Teichner knows instead of</p> <p>17 listening to Mr. Miller ask leading questions.</p> <p>18 THE COURT: What's your objection?</p> <p>19 MR. McELHINNEY: I apologize. Leading.</p> <p>20 THE COURT: Would you rephrase your question.</p> <p>21 BY MR. MILLER:</p> <p>22 Q Were the defendants required by the Court to</p> <p>23 place funds into the reserve accounts after you had come</p> <p>24 in as receiver in this case?</p>	<p style="text-align: right;">Page 109</p> <p>1 once the judge approves those fees.</p> <p>2 Q Thank you.</p> <p>3 A Because I believe an order from Her Honor wants</p> <p>4 me to -- I think she wants to see the bills now each</p> <p>5 month, if I recall.</p> <p>6 Q So to be clear, has the refusal to implement</p> <p>7 your fees impaired your ability to do your tasks as</p> <p>8 receiver?</p> <p>9 A Yes.</p> <p>10 Q And the withdrawal from the reserve accounts</p> <p>11 without your permission, has that interfered with your</p> <p>12 ability to proceed as receiver?</p> <p>13 A Yes.</p> <p>14 MR. MILLER: Sorry, Your Honor. I misplaced a</p> <p>15 binder here.</p> <p>16 No further questions, Your Honor.</p> <p>17 THE COURT: Mr. McElhinney, briefly.</p> <p>18 MR. McELHINNEY: Court's indulgence.</p> <p>19</p> <p>20 RE-CROSS-EXAMINATION</p> <p>21 BY MR. McELHINNEY:</p> <p>22 Q Mr. Teichner, you said that when we withdrew</p> <p>23 money from the reserve accounts, that interfered with</p> <p>24 your ability to carry out your functions as a receiver?</p>

<p style="text-align: right;">Page 110</p> <p>1 A Yes.</p> <p>2 Q In what way?</p> <p>3 A Well, because my functions as a receiver is to</p> <p>4 determine how much can be withdrawn based on approval of</p> <p>5 the capital expenditures.</p> <p>6 MR. McELINNEY: No further questions.</p> <p>7 THE COURT: Anything further, Mr. Miller?</p> <p>8 MR. MILLER: No, Your Honor. Thank you.</p> <p>9 THE COURT: Thank you.</p> <p>10 Sir, thank you very much. I would leave before</p> <p>11 they change their minds. Give me those exhibits with the</p> <p>12 stickers. You have a nice day, sir. You do not have to</p> <p>13 stay and watch, but you may if you want. The problem is</p> <p>14 if you stay and watch, they may recall you.</p> <p>15 THE WITNESS: Okay. Thank you.</p> <p>16 THE COURT: Anybody else have anything</p> <p>17 productive before we break for lunch?</p> <p>18 MR. McELHINNEY: Nothing further for defense</p> <p>19 right now, Your Honor.</p> <p>20 MR. MILLER: No, Your Honor.</p> <p>21 THE COURT: All right. So we will break for</p> <p>22 lunch until 1:15. Hour and 15 minutes, guys.</p> <p>23 Have a nice lunch break.</p> <p>24 (The midday recess was taken.)</p>	<p style="text-align: right;">Page 112</p> <p>1 Honor has already seen in the motion in limine, that the</p> <p>2 affidavits were deficient to invoke this Court's</p> <p>3 jurisdiction to begin a contempt proceeding in the first</p> <p>4 place.</p> <p>5 The second one I'd like to focus on today,</p> <p>6 though, is the impact of the final judgment that's been</p> <p>7 entered in this case.</p> <p>8 With the entry of the final judgment, this</p> <p>9 Court has been divested of jurisdiction to consider</p> <p>10 contempt proceedings based on interlocutory orders that</p> <p>11 predate the final judgment.</p> <p>12 THE COURT: I don't even lose jurisdiction when</p> <p>13 they file for bankruptcy for contempt proceedings,</p> <p>14 Mr. Smith.</p> <p>15 MR. SMITH: Let me see if I can persuade you,</p> <p>16 Your Honor.</p> <p>17 THE COURT: All right. I'll keep listening.</p> <p>18 MR. SMITH: I appreciate that.</p> <p>19 Unlike criminal contempt, civil contempt, like</p> <p>20 the one we're here today, is a proceeding between the</p> <p>21 parties. So there's a difference between criminal</p> <p>22 contempt, which we're not dealing with today because that</p> <p>23 would have a whole host of other procedural due process</p> <p>24 protection.</p>
<p style="text-align: right;">Page 111</p> <p>1</p> <p>2</p> <p>3 -oOo-</p> <p>4 RENO, NEVADA; WEDNESDAY, JUNE 7, 2023; 1:15 P.M.</p> <p>5 -oOo-</p> <p>6</p> <p>7 THE COURT: Mr. Miller, your next witness.</p> <p>8 MR. MILLER: Your Honor, we rest with</p> <p>9 Mr. Teichner.</p> <p>10 Mr. Smith, I can tell you wanted to say</p> <p>11 something.</p> <p>12 MR. SMITH: Your ears must have been burning,</p> <p>13 Your Honor. That's correct.</p> <p>14 Now that the plaintiff has rested, the defense,</p> <p>15 Mr. McElhinney and myself, would like to make a motion</p> <p>16 under Rules 50 and 52, a motion for judgment as a matter</p> <p>17 of law or directed findings.</p> <p>18 I'm going to handle a couple of jurisdictional</p> <p>19 arguments. Mr. McElhinney will handle some of the more</p> <p>20 evidentiary-based arguments.</p> <p>21 The defense has two jurisdictional arguments</p> <p>22 for why there should be a directed verdict or judgment as</p> <p>23 a matter of law given what we've heard so far.</p> <p>24 The first jurisdictional argument is what Your</p>	<p style="text-align: right;">Page 113</p> <p>1 Civil contempt proceedings are a proceeding</p> <p>2 between the parties to the main cause. When the main</p> <p>3 cause is over, every proceeding dependent upon that main</p> <p>4 cause is concluded, and that applies to contempt</p> <p>5 proceedings.</p> <p>6 There's a number of older, I acknowledge, U.S.</p> <p>7 Supreme Court cases that have addressed similar issues.</p> <p>8 I would cite Gompers -- that's G-o-m-p-e-r-s -- vs. Buck</p> <p>9 Stove and Range, 221 U.S. 418, and another U.S. Supreme</p> <p>10 Court case referred to as Hartmarx Corp., 496 U.S. 384,</p> <p>11 and those say that a civil contempt proceeding loses</p> <p>12 jurisdiction or otherwise becomes moot when the main</p> <p>13 cause is finished, and here there's been a final</p> <p>14 judgment, and the main cause is concluded.</p> <p>15 The parties have fought that at the Nevada</p> <p>16 Supreme Court a little bit, but Your Honor has</p> <p>17 recognized, in its May 23, 2023, order, that the amended</p> <p>18 final judgment is a final judgment. So the main cause</p> <p>19 between the parties is concluded, and when contempt --</p> <p>20 when the main cause is concluded, other federal courts</p> <p>21 that are more recent than the U.S. Supreme Court cases</p> <p>22 I've cited say the general rule is the contempt</p> <p>23 proceeding becomes mooted when the proceeding at which it</p> <p>24 arises is terminated.</p>



<p style="text-align: right;">Page 114</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 116</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>24          He also testified that he thought the January</p>
<p style="text-align: right;">Page 115</p> <p>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.</p> <p>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.</p> <p>9           THE COURT: Mr. McElhinney.</p> <p>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.</p> <p>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.</p> <p>24          Clear and convincing evidence means evidence</p>	<p style="text-align: right;">Page 117</p> <p>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.</p> <p>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.</p> <p>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</p>

<p style="text-align: right;">Page 118</p> <p>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.</p> <p>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.</p> <p>11 The case --</p> <p>12 THE COURT: Mr. McElhinney, refresh my memory.</p> <p>13 Has your client deposited what it believes the 14 appropriate amount of rent is with the receiver?</p> <p>15 MR. McELHINNEY: Have they deposited what?</p> <p>16 THE COURT: The appropriate amount of rent they 17 believe is due?</p> <p>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.</p> <p>24 In any event, Your Honor, Detwiler stands for</p>	<p style="text-align: right;">Page 120</p> <p>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.</p> <p>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 --</p> <p>9 THE COURT: So do you know what most people do 10 when that happens? Do you know what they did in the 11 Winnepoquet case when that happened?</p> <p>12 MR. McELHINNEY: I don't.</p> <p>13 THE COURT: Every month Mr. Smith's firm 14 delivered a check to the (indecipherable). Every month.</p> <p>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.</p> <p>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</p>
<p style="text-align: right;">Page 119</p> <p>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 --</p> <p>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.</p> <p>8 MR. McELHINNEY: And I apologize for that.</p> <p>9 THE COURT: It's not your fault. It's all of 10 us.</p> <p>11 MR. McELHINNEY: I agree, but in terms of sworn 12 testimony, never.</p> <p>13 THE COURT: I agree.</p> <p>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.</p> <p>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.</p> <p>21 THE COURT: Mr. Smith wants you to add 22 something.</p> <p>23 (A discussion was held off the record.)</p> <p>24 MR. McELHINNEY: Your Honor, another point that</p>	<p style="text-align: right;">Page 121</p> <p>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.</p> <p>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&amp;Rs, and 10 Mr. Teichner admitted that. It's a business necessity.</p> <p>11 So I don't think they've met their burden, and 12 that's our motion, Your Honor.</p> <p>13 THE COURT: Thank you.</p> <p>14 Mr. Miller. Mr. Eisenberg.</p> <p>15 MR. MILLER: Thank you, Your Honor.</p> <p>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.</p> <p>23 The Court's December 5, 2022, order 24 specifically contemplates that the receiver will continue</p>

<p style="text-align: right;">Page 122</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 124</p> <p>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."</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>24 In this case, we know that the receiver</p>
<p style="text-align: right;">Page 123</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>23 As I addressed in my opening statement, all of  24 Plaintiffs' Motions for Order to Show Cause are supported</p>	<p style="text-align: right;">Page 125</p> <p>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.</p> <p>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</p>

<p style="text-align: right;">Page 126</p> <p>1 fees or letting him implement his fees is in the monthly 2 statements themselves. And then the refusal to turn over 3 rents.</p> <p>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.</p> <p>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.</p> <p>24 And you look at the most recent statements --</p>	<p style="text-align: right;">Page 128</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>24 So I immediately send an email saying, I just</p>
<p style="text-align: right;">Page 127</p> <p>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.</p> <p>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?</p> <p>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.</p>	<p style="text-align: right;">Page 129</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>22 So, again, finally, all of the exhibits have 23 been admitted.</p> <p>24 THE COURT: Not all the exhibits. I haven't</p>

<p style="text-align: right;">Page 130</p> <p>1 admitted Exhibit 130 through 139.</p> <p>2 MR. MILLER: I misspoke, Your Honor.</p> <p>3 All of the exhibits that were attached to the</p> <p>4 underlying briefing that is the subject of the Motion for</p> <p>5 Order to Show Cause, so every exhibit that was attached</p> <p>6 to one of those motions in opposition or a reply have</p> <p>7 been submitted to this Court as evidence for your</p> <p>8 consideration.</p> <p>9 THE COURT: Thank you.</p> <p>10 Anything else? Mr. Smith? Mr. McElhinney?</p> <p>11 MR. SMITH: Yes, Your Honor. I'll just briefly</p> <p>12 respond to the jurisdictional opposition.</p> <p>13 Mr. Miller first points to the Supreme Court's</p> <p>14 order to show cause, questioning whether the Supreme</p> <p>15 Court has jurisdiction and wondering whether there's a</p> <p>16 final judgment here, but Your Honor and I actually agree</p> <p>17 there is a final judgment here. The amended final</p> <p>18 judgment is a final judgment. That's what you wrote in</p> <p>19 the May 23, 2023, order, so you and I agree there's a</p> <p>20 final judgment. We have a disagreement on the</p> <p>21 consequences.</p> <p>22 THE COURT: But neither you nor I or Polsenberg</p> <p>23 or Eisenberg, who are the only ones who understand</p> <p>24 whether there's really a final judgment.</p>	<p style="text-align: right;">Page 132</p> <p>1 Then Mr. Miller says, well, we stipulated to</p> <p>2 this dissolution process, and, therefore, this Court has</p> <p>3 apparently jurisdiction for contempt and for the</p> <p>4 receivership, but disagreeing with Mr. Miller's</p> <p>5 characterization of that --</p> <p>6 THE COURT: I wouldn't say you stipulated. I</p> <p>7 would say you elected your remedy, proceeding with the</p> <p>8 dissolution motion under certain conditions. I certainly</p> <p>9 understand you and I are going to disagree about that,</p> <p>10 and you all are going to argue that in Carson City.</p> <p>11 MR. SMITH: That's correct, but I would like to</p> <p>12 at least address the point, Your Honor.</p> <p>13 This wasn't an election of remedies issues. It</p> <p>14 wasn't stipulated in this process, but I'll assume that</p> <p>15 premise for this moment without waiving the argument.</p> <p>16 Even if that were the case, that was done two months</p> <p>17 prior to the amended final judgment, so even if that did</p> <p>18 occur, that amended final judgment still ends the case,</p> <p>19 and everything before that merges into the final</p> <p>20 judgment.</p> <p>21 So even if that characterization is correct,</p> <p>22 which I disagree with, the final judgment entered two</p> <p>23 months later still merges and divests the Court of</p> <p>24 jurisdiction and, again, moots this civil contempt</p>
<p style="text-align: right;">Page 131</p> <p>1 MR. SMITH: Sometimes I wonder if those</p> <p>2 esteemed colleagues understand it as well or if the</p> <p>3 supreme court listens to any of us down here to begin</p> <p>4 with.</p> <p>5 But at least as of this moment, you and I,</p> <p>6 those two bright minds, agree there's a final judgment</p> <p>7 but just disagree about the consequences of that. So</p> <p>8 there is a final judgment in place, and it's under the</p> <p>9 case law I cited and that I've argued so far today. That</p> <p>10 final judgment divests the Court of jurisdiction to</p> <p>11 consider civil contempt based on interlocutory orders</p> <p>12 that have since merged into the final judgment.</p> <p>13 Then Mr. Miller seems to argue the status of</p> <p>14 the receivership and says that 2015 receivership order</p> <p>15 invokes NRS 32.0103, but 32.0103 says, "A receiver can be</p> <p>16 imposed after judgment to carry the judgment in effect."</p> <p>17 Well, there was no judgment by any definition in 2015, so</p> <p>18 if that's what the argument is, one would have to</p> <p>19 question the propriety of imposing the receivership in</p> <p>20 the first place.</p> <p>21 What actually happened was a receiver was</p> <p>22 imposed pendente lite -- excuse my Latin -- until this</p> <p>23 case is over or to maintain the status quo. Well, this</p> <p>24 case is now over, and that receivership has terminated.</p>	<p style="text-align: right;">Page 133</p> <p>1 proceeding.</p> <p>2 And, finally, I'll address the Wynn analogy</p> <p>3 since Your Honor and I have a little bit of history there</p> <p>4 and know that case.</p> <p>5 THE COURT: You couldn't get an account and</p> <p>6 then went through the trust to try to get one in</p> <p>7 Delaware, still couldn't get an account, so what did you</p> <p>8 do?</p> <p>9 MR. SMITH: Well, I think there's a difference</p> <p>10 between the size of the money there and the circumstances</p> <p>11 in that case than this one.</p> <p>12 Your Honor and I have --</p> <p>13 THE COURT: Sure.</p> <p>14 MR. SMITH: Right? I mean --</p> <p>15 THE COURT: It was a very different amount of</p> <p>16 money.</p> <p>17 MR. SMITH: Very different amount of money and</p> <p>18 no receivership was involved here, and here we have a</p> <p>19 receiver that's ordered to open a bank account. And I</p> <p>20 know Your Honor has had other receivership actions. I've</p> <p>21 never seen a receiver take 18 months to open a bank</p> <p>22 account.</p> <p>23 So there's a question about whether we're being</p> <p>24 ordered to deposit money into a bank account that never</p>

<p style="text-align: right;">Page 134</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 136</p> <p>1 receiver was supposed to do it.</p> <p>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 &amp; 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.</p> <p>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.</p> <p>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</p>
<p style="text-align: right;">Page 135</p> <p>1 else.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 137</p> <p>1 control of the reserve accounts. He never requested to.  2 You have to look at how they bootstrap themselves into  3 this argument.</p> <p>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&amp;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.</p> <p>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.</p> <p>16 Thank you, Your Honor.</p> <p>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.</p>

<p style="text-align: right;">Page 138</p> <p>1 Now, next witness.</p> <p>2 MR. McELHINNEY: All right. Given the fact</p> <p>3 you've denied that motion, Your Honor, we will call a</p> <p>4 witness, Mr. Reed Brady.</p> <p>5 THE COURT: Mr. Brady, if you'd come forward,</p> <p>6 please.</p> <p>7 Anybody need a break before we go to this?</p> <p>8 MR. MILLER: Your Honor, could we take a</p> <p>9 five-minute break? I'd like to talk to opposing counsel,</p> <p>10 if that's possible.</p> <p>11 THE COURT: We're going to have a five-minute</p> <p>12 break.</p> <p>13 (A recess was taken.)</p> <p>14 THE COURT: I understand you'd like to take the</p> <p>15 rest of the afternoon off to continue what are supposedly</p> <p>16 very productive discussions.</p> <p>17 MR. MILLER: Jarrad Miller on behalf of the</p> <p>18 plaintiffs.</p> <p>19 That is my understanding. The one caveat there</p> <p>20 is that we understand that the defendants are going to</p> <p>21 call just one additional witness, Mr. Reed Brady, so that</p> <p>22 if we are unsuccessful this afternoon in settling this</p> <p>23 case, we should still be able to finish this week.</p> <p>24 Is that accurate?</p>	<p style="text-align: right;">Page 140</p> <p>1 STATE OF NEVADA )</p> <p>2 ) ss.</p> <p>3 COUNTY OF WASHOE )</p> <p>4 I, PEGGY B. HOOGS, Certified Court Reporter in</p> <p>5 and for the State of Nevada, do hereby certify:</p> <p>6 That the foregoing proceedings were taken by me</p> <p>7 at the time and place therein set forth; that the</p> <p>8 proceedings were recorded stenographically by me and</p> <p>9 thereafter transcribed via computer under my supervision;</p> <p>10 that the foregoing is a full, true and correct</p> <p>11 transcription of the proceedings to the best of my</p> <p>12 knowledge, skill and ability.</p> <p>13 I further certify that I am not a relative nor</p> <p>14 an employee of any attorney or any of the parties, nor am</p> <p>15 I financially or otherwise interested in this action.</p> <p>16 I declare under penalty of perjury under the</p> <p>17 laws of the State of Nevada that the foregoing statements</p> <p>18 are true and correct.</p> <p>19 Dated this 3rd day of July, 2023.</p> <p>20</p> <p>21 /s/ Peggy B. Hoogs</p> <p>22 _____</p> <p>23 Peggy B. Hoogs, CCR #160, RDR</p> <p>24</p>
<p style="text-align: right;">Page 139</p> <p>1 MR. McELHINNEY: That's correct, Your Honor.</p> <p>2 THE COURT: So can we start at 8:30, Mr. Brady,</p> <p>3 if we don't settle?</p> <p>4 MR. BRADY: Yes.</p> <p>5 THE COURT: I will see you guys here at 8:30 in</p> <p>6 the morning either to take Mr. Brady's testimony or to</p> <p>7 put a settlement on the record. How's that?</p> <p>8 MR. McELINNEY: Agreed.</p> <p>9 THE COURT: All right. Thank you.</p> <p>10 (Proceedings concluded at 2:29 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 141</p> <p>1 HEALTH INFORMATION PRIVACY &amp; SECURITY: CAUTIONARY NOTICE</p> <p>2 Litigation Services is committed to compliance with applicable federal</p> <p>3 and state laws and regulations ("Privacy Laws") governing the</p> <p>4 protection and security of patient health information. Notice is</p> <p>5 hereby given to all parties that transcripts of depositions and legal</p> <p>6 proceedings, and transcript exhibits, may contain patient health</p> <p>7 information that is protected from unauthorized access, use and</p> <p>8 disclosure by Privacy Laws. Litigation Services requires that access,</p> <p>9 maintenance, use, and disclosure (including but not limited to</p> <p>10 electronic database maintenance and access, storage, distribution/</p> <p>11 dissemination and communication) of transcripts/exhibits containing</p> <p>12 patient information be performed in compliance with Privacy Laws.</p> <p>13 No transcript or exhibit containing protected patient health</p> <p>14 information may be further disclosed except as permitted by Privacy</p> <p>15 Laws. Litigation Services expects that all parties, parties'</p> <p>16 attorneys, and their HIPAA Business Associates and Subcontractors will</p> <p>17 make every reasonable effort to protect and secure patient health</p> <p>18 information, and to comply with applicable Privacy Law mandates,</p> <p>19 including but not limited to restrictions on access, storage, use, and</p> <p>20 disclosure (sharing) of transcripts and transcript exhibits, and</p> <p>21 applying "minimum necessary" standards where appropriate. It is</p> <p>22 recommended that your office review its policies regarding sharing of</p> <p>23 transcripts and exhibits - including access, storage, use, and</p> <p>24 disclosure - for compliance with Privacy Laws.</p> <p>25 © All Rights Reserved. Litigation Services (rev. 6/1/2019)</p>

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4 IN THE SECOND JUDICIAL DISTRICT COURT  
5 STATE OF NEVADA, COUNTY OF WASHOE  
6 THE HONORABLE ELIZABETH GONZALEZ, OUTSIDE JUDGE

7 ALBERT THOMAS, et al.

8 Plaintiffs, Case CV12-02222  
9 vs.

10 MEI-GSR HOLDINGS, et al.,

11 Defendants.

12 \_\_\_\_\_/

13 Pages 1 to 292, inclusive.

14 TRANSCRIPT OF PROCEEDINGS  
15 ORDER TO SHOW CAUSE  
16 Thursday, June 8, 2023

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<div>Page 2</div> <div>1 A P P E A R A N C E S:</div> <div>2 FOR PLAINTIFFS: ROBERTSON JOHNSON, et al.</div> <div>3 Jarrad Miller, Esq.</div> <div>4 Briana Collings, Esq.</div> <div>5 50 W. Liberty St., Ste. 600</div> <div>6 Reno, NV 89501</div> <div>7 LEMONS GRUNDY &amp; EISENBERG</div> <div>8 Robert Eisenberg, Esq.</div> <div>9 6005 Plumas Street</div> <div>10 Reno, Nevada</div> <div>11 FOR DEFENDANTS: PISANELLI BICE</div> <div>12 Jordan T. Smith, Esq.</div> <div>13 400 South 7th St., Ste. 300</div> <div>14 Reno, NV</div> <div>15 MERUELO GROUP, LLC</div> <div>16 David McElhinney, Esq.</div> <div>17 2500 2nd Street</div> <div>18 Executive Offices</div> <div>19 Reno, NV 89595-1200</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div>	<div>Page 4</div> <div>1 RENO, NEVADA -- 6/8/2023 -- 8:30 A.M.</div> <div>2 -o0o-</div> <div>3 THE COURT: Good morning, Mr. Brady.</div> <div>4 (Witness sworn.)</div> <div>5 THE COURT: You may proceed,</div> <div>6 Mr. McElhinney.</div> <div>7 MR. McELHINNEY: Thank you, your Honor.</div> <div>8 DIRECT EXAMINATION</div> <div>9 BY MR. McELHINNEY:</div> <div>10 Q. Mr. Brady, good morning.</div> <div>11 A. Good morning.</div> <div>12 Q. Would you please describe for me your role</div> <div>13 with GSR.</div> <div>14 A. Yes. I'm the executive director of finance</div> <div>15 and accounting. I'm over all of accounts</div> <div>16 receivable, accounts payable, the GL, revenue audit,</div> <div>17 among other things. Cage, count room, inventory</div> <div>18 control. I'm mainly oversee -- also over the condo</div> <div>19 accounting.</div> <div>20 Q. Who is your employer? Is it MEI-GSR?</div> <div>21 A. Correct.</div> <div>22 Q. How long have you been with -- let me</div> <div>23 clarify for the court. MEI-GSR is the owner doing</div> <div>24 business as Grand Sierra Resort. Is that accurate?</div>
<div>Page 3</div> <div>1 I N D E X</div> <div>2 Examination of Witness Brady:</div> <div>3 By Mr. McElhinney 4</div> <div>4 By Mr. Miller 148</div> <div>5 By the Court 281</div> <div>6</div> <div>7 E X H I B I T S</div> <div>8 Exhibit</div> <div>9 No. Admitted</div> <div>10 142 130</div> <div>11 144 210</div> <div>12 146 257</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div>	<div>Page 5</div> <div>1 A. Correct.</div> <div>2 Q. So, if I refer to Grand Sierra Resort as</div> <div>3 "GSR," you'll understand what I'm talking about.</div> <div>4 A. Yes.</div> <div>5 Q. How long have you been with GSR?</div> <div>6 A. Just over six years.</div> <div>7 Q. Are you familiar with what's been referred</div> <div>8 to in this litigation as "governing documents"?</div> <div>9 A. Yes.</div> <div>10 MR. McELHINNEY: Your Honor, may I approach</div> <div>11 and give him the Books 1 through 4?</div> <div>12 THE COURT: You may.</div> <div>13 BY MR. McELHINNEY:</div> <div>14 Q. What are the governing documents, as you</div> <div>15 understand it?</div> <div>16 A. The Seventh Amended CC&amp;Rs, the unit</div> <div>17 maintenance agreement and the rental maintenance</div> <div>18 agreement.</div> <div>19 Q. Would you open Book 1 and look at Exhibit</div> <div>20 1. Do you recognize that document?</div> <div>21 A. Yes.</div> <div>22 Q. What is it?</div> <div>23 A. It's the Seventh Amended CC&amp;Rs.</div> <div>24 Q. Would you just take a moment or just a</div>

<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&amp;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&amp;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&amp;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>

<p style="text-align: right;">Page 10</p> <p>1 providing data to them. Part of that is the condo.</p> <p>2 Q. So, if they came in for an audit and you</p> <p>3 had not prepared a budget, what would be the impact</p> <p>4 on Grand Sierra?</p> <p>5 A. There would be fluctuations in our income</p> <p>6 statement and balance sheets and they would ask why.</p> <p>7 Q. Okay. How do you determine the categories</p> <p>8 of items that go into the SFUE and HE calculations?</p> <p>9 A. CC&amp;Rs. There's different sections.</p> <p>10 Section -- the definitions themselves, very</p> <p>11 important, because that highlights what is</p> <p>12 condominium property, shared facility unit.</p> <p>13 And then the CC&amp;Rs are -- these CC&amp;Rs they</p> <p>14 kinda bounce around all over the place so you can't</p> <p>15 point to one section and say, oh, yeah, there it is.</p> <p>16 So, I use Section 4 heavily and then Section 9, and</p> <p>17 then the exhibits.</p> <p>18 Q. All right. Would you look at Exhibit 1.</p> <p>19 Is there a definition in the Seventh</p> <p>20 Amended CC&amp;Rs that defines condominium property? If</p> <p>21 so, would you find it and read it to us.</p> <p>22 A. Yes. Page three. "Condominium property, a</p> <p>23 portion of the real property and space within the</p> <p>24 parcel, the improvement, and structures erected,</p>	<p style="text-align: right;">Page 12</p> <p>1 Non-plaintiffs, correct?</p> <p>2 A. Correct.</p> <p>3 Q. A total of 670 units?</p> <p>4 A. Yes.</p> <p>5 Q. So, just to recap, your definition -- the</p> <p>6 definition of condominium property set forth in the</p> <p>7 CC&amp;Rs goes beyond that Floors 17 through 24 of the</p> <p>8 Summit Tower. Is that accurate?</p> <p>9 A. That is accurate. It is the whole</p> <p>10 property, land. Exhibit A actually spells it out.</p> <p>11 Q. Okay. And it also is -- part of that</p> <p>12 definition says, "It is a portion of the real</p> <p>13 property and space within the parcel."</p> <p>14 Is "parcel" defined in the CC&amp;Rs?</p> <p>15 A. It is.</p> <p>16 Q. And on what page?</p> <p>17 A. Page four.</p> <p>18 Q. And what does the parcel definition say?</p> <p>19 A. "The entire tract of real estate described</p> <p>20 in the first recital of this declaration."</p> <p>21 Q. So, what is your understanding of that</p> <p>22 definition? If I were to look at a map, what would</p> <p>23 I look at when you say the word "parcel"?</p> <p>24 A. All of the land that is the GSR that goes</p>
<p style="text-align: right;">Page 11</p> <p>1 constructed or contained therein, thereon or</p> <p>2 thereunder, the easements, rights, and</p> <p>3 appurtenances"--</p> <p>4 Q. "Appurtenances."</p> <p>5 A. Thank you.</p> <p>6 "belonging thereto and fixtures intended</p> <p>7 for the mutual use, benefit, or enjoyment of the</p> <p>8 owners that is hereby and hereafter submitted and</p> <p>9 subjected to the provisions of the declaration to</p> <p>10 the act from time to time."</p> <p>11 Q. All right. So, the condominium property by</p> <p>12 that definition, do you interpret that as just the</p> <p>13 Summit Tower?</p> <p>14 A. Absolutely not.</p> <p>15 Q. Okay. It goes -- now, the Summit Tower,</p> <p>16 please clarify. What is that a reference to, so the</p> <p>17 court understands?</p> <p>18 A. The Grand Sierra Resort, the property</p> <p>19 itself has three different towers. The Summit Tower</p> <p>20 is Floors 17 through 27 and within there -- Floors</p> <p>21 17 through 24 are the condo -- where the condo units</p> <p>22 are, 670 condo units.</p> <p>23 Q. So, those would be the units owned by</p> <p>24 Plaintiffs, some by Defendants and some by</p>	<p style="text-align: right;">Page 13</p> <p>1 from Second Street all the way to Telegraph all the</p> <p>2 way to Mill.</p> <p>3 Q. Okay. So, it is all through the parking</p> <p>4 lot to the very edges?</p> <p>5 A. Parking lot, all the way to Grand</p> <p>6 Adventureland, the RV, the golf. And there's</p> <p>7 actually a small parcel off Telegraph Street, if you</p> <p>8 look at the Exhibit A.</p> <p>9 Q. What is your understanding of the term</p> <p>10 "shared facilities unit"? And, if it's defined,</p> <p>11 would you share that with us.</p> <p>12 A. It is defined. It's on page six and it</p> <p>13 spells out a lot. Please don't make me read it.</p> <p>14 Q. Paraphrase for me, if you would.</p> <p>15 A. Sure. It is the -- let's see. So, it</p> <p>16 says, "Identified on the plat attached to as Exhibit</p> <p>17 A." So, if you go to Exhibit A, that is -- and you</p> <p>18 look at the parcels, you can go on the Washoe County</p> <p>19 Recorder and see the parcels and what it entails.</p> <p>20 It is pretty much all of the land. Then it</p> <p>21 goes into detail. So, all additions alterations</p> <p>22 betterments, improvements. Some examples are -- it</p> <p>23 says "the condominium property," which we already</p> <p>24 established prior -- "exterior, interior wall</p>

