

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.

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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 10 of 10

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CHRONOLOGICAL INDEX

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Default	11/26/2014	3	PA0461- 0462

Description	Date	Vol. Nos.	Bates Nos.
Defendants' Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures	6/24/2021	6-7	PA1237-1559
Defendants' Motion for Instructions to Receiver Regarding Reimbursement of Capital Expenditures	5/21/2020	3-4	PA0662-0704
Defendants' Opposition to Plaintiffs' Motion for a Receiver	11/5/2014	2	PA0409-0415
Defendants' Reply in Support of Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures	11/2/2021	8	PA1602-1629
Defendants' Reply in Support of Motion for Instructions to Receiver Regarding Reimbursement of Capital Expenditures	7/10/2020	4-6	PA0718-1198
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Opposition to Defendants' Motion for Instructions to Receiver Regarding Reimbursement of Capital Expenditures	6/18/2020	4	PA0705-0717

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

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

DATED this 8th day of April 2024.

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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 10 of 10** properly addressed to the following:

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<p style="text-align: right;">Page 258</p> <p>1 A. 144.</p> <p>2 MR. MILLER: Yes.</p> <p>3 THE COURT: D-1.</p> <p>4 THE WITNESS: I think I gave it back.</p> <p>5 THE COURT: Here you go. Be nice to it.</p> <p>6 THE WITNESS: I will, your Honor.</p> <p>7 Okay.</p> <p>8 BY MR. MILLER:</p> <p>9 Q. So, if I understood your prior testimony,</p> <p>10 you couldn't decide how to proceed given these two</p> <p>11 orders. Is that correct?</p> <p>12 A. That's contrary to testimony, objection.</p> <p>13 THE COURT: Overruled. You can clarify, if</p> <p>14 you need.</p> <p>15 THE WITNESS: Say it again.</p> <p>16 BY MR. MILLER:</p> <p>17 Q. So, your prior testimony we talked about</p> <p>18 these two provisions, right, that are demonstrated</p> <p>19 in the demonstrative evidence which come -- which</p> <p>20 one paragraph comes out of Exhibit 122 and the other</p> <p>21 paragraph comes out of Exhibit 124.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Was your prior testimony that you couldn't</p>	<p style="text-align: right;">Page 260</p> <p>1 BY MR. MILLER:</p> <p>2 Q. Do you think, if your counsel had a genuine</p> <p>3 concern about how to apply these two orders and was</p> <p>4 having difficulty doing such, that they would have</p> <p>5 been the subject of the defendants's motion for</p> <p>6 reconsideration on these very issues?</p> <p>7 A. I can't answer for them, and I don't</p> <p>8 believe we ever had any discussions about these</p> <p>9 orders.</p> <p>10 Q. Okay.</p> <p>11 A. But I know we had discussions about the</p> <p>12 orders were very confusing.</p> <p>13 Q. And my question to you is, If you think</p> <p>14 there was a legitimate issue with MEI-GSR</p> <p>15 determining how to apply these at that time, back in</p> <p>16 January of 2022, this motion -- yeah, both motions</p> <p>17 were filed at that time, January 14, 2022, and the</p> <p>18 other one January 18th, 2022 -- do you think, if</p> <p>19 there was a legitimate concern about what you've</p> <p>20 talked about today, that that would have been</p> <p>21 referenced in your motions for reconsideration on</p> <p>22 these issues?</p> <p>23 MR. McELHINNEY: Objection, asked and</p> <p>24 answered.</p>
<p style="text-align: right;">Page 259</p> <p>1 decide how to apply these?</p> <p>2 A. That's correct. Because there were seven</p> <p>3 orders and they all had the same time stamp so --</p> <p>4 and then the contradicting -- contradicting on what</p> <p>5 we're supposed to do with 2020 fees, yes, it was</p> <p>6 very hard to determine.</p> <p>7 Q. Okay. You understand that your attorney</p> <p>8 filed Defendants's motions for leave for</p> <p>9 reconsideration concerning both of these orders.</p> <p>10 Do you see that?</p> <p>11 A. 146?</p> <p>12 Q. Yes. Actually, sought reconsideration of</p> <p>13 all of them, I believe, but these two specifically</p> <p>14 there was reconsideration sought.</p> <p>15 A. Yes. That's what it appears.</p> <p>16 Q. Have you reviewed the basis for which your</p> <p>17 attorney sought reconsideration?</p> <p>18 A. If I did, I can't remember.</p> <p>19 Q. Okay. And I've reviewed both of these and</p> <p>20 I can't find any arguments that they were ambiguous</p> <p>21 or that they couldn't be interpreted. I find that</p> <p>22 they were -- they claim to be legally erroneous.</p> <p>23 (Witness reviewing document.)</p> <p>24</p>	<p style="text-align: right;">Page 261</p> <p>1 THE COURT: Overruled. You can answer.</p> <p>2 THE WITNESS: I'm not a lawyer, so I have</p> <p>3 no idea.</p> <p>4 BY MR. MILLER:</p> <p>5 Q. All right. In Defendant MEI-GSR's</p> <p>6 opposition to the December 28th, 2022, motion for</p> <p>7 order to show cause, I'll just read you a sentence</p> <p>8 from there. It says, "Those fees in place prior to</p> <p>9 the court's September 27th, 2021, order, shall</p> <p>10 remain in place until those fees for 2020 are</p> <p>11 recalculated and approved by the court." Then it</p> <p>12 goes on to indicate that those are precisely the</p> <p>13 fees being applied.</p> <p>14 And that was filed in the opposition. I</p> <p>15 just don't understand that.</p> <p>16 A. Can you give me the exhibit so I can look</p> <p>17 at it.</p> <p>18 Q. It's in a motion that I don't have a copy</p> <p>19 of, so I will move on because we've hit that point</p> <p>20 several times.</p> <p>21 THE COURT: Thank you. You promised to get</p> <p>22 done by this afternoon and it's approaching fast.</p> <p>23 BY MR. MILLER:</p> <p>24 Q. Lemme have you refer to Exhibit 91.</p>

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<p style="text-align: right;">Page 262</p> <p>1 A. Okay.</p> <p>2 Q. And this is an email from Stefanie Sharp to</p> <p>3 myself and your counsel dated December 16th, 2022.</p> <p>4 Have you ever had the opportunity to see</p> <p>5 this email?</p> <p>6 A. I'm not entirely sure.</p> <p>7 Q. Okay. It states, "I can confirm that the</p> <p>8 receiver did not participate in any way with the</p> <p>9 preparation of the documents attached hereto and did</p> <p>10 not approve of the documents attached hereto.</p> <p>11 Neither the receiver nor I have seen the attached</p> <p>12 prior to your email."</p> <p>13 And then if we look at the other -- next</p> <p>14 page, we can see that the documents refer to the</p> <p>15 Better Reserve Consultants year -- beginning year</p> <p>16 2023 reserve study.</p> <p>17 Is that your understanding too, that the</p> <p>18 receiver had never even seen those before they went</p> <p>19 out?</p> <p>20 A. I am not -- I mean, that's what it says.</p> <p>21 I'm not entirely sure. I know I reached out to him</p> <p>22 and asked if he has -- if he started his reserve</p> <p>23 study and he did not.</p> <p>24 Q. And once you obtained this reserve study,</p>	<p style="text-align: right;">Page 264</p> <p>1 email from Richard Teichner to you dated</p> <p>2 June 27th, 2022.</p> <p>3 A. I'm sorry. June 27th? Seventh?</p> <p>4 Q. June 27th, 2022. It's all the way at the</p> <p>5 end of the package that was attached to your</p> <p>6 declaration.</p> <p>7 A. Yep.</p> <p>8 Q. This email states from Mr. Teichner to you,</p> <p>9 "Have the fees that I calculated for 2021 been</p> <p>10 retroactively applied to the plaintiff and</p> <p>11 non-plaintiff unit owners by adjusting their</p> <p>12 balances appearing on the monthly statements? If</p> <p>13 so, in which months were those adjustments made?"</p> <p>14 Do you recall receiving that email?</p> <p>15 A. Yes.</p> <p>16 Q. When you read that, does that lead you to</p> <p>17 believe that he thinks his fees should have been</p> <p>18 applied retroactively to that date?</p> <p>19 A. It appears.</p> <p>20 Q. So, did you apply them retroactively to</p> <p>21 that date?</p> <p>22 A. No. Because like I explained, I said no,</p> <p>23 we did not. As the order went into place in 2022,</p> <p>24 which means we are waiting on you to update the</p>
<p style="text-align: right;">Page 263</p> <p>1 before you sent it out to the unit owners, did you</p> <p>2 send it over to Mr. Teichner to say, Hey, do you</p> <p>3 want to take a look at this and approve it?</p> <p>4 A. I'm not sure if it was this year, but I was</p> <p>5 under the impression that -- I'm not sure what year</p> <p>6 it was but that Mr. Teichner and Stefanie Sharp were</p> <p>7 in touch with my legal team or the MEI-GSR's legal</p> <p>8 team, so I'm not 100 percent sure. I don't know.</p> <p>9 Q. Okay.</p> <p>10 A. But I personally never sent it to him.</p> <p>11 Q. Do you think you're interfering with the</p> <p>12 receiver's ability to implement compliance with the</p> <p>13 governing documents when you obtained and send out a</p> <p>14 reserve study without even having the receiver</p> <p>15 approve it?</p> <p>16 A. No. Because he's supposed to do his own</p> <p>17 separate reserve study, and I reached out and asked</p> <p>18 him and he did not. Again, we have 110 units. Only</p> <p>19 93 of them -- unit owners are plaintiffs, so I need</p> <p>20 to send it out for those unit owners.</p> <p>21 Q. Okay. Let me have you turn to Exhibit 100.</p> <p>22 This is a document -- it starts with your</p> <p>23 declaration, but go all the way to the end to the</p> <p>24 last document in this batch of papers. It's an</p>	<p style="text-align: right;">Page 265</p> <p>1 numbers for 2021 and 2020 with actuals. Also, as</p> <p>2 the order stated, that we are only to adjust the</p> <p>3 accounts once.</p> <p>4 Also, as far as the non-plaintiffs go, we</p> <p>5 are waiting for the judge to order if she has</p> <p>6 jurisdiction so we are not sure that we would even</p> <p>7 adjust those.</p> <p>8 Q. So, rather than apply the fees</p> <p>9 retroactively to 2021, which he, apparently, assumed</p> <p>10 was being done pursuant to this email, you argued</p> <p>11 with him. Is that correct? You sent him back an</p> <p>12 email giving him instruction on what he needed to</p> <p>13 do.</p> <p>14 A. Again, the seven orders and -- the seven</p> <p>15 orders that were on January 4th, 2022, were very</p> <p>16 confusing. So, again, got with my legal counsel and</p> <p>17 it was determined that he was supposed to -- the</p> <p>18 order says that the order shall remain in place</p> <p>19 until the fees of 2020, number 122, and he hasn't</p> <p>20 done 2020, and that's what I asked him there.</p> <p>21 Q. That's what you asked him to do, right?</p> <p>22 A. No, no. I asked him if they were done. I</p> <p>23 didn't ask -- I didn't force him. I said, Look, I</p> <p>24 would love to comply, but according to this order,</p>

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<p style="text-align: right;">Page 266</p> <p>1 again, he -- the net rents were for so long net 2 rents, and then all of a sudden he changes gear. 3 So, sometimes it gets very confusing with 4 all the orders and, yes, I need clarification 5 sometimes. That's why I go to my legal counsel and 6 I ask them advice and then it was determined -- I 7 asked him. 8 Q. Can you tell me why the advice results in 9 no money being paid to the plaintiffs? 10 MR. McELHINNEY: Just contrary to evidence, 11 your Honor, and I object. 12 THE COURT: Denied, overruled. You can 13 answer, please. 14 THE WITNESS: Based on the orders, I guess. 15 BY MR. MILLER: 16 Q. In receiving this email from the receiver, 17 would it have been possible for you in your capacity 18 as the person who does the accounting to 19 retroactively apply those fees and send checks as 20 required under those fees? 21 Would it have been possible? 22 A. So, he asked me and then I responded and 23 his response was, "Thank you for your rapid 24 response." Nowhere did he say, You need to apply</p>	<p style="text-align: right;">Page 268</p> <p>1 question. 2 A. Again, I don't -- I don't know. Could we 3 have? Yeah. It may take a little bit but I believe 4 we also put up a bond for these fees so ... 5 Q. How much later was that bond put up? 6 A. I believe 2023. 7 Q. Okay. 8 A. About as much time as Teichner's -- 9 Q. So, not very soon. 10 A. No. 11 Q. And then let's go to his email on the other 12 side, and this was a preceding email September 19th, 13 2022. Mr. Teichner states, "Can you tell me whether 14 there have been any distributions to the plaintiffs 15 since the January 4th rulings by the justice." 16 (Witness reviewing document.) 17 THE WITNESS: January 4th ruling, again, it 18 all goes back to June 4th rulings. 19 BY MR. MILLER: 20 Q. All right. When you read that email, did 21 you believe that he assumed that payment should have 22 been made to the plaintiffs? 23 A. I can't assume what -- 24 Q. Would Mr. Teichner ask that question if he</p>
<p style="text-align: right;">Page 267</p> <p>1 these, or anything like that so -- 2 Q. That wasn't my question? 3 A. Sorry. 4 MR. McELHINNEY: Your Honor, objection. 5 Interruption. 6 THE COURT: Were you finished with your 7 answer, sir? 8 THE WITNESS: Yes, I'm done. 9 BY MR. MILLER: 10 Q. My question was, Could you have? Could you 11 have applied those fees retroactive and sent out the 12 checks to the plaintiff unit owners? 13 A. Not on the current orders we could not 14 have. 15 Q. Okay. And the judge is gonna determine 16 what current orders apply and how they apply. 17 So, what I'm asking you is, Could you have 18 done that? Could you have looked at this email here 19 where he says, My fees apply retroactive to 2021, 20 has that been done, and I'm asking you, Were you 21 physically capable of doing that? 22 Could the GSR have applied his fees that -- 23 that were approved and then actually written the 24 checks to the plaintiff unit owners? That's the</p>	<p style="text-align: right;">Page 269</p> <p>1 didn't believe that the plaintiffs should have 2 received their money under the orders? 3 A. September -- I'm not -- I don't know. When 4 was this? September 19th? So, that would have been 5 at this time, because not until May 2023 he was 6 asking for net revenues. And he would have to 7 calculate the net revenues and he didn't do his job. 8 So, the fact that he throws it on me ... 9 Q. Again, that just comes back to, Does the 10 receiver who has been put in power by the court 11 dictate what occurs or does Mr. Reed Brady at the 12 MEI-GSR dictate what occurs? 13 A. I think we have proper discussions and it's 14 -- it was back and forth. And ultimately the 15 receiver was asking a question and I answered the 16 question. 17 Q. So, let's look at Exhibit 139. 18 A. Okay. 19 Q. In Exhibit 139 is that a unit owner account 20 statement? 21 A. Yes, it is. 22 Q. And what's the date of that statement? 23 A. It's from June 1st to June 30th, 2020. 24 Q. Okay. Under -- so we know under recent</p>