<p style="text-align: right;">Page 14</p> <p>1 finishes, the building facade, the roof, roof</p> <p>2 support elements, insulation, stairways, entrances</p> <p>3 exits, utility, mechanical, electrical, plumbing</p> <p>4 telecommunications other systems, including without</p> <p>5 limitation, wire, pipes, ducts, panels, pumps,</p> <p>6 cables, television, Internet, heating, ventilation,</p> <p>7 HVAC, the elevators, trash room, trash chutes, any</p> <p>8 desk areas, office space, concierge bell desk and</p> <p>9 other hotel operations located within the</p> <p>10 condominium property."</p> <p>11 Q. One of the challenges in this case is when</p> <p>12 you're reading go slow, because the court reporter's</p> <p>13 taking down what you say, so just keep it at a</p> <p>14 conversational tone. When we read things we tend to</p> <p>15 speed up and I watched the court reporter trying to</p> <p>16 keep up.</p> <p>17 A. Got you.</p> <p>18 THE COURT: When you refer to "Exhibit A,"</p> <p>19 you're referring to the legal description of the</p> <p>20 parcel?</p> <p>21 THE WITNESS: Yes. In the back of the</p> <p>22 CC&amp;Rs.</p> <p>23 THE COURT: I was making sure you and I are</p> <p>24 talking about the same exhibit.</p>	<p style="text-align: right;">Page 16</p> <p>1 THE COURT: Sir, can you look at Exhibit A</p> <p>2 and tell me where the public shared easement is</p> <p>3 depicted and the plat map.</p> <p>4 THE WITNESS: So, if you go -- the vicinity</p> <p>5 is the site.</p> <p>6 THE COURT: Yep.</p> <p>7 THE WITNESS: So, that is the site of the</p> <p>8 building.</p> <p>9 THE COURT: Okay. Next page.</p> <p>10 THE WITNESS: I'm sorry.</p> <p>11 MR. McELHINNEY: Your Honor, you're</p> <p>12 difficult to hear.</p> <p>13 THE WITNESS: So, if you go to the legal</p> <p>14 description, it has the parcel numbers.</p> <p>15 THE COURT: So, the legal description is</p> <p>16 the only places he's mentioned are depicted. It's</p> <p>17 not depicted on the plat map.</p> <p>18 THE WITNESS: It is not -- well, the site.</p> <p>19 But if you go to the parcels, you can go to the</p> <p>20 Washoe County Recorder.</p> <p>21 THE COURT: When I used to do work</p> <p>22 involving real property and developers, frequently</p> <p>23 the easements were indicated on the maps themselves.</p> <p>24 I'm asking if you see them on the map themselves</p>
<p style="text-align: right;">Page 15</p> <p>1 BY MR. McELHINNEY:</p> <p>2 Q. Mr. Brady, are the shared facilities units</p> <p>3 also defined in Section 2.3, page nine?</p> <p>4 A. Yes.</p> <p>5 Q. And do you rely upon that section when</p> <p>6 doing your calculations, et cetera?</p> <p>7 A. Yes. Also points to Section 4 too.</p> <p>8 Q. All right. Now, my understanding is the</p> <p>9 shared -- do the shared facilities unit include</p> <p>10 public shared facilities?</p> <p>11 A. Yes.</p> <p>12 Q. What is the distinction between shared</p> <p>13 facilities unit and public shared facilities?</p> <p>14 A. It is the egress and ingress and --</p> <p>15 Q. Look at page five and see if there's a</p> <p>16 definition of "public shared facilities," please.</p> <p>17 A. Yes. "That portion of the shared</p> <p>18 facilities unit located within the condominium</p> <p>19 property that is subject to the public shared</p> <p>20 facilities easement for access and use by the hotel</p> <p>21 management company and the unit owners."</p> <p>22 Q. All right. Now, I want to direct you to</p> <p>23 particular sections and ask you if those are</p> <p>24 sections upon which you rely.</p>	<p style="text-align: right;">Page 17</p> <p>1 besides the legal descriptions.</p> <p>2 THE WITNESS: On the maps themselves?</p> <p>3 THE COURT: Yes.</p> <p>4 THE WITNESS: Just the site map.</p> <p>5 THE COURT: And where is the easement</p> <p>6 depicted on the site map, which is only the picture</p> <p>7 of the building?</p> <p>8 THE WITNESS: I'm not sure.</p> <p>9 THE COURT: Okay. Thank you.</p> <p>10 BY MR. McELHINNEY:</p> <p>11 Q. Mr. Brady, look at Section 4.3, subpart</p> <p>12 E-1, and this is in Exhibit 1, page 14.</p> <p>13 Does that section describe the easements?</p> <p>14 A. Yes.</p> <p>15 Q. Is that a section upon which you relied in</p> <p>16 rendering your calculations?</p> <p>17 A. Yes.</p> <p>18 Q. And read that out loud for me, please. If</p> <p>19 it's a long section -- let me -- I want to avoid you</p> <p>20 reading endlessly. Is it a long section?</p> <p>21 A. Yes.</p> <p>22 Q. Let me ask a question.</p> <p>23 Does it describe ingress, egress, and</p> <p>24 access?</p>

<p style="text-align: right;">Page 18</p> <p>1 (Witness reviewing document.)</p> <p>2 THE WITNESS: I cannot find it.</p> <p>3 Can you point it to me.</p> <p>4 BY MR. McELHINNEY:</p> <p>5 Q. Absolutely. Look at E Roman Numeral 1.</p> <p>6 A. Yes. "Public shared facilities easement."</p> <p>7 Q. All right. And describe what that is, your</p> <p>8 understanding of what that is.</p> <p>9 A. It's ingress and egress, so the walkways,</p> <p>10 hallways, corridors, hotel lobbies, elevators</p> <p>11 stairways, access to and from the hotel units,</p> <p>12 residential units and the commercial units for</p> <p>13 reasonable pedestrian access over, upon, across</p> <p>14 those pedestrian access-ways located outside the</p> <p>15 hotel building.</p> <p>16 Q. Lemme stop you for a minute.</p> <p>17 So, this section actually identifies hotel</p> <p>18 lobby, does it not?</p> <p>19 A. It does.</p> <p>20 Q. Elevators, stairways. It talks about areas</p> <p>21 located outside the hotel building itself, correct?</p> <p>22 A. Correct.</p> <p>23 MR. McELHINNEY: Court's indulgence,</p> <p>24 please.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. And then look at -- we're on page 15. Look</p> <p>2 at section -- this is 4.3 E Roman Numeral small 2,</p> <p>3 capital letter B.</p> <p>4 A. Okay.</p> <p>5 Q. Did I lose you along that description, or</p> <p>6 are you with me?</p> <p>7 A. No. I'm with you.</p> <p>8 Q. What does that describe in terms of</p> <p>9 easements?</p> <p>10 A. "Any and all structural components of the</p> <p>11 improvements including, without limitation, all</p> <p>12 footing, foundations, exterior walls, finishes</p> <p>13 roach, roof trusses, support elements and</p> <p>14 insulation."</p> <p>15 Q. Remember to go slow for me, please.</p> <p>16 And then paragraph C what does that</p> <p>17 describe? Just briefly?</p> <p>18 A. That describes heating, the ventilation,</p> <p>19 compressors, air-handlers, HVAC to the condominium</p> <p>20 property.</p> <p>21 Q. Let's look at page 15, Exhibit 1, small</p> <p>22 Roman Numeral 3. That talks about a non-exclusive</p> <p>23 easement to use the loading area. What is that?</p> <p>24 A. That would be our receiving and warehouse</p>
<p style="text-align: right;">Page 19</p> <p>1 THE COURT: Sure.</p> <p>2 BY MR. McELHINNEY:</p> <p>3 Q. Now look at Roman Numeral 2. We're still</p> <p>4 in 4.3 E -- small Roman Numeral 2.</p> <p>5 What does that describe, just generally? I</p> <p>6 don't need you to read it to me but tell me your</p> <p>7 understanding of it.</p> <p>8 A. I'm sorry. 4.3 what?</p> <p>9 Q. Roman Numeral 2, page 14.</p> <p>10 A. Oh, thank you.</p> <p>11 (Witness reviewing document.)</p> <p>12 THE WITNESS: "Non-exclusive easements for</p> <p>13 the continued existence of the service from any of</p> <p>14 the following components or facilities which are</p> <p>15 located within the shared facilities unit and/or</p> <p>16 parcel."</p> <p>17 BY MR. McELHINNEY:</p> <p>18 Q. And then that next section sorta describes</p> <p>19 utilities, mechanical, electrical, those sorts of</p> <p>20 things. Is that correct?</p> <p>21 A. Yes. Satellite dishes, transformers,</p> <p>22 heaters, utility rooms, delivery of utility</p> <p>23 mechanical, telecommunications, television,</p> <p>24 Internet.</p>	<p style="text-align: right;">Page 21</p> <p>1 area.</p> <p>2 Q. Okay. And access between the loading area</p> <p>3 and the hotel units, correct?</p> <p>4 A. Correct. So, all back of the house.</p> <p>5 Q. All right. And then let's look at small</p> <p>6 Roman Numeral 4, "The non-exclusive easement to use</p> <p>7 and enjoy portions of the shared facilities unit</p> <p>8 which from time to time are made available by the</p> <p>9 owner of the shared facilities unit for use by the</p> <p>10 unit owners of the hotel units."</p> <p>11 Do you see that language?</p> <p>12 A. I do.</p> <p>13 Q. Who is the owner of the shared facilities</p> <p>14 unit?</p> <p>15 A. Us, GSR.</p> <p>16 Q. GSR MEI-GSR?</p> <p>17 A. Yes.</p> <p>18 Q. And what are they referring to there? How</p> <p>19 do you read that for use and enjoyment of portions</p> <p>20 of the shared facilities units? What does that</p> <p>21 include?</p> <p>22 A. That would include the fitness center for</p> <p>23 the guests, the pool for the guests, and any area</p> <p>24 that is around the property they can walk.</p>

<p style="text-align: right;">Page 22</p> <p>1 Q. Okay. And when the unit owners are there</p> <p>2 on property, are they allowed to use that pool for</p> <p>3 free?</p> <p>4 A. Yes.</p> <p>5 Q. If a hotel guest is staying in any one of</p> <p>6 those units, are they allowed to use the hotel pool</p> <p>7 for free?</p> <p>8 A. Yes. And the fitness center.</p> <p>9 Q. Now, the pool is open to the public,</p> <p>10 correct?</p> <p>11 A. It is, but it has to be -- they have to</p> <p>12 pay.</p> <p>13 Q. Okay. And those -- I don't want to get too</p> <p>14 far ahead myself, but what costs of the pool are</p> <p>15 attributable to the unit owners?</p> <p>16 A. I only take the -- I guess you would call</p> <p>17 it the non-revenue-generating, so I take the</p> <p>18 lifeguards, the security, the EVS, and I believe we</p> <p>19 have one or two technicians for the pool.</p> <p>20 Q. Okay. So, you don't charge for the people</p> <p>21 serving food out there?</p> <p>22 A. Absolutely not.</p> <p>23 Q. You don't charge for the barmaids that are</p> <p>24 running around taking drink orders?</p>	<p style="text-align: right;">Page 24</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. McELHINNEY:</p> <p>3 Q. What is that language that talks about the</p> <p>4 unit owners being responsible for a proportionate</p> <p>5 share?</p> <p>6 A. It's about -- it's three sentences from the</p> <p>7 bottom, "Owner, including, without limitation, each</p> <p>8 unit owner's proportionate share of the shared</p> <p>9 facilities expenses as more particularly described</p> <p>10 in Section 6.9."</p> <p>11 Q. So, is section Roman Numeral 4 on page 14</p> <p>12 talking about some of the expenses under 6.9?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 A. Well, it's above and beyond.</p> <p>16 Q. Okay. Page 17. And this is Section 4.5B</p> <p>17 small Roman Numeral 1.</p> <p>18 Now, what does it say at the top of the</p> <p>19 page in section B? And you can paraphrase. You</p> <p>20 don't need to read it.</p> <p>21 A. So, this is for maintenance, repairs, and</p> <p>22 replacements, and it's by the unit owner.</p> <p>23 "Except as otherwise provided in paragraph</p> <p>24 A above or paragraph C below, each unit owner shall</p>
<p style="text-align: right;">Page 23</p> <p>1 A. No.</p> <p>2 THE COURT: Do we still call them</p> <p>3 "barmaids"?</p> <p>4 MR. McELHINNEY: I apologize if that was an</p> <p>5 offensive reference. It shows my age.</p> <p>6 THE COURT: "Cocktail servers," Mr.</p> <p>7 McElhinney.</p> <p>8 BY MR. McELHINNEY:</p> <p>9 Q. Bar personnel, you don't charge for that</p> <p>10 either?</p> <p>11 A. No.</p> <p>12 MR. McELHINNEY: All right, your Honor.</p> <p>13 Thank you.</p> <p>14 BY MR. McELHINNEY:</p> <p>15 Q. I'd like to direct you to Section 4.5 on</p> <p>16 page 17 of Exhibit 1. Before we leave, I'll back</p> <p>17 you up.</p> <p>18 Going back to page 15, if you would, in</p> <p>19 sections Roman Numeral 4 where you thought that</p> <p>20 included the pool, is there language in there about</p> <p>21 the unit owners sharing in the cost of the expenses</p> <p>22 related to those facilities?</p> <p>23 A. Yes.</p> <p>24 (Witness reviewing document.)</p>	<p style="text-align: right;">Page 25</p> <p>1 be responsible for, at his or her own expense, all</p> <p>2 costs and expenses associated with all of the</p> <p>3 following items to be installed and maintained as</p> <p>4 provided in this declaration or the unit maintenance</p> <p>5 agreement."</p> <p>6 Q. All right. Now, what we have in Roman</p> <p>7 Numeral 1 is a long, long paragraph.</p> <p>8 Is this what you would refer to as F, F and</p> <p>9 E?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Do you see about three-quarters of</p> <p>12 the way down that long paragraph in small Roman</p> <p>13 Numeral 1 where it begins "In each instance that the</p> <p>14 declarant"?</p> <p>15 A. Yes.</p> <p>16 Q. Would you read that for us, please, and</p> <p>17 read slowly for the court reporter.</p> <p>18 A. Sure. "In each instance that the declarant</p> <p>19 or hotel management company, as the case may be,</p> <p>20 makes a determination that the F, F and E is in need</p> <p>21 of replacement for purposes of replacing F, F and E</p> <p>22 due to wear and tear, age, or to perform general</p> <p>23 refurbishment or renovation of the units, each unit</p> <p>24 owner of the hotel unit will be required to</p>

<p style="text-align: right;">Page 26</p> <p>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 ."</p> <p>10 Q. Is there a -- who is the declarant?  11 A. MEI-GSR.</p> <p>12 Q. And is there a separate hotel management  13 company?  14 A. No.</p> <p>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."</p> <p>23 Q. Is this some of the work that is ongoing in  24 the Summit Tower now?</p>	<p style="text-align: right;">Page 28</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Yes.</p> <p>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.</p> <p>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.</p> <p>22 Q. Does it include the appearance of the lobby  23 areas and the easement corridors?  24 A. Absolutely.</p>	<p style="text-align: right;">Page 29</p> <p>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.</p> <p>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.</p> <p>17 Q. It reads, As with the decision to replace  18 or refurbish F,F&amp;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,</p>

<p style="text-align: right;">Page 30</p> <p>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&amp;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&amp;E is in need of replacement for purposes of  21 replacing building F, F&amp;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 --</p>	<p style="text-align: right;">Page 32</p> <p>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&amp;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&amp;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</p>
<p style="text-align: right;">Page 31</p> <p>1 "in such building F, F&amp;E replacement program and to  2 pay for such unit owner's share of the cost of such  3 building F,F&amp;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&amp;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&amp;E,</p>	<p style="text-align: right;">Page 33</p> <p>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&amp;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&amp;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&amp;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?</p>



<p style="text-align: right;">Page 34</p> <p>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</p>	<p style="text-align: right;">Page 36</p> <p>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&amp;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?</p>
<p style="text-align: right;">Page 35</p> <p>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&amp;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</p>	<p style="text-align: right;">Page 37</p> <p>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</p>

<p style="text-align: right;">Page 38</p> <p>1 prior year.</p> <p>2 Q. For what?</p> <p>3 A. For gas. But utilities across the board,</p> <p>4 gas mainly.</p> <p>5 Q. Do you recall what you paid for gas in one</p> <p>6 month in December of 2022?</p> <p>7 A. It was almost a million dollars.</p> <p>8 Q. And what had it cost you the entire year</p> <p>9 before that?</p> <p>10 A. The entire year it fluctuates. In the</p> <p>11 winter it goes higher but, again, the year before I</p> <p>12 was -- I believe it was roughly between two hundred</p> <p>13 and \$300,000 was our highest that we ever paid in</p> <p>14 prior years when it's cold, you know, or heat goes</p> <p>15 up.</p> <p>16 Q. Okay. Are these requirements that you've</p> <p>17 been talking about setting the budget, are they</p> <p>18 mandatory under the CC&amp;Rs?</p> <p>19 A. Yes.</p> <p>20 Q. Let's talk about the reserves for a minute.</p> <p>21 How do you determine what capital</p> <p>22 expenditures will be made in any given year?</p> <p>23 A. So, at the beginning of -- so, Federal</p> <p>24 Reserve Consultants, Mari Jo, is the person who does</p>	<p style="text-align: right;">Page 40</p> <p>1 renovation in the Summit Tower first show up in an</p> <p>2 independent third-party reserve report?</p> <p>3 A. So, the reserve study is -- it goes out 30</p> <p>4 years. So, technically, if we don't know when we're</p> <p>5 going to the -- if GSR doesn't know when we will</p> <p>6 remodel, there's a -- Better Reserve uses a</p> <p>7 calculation that -- I don't know where they got</p> <p>8 it -- but they say on average a hotel will renovate</p> <p>9 the rooms somewhere between five to ten years, let's</p> <p>10 say.</p> <p>11 So, if we don't know when we will renovate</p> <p>12 she actually determines it and she goes out 30</p> <p>13 years. There's a schedule that they do that goes</p> <p>14 out 30 years on where the reserves should be at the</p> <p>15 end of each year.</p> <p>16 Q. So, if -- as an example, look at the 2019</p> <p>17 reserve study that it projects out 30 years forward</p> <p>18 and anticipated costs. Do I understand that?</p> <p>19 A. Yes. So, in 2016 it would project out to</p> <p>20 2036 -- 2046.</p> <p>21 Q. And so a question: Does Betterley tell you</p> <p>22 when she thinks units need to be remodeled or</p> <p>23 refurbished?</p> <p>24 A. She does not tell us, but on the -- she has</p>
<p style="text-align: right;">Page 39</p> <p>1 our reserves. She will contact us right around</p> <p>2 usually August, one, asking, Do you need a reserve</p> <p>3 study again, and we say, Yes. We've used her for</p> <p>4 the last six years.</p> <p>5 She will go and say, Okay, we need to start</p> <p>6 the reserve process. Okay. So, she needs to know</p> <p>7 the balances of what the accounts are, what has gone</p> <p>8 into the accounts on a yearly basis. And then also</p> <p>9 she goes, I need your budget, you know, your capital</p> <p>10 budget going forward, just a rough estimate.</p> <p>11 Q. And my understanding is that report, the</p> <p>12 on-site report comes out every five years.</p> <p>13 A. The on-site report mandatory by the CC&amp;Rs</p> <p>14 has to be on-site. Every other year is just a --</p> <p>15 they call it an "off-site," but she still comes on</p> <p>16 property.</p> <p>17 Every five years she goes throughout the</p> <p>18 building and takes the pictures. If you look at the</p> <p>19 reserve, those are her pictures, not ours. She</p> <p>20 takes pictures of everything. She asks -- we take</p> <p>21 her around the whole property. It's almost an</p> <p>22 all-day event and we're just showing her and she's</p> <p>23 asking questions.</p> <p>24 Q. When did -- if you know, when did the</p>	<p style="text-align: right;">Page 41</p> <p>1 to determine when it will be, because she has to</p> <p>2 produce the reserve numbers, you know. We have to</p> <p>3 have adequate reserves in order for us to remodel</p> <p>4 these rooms or the majority of the property per the</p> <p>5 CC&amp;Rs.</p> <p>6 Q. Do you dictate to Betterley what categories</p> <p>7 of expenses are included in the budget?</p> <p>8 A. No.</p> <p>9 Q. Do you know is she familiar with your</p> <p>10 CC&amp;Rs?</p> <p>11 A. Yes.</p> <p>12 Q. Under Exhibit 1 and Sections 6.9 and 6.10,</p> <p>13 who makes the determination of what needs</p> <p>14 replacement or renovation?</p> <p>15 A. He declarant, GSR.</p> <p>16 Q. And that would be whether GSR is referred</p> <p>17 to as a shared facilities unit owner or the</p> <p>18 declarant, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Let's shift gears. Look at Exhibit 2, 2007</p> <p>21 rental agreement.</p> <p>22 What is important about this document in</p> <p>23 carrying out your job responsibilities?</p> <p>24 A. This pretty much sets us, if they sign this</p>

<p style="text-align: right;">Page 42</p> <p>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</p>	<p style="text-align: right;">Page 44</p> <p>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."</p>
<p style="text-align: right;">Page 43</p> <p>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</p>	<p style="text-align: right;">Page 45</p> <p>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&amp;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</p>

<p style="text-align: right;">Page 46</p> <p>1 unit maintenance agreement.</p> <p>2 Now, backing up to the unit rental</p> <p>3 agreement, you use that formula when you're</p> <p>4 determining the balance of net rent.</p> <p>5 Is that fair to say?</p> <p>6 A. Yes.</p> <p>7 Q. You use the formula set forth on page eight</p> <p>8 of the unit rental agreement?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Now, unit maintenance agreement.</p> <p>11 What is it about this document that's important to</p> <p>12 you in carrying out your job responsibilities?</p> <p>13 A. This -- one of the main things here is that</p> <p>14 this spells out what the daily use fee is gonna be,</p> <p>15 the expenses that go into the daily use fee.</p> <p>16 Q. And do you follow that formula for your</p> <p>17 calculations of the daily use fee?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Is there a -- I'm gonna direct you</p> <p>20 to turn to page six in Exhibit 3.</p> <p>21 Is there an acknowledgment in this document</p> <p>22 that the unit owners sign as to any representations</p> <p>23 with respect to economic benefits for ownership of</p> <p>24 the units?</p>	<p style="text-align: right;">Page 48</p> <p>1 rental agreement, and direct you to page 13 of that</p> <p>2 document.</p> <p>3 A. Okay.</p> <p>4 Q. Paragraph 18, would you read that slowly</p> <p>5 for us, please. It's in bold lettering, is it not?</p> <p>6 A. It is.</p> <p>7 Q. Okay. Go ahead.</p> <p>8 A. "No guaranteed rental. Owner acknowledges</p> <p>9 that there are no rental income guarantees of any</p> <p>10 nature, no pooling agreements whatsoever, and no</p> <p>11 representations other than what is contained in this</p> <p>12 agreement.</p> <p>13 "Neither the company nor manager guarantees</p> <p>14 that owner will receive any minimum payments under</p> <p>15 this agreement or that owner will receive rental</p> <p>16 income equivalent to that generated by any other</p> <p>17 unit in the hotel."</p> <p>18 Q. Thank you. We've talked about the Seventh</p> <p>19 Amended CC&amp;Rs, the unit rental agreement, and unit</p> <p>20 maintenance agreement.</p> <p>21 What is your understanding of the</p> <p>22 receiver's relationship to the governing documents?</p> <p>23 A. That he has to comply with them --</p> <p>24 Q. Okay.</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Section 14 is owners' acknowledgments.</p> <p>2 Q. Would you read the portion out loud about</p> <p>3 the economic and tax benefits starting at the</p> <p>4 beginning of that sentence, if you can find it.</p> <p>5 A. "Owner's acknowledgments. Owner</p> <p>6 understands and acknowledges that execution of this</p> <p>7 agreement is a mandatory requirement of ownership of</p> <p>8 the unit.</p> <p>9 "Owner further acknowledges, represents and</p> <p>10 warranties that neither the company nor manager or</p> <p>11 any of the representative officers, representatives,</p> <p>12 employees, agents, subsidiaries, parent, the company</p> <p>13 and affiliates has, one, made any statements or</p> <p>14 representations with respect to the economic or tax</p> <p>15 benefits of ownership of the unit; two, assigns the</p> <p>16 economic benefits to be derived from the managerial</p> <p>17 efforts of the company or manager or from</p> <p>18 participation in the unit management program, or,</p> <p>19 three, make any suggestion, implication, statement</p> <p>20 or representation that owner is not permitted to</p> <p>21 rent the unit directly or to use other reservation</p> <p>22 agents to rent the unit."</p> <p>23 Q. Will you keep the mic closer to you.</p> <p>24 I'll take you back to Exhibit 2, the unit</p>	<p style="text-align: right;">Page 49</p> <p>1 A. -- and oversee.</p> <p>2 Q. He's ordered to implement compliance</p> <p>3 amongst all unit owners with the governing</p> <p>4 documents, correct, January 7, 2015, appointment</p> <p>5 order?</p> <p>6 A. Correct.</p> <p>7 Q. Is it your understanding that he has</p> <p>8 discretion whether or not to deviate from the</p> <p>9 governing documents?</p> <p>10 A. He does not.</p> <p>11 Q. That's set forth in the Christmas Eve order</p> <p>12 2020, Exhibit 10?</p> <p>13 A. Correct.</p> <p>14 Q. What is the very first time to your</p> <p>15 knowledge that the receiver requested court</p> <p>16 permission to open an account and collect rents from</p> <p>17 the units?</p> <p>18 A. I believe that was January of 2021.</p> <p>19 Q. Let's look at Exhibit 38 and Book No. 4.</p> <p>20 The court will correct me if I'm wrong, but my</p> <p>21 recollection from the receiver was he testified that</p> <p>22 this email from Stefanie Sharp to the Honorable</p> <p>23 Nancy Saita was the first time they had requested to</p> <p>24 collect net rents from the unit owners.</p>

<p style="text-align: right;">Page 50</p> <p>1 MR. MILLER: Objection, misstates witness</p> <p>2 testimony.</p> <p>3 THE COURT: Overruled. You may answer.</p> <p>4 BY MR. McELHINNEY:</p> <p>5 Q. If you look at Exhibit 38, does this</p> <p>6 refresh your recollection as to the first time the</p> <p>7 receiver said, I want to start to collect the net</p> <p>8 rent?</p> <p>9 MR. MILLER: Objection, leading.</p> <p>10 BY MR. McELHINNEY:</p> <p>11 Q. Fine.</p> <p>12 When is the first time in your recollection</p> <p>13 that the receiver sought to start collecting rents</p> <p>14 from the unit owners?</p> <p>15 A. September 15th, 2021.</p> <p>16 Q. And you're looking at Exhibit 38.</p> <p>17 A. I am.</p> <p>18 Q. Is that the first time you became aware of</p> <p>19 this request?</p> <p>20 A. Yes.</p> <p>21 Q. And what was it that the receiver was</p> <p>22 requesting? Now, we get into a little weird rule</p> <p>23 here but it's important. If you're going to read</p> <p>24 from the document, tell me you're reading from the</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Yes.</p> <p>2 Q. And what was the authority that Ms. Sharp</p> <p>3 cites in that document that authorizes him taking</p> <p>4 control of the net rents?</p> <p>5 A. The January 2015.</p> <p>6 Q. The January 2015 order appointing the</p> <p>7 receiver, correct?</p> <p>8 A. Correct.</p> <p>9 Q. After Ms. Sharp sent her email to Justice</p> <p>10 Saita about taking over the net rent, did the</p> <p>11 receiver file a motion shortly after that?</p> <p>12 A. Yes, in October.</p> <p>13 Q. Would you look at in Book 2, Exhibit 19.</p> <p>14 Looking at Exhibit 19, "Receiver Motion for Orders</p> <p>15 and Instructions," have you seen this motion before?</p> <p>16 A. Yes.</p> <p>17 Q. And what is it that the receiver is</p> <p>18 requesting in this motion?</p> <p>19 A. I believe he was requesting clarification.</p> <p>20 Q. Say again.</p> <p>21 A. He was requesting clarification.</p> <p>22 Q. Turn to page -- bear with me. Turn to page</p> <p>23 eight.</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 51</p> <p>1 document. If you read it and it refreshes your</p> <p>2 recollection, close the book and tell me what your</p> <p>3 recollection is.</p> <p>4 Take a look at it and see if that refreshes</p> <p>5 your recollection before you begin to testify,</p> <p>6 please.</p> <p>7 (Witness reviewing document.)</p> <p>8 BY MR. McELHINNEY:</p> <p>9 Q. Have you finished looking at that document?</p> <p>10 A. Yes.</p> <p>11 Q. Does that refresh your recollection?</p> <p>12 A. Yes.</p> <p>13 Q. What was it that Ms. Sharp was requesting</p> <p>14 on behalf of the receiver on September 15th, 2021?</p> <p>15 A. To collect net rents. The receiver had to</p> <p>16 open a bank account and he wanted net rents.</p> <p>17 Q. Okay. And net rents after deducting what?</p> <p>18 A. The DUF. And then you do a 50 percent</p> <p>19 revenue split and then you deduct the hotel</p> <p>20 expenses, the shared facility unit expenses and the</p> <p>21 reserves.</p> <p>22 Q. Okay. Do I understand correctly that this</p> <p>23 is the first time you're aware of that the receiver</p> <p>24 had asked to take over that function?</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Starting on line ten it reads, "The</p> <p>2 receiver requests that this court order that the</p> <p>3 receiver is to recalculate the charges for DUF, SFUE</p> <p>4 and HE for 2020 based on the same methodology that</p> <p>5 has been used in calculating fee charges for 2021,</p> <p>6 once the court approves that methodology."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. So, in this motion is it your understanding</p> <p>10 he's asking for the court to order that the receiver</p> <p>11 recalculate his 2020 fee calculations?</p> <p>12 A. Yes. Once the 2021 is approved.</p> <p>13 Q. Right. So, what brought that about? He</p> <p>14 had -- I want to back up a little bit.</p> <p>15 You were here when Mr. Teichner was coming</p> <p>16 to the property to calculate his 2020 fee</p> <p>17 calculations, were you not?</p> <p>18 A. Yes.</p> <p>19 Q. And tell me about that. Did -- about him</p> <p>20 coming to the property, what was that experience</p> <p>21 like? What were the discussions between the two of</p> <p>22 you?</p> <p>23 A. It was between me, Katelyn, the CFO at the</p> <p>24 time, and Sean Clark, who was the previous director</p>

<p style="text-align: right;">Page 54</p> <p>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&amp;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</p>	<p style="text-align: right;">Page 56</p> <p>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&amp;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.</p>
<p style="text-align: right;">Page 55</p> <p>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&amp;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&amp;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.</p>	<p style="text-align: right;">Page 57</p> <p>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&amp;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.</p>

<p style="text-align: right;">Page 58</p> <p>1 Q. No what?</p> <p>2 A. Environmental services. It's public area</p> <p>3 maintenance. It's also called -- to clean the</p> <p>4 property --</p> <p>5 Q. Okay.</p> <p>6 A. -- the whole property. There's no EVS in</p> <p>7 here. There's no security to keep the guests safe.</p> <p>8 There's no warehouse or inventory. Inventory</p> <p>9 receiving.</p> <p>10 Q. Let me ask a question.</p> <p>11 A. Sure.</p> <p>12 Q. Why would a unit owner have to pay a</p> <p>13 portion of warehouse expense?</p> <p>14 A. Sure. So, the warehouse is where we store</p> <p>15 -- we buy in bulk. So, all the amenities that go</p> <p>16 into the room, those are not -- those get stored so</p> <p>17 we can get a very cheap price.</p> <p>18 They actually come from China, so they get</p> <p>19 shipped over here the lowest price possible and get</p> <p>20 stored so we can buy in bulk so it's the lowest</p> <p>21 price to us and the unit owners.</p> <p>22 Q. Okay.</p> <p>23 A. Also, the receiving dock is where all the</p> <p>24 supplies come in. You want new towels, it comes in</p>	<p style="text-align: right;">Page 60</p> <p>1 A. No.</p> <p>2 MR. MILLER: Leading and calls for legal</p> <p>3 conclusion.</p> <p>4 THE COURT: Overruled.</p> <p>5 BY MR. McELHINNEY:</p> <p>6 Q. Go ahead.</p> <p>7 A. No.</p> <p>8 Q. You heard the testimony from Mr. Teichner,</p> <p>9 right, because you're the corporate representative</p> <p>10 here?</p> <p>11 A. Yes.</p> <p>12 Q. Did it sound to you like -- who</p> <p>13 recalculated those numbers that led to the</p> <p>14 difference between his 2020 numbers and 2021</p> <p>15 numbers?</p> <p>16 A. It appeared to me that his legal counsel</p> <p>17 interpreted the CC&amp;Rs and told him what should be</p> <p>18 included and what should not be included.</p> <p>19 Q. Okay. And you've been doing this for six</p> <p>20 years, correct?</p> <p>21 A. Correct.</p> <p>22 Q. You've been working with the Seventh</p> <p>23 Amended CC&amp;Rs and the other two governing documents,</p> <p>24 correct?</p>
<p style="text-align: right;">Page 59</p> <p>1 there. You want new supplies, it all comes in</p> <p>2 there. So, there's none of that in here.</p> <p>3 Q. Is there any charge for human resources?</p> <p>4 A. No.</p> <p>5 Q. And is a portion of the human resources</p> <p>6 attributable to those units?</p> <p>7 A. Absolutely. They're the ones that hire the</p> <p>8 housekeepers. We have over 2,000 employees. A</p> <p>9 majority -- the biggest department -- one of the</p> <p>10 biggest departments is housekeeping, front desk,</p> <p>11 reservations, and the other department --</p> <p>12 engineering that takes care of the whole property.</p> <p>13 Q. When you compare your calculations to his</p> <p>14 calculations, is there a ratio of difference between</p> <p>15 the two of them?</p> <p>16 A. Yeah. His are probably three to four times</p> <p>17 less than what we had.</p> <p>18 Q. Do his cost allocations conform with the</p> <p>19 governing documents?</p> <p>20 A. Yes. He uses the same square footage that</p> <p>21 I use in mine.</p> <p>22 Q. In terms of the categories of expenses that</p> <p>23 he's charging, though, is that in conformity with</p> <p>24 the Seventh Amended CC&amp;Rs?</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Correct.</p> <p>2 Q. Are your calculations in accordance with</p> <p>3 the governing documents?</p> <p>4 A. I believe 100 percent, yes.</p> <p>5 Q. Now, I'm going to bring us back to we had</p> <p>6 been talking about Ms. Sharp's September 15th, 2021,</p> <p>7 email to Justice Saita and we had talked about</p> <p>8 Exhibit 19, which I think you were on that page with</p> <p>9 me.</p> <p>10 Again, to summarize, in that motion he's</p> <p>11 asking the court to authorize him to recalculate his</p> <p>12 2020 numbers that had been invalidated in the</p> <p>13 Christmas Eve 2020 order. Is that accurate?</p> <p>14 A. That is accurate.</p> <p>15 Q. In this motion does he make a request as to</p> <p>16 what fees he would like to have the court apply</p> <p>17 prior to him completing his 2020 fee calculations?</p> <p>18 Look at page eight, line 13.</p> <p>19 A. I'm sorry. Repeat the question.</p> <p>20 Q. Did he make a request to the court in this</p> <p>21 motion as to what fees he wanted the court to apply</p> <p>22 pending him completing the 2020 fee calculations?</p> <p>23 A. Yes. He wanted to apply his 2021</p> <p>24 calculations once the court approves the</p>

<p style="text-align: right;">Page 62</p> <p>1 methodology.</p> <p>2 Q. Read for me starting on line 13 where it</p> <p>3 says "The receiver also requests."</p> <p>4 A. "The receiver also requests that the DUF,</p> <p>5 the SFUE and HE currently being charged prior to the</p> <p>6 entry of the court's September 29th, 2021, order</p> <p>7 remain in place until the fees for 2020 are</p> <p>8 recalculated and approved by this court so that only</p> <p>9 a single account adjustment will be necessary."</p> <p>10 Q. Now, do you understand what he meant when</p> <p>11 he used that phrase?</p> <p>12 A. It was my -- kinda confusing, but at the</p> <p>13 time we were using Proctor's numbers because the</p> <p>14 court -- the December 2021 order said that we can't</p> <p>15 use his numbers.</p> <p>16 Q. Okay. I'll slow you down a little bit.</p> <p>17 Look at Exhibit 19, page 10, line 14.</p> <p>18 He actually says that his preference is</p> <p>19 that the fees calculated by the prior receiver,</p> <p>20 Mr. Proctor, remain in place until revised fees are</p> <p>21 calculated for 2020 based upon the court's approval</p> <p>22 of the methodology that he used for his 2021</p> <p>23 calculations, correct?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">Page 64</p> <p>1 A. I do.</p> <p>2 Q. When he's referring to "all rents," what</p> <p>3 was it that the receiver was requesting?</p> <p>4 A. We had long conversations on this and it</p> <p>5 was net rents.</p> <p>6 Q. Net rents.</p> <p>7 So, his reference -- the court's reference</p> <p>8 here to "all rents" is a reference to net rents.</p> <p>9 A. Correct.</p> <p>10 Q. Turn to page four of the order, line 22.</p> <p>11 The motion further requests the court approve the</p> <p>12 opening of an account for the receivership with the</p> <p>13 receiver having sole signatory authority over the</p> <p>14 account and order that all rents received by the</p> <p>15 defendants currently and in the future generated</p> <p>16 from either all 670 condominium units or the</p> <p>17 plaintiff-owned units net of the total charges for,</p> <p>18 DUF, SFUE, HE, fees for reserves combined are to be</p> <p>19 deposited into the account.</p> <p>20 Did I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. So, again, his reference to "all rents" is</p> <p>23 a reference to net rents.</p> <p>24 Do I understand that correctly?</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Okay. Did this motion eventually result in</p> <p>2 the entry of an order?</p> <p>3 A. Yes, I believe so.</p> <p>4 Q. Look -- turn to Book 3, please, which is</p> <p>5 Exhibit No. 25. It should be an Order Granting</p> <p>6 Receiver's Motion for Orders and Instructions.</p> <p>7 A. Yes.</p> <p>8 Q. When was this order entered? What's the</p> <p>9 file stamp?</p> <p>10 A. It looks like January 4th, 2022.</p> <p>11 Q. Okay. Turn to page three, line 12. It</p> <p>12 says, "The appointment order provides the receiver</p> <p>13 authority to take control of all accounts</p> <p>14 receivable, payments, rents, including all</p> <p>15 statements and records of deposits, advances, and</p> <p>16 prepaid contracts or rents."</p> <p>17 Do you see that language?</p> <p>18 A. I do.</p> <p>19 Q. And if you go to line 16, it says, "The</p> <p>20 receiver has informed the parties of his intent to</p> <p>21 open a separate account into which all rents and</p> <p>22 other proceeds from the units will be deposited and</p> <p>23 now request the court's permission to open such</p> <p>24 account." Do you see that language?</p>	<p style="text-align: right;">Page 65</p> <p>1 A. Yes.</p> <p>2 Q. Turn to page six of the order, line 22. It</p> <p>3 reads "Indeed, the appointment order also expressly</p> <p>4 calls for the receiver to collect proceeds from the</p> <p>5 property" -- parentheses -- "defined as the 670</p> <p>6 condominium units" -- closed paren -- "including but</p> <p>7 not limited to rent earned therefrom."</p> <p>8 It cites to a page number and line numbers</p> <p>9 of the appointment order.</p> <p>10 "It logically follows, then, that the</p> <p>11 receiver may open a separate account for the</p> <p>12 receivership in which it may hold all rents from the</p> <p>13 property as defined by the receivership order,"</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. So, in this order what is defined as "all</p> <p>17 rents"? Turn to page eight at line six, where it</p> <p>18 reads "The receiver shall open a separate account on</p> <p>19 which receiver has sole signatory authority and into</p> <p>20 which all rents received by the defendants currently</p> <p>21 for all 670 condominium units net a total charge for</p> <p>22 DUF, SFUE and HE fees and reserves are to be</p> <p>23 deposited." Did I read that correctly?</p> <p>24 A. Yes.</p>



<p style="text-align: right;">Page 66</p> <p>1 Q. So, again, a reference in this order to</p> <p>2 "all rents" is net rents, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Page eight of the same Exhibit 25, "It is</p> <p>5 further ordered that the receiver shall recalculate</p> <p>6 the DUF, SFUE and HE based on the same methodology</p> <p>7 as has been used in calculating the fees charges for</p> <p>8 2021."</p> <p>9 So, what he's talking about, what the court</p> <p>10 is talking about there is him recalculating his 2020</p> <p>11 fees. Is that accurate?</p> <p>12 MR. MILLER: Objection, leading.</p> <p>13 THE COURT: Rephrase your question.</p> <p>14 BY MR. McELHINNEY:</p> <p>15 Q. This order when it's ordering the receiver</p> <p>16 to recalculate the DUF and SFUE and HE, for what</p> <p>17 year is that calculation being required?</p> <p>18 A. He's supposed to recalculate 2020 using the</p> <p>19 2021 methodology.</p> <p>20 Q. All right. And then on page eight starting</p> <p>21 at line three we see the language again, "Those fees</p> <p>22 in place prior to the court's September 27th, 2021,</p> <p>23 order" -- now, I -- "shall remain in place until the</p> <p>24 fees for 2020 are recalculated and approved by this</p>	<p style="text-align: right;">Page 68</p> <p>1 October and his numbers were not actually approved</p> <p>2 until this order in January. So, we couldn't --</p> <p>3 THE COURT: January --</p> <p>4 BY MR. McELHINNEY:</p> <p>5 Q. So, let me show you -- or let me clarify.</p> <p>6 There is a January 4th, 2022, order that</p> <p>7 approved his 2021 fees, correct?</p> <p>8 A. Correct.</p> <p>9 Q. So, those fees were not approved prior to</p> <p>10 January 4th, 2022.</p> <p>11 A. No. In October it even expressly -- we</p> <p>12 just read that he wanted -- he asked the court to</p> <p>13 approve them.</p> <p>14 Q. Okay. So, this phrase, "Those fees in</p> <p>15 place prior to the court's September 27th, 2021,</p> <p>16 order shall remain in place until the fees for 2020</p> <p>17 are recalculated," we know it can't be a reference</p> <p>18 to his 2021 numbers because they were not approved</p> <p>19 in September 27th, 2021, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Can't be a reference to Proctor's numbers</p> <p>22 because those had been outlawed by the findings of</p> <p>23 fact, conclusions of law, and order -- which, your</p> <p>24 Honor, is Exhibit 16 -- and that was entered</p>
<p style="text-align: right;">Page 67</p> <p>1 court such that only a single account adjustment</p> <p>2 will be necessary."</p> <p>3 Now, we talked about the fact that when he</p> <p>4 filed his motion in October, he thought that phrase</p> <p>5 meant return to Proctor's numbers, correct?</p> <p>6 A. Correct.</p> <p>7 Q. However, what happened on September 29th,</p> <p>8 2021?</p> <p>9 A. Proctor's numbers were stricken from the</p> <p>10 record.</p> <p>11 Q. So, the requirement to go back to Proctor's</p> <p>12 numbers was ordered removed from that December --</p> <p>13 that Christmas Eve 2020 order.</p> <p>14 Is that accurate?</p> <p>15 A. Correct.</p> <p>16 Q. So, as you're reading this provision, tell</p> <p>17 me about -- are you confused or is it clear to you?</p> <p>18 A. It is clear as mud. I was thoroughly</p> <p>19 confused.</p> <p>20 Q. Okay. So, what did you do?</p> <p>21 A. So, we -- I met with counsel. We went over</p> <p>22 all the majority of the orders to see which numbers</p> <p>23 were in place. We couldn't use his numbers because</p> <p>24 he referenced that we had used Proctor's numbers in</p>	<p style="text-align: right;">Page 69</p> <p>1 September 29th, 2021, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And his 2020 numbers had been deemed</p> <p>4 invalid in the court's Christmas Eve 2020 order,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. So, what fees are left for you to apply if</p> <p>8 you follow that directive of the court?</p> <p>9 A. The only fees that are left are our fees</p> <p>10 that we calculated. But we did take into account</p> <p>11 during the May -- the four-day trial there was</p> <p>12 stipulations where, you know, VIPs or valet,</p> <p>13 transportation, certain stuff couldn't be part of</p> <p>14 the DUF.</p> <p>15 So, we took that into account and removed</p> <p>16 that and we started using our numbers, because those</p> <p>17 were the only numbers that me and the counsel came</p> <p>18 up with that we could use. There was no other</p> <p>19 numbers we could use.</p> <p>20 Q. There were no other numbers that really fit</p> <p>21 within this description that you found confusing --</p> <p>22 A. Yes.</p> <p>23 Q. -- in this order.</p> <p>24 A. And based on the CC&amp;Rs.</p>

<p style="text-align: right;">Page 70</p> <p>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,</p>	<p style="text-align: right;">Page 72</p> <p>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?</p>
<p style="text-align: right;">Page 71</p> <p>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?</p>	<p style="text-align: right;">Page 73</p> <p>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,</p>

<p style="text-align: right;">Page 74</p> <p>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 <b>Q. Okay. Following your conversations with</b> 5 <b>Mr. Teichner, what was your understanding of what he</b> 6 <b>was doing in regards to the net reserves or the net</b> 7 <b>rent?</b> 8 A. In 2022 or -- 9 <b>Q. Let's say any time after entry of these</b> 10 <b>orders, the January 4, 2022, in your conversations</b> 11 <b>with him.</b> 12 A. Nothing. 13 <b>Q. Okay. Did you ever have discussions with</b> 14 <b>him about, Are you going to calculate the net rent?</b> 15 A. Yes. Multiple times I reached out to him 16 because, again, per the CC&amp;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 <b>Q. Were you withholding rent from him?</b> 24 A. No. Multiple times I asked him and the</p>	<p style="text-align: right;">Page 76</p> <p>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 <b>Q. Mr. Brady, I want to recap a little bit.</b> 10 <b>We're getting ready to shift gears.</b> 11 <b>My understanding you had described your</b> 12 <b>meetings with Mr. Teichner where he was coming to</b> 13 <b>the GSR, correct?</b> 14 A. Yes. 15 <b>Q. On those occasions during the discussions</b> 16 <b>were you guys going through the governing documents?</b> 17 A. Yes. 18 <b>Q. And any estimate of how many hours you</b> 19 <b>spent either with Mr. Teichner at the property or</b> 20 <b>communicating with him off property about his</b> 21 <b>methodology and calculations?</b> 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,</p>
<p style="text-align: right;">Page 75</p> <p>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 <b>Q. And that's the true-up process you</b> 16 <b>described earlier?</b> 17 A. Yes. That's the true-up process we do 18 every year. Per the CC&amp;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.</p>	<p style="text-align: right;">Page 77</p> <p>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 <b>Q. Okay. And you had told us that you felt</b> 5 <b>you reached a meeting of the minds between GSR and</b> 6 <b>Mr. Teichner as to the methodology for reaching his</b> 7 <b>calculations?</b> 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 <b>Q. So, we were talking about the Exhibit 25,</b> 14 <b>which is the January 4th, 2022, order that talks</b> 15 <b>about he requested that the DUF, HE and SFUE being</b> 16 <b>charged prior to the court's order remained in place</b> 17 <b>until the fees for 2020 are recalculated.</b> 18 <b>You said that you went back and applied --</b> 19 <b>what numbers did you apply?</b> 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</p>

<p style="text-align: right;">Page 78</p> <p>1 specifically said we cannot apply this to the DUF or</p> <p>2 to the SFU or the HE. So, we took his original</p> <p>3 numbers that were thrown out and we changed them</p> <p>4 based on what the judge said.</p> <p>5 We felt those were the most accurate based</p> <p>6 on the CC&amp;Rs of what Mr. Teichner reviewed with us</p> <p>7 extensively, that we went over based on the</p> <p>8 governing documents. So, we felt that we satisfied</p> <p>9 the judge in that until Mr. Teichner could come up</p> <p>10 with his own.</p> <p>11 But at that time he got legal counsel and</p> <p>12 his whole interpretation of the CC&amp;Rs the governing</p> <p>13 documents changed drastically.</p> <p>14 Q. Okay. Did you or your counsel tell the</p> <p>15 court that you did not understand the language and</p> <p>16 that you tried to get clarification?</p> <p>17 A. Yes.</p> <p>18 Q. You're familiar with -- let's look at</p> <p>19 Exhibit 28, which is in Book 3. By the way, before</p> <p>20 we look closer at Exhibit 28, Mr. Proctor was the</p> <p>21 first receiver appointed in this case.</p> <p>22 Are you aware of that?</p> <p>23 A. Yes.</p> <p>24 Q. And then who paid Mr. Proctor for his</p>	<p style="text-align: right;">Page 80</p> <p>1 \$135,000 that we interplead with the court?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Let's look at Exhibit 28.</p> <p>4 Have you seen this document before,</p> <p>5 Defendants' Surrebuttal to Plaintiffs' May 24th,</p> <p>6 2022, Rebuttal Oral Argument Regarding Plaintiffs'</p> <p>7 Motion for Order to Show Cause Regarding Contempt.</p> <p>8 Is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Turn to page two, line ten. It says, "To</p> <p>11 summarize, Plaintiffs contend the first order</p> <p>12 stating that the receiver 2021 calculation shall be</p> <p>13 applied retroactive to January 2020 is harmonious</p> <p>14 with the second order stating that until such time</p> <p>15 as the receiver recalculates his 2020 calculations</p> <p>16 and the court approves the same, those fees in place</p> <p>17 before the court's 9/27/2021 order shall remain in</p> <p>18 place. These orders are contradictory."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. So, this -- your attorneys are trying to</p> <p>22 address the contradiction between those two orders.</p> <p>23 Is that your understanding?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 79</p> <p>1 receiver fees?</p> <p>2 A. The GSR UOA.</p> <p>3 Q. And do you know how much he was paid?</p> <p>4 A. I believe approximately \$50,000.</p> <p>5 Q. 50,000?</p> <p>6 A. Yes.</p> <p>7 Q. So, was he paid in full?</p> <p>8 A. Yes, as far as I know.</p> <p>9 Q. In terms of Mr. Teichner, when he wouldn't</p> <p>10 give you the net unit rental numbers, did we</p> <p>11 eventually interplead money with the court to get</p> <p>12 him paid?</p> <p>13 A. We did, \$135,000.</p> <p>14 Q. And was that your understanding of payment</p> <p>15 of his fees and his attorney's fees?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So, as far as you know, as we sit</p> <p>18 here today the receiver has been paid in full, at</p> <p>19 least effective -- I'm not sure what the date was,</p> <p>20 but probably end of March 2023, thereabouts?</p> <p>21 A. Yes. But also the -- we also paid \$80,000</p> <p>22 to the GSR UOA for the assessment, and I can only</p> <p>23 assume that went to pay the bills for Mr. Teichner.</p> <p>24 Q. Okay. So, that's in addition to the</p>	<p style="text-align: right;">Page 81</p> <p>1 MR. McELHINNEY: Your Honor, I want to</p> <p>2 acknowledge, because I don't want to unnecessarily</p> <p>3 confuse the court, sometimes the reference is to the</p> <p>4 order of September 29th, 2021; other times it's</p> <p>5 September 27th, 2021.</p> <p>6 The reality is there's only one order</p> <p>7 around that time and it was September 29th, 2021.</p> <p>8 That's what is contained in the receiver motion, but</p> <p>9 it didn't -- I think it's a typo, probably, that</p> <p>10 showed up in the order.</p> <p>11 And, again, if Mr. Miller disagrees, he can</p> <p>12 certainly correct me.</p> <p>13 THE COURT: He doesn't disagree. He agrees</p> <p>14 with you.</p> <p>15 MR. McELHINNEY: Okay. That's good news.</p> <p>16 We're making progress.</p> <p>17 BY MR. McELHINNEY:</p> <p>18 Q. All right. Did the plaintiffs acknowledge</p> <p>19 at that time, around the time that we had filed this</p> <p>20 motion -- let's even be more precise.</p> <p>21 At the hearing on May 24th -- I'll direct</p> <p>22 you to an exhibit here in a moment. At the hearing</p> <p>23 on May 24th, 2022, did the plaintiffs acknowledge</p> <p>24 that there was a conflict between these two orders?</p>

<p style="text-align: right;">Page 82</p> <p>1 A. No. I think they said they can be read 2 harmoniously.</p> <p>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.</p> <p>6 Turn to page thirty. I'll represent to you 7 that -- were you present at this hearing?</p> <p>8 A. Yes.</p> <p>9 Q. The -- do you recall Mr. Tew arguing on 10 behalf of Plaintiffs?</p> <p>11 A. Yes.</p> <p>12 Q. And do you recall him saying that the two 13 orders actually can be read in harmony with one 14 another?</p> <p>15 A. Yes.</p> <p>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"?</p> <p>19 A. Yes.</p> <p>20 MR. McELHINNEY: Your Honor, I'm not going 21 to belabor the point.</p> <p>22 THE COURT: Great.</p> <p>23 BY MR. McELHINNEY:</p> <p>24 Q. Do you feel -- at this point have you given</p>	<p style="text-align: right;">Page 84</p> <p>1 line three. I can read it in the interest of time.</p> <p>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?</p> <p>10 A. Yes.</p> <p>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."</p> <p>20 Can you reconcile that language with the 21 language that appears in Exhibit 25?</p> <p>22 A. No.</p> <p>23 Q. And that is the exact argument that was 24 being made by your counsel at both the May 24th</p>
<p style="text-align: right;">Page 83</p> <p>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.</p> <p>6 Are there any other details that you want 7 to provide to the court at this point?</p> <p>8 A. Just that we use actuals. There's no 9 fluffing the numbers. There's no -- everything is 10 actuals.</p> <p>11 Q. All right.</p> <p>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.</p> <p>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.</p> <p>22 A. Yes.</p> <p>23 Q. And what is the instruction of the court in 24 this order? Look at page two, probably starting at</p>	<p style="text-align: right;">Page 85</p> <p>1 hearing and then in their surrebuttal opposition 2 where they are identifying those two orders as 3 conflicting with one another.</p> <p>4 A. Yes.</p> <p>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?</p> <p>8 A. Yes.</p> <p>9 Q. Did you hear Mr. Miller stand up yesterday 10 and say that those two orders are ambiguous?</p> <p>11 A. Yes.</p> <p>12 Q. Had you ever heard him say that before?</p> <p>13 A. No.</p> <p>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?</p> <p>18 A. That is accurate until, I believe it was 19 May 23 he changed it to "gross."</p> <p>20 Q. Look at Exhibit 29, which should be in Book 21 No. 3. Do you see his letter of November 14th, 22 2022?</p> <p>23 A. Yes.</p> <p>24 Q. Turn to page three.</p>

<p style="text-align: right;">Page 86</p> <p>1 (Witness reviewing document.)</p> <p>2 BY MR. McELHINNEY:</p> <p>3 Q. These are not numbered pleading paper, so</p> <p>4 I'll direct you about halfway down the last full</p> <p>5 sentence that appears on that page. It says, "For</p> <p>6 example, the first sentence on page two, lines four,</p> <p>7 10 to 14 states, that the receivership is over all</p> <p>8 condominium units and requires that the rents</p> <p>9 received from all 670 condominium units net of total</p> <p>10 charges for DUF, SFUE and HE fees and reserves be</p> <p>11 turned over to the receiver and deposited into the</p> <p>12 receivership account," correct?</p> <p>13 A. Correct.</p> <p>14 Q. Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. Even as of -- so, this is 11 months after</p> <p>17 entry of the June 4th, 2022, order. He's still</p> <p>18 talking to you about net rents. Is that accurate?</p> <p>19 A. Yes.</p> <p>20 Q. By the way, has he ever, as you sit here</p> <p>21 today, given you the reserve numbers for 2020?</p> <p>22 A. No.</p> <p>23 Q. How about for 2021?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 88</p> <p>1 THE COURT: How much longer with this</p> <p>2 witness?</p> <p>3 MR. McELHINNEY: Another hour at least.</p> <p>4 THE COURT: Okay.</p> <p>5 MR. McELHINNEY: Probably a bit longer.</p> <p>6 BY MR. McELHINNEY:</p> <p>7 Q. This is still part of Exhibit 29. If you</p> <p>8 go -- if you go back, he has some exhibits that were</p> <p>9 included with that filing, go to Exhibit 5. It's</p> <p>10 really at the very back of that exhibit and it's</p> <p>11 June 27th, 2022.</p> <p>12 A. Okay.</p> <p>13 Q. Turn to page two of that letter. And the</p> <p>14 receiver says, very last paragraph, "Once the court</p> <p>15 rules on the pending motions, objections, and</p> <p>16 replies and decides whether or not the revised fee</p> <p>17 charges are to be applied to GSR and the" -- it says</p> <p>18 "OTPOs," and I think he means other third-party</p> <p>19 owners -- "then I will be able to perform the</p> <p>20 recalculations, obtain the net rents for GSR, and</p> <p>21 disburse the funds as set forth above. However, I</p> <p>22 must be assured that I will receive the net rents"</p> <p>23 -- I'm sorry. "However, I must be assured that I</p> <p>24 will receive the net rents from GSR as recalculated</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. So, even though the order requires him to</p> <p>2 determine net rent using the DUF, SFUE, HE and</p> <p>3 reserves, he's never even given you the reserves.</p> <p>4 A. No.</p> <p>5 Q. Turn to page four of Exhibit 29, and this,</p> <p>6 again, is still part of the November 14th, 2022,</p> <p>7 order. Third full sentence that starts "Certainly,</p> <p>8 the amount of the net rents," are you with me?</p> <p>9 A. Yes.</p> <p>10 Q. "Certainly, the amount of the net rents</p> <p>11 would first need to be calculated before the</p> <p>12 receiver could inform GSR of the amount that it</p> <p>13 would need to turn over to the receiver for past-due</p> <p>14 amounts as well as for the most current month's</p> <p>15 amount." Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. Is that consistent with the conversations</p> <p>18 you were having with Mr. Teichner?</p> <p>19 A. Yes.</p> <p>20 Q. And he was telling you, I'm not gonna do it</p> <p>21 because?</p> <p>22 A. He was not getting paid.</p> <p>23 MR. McELHINNEY: Court's indulgence, your</p> <p>24 Honor.</p>	<p style="text-align: right;">Page 89</p> <p>1 so that my fees and my counsel fees, both the</p> <p>2 current amounts and the amounts to perform the</p> <p>3 additional work, will be paid forthwith."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And did I read it correctly?</p> <p>7 A. Yes.</p> <p>8 Q. That's consistent with the conversations</p> <p>9 you were having with Mr. Teichner?</p> <p>10 A. Yes.</p> <p>11 Q. I want to make sure I understand your</p> <p>12 testimony. Up until September 15th, 2021, to your</p> <p>13 knowledge the receiver never demanded that the GSR</p> <p>14 hand over rental income. Is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. And when he made that first demand, it was</p> <p>17 actually the email from his attorney to Justice</p> <p>18 Saita. That was September 15th, 2021. It was to</p> <p>19 hand over net rent revenue by subtracting the DUF,</p> <p>20 HE and SFUE and reserves?</p> <p>21 A. Correct.</p> <p>22 Q. Once the January 4th, 2022, order was</p> <p>23 issued ordering him to calculate the 2020 DUF, SFUE</p> <p>24 and HE, did he admit to you that it was up to him to</p>

<p style="text-align: right;">Page 90</p> <p>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.</p>	<p style="text-align: right;">Page 92</p> <p>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.</p>
<p style="text-align: right;">Page 91</p> <p>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.</p>	<p style="text-align: right;">Page 93</p> <p>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</p>

<p style="text-align: right;">Page 94</p> <p>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</p>	<p style="text-align: right;">Page 96</p> <p>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</p>
<p style="text-align: right;">Page 95</p> <p>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?</p>	<p style="text-align: right;">Page 97</p> <p>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?</p>



<p style="text-align: right;">Page 98</p> <p>1 A. Correct.</p> <p>2 Q. Not in your capacity as a declarant under</p> <p>3 the Seventh Amended CC&amp;Rs.</p> <p>4 A. That is correct.</p> <p>5 Q. Let's talk about the receiver's claiming a</p> <p>6 right to order and overseeing reserve studies.</p> <p>7 When did you become aware that the receiver</p> <p>8 was claiming entitlement to oversee the reserve</p> <p>9 studies?</p> <p>10 A. I believe that was the same,</p> <p>11 September 2021.</p> <p>12 Q. September 15th, 2021, email from Stefanie</p> <p>13 Sharp to Justice Saita?</p> <p>14 A. Correct.</p> <p>15 Q. That's the first time -- is that the first</p> <p>16 time you ever heard the receiver was making that</p> <p>17 claim?</p> <p>18 A. Yes.</p> <p>19 Q. And then it showed up in the order, Exhibit</p> <p>20 23, the Order Granting Plaintiffs' Motion for</p> <p>21 Instructions to the Receiver, at page four, line 22</p> <p>22 through 24. Do you agree with that representation?</p> <p>23 A. Yes.</p> <p>24 Q. Did you understand that to be the order of</p>	<p style="text-align: right;">Page 100</p> <p>1 whatever the order that came out that -- the lines</p> <p>2 that they --</p> <p>3 THE COURT: You understand what that says</p> <p>4 about the reserve fees?</p> <p>5 THE WITNESS: Yes.</p> <p>6 THE COURT: And what do you think that</p> <p>7 means?</p> <p>8 THE WITNESS: At the time overseeing the</p> <p>9 reserves, overseeing the reserves is, I believe,</p> <p>10 there may be a line in there about take over the</p> <p>11 reserves, but in the -- until the 2021 order,</p> <p>12 September 2021 order there was never any -- from the</p> <p>13 plaintiffs, defendants, or receivers, anything about</p> <p>14 the reserves. Again, the reserves are a</p> <p>15 third-party, independent --</p> <p>16 THE COURT: I'm not talking about the</p> <p>17 reserve study, but the dollars, the money that's in</p> <p>18 the reserve fund.</p> <p>19 THE WITNESS: Yeah. It is to be used per</p> <p>20 the CC&amp;Rs for renovation to remodel the units,</p> <p>21 rooms, to make it a four-diamond property.</p> <p>22 THE COURT: Where did you get that</p> <p>23 impression?</p> <p>24 THE WITNESS: From the CC&amp;Rs.</p>
<p style="text-align: right;">Page 99</p> <p>1 the court from January 7th, 2015? I mean, is</p> <p>2 there a provision that says he's to take over the</p> <p>3 ordering and the overseeing of the third-party</p> <p>4 independent reserve studies?</p> <p>5 A. No, not that I'm aware of.</p> <p>6 Q. Did the receiver ever say to you, I want to</p> <p>7 take over the reserve accounts?</p> <p>8 A. No.</p> <p>9 Q. Has the receiver ever said to you, You</p> <p>10 can't withdraw money from the reserve accounts</p> <p>11 without my permission?</p> <p>12 A. No.</p> <p>13 Q. Is there an order that says you can't</p> <p>14 withdraw money from the reserve accounts without the</p> <p>15 receiver's permission?</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. And who is in control? Whose name is on</p> <p>18 the reserve accounts?</p> <p>19 A. The declarant, MEI-GSR.</p> <p>20 Q. Okay.</p> <p>21 THE COURT: Can I ask a question? Did you</p> <p>22 ever read the order appointing the receiver from</p> <p>23 2015?</p> <p>24 THE WITNESS: Yes, a while ago. And</p>	<p style="text-align: right;">Page 101</p> <p>1 THE COURT: Okay. So, you thought that you</p> <p>2 could use it for any purpose, regardless of the</p> <p>3 order appointing the receiver and what it says?</p> <p>4 THE WITNESS: I thought? No. Everything</p> <p>5 that I do I go through legal counsel.</p> <p>6 THE COURT: Okay. Thank you. That's all</p> <p>7 right. We're not on video, so that didn't do it,</p> <p>8 but I understand what you just said.</p> <p>9 BY MR. McELHINNEY:</p> <p>10 Q. Mr. Brady, the court asked you, So you just</p> <p>11 think you can use that reserve account for anything</p> <p>12 you want. What do you use the reserve account for?</p> <p>13 A. We don't use it for anything. We use it to</p> <p>14 pay bills. The majority of the reserves that were</p> <p>15 taken out were for the Summit remodel.</p> <p>16 Q. So, the Summit remodel, that includes some</p> <p>17 of the floors of the plaintiff-owned units, correct?</p> <p>18 A. The majority of the floors, yes.</p> <p>19 Q. So, the renovation you're doing is actually</p> <p>20 to the plaintiffs' units and some Non-plaintiff and</p> <p>21 defendant units as well, correct?</p> <p>22 A. Correct.</p> <p>23 Q. That was instructed in the independent</p> <p>24 third-party reserve study, correct?</p>