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<p style="text-align: right;">Page 270</p> <p>1 statements I believe you said 47 percent of the 2 plaintiffs owe the GSR money under your 3 calculations, and then I presume 53 percent are owed 4 money under the statements. 5 A. Overall the units, because some of the 6 TPOs -- I say TPOs, third-party owners -- include 7 plaintiffs and non-plaintiffs. Overall there's 95 8 units because some of them have double rooms. 9 They're counted as one unit owner, but they have 10 double rooms. So, of the 95 units there was 47 of 11 them that either owed us money or even and there was 12 48 that we owed. 13 Q. And that's under -- 14 THE COURT: I thought you said 93 units 15 that were plaintiffs. 16 THE WITNESS: There's 93 unit owners. Some 17 of them have what is called "double rooms." 18 THE COURT: I got it now. Thank you. I 19 misunderstood what you said. 20 BY MR. MILLER: 21 Q. Again, just to be clear, that's -- under 22 your calculations that are double what the prior 23 receiver's calculations were. Just to be clear. 24 A. These were in July of 2020.</p>	<p style="text-align: right;">Page 272</p> <p>1 out monthly with the payments to the unit owners for 2 their rents? 3 A. It does. Also in that unit owner agreement 4 it says that the -- they are payable upon receipt 5 and goes into more stipulation where we can cancel 6 the unit rental agreement, but that's another thing. 7 Q. Which the court has specifically rejected, 8 correct? Is that correct? 9 A. I'm not sure about that specifically, but 10 yes. 11 Q. Okay. So, under the unit rental 12 agreements, if there's a balance owed it has to be 13 paid within the 30 days. Is that correct? 14 A. I'm not sure of the days but, yes, it is. 15 Q. Okay. So, are you violating the governing 16 documents by not paying out those amounts owed even 17 under your calculations? 18 A. I'd say yes and no. 19 Q. Okay. Where does the "no" come from? 20 A. I guess from the track record from the 21 plaintiffs. We have five instances of being paid, 22 so it is believed that they would not pay us. So, 23 for our order to send the money, we would never get 24 any money when they owed us.</p>
<p style="text-align: right;">Page 271</p> <p>1 Q. I'm just -- I wanted you to look at that so 2 we could look at the column on the bottom that shows 3 what's owed and -- from the plaintiffs or owed to 4 the plaintiffs. 5 A. Sure. 6 Q. You understand there's a column there, 7 right? 8 A. Yeah. 9 Q. Yeah. So, under your current statements, 10 your calculations that are double what the prior 11 receiver's were, your testimony is that about half 12 of them are owed money under your calculations. 13 Is that correct? 14 A. Yes. 15 Q. Okay. And even though money's owed on the 16 statements, GSR still doesn't send the monthly rent 17 checks to those plaintiffs. Is that correct? 18 A. That's correct. I think I argued it 19 before. 20 Q. You did argue it. 21 So, are you -- you're familiar with the 22 unit rental agreement, correct? 23 A. I am. 24 Q. And does it require that the statements go</p>	<p style="text-align: right;">Page 273</p> <p>1 Q. What court order or governing document 2 gives you the ability to make that determination and 3 withhold money that is owed to the plaintiffs? 4 A. There's no court order. 5 Q. Okay. And, in fact, if -- does that 6 interfere with the receiver implementing compliance 7 with the governing documents when you willfully 8 violate a provision of the governing documents that 9 says you have to pay out those funds in 30 days? 10 A. Well, it was ordered that we are supposed 11 to turn over the net revenues to the -- to Mr. 12 Teichner when he opens up a bank account. 13 So, again, he hasn't calculated the fees 14 and he hasn't calculated 2020 fees or calculated 15 2021 fees or hasn't calculated 2022 fees, he has not 16 done the reserve study. We can't give him net 17 revenues, and until recently or -- and he hasn't 18 even opened an account. Until recently he just 19 pivoted to gross revenue. 20 Q. So, your testimony is that you can't even 21 release the net revenues that are owed under your 22 own calculations, right? 23 A. A lot of the times the TPOs will owe us 24 money.</p>

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<p style="text-align: right;">Page 274</p> <p>1 Q. Under calculations that are double what the</p> <p>2 last receiver calculated.</p> <p>3 A. Depending on -- when you say "double the</p> <p>4 previous," do you mean Proctor's 2015 numbers?</p> <p>5 Q. He's the past receiver.</p> <p>6 A. The 2015 numbers that were never updated?</p> <p>7 Q. Yes.</p> <p>8 A. Okay.</p> <p>9 Q. So, is Ken Baumann also an employee of</p> <p>10 MEI-GSR?</p> <p>11 A. Yes, he is.</p> <p>12 Q. Is he your boss?</p> <p>13 A. No.</p> <p>14 Q. Equal?</p> <p>15 A. No. He's -- we're both executives, but</p> <p>16 he's a SVP.</p> <p>17 Q. Okay. Is it your understanding that for</p> <p>18 several years prior to Mr. Teichner taking over the</p> <p>19 UOA entirely, Mr. Ken Baumann was the president of</p> <p>20 the UOA?</p> <p>21 A. I am not sure about that.</p> <p>22 Q. That's not something you had knowledge of?</p> <p>23 A. The president?</p> <p>24 Q. Yes.</p>	<p style="text-align: right;">Page 276</p> <p>1 not 100 percent sure and I don't -- again, I have no</p> <p>2 affiliation myself with the UOA so I don't -- and I</p> <p>3 don't keep the minutes or anything like that, so I</p> <p>4 don't know. Really, the only time I ever talk is to</p> <p>5 Tarantino. I think that's her name.</p> <p>6 MR. MILLER: Have we marked Exhibit 138</p> <p>7 yet?</p> <p>8 THE COURT: I know it's marked. I haven't</p> <p>9 admitted it. It was one of those that you were</p> <p>10 going to lay additional foundation for.</p> <p>11 BY MR. MILLER:</p> <p>12 Q. Can you refer to Exhibit 138?</p> <p>13 THE COURT: Don't show it on the screen</p> <p>14 because it's not admitted.</p> <p>15 BY MR. MILLER:</p> <p>16 Q. Are you familiar with that document?</p> <p>17 (Witness reviewing document.)</p> <p>18 THE WITNESS: I'm guessing this is from the</p> <p>19 recorder's office.</p> <p>20 THE COURT: We don't want you to guess.</p> <p>21 THE WITNESS: Then, no, I don't know</p> <p>22 exactly.</p> <p>23 BY MR. MILLER:</p> <p>24 Q. Are you familiar with the Nevada Secretary</p>
<p style="text-align: right;">Page 275</p> <p>1 A. I believe -- I'm not sure when he was on</p> <p>2 the board, but he's on the board but I didn't know</p> <p>3 he was the president, no.</p> <p>4 Q. Is it your understanding that another GSR</p> <p>5 UOA employee is on the board as well?</p> <p>6 A. Yes. Currently, yes.</p> <p>7 Q. And there's only one non-GSR employee on</p> <p>8 the board. Is that right?</p> <p>9 A. I believe that is correct, yes.</p> <p>10 Q. Okay. So, up until recently when Mr.</p> <p>11 Teichner took over all control of the UOA, MEI-GSR's</p> <p>12 employees were attempting to control the board -- is</p> <p>13 that correct -- because they had the majority of the</p> <p>14 votes?</p> <p>15 MR. McELHINNEY: Objection,</p> <p>16 mischaracterization.</p> <p>17 THE COURT: Overruled.</p> <p>18 THE WITNESS: I can't say. I'm not sure.</p> <p>19 BY MR. MILLER:</p> <p>20 Q. I just heard you repeatedly say, I believe</p> <p>21 in your prior testimony, that MEI-GSR had no control</p> <p>22 over affiliation of the GSR UOA, and I just thought</p> <p>23 that's not really accurate.</p> <p>24 A. I mean -- they are on a lot of boards, so</p>	<p style="text-align: right;">Page 277</p> <p>1 of State's website?</p> <p>2 A. I believe I've been there a couple times.</p> <p>3 Q. You've been on the Nevada Secretary of</p> <p>4 State website. Have you ever looked up a corporate</p> <p>5 entity?</p> <p>6 A. I don't think I have, no.</p> <p>7 Q. Not once in your life?</p> <p>8 A. Not that I remember, no. Sorry.</p> <p>9 Q. All right. I'd ask to move for the</p> <p>10 admission of this Exhibit 138 as a public record.</p> <p>11 THE COURT: Any objection? I don't know</p> <p>12 what it is. It's not admitted until you tell me.</p> <p>13 MR. McELHINNEY: Your Honor, I can't tell</p> <p>14 where this came from. I can't tell if it's a public</p> <p>15 record or not, so I object.</p> <p>16 THE COURT: Okay.</p> <p>17 MR. MILLER: This is a printout from the</p> <p>18 Secretary of State's web page of Nevada for the</p> <p>19 corporate entity MEI-GSR Holding LLC.</p> <p>20 MR. McELHINNEY: My objection is it's not</p> <p>21 certified. I don't see anything indicating where</p> <p>22 this came from. It shows entity information but</p> <p>23 there's no --</p> <p>24 THE COURT: Does it show the header of the</p>