<p style="text-align: right;">Page 102</p> <p>1 A. Correct.</p> <p>2 Q. Is that independent, third-party reserve</p> <p>3 study sent to the union others?</p> <p>4 A. Yes.</p> <p>5 Q. Did you ever get an objection from anybody</p> <p>6 about the special assessments that were laid out in</p> <p>7 that special -- in that independent, third-party</p> <p>8 reserve report?</p> <p>9 A. Not from the unit owners themselves. From</p> <p>10 Plaintiffs, I think they filed an order, and we</p> <p>11 actually had one or two unit owners pay the special</p> <p>12 assessment, which we had to -- the order that</p> <p>13 reversed the special assessment, we had to pay back</p> <p>14 within 20 days, I believe, and we did that.</p> <p>15 Q. We'll talk about those special assessments</p> <p>16 and unwinding them in a moment.</p> <p>17 So, I just want to understand better. The</p> <p>18 money you pull out of the reserves, that isn't</p> <p>19 distributed to ownership in any fashion, is it?</p> <p>20 A. No. It's to directly pay the bills,</p> <p>21 invoices.</p> <p>22 Q. So, these are actual invoices that are</p> <p>23 being used for the renovation of the Summit Tower</p> <p>24 including the plaintiffs' units?</p>	<p style="text-align: right;">Page 104</p> <p>1 Summit rooms alone, that doesn't include the</p> <p>2 corridors or anything like that. We are using</p> <p>3 actual invoices for that. We use actual invoices</p> <p>4 for everything.</p> <p>5 Q. Okay. Do you have any idea -- I don't want</p> <p>6 you to wild-guess -- buy how much money has MEI-GSR</p> <p>7 spent on the GSR since they acquired ownership?</p> <p>8 THE COURT: The entire property?</p> <p>9 MR. McELHINNEY: Correct.</p> <p>10 THE WITNESS: Over -- since 2012 we have</p> <p>11 spent over \$500 million.</p> <p>12 BY MR. McELHINNEY:</p> <p>13 Q. And --</p> <p>14 A. -- in capital improvements. That's not</p> <p>15 wear and tear or replacements or anything like that.</p> <p>16 Q. Okay. And that includes improvements to</p> <p>17 the pool?</p> <p>18 A. To the pool, yes.</p> <p>19 Q. The pool that the unit owners get to use.</p> <p>20 A. Correct.</p> <p>21 Q. In regards to which the plaintiffs get half</p> <p>22 of that DRF that is related to their right to use</p> <p>23 the pool, correct?</p> <p>24 A. Correct.</p>
<p style="text-align: right;">Page 103</p> <p>1 A. Correct. So, for example, the furniture,</p> <p>2 fixtures, and equipment for Floors 17 through 22,</p> <p>3 which is strictly all the condo units, it is roughly</p> <p>4 \$15 million for all of the F, F and E.</p> <p>5 We had to put a 50 percent deposit down on</p> <p>6 that, which came to about 7.2 million straight</p> <p>7 invoice that we had to wire to the company. And we</p> <p>8 used the reserves for that since it was strictly for</p> <p>9 the condo units.</p> <p>10 Q. Are these repairs as described in the F, F</p> <p>11 and E in the Seventh Amended CC&amp;Rs?</p> <p>12 A. Absolutely.</p> <p>13 Q. Is this a markup? When you pull the money</p> <p>14 out of the reserves, do you make an administrative</p> <p>15 markup for the benefit of GSR?</p> <p>16 A. No. We have invoices -- actual invoices</p> <p>17 that we use that we actually paid and then get</p> <p>18 refunded. And based on if it's an F, F, E or SFU or</p> <p>19 hotel common elements, we will only take a certain</p> <p>20 percentage and based on the floors too. So, it's</p> <p>21 only strictly to the condo units themselves, F, F</p> <p>22 and E, the shared facility and the hotel.</p> <p>23 And it's either -- since we're doing this</p> <p>24 remodel, which is over \$24 million just for the</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. How about the lobby area?</p> <p>2 A. Totally remodeled the lobby area. Totally</p> <p>3 remodeled the porte cochere. The entrance, we</p> <p>4 remodeled all the way down. We are currently</p> <p>5 remodeling the elevators. That alone is \$2.4</p> <p>6 million to renovate just one part of the elevators.</p> <p>7 We have three different banks. It's called</p> <p>8 a modernization of elevators. They're old. The</p> <p>9 property is from 1975 so it's -- there's a lot of</p> <p>10 upkeep for this property.</p> <p>11 Q. Is this part of keeping up with the AAA</p> <p>12 four-diamond rating?</p> <p>13 A. Yes.</p> <p>14 Q. Are these shared unit facilities easements?</p> <p>15 A. Yes. The porte cochere, the front lobby,</p> <p>16 the easements in and out, the elevators, any -- the</p> <p>17 walkways to the pool, walkways to the fitness center</p> <p>18 and then the back of house too to the warehouse, to</p> <p>19 the laundry.</p> <p>20 Q. Okay. I'm going to pull us back to the</p> <p>21 issue that I had been addressing a moment ago, which</p> <p>22 was receivers being ordered to order and oversee</p> <p>23 reserve studies. He has an exclusive right to do</p> <p>24 that.</p>

<p style="text-align: right;">Page 106</p> <p>1 A. Yes.</p> <p>2 Q. Has the receiver carried out that function?</p> <p>3 A. No.</p> <p>4 Q. And what did you do -- did you ask him</p> <p>5 whether or not he would perform that function?</p> <p>6 A. Just to be clear, he's to oversee the</p> <p>7 reserve study. It's an independent party that has</p> <p>8 to do the reserve study. They have to be licensed.</p> <p>9 It's a requirement.</p> <p>10 And in the CC&amp;Rs it says "independent" so</p> <p>11 he's only overseeing the reserve studies just like,</p> <p>12 you know, we are -- we would still have to help out</p> <p>13 because they would ask for certain stuff.</p> <p>14 He's not calculating the reserves. It's</p> <p>15 not up to him. It's to the independent party. So</p> <p>16 just to clarify that, but, no, he has not.</p> <p>17 Q. That's a good point to follow up on to make</p> <p>18 sure I understand it.</p> <p>19 So, the independent reserve study sets out</p> <p>20 the capital expenditures anticipated for 30 years</p> <p>21 out, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And then he makes a recommendation as to</p> <p>24 the balance that should be in those reserve</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Correct.</p> <p>2 Q. And it's a matter of business necessity, it</p> <p>3 has to be done.</p> <p>4 A. Yes.</p> <p>5 Q. I may have asked you this. When you meet</p> <p>6 with Betterley, do you tell her what category of</p> <p>7 expenses are to be included in her reserve study?</p> <p>8 MR. MILLER: Asked and answered?</p> <p>9 THE COURT: Sustained.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. McELHINNEY:</p> <p>12 Q. There was a September 21 withdrawal of</p> <p>13 \$3,562,441.28. Is that correct?</p> <p>14 A. Yes. What date?</p> <p>15 Q. September 2021. Does that sound right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And what was that for?</p> <p>18 A. That was for -- the majority of that,</p> <p>19 again, was for the Summit remodel.</p> <p>20 Q. Okay. So, that, again, are the units owned</p> <p>21 by the plaintiffs, defendants and non-plaintiffs,</p> <p>22 correct?</p> <p>23 A. Correct. And for the corridors.</p> <p>24 Q. Do you have any estimate of how many</p>
<p style="text-align: right;">Page 107</p> <p>1 accounts.</p> <p>2 A. Yes. By year.</p> <p>3 Q. You don't decide that. The independent</p> <p>4 third party does.</p> <p>5 A. Correct. And it gets updated every year.</p> <p>6 Q. There were meetings with Mrs. Betterley and</p> <p>7 Stefanie Sharp and the receiver.</p> <p>8 Were you present for those meetings?</p> <p>9 A. I was not.</p> <p>10 Q. Okay. But to date has the receiver carried</p> <p>11 out that duty to order and oversee a new reserve</p> <p>12 study?</p> <p>13 A. No.</p> <p>14 Q. What did you do when he refused to do it?</p> <p>15 A. Per the CC&amp;Rs I have to get out a budget,</p> <p>16 so we -- after I talked with Legal and we determined</p> <p>17 that we should move ahead with our reserve study,</p> <p>18 because per the CC&amp;Rs I have to get something out.</p> <p>19 Also, for our books that I get audited</p> <p>20 every year, I need to have my books straight, so in</p> <p>21 order for that to happen the reserve study had to be</p> <p>22 done.</p> <p>23 Q. So, the reserve study is mandated under the</p> <p>24 Seventh Amended CC&amp;Rs, correct?</p>	<p style="text-align: right;">Page 109</p> <p>1 plaintiffs' rooms have actually been renovated to</p> <p>2 date?</p> <p>3 A. To date I believe not -- not plaintiffs</p> <p>4 themselves. I know third-party owners, roughly 18</p> <p>5 have been done.</p> <p>6 Q. Okay. And so there's more work to be done.</p> <p>7 Is that accurate?</p> <p>8 A. Oh, yes. Through -- we're going to start</p> <p>9 up in -- the end of this year, I believe, in</p> <p>10 October, and we'll finish it in 2024.</p> <p>11 But, again, these companies don't --</p> <p>12 unfortunately, they don't, you know, just say, Oh,</p> <p>13 yeah, you can pay us later. There's millions of</p> <p>14 dollars of deposits that we have to put down.</p> <p>15 Again, the seven million was just for furniture and</p> <p>16 fixtures alone for Floors 17 through 22.</p> <p>17 Q. I want to cover something now, because it</p> <p>18 showed up in one of the court's orders.</p> <p>19 The court at some point had denied the</p> <p>20 request for reimbursement for capital expenditures</p> <p>21 because they were extraordinary -- she did not</p> <p>22 regard them as extraordinary expenses.</p> <p>23 Are you familiar with the term</p> <p>24 "extraordinary expenses" as it is used in the</p>

<p style="text-align: right;">Page 110</p> <p>1 Seventh Amended CC&amp;Rs?</p> <p>2 A. Not really, no.</p> <p>3 Q. Let's look at from Section 6.9.</p> <p>4 A. It's in 6.9 B.</p> <p>5 Q. What is that a reference to? What's your</p> <p>6 understanding of extraordinary expenses?</p> <p>7 A. It says "Extraordinary expenditures not</p> <p>8 originally included in the annual estimate which may</p> <p>9 become necessary during the year shall be charged</p> <p>10 first against such portions of any specific</p> <p>11 contingency reserve or shared facilities reserve."</p> <p>12 Q. So, were the expenditures that the</p> <p>13 \$24 million remodel of the Summit towers, that was</p> <p>14 in the budget originally, was it not?</p> <p>15 A. Yes.</p> <p>16 Q. So, that's not an extraordinary expense and</p> <p>17 unanticipated expense that had to be added later.</p> <p>18 A. No.</p> <p>19 Q. Do I understand that correctly?</p> <p>20 A. Correct.</p> <p>21 Q. Is that true? With the pool expenditures</p> <p>22 and with the other expenditures where you pulled</p> <p>23 money out of the reserves?</p> <p>24 A. Correct. Those were all in the reserve</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Were all those for actual invoices?</p> <p>2 A. Yes.</p> <p>3 Q. There's no markup, actual invoices?</p> <p>4 A. No.</p> <p>5 Q. With no distribution to ownership?</p> <p>6 A. No.</p> <p>7 Q. I've asked you this question before and I</p> <p>8 want to ask it again. Is there a court order of</p> <p>9 which you're aware that says the receiver is in</p> <p>10 control of the reserve accounts?</p> <p>11 MR. MILLER: Objection, asked and answered.</p> <p>12 THE COURT: Overruled.</p> <p>13 THE WITNESS: Say it again.</p> <p>14 BY MR. McELHINNEY:</p> <p>15 Q. Is there a court order of which you are</p> <p>16 aware that says the receiver is in control of the</p> <p>17 reserve accounts?</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. That the -- is there an order of which</p> <p>20 you're aware that says the GSR may not take any</p> <p>21 reimbursement from the reserve accounts without</p> <p>22 first getting the receiver's approval?</p> <p>23 A. Not that I'm aware of.</p> <p>24</p>
<p style="text-align: right;">Page 111</p> <p>1 study.</p> <p>2 Q. And they were all then part of the original</p> <p>3 budget?</p> <p>4 A. Correct.</p> <p>5 Q. And that budget gets sent to the unit</p> <p>6 owners in advance?</p> <p>7 A. With the November statement.</p> <p>8 Q. Okay. There was a withdrawal, my</p> <p>9 understanding, of \$13 million. I don't have a date</p> <p>10 for that.</p> <p>11 A. I think we did one in August. That was the</p> <p>12 seven million dollars, one in 2022 -- 7.2., and then</p> <p>13 I believe we did another one in September or</p> <p>14 November. And I don't have the ...</p> <p>15 Q. Were those withdrawals also part of the \$24</p> <p>16 million renovation?</p> <p>17 A. That and other items, yes.</p> <p>18 Q. What were the other items? Can you</p> <p>19 remember those?</p> <p>20 A. Not off the top of my head. I mean, the</p> <p>21 majority was for the Summit rooms and Summit</p> <p>22 corridors. Yeah, I can't remember. I know we did</p> <p>23 some IT stuff that we capitalized. I'm not</p> <p>24 100 percent sure at this time.</p>	<p style="text-align: right;">Page 113</p> <p>1 THE COURT: I'll interrupt again.</p> <p>2 What do you think it means when the order</p> <p>3 says, "It is further ordered that defendants and any</p> <p>4 other person or entity who may have possession,</p> <p>5 custody, or control of any property including any of</p> <p>6 their agents, representatives, assignees, and</p> <p>7 employees shall do the following: Turn over to the</p> <p>8 receiver all rents, dues, reserves, and revenues</p> <p>9 derived from the property wherever and in whatsoever</p> <p>10 mode maintained"? What do you think that means?</p> <p>11 THE WITNESS: Turn over all -- where? I'm</p> <p>12 sorry. Is there an exhibit?</p> <p>13 THE COURT: From the 2015 appointment</p> <p>14 order, sir.</p> <p>15 THE WITNESS: Okay. What do I take that</p> <p>16 as?</p> <p>17 THE COURT: I'm asking what you think that</p> <p>18 means.</p> <p>19 THE WITNESS: If the -- the receiver has</p> <p>20 the ability to do it, but the receiver has never</p> <p>21 done it or never asked until recently.</p> <p>22 So, it was my understanding that, if the</p> <p>23 receiver wanted to do it, they -- he would have</p> <p>24 reached out to me and then I would have talked it</p>

<p style="text-align: right;">Page 114</p> <p>1 over with Legal and we would have gone from there.</p> <p>2 THE COURT: Okay.</p> <p>3 BY MR. McELHINNEY:</p> <p>4 Q. Mr. Brady, that order that the court is</p> <p>5 asking you about has all kinds of powers of the</p> <p>6 receiver. He can take control of your computers,</p> <p>7 your passwords --</p> <p>8 THE COURT: Not MEI-GSR, only the unit</p> <p>9 owners association. It was clear because of gaming</p> <p>10 issues, right?</p> <p>11 MR. McELHINNEY: I don't think that's right</p> <p>12 at all, your Honor. I mean, this order is so</p> <p>13 contrary to law and confusing as to its scope.</p> <p>14 THE COURT: So, why didn't you appeal the</p> <p>15 order? It's appealable under 3A.</p> <p>16 MR. McELHINNEY: It wasn't even enforced</p> <p>17 for six and a half years.</p> <p>18 THE COURT: Never mind.</p> <p>19 MR. McELHINNEY: I have all kinds of</p> <p>20 reasons, your Honor.</p> <p>21 THE COURT: We're not on that issue. We're</p> <p>22 asking this witness questions.</p> <p>23 BY MR. McELHINNEY:</p> <p>24 Q. Her honor is suggesting that it was only</p>	<p style="text-align: right;">Page 116</p> <p>1 BY MR. McELHINNEY:</p> <p>2 Q. When I asked you earlier about the receiver</p> <p>3 had all kinds of powers to take control of</p> <p>4 computers, passwords, and information and equipment,</p> <p>5 the court interjected and said that was only as to</p> <p>6 the MEI UOA. Is that your understanding of the</p> <p>7 order?</p> <p>8 A. No.</p> <p>9 Q. It says to all property, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Did the receiver ever come to you and</p> <p>12 demand to take control of those things?</p> <p>13 A. Never.</p> <p>14 Q. Has anyone suggested you violated this</p> <p>15 court order because you didn't turn those things</p> <p>16 over to the receiver?</p> <p>17 A. No.</p> <p>18 Q. You're aware of the fact that we filed</p> <p>19 motions for permission to withdraw money out of the</p> <p>20 reserves in May 21 of 2020. Are you aware of that?</p> <p>21 A. Yes.</p> <p>22 Q. And in that motion we said, "We acknowledge</p> <p>23 that the January 7th, 2015, order appointing the</p> <p>24 receiver charges the receiver with accounting for</p>
<p style="text-align: right;">Page 115</p> <p>1 the GSR UOA's computers that the receiver had a</p> <p>2 right to take control over. I'm on page two of the</p> <p>3 order.</p> <p>4 "It is further ordered that to enforce</p> <p>5 compliance with the governing documents the receiver</p> <p>6 shall have the following powers and responsibilities</p> <p>7 and shall be authorized and empowered to, No. 1,</p> <p>8 review and/or take control."</p> <p>9 You'll agree with me for the first six and</p> <p>10 a half years he was reviewing but never sought to</p> <p>11 take control. Would you agree?</p> <p>12 A. Yes.</p> <p>13 Q. And, then, all records, correspondence,</p> <p>14 insurance policies, books, accounts of or relating</p> <p>15 to the property which refer to the property in</p> <p>16 ongoing construction, et cetera, all office</p> <p>17 equipment used by Defendants in connection with</p> <p>18 development, improvements, leasing, sales, marketing</p> <p>19 and other conveyances."</p> <p>20 That isn't limited just to the GSR UOA, is</p> <p>21 it, sir?</p> <p>22 MR. MILLER: Objection, leading.</p> <p>23 THE COURT: Rephrase your question.</p> <p>24</p>	<p style="text-align: right;">Page 117</p> <p>1 all income and expenses associated with the</p> <p>2 compliance with the governing documents."</p> <p>3 So, we asked the court to instruct the</p> <p>4 receiver for those reimbursements, correct?</p> <p>5 A. To look over the backup for it, yes.</p> <p>6 Q. Right. And we didn't get an order until</p> <p>7 three years later. Does that sound accurate to you?</p> <p>8 A. Yes. I went -- we went extensively over</p> <p>9 all of the invoices with Mr. Teichner. He had</p> <p>10 several questions. I answered them.</p> <p>11 And then, as far as I knew, he was fine</p> <p>12 with it and then I believe he sent it to the court</p> <p>13 to get approval and it never got -- and then three</p> <p>14 years later.</p> <p>15 Q. Okay. Then we filed another motion</p> <p>16 June 24th, 2021, entitled, Defendants' Motion for</p> <p>17 Instructions Regarding Reimbursement of the 2020</p> <p>18 Capital Expenditures. Therein we sought</p> <p>19 reimbursement 1,614,000 in round numbers.</p> <p>20 And we acknowledged that same authority of</p> <p>21 the receiver being charged with accounting for all</p> <p>22 income and expenses associated with compliance with</p> <p>23 the governing documents, so we, once again, asked</p> <p>24 for the court to instruct the receiver to reimburse</p>

<p style="text-align: right;">Page 118</p> <p>1 Defendants for those totals.</p> <p>2 In either of those motions do we talk about</p> <p>3 an order that says we have to have the receiver's</p> <p>4 permission before we can withdraw money from those</p> <p>5 accounts?</p> <p>6 A. No.</p> <p>7 Q. Didn't the receiver tell us he won't make</p> <p>8 those calculations and determinations because he's</p> <p>9 not being paid?</p> <p>10 A. The -- that was --</p> <p>11 Q. Did he ever tell you when you gave him the</p> <p>12 numbers and calculations that he wasn't gonna do</p> <p>13 that because he wasn't being paid?</p> <p>14 A. The numbers and the calculations for the</p> <p>15 reserves?</p> <p>16 Q. For the -- yes, the reserves, capital</p> <p>17 expenditure withdrawals you wanted to make.</p> <p>18 A. I don't think he ever -- I don't think he</p> <p>19 ever said that he would not --</p> <p>20 Q. All right. And take a look at Exhibit 33,</p> <p>21 which should be in Book No. 3. Your counsel has</p> <p>22 filed a motion to compel the receiver to prepare the</p> <p>23 report on Defendants' request for reimbursement of</p> <p>24 capital expenditures, correct?</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. So, is it your contention that all of the</p> <p>2 requested expenses fall squarely under the Seventh</p> <p>3 Amended CC&amp;Rs?</p> <p>4 A. Yes.</p> <p>5 Q. And then the court also found that the</p> <p>6 procedures required under Section 6.10A were not</p> <p>7 followed prior to the 2020 expenses being incurred.</p> <p>8 Do you agree with that?</p> <p>9 A. No.</p> <p>10 Q. What procedures were followed prior to</p> <p>11 incurring those expenses?</p> <p>12 A. We send out the yearly reserve study on the</p> <p>13 November statements -- with the November statements</p> <p>14 every year which details out all the expenditures</p> <p>15 that we would have throughout the year.</p> <p>16 Q. You send them separate from that a budget</p> <p>17 or is that encapsulated?</p> <p>18 A. We do that with the budget and what the new</p> <p>19 reserve studies will be or reserve amounts will be,</p> <p>20 and strictly pulls the numbers from the reserve</p> <p>21 study itself.</p> <p>22 Q. And then the court says in the same order</p> <p>23 that she declined to find the 2020 expenses are</p> <p>24 extraordinary expenditures, which would permit</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Correct.</p> <p>2 Q. And wasn't there an order issued that he</p> <p>3 was supposed to do those calculations within a</p> <p>4 certain period of time or supposed to approve our</p> <p>5 calculations within a certain period of time?</p> <p>6 A. Yes.</p> <p>7 Q. And, sir, it wasn't until January 26, 2023,</p> <p>8 that we finally got an order from the court denying</p> <p>9 the June 24th, 2021, motion wherein the court</p> <p>10 found that the requested expenses for 2020 don't</p> <p>11 fall within the definition of common elements.</p> <p>12 What's your response to that?</p> <p>13 A. I disagree.</p> <p>14 Q. It is -- is "common elements" even a term</p> <p>15 used in the Seventh Amended CC&amp;Rs?</p> <p>16 A. Not in the CC&amp;Rs. It was in the reserve</p> <p>17 study. But common elements, in my eyes, is -- I</p> <p>18 don't know if there's a definition of it in the</p> <p>19 CC&amp;Rs. I'm not --</p> <p>20 Q. I don't believe there is. I haven't found</p> <p>21 it.</p> <p>22 A. Okay. Then, it was used in the reserves.</p> <p>23 It was "common elements" and it was interchangeable</p> <p>24 with, I believe, hotel -- "hotel expense."</p>	<p style="text-align: right;">Page 121</p> <p>1 reimbursement under Section 6.10B.</p> <p>2 Do you agree with that?</p> <p>3 A. No. They were not extraordinary. They</p> <p>4 were budgeted.</p> <p>5 Q. Right. And we filed a motion for</p> <p>6 reconsideration of both the May 2020 and the</p> <p>7 June 2021 orders.</p> <p>8 On March 28th, 2023, the court entered an</p> <p>9 order granting the motion to the limited extent that</p> <p>10 the defendants seek leave to file the motions for</p> <p>11 reconsideration in, quotes, in all other respects</p> <p>12 the relief sought by the motion will be addressed</p> <p>13 after a full briefing on the motions for</p> <p>14 reconsideration, end quote.</p> <p>15 Your Honor, I think that's already been</p> <p>16 done. I mean, in the past we have had the court</p> <p>17 either grant the reconsideration and then grant the</p> <p>18 relief sought or grant the relief and deny the</p> <p>19 relief sought."</p> <p>20 I've never seen an order, at least in my</p> <p>21 experience, that grants the leave but then says I'm</p> <p>22 not gonna order until it's fully briefed. So, I</p> <p>23 guess --</p> <p>24 THE COURT: That's how I did it in the</p>

<p style="text-align: right;">Page 122</p> <p>1 Second Judicial District Court for 18 years.</p> <p>2 MR. McELHINNEY: I submit it's already been</p> <p>3 fully briefed. I don't know if Mr. Miller agrees or</p> <p>4 disagrees.</p> <p>5 MR. MILLER: Disagrees.</p> <p>6 THE COURT: So, only one agreement today.</p> <p>7 MR. McELHINNEY: Okay, I got it.</p> <p>8 BY MR. McELHINNEY:</p> <p>9 Q. Turn to Exhibit 5 in Binder No. 1, please.</p> <p>10 I'll represent to you, Mr. Brady, this is</p> <p>11 the motion for appointment of receiver that the</p> <p>12 plaintiffs had filed October 16, 2014.</p> <p>13 I'm gonna direct you to page eight and it's</p> <p>14 under "Conclusion." Beginning on line 24, "The</p> <p>15 appointment of James S. Proctor as receiver, No.</p> <p>16 1" -- let me read the paragraph just before.</p> <p>17 "Accordingly, the defendants are not</p> <p>18 complying with the governing documents. Plaintiffs</p> <p>19 respectfully request the entry of the order attached</p> <p>20 hereto as Exhibit 18, the order granting the</p> <p>21 following relief: The appointment of the James S.</p> <p>22 Proctor as receiver over Defendant GSR UOA</p> <p>23 association, a Nevada nonprofit corporation, over</p> <p>24 Defendant MEI-GSR Holding LLC, a Nevada</p>	<p style="text-align: right;">Page 124</p> <p>1 A. Yes.</p> <p>2 Q. They said in their moving papers they</p> <p>3 needed him appointed over the MEI-GSR so that he</p> <p>4 could monitor and control those things noted in</p> <p>5 their report, including rent, maintenance, and</p> <p>6 reserve collections, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And he was to do so at his sole discretion</p> <p>9 as he deems necessary, correct?</p> <p>10 A. Correct.</p> <p>11 Q. So, do I understand it, six and a half</p> <p>12 years after issuance of the 2015 order had the</p> <p>13 receiver ever come to you and said, I want to take</p> <p>14 control of your reserves?</p> <p>15 A. No.</p> <p>16 Q. Up until September 15, 2021, had he ever</p> <p>17 come to you and said, I want to take control of your</p> <p>18 rents?</p> <p>19 A. No.</p> <p>20 Q. And when he did finally come in September</p> <p>21 of 2015, he said, I want to take control of your net</p> <p>22 rents. Do I understand that correctly?</p> <p>23 A. Yes.</p> <p>24 Q. And the first time he ever changed that</p>
<p style="text-align: right;">Page 123</p> <p>1 limited-liability company, for the limited purposes</p> <p>2 of monitoring and controlling, if the receiver in</p> <p>3 his sole discretion deems necessary, the operations,</p> <p>4 rental, maintenance, fee, due, and reserve</p> <p>5 collections of all condominium units governed by the</p> <p>6 GSR UOA owned by the plaintiffs or defendants in</p> <p>7 this action, the property."</p> <p>8 Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. So, certainly what was contemplated by the</p> <p>11 plaintiffs in the filing of this motion was to give</p> <p>12 the receiver power over the MEI-GSR. They actually</p> <p>13 asked for an appointment over him so that they could</p> <p>14 monitor and control, if the receiver in his sole</p> <p>15 discretion deemed necessary, the operation, rental</p> <p>16 maintenance, due, fee, due and reserve collections</p> <p>17 of all condominium units governed by the GSR UOA,"</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 MR. MILLER: Relevance.</p> <p>21 THE COURT: Overruled.</p> <p>22 BY MR. McELHINNEY:</p> <p>23 Q. Okay. They contemplated originally the</p> <p>24 receiver being over GSR UOA and MEI-GSR, correct?</p>	<p style="text-align: right;">Page 125</p> <p>1 from net rents to gross rents was May of 2023.</p> <p>2 A. Correct.</p> <p>3 Q. Let's talk about the special assessments.</p> <p>4 How are we doing time-wise?</p> <p>5 THE COURT: It's 11:30.</p> <p>6 MR. McELHINNEY: I have a shot at being</p> <p>7 done by noon.</p> <p>8 THE COURT: That was a nod of the head no.</p> <p>9 It doesn't come through when we're just with the</p> <p>10 reporter. I don't believe it.</p> <p>11 MR. McELHINNEY: I mean with my direct.</p> <p>12 BY MR. McELHINNEY:</p> <p>13 Q. Special assessments. The first one was for</p> <p>14 the \$100,000. That was issued by the UOA, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Had nothing to do with MEI-GSR, AMG GSR or</p> <p>17 Gage Village?</p> <p>18 A. No. Totally separate entity.</p> <p>19 Q. All right. So, to the extent that that</p> <p>20 special assessment had to be unwound timely, et</p> <p>21 cetera, that wasn't your job.</p> <p>22 A. No.</p> <p>23 Q. That would have been the job of the GSR</p> <p>24 UOA.</p>

<p style="text-align: right;">Page 126</p> <p>1 A. Yes.</p> <p>2 Q. Now, you told us earlier that there might</p> <p>3 have been one other non-plaintiff who made, but it</p> <p>4 was the defendant-owned units who paid their share.</p> <p>5 They paid \$80,000 roughly.</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And the order in setting aside those</p> <p>8 special assessments said that everybody would be</p> <p>9 reimbursed within a certain period of time. As I</p> <p>10 recall, it was 30 days.</p> <p>11 Do you know was the GSR UOA ever</p> <p>12 reimbursed?</p> <p>13 A. Sorry. MEI ever reimbursed? No, we were</p> <p>14 never reimbursed.</p> <p>15 Q. Was that -- do you know was that timely</p> <p>16 rescinded by the GSR UOA, the special assessment, or</p> <p>17 do you know?</p> <p>18 A. Was it timely rescinded?</p> <p>19 Q. Yes. So, the court order was you have to</p> <p>20 rescind the special assessment. Was that done?</p> <p>21 A. By the GSR UOA?</p> <p>22 Q. Yes.</p> <p>23 A. I think there was a letter saying that they</p> <p>24 would not be able to -- from the Associa, which is</p>	<p style="text-align: right;">Page 128</p> <p>1 rescinded.</p> <p>2 A. Yes, according to the order.</p> <p>3 Q. And money reimbursed, correct?</p> <p>4 A. Correct.</p> <p>5 Q. I want you to turn -- this is Book No. 3 --</p> <p>6 Exhibit 32.</p> <p>7 In Exhibit 32, that's the receiver's</p> <p>8 omnibus reply to the parties' oppositions to the</p> <p>9 receiver's motions and orders for instructions.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. On page four of this document the receiver</p> <p>13 sets forth his calculations -- now, you correct me</p> <p>14 if you read it differently. But the way I read it</p> <p>15 is he's calculating the delta between the fees that</p> <p>16 we are applying using his 2020 methodology and his</p> <p>17 2021 calculations, and he comes up with</p> <p>18 \$1,103,950.99. Is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And is that how you read that? That's what</p> <p>21 that number represents?</p> <p>22 A. Yes.</p> <p>23 Q. Now, at some point we had challenged that</p> <p>24 number and the court entered an order saying you</p>
<p style="text-align: right;">Page 127</p> <p>1 the GSR UOA, that said they would not be able to</p> <p>2 fulfill that obligation, if I remember from</p> <p>3 yesterday.</p> <p>4 Q. And that was because they didn't have</p> <p>5 enough money to reimburse the money back to the</p> <p>6 people who paid the special assessment, correct?</p> <p>7 A. Correct.</p> <p>8 Q. The second special assessment was issued by</p> <p>9 MEI-GSR designed to reimburse the reserves for the</p> <p>10 costs associated with the current ongoing</p> <p>11 \$24 million renovation. Is that correct?</p> <p>12 A. And other things, yes.</p> <p>13 Q. Okay. And how many unit owners paid that</p> <p>14 special assessment?</p> <p>15 A. Unit owners? One.</p> <p>16 Q. And was that a plaintiff?</p> <p>17 A. No.</p> <p>18 Q. And has that non-plaintiff unit owner been</p> <p>19 reimbursed in full by defendants?</p> <p>20 A. Yes.</p> <p>21 Q. So, that special assessment over which the</p> <p>22 defendants have control -- and when I say</p> <p>23 "defendants," I'm excluding GSR UOA because we don't</p> <p>24 represent them -- that special assessment has been</p>	<p style="text-align: right;">Page 129</p> <p>1 gotta pay the 1,103,950, correct?</p> <p>2 A. Correct.</p> <p>3 Q. We posted a bond, didn't we?</p> <p>4 A. We did.</p> <p>5 Q. So, that amount has been tendered to the</p> <p>6 court in the form of a bond taking care of the</p> <p>7 delta.</p> <p>8 So, in essence, with that bond in place we</p> <p>9 have applied the receiver's 2021 numbers from</p> <p>10 January 2020 to December 31st -- I think it's</p> <p>11 December 21, 2022, but I may be corrected. It may</p> <p>12 be 2021. No. I think it's 2022.</p> <p>13 Do you agree with that? If you need to</p> <p>14 look at the exhibits that are attached to help,</p> <p>15 maybe it can shed light on it because, honestly, I'm</p> <p>16 not sure.</p> <p>17 THE COURT: Exhibit 1 to the receiver's</p> <p>18 omnibus reply, which I'm not sure what the exhibit</p> <p>19 number is in these proceedings.</p> <p>20 THE WITNESS: Repeat the question.</p> <p>21 BY MR. McELHINNEY:</p> <p>22 Q. I'm trying to figure out. I know he</p> <p>23 started his calculations January 1, 2020. I'm just</p> <p>24 not sure how far forward he comes with his</p>



<p style="text-align: right;">Page 130</p> <p>1 calculation.</p> <p>2 A. It appears to be 12/31/21.</p> <p>3 Q. Okay.</p> <p>4 MR. McELHINNEY: May I approach, your</p> <p>5 Honor?</p> <p>6 THE COURT: You may.</p> <p>7 Next in order?</p> <p>8 MR. McELHINNEY: Yes.</p> <p>9 THE COURT: No. 142. Any objection?</p> <p>10 MR. MILLER: No, your Honor.</p> <p>11 THE COURT: 142 will be admitted.</p> <p>12 (Exhibit 142 admitted.)</p> <p>13 BY MR. McELHINNEY:</p> <p>14 Q. I don't have a file-stamped copy, although,</p> <p>15 if you turn to the back -- if you go to Exhibit A,</p> <p>16 you'll see the supersedeas bond is file-stamped</p> <p>17 April 4th, 2023. Can you confirm that, please.</p> <p>18 (Witness reviewing document.)</p> <p>19 THE WITNESS: The last page?</p> <p>20 BY MR. McELHINNEY:</p> <p>21 Q. It's -- look at Exhibit A.</p> <p>22 A. Oh, yes, April 4th, 2023.</p> <p>23 Q. And that documents our having posted with</p> <p>24 the court a bond for \$1,103,950.99.</p>	<p style="text-align: right;">Page 132</p> <p>1 out what he was going to do about renting the units?</p> <p>2 A. I believe so.</p> <p>3 Q. And what response did you get?</p> <p>4 A. The "I haven't been paid."</p> <p>5 Q. And so at some point did you sit down with</p> <p>6 management and with counsel and make a decision,</p> <p>7 look, we're gonna go ahead and rent these units,</p> <p>8 these former units, under protest?</p> <p>9 A. Yes.</p> <p>10 Q. When, Mr. Brady, did we start renting those</p> <p>11 units?</p> <p>12 A. I believe April -- after we stopped renting</p> <p>13 them?</p> <p>14 Q. Yes.</p> <p>15 A. I believe it was April 4th or 5th of</p> <p>16 2023.</p> <p>17 Q. What is your understanding of the reason</p> <p>18 why you stopped renting the units in March of 2023</p> <p>19 after the recording of the termination agreement?</p> <p>20 A. The condominium was dissolved, and that</p> <p>21 includes the unit rental agreement, the CC&amp;Rs,</p> <p>22 pretty much everything, and the UOA.</p> <p>23 Q. Okay. Did it also extinguish the units?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 131</p> <p>1 Is that accurate?</p> <p>2 A. That's correct.</p> <p>3 Q. I want to move on to one final topic, and</p> <p>4 that is the alleged failure of the defendants to</p> <p>5 rent the Plaintiffs' units in March of 2023.</p> <p>6 When was the termination agreement</p> <p>7 recorded? Do you recall?</p> <p>8 A. I believe it was the beginning of</p> <p>9 March 2023.</p> <p>10 Q. Okay. I'm showing February 28th, 2023.</p> <p>11 Does that sound right?</p> <p>12 A. Yes.</p> <p>13 Q. Now, was there a discussion -- are you</p> <p>14 familiar with NRS 116 and the provisions that are in</p> <p>15 there?</p> <p>16 A. No, not really.</p> <p>17 Q. Okay. On May 14, 2023, the court entered</p> <p>18 an order that the receiver was to continue to rent</p> <p>19 the units. Are you familiar with that order?</p> <p>20 A. Yes.</p> <p>21 Q. From March 14 to the end of that month, did</p> <p>22 you have any contact with the receiver at all?</p> <p>23 A. No.</p> <p>24 Q. Did you attempt to reach out to him to find</p>	<p style="text-align: right;">Page 133</p> <p>1 MR. McELHINNEY: Court's indulgence,</p> <p>2 please. Your Honor, could we take a 10-minute</p> <p>3 break?</p> <p>4 THE COURT: Why don't we take our lunch</p> <p>5 break and we'll return at 1:00.</p> <p>6 (Lunch recess taken.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

<p style="text-align: right;">Page 134</p> <p>1 AFTERNOON SESSION</p> <p>2 THE COURT: Would you like to continue your</p> <p>3 direct examination.</p> <p>4 MR. McELHINNEY: Yes, your Honor. Thank</p> <p>5 you.</p> <p>6 BY MR. McELHINNEY:</p> <p>7 Q. Mr. Brady, when you were going through</p> <p>8 direct examination earlier today, I had asked you if</p> <p>9 all the withdrawals from the capital reserve</p> <p>10 accounts for capital expenditures were related to</p> <p>11 the 2024 Summit renovation. Do you recall that?</p> <p>12 A. Yes.</p> <p>13 Q. And you said yes, but there was some other</p> <p>14 things. Do you recall that testimony?</p> <p>15 A. Yes.</p> <p>16 Q. What were you referencing to when you said</p> <p>17 "other things"?</p> <p>18 A. Other capital expenditures. Everything</p> <p>19 that we pulled from the reserves were capital</p> <p>20 expenditures.</p> <p>21 You specifically asked about the Summit</p> <p>22 rooms and, no, they were not all for the Summit</p> <p>23 rooms but they were all capital expenditures.</p> <p>24 Q. So, capital expenditures for other items</p>	<p style="text-align: right;">Page 136</p> <p>1 the reserve account is attributable to the</p> <p>2 Defendant-owned units?</p> <p>3 A. Roughly 84 percent of it.</p> <p>4 Q. So, if I'm looking at a \$16 million account</p> <p>5 balance in the reserves, 84 percent of that money is</p> <p>6 attributable to the Defendant-owned units.</p> <p>7 A. Correct. It was funded by the</p> <p>8 Defendant-owned units.</p> <p>9 Q. Okay. And then what percentage of the</p> <p>10 money in this reserve account is attributable to the</p> <p>11 Plaintiffs' units?</p> <p>12 A. It's 93, so it was roughly 13, 14 percent.</p> <p>13 Q. Okay. So, out of -- if I use a number of</p> <p>14 \$19 million that was withdrawn out of the reserve</p> <p>15 accounts from a dollars-and-cents perspective, what</p> <p>16 dollar amount would be attributable to the</p> <p>17 plaintiffs' units?</p> <p>18 A. I believe we only withdrew about 16 or</p> <p>19 17 million, is what I believe it was.</p> <p>20 Q. Okay. Let's do 16 million.</p> <p>21 A. It would be roughly.</p> <p>22 Q. What would be the dollar value attributable</p> <p>23 to the Plaintiffs' units?</p> <p>24 A. 1.5, 2 million.</p>
<p style="text-align: right;">Page 135</p> <p>1 that you don't necessarily recall as you sit here</p> <p>2 today?</p> <p>3 A. Yes.</p> <p>4 Q. Were they all based upon actual invoices?</p> <p>5 A. All invoices based on the CC&amp;Rs and the</p> <p>6 reserve study.</p> <p>7 Q. Okay. Thank you.</p> <p>8 There's a total of 670 unit, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And what percentage of those 670 units are</p> <p>11 owned by Defendants?</p> <p>12 A. By Defendants? 560.</p> <p>13 Q. And about how many of them are owned by</p> <p>14 Plaintiffs?</p> <p>15 A. Ninety-three, I believe.</p> <p>16 Q. And then there are another certain numbers</p> <p>17 that are owned by Non-plaintiffs. Is that accurate?</p> <p>18 A. Correct.</p> <p>19 Q. And if I add up all those numbers, I have</p> <p>20 the 670 units.</p> <p>21 A. Correct.</p> <p>22 Q. When I'm looking at reserves, money that is</p> <p>23 in the reserve accounts that is attributable to the</p> <p>24 Defendants' units, what percentage of the money in</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. 1.5 to 2 million, somewhere in there?</p> <p>2 A. Yes, off the top of my head.</p> <p>3 Q. To be clear, were the plaintiffs -- had the</p> <p>4 plaintiffs been paying the reserve contribution?</p> <p>5 A. When you say "pay" they've been -- we --</p> <p>6 GSR MEI has taken it from their rental revenue less</p> <p>7 the DUF their 50 percent of the rental revenue. And</p> <p>8 then we've taken a portion of it, whatever's left we</p> <p>9 take and fund the reserves.</p> <p>10 Q. They're not writing you a check to cover</p> <p>11 the references you're holding from their rent?</p> <p>12 A. Correct.</p> <p>13 Q. Why are you withholding it versus them</p> <p>14 paying you a check?</p> <p>15 A. Per CC&amp;Rs it's -- if -- so, we take the</p> <p>16 DUF, 50 percent, add 50 percent of the resort fee</p> <p>17 minus the SFU expenses, and then if there's any left</p> <p>18 over, it goes towards the reserves.</p> <p>19 Q. My question more particularly is why aren't</p> <p>20 we making them write the checks?</p> <p>21 MR. MILLER: Leading.</p> <p>22 THE COURT: Overruled.</p> <p>23 THE WITNESS: They have not -- any balances</p> <p>24 that they owed have not been -- there's probably --</p>

<p style="text-align: right;">Page 138</p> <p>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.</p>	<p style="text-align: right;">Page 140</p> <p>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</p>
<p style="text-align: right;">Page 139</p> <p>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.</p>	<p style="text-align: right;">Page 141</p> <p>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</p>

<p style="text-align: right;">Page 142</p> <p>1 the 2020 numbers but less -- backed out, again, all</p> <p>2 of the things that were noted by -- I think this was</p> <p>3 the December 2020 order but used same calculations</p> <p>4 sent out to all of the unit owners and the budget</p> <p>5 for 2022 along with the reserves.</p> <p>6 Q. So, are these numbers different from the</p> <p>7 numbers that appear in the earlier exhibit we looked</p> <p>8 at, Exhibit 66?</p> <p>9 A. Yes.</p> <p>10 Q. And tell me why.</p> <p>11 A. Every year we have to come up with a budget</p> <p>12 per the CC&amp;Rs.</p> <p>13 Q. And that's consistent with the Seventh</p> <p>14 Amended CC&amp;Rs, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Turn to Exhibit 82, if you would, please.</p> <p>17 Same questions. This is an owner's account</p> <p>18 statement, it looks like, for the period October 1,</p> <p>19 2022, to October 31, 2022. I see numbers on there.</p> <p>20 Did you generate these numbers appearing on</p> <p>21 this statement?</p> <p>22 A. Yes.</p> <p>23 Q. Did you use the same methodology that you</p> <p>24 had described already?</p>	<p style="text-align: right;">Page 144</p> <p>1 right?</p> <p>2 Q. Right. I was looking for the period --</p> <p>3 A. Yes, for November 2022.</p> <p>4 Q. Yes.</p> <p>5 A. This would be the same as the first two</p> <p>6 because, again, this is 2022. So, it doesn't change</p> <p>7 throughout the year.</p> <p>8 Q. All right. Let's go to Exhibit 88. This</p> <p>9 is an account statement dated September 9th, 2021,</p> <p>10 for the period August 20, 2021, to August 30, 2021.</p> <p>11 Did you generate these numbers on this</p> <p>12 invoice?</p> <p>13 A. No.</p> <p>14 Q. Who generated these numbers?</p> <p>15 A. These are Proctor's numbers.</p> <p>16 Q. Okay. So, was this during a period that we</p> <p>17 were ordered to follow Proctor's numbers?</p> <p>18 A. So, when the orders came out Christmas Eve</p> <p>19 of 2020, it was said to go back to Proctor's numbers</p> <p>20 until Mr. Teichner can redo his numbers or look into</p> <p>21 his numbers.</p> <p>22 So, we were using Proctor's numbers until</p> <p>23 September of 2021 when it was stricken from the</p> <p>24 court that we couldn't use Proctor's numbers.</p>
<p style="text-align: right;">Page 143</p> <p>1 A. Yes. Since these are 2022, yes.</p> <p>2 Q. Are these numbers different from the last</p> <p>3 two statements that we've looked at and, if so, why?</p> <p>4 A. They're different from the first statement</p> <p>5 because the first statement was 2021. And then the</p> <p>6 last statement was 2022 and this was 2022, so they</p> <p>7 are the same.</p> <p>8 Q. So, they are -- I see consistency between</p> <p>9 those two exhibits, then.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Again, these calculations are in</p> <p>12 accordance with the Seventh Amended CC&amp;Rs?</p> <p>13 A. And the unit maintenance agreement because</p> <p>14 of the DUF.</p> <p>15 Q. Very well. Go to Exhibit 87. This is on</p> <p>16 owner account statement for the period November 1,</p> <p>17 2022, to November 30th, 2022.</p> <p>18 Did you generate the numbers appearing on</p> <p>19 this invoice or statement?</p> <p>20 A. Yes.</p> <p>21 Q. And tell me how you arrived at these</p> <p>22 numbers. And if they're different from the prior</p> <p>23 invoices or statements, tell me why.</p> <p>24 A. You said this was for December 14, 2022,</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. Very well. What I'm looking at here are</p> <p>2 numbers -- did you generate this statement but you</p> <p>3 used Proctor's numbers? Is that your testimony?</p> <p>4 A. That is correct.</p> <p>5 Q. Okay. And then, finally, Exhibit 89, which</p> <p>6 is a statement dated October 14th, 2021, for the</p> <p>7 period September 1, 2021, through September 30th,</p> <p>8 2021, did you generate these numbers?</p> <p>9 A. I did.</p> <p>10 Q. And what numbers are you applying on this</p> <p>11 invoice?</p> <p>12 A. These were the budget numbers from 2020</p> <p>13 that we would have applied if the order did not come</p> <p>14 out on Christmas Eve to use Proctor's numbers, so</p> <p>15 these were the numbers that we used from -- that we</p> <p>16 did from November 2020.</p> <p>17 So, it would have been September 2020 all</p> <p>18 the way back to October of 2019 but, again, we had</p> <p>19 to -- we were closed for three months due to COVID</p> <p>20 so we had to use three months from 2019, March,</p> <p>21 April, May.</p> <p>22 Q. I'm going to take you back to Exhibit 77.</p> <p>23 Take a look at that invoice, please. It shows net</p> <p>24 due to owner \$4,387.01. Do you see that?</p>

<p style="text-align: right;">Page 146</p> <p>1 A. I do.</p> <p>2 Q. Do I understand that correctly, that is</p> <p>3 money that is due back to the unit owner?</p> <p>4 A. That is correct.</p> <p>5 Q. Did you pay that money back to the unit</p> <p>6 owner?</p> <p>7 A. We did not.</p> <p>8 Q. Why?</p> <p>9 A. Two reasons. One, for the plaintiffs we</p> <p>10 have been paid five times since 2020 any money owed.</p> <p>11 So, their accounts have literally never been up to</p> <p>12 date and in line so -- on that factor.</p> <p>13 And then on the second factor, we are</p> <p>14 seasonality. We are very busy in the summer and</p> <p>15 lose steam in about -- right around October through</p> <p>16 April we kinda lose steam, less revenue comes in.</p> <p>17 So, it was because of that fact we --</p> <p>18 because of those two factors and after talking with</p> <p>19 Legal, we decided not to do a paid-out because it</p> <p>20 would come back and we would have to take it out of</p> <p>21 the rental revenue and at some point they would owe</p> <p>22 us.</p> <p>23 Q. I think you told us a moment ago that there</p> <p>24 are 46 plaintiffs who owe you money.</p>	<p style="text-align: right;">Page 148</p> <p>1 different types of rooms. Some rooms will</p> <p>2 absolutely drop and will never, you know, hit the</p> <p>3 due-to unit owner, and some are -- will stay</p> <p>4 negative, but they'll get almost to zero. So, the</p> <p>5 likelihood is very likely for most.</p> <p>6 Q. And if you distributed that money that you</p> <p>7 owe them now based upon your experience, how likely</p> <p>8 is it that they will pay you when they go negative</p> <p>9 and owe you money?</p> <p>10 A. Well, if you take five instances from 2020,</p> <p>11 so that's, you know, 24, that's 27 months, times</p> <p>12 that by 93 unit owners, not very likely at all.</p> <p>13 Q. Okay. Even extremely unlikely.</p> <p>14 Would you agree?</p> <p>15 A. I would agree.</p> <p>16 MR. McELHINNEY: Court's indulgence,</p> <p>17 please.</p> <p>18 THE COURT: Sure.</p> <p>19 BY MR. McELHINNEY:</p> <p>20 Q. Did GSR ever intend to violate a court</p> <p>21 order?</p> <p>22 A. No.</p> <p>23 Q. Would GSR knowingly ever violate a court</p> <p>24 order?</p>
<p style="text-align: right;">Page 147</p> <p>1 A. Forty-seven.</p> <p>2 Q. Forty-seven.</p> <p>3 A. As of the end of may.</p> <p>4 Q. So, I want to make sure I understand your</p> <p>5 testimony.</p> <p>6 You're withholding rent money because</p> <p>7 during the quiet months -- do I understand</p> <p>8 correctly -- the rental income won't be enough to</p> <p>9 cover their obligations of DUF, SFUE, HE and</p> <p>10 reserves. Do I understand that correctly?</p> <p>11 A. That is correct.</p> <p>12 Q. So, you have to use that money that you owe</p> <p>13 them to actually pay their share of the costs</p> <p>14 because they're not writing you checks.</p> <p>15 Do I understand that correctly?</p> <p>16 A. Correct. They have -- again, there's only</p> <p>17 been five instances, not five -- five instances that</p> <p>18 they've ever cut us a check.</p> <p>19 Q. All right. And how likely is it from your</p> <p>20 experience that these positive numbers dropped to</p> <p>21 negative numbers during that October-April time</p> <p>22 period?</p> <p>23 A. More than likely they will drop, not all,</p> <p>24 some because there is ten different categories of</p>	<p style="text-align: right;">Page 149</p> <p>1 A. No.</p> <p>2 MR. McELHINNEY: No further questions, your</p> <p>3 Honor.</p> <p>4 THE COURT: Mr. Miller.</p> <p>5 CROSS-EXAMINATION</p> <p>6 BY MR. MILLER:</p> <p>7 Q. Just because we looked at Exhibit 88, can</p> <p>8 you refer to that document again.</p> <p>9 A. Yes, sir.</p> <p>10 Q. So, in referring to Exhibit 88, turn to the</p> <p>11 second page and look at the contracted hotel fees.</p> <p>12 A. Yes.</p> <p>13 Q. And do you see the amount of \$463.12?</p> <p>14 A. I do.</p> <p>15 Q. Do you understand that to be the amount</p> <p>16 that Proctor calculated as the contracted hotel</p> <p>17 fees?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know if that number was ever</p> <p>20 challenged by your counsel at that time going back</p> <p>21 when those were originally calculated?</p> <p>22 A. Back in 2015?</p> <p>23 Q. Yeah.</p> <p>24 A. I don't know. I'm sorry.</p>

<p style="text-align: right;">Page 150</p> <p>1 Q. So, you don't know if anybody protested</p> <p>2 those as being too high or too low?</p> <p>3 A. I'm not sure, no.</p> <p>4 Q. Now, let's turn to Exhibit 87. I believe</p> <p>5 you stated that these are the contracted hotel fees</p> <p>6 that you had calculated for 2022. Is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And in the amount there, is that \$981.02?</p> <p>9 A. Yes.</p> <p>10 Q. So, your contracted hotel fees are more</p> <p>11 than double what Proctor, or slightly -- very close</p> <p>12 to double what Proctor calculated in that?</p> <p>13 A. I don't know what type of room it is. I</p> <p>14 don't know if it was the same room.</p> <p>15 Q. Look at the statement.</p> <p>16 A. What was the first exhibit? Exhibit 88?</p> <p>17 THE COURT: Unit 1886.</p> <p>18 THE WITNESS: Thank you, your Honor.</p> <p>19 MR. McELHINNEY: No further questions.</p> <p>20 THE COURT: At all?</p> <p>21 MR. MILLER: Well, no. There's no question</p> <p>22 pending.</p> <p>23 MR. McELHINNEY: I think he's allowed to</p> <p>24 give an explanation.</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Do you understand that our first two</p> <p>2 motions for order to show cause -- or maybe even the</p> <p>3 first three motions for order to show cause -- were</p> <p>4 entered before we had any of the January 4th, 2022,</p> <p>5 order? You understand that?</p> <p>6 A. Correct.</p> <p>7 Q. Okay.</p> <p>8 A. The first time he -- first time he ever</p> <p>9 said he wanted the rents was in September of 2021.</p> <p>10 Q. That's not my question.</p> <p>11 A. Okay.</p> <p>12 Q. Okay. Do you understand, then, that Mr.</p> <p>13 Teichner was to be paid out of the rents?</p> <p>14 A. At his discretion, yes.</p> <p>15 Q. Okay. Thank you.</p> <p>16 And do you think he didn't want to get</p> <p>17 paid?</p> <p>18 A. Again, the GSR, the UOA pays him, not GSR,</p> <p>19 and we have nothing to do with the UOA.</p> <p>20 Q. Who -- what entity was it that took in the</p> <p>21 rents? What entity was holding the rents when the</p> <p>22 units would be rented?</p> <p>23 A. MEI-GSR.</p> <p>24 Q. And you represent MEI-GSR, correct?</p>
<p style="text-align: right;">Page 151</p> <p>1 THE COURT: He is on redirect. Write it</p> <p>2 down. It was Exhibit 87 and 88.</p> <p>3 MR. McELHINNEY: I just remember you saying</p> <p>4 not to interrupt the witness.</p> <p>5 BY MR. MILLER:</p> <p>6 Q. Turn to page six, and this is the</p> <p>7 appointment order that we continue to talk about,</p> <p>8 Exhibit 115.</p> <p>9 A. Okay. Yes.</p> <p>10 Q. Let me have you -- I'll just read it to</p> <p>11 you. Starting at line 12 it says, "To pay and</p> <p>12 discharge out of the properties' rents and/or GSR</p> <p>13 UOA monthly dues collections, all the reasonable and</p> <p>14 necessary expenses of the receivership."</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Do you understand that Mr. Teichner was to</p> <p>18 be paid out of the rents?</p> <p>19 A. If it was -- yes and no, because --</p> <p>20 Q. How no? Explain the "no" part.</p> <p>21 A. Sure. Well, there was another order that</p> <p>22 said -- I believe it was brought up -- the</p> <p>23 Defendants's brought up that in 2016 it said that it</p> <p>24 was per the receiver's discretion.</p>	<p style="text-align: right;">Page 153</p> <p>1 A. I do.</p> <p>2 Q. You represented the entity that took in the</p> <p>3 rents and held those rents, the same rents that were</p> <p>4 supposed to pay Mr. Teichner. Is that correct?</p> <p>5 A. Yes, based on his calculations. He had to</p> <p>6 give me the net rents.</p> <p>7 Q. Not to be paying his fees. What order says</p> <p>8 that Mr. Teichner has to give you the net rents to</p> <p>9 be paid his fees?</p> <p>10 A. What order?</p> <p>11 Q. Yeah.</p> <p>12 A. A lot of orders.</p> <p>13 Q. So, you're telling me that you believe</p> <p>14 there's an order somewhere in existence that Mr.</p> <p>15 Teichner has to give you any calculations whatsoever</p> <p>16 to be paid his fees out of the rents.</p> <p>17 A. Yes. I believe there were several orders.</p> <p>18 Q. I would like to see it. I mean, if you can</p> <p>19 refer to a specific order, because I haven't seen</p> <p>20 one.</p> <p>21 A. I don't know the exhibits off the top of my</p> <p>22 head. I'm sorry.</p> <p>23 Q. We're talking about the payment of Mr.</p> <p>24 Teichner's fees from the rents.</p>

<p style="text-align: right;">Page 154</p> <p>1           You understand that, correct?</p> <p>2           A. I understand that, yes.</p> <p>3           Q. The entity that you represent was in</p> <p>4 possession of all those rents, right?</p> <p>5           A. They were?</p> <p>6           Q. Is there any reason why when he submitted</p> <p>7 his last invoice that wasn't paid, I believe in</p> <p>8 November of 2019, that you, representing GSR and</p> <p>9 sitting on all those rents that come in, the rents</p> <p>10 for Defendant-owned units and Plaintiff-owned units,</p> <p>11 is there any reason why you couldn't have written a</p> <p>12 check to pay his invoice so he could continue to</p> <p>13 work? From the rents.</p> <p>14           A. Again, GSR UOA, that's who paid him, not</p> <p>15 GSR.</p> <p>16           Q. All right. Let's look at page eight of the</p> <p>17 same document and then I'll read to you lines 16 to</p> <p>18 18. It states, "It is further ordered that</p> <p>19 Defendants and any other person or entity who may</p> <p>20 have possession, custody or control of any property,</p> <p>21 including any of the their agents, representatives,</p> <p>22 assignees and employees shall do the following."</p> <p>23           "Any," not -- okay. Before we go on to the</p> <p>24 next, do you understand what that says, "Any</p>	<p style="text-align: right;">Page 156</p> <p>1 court, do you believe that MEI-GSR was in possession</p> <p>2 of Mr. Teichner's invoices?</p> <p>3           A. Truthfully, I'm not 100 percent sure. I've</p> <p>4 never seen them.</p> <p>5           Q. Okay. So, at that point, when he submits</p> <p>6 his invoices, do you agree that under the</p> <p>7 appointment order any defendants have a duty to turn</p> <p>8 over to the receiver all rents under this</p> <p>9 appointment order? Do you dispute the language of</p> <p>10 that order?</p> <p>11           A. Again, I go with my legal counsel. I</p> <p>12 talked it over with my legal counsel.</p> <p>13           Q. Tell me what your legal counsel told you</p> <p>14 about that. The attorney-client privilege has been</p> <p>15 waived here. Tell me what you can recall about your</p> <p>16 legal counsel telling you whether or not all rents</p> <p>17 need to be turned over to the receiver.</p> <p>18           MR. SMITH: Your Honor, I'm not trying to</p> <p>19 tag team. I'm aware of the sanction, which is a</p> <p>20 whole separate issue. I'm aware of our attempt to</p> <p>21 reinstate that so there's a clawback provision.</p> <p>22           This is oral testimony. Another point on</p> <p>23 that is the sanction was imposed in the first place,</p> <p>24 presumably -- I disagree with it -- but to even the</p>
<p style="text-align: right;">Page 155</p> <p>1 defendant" and that would include MEI-GSR.</p> <p>2           Is that correct?</p> <p>3           A. That's correct.</p> <p>4           Q. All right. So, let's go to the top of page</p> <p>5 nine, subsection E. It states, "Turn over to the</p> <p>6 receiver" -- do you see the word "all" --</p> <p>7           A. I do.</p> <p>8           Q. -- "all rents, dues, reserves and revenues</p> <p>9 derived from the property wherever and in whatever</p> <p>10 mode maintained."</p> <p>11           So, when we go back to 2021 when Mr.</p> <p>12 Teichner was not being paid for his invoices -- and</p> <p>13 he submitted his invoices, correct?</p> <p>14           A. Not to us, no.</p> <p>15           Q. Did he submit them to your counsel? Were</p> <p>16 they filed with the court?</p> <p>17           A. I -- I'm unaware of that. I don't know.</p> <p>18           Q. Do you believe it's safe to assume that his</p> <p>19 invoices were filed with the court in this action?</p> <p>20           MR. McELHINNEY: Objection, speculation.</p> <p>21           THE COURT: Sustained. Rephrase the</p> <p>22 question.</p> <p>23 BY MR. MILLER:</p> <p>24           Q. Assuming his invoices were filed with the</p>	<p style="text-align: right;">Page 157</p> <p>1 playing field based on misconduct with the</p> <p>2 underlying judgment.</p> <p>3           We're now in a contempt proceeding where</p> <p>4 there's jurisdiction for it or not which is</p> <p>5 collateral to any misconduct which may or may not</p> <p>6 have occurred leading to the sanction. So, I don't</p> <p>7 believe it's even appropriate to apply that prior</p> <p>8 waiver to the extent it's still in place in this</p> <p>9 collateral proceeding, No. 1.</p> <p>10           Because, again, the misconduct -- alleged</p> <p>11 misconduct for which it was imposed doesn't affect</p> <p>12 this proceeding, so it seems an unfair and a</p> <p>13 violation of due process to apply that sanction</p> <p>14 here.</p> <p>15           No. 2, it applies to documents your Honor</p> <p>16 pointed out that there was a clawback process. That</p> <p>17 clawback process doesn't really work here in a</p> <p>18 courtroom.</p> <p>19           And, No. 3, I'd like to avoid a Harvey</p> <p>20 Whittemore situation where I have to instruct the</p> <p>21 witness not to answer and just take a writ and this</p> <p>22 proceeding doesn't get done for two years.</p> <p>23           THE COURT: Two years or three years?</p> <p>24           MR. SMITH: It might have been three at</p>