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<p style="text-align: right;">Page 278</p> <p>1 secretary of state?</p> <p>2 MR. McELHINNEY: Not what I'm looking at,</p> <p>3 no.</p> <p>4 BY MR. MILLER:</p> <p>5 Q. Is it your understanding that Luis Armona</p> <p>6 is a manager of MEI-GSR?</p> <p>7 A. I think I answered before I'm not --</p> <p>8 Q. I thought --</p> <p>9 A. 100 percent sure.</p> <p>10 Q. If I understood your testimony prior, Luis</p> <p>11 Armona is the primary decision-maker.</p> <p>12 Is that correct?</p> <p>13 A. No.</p> <p>14 Q. Who is the primary decision-maker?</p> <p>15 A. It's kind of -- we have an executive</p> <p>16 committee, so I would say that. I know that we pay</p> <p>17 a management fee to Meruelo Group, so they are, you</p> <p>18 know -- they help us out. But it's kind of a</p> <p>19 collective, not one person, per se.</p> <p>20 Q. Does Alex Meruelo make the ultimate</p> <p>21 decisions over MEI-GSR Holding?</p> <p>22 A. No, I wouldn't say that.</p> <p>23 Q. That's not accurate?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 280</p> <p>1 chime in from now -- but also the GM chimes in, I</p> <p>2 chime in, the executives chime in.</p> <p>3 Q. Does Mr. Meruelo as a manager/owner of</p> <p>4 MEI-GSR Holdings trump everybody else's decisions if</p> <p>5 he so decides?</p> <p>6 A. I -- not necessarily, no. But he is an</p> <p>7 owner, so, I mean, we have to take his decisions</p> <p>8 serious. But he is an open owner, and if you have</p> <p>9 any objections, he will listen and ultimately it'll</p> <p>10 be a decision by -- with the GM and the CFO.</p> <p>11 Q. He's not only the owner, but the manager of</p> <p>12 the LLC, correct?</p> <p>13 THE COURT: Were you done?</p> <p>14 THE WITNESS: Yes, I was.</p> <p>15 BY MR. MILLER:</p> <p>16 Q. He's not only the owner, but he's the</p> <p>17 manager of the LLC. Is that correct?</p> <p>18 A. Again, if you can point me to a document,</p> <p>19 but I'm not 100 percent sure.</p> <p>20 Q. Would you defer to his deposition testimony</p> <p>21 on whether or not he has ultimate control over</p> <p>22 MEI-GSR Holdings?</p> <p>23 A. I can't say what he would say.</p> <p>24 Q. Okay.</p>
<p style="text-align: right;">Page 279</p> <p>1 Q. So, if Mr. Meruelo testified during his</p> <p>2 deposition in this matter that he was the ultimate</p> <p>3 decision-maker, his deposition testimony would be</p> <p>4 false?</p> <p>5 A. Is he the ultimate decision-maker? He does</p> <p>6 make decisions but, for the most part, he has a</p> <p>7 team, a team of Meruelo Group. We're a team at</p> <p>8 MEI-GSR, so it's collective.</p> <p>9 Q. Who is at the top? Who has the final say?</p> <p>10 A. For?</p> <p>11 Q. For MEI-GSR Holding.</p> <p>12 A. Holding?</p> <p>13 MR. McELHINNEY: Objection, your Honor. If</p> <p>14 it matters as to topic, I think it should be</p> <p>15 specified.</p> <p>16 THE COURT: Okay. That's fair.</p> <p>17 Can you rephrase your question?</p> <p>18 MR. MILLER: Yes.</p> <p>19 BY MR. MILLER:</p> <p>20 Q. Over decisions made in connection with this</p> <p>21 litigation, who is the ultimate decision-maker for</p> <p>22 MEI-GSR Holding?</p> <p>23 A. I think it's -- over the condo, I think</p> <p>24 it's a collective, the legal team. Mr. Meruelo does</p>	<p style="text-align: right;">Page 281</p> <p>1 THE COURT: Are you going to stop? We're</p> <p>2 going to switch gears and I'll turn on my</p> <p>3 microphone.</p> <p>4 MR. McELHINNEY: May we take a break?</p> <p>5 THE COURT: No. Do you really need one?</p> <p>6 MR. McELHINNEY: Yes, I do.</p> <p>7 THE COURT: Okay.</p> <p>8 (Recess taken.)</p> <p>9 BY THE COURT:</p> <p>10 Q. Thank you.</p> <p>11 Mr. Brady, how do you calculate the daily</p> <p>12 resort fee?</p> <p>13 A. Sure. How in depth do you want?</p> <p>14 Q. As in depth as you think I need to know,</p> <p>15 because I have to know in case I have to think about</p> <p>16 some issues these guys have raised about whether</p> <p>17 things are appropriate to be included in certain</p> <p>18 categories of expenses, the DRF.</p> <p>19 A. That is --</p> <p>20 Q. I show up at the hotel and they say, It's</p> <p>21 \$35 extra and you get Internet, and if you want to</p> <p>22 go to the pool, you can if you wanted.</p> <p>23 A. That's a decision by the executive team.</p> <p>24 I don't know if there's actually a formula,</p>

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<p style="text-align: right;">Page 282</p> <p>1 per se, but that would be part of the hotel's</p> <p>2 decision on what to charge with the GM.</p> <p>3 Q. And that's a discretionary amount that's</p> <p>4 set by the hotel to allow hotel patrons to use</p> <p>5 certain hotel amenities?</p> <p>6 A. Yes, along with other things.</p> <p>7 MR. MILLER: Your Honor, that issue is</p> <p>8 litigated and it was a subject of prior order in</p> <p>9 this case.</p> <p>10 THE COURT: That's beyond me.</p> <p>11 MR. MILLER: Okay. I would hate to see an</p> <p>12 inconsistent --</p> <p>13 THE COURT: I won't make an inconsistent</p> <p>14 ruling. I was just curious.</p> <p>15 BY THE COURT:</p> <p>16 Q. You indicated earlier there were 17 units</p> <p>17 that had been remodeled.</p> <p>18 A. Eighteen total. I don't know how many</p> <p>19 plaintiffs.</p> <p>20 Q. Eighteen of the 670 units have been</p> <p>21 remodeled?</p> <p>22 A. Oh, no, no. Those were of third-party</p> <p>23 owners. Of the 110 third-party, 18. Of the 670,</p> <p>24 we've remodeled floors 22, 23, 24. I don't believe</p>	<p style="text-align: right;">Page 284</p> <p>1 quarter last year.</p> <p>2 A. Because we have to pay deposits, and</p> <p>3 depending on the company, we have to pay 50 percent</p> <p>4 of the deposits. So, those are deposits for floors</p> <p>5 17 through 21. Like I said, one of the deposits was</p> <p>6 7.2 million alone and that was strictly for F, F and</p> <p>7 E within the room.</p> <p>8 Q. But if the intent was that the units were</p> <p>9 not going to be owned by the unit owners anymore and</p> <p>10 they were gonna be sold as a group, which was</p> <p>11 presented in the motion, why did the reserve fees</p> <p>12 need to be used for the remodel?</p> <p>13 A. At that time in -- I think we took it --</p> <p>14 we've taken it out at the end of 2020. We took some</p> <p>15 out in 2021. That was the first deposits for 2022.</p> <p>16 And then we took more on 2022. I don't know if at</p> <p>17 that time we thought we would dissolve the condo</p> <p>18 units.</p> <p>19 I know we may have talked about it, but we</p> <p>20 didn't know if it was possible at that time with all</p> <p>21 of the litigation.</p> <p>22 Q. Okay. Who made the decision to withdraw</p> <p>23 funds from the reserve accounts?</p> <p>24 A. It was --</p>
<p style="text-align: right;">Page 283</p> <p>1 the suites have been fully remodeled yet, so there</p> <p>2 is roughly, I believe, 100 to -- 100 to 150 per</p> <p>3 floor.</p> <p>4 Q. So, how many have been remodeled?</p> <p>5 A. Probably say over 300.</p> <p>6 Q. So, 300, less than half have been</p> <p>7 remodeled. And you said the remainder will be</p> <p>8 started in October of this year?</p> <p>9 A. They will -- correct. So, it might be less</p> <p>10 than 300, now that I think about it. Seventeen</p> <p>11 through 21, that's five floors, and we did -- we did</p> <p>12 three floors, so three-eighths have been done of the</p> <p>13 670.</p> <p>14 Q. And of those units that have been</p> <p>15 remodeled, when were they completed?</p> <p>16 A. I believe we capitalized those at the -- I</p> <p>17 wanna say at the end of last year we capitalized</p> <p>18 them or the beginning of this year.</p> <p>19 Q. Okay. So, why did you need reserve fees</p> <p>20 for that remodel when you were asking to dissolve</p> <p>21 the association?</p> <p>22 A. Why did we need reserve fees?</p> <p>23 Q. Yeah. Because you asked to dissolve the</p> <p>24 association first quarter of this year -- no -- last</p>	<p style="text-align: right;">Page 285</p> <p>1 MR. McELHINNEY: Your Honor, I'm sorry. I</p> <p>2 didn't not understand your question.</p> <p>3 THE COURT: Who made the decision to</p> <p>4 withdraw funds from the reserve account.</p> <p>5 THE WITNESS: We -- I discussed it with</p> <p>6 counsel and the executive team, and it was a</p> <p>7 collective agreement.</p> <p>8 Mr. Teichner was dragging his feet and we</p> <p>9 were getting bills on these rooms in the millions of</p> <p>10 dollars. So, I believe it was a collective</p> <p>11 agreement to withdraw from the reserve accounts.</p> <p>12 BY THE COURT:</p> <p>13 Q. Okay. You said there were three</p> <p>14 different -- I'll call them "tranches" -- that were</p> <p>15 withdrawn from the reserve account, the first was in</p> <p>16 2021 --</p> <p>17 A. Yes.</p> <p>18 Q. -- for three thousand --</p> <p>19 A. Three million.</p> <p>20 Q. And then -- yeah, three million.</p> <p>21 A. Yeah.</p> <p>22 Q. And then there were two in 2022 that</p> <p>23 totaled about \$12,892,000 if I'm correct?</p> <p>24 A. Yes, you're correct.</p>