<p style="text-align: right;">Page 158</p> <p>1 that point, your Honor.</p> <p>2 So, I don't think that prior sanction</p> <p>3 applies to this proceeding.</p> <p>4 No. 2, I don't it applies to oral</p> <p>5 testimony.</p> <p>6 And, No. 3, if it does, I'm going to be</p> <p>7 forced to instruct the witness not to answer and</p> <p>8 this proceeding won't finish.</p> <p>9 THE COURT: Mr. Miller?</p> <p>10 MR. MILLER: I believe, your Honor, you</p> <p>11 would determine whether or not the proceeding will</p> <p>12 finish.</p> <p>13 But the attorney-client privilege has been</p> <p>14 clearly waived in this case. There are numerous</p> <p>15 instances where we're going to go through, even</p> <p>16 today, where the internal emails of counsel directly</p> <p>17 conflict with the positions that they've made, even</p> <p>18 today, even during these hearings, such as the</p> <p>19 inclusion of the pool expenses into the expenses.</p> <p>20 So, I believe that the record demonstrates</p> <p>21 it has been waived, the court's ruled it's been</p> <p>22 waived. There's ample evidence to show we've got</p> <p>23 statements from counsel that directly conflict with</p> <p>24 representations that have been made. So, I believe</p>	<p style="text-align: right;">Page 160</p> <p>1 essentially, relying upon advice of counsel with</p> <p>2 this witness as to why he did some things or like</p> <p>3 the receiver relied on the advice of counsel why he</p> <p>4 did things and changed things. That's the situation</p> <p>5 we're in and we will deal with as I'm evaluating</p> <p>6 credibility.</p> <p>7 MR. MILLER: Thank you, your Honor.</p> <p>8 To be clear, I have a little -- I</p> <p>9 understand your instruction --</p> <p>10 THE COURT: Unless you have a document.</p> <p>11 MR. MILLER: Thank you, your Honor, unless</p> <p>12 I have a document.</p> <p>13 BY MR. MILLER:</p> <p>14 Q. Going back to November of 2021 when Mr.</p> <p>15 Teichner's invoices first stopped being paid, is my</p> <p>16 recollection from his testimony, going back at that</p> <p>17 time could you in your position at MEI-GSR holding</p> <p>18 all the rents for both the plaintiffs and the</p> <p>19 defendants' units, could you have written a check</p> <p>20 from the rents to Mr. Teichner at that time so that</p> <p>21 he would continue working on this case?</p> <p>22 A. Me personally, no, I could not have without</p> <p>23 approval from a lot of levels of approval. So, no,</p> <p>24 I could just not write a check, unfortunately.</p>
<p style="text-align: right;">Page 159</p> <p>1 the door has been opened and that he should answer</p> <p>2 that line of questioning, but I would defer to</p> <p>3 Mr. Eisenberg as well.</p> <p>4 THE COURT: Mr. Eisenberg, anything to add</p> <p>5 before I rule?</p> <p>6 MR. EISENBERG: Can I speak to Mr. Miller</p> <p>7 for a moment?</p> <p>8 (Sotto voce discussion between counsel.)</p> <p>9 MR. MILLER: Your Honor, even during these</p> <p>10 proceedings Mr. Brady has repeatedly stated that he</p> <p>11 relied upon counsel for certain positions and this</p> <p>12 would be one of those positions certainly at issue</p> <p>13 in these contempt proceedings.</p> <p>14 THE COURT: I certainly understand your</p> <p>15 position. However, my position is that the</p> <p>16 documents that were subject to the sanction order to</p> <p>17 the extent they relate to a witness' testimony, the</p> <p>18 testimony is fair game.</p> <p>19 However, if it does not relate to a</p> <p>20 specific document that has been previously produced</p> <p>21 as a result of the sanction order, I'm going to</p> <p>22 allow the defendants to stand on an attorney-client</p> <p>23 privilege.</p> <p>24 I understand the defendants are,</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. If someone above you would have approved</p> <p>2 that expense, could you have written the check to</p> <p>3 Mr. Teichner paying him for his services and</p> <p>4 deducting that from the rental proceeds that were</p> <p>5 collected from the units for that time period?</p> <p>6 A. Yes. We would have needed a W-9 from Mr.</p> <p>7 Teichner, because I don't think we've ever paid him</p> <p>8 personally through GSR. So, yeah, if I get a check</p> <p>9 request and properly approval, I would be able to</p> <p>10 pay. Yes.</p> <p>11 Q. Who would you have had gotten approval</p> <p>12 from?</p> <p>13 A. We have a list of approvers company-wide,</p> <p>14 so depending on the dollar amount, it goes to the GM</p> <p>15 and then to Mr. Armona and it would probably have to</p> <p>16 be -- since this is a legal case, it would have to</p> <p>17 be approved by legal counsel.</p> <p>18 Q. Is Mr. Meruelo at the apex of that</p> <p>19 approval?</p> <p>20 A. He is not.</p> <p>21 Q. Mr. Armona is at the apex of that approval?</p> <p>22 A. Over a certain dollar amount, yes, he's the</p> <p>23 apex.</p> <p>24 Q. Is there anybody above Mr. Armona?</p>



<p style="text-align: right;">Page 162</p> <p>1 A. No.</p> <p>2 Q. Okay. And is Mr. Armona also a manager of</p> <p>3 MEI-GSR Holdings?</p> <p>4 A. When you say "manager" ...</p> <p>5 Q. So, my understanding is that MEI-GSR</p> <p>6 Holdings LLC is an LLC, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And LLCs have managers.</p> <p>9 Are you familiar with that term?</p> <p>10 A. Yeah.</p> <p>11 Q. Is it your understanding that Mr. Armona is</p> <p>12 the manager of MEI-GSR Holdings?</p> <p>13 A. I believe, yes. I believe he has --</p> <p>14 actually, I'm not 100 percent sure. I'm sorry.</p> <p>15 Q. Okay. We have a document for that we'll</p> <p>16 get to later.</p> <p>17 A. Okay. We pay a management fee to Meruelo</p> <p>18 Group because they are -- they manage us.</p> <p>19 Q. If MEI-GSR stopped paying you, would you</p> <p>20 continue to work for them?</p> <p>21 A. Yes, most likely.</p> <p>22 Q. For how long would you continue to work</p> <p>23 without payment?</p> <p>24 A. I'm not sure. I like GSR, so not --</p>	<p style="text-align: right;">Page 164</p> <p>1 A. I'm trying to answer the questions as</p> <p>2 honestly as possible.</p> <p>3 Q. I'll ask you the question again: As to</p> <p>4 that paragraph that we just looked at, in reading</p> <p>5 that paragraph that talks about how he gets paid</p> <p>6 from the rents, is there anything ambiguous in that</p> <p>7 paragraph?</p> <p>8 A. It's GSR UOA monthly fees. No.</p> <p>9 Q. Thank you. And then we went back to page</p> <p>10 nine of the order and we looked at the top of page</p> <p>11 nine, lines one and two. And that's the part about</p> <p>12 any defendant having a duty to turn over to the</p> <p>13 receiver all rents, dues, reserves and revenues.</p> <p>14 Is there anything ambiguous to you about</p> <p>15 those two lines of this order?</p> <p>16 A. Dues, I'm not sure what -- that would be</p> <p>17 the only thing. I don't know what dues are.</p> <p>18 Q. All right. Then, let's limit that.</p> <p>19 Is there anything ambiguous in this section</p> <p>20 that we just referred to about "turn over to the</p> <p>21 receiver all rents, reserves," just those two</p> <p>22 things? Is there anything ambiguous about turning</p> <p>23 over all rents and all reserves?</p> <p>24 A. No.</p>
<p style="text-align: right;">Page 163</p> <p>1 couldn't answer that hypothetical.</p> <p>2 Q. Okay. If we go back to page six, we read</p> <p>3 the provision from lines 12 to 14 about the receiver</p> <p>4 being paid from the rents, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And is there anything ambiguous in that to</p> <p>7 you?</p> <p>8 A. This order itself, no, but there was many</p> <p>9 orders after this.</p> <p>10 Q. That wasn't the question.</p> <p>11 And this is important because this is a</p> <p>12 legal proceeding, right? We have certain standards.</p> <p>13 So, if I ask you a question about something</p> <p>14 like that, if you can answer the question, that</p> <p>15 would be great. Because I'm just asking you about</p> <p>16 this paragraph.</p> <p>17 And my understanding is that you just</p> <p>18 confirmed that there's nothing ambiguous about that</p> <p>19 paragraph.</p> <p>20 A. Truthfully, I haven't read the whole order</p> <p>21 in a while so, without reading the whole order, I</p> <p>22 can't honestly answer.</p> <p>23 Mr. Miller, I'm sorry I'm frustrating you.</p> <p>24 Q. No, you're not frustrating me.</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. Is there any reason why MEI-GSR couldn't</p> <p>2 turn over all rents and all reserves to the</p> <p>3 receiver?</p> <p>4 A. Yeah. He didn't open a bank account.</p> <p>5 Q. That's not what I asked you. That's not</p> <p>6 the question.</p> <p>7 So, under this order -- do you see under</p> <p>8 this order, the language of this, is there any</p> <p>9 reason why under the language of this order that</p> <p>10 we're looking at, these two lines, that MEI-GSR</p> <p>11 couldn't have turned over the rents and the</p> <p>12 reserves?</p> <p>13 A. Truthfully, this was back in 2015. I don't</p> <p>14 know, Mr. Miller.</p> <p>15 Q. Okay.</p> <p>16 A. I honestly don't know.</p> <p>17 Q. You have no clear reason why they couldn't</p> <p>18 turn over the rents and reserves?</p> <p>19 A. Back in 2015, I'm not sure.</p> <p>20 Q. How about today? As we sit here today is</p> <p>21 there any reason why MEI-GSR can't turn over all</p> <p>22 rents and reserves to the receiver?</p> <p>23 A. Yeah. There's a couple of reasons.</p> <p>24 Q. Please state them.</p>

<p style="text-align: right;">Page 166</p> <p>1 A. No bank account.</p> <p>2 Q. All right. Let me stop you there before we</p> <p>3 go on. I'm --</p> <p>4 A. Can --</p> <p>5 THE COURT: We're going to write them down</p> <p>6 and give you a whole list so we don't forget.</p> <p>7 THE WITNESS: No. 2, there's many orders</p> <p>8 that said that he would calculate it and come back</p> <p>9 to us. He never calculated it.</p> <p>10 No. 3, we don't know what the reserves are.</p> <p>11 He's never done the reserves. The receiver has not</p> <p>12 done his job, so I cannot do my job.</p> <p>13 MR. MILLER: Your Honor, this is a new</p> <p>14 document that has not been marked as an exhibit.</p> <p>15 THE CLERK: Exhibit 143 is marked.</p> <p>16 THE COURT: Any objection to 143?</p> <p>17 MR. McELHINNEY: I've never seen it, your</p> <p>18 Honor.</p> <p>19 THE COURT: Take a moment and decide if you</p> <p>20 have an objection.</p> <p>21 Don't read from it. You can read it to</p> <p>22 yourself if you want to.</p> <p>23 MR. McELHINNEY: I would not stipulate to</p> <p>24 it.</p>	<p style="text-align: right;">Page 168</p> <p>1 MR. McELHINNEY: Yes, it was sent</p> <p>2 encrypted.</p> <p>3 THE COURT: It has your email address on</p> <p>4 it?</p> <p>5 MR. McELHINNEY: It does.</p> <p>6 MR. MILLER: Yes.</p> <p>7 THE COURT: Okay. Is it's been offered and</p> <p>8 objected to, and there's a process you have to</p> <p>9 follow.</p> <p>10 MR. McELHINNEY: All right.</p> <p>11 MR. MILLER: Your Honor, this is an email</p> <p>12 from the counsel for Stefanie Sharp, the counsel for</p> <p>13 the receiver. It's to Mr. McElhinney and myself and</p> <p>14 it's from May 5th, 2023.</p> <p>15 THE COURT: So, you can't lay the</p> <p>16 foundation by argument.</p> <p>17 MR. MILLER: Okay.</p> <p>18 THE COURT: You have to do it testimony or</p> <p>19 stipulation.</p> <p>20 MR. MILLER: I believe it's subject to our</p> <p>21 existing stipulation for all emails. Mr. McElhinney</p> <p>22 is disputing that's the case, so, I guess, I could</p> <p>23 call Mr. Mr. McElhinney.</p> <p>24 THE COURT: He says he didn't get it. He</p>
<p style="text-align: right;">Page 167</p> <p>1 THE COURT: So, you have an objection?</p> <p>2 MR. McELHINNEY: I'm not familiar with this</p> <p>3 document.</p> <p>4 THE COURT: Mr. Miller, has the document</p> <p>5 ever been produced?</p> <p>6 MR. MILLER: Yes. It was emailed from</p> <p>7 Stefanie Sharp to David McElhinney and Jarrad Miller</p> <p>8 on May 5th, 2023, titled "Rent collections of unit</p> <p>9 owners." It includes account information for the</p> <p>10 account opened by the receiver.</p> <p>11 THE COURT: I thought you had stipulated to</p> <p>12 all emails that you had exchanged among yourselves.</p> <p>13 MR. MILLER: I heard from Mr. Brady this</p> <p>14 morning that there was no account, that he doesn't</p> <p>15 have any account information or no access to it. He</p> <p>16 just said he has no access.</p> <p>17 THE COURT: That's not what I'm asking.</p> <p>18 As part of what I was doing in the</p> <p>19 exhibit-admitting process, I asked you what did you</p> <p>20 stipulate to and you guys told me you stipulated to</p> <p>21 all the emails. This is not an email?</p> <p>22 MR. McELHINNEY: It is an encrypted message</p> <p>23 that I've never seen.</p> <p>24 THE COURT: Encrypted?</p>	<p style="text-align: right;">Page 169</p> <p>1 told me a minute ago he didn't receive it. He's</p> <p>2 never seen it before.</p> <p>3 MR. McELHINNEY: Your Honor, let me be</p> <p>4 clear. If it's an encrypted message, I may have</p> <p>5 received it but I don't open them. I'm highly</p> <p>6 suspicious of them. I'll go under oath.</p> <p>7 If I knew she had sent wiring instructions,</p> <p>8 I would have sent that to Mr. Brady. I did not open</p> <p>9 an encrypted message from anybody. I don't as a</p> <p>10 practice.</p> <p>11 MR. MILLER: Okay. We'll move on.</p> <p>12 THE COURT: Mr. Brady, does the one you</p> <p>13 have a sticker on it or not?</p> <p>14 THE WITNESS: No.</p> <p>15 THE COURT: Keep that document that you</p> <p>16 have. It has writing on it. You have information</p> <p>17 on how to give the receiver money so he can get</p> <p>18 rents.</p> <p>19 MR. MILLER: We blew it again, your Honor.</p> <p>20 It's been redacted.</p> <p>21 THE COURT: Never mind. I was just trying</p> <p>22 to be helpful. So, that didn't work either, sir.</p> <p>23 We'll figure out how to get it to you.</p> <p>24 MR. MILLER: Mr. McElhinney would need to</p>

<p style="text-align: right;">Page 170</p> <p>1 open an encrypted message.</p> <p>2 THE COURT: He won't, so can you give a</p> <p>3 copy to the witness yourself.</p> <p>4 MR. MILLER: Yes. Thank you.</p> <p>5 THE COURT: How do you know it's encrypted?</p> <p>6 MR. McELHINNEY: It says it on the email</p> <p>7 itself.</p> <p>8 THE COURT: I don't even know what that</p> <p>9 means.</p> <p>10 MR. McELHINNEY: You know, I'm not sure I</p> <p>11 do either.</p> <p>12 THE COURT: I'm not that tech savvy. I</p> <p>13 don't know what an encrypted message is.</p> <p>14 MR. McELHINNEY: I don't know either. To</p> <p>15 me it has spam or it has "something's wrong" written</p> <p>16 all over it and I have visions of shutting down my</p> <p>17 computer.</p> <p>18 THE COURT: I just had a question. Keep</p> <p>19 going, please, Mr. Miller. We'll figure this out</p> <p>20 later.</p> <p>21 MR. MILLER: All right, thank you.</p> <p>22 BY MR. MILLER:</p> <p>23 Q. Mr. Brady, do the CC&amp;Rs dictate what goes</p> <p>24 into the reserves?</p>	<p style="text-align: right;">Page 172</p> <p>1 GSR for six years. Is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you recall during your time at</p> <p>4 the GSR during your six years anyone indicating to</p> <p>5 you that Mr. Teichner has the authority to determine</p> <p>6 what goes into the reserves and the reserve studies?</p> <p>7 A. From what I remember, he has authority to</p> <p>8 oversee the reserve studies based on the CC&amp;Rs.</p> <p>9 Q. So, it's ultimately the reserves and</p> <p>10 reserve study is under his authority.</p> <p>11 Is that correct?</p> <p>12 A. To oversee what is the independent company</p> <p>13 that is actually doing the reserve study.</p> <p>14 Q. So, he's the one who determines if the</p> <p>15 independent study has followed the CC&amp;Rs?</p> <p>16 A. Yeah. He would have to work with</p> <p>17 independent study because they follow the CC&amp;Rs too,</p> <p>18 so yes.</p> <p>19 Q. Let me have you refer to Exhibit 45.</p> <p>20 Are you familiar with this document? It's</p> <p>21 an email from your counsel, David McElhinney to Ann</p> <p>22 Hall dated July 9th, 2020.</p> <p>23 A. I have not.</p> <p>24 Q. "Starting with reimbursement of capital</p>
<p style="text-align: right;">Page 171</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Do the CC&amp;Rs dictate what goes into</p> <p>3 a reserve study?</p> <p>4 A. What goes into the reserve study?</p> <p>5 Q. Yeah. What components can go into the</p> <p>6 reserve study.</p> <p>7 A. Yeah.</p> <p>8 Q. Okay. So, in order to do a proper reserve</p> <p>9 study, you have to comply with the underlying CC&amp;Rs.</p> <p>10 Is that correct?</p> <p>11 A. The third-party independent has to --</p> <p>12 Q. Whomever --</p> <p>13 A. -- comply.</p> <p>14 Q. Whoever prepares the reserve study has to</p> <p>15 comply. Is that correct?</p> <p>16 A. That is my understanding, yes.</p> <p>17 Q. Okay. And I'm doing it just as much as you</p> <p>18 are, and I'll try not to do it, but we're talking</p> <p>19 over each other, which is the No. 1 rule.</p> <p>20 A. Understood.</p> <p>21 Q. Let me have you refer to Exhibit 40. Have</p> <p>22 you ever had the opportunity to review Exhibit 40?</p> <p>23 A. I don't think in its entirety, no.</p> <p>24 Q. I believe you stated that you'd been at the</p>	<p style="text-align: right;">Page 173</p> <p>1 expenditures, one of the issues Miller raises in</p> <p>2 that a declaration was not provided to verify</p> <p>3 support the spreadsheet that Katherine prepared. We</p> <p>4 can prepare a declaration for Katherine's signature,</p> <p>5 or, as we argued in the reply, Teichner can do the</p> <p>6 verification as the receiver."</p> <p>7 Now, this is the important part: "Also,</p> <p>8 another area of concern is that the CC&amp;Rs identify</p> <p>9 the hotel expenses as those appearing on Exhibit E</p> <p>10 to the CC&amp;Rs. Exhibit E does not identify the pool</p> <p>11 or the front desk. Katherine relied on the reserve</p> <p>12 study to identify which reserve expenses go in."</p> <p>13 Now, this is important: "The problem is</p> <p>14 that the reserve study does not exactly square with</p> <p>15 the CC&amp;Rs. The same problem exists with the common</p> <p>16 elements. We did add in the argument that Teichner</p> <p>17 has the authority to determine whether the expenses</p> <p>18 are supported and properly attributable to the</p> <p>19 reserves."</p> <p>20 THE COURT: Is that an objection?</p> <p>21 MR. SMITH: I want to put on the record we</p> <p>22 still maintain our objection to the use of any</p> <p>23 attorney-client privilege communications that we've</p> <p>24 been ordered to produce. I understand it's been</p>

<p style="text-align: right;">Page 174</p> <p>1 previously ruled on.</p> <p>2 We're not waiving anything by sitting</p> <p>3 silent based on that prior order.</p> <p>4 THE COURT: I understand that you are</p> <p>5 preserving your objection for purposes of appellate</p> <p>6 review.</p> <p>7 MR. MILLER: Thank you.</p> <p>8 BY MR. MILLER:</p> <p>9 Q. So, after reading this email, do you</p> <p>10 understand that even your own counsel has determined</p> <p>11 that Mr. Teichner is the one that determines if</p> <p>12 items are properly attributable to the reserves?</p> <p>13 A. With the independent third party? Sure, he</p> <p>14 can --</p> <p>15 Q. Where do -- where does it state that in</p> <p>16 there?</p> <p>17 A. Per the CC&amp;Rs it's definitely stated that</p> <p>18 an independent third party has to do it.</p> <p>19 Q. Okay.</p> <p>20 A. Now, independent third-party also is</p> <p>21 supposed to look over the governing documents and</p> <p>22 follow them. If there's any arguments between the</p> <p>23 two, then that would be between them.</p> <p>24 Q. Okay.</p>	<p style="text-align: right;">Page 176</p> <p>1 statements for the reserve accounts in our shared</p> <p>2 file.</p> <p>3 Q. So, MEI-GSR in this case, as a result of</p> <p>4 reviewing room key data and room key statements, was</p> <p>5 determined to have committed fraud.</p> <p>6 Do you understand that by sending out false</p> <p>7 statements showing that there was no room rental</p> <p>8 activity when, in fact, GSR was renting the rooms</p> <p>9 and keeping all the revenue. Do you understand that</p> <p>10 occurred in this case?</p> <p>11 MR. McELHINNEY: Objection, your Honor,</p> <p>12 contrary to evidence and I don't believe there's any</p> <p>13 evidence in the record to support that</p> <p>14 representation.</p> <p>15 THE COURT: Can you rephrase your question.</p> <p>16 BY MR. MILLER:</p> <p>17 Q. Do you understand that the court has</p> <p>18 determined in this case that GSR-MEI has committed</p> <p>19 fraud?</p> <p>20 A. I --</p> <p>21 MR. McELHINNEY: Let me pose an objection.</p> <p>22 I understand there's punitive damages in this case.</p> <p>23 I don't remember as I sit here if there was</p> <p>24 specifically a finding of fraud.</p>
<p style="text-align: right;">Page 175</p> <p>1 A. I believe back in 2020 he did not have any</p> <p>2 issues with the reserve study.</p> <p>3 Q. Who?</p> <p>4 A. Mr. Teichner. He never brought up to my</p> <p>5 attention, as far as I know, to Katelyn's attention.</p> <p>6 Q. Okay. Let me have you turn to Exhibit 46.</p> <p>7 A. Yes.</p> <p>8 Q. Exhibit 46 is an email from Stefanie Sharp</p> <p>9 to Justice Saita dated September 15th, 2021.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Are you familiar with this email?</p> <p>13 A. I've read over it a couple times.</p> <p>14 Q. Okay. Going to the first paragraph where</p> <p>15 it says "Accounts," it says "As noted in the</p> <p>16 receiver's report for the month of August, the</p> <p>17 receiver requested that he have read-only access to</p> <p>18 the reserve account so that he can monitor the</p> <p>19 activity in those accounts. However, Defendants</p> <p>20 denied this request."</p> <p>21 Do you know why that request was denied to</p> <p>22 even give him access to look at what's in the</p> <p>23 reserve accounts?</p> <p>24 A. We uploaded statements, so he had the</p>	<p style="text-align: right;">Page 177</p> <p>1 THE COURT: Yes.</p> <p>2 MR. McELHINNEY: Okay. Is that in the</p> <p>3 findings of fact, conclusions of law?</p> <p>4 THE COURT: It is. Both of them.</p> <p>5 MR. McELHINNEY: Thank you, your Honor.</p> <p>6 THE COURT: The ones I did and the one</p> <p>7 Sattler did.</p> <p>8 THE WITNESS: I'm not 100 percent sure, to</p> <p>9 tell you the truth. Since I've been here there's --</p> <p>10 that I know of there's been no fraud since I've</p> <p>11 taken over.</p> <p>12 BY MR. MILLER:</p> <p>13 Q. Well, that's interesting, when you have</p> <p>14 multiple court orders that say you're supposed to</p> <p>15 apply receiver's fees and then you issue your own</p> <p>16 fees. Is that not fraud, sending out -- when you're</p> <p>17 under a receivership and you're supposed to apply</p> <p>18 receiver's fees, but yet you send out statements</p> <p>19 with your own fees, isn't that fraud?</p> <p>20 A. Well --</p> <p>21 Q. You're purporting that you --</p> <p>22 THE COURT: Let him finish.</p> <p>23 THE WITNESS: No. Mr. Miller -- the</p> <p>24 plaintiffs are not the only ones in this, as we have</p>

<p style="text-align: right;">Page 178</p> <p>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&amp;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</p>	<p style="text-align: right;">Page 180</p> <p>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?</p>
<p style="text-align: right;">Page 179</p> <p>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</p>	<p style="text-align: right;">Page 181</p> <p>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?"</p>

<p style="text-align: right;">Page 182</p> <p>1 Do you see that?</p> <p>2 A. In one?</p> <p>3 Q. Yes.</p> <p>4 (Witness reviewing document.)</p> <p>5 THE WITNESS: Yes, that's what it says.</p> <p>6 BY MR. MILLER:</p> <p>7 Q. All right. Do you dispute that statement?</p> <p>8 A. Yes, I do.</p> <p>9 Q. In what way?</p> <p>10 A. Again, the reserves are a third party. It</p> <p>11 can't be Mr. Teichner. He's not qualified. He can</p> <p>12 oversee it. I 100 percent agree with that.</p> <p>13 Q. Okay.</p> <p>14 A. To this day he still hasn't so --</p> <p>15 Q. And that goes back to that concept that,</p> <p>16 unlike you, Mr. Teichner actually wants to be paid</p> <p>17 to do work. Is that correct?</p> <p>18 A. Correct. But the difference is he gets</p> <p>19 paid from the UOA, not the GSR MEI.</p> <p>20 Q. Do we need to go back over Exhibit 115,</p> <p>21 wherein there it states he gets paid from the rents?</p> <p>22 Do you understand?</p> <p>23 A. Correct, or UOA dues.</p> <p>24 Q. Rents or dues. So, he gets paid from the</p>	<p style="text-align: right;">Page 184</p> <p>1 internal email of your counsel. It states, "take</p> <p>2 over the actual reserve accounts and monthly</p> <p>3 collections to ensure timely funding of the reserves</p> <p>4 and compliance with the governing documents. The</p> <p>5 receiver has this authority in the appointment</p> <p>6 order."</p> <p>7 It states "He doesn't have to take over the</p> <p>8 bank accounts if he sees no reason to do so." And</p> <p>9 then "We should leave this to his discretion."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. So, he can take over those accounts if he</p> <p>13 demands them.</p> <p>14 A. Sure.</p> <p>15 Q. All right. If he can take over the</p> <p>16 accounts if he demands them, then doesn't he have</p> <p>17 control over any withdrawals coming out of the</p> <p>18 accounts?</p> <p>19 A. He never took over the accounts. He</p> <p>20 just -- until recently he asked.</p> <p>21 Q. Okay.</p> <p>22 A. He asked for read-only access.</p> <p>23 Q. Let me have you turn to Exhibit 56.</p> <p>24 Are you tax with the document?</p>
<p style="text-align: right;">Page 183</p> <p>1 rents, we established.</p> <p>2 A. Or dues.</p> <p>3 Q. MEI-GSR holds the rents, right? Didn't we</p> <p>4 establish that?</p> <p>5 A. Per the CC&amp;Rs and unit maintenance</p> <p>6 agreement, yes, you're absolutely correct.</p> <p>7 Q. And we also established that under Exhibit</p> <p>8 115, the appointment order, that the defendants have</p> <p>9 a duty to turn over the rents to the receiver. Yes?</p> <p>10 A. Based on him opening an account --</p> <p>11 Q. Okay.</p> <p>12 A. -- and based on him providing the net</p> <p>13 revenue.</p> <p>14 Q. And you don't get that anywhere from the</p> <p>15 appointment order, do you? It's nowhere in that</p> <p>16 Exhibit 115. Is that correct?</p> <p>17 A. Mr. Miller, there's so many conflicting</p> <p>18 orders, like it is very hard to read them. And I</p> <p>19 have to go to Legal almost, you know, every week</p> <p>20 just to figure out what is going on and to keep</p> <p>21 track. Again, this has been going on for God knows</p> <p>22 how many years.</p> <p>23 Q. Let's turn to the second page of Exhibit</p> <p>24 47, paragraph six. Again, we're referring to the</p>	<p style="text-align: right;">Page 185</p> <p>1 A. No. Page two, I am.</p> <p>2 Q. To summarize page two, you had email</p> <p>3 exchanges with Mr. Teichner on May 5th.</p> <p>4 Is that correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And did he demand the gross rents?</p> <p>7 A. He did. That was the very first time.</p> <p>8 Q. And did you argue with him turning over the</p> <p>9 gross rents in your emails?</p> <p>10 A. I've argued that we've always said from</p> <p>11 then, from 2020 or September 2021 until then, that</p> <p>12 it's been net rents. This is the first time he's</p> <p>13 ever said "gross rents."</p> <p>14 Q. That wasn't my question.</p> <p>15 My question is, In accordance with -- he</p> <p>16 even cites to it, Exhibit 115, the appointment</p> <p>17 order, authority to collect all rents. He demands</p> <p>18 the rents.</p> <p>19 Do you respond by saying, "Yes, I'll turn</p> <p>20 over all rents in order in accordance with your</p> <p>21 authority"?</p> <p>22 A. I'll have to read it. I'm not 100 percent</p> <p>23 sure. I didn't think I responded back to him.</p> <p>24 Q. Keep turning to page four. This is an</p>

<p style="text-align: right;">Page 186</p> <p>1 email from you May 5th, 2023, to Mr. Teichner.</p> <p>2 "I have some questions about this latest</p> <p>3 demand." Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. So, in response to him demanding all rents,</p> <p>6 did you say, Yes, I'll turn over all rents" or did</p> <p>7 you respond to him by saying, No, you have a duty to</p> <p>8 calculate net rents? Is that -- we can read through</p> <p>9 your email again.</p> <p>10 MR. McELHINNEY: Objection, that question</p> <p>11 mischaracterizes what's set forth in the exhibit.</p> <p>12 THE COURT: Sustained.</p> <p>13 Rephrase your question.</p> <p>14 BY MR. MILLER:</p> <p>15 Q. You understand that Mr. Teichner demanded</p> <p>16 the gross rents, correct?</p> <p>17 A. Yes, I understand that.</p> <p>18 Q. All right. And then the email that we're</p> <p>19 looking at here, which is page four in Exhibit 56,</p> <p>20 what was your response to his demand for the gross</p> <p>21 rents?</p> <p>22 A. I had some questions because this was the</p> <p>23 first time that he went from net rents, which we</p> <p>24 have been agreeing on since September of 2021 and</p>	<p style="text-align: right;">Page 188</p> <p>1 I'm actually the only one that can communicate with</p> <p>2 him, is between me and him. We've had these</p> <p>3 conversations back and forth a thousand times.</p> <p>4 So, I need to clarification. I just can't</p> <p>5 jump into something without clarifying. I talked it</p> <p>6 over with my legal counsel and we determined we had</p> <p>7 questions. We need clarification.</p> <p>8 Q. So, is it your position here today that</p> <p>9 tomorrow, in accordance with his demand, that you</p> <p>10 turn over all of the gross rents for the plaintiffs'</p> <p>11 and defendants' units, that you will comply with</p> <p>12 that demand and deposit the money into the account</p> <p>13 numbers that you now have?</p> <p>14 A. I'm sorry. Repeat the question.</p> <p>15 Q. We've looked at the appointment order. We</p> <p>16 know that it says you have to turn over all rents.</p> <p>17 Mr. Teichner in this email has unequivocally in no</p> <p>18 uncertain terms said to turn over all rents for</p> <p>19 plaintiff and defendant units.</p> <p>20 My question to you is, Tomorrow, now that</p> <p>21 you have the account information, which your counsel</p> <p>22 has had for nearly a month, are you going to start</p> <p>23 transferring those rents into Mr. Teichner's</p> <p>24 accounts?</p>
<p style="text-align: right;">Page 187</p> <p>1 even earlier, we've -- rents has always been net</p> <p>2 rents.</p> <p>3 Then all of a sudden here he comes out of</p> <p>4 nowhere and says "gross rents" so, yes, I had many</p> <p>5 questions for him because I don't know, you know --</p> <p>6 I needed clarification.</p> <p>7 Q. Okay. So, these actually go back in order.</p> <p>8 If we look at page five of this -- and this is Mr.</p> <p>9 Teichner to you stating "Read, effective immediately</p> <p>10 I need for you to send me the total rents collected</p> <p>11 on all of the plaintiff unit owners' units and on</p> <p>12 all the defendant unit owners' units."</p> <p>13 And was your response to that, "Yes, I will</p> <p>14 send you those rents"?</p> <p>15 A. No. I had questions.</p> <p>16 Q. Okay. Is it -- if you're under a</p> <p>17 receivership and the receivership order</p> <p>18 unambiguously says that Mr. Teichner is entitled to</p> <p>19 all rents, are you interfering or not cooperating</p> <p>20 with the receiver when you question his demand to</p> <p>21 turn over the rents?</p> <p>22 A. If he just said, Hey, pay me \$2 million, am</p> <p>23 I supposed to turn around and say, Yes? I have</p> <p>24 questions. Me and him have always communicated.</p>	<p style="text-align: right;">Page 189</p> <p>1 MR. McELHINNEY: Your Honor, I'll object on</p> <p>2 relevancy. I don't think this is a subject of the</p> <p>3 motion for order to show cause.</p> <p>4 THE COURT: It is not, but I'd like to hear</p> <p>5 the answer.</p> <p>6 THE WITNESS: Again, I have no sole</p> <p>7 authority to issue anything. Again, you would have</p> <p>8 to go through the approval. And I believe we filed</p> <p>9 against this. We have filed against gross from the</p> <p>10 very beginning.</p> <p>11 The ambiguous, he changed his -- he has</p> <p>12 said "net rents" the whole time and we've been in</p> <p>13 communications about turning over net rents. But</p> <p>14 he's never opened a bank account until May 5th,</p> <p>15 2023. He's had a year and five months to open a</p> <p>16 bank account.</p> <p>17 We've never -- until recently we've</p> <p>18 received a bank account. I'm trying not to -- I've</p> <p>19 actually been very cooperative with Mr. Teichner.</p> <p>20 We have a good relationship.</p> <p>21 So, I've reached out to him many times</p> <p>22 saying, What do you need from us? So, the fact that</p> <p>23 he just changed, he went 180 degrees, yeah, I have</p> <p>24 to question it and I would have to get with my legal</p>

<p style="text-align: right;">Page 190</p> <p>1 counsel and determine what the best course of action</p> <p>2 is.</p> <p>3 BY MR. MILLER:</p> <p>4 Q. Let me ask you a simple question.</p> <p>5 When Mr. Teichner makes a demand on the GSR</p> <p>6 that is squarely within the appointment order, such</p> <p>7 as demanding the turnover of the rents in this case</p> <p>8 and you question his request or delay responding to</p> <p>9 his request, does that interfere with Mr. Teichner's</p> <p>10 ability to do his work?</p> <p>11 A. No.</p> <p>12 Q. It doesn't?</p> <p>13 A. No.</p> <p>14 Q. Does it create additional --</p> <p>15 A. One, he has provided no numbers for any of</p> <p>16 the fees, so I don't know how he would be able to</p> <p>17 calculate anything. He has done no work.</p> <p>18 So, for him to just get the gross revenues</p> <p>19 of all of units and then sit on it for how long,</p> <p>20 please -- because it took him 14 months to open an</p> <p>21 account. So, I don't know if we keep on just</p> <p>22 feeding him net rent. I don't -- I still oppose the</p> <p>23 gross rent -- net rent, how long would it be before</p> <p>24 you would get paid, we would get paid? I don't</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. Okay. And do you understand that Proctor's</p> <p>2 calculation of fees were applied by the court from</p> <p>3 2016 to the end of 2019?</p> <p>4 A. And then they're stricken from the record</p> <p>5 in September of 2021, so did ...</p> <p>6 Q. That's --</p> <p>7 A. Yes, I do understand that and I -- he was</p> <p>8 not -- they were not following the CC&amp;Rs or the</p> <p>9 governing documents.</p> <p>10 Q. Whose job is it to implement compliance</p> <p>11 with the governing documents? As we sit here today,</p> <p>12 whose job is it?</p> <p>13 A. To oversee the governing documents, the</p> <p>14 receiver --</p> <p>15 Q. Yes.</p> <p>16 A. -- and mine too.</p> <p>17 Q. No.</p> <p>18 Do you believe that the receiver authority</p> <p>19 stripped MEI-GSR's ability to oversee and implement</p> <p>20 the governing documents?</p> <p>21 A. Stripped -- I mean, with a unit owner</p> <p>22 maintenance agreement, there's certain things that</p> <p>23 we have to do that the receiver won't do. We have</p> <p>24 to collect the rents, we have to do that, so I hope</p>
<p style="text-align: right;">Page 191</p> <p>1 know. I don't know that answer.</p> <p>2 Q. Do you know when Mr. Teichner provided his</p> <p>3 receiver's calculation of fees that were filed and</p> <p>4 provided to the defendants and those fees still</p> <p>5 weren't applied and haven't been applied, not one</p> <p>6 time under Mr. Teichner's testimony, do you think</p> <p>7 that Mr. Teichner may have gotten to the end of his</p> <p>8 rope on the net fees argument when you just don't</p> <p>9 apply what he's calculated?</p> <p>10 MR. McELHINNEY: Objection, speculation.</p> <p>11 THE COURT: Overruled.</p> <p>12 THE WITNESS: No, I don't think he got to</p> <p>13 the individual -- again, as soon as the 2020 fees --</p> <p>14 2021 fees went into place on January 4th, by April</p> <p>15 those fees are gone because you have to do a true-up</p> <p>16 for the CC&amp;Rs. You absolutely have to.</p> <p>17 BY MR. MILLER:</p> <p>18 Q. You bring up an interesting issue.</p> <p>19 THE COURT: Let him finish.</p> <p>20 THE WITNESS: Thank you, your Honor.</p> <p>21 BY MR. MILLER:</p> <p>22 Q. Do you understand when Proctor's</p> <p>23 calculation of fees were approved by the court?</p> <p>24 A. 2016, I believe.</p>	<p style="text-align: right;">Page 193</p> <p>1 it didn't strip our ...</p> <p>2 Q. I think this is the fundamental problem,</p> <p>3 right? You're operating under the assumption that</p> <p>4 MEI-GSR still has the ability to make decisions over</p> <p>5 Mr. Teichner concerning the application of the</p> <p>6 governing documents. Is that correct?</p> <p>7 A. No.</p> <p>8 Q. Then, why wouldn't you apply his fees as</p> <p>9 soon as they were provided to you?</p> <p>10 A. The order it goes back -- used the fees</p> <p>11 prior to February 27th until he recalculates them.</p> <p>12 Q. What about the other order, the other</p> <p>13 January order that specifically says to apply</p> <p>14 Mr. Proctor -- or Mr. Teichner's calculated fees</p> <p>15 until new fees are approved by the court?</p> <p>16 A. There was seven orders and they were very</p> <p>17 conflicting so ...</p> <p>18 Q. All right.</p> <p>19 MR. MILLER: Can I have the court provide</p> <p>20 you with Demonstrative D-1.</p> <p>21 THE COURT: We'll go another 15 minutes</p> <p>22 before we break.</p> <p>23 BY MR. MILLER:</p> <p>24 Q. I'm just trying to save everybody time</p>



<p style="text-align: right;">Page 194</p> <p>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?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay. So, do you believe that paragraph  9 comes out of that document?</p> <p>10 A. Yes.</p> <p>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?</p> <p>16 A. Yes.</p> <p>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?</p> <p>23 Because the court came back and in  24 connection with the same order that sanctioned your</p>	<p style="text-align: right;">Page 196</p> <p>1 in place prior to the court's September 27th,  2 2021, order, shall remain in place," until he  3 recalculated 2020 --</p> <p>4 Q. Did --</p> <p>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.</p> <p>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?</p> <p>17 A. Yes.</p> <p>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?</p> <p>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.</p> <p>24 "It is hereby ordered that the receiver's</p>
<p style="text-align: right;">Page 195</p> <p>1 counsel for manipulating -- or your employer for  2 manipulating the receiver and in that same order the  3 court decided --</p> <p>4 MR. McELHINNEY: Mischaracterizes the  5 contents of the order.</p> <p>6 THE COURT: Rephrase your question.</p> <p>7 MR. MILLER: Yes, your Honor.</p> <p>8 BY MR. MILLER:</p> <p>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?</p> <p>14 A. Applying Proctor's fees?</p> <p>15 Q. Yes.</p> <p>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.</p> <p>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?</p> <p>24 A. We did do this order. It says, "Those fees</p>	<p style="text-align: right;">Page 197</p> <p>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."</p> <p>5 So, are those not the fees -- this is the  6 first time the court's approved fees, correct?</p> <p>7 A. Which order should I follow?</p> <p>8 Q. They were issued on the same date, right,  9 as a result of two different motion streams? Do you  10 understand that?</p> <p>11 A. I absolutely do. Yes.</p> <p>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?</p> <p>15 MR. McELHINNEY: Objection,  16 mischaracterizes what is says.</p> <p>17 THE COURT: Overruled. You may answer it.</p> <p>18 THE WITNESS: I don't know what the  19 question was. I'm sorry.</p> <p>20 BY MR. MILLER:</p> <p>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</p>

<p style="text-align: right;">Page 198</p> <p>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</p>	<p style="text-align: right;">Page 200</p> <p>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.</p>
<p style="text-align: right;">Page 199</p> <p>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&amp;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</p>	<p style="text-align: right;">Page 201</p> <p>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.</p>

<p style="text-align: right;">Page 202</p> <p>1 A. It was very --</p> <p>2 THE COURT: Hold on.</p> <p>3 MR. MILLER: I'd like to hear the answer to</p> <p>4 his question, if I may.</p> <p>5 THE COURT: Ask a different question.</p> <p>6 MR. MILLER: All right.</p> <p>7 BY MR. MILLER:</p> <p>8 Q. Exhibit 124 at the operative paragraph</p> <p>9 states, "It is hereby ordered that, one, the</p> <p>10 receiver's new calculations as submitted to the</p> <p>11 court should immediately be applied retroactive to</p> <p>12 January 2020."</p> <p>13 Is there anything ambiguous or confusing</p> <p>14 about that language in this order?</p> <p>15 A. I'm sorry. I can't -- there were seven</p> <p>16 orders that day. I can't take one over the other.</p> <p>17 Again, talk to my legal counsel, they were just as</p> <p>18 confused. I'm sorry, Mr. Miller.</p> <p>19 Q. That was not my question.</p> <p>20 Did you hear my question?</p> <p>21 A. Please repeat it.</p> <p>22 Q. Okay. "It is hereby ordered that, one, the</p> <p>23 receiver's new fee calculations as submitted to the</p> <p>24 court should immediately be applied retroactive to</p>	<p style="text-align: right;">Page 204</p> <p>1 Do you see that?</p> <p>2 A. What year is this?</p> <p>3 Q. December 24th, 2020.</p> <p>4 (Witness reviewing document.)</p> <p>5 THE WITNESS: I'm not sure what order this</p> <p>6 is referring to, the court's order.</p> <p>7 BY MR. MILLER:</p> <p>8 Q. It's an order that stands by itself.</p> <p>9 Do you recall the defendants being</p> <p>10 sanctioned for trying to -- for interfering with the</p> <p>11 receiver? Do you recall that occurring in this</p> <p>12 case?</p> <p>13 A. I have never interfered with the receiver,</p> <p>14 no.</p> <p>15 Q. That wasn't my question.</p> <p>16 A. And I don't recall. No.</p> <p>17 Q. Okay. So, no one ever advised you from the</p> <p>18 GSR that the court entered an order that states,</p> <p>19 "The defendants attempted to advance their</p> <p>20 interpretation of the court's orders to the receiver</p> <p>21 interfered with the October order taking effect and</p> <p>22 resulted in unnecessarily duplicative litigation."</p> <p>23 A. One second as I read through it.</p> <p>24 (Witness reviewing document.)</p>
<p style="text-align: right;">Page 203</p> <p>1 January 2020 and going forward until subsequent</p> <p>2 order from the court is issued."</p> <p>3 Is there anything confusing about that</p> <p>4 language in this order?</p> <p>5 A. The only thing that would be confusing is</p> <p>6 under the governing documents. But from what you</p> <p>7 just said in that little snippet, no, there's</p> <p>8 nothing confusing on that particular order.</p> <p>9 Q. Okay. In fact, could you have applied</p> <p>10 those fees that the parties paid Mr. Teichner to</p> <p>11 calculate and that were submitted to the court,</p> <p>12 could you have applied those fees starting</p> <p>13 January 8th, 2022?</p> <p>14 A. Could we have?</p> <p>15 Q. Yes.</p> <p>16 A. I'm sure we could have, yes.</p> <p>17 Q. Very good. Thank you.</p> <p>18 Let me have you look at Exhibit 119.</p> <p>19 A. Book No. 4? Okay.</p> <p>20 Q. On page three starting at line 17 it</p> <p>21 states, "The defendants' attempt to advance their</p> <p>22 interpretation of the court's orders to the receiver</p> <p>23 interfered with the October order taking effect and</p> <p>24 resulted in unnecessary duplicative litigation."</p>	<p style="text-align: right;">Page 205</p> <p>1 THE WITNESS: What was your question again?</p> <p>2 BY MR. MILLER:</p> <p>3 Q. Were you aware that this had occurred? Had</p> <p>4 anybody told you back in December of 2020 that</p> <p>5 MEI-GSR, or the defendants, had already been</p> <p>6 reprimanded or sanctioned by the court for</p> <p>7 interfering with the receiver?</p> <p>8 A. They may have. I don't remember.</p> <p>9 Q. Do you think it would have been important</p> <p>10 to know when you were dealing with the receiver</p> <p>11 after that date that the defendants had already been</p> <p>12 in trouble for interfering with the receiver?</p> <p>13 MR. McELHINNEY: I'll object to the line of</p> <p>14 questions. It sounds like character evidence. If</p> <p>15 you're bad once, then you must have done it again.</p> <p>16 I think it's a violation of the rules of evidence.</p> <p>17 It's not a subject matter of any of the motions or</p> <p>18 order to show cause. I object.</p> <p>19 THE COURT: Overruled. You may continue.</p> <p>20 THE WITNESS: Is this an order by that --</p> <p>21 the receiver put in or was this an order by the</p> <p>22 plaintiffs?</p> <p>23 BY MR. MILLER:</p> <p>24 Q. This is an order by the judge that lost his</p>

<p style="text-align: right;">Page 206</p> <p>1 job because your client --</p> <p>2 MR. SMITH: Objection --</p> <p>3 THE COURT: Mr. Miller. Wait. wait.</p> <p>4 MR. MILLER: All right. Thank you, your</p> <p>5 Honor. I understand.</p> <p>6 THE COURT: No personal attacks. There's</p> <p>7 history in this, and I will go through this when I</p> <p>8 make my decision but no personal attacks of any</p> <p>9 sort.</p> <p>10 MR. MILLER: Yes, your Honor. Thank you.</p> <p>11 BY MR. MILLER:</p> <p>12 Q. So, I think I understand that you were not</p> <p>13 advised that you previously had this issue with</p> <p>14 dealings with the receiver.</p> <p>15 A. Personally I've never had any problems with</p> <p>16 the receiver. We've actually had a great</p> <p>17 relationship, so the fact that it says that I</p> <p>18 interfered, I -- I'm not sure.</p> <p>19 Q. I'm not saying --</p> <p>20 A. MEI-GSR. Me personally I didn't interfere.</p> <p>21 I'm sorry.</p> <p>22 Q. Had you known about that background of the</p> <p>23 -- prior interference with the receiver, do you</p> <p>24 think when you were dealing with him in 2021 over</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. You just said that "I'm supposed to</p> <p>2 recalculate." Is that what you just said?</p> <p>3 A. That he's supposed to recalculate.</p> <p>4 Q. Mr. Teichner, right, not the defendants in</p> <p>5 this action?</p> <p>6 A. He can't recalculate with the help of the</p> <p>7 defendants. So, again, he's working with me</p> <p>8 constantly because he needs actual numbers to do</p> <p>9 this.</p> <p>10 So, I work with Mr. Teichner very closely</p> <p>11 and we did and he came by and he -- we went over a</p> <p>12 lot of iterations of this. Again, it took him --</p> <p>13 when was this? 2020?</p> <p>14 It took him eight months to produce this,</p> <p>15 so it's not an easy thing to produce this worksheet.</p> <p>16 It takes a lot of reiterations. And, again, I did</p> <p>17 not think he was following the governing documents</p> <p>18 when we did it in 2020 -- 2019 and we calculated</p> <p>19 2020, we had a great agreement with the governing</p> <p>20 documents.</p> <p>21 Then all of a sudden he pivoted when he got</p> <p>22 his counsel, Stefanie Sharp, after the May court --</p> <p>23 sorry. I think it was May 2021 -- after that trial</p> <p>24 he got Stefanie Sharp as his counsel. And then his</p>
<p style="text-align: right;">Page 207</p> <p>1 what fees to apply, would you have just asked him,</p> <p>2 Should I apply your recent calculations, should I</p> <p>3 apply the prior Proctor calculations? Did you ask</p> <p>4 him?</p> <p>5 A. I believe he was very confused too, because</p> <p>6 I expressed the confusion with the orders and I</p> <p>7 believe he was confused too. They are not clear</p> <p>8 orders, in my eyes, and it's very confusing.</p> <p>9 Q. He never once told you, Apply the fees that</p> <p>10 I calculated?</p> <p>11 A. Once told me personally, no.</p> <p>12 Q. No? Okay.</p> <p>13 A. Not that I recall.</p> <p>14 Q. Now, going down to the next line in this</p> <p>15 order, it states -- I'm still on page three, line</p> <p>16 24. It states, "Specifically, the receiver shall</p> <p>17 recalculate the DUF, the hotel expense fees, and the</p> <p>18 shared facility fees to include only those expenses</p> <p>19 that are specifically provided for in the governing</p> <p>20 documents."</p> <p>21 Were you aware of this provision of this</p> <p>22 order?</p> <p>23 A. Yes. That he was supposed to recalculate?</p> <p>24 Yes.</p>	<p style="text-align: right;">Page 209</p> <p>1 whole -- the way he was looking at the governing</p> <p>2 documents totally did a 180.</p> <p>3 So, we were fighting them -- him on this</p> <p>4 the whole time, and he kept on saying, Well, that's</p> <p>5 how Stefanie Sharp reads it. We went over with</p> <p>6 Stefanie Sharp, this how she reads it.</p> <p>7 Q. Did you just say you were fighting with the</p> <p>8 receiver over his application of fees?</p> <p>9 A. Fighting? We were going over -- again, we</p> <p>10 have a good relationship. It wasn't really</p> <p>11 fighting. It was a discussion to go over.</p> <p>12 Q. So, you mischaracterized fighting with him</p> <p>13 over the application of his fees.</p> <p>14 A. Correct. You can ask Mr. Teichner if we</p> <p>15 ever fought.</p> <p>16 Q. Okay. Now, let's go back to -- we were</p> <p>17 talking about in January of 2020 this is the time</p> <p>18 that you and Mr. Teichner were cooperating, and you</p> <p>19 came up with these fees that you thought were</p> <p>20 correct, right?</p> <p>21 A. January -- well, it was --</p> <p>22 Q. They were applied January of 2020?</p> <p>23 A. They were, so it was all of 2019, correct.</p> <p>24 Q. And did you understand that we went through</p>

<p style="text-align: right;">Page 210</p> <p>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.</p>	<p style="text-align: right;">Page 212</p> <p>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</p>
<p style="text-align: right;">Page 211</p> <p>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</p>	<p style="text-align: right;">Page 213</p> <p>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.</p>

<p style="text-align: right;">Page 214</p> <p>1 THE WITNESS: His fees were not approved</p> <p>2 until January 2022, so I'm not sure I follow.</p> <p>3 BY MR. MILLER:</p> <p>4 Q. Did he not provide those to you in</p> <p>5 approximately August of 2021?</p> <p>6 A. He provided them to, I think, you too, the</p> <p>7 general counsel. I went over them and he asked for</p> <p>8 them to be approved.</p> <p>9 Q. Yeah. If he's asking for fees to be</p> <p>10 approved, shouldn't they just be approved?</p> <p>11 A. He never once said, Please apply these.</p> <p>12 Q. All right. Getting back to this --</p> <p>13 THE COURT: Is this a good time for a</p> <p>14 break?</p> <p>15 MR. MILLER: Just one last question while</p> <p>16 we're still on the same page.</p> <p>17 THE COURT: Sure.</p> <p>18 BY MR. MILLER:</p> <p>19 Q. So, if I understood your testimony</p> <p>20 correctly, you went back to the fees that you and</p> <p>21 Proctor -- you and Teichner put together for the</p> <p>22 January 2020 time period that were rejected by the</p> <p>23 court. And then you tried to make those fees</p> <p>24 compliant with the court's order going forward</p>	<p style="text-align: right;">Page 216</p> <p>1 everybody was on the same page here. Apparently,</p> <p>2 we're not.</p> <p>3 BY MR. MILLER:</p> <p>4 Q. If you can pull up Exhibit 31 -- I'm sorry.</p> <p>5 Exhibit 131.</p> <p>6 A. Yes, sir.</p> <p>7 Q. So, Exhibit 131, do you recognize this as</p> <p>8 the order where Judge Sattler gives some direction</p> <p>9 on things that he doesn't like in the daily use fee?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then there's no mention in there</p> <p>12 about the SFU or the hotel fees, is there?</p> <p>13 A. No. I believe that was on the one you just</p> <p>14 gave me, 144.</p> <p>15 Q. All right. And if we look at that</p> <p>16 document, the one I just gave you, the</p> <p>17 November 2nd, 2020, order, do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. This talks about the recalculation of the</p> <p>20 hotel expense fees, shared facility unit expenses,</p> <p>21 because you guys took the position that he only</p> <p>22 wanted the DUF recalculated, so he had to write a</p> <p>23 subsequent order that says, "No, I meant you have to</p> <p>24 recalculate the hotel expense fees, shared facility</p>
<p style="text-align: right;">Page 215</p> <p>1 because you had no other fees you could use.</p> <p>2 Is that right?</p> <p>3 A. There were specific things that the -- like</p> <p>4 you just mentioned, that the order said that they</p> <p>5 could not be part of. I believe some of them was</p> <p>6 the valet could not be part of the DUF, the</p> <p>7 transportation, and bell desk, so we removed those.</p> <p>8 Q. Okay.</p> <p>9 A. There was other orders.</p> <p>10 Q. This is it (indicating).</p> <p>11 A. Okay.</p> <p>12 Q. This is the other order. If we look in</p> <p>13 this order --</p> <p>14 MR. McELHINNEY: Objection, your Honor. We</p> <p>15 should look at the order of October 12th, '20.</p> <p>16 That's the document. Why Mr. Miller wouldn't show</p> <p>17 that to him, I don't know.</p> <p>18 THE COURT: Okay.</p> <p>19 MR. MILLER: All right.</p> <p>20 BY MR. MILLER:</p> <p>21 Q. So, the --</p> <p>22 THE COURT: Are you approaching with an</p> <p>23 exhibit?</p> <p>24 MR. MILLER: Exhibit 31 -- I thought</p>	<p style="text-align: right;">Page 217</p> <p>1 unit expenses." Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And he gave no direction in here</p> <p>4 whatsoever, did he, as to what items he wanted</p> <p>5 removed?</p> <p>6 A. He didn't. But he said "per the governing</p> <p>7 documents."</p> <p>8 Q. Yes. Exactly.</p> <p>9 THE COURT: Good place for the break?</p> <p>10 (Recess taken.)</p> <p>11 THE COURT: You asked me if you could do</p> <p>12 your offer of proof related to Ms. Kern, and</p> <p>13 Mr. Miller was kind enough to accommodate that.</p> <p>14 MR. McELHINNEY: Your Honor, for</p> <p>15 perspective, we had identified Ms. Gayle Kern as a</p> <p>16 witness in this case. Your Honor had -- there had</p> <p>17 been a motion in limine to prevent her from</p> <p>18 testifying. We had opposed that.</p> <p>19 The court had -- on the first day of trial</p> <p>20 had granted Ms. Kern's ability to testify in part</p> <p>21 and denied her ability to testify in part. Your</p> <p>22 Honor, determining that she -- if she testified she</p> <p>23 would only be allowed to testify to the contents of</p> <p>24 her declaration that was filed.</p>

<p style="text-align: right;">Page 218</p> <p>1 THE COURT: I think my exact order was</p> <p>2 consistent with the declaration.</p> <p>3 MR. McELHINNEY: Yes. But I understood you</p> <p>4 to say she couldn't cover any subjects outside of</p> <p>5 the declaration.</p> <p>6 THE COURT: That is correct.</p> <p>7 MR. McELHINNEY: And that's the declaration</p> <p>8 of Gayle Kern that was filed March 28th, 2022.</p> <p>9 Ms. Kern is present in the courtroom at my</p> <p>10 request while I make this offer of proof.</p> <p>11 If allowed to testify, Ms. Kern would tell</p> <p>12 you that she was a licensed attorney, licensed to</p> <p>13 practice law in the state of Nevada and a</p> <p>14 shareholder with the law firm of Leach, Kern,</p> <p>15 Gruchow, Anderson and Song.</p> <p>16 While she's a general practitioner, her</p> <p>17 testimony would be that over 38 years of experience</p> <p>18 practicing law, most of those years her practice has</p> <p>19 concentrated primarily on common interest community</p> <p>20 issues, including condominiums very similar to the</p> <p>21 condominium hotel business model that exists at the</p> <p>22 Grand Sierra Hotel.</p> <p>23 She is one of less than 200 attorneys in</p> <p>24 the U.S. inducted into the College of Community</p>	<p style="text-align: right;">Page 220</p> <p>1 members of the board of directors of common interest</p> <p>2 communities. Her testimony would be that she</p> <p>3 regularly attends Community Association Institute</p> <p>4 national law seminars to keep apprised of new</p> <p>5 developments in the common interest community</p> <p>6 industry, not only in Nevada but throughout the</p> <p>7 country.</p> <p>8 She currently serves on the Law Seminar</p> <p>9 Planning Committee. She would testify that she's a</p> <p>10 member of the Nevada State Bar Real Estate section</p> <p>11 and subcommittee with common interest communities</p> <p>12 and has provided seminars to other attorneys</p> <p>13 regarding common interest communities and even</p> <p>14 indicated she would be attending an upcoming state</p> <p>15 bar conference in June -- this would have been 2022</p> <p>16 -- representing the subcommittee.</p> <p>17 Her testimony would be that she has in the</p> <p>18 past represented the Grand Sierra Resort owners --</p> <p>19 Union Owners Association, GSR UOA. There's nothing</p> <p>20 about that prior representation, she would tell you,</p> <p>21 that in any manner affects her ability to provide</p> <p>22 accurate and unbiased testimony in this matter.</p> <p>23 THE COURT: Was there anything else related</p> <p>24 to the substantive nature of her testimony, other</p>
<p style="text-align: right;">Page 219</p> <p>1 Association Lawyers and only one of four in the</p> <p>2 entire state of Nevada.</p> <p>3 She has been -- her testimony would be</p> <p>4 she's been qualified and has testified as an expert</p> <p>5 on common interest community and condominium hotel</p> <p>6 litigation matters in the past.</p> <p>7 She provides lectures and teaches seminars</p> <p>8 on a regular basis on topics concerning common</p> <p>9 interest community law. She serves on the Community</p> <p>10 Association Institute's Legislative Action Committee</p> <p>11 which participates in the review and comments on</p> <p>12 legislation affecting common interest communities</p> <p>13 and regulations promulgated by the ombudsman and</p> <p>14 Nevada Real Estate Division.</p> <p>15 Her testimony would be that she worked with</p> <p>16 the Nevada Real Estate Division in the development</p> <p>17 of the first standardized community management exam</p> <p>18 and she's approved by the Nevada Real Estate</p> <p>19 Division to teach classes to train community</p> <p>20 managers who, following in their education and</p> <p>21 licensing, go into management, common interest</p> <p>22 community associations.</p> <p>23 She's also authorized to provide continuing</p> <p>24 education classes to both community managers and</p>	<p style="text-align: right;">Page 221</p> <p>1 than her qualifications, that you wanted to put on</p> <p>2 the record?</p> <p>3 MR. McELHINNEY: Yes, please, your Honor.</p> <p>4 She would testify that during the course of</p> <p>5 her representation of Defendant GSR UOA in this</p> <p>6 matter she had -- has had occasion to become</p> <p>7 familiar with the Seventh Amended CC&amp;Rs. She</p> <p>8 drafted the Eighth Amended CCR&amp;Rs and the Ninth</p> <p>9 Amended CC&amp;Rs, and she would testify it was a matter</p> <p>10 of necessity in the drafting of those documents to</p> <p>11 become very familiar with the contents of the</p> <p>12 Seventh Amended CC&amp;Rs.</p> <p>13 She would testify as to the purpose of the</p> <p>14 Seventh Amended CC&amp;Rs. Her testimony would be these</p> <p>15 covenants run with the land, literally defining the</p> <p>16 scope of the interest -- owner interest in a</p> <p>17 particular unit.</p> <p>18 She would identify particular sections of</p> <p>19 the CC&amp;Rs that are of critical importance for the</p> <p>20 court to understand the nature and the scope of the</p> <p>21 expenses for which the unit owners are responsible.</p> <p>22 She would -- her testimony would be to look at</p> <p>23 Section 6.9 and 6.10. They spell out the</p> <p>24 declarant's and shared facility owner units'</p>