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<p style="text-align: right;">Page 286</p> <p>1 Q. Was the same decision-making process used</p> <p>2 for both of those withdrawals in 2021 and 2022?</p> <p>3 A. Yes.</p> <p>4 Q. Can you tell me why no one asked the</p> <p>5 receiver or the court for approval of the</p> <p>6 withdrawals?</p> <p>7 A. From what I remember after talking with our</p> <p>8 counsel and with the executive team, they could not</p> <p>9 find any specific order that said we had to go</p> <p>10 through the receiver to get his permission.</p> <p>11 So, it was decided that, since the bills</p> <p>12 were coming in and we were remodeling the rooms, we</p> <p>13 were getting millions of dollars in deposits for the</p> <p>14 first phase, and then we capitalized them at the end</p> <p>15 of 2022.</p> <p>16 And then we were getting more deposits at</p> <p>17 the end of 2022 and it was decided to take the money</p> <p>18 out of the reserves.</p> <p>19 Q. Okay. When was the last time MEI-GSR sent</p> <p>20 a check for rental income to a unit owner other than</p> <p>21 those affiliated with the defendants?</p> <p>22 A. We send out to non-plaintiffs on a monthly</p> <p>23 basis if we owe them money.</p> <p>24 Q. But the plaintiffs, you don't.</p>	<p style="text-align: right;">Page 288</p> <p>1 weekly without -- we know 100 percent certain what</p> <p>2 those numbers are. Because as an accountant it has</p> <p>3 to get audited by revenue auditors. Then at the end</p> <p>4 of the month we reconcile that to what was actually</p> <p>5 deposited to our banks. We have to make sure our</p> <p>6 balance sheets are correct before we can say this is</p> <p>7 the total.</p> <p>8 Also, we have a condo system that is kind</p> <p>9 of a standalone based on the IMS that we use that we</p> <p>10 update on a monthly basis to produce the statements.</p> <p>11 And that takes into account -- because we rent the</p> <p>12 rooms more than -- the governing documents say we</p> <p>13 can only rent their rooms five -- comp their rooms</p> <p>14 five times.</p> <p>15 So, during the month we will comp it, but</p> <p>16 the system that we use actually calculates it as</p> <p>17 cash and gives the average daily cash rate for that</p> <p>18 time, so that doesn't get done until the end of the</p> <p>19 month with the condo system.</p> <p>20 Q. Okay.</p> <p>21 A. So, it would be almost impossible to get an</p> <p>22 accurate number.</p> <p>23 Q. So, you would do it on a monthly basis on a</p> <p>24 trailing -- after your accounting has been done or</p>
<p style="text-align: right;">Page 287</p> <p>1 A. We do not. Because the majority of the</p> <p>2 non-plaintiffs are in good standing, so it was a</p> <p>3 collective agreement that we will pay those out.</p> <p>4 Q. Okay. How hard is it for you to send gross</p> <p>5 rent of the condo units for the units owned by the</p> <p>6 entities affiliated with the defendants and the 95</p> <p>7 units owned by the plaintiffs weekly?</p> <p>8 A. Extremely hard.</p> <p>9 Q. Tell me why.</p> <p>10 A. One, the system that we use it has to be</p> <p>11 audited. Then at the end of the month we have to</p> <p>12 vet those audited, the GL account, we have ten days</p> <p>13 to close the books.</p> <p>14 And sometimes that doesn't get closed, so</p> <p>15 there's a lot of -- a process that goes into it and</p> <p>16 a lot of team members that account for the hotel</p> <p>17 revenue -- and you're talking about gross?</p> <p>18 Q. I am talking about gross.</p> <p>19 A. Yes.</p> <p>20 Q. So there's absolutely no question about</p> <p>21 who's talking about what, I'm talking about gross,</p> <p>22 the entire amount that is paid.</p> <p>23 A. Understood.</p> <p>24 It would be extremely difficult to do it</p>	<p style="text-align: right;">Page 289</p> <p>1 auditing?</p> <p>2 A. After we would close the books, because we</p> <p>3 usually send the statements out. They have to be</p> <p>4 stamp-marked for the 20th, so yes.</p> <p>5 THE COURT: Okay. Those are all my</p> <p>6 questions for you. If you want to step down for</p> <p>7 now. We'll see you in the morning at 9:00.</p> <p>8 THE WITNESS: Sounds good.</p> <p>9 THE COURT: I have a homework assignment</p> <p>10 for you, counsel. I know tomorrow we will do</p> <p>11 closing arguments. Here is my question:</p> <p>12 So, in reviewing NRS 22.100 again this</p> <p>13 morning and this afternoon, Subsection 3 relates to</p> <p>14 additional damages beyond the \$500 or imprisonment</p> <p>15 as options, imprisonment not to exceed 25 days.</p> <p>16 So, my question is: Subsection 3 has other</p> <p>17 reasonable expenses including, without limitation,</p> <p>18 attorney fees incurred by the party as a result of</p> <p>19 the contempt.</p> <p>20 My question for you to think about over the</p> <p>21 evening and talk about with your teams is whether</p> <p>22 and to the extent that receivership expenses and the</p> <p>23 expenses of the receiver attending and participating</p> <p>24 in this proceeding fall within the scope of</p>