<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&amp;Rs.  6 She would also identify the CC&amp;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."  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.  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.  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&amp;Rs mean and the scope  2 of those CC&amp;Rs and how Ms. Sharp's interpretation of  3 the CC&amp;Rs was overly narrow.  4 She would testify about how many CC&amp;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.  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.  16 THE COURT: We would stipulate that this  17 case is off the rails.  18 MR. McELHINNEY: She would review sections  19 4.3 on pages 14 and 15 of the CC&amp;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&amp;E, and she would</p>
<p style="text-align: right;">Page 223</p> <p>1 Seventh Amended CC&amp;Rs, paying particular attention  2 to Sections 6.9 and 6.10, shared facilities unit and  3 hotel expense categories.  4 She would have given us her understanding  5 and interpretation of condominium property as it is  6 defined in the Seventh Amended CC&amp;Rs and the meaning  7 of "parcel" and how broad that is in its nature and  8 description.  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.  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.  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&amp;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&amp;Rs.  5 She would have identified under the Seventh  6 Amended CC&amp;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.  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&amp;Rs.  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>



<p style="text-align: right;">Page 226</p> <p>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&amp;Rs are accurate and Mr. 13 Teichner's current calculations of CC&amp;Rs are 14 extraordinarily restrictive of the CC&amp;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?</p>	<p style="text-align: right;">Page 228</p> <p>1 proof repeatedly references what her legal opinions 2 would be about the application of the CC&amp;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&amp;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</p>
<p style="text-align: right;">Page 227</p> <p>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 NRCP 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</p>	<p style="text-align: right;">Page 229</p> <p>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.</p>

<p style="text-align: right;">Page 230</p> <p>1 MR. McELHINNEY: All right. The final</p> <p>2 point I want to make for the record is this is</p> <p>3 relevant. Mr. Miller repeatedly in almost every</p> <p>4 motion has accused us of hyperinflated fees and</p> <p>5 exaggerated fees designed to punish the plaintiffs</p> <p>6 and to drive down the value of the units.</p> <p>7 Her testimony would show, in fact, our</p> <p>8 calculations are very consistent with the Seventh</p> <p>9 Amended CC&amp;Rs. Thank you, your Honor.</p> <p>10 THE COURT: Thank you.</p> <p>11 Can we return to Mr. Brady now?</p> <p>12 MR. McELHINNEY: That's fine with me, your</p> <p>13 Honor. Thank you. I appreciate it.</p> <p>14 And Mr. Miller, thank you.</p> <p>15 BY MR. MILLER:</p> <p>16 Q. Mr. Brady, I believe we were at the point</p> <p>17 in your testimony where we were discussing Mr.</p> <p>18 Teichner retaining counsel. Is that correct?</p> <p>19 A. Yes, I believe so.</p> <p>20 Q. Is there anything wrong with Mr. Teichner</p> <p>21 retaining real estate counsel to assist him in going</p> <p>22 over the CC&amp;Rs?</p> <p>23 A. No.</p> <p>24 Q. And, in fact, Mr. Teichner's positions</p>	<p style="text-align: right;">Page 232</p> <p>1 un-biasedly apply the CC&amp;Rs?</p> <p>2 A. I don't have any reason, no.</p> <p>3 Q. She doesn't represent either the plaintiffs</p> <p>4 or the defendants in this action, correct?</p> <p>5 A. No.</p> <p>6 Q. Do you have any reason to believe that</p> <p>7 Ms. Sharp isn't competent to analyze the CC&amp;Rs?</p> <p>8 A. Never met her, so I can't answer that.</p> <p>9 Q. All right.</p> <p>10 MR. MILLER: I'd like to offer Exhibit 145.</p> <p>11 THE CLERK: 145, your Honor.</p> <p>12 THE COURT: Thank you.</p> <p>13 BY MR. MILLER:</p> <p>14 Q. Were you ever informed that the court had</p> <p>15 instructed both Plaintiffs and Defendants to each</p> <p>16 provide to the court two names to complete an</p> <p>17 independent reserve study no later than November 12,</p> <p>18 2021?</p> <p>19 A. I remember hearing it, yes.</p> <p>20 Q. Okay. Let me have you turn to Exhibit 121.</p> <p>21 Let me have you refer to page five, lines 11 to 18.</p> <p>22 This is an order that the court issued shortly after</p> <p>23 the November 8th, 2021, status conference wherein</p> <p>24 it memorializes that the court directed the parties</p>
<p style="text-align: right;">Page 231</p> <p>1 about what goes into the CC&amp;Rs were a result of the</p> <p>2 court ordering him to redo the calculations and</p> <p>3 consulting with counsel. Is that correct?</p> <p>4 A. The first one -- I can't remember the</p> <p>5 second -- the retained counsel. I'm not sure about</p> <p>6 that one but, yes, the first one.</p> <p>7 Q. I thought I heard you testify that Mr.</p> <p>8 Teichner's positions drastically changed once he</p> <p>9 retained counsel.</p> <p>10 A. Oh, they did.</p> <p>11 Q. Okay.</p> <p>12 A. But I don't know if the court ordered him.</p> <p>13 I thought you said after the court ordered.</p> <p>14 Q. The court ordered him to recalculate the</p> <p>15 fees.</p> <p>16 A. That is correct. Yes.</p> <p>17 Q. And just so we're clear, the court didn't</p> <p>18 give any direction in the recalculation of fees as</p> <p>19 to what the court believed was wrong with the SFU</p> <p>20 hotel fees, et cetera.</p> <p>21 A. No. Just said "per the governing</p> <p>22 documents."</p> <p>23 Q. Okay. And do you believe that either</p> <p>24 Ms. Sharp would have any reason to not try to</p>	<p style="text-align: right;">Page 233</p> <p>1 to submit two names of independent reserve study</p> <p>2 specialists.</p> <p>3 But going back to the 1/21 order, page</p> <p>4 five, lines 11 it says, "Plaintiffs have further</p> <p>5 objected to the reserve study because it has</p> <p>6 included expenses which are clearly erroneous" --</p> <p>7 paren -- "motion at four lines six to 13, noting</p> <p>8 public pool expenses that were included while the</p> <p>9 governing documents and court orders exclude any</p> <p>10 revenue-generating expenses" -- end paren, period --</p> <p>11 "the reserve study to be limited as directed in the</p> <p>12 previous court orders and governing documents. The</p> <p>13 reserve study provided by Defendants clearly shows</p> <p>14 at least one basic elementary example of expenses</p> <p>15 which are included but should not be, id.</p> <p>16 "Accordingly, the court finds that the</p> <p>17 defendants' reserve study to be flawed and</p> <p>18 untrustworthy and finds the receiver has the proper</p> <p>19 and sole authority to oversee and implement a new</p> <p>20 reserve study."</p> <p>21 Did anybody show you the language of that</p> <p>22 order around this time?</p> <p>23 A. I heard about it, yes.</p> <p>24 Q. Okay. And was that referring to a</p>

<p style="text-align: right;">Page 234</p> <p>1 Betterley reserve study?</p> <p>2 A. Yes, I believe so.</p> <p>3 Q. Okay. So, after litigating these issues,</p> <p>4 the court has specifically found that that Betterley</p> <p>5 reserve study is inherently untrustworthy, I</p> <p>6 believe.</p> <p>7 A. Okay.</p> <p>8 Q. Okay. And, in fact, the court ordered that</p> <p>9 the plaintiffs and the defendants each provide other</p> <p>10 reserve studies specialists, right, to pick somebody</p> <p>11 else because the court found that Ms. Betterley was</p> <p>12 untrustworthy or that that reserve study was</p> <p>13 untrustworthy, correct?</p> <p>14 A. The reserve study, again, is an independent</p> <p>15 and they base it on the CC&amp;Rs. So, whether the</p> <p>16 court did say that it was untrustworthy because of</p> <p>17 certain things, but that doesn't make the whole</p> <p>18 thing untrustworthy in my eyes.</p> <p>19 Q. Okay.</p> <p>20 A. Yes.</p> <p>21 Q. So, after this order was issued, what did</p> <p>22 GSR do the following year? Did they go back to</p> <p>23 Betterley for another reserve study?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 236</p> <p>1 answer by Mr. Brady.</p> <p>2 THE COURT: Any objection?</p> <p>3 MR. MILLER: No objection, your Honor.</p> <p>4 THE COURT: It is stricken. Watch it.</p> <p>5 THE WITNESS: Will do.</p> <p>6 BY MR. MILLER:</p> <p>7 Q. So, despite receiving this order of the</p> <p>8 court specifically determining that the prior</p> <p>9 Betterley reserve study was flawed and</p> <p>10 untrustworthy, the following year you go back to the</p> <p>11 same reserve study specialist. Is that correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Okay. And, in fact, the court specifically</p> <p>14 found, right, that the inclusion of the pool</p> <p>15 expenses should not have been in that reserve study.</p> <p>16 Is that accurate?</p> <p>17 Do you want me to read those lines to you?</p> <p>18 (Witness reviewing document.)</p> <p>19 THE WITNESS: So, it says "any</p> <p>20 revenue-generating expenses." Per the governing</p> <p>21 documents, there's nothing in the governing</p> <p>22 documents, so this is very confusing, that says we</p> <p>23 have to exclude any revenue-generating expenses.</p> <p>24 We do not include just because, you know --</p>
<p style="text-align: right;">Page 235</p> <p>1 Q. After receiving an order from the court</p> <p>2 saying that the prior one was untrustworthy and that</p> <p>3 you needed to provide the names of two other reserve</p> <p>4 advisers, GSR went and used the same reserve study</p> <p>5 specialist?</p> <p>6 A. So, I reached out to Mr. Teichner asking if</p> <p>7 he did a new reserve study, because he is over the</p> <p>8 UOA and over all this. And he's -- right here,</p> <p>9 according to here, "finds he is the sole authority</p> <p>10 to order, oversee and implement."</p> <p>11 It doesn't say to do the reserve study --</p> <p>12 that's a third party -- so he has to do that.</p> <p>13 Again, there are 110 condo unit owners.</p> <p>14 Ninety-three of those are plaintiffs. The other</p> <p>15 people I have to abide by the CC&amp;Rs. I have to -- I</p> <p>16 can't wait. Again, it's a business. I have to keep</p> <p>17 on going and with our legal counsel. I talked it</p> <p>18 over with legal counsel and they advised me to use</p> <p>19 Betterley.</p> <p>20 MR. SMITH: Mr. Brady, please --</p> <p>21 THE COURT: Don't tell us what you said to</p> <p>22 your lawyer unless it's in the document you're</p> <p>23 looking at and I told you to.</p> <p>24 MR. SMITH: I move to strike the last</p>	<p style="text-align: right;">Page 237</p> <p>1 but per the governing documents it does not say</p> <p>2 exclude revenue-generating expenses so, yes, it is a</p> <p>3 little confusing.</p> <p>4 BY MR. MILLER:</p> <p>5 Q. Let me read you lines 11 and 12 again.</p> <p>6 "Plaintiffs further object to Defendants' reserve</p> <p>7 study because it includes expenses which are clearly</p> <p>8 erroneous," motion at four, line six to 13 noting</p> <p>9 public pool expenses that were included while the</p> <p>10 governing document and court orders exclude any</p> <p>11 revenue-generating expenses."</p> <p>12 So, I mean, it specifically says the pool</p> <p>13 expenses are an example of this, so why would you --</p> <p>14 MR. McELHINNEY: Your Honor, let me pose an</p> <p>15 objection. What this order says is the Plaintiffs'</p> <p>16 further object to the Defendants' reserve study</p> <p>17 because it included expenses which are clearly</p> <p>18 erroneous. That is the plaintiffs' allegation.</p> <p>19 They cite to their motion noting public</p> <p>20 pool expenses that were included while the governing</p> <p>21 documents and court orders excluded any</p> <p>22 revenue-generating expenses.</p> <p>23 THE COURT: "Accordingly, the court finds</p> <p>24 the defendants' reserve study to be flawed and</p>

<p style="text-align: right;">Page 238</p> <p>1 untrustworthy and finds the receiver has the proper 2 and sole authority to order, oversee... "</p> <p>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.</p> <p>6 THE COURT: You don't think "accordingly" 7 refers back to the public pool expenses?</p> <p>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.</p> <p>12 THE COURT: Okay. So, I note what you've 13 said. Your objection is overruled.</p> <p>14 BY MR. MILLER:</p> <p>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?</p> <p>18 A. I believe it did from the Better Reserve 19 Consultants. I believe they included it because, 20 again, they consult the CC&amp;Rs. We don't tell them 21 what to put in there. They read the CC&amp;Rs and put 22 it in there.</p> <p>23 Q. Have you ever had the opportunity to review 24 the Fourteenth Amendment to the CC&amp;Rs? I'm sorry.</p>	<p style="text-align: right;">Page 240</p> <p>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.</p> <p>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."</p> <p>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?</p> <p>17 A. That is correct.</p> <p>18 Q. Did you immediately withdraw the special 19 assessment upon receiving this unambiguous notice 20 that the receiver thinks this is wrong?</p> <p>21 A. I don't think we did. I'm not sure what we 22 reversed --</p> <p>23 Q. Are you cooperating with the receiver when 24 you charge forward doing things that he specifically</p>
<p style="text-align: right;">Page 239</p> <p>1 I apologize.</p> <p>2 Have you ever had the opportunity to review 3 the 2014 reserve study for the property?</p> <p>4 A. No, I don't think I have.</p> <p>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?</p> <p>9 MR. McELHINNEY: Objection, no evidence to 10 support that -- well, strike the objection. Never 11 mind.</p> <p>12 THE WITNESS: I don't know what we did. I 13 know we've only been using Better Reserve 14 Consultants since 2016.</p> <p>15 BY MR. MILLER:</p> <p>16 Q. Do you know if you've ever used Reserve 17 Advisers?</p> <p>18 A. I'm not sure.</p> <p>19 Q. That would have been prior to your time?</p> <p>20 A. Yes.</p> <p>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.</p>	<p style="text-align: right;">Page 241</p> <p>1 states he thinks is wrong?</p> <p>2 A. Am I cooperating?</p> <p>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?</p> <p>7 A. I do understand that.</p> <p>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?</p> <p>13 A. He never explicitly said to reverse it. He 14 just objected to it, so I --</p> <p>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?</p> <p>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</p>

<p style="text-align: right;">Page 242</p> <p>1 to not apply it.</p> <p>2 Q. You don't interpret that first paragraph of</p> <p>3 meaning that it's wrong and it should be withdrawn?</p> <p>4 A. Again, there's 110 condo unit owners, 93</p> <p>5 are plaintiffs but there are non-plaintiffs that we</p> <p>6 have to keep -- we have to maintain status quo. So,</p> <p>7 again, it was -- I got with the legal team and</p> <p>8 decided to let it go.</p> <p>9 Q. So, this was a conscious decision to let it</p> <p>10 go.</p> <p>11 A. I don't know if it was a conscious decision</p> <p>12 because he never came to us and said to reverse it</p> <p>13 and take it out or -- so.</p> <p>14 Q. You said you just got with the legal team</p> <p>15 and discussed it.</p> <p>16 A. We did. We discussed it, as far as I</p> <p>17 remember.</p> <p>18 Q. And you decided not to withdraw but to</p> <p>19 charge forward.</p> <p>20 A. It was on the statement, yes.</p> <p>21 Q. Let me have you turn to the next page. The</p> <p>22 second to last paragraph states, "This court is</p> <p>23 aware that the GSR has been assessing fees and</p> <p>24 charges which it has unilaterally calculated and</p>	<p style="text-align: right;">Page 244</p> <p>1 BY MR. MILLER:</p> <p>2 Q. All right. So, it sounds like you</p> <p>3 specifically discussed that the receiver did not</p> <p>4 agree with the actions you were taking.</p> <p>5 MR. McELHINNEY: Objection, attorney-client</p> <p>6 privilege.</p> <p>7 THE COURT: Sustained.</p> <p>8 BY MR. MILLER:</p> <p>9 Q. Let me ask you, After receiving this letter</p> <p>10 from Mr. Teichner, could you have reversed the</p> <p>11 special assessment that he was referring to?</p> <p>12 A. We could have reversed it but, as far as I</p> <p>13 can remember, one person paid, zero plaintiffs paid.</p> <p>14 And when it was -- when the order came down that we</p> <p>15 had to reverse the special assessment, we</p> <p>16 immediately paid that one person who was not a</p> <p>17 plaintiff.</p> <p>18 Q. What I'm asking you is, When he sent you</p> <p>19 the letter, being the receiver in the case,</p> <p>20 expressing he didn't agree with this, could you have</p> <p>21 at that time sent -- withdrawn the special</p> <p>22 assessment?</p> <p>23 A. I said we could have.</p> <p>24 Q. All right. And did it interfere with the</p>
<p style="text-align: right;">Page 243</p> <p>1 that the receiver's position is that these actions</p> <p>2 are in violation of this court's January 6th,</p> <p>3 2015, order appointing receiver and directing</p> <p>4 defendants's compliance."</p> <p>5 Did you review that paragraph when he sent</p> <p>6 this letter?</p> <p>7 A. I'm sorry. Point it out again.</p> <p>8 Q. It's the second to last paragraph on the</p> <p>9 second page.</p> <p>10 (Witness reviewing document.)</p> <p>11 THE WITNESS: I'm not sure. All I know is</p> <p>12 that, before I did any of this, I reached out to him</p> <p>13 and asked if he completed it. He said no.</p> <p>14 He had a court order to do it, he didn't do</p> <p>15 it. So, I don't -- like, the fact that we run a</p> <p>16 business and we have, you know, other condo owners</p> <p>17 that are not part of the plaintiffs, we have to</p> <p>18 remain the status quo. We can't sit there and wait</p> <p>19 for a receiver not to do his job.</p> <p>20 And so it was decided -- I talked to Legal</p> <p>21 and it was decided that we're going to complete the</p> <p>22 reserve study, and based on the reserve study there</p> <p>23 was assessments.</p> <p>24</p>	<p style="text-align: right;">Page 245</p> <p>1 receivership increased costs to have to keep</p> <p>2 litigating forward to a court order on this issue?</p> <p>3 A. No.</p> <p>4 Q. Huh. It did not increase costs?</p> <p>5 A. If he would have done his job to do the</p> <p>6 reserves in the first place, we wouldn't be here.</p> <p>7 Q. And this comes back to the concept that you</p> <p>8 keep working, even though MEI-GSR is taking in all</p> <p>9 the rents under a court order to pay the receiver</p> <p>10 from the rents, but doesn't do so.</p> <p>11 A. This was November 30th, so he would have</p> <p>12 been pretty much paid up, one month not paid. So,</p> <p>13 he had -- as far as from earlier, October 31st was</p> <p>14 the last statement, I believe, he got paid. So, he</p> <p>15 had all this time to do his job and he did not.</p> <p>16 Q. Around this time, correct, is when the</p> <p>17 receiver started to take positions that were</p> <p>18 directly contrary to what you were trying to do,</p> <p>19 right, the special assessment?</p> <p>20 Is that accurate as reflected in this</p> <p>21 letter?</p> <p>22 A. It was actually September 15th is when he</p> <p>23 asked for -- I believe Stefanie Sharp asked for net</p> <p>24 rents, so I believe it was around that time.</p>

<p style="text-align: right;">Page 246</p> <p>1 Q. And then around that same time miraculously</p> <p>2 he stopped getting paid. How do you explain that?</p> <p>3 A. Again, it's the UOA that pays him. I heard</p> <p>4 that they ran out of money because they did a</p> <p>5 special assessment where we paid \$80,000 to him.</p> <p>6 I'm not sure when the special assessment came out.</p> <p>7 I think it was October so --</p> <p>8 Q. You keep saying it's the UOA that pays him,</p> <p>9 but where do you find that from a court order? What</p> <p>10 order says it's the UOA that pays Mr. Teichner?</p> <p>11 Doesn't it say that he's paid from the</p> <p>12 rents and the defendants have to turn over the</p> <p>13 rents? How does that not equate to having to turn</p> <p>14 over those rents to pay his bills?</p> <p>15 A. The rents and/or the dues, UOA dues. So,</p> <p>16 we have never paid. It's always been the UOA. So,</p> <p>17 again, this is something that is -- I don't know.</p> <p>18 It's always been paid out of the dues.</p> <p>19 Q. You're under oath, obviously.</p> <p>20 A. Yes.</p> <p>21 Q. Was it a plan to cut off payment to the</p> <p>22 receiver so he wouldn't be able to do his job?</p> <p>23 A. No. Because there was special assessment</p> <p>24 and we paid the \$80,000.</p>	<p style="text-align: right;">Page 248</p> <p>1 A. I believe it went out on the statements.</p> <p>2 And there was only one person that paid and we paid</p> <p>3 him within the time.</p> <p>4 Q. So, you're telling me that there's a</p> <p>5 statement somewhere that says that the special</p> <p>6 assessment was rescinded?</p> <p>7 A. There is -- we credited it back, the</p> <p>8 charge. I believe it was -- when was this?</p> <p>9 August 24th? I'm guessing it was the September</p> <p>10 statement.</p> <p>11 Q. And you believe that satisfies the court's</p> <p>12 order that the defendants shall send out a notice to</p> <p>13 all unit owners of said withdraw.</p> <p>14 A. I mean, we immediately refunded. On the</p> <p>15 statements we reversed the charges that we did.</p> <p>16 Q. Let's look what the order says again then.</p> <p>17 It says --</p> <p>18 MR. McELHINNEY: Objection, he interrupted</p> <p>19 the witness.</p> <p>20 THE COURT: Finish your answer.</p> <p>21 THE WITNESS: Sure.</p> <p>22 And within ten days we paid the only unit</p> <p>23 owner that actually paid, non-plaintiff.</p> <p>24</p>
<p style="text-align: right;">Page 247</p> <p>1 Q. Let me have you refer to Exhibit 122.</p> <p>2 Refer to page seven, line 22. It states that, "It</p> <p>3 is further ordered that the notice of special</p> <p>4 assessment and the reference study sent to the unit</p> <p>5 owners by Defendants on August 24th, 2021, shall</p> <p>6 be immediately withdrawn, that the defendants shall</p> <p>7 send out a notice to all unit owners of said</p> <p>8 withdrawal within ten days of this order that any</p> <p>9 amounts paid by unit owners pursuant to the notice</p> <p>10 of special assessment shall be refunded within ten</p> <p>11 days of this order, and that the receiver shall have</p> <p>12 sole authority to order and oversee reserve studies</p> <p>13 related to defendants' property under the governing</p> <p>14 documents."</p> <p>15 So, I know I've seen a letter from Associa</p> <p>16 Management which inaccurately states that only one</p> <p>17 special assessment was withdrawn and then also</p> <p>18 improperly states that it'll take some time to do it</p> <p>19 rather than doing it within the ten days.</p> <p>20 But what I don't see anywhere in the file</p> <p>21 is the letter from the defendants as ordered by the</p> <p>22 court sending out notice to all of these plaintiffs</p> <p>23 or unit owners that received this saying that the</p> <p>24 special assessment has been rescinded.</p>	<p style="text-align: right;">Page 249</p> <p>1 BY MR. MILLER:</p> <p>2 Q. Okay. I'm going back to the order at line</p> <p>3 22. It says that "the notice of special assessment</p> <p>4 and the reserve study sent to the unit owners by</p> <p>5 Defendants on October 24th, 2021, shall be</p> <p>6 immediately withdrawn, that the defendants shall</p> <p>7 send out notice to all unit owners of said</p> <p>8 withdraw."</p> <p>9 And I don't recall ever seeing the notice</p> <p>10 of withdraw, that the reserve study that you had</p> <p>11 sent to them -- which, to be honest with you, would</p> <p>12 you like to receive that reserve study on a piece of</p> <p>13 property that you own as seeking -- what was it? --</p> <p>14 a \$66 million special assessment?</p> <p>15 A. I don't have the figure in front of me so</p> <p>16 I'm not really sure. But, again, we don't do the</p> <p>17 special assessment. That is strictly the</p> <p>18 independent study.</p> <p>19 So, to answer your first question, I'm not</p> <p>20 sure if a notice went out, but I know for sure that</p> <p>21 it went out on their statements. And I know for</p> <p>22 sure that we refunded the only person that paid</p> <p>23 within ten days.</p> <p>24 Q. As we sit here today it's my understanding</p>

<p style="text-align: right;">Page 250</p> <p>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.</p> <p>10 So, what I'm asking is you, Do you have a  11 document that states that the CC&amp;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?</p> <p>15 A. I'm -- I don't know.</p> <p>16 Q. Okay.</p> <p>17 A. If -- I'm not sure if we sent one or not.</p> <p>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."</p> <p>22 Do you see that?</p> <p>23 A. I do see that, yes.</p> <p>24 Q. Okay.</p>	<p style="text-align: right;">Page 252</p> <p>1 receiver didn't agree with the issuance of those  2 statements containing the old fees and having the  3 special assessment?</p> <p>4 A. I can't remember.</p> <p>5 Q. Do you think it would be your counsel's  6 duty to notify you that this is a problem?</p> <p>7 A. I'm -- it is their duty, but I just can't  8 remember if they did or not.</p> <p>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?</p> <p>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.</p> <p>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</p>
<p style="text-align: right;">Page 251</p> <p>1 A. To this day he has not.</p> <p>2 Q. Let me have you turn to Exhibit 68.  3 Have you ever seen this email before?</p> <p>4 A. I'm not sure.</p> <p>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.</p> <p>9 A. January 2020 statements?</p> <p>10 Q. Oh, the January 16th, 2022, statements.  11 Sorry.</p> <p>12 A. I'm not sure. I don't know if I got this  13 email or not.</p> <p>14 Q. You're in charge of preparing the  15 statements and sending them out to the unit owners.  16 Is that correct?</p> <p>17 A. That is correct, yes.</p> <p>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?</p> <p>22 A. I can't remember. I don't think I ever  23 received anything from the receiver himself.</p> <p>24 Q. Okay. So, you didn't even know that the</p>	<p style="text-align: right;">Page 253</p> <p>1 conflicting orders, it was very --</p> <p>2 Q. Did you ever reach out to the --</p> <p>3 MR. McELHINNEY: Interrupting the witness.  4 Objection.</p> <p>5 THE COURT: Did you finish?</p> <p>6 THE WITNESS: Yeah. I'm good.</p> <p>7 BY MR. MILLER:</p> <p>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?</p> <p>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.</p> <p>16 So, I was in contact. Did I ask him  17 directly, no? But he never asked me directly so ...</p> <p>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.</p> <p>21 Is that what I'm understanding?</p> <p>22 A. Not dictating. I asked him if he had it  23 done, because per the CC&amp;Rs I have to get a budget  24 out and do a true-up.</p>

<p style="text-align: right;">Page 254</p> <p>1 Q. Let me have you turn to Exhibit 78. This</p> <p>2 is the receiver's report from March 1st through</p> <p>3 March 31, 2022. Have you ever seen this document?</p> <p>4 A. I believe I have.</p> <p>5 Q. And do you recall the receiver instructing</p> <p>6 you that he wanted to put the rents into the GSR UOA</p> <p>7 account?</p> <p>8 A. Yes.</p> <p>9 Q. And whose decision would it have been to</p> <p>10 put the money into the GSR UOA account, the receiver</p> <p>11 or your decision?</p> <p>12 A. It was the receiver's. After that I had a</p> <p>13 conversation with them. Because it's a</p> <p>14 not-for-profit organization, we were a little</p> <p>15 worried about the UOA's bank account, using that, in</p> <p>16 the order where it strictly said that he needs to</p> <p>17 open a bank account. So, I reached out to him, or I</p> <p>18 believe there was an order that was sent stating</p> <p>19 that fact.</p> <p>20 Q. Now, let's look at the large paragraph on</p> <p>21 the second page of this document. It states, "When</p> <p>22 I informed Mr. Reid that until I receive an EIN for</p> <p>23 me as a receiver, the bank account of the UOA is</p> <p>24 going to be used as a conduit for collecting rents</p>	<p style="text-align: right;">Page 256</p> <p>1 opens his own account. So, per the seven confusing</p> <p>2 orders in January 4th, 2022, one of the things was</p> <p>3 he opened his own account.</p> <p>4 So, again, I expressed that to him after I</p> <p>5 got with the appropriate parties and we expressed</p> <p>6 that concern. I believe we filed something on this</p> <p>7 that we didn't think this was right, but I'm not</p> <p>8 sure on that one.</p> <p>9 Q. So, you didn't attempt to cooperate with</p> <p>10 him in his instructions that we're going to put them</p> <p>11 into the UOA account but, instead, you chose to</p> <p>12 oppose his request.</p> <p>13 A. Again, he only cited one. He didn't cite</p> <p>14 here about the other ones saying that the order said</p> <p>15 that you personally need to as a receiver.</p> <p>16 So, again, we were still -- even though he</p> <p>17 went through all this, it says "I believe," so</p> <p>18 100 percent -- so based on those conclusions, we --</p> <p>19 I believe we filed an order but not 100 percent</p> <p>20 sure.</p> <p>21 MR. MILLER: May I approach, your Honor?</p> <p>22 THE COURT: Yes. Next in order?</p> <p>23 MR. MILLER: Yes. These are the</p> <p>24 defendants' five motions for reconsideration of the</p>
<p style="text-align: right;">Page 255</p> <p>1 and making the payments as described above, he</p> <p>2 expressed some concern about whether the nonprofit</p> <p>3 status of the UOA might be compromised. Although I</p> <p>4 have had considerable experience with not-for-profit</p> <p>5 entities, but not having been involved with that</p> <p>6 area of practice for over 20 years, I do not believe</p> <p>7 the provisions under the IRS code and the related</p> <p>8 regulations would apply to the UOA tax status.</p> <p>9 "However, in order to be certain that no</p> <p>10 such problems exist, I decided to perform some</p> <p>11 research to ascertain that using UOA bank accounts</p> <p>12 would not affect its filing status as an</p> <p>13 association. And also I contacted UOA's accountant</p> <p>14 and tax preparer firm to ask them if they believe</p> <p>15 whether the UOA's filing status would be affected."</p> <p>16 Did you ever read that provision?</p> <p>17 A. Well, he informed me to let me know.</p> <p>18 Q. He let you know.</p> <p>19 So, after he does this research, tells you</p> <p>20 that he wants to put it into the UOA account, did</p> <p>21 MEI-GSR refuse?</p> <p>22 A. Again, we had concerns. He only mentions</p> <p>23 one concern. The other concern was the order said</p> <p>24 that he opens his own account. As a receiver he</p>	<p style="text-align: right;">Page 257</p> <p>1 January 4th, 2022, court orders.</p> <p>2 THE COURT: We're up to 146.</p> <p>3 THE CLERK: Yes, your Honor.</p> <p>4 THE COURT: Please provide a copy to Mr.</p> <p>5 McElhinney.</p> <p>6 MR. McELHINNEY: No objection, your Honor.</p> <p>7 THE COURT: They will be admitted.</p> <p>8 (Exhibit 146 admitted.)</p> <p>9 THE COURT: You can continue, Mr. Miller.</p> <p>10 BY MR. MILLER:</p> <p>11 Q. Are you familiar with these documents, Mr.</p> <p>12 Brady?</p> <p>13 A. Yes. I believe I've read them.</p> <p>14 Q. So, we've heard, I think repeatedly, how</p> <p>15 you don't believe that Exhibit 122, the Order</p> <p>16 Granting Receiver's Motion for Order and</p> <p>17 Instructions dated January 4th, 2022, and Exhibit 24</p> <p>18 Order Approving Receiver's Fees dated January 4th,</p> <p>19 2022, can be read in harmony or conflict with each</p> <p>20 other, right? Isn't that your position?</p> <p>21 A. I'll have to look at the exhibits again.</p> <p>22 I'm sorry. Which ones again? You said 24?</p> <p>23 Q. Oh, yes. If you want to look at the</p> <p>24 demonstrative exhibit so we can speed things along.</p>