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<p style="text-align: right;">Page 290</p> <p>1 Subsection 3.</p> <p>2 Anybody have anything else for tonight?</p> <p>3 MR. SMITH: To repeat, to see if the</p> <p>4 receivership expenses and the cost of receiving</p> <p>5 participating in this proceeding fall within the</p> <p>6 scope of Subsection 3.</p> <p>7 THE COURT: Of 22.100, yes.</p> <p>8 Anybody else have something you want to</p> <p>9 tell me? I have a conference call at 8:00 that will</p> <p>10 last 45 minutes. And I'll do it here so I'll be</p> <p>11 ready to start at 9:00.</p> <p>12 MR. MILLER: Your Honor, do you want to put</p> <p>13 any time limit on the closings?</p> <p>14 THE COURT: How much longer you have with</p> <p>15 him, with Mr. Brady?</p> <p>16 MR. MILLER: Hopefully, not more than 15</p> <p>17 minutes.</p> <p>18 THE COURT: Okay. So, I took up the rest</p> <p>19 of your time. That's why you didn't finish this</p> <p>20 afternoon.</p> <p>21 MR. MILLER: Yes.</p> <p>22 THE COURT: Yeah, yeah right. I don't</p> <p>23 believe it for a minute.</p> <p>24 How long is the redirect, Mr. McElhinney?</p>	<p style="text-align: right;">Page 292</p> <p>1 STATE OF NEVADA)</p> <p>2) ss.</p> <p>3 COUNTY OF WASHOE)</p> <p>4</p> <p>5 I, TINA M. DALPINO, a Certified Court Reporter</p> <p>6 in and for the states of Nevada and California, do</p> <p>7 hereby certify:</p> <p>8 That I was personally present for the purpose</p> <p>9 of acting as Certified Court Reporter in the matter</p> <p>10 entitled herein;</p> <p>11 That said transcript which appears hereinbefore</p> <p>12 was taken in verbatim stenotype notes by me and</p> <p>13 thereafter transcribed into typewriting as herein</p> <p>14 appears to the best of my knowledge, skill, and</p> <p>15 ability and is a true record thereof.</p> <p>16</p> <p>17 DATED: At Reno, Nevada, this 30th day of June 2023.</p> <p>18</p> <p>19 ___/S/ Tina M. DalPino</p> <p>20 Tina M. DalPino, CCR #641</p> <p>21 -o0o-</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 291</p> <p>1 MR. McELHINNEY: I'm guessing an hour, your</p> <p>2 Honor.</p> <p>3 THE COURT: Okay. So, my guess is we will</p> <p>4 finish the witness by about 10:30 and then we will</p> <p>5 start with closings. We'll go until lunchtime with</p> <p>6 you, hopefully, and then break and start with Mr.</p> <p>7 McElhinney.</p> <p>8 If you want time limits, I will. But,</p> <p>9 otherwise, given the estimates that you both told</p> <p>10 me, it was about an hour, hour and a half. And my</p> <p>11 calculation of time based on what I think you need</p> <p>12 from Mr. Brady is you have plenty of time. My plane</p> <p>13 is not until 7:00. What else?</p> <p>14 MR. McELHINNEY: Nothing further, your</p> <p>15 Honor.</p> <p>16 THE COURT: Okay. Have a nice evening.</p> <p>17 See you in the morning.</p> <p>18 (End of proceedings at 5:01</p> <p>19 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 293</p> <p>1 HEALTH INFORMATION PRIVACY & 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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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 HONORABLE ELIZABETH GONZALEZ, SENIOR JUDGE

8 -o0o-

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

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

16 _____/

17

18 TRANSCRIPT OF PROCEEDINGS

19 CONTEMPT TRIAL - DAY 4

20 JUNE 9, 2023

21 RENO, NEVADA

22

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

24 JOB NO. 975735

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

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

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

MS. COLLINGS: Absolutely.

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

MR. SMITH: It is.

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

MR. SMITH: Yep. I understand.

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

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WITNESS

DAVID REED BRADY

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EXHIBITS

NUMBER	DESCRIPTION	MARKED	ADMITTED
Exhibit 143	E-mail from Stephanie Sharp to David McElhinney & Jarrad Miller	--	12
Exhibit 147	MEI-GSR Holdings, LLC Business Entity Information	13	13
Exhibit 148	Order Granting Motion for Instructions to Receiver	13	14
Exhibit D-2	PowerPoint Presentation by David McElhinney	130	--

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

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

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

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

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

THE CLERK: Yes, Your Honor.

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

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

CONTEMPT TRIAL, DAY 4 (THOMAS VS. MEI-GSR) - 06/09/2023

<p style="text-align: right;">Page 6</p> <p>1 evening, so I thought it was best for me to ask my questions</p> <p>2 so everybody could think about what I asked over the</p> <p>3 evening, so you may resume.</p> <p>4 MR. McELHINNEY: Your Honor, before we get</p> <p>5 started, I would like to make I guess sort of an</p> <p>6 announcement for lack of a better term.</p> <p>7 THE COURT: An announcement?</p> <p>8 MR. McELHINNEY: Well, that may be a bit dramatic,</p> <p>9 but last night --</p> <p>10 THE COURT: Did you settle the case last night?</p> <p>11 MR. McELHINNEY: No.</p> <p>12 THE COURT: Oh, darn. That would have been an</p> <p>13 announcement.</p> <p>14 MR. McELHINNEY: We are sensitive, Your Honor,</p> <p>15 about the issue of money that is owed the Plaintiffs. Last</p> <p>16 night I went to my computer, I located the e-mail from</p> <p>17 Stephanie Sharp and I opened it, the encrypted message.</p> <p>18 THE COURT: The encrypted one?</p> <p>19 MR. McELHINNEY: Yes. So now we have wiring</p> <p>20 instructions to the account that got opened a couple of days</p> <p>21 ago. We wired into --</p> <p>22 THE COURT: A couple weeks ago.</p> <p>23 MR. McELHINNEY: A couple weeks ago, fair enough.</p> <p>24 The amount that we wired in is \$274,674.44.</p>	<p style="text-align: right;">Page 8</p> <p>1 details what those funds represented?</p> <p>2 MR. McELHINNEY: I don't believe so. I think it</p> <p>3 was just a wire last night.</p> <p>4 THE COURT: Mr. Brady.</p> <p>5 THE WITNESS: There is backup. Sorry, this was at</p> <p>6 I think 10:00 or 11:00 last night. So I have the backup. I</p> <p>7 will send it to Mr. Teischner.</p> <p>8 THE COURT: Thank you.</p> <p>9 THE WITNESS: It details each condo owner and the</p> <p>10 statements will come out with those balances when they come</p> <p>11 out on, they will come out with the balances before the</p> <p>12 payout.</p> <p>13 THE COURT: So Mr. Teischner will get a copy of</p> <p>14 the spreadsheet. I would ask you to also provide a copy to</p> <p>15 Mr. McElhinney who will then provide that same spreadsheet</p> <p>16 to counsel. Is that okay with you?</p> <p>17 THE WITNESS: Yes, Your Honor.</p> <p>18 THE COURT: Thank you, Mr. Brady. I appreciate</p> <p>19 that. Mr. Miller.</p> <p>20 MR. MILLER: Thank you, Your Honor. Just for</p> <p>21 clarity, I assume that there is no objection to the</p> <p>22 Receiver --</p> <p>23 THE COURT REPORTER: I'm sorry, do you have a mic?</p> <p>24 MR. MILLER: I don't have one.</p>
<p style="text-align: right;">Page 7</p> <p>1 THE COURT: Give me that number again, please.</p> <p>2 MR. McELHINNEY: Yes. \$274,674.44.</p> <p>3 THE WITNESS: Sorry, it's \$79.</p> <p>4 THE COURT: Thank you, Mr. Brady. \$274,679.44.</p> <p>5 THE WITNESS: Not 74.</p> <p>6 MR. McELHINNEY: Okay. I should have checked with</p> <p>7 you. You are my numbers guy.</p> <p>8 THE COURT: And he is testifying under oath to</p> <p>9 that number.</p> <p>10 MR. McELHINNEY: Yes, yes.</p> <p>11 THE COURT: Because he already has been sworn this</p> <p>12 morning.</p> <p>13 MR. McELHINNEY: So, Your Honor, that represents</p> <p>14 the amount of money that is owed the Plaintiffs. Of course</p> <p>15 it does not, it's not a delta between, remember, there are a</p> <p>16 number of Plaintiffs who owe us money, about \$171,000. Is</p> <p>17 that right, Mr. Brady?</p> <p>18 THE WITNESS: Yes, roughly around that.</p> <p>19 MR. McELHINNEY: We didn't do an offset. We just</p> <p>20 paid the Plaintiffs the money they are owed. Again, once we</p> <p>21 had the wiring instructions that's what we did.</p> <p>22 THE COURT: May I ask a question?</p> <p>23 MR. McELHINNEY: Yes, please.</p> <p>24 THE COURT: Was a spreadsheet sent to someone that</p>	<p style="text-align: right;">Page 9</p> <p>1 THE COURT: Why don't you have one?</p> <p>2 MR. MILLER: Oh, sorry. Because I'm not paying</p> <p>3 attention.</p> <p>4 I assume that there is no objection to the</p> <p>5 Receiver releasing those back due rents to the Plaintiffs?</p> <p>6 THE COURT: Absolutely there is, because remember</p> <p>7 in my order it said before the release of any funds occurred</p> <p>8 the Receiver had to request it from the Court.</p> <p>9 MR. MILLER: Oh, okay.</p> <p>10 THE COURT: So that was what my order provided so</p> <p>11 that there will be a mechanism for me to approve any</p> <p>12 disbursements that the Receiver makes.</p> <p>13 MR. MILLER: I'm glad we have that point of</p> <p>14 clarification. I was assuming because --</p> <p>15 THE COURT: I'm also going to clarify another</p> <p>16 order today and I want you guys to be thinking of it, the</p> <p>17 order that we all now understand I assume too much that the</p> <p>18 Receiver was going to be able to act as the renter of the</p> <p>19 units under the Unit Rental Agreement. You all correctly</p> <p>20 along with the Receiver interpreted that more correctly that</p> <p>21 he can't do that, he is not equipped to, and so the</p> <p>22 Defendants are performing that service.</p> <p>23 I'm going to enter an oral modification of that</p> <p>24 order at the conclusion of these proceedings today. I may</p>

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<p style="text-align: right;">Page 10</p> <p>1 add some other things to it, so please be thinking about</p> <p>2 that to engage me in a discussion as I say those things, so</p> <p>3 that if there is something you think is impossible to comply</p> <p>4 with or you think is unsatisfactory in documentation that I</p> <p>5 can make sure that I address those concerns.</p> <p>6 MR. McELHINNEY: Thank you, Your Honor.</p> <p>7 MR. MILLER: Your Honor, can I make an oral motion</p> <p>8 for the release of those funds, those back due rents</p> <p>9 under --</p> <p>10 THE COURT: The Receiver has to make that request.</p> <p>11 MR. MILLER: Okay. Thank you.</p> <p>12 THE COURT: Not you.</p> <p>13 THE WITNESS: Your Honor, can you repeat that</p> <p>14 number? Since I'm under oath, I want to make sure that it</p> <p>15 is correct.</p> <p>16 THE COURT: The number you told me, \$274,679.44.</p> <p>17 Thank you for confirming that, Mr. Brady.</p> <p>18 THE WITNESS: That is correct.</p> <p>19 THE COURT: He nodded. Nods don't come across on</p> <p>20 the record, but I am making a reflection on the record that</p> <p>21 he nodded affirmatively that that number was correct.</p> <p>22 Any other announcements?</p> <p>23 MR. McELHINNEY: Nothing for the Defense,</p> <p>24 Your Honor.</p>	<p style="text-align: right;">Page 12</p> <p>1 Rules of Civil Procedure clearly apply.</p> <p>2 MR. SMITH: I made the objection. I just think</p> <p>3 due to the procedural posture of the case it doesn't, but I</p> <p>4 understand Your Honor's position.</p> <p>5 THE COURT: Did you turn on your microphone?</p> <p>6 MR. MILLER: Yes.</p> <p>7 THE COURT: I'm turning mine off, because I have</p> <p>8 feedback.</p> <p>9 Do you want to go back and readmit that e-mail,</p> <p>10 now that Mr. McElhinney found it, the redacted e-mail?</p> <p>11 MR. McELHINNEY: Yeah, I have opened it, so I have</p> <p>12 no further objection to its admission.</p> <p>13 THE COURT: Do you remember the number? Is it</p> <p>14 142?</p> <p>15 THE CLERK: 143, Your Honor.</p> <p>16 THE COURT: 143. Any objection to the admission</p> <p>17 of 143 so I can keep my record clean?</p> <p>18 MR. McELHINNEY: No objection, Your Honor.</p> <p>19 THE COURT: 143 will be admitted.</p> <p>20</p> <p>21 (Exhibit Number 143 was admitted into evidence.)</p> <p>22</p> <p>23 MR. MILLER: Your Honor, I would like to move for</p> <p>24 the admission of a new exhibit. I believe it's 146, or 147.</p>
<p style="text-align: right;">Page 11</p> <p>1 THE COURT: Since I finished my counseling session</p> <p>2 with my case at 8:00, may I then hear additional testimony</p> <p>3 from Mr. Brady?</p> <p>4 MR. MILLER: Yes, Your Honor. I have an</p> <p>5 evidentiary matter I would like to address first and that is</p> <p>6 I would like to move for the admission of the deposition of</p> <p>7 Alex Mervelo pursuant to Nevada Rules of Civil Procedure</p> <p>8 32(3) which states an adverse party may use for any purpose</p> <p>9 the deposition of a party or anyone who when deposed was the</p> <p>10 parties' officer, director, manager, agent or --</p> <p>11 THE COURT: You are not looking up at the Judge.</p> <p>12 So I'm not going to admit the deposition. I will permit you</p> <p>13 in your rebuttal case to read in any portions of the</p> <p>14 deposition that you like as testimonial evidence because you</p> <p>15 can use it for any purpose, but I'm not going to read it</p> <p>16 when you guys aren't with me. You are going to read it and</p> <p>17 suffer with me.</p> <p>18 MR. MILLER: Okay.</p> <p>19 MR. SMITH: Yes, Your Honor. I would just lodge a</p> <p>20 quick objection. I don't think that rule applies to these</p> <p>21 types of proceedings.</p> <p>22 THE COURT: Oh, I absolutely think it applies to</p> <p>23 these kind of proceedings. You and I will disagree about</p> <p>24 lots of things about what this proceeding is, but the Nevada</p>	<p style="text-align: right;">Page 13</p> <p>1 THE COURT: Did you show it to Mr. McElhinney?</p> <p>2 MR. MILLER: Yes, Your Honor.</p> <p>3</p> <p>4 (Exhibit Number 147 was marked for identification.)</p> <p>5</p> <p>6 THE COURT: Mr. McElhinney, any objection to 147?</p> <p>7 MR. McELHINNEY: No objection.</p> <p>8 THE COURT: 147 will be admitted.</p> <p>9</p> <p>10 (Exhibit Number 147 was admitted into evidence.)</p> <p>11</p> <p>12 CROSS-EXAMINATION</p> <p>13 BY MR. MILLER:</p> <p>14 Q Mr. Brady, in your prior testimony I believe you</p> <p>15 referenced a daily resort fee?</p> <p>16 A Yes.</p> <p>17 Q Do you understand that the Court has issued an</p> <p>18 order concerning the daily resort fee?</p> <p>19 A I was not aware, no.</p> <p>20 Q Okay.</p> <p>21</p> <p>22 (Exhibit Number 148 was marked for identification.)</p> <p>23</p> <p>24 MR. MILLER: Your Honor, I would like to move for</p>

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<p style="text-align: right;">Page 14</p> <p>1 the admission of 148.</p> <p>2 THE COURT: Any objection to 148, Mr. McElhinney?</p> <p>3 MR. McELHINNEY: No objection, Your Honor.</p> <p>4 THE COURT: I'm forgetting to turn on my mic. The</p> <p>5 court reporter keeps turning and looking at me.</p> <p>6 MR. McELHINNEY: I apologize, Your Honor. No, no</p> <p>7 objection.</p> <p>8 THE COURT: Thank you. It will be admitted.</p> <p>9</p> <p>10 (Exhibit Number 148 was admitted into evidence.)</p> <p>11</p> <p>12 BY MR. MILLER:</p> <p>13 Q All right. Mr. Brady, I believe the Court</p> <p>14 yesterday asked you if you can recall when the last time</p> <p>15 rents were paid out to the Plaintiffs?</p> <p>16 A I believe so.</p> <p>17 Q Do you recall when the last time rental checks</p> <p>18 were distributed to the Plaintiffs?</p> <p>19 A I'm not 100 percent certain, but I would think it</p> <p>20 would be right around -- actually, I'm not 100 percent</p> <p>21 certain.</p> <p>22 Q Does January of 2020 sound familiar?</p> <p>23 A I was thinking right around that time, yes,</p> <p>24 because, sorry, we do pay out checks, but I'm not sure which</p>	<p style="text-align: right;">Page 16</p> <p>1 Q Are you, are you familiar with roughly what the</p> <p>2 gross rents are for an average unit in the Summit Tower per</p> <p>3 month?</p> <p>4 A I don't have the statements in front of me, so --</p> <p>5 Q Do you have a general understanding, is it 2 to</p> <p>6 \$3,000?</p> <p>7 A Depending on how many nights were rented, ADR can</p> <p>8 be, sorry, average daily rate can be anywhere from, geez,</p> <p>9 can go as low as \$50 to up to \$200 on average, so, you know,</p> <p>10 let's call it \$150. Yeah, times 10 to 20 rooms, so \$1,500</p> <p>11 to \$3,000.</p> <p>12 Q Okay. And Plaintiffs have roughly 100 units?</p> <p>13 A Minus -- 93.</p> <p>14 Q 93 units?</p> <p>15 A Well, 95.</p> <p>16 Q Okay.</p> <p>17 A Because of the --</p> <p>18 Q So on average per month the Grand Sierra is taking</p> <p>19 in 150 to \$300,000 for the Plaintiffs' units gross rents?</p> <p>20 A I would say right around there, correct.</p> <p>21 Q And since approximately January of 2020 they</p> <p>22 haven't received any money for the rental of their units?</p> <p>23 A Well, it wasn't until May of 2023 that gross rents</p> <p>24 was even in discussion, so --</p>
<p style="text-align: right;">Page 15</p> <p>1 condo owners.</p> <p>2 Q Okay. Are you confident that no Plaintiff rental</p> <p>3 checks were issued in all of January 2021?</p> <p>4 A All of January of 2021?</p> <p>5 Q I'm sorry, all of 2021. For the whole entire year</p> <p>6 of 2021 do you believe that no rental checks were issued to</p> <p>7 any of the Plaintiffs?</p> <p>8 A I'm not 100 percent confident. I would have to go</p> <p>9 back and see, but I would probably say very little, if any,</p> <p>10 very little were paid out.</p> <p>11 Q Okay. And that would be the same for 2022?</p> <p>12 A Same answer, yes.</p> <p>13 Q And then the same for 2023 thus far?</p> <p>14 A During those years we were waiting for</p> <p>15 Mr. Teischner to do his net revenues as he stated many</p> <p>16 times, so we were waiting for him.</p> <p>17 Q Okay. And I'm not sure, I'm not sure that</p> <p>18 answered my question, but so for all of 2023 you don't</p> <p>19 believe that any rental checks were issued for the</p> <p>20 Plaintiffs?</p> <p>21 A For the Plaintiffs, no, I would have to --</p> <p>22 Q Okay.</p> <p>23 A Because we would pay Mr. Teischner per the order,</p> <p>24 so the net revenues.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q And that wasn't my question.</p> <p>2 A Understood.</p> <p>3 Q Okay.</p> <p>4 A Sorry, can you repeat the question?</p> <p>5 Q So despite receiving between 150 to \$300,000 a</p> <p>6 month in gross rents for the Plaintiff units, since January</p> <p>7 of 2020 the Plaintiffs have basically not received any</p> <p>8 money; is that correct?</p> <p>9 A In January of 2020 their total Plaintiffs, they</p> <p>10 actually had a due to us, so.</p> <p>11 Q And that's under the fees that the Court</p> <p>12 specifically rejected; is that correct?</p> <p>13 A Not at that time from January 2020 they were not</p> <p>14 rejected. From February 2020 they were not rejected, so.</p> <p>15 Q Did the Court ultimately reject it; is that</p> <p>16 correct?</p> <p>17 A The Court ultimately rejected it, yes.</p> <p>18 Q Yes. Okay. Let me have you -- oh, can I get</p> <p>19 Exhibit 103, please, or the binder with Exhibit 103. You</p> <p>20 have the whole binder. Thank you.</p> <p>21 A Thank you. Sorry, let me get situated here.</p> <p>22 103 you said?</p> <p>23 Q Yes.</p> <p>24 A Okay.</p>

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<p style="text-align: right;">Page 18</p> <p>1 Q Do you recognize this document?</p> <p>2 A I do.</p> <p>3 Q And this is an owner account statement dated</p> <p>4 April 20th, 2023. Do you recognize that?</p> <p>5 A Yes, for the period of March.</p> <p>6 Q So for the period of March it shows no rental</p> <p>7 activity; is that correct?</p> <p>8 A That is correct.</p> <p>9 Q And I'm just trying to understand your prior</p> <p>10 testimony. You had indicated a reason for stopping the</p> <p>11 rental of the units in March?</p> <p>12 A I believe Mr. McElhinney did, but on February 28th</p> <p>13 an order went out that dissolved the condo ownership units'</p> <p>14 URA, CC&Rs, and Unit Maintenance Agreement.</p> <p>15 Q Okay.</p> <p>16 THE COURT: I didn't dissolve the rental</p> <p>17 agreement. Okay. Let's keep going.</p> <p>18 THE WITNESS: Correct. I think later you came</p> <p>19 back, correct, yes.</p> <p>20 MR. McELHINNEY: Your Honor, I guess I'm going to</p> <p>21 impose an objection to Your Honor's comments as though that</p> <p>22 is a finding. If the units no longer exist, the URA no</p> <p>23 longer exists.</p> <p>24 THE COURT: The URA is an individual agreement</p>	<p style="text-align: right;">Page 20</p> <p>1 A That is not correct.</p> <p>2 Q Oh, so you continued to rent your, or the</p> <p>3 Defendant-owned units during that time period even though</p> <p>4 the units no longer existed?</p> <p>5 A Correct.</p> <p>6 Q All right. You had, my recollection is that you</p> <p>7 had some testimony yesterday that concerned what occurred</p> <p>8 during COVID and I'm not sure I exactly understood your</p> <p>9 testimony.</p> <p>10 I think you said that during those months when</p> <p>11 there was basically no expenses because of the, or very few</p> <p>12 expenses because the condo operation, I mean the casino was</p> <p>13 closed, that instead of using those months in the actual</p> <p>14 budgets you went back to 2019 and used those numbers for the</p> <p>15 closed period of time?</p> <p>16 A For the 2021 budget?</p> <p>17 Q Yeah.</p> <p>18 A Absolutely.</p> <p>19 Q Okay. So was there ever a true-up to adjust so</p> <p>20 that the Plaintiffs didn't have to pay for those months</p> <p>21 where these expenses weren't exactly incurred?</p> <p>22 A Yes.</p> <p>23 Q Okay. And then you understand the daily use fee,</p> <p>24 the components of it. One of the components is</p>
<p style="text-align: right;">Page 19</p> <p>1 with the owner of the unit and the unit remains in existence</p> <p>2 until the sale. The sale has not occurred.</p> <p>3 MR. McELHINNEY: I don't mean to be argumentative</p> <p>4 with the Court.</p> <p>5 THE COURT: You guys are going to deal with it at</p> <p>6 the Supreme Court, and I'm going to have my position, and</p> <p>7 you all are going to have your position, and somebody is</p> <p>8 going to make a decision later, but I'm going to make</p> <p>9 interim orders to fix what's going on right now.</p> <p>10 MR. McELHINNEY: Understood, Your Honor. I just</p> <p>11 don't want the record -- I want the record to be clear that</p> <p>12 I don't agree with your position.</p> <p>13 THE COURT: I certainly understand. Jordan Smith</p> <p>14 has told me that several times and I understand his</p> <p>15 position. I disagree.</p> <p>16 BY MR. MILLER:</p> <p>17 Q So if I understand your counsel's position</p> <p>18 correctly, the units no longer existed, that's why you</p> <p>19 stopped renting them?</p> <p>20 A I'm not an expert on that, but, yes, as of</p> <p>21 February 28th.</p> <p>22 Q So I assume if that held true that none of the 670</p> <p>23 units that are in the condo association were rented during</p> <p>24 that time period?</p>	<p style="text-align: right;">Page 21</p> <p>1 housekeeping; is that correct?</p> <p>2 A Correct.</p> <p>3 Q Is that a significant portion of the daily use</p> <p>4 fee?</p> <p>5 A Yes.</p> <p>6 Q And is a significant portion of the housekeeping</p> <p>7 the labor for the person to actually clean the room?</p> <p>8 A That's, I would say that's probably 60 percent of</p> <p>9 the housekeeping.</p> <p>10 Q Okay. And is it your understanding that during</p> <p>11 COVID, you know, for some time period from 2020 deep into</p> <p>12 2021 that it was the hotel policy that if you had a</p> <p>13 multi-day stay in a room that because of COVID that the room</p> <p>14 would only get cleaned once. It wasn't getting cleaned</p> <p>15 everyday during COVID because of the implications of COVID?</p> <p>16 A That is correct, but --</p> <p>17 Q All right. And for that period, at least from my</p> <p>18 review of the monthly statements, even though you would have</p> <p>19 a multi-day stay where the rooms weren't being cleaned</p> <p>20 everyday, you still had that 30 plus dollar charge for the</p> <p>21 daily use fee. Was that ever tried up?</p> <p>22 A They could, they could come and ask to get</p> <p>23 cleaned.</p> <p>24 Q Okay.</p>

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<p style="text-align: right;">Page 22</p> <p>1 A A lot of them did.</p> <p>2 Q How about --</p> <p>3 A They were still cleaning other rooms because there</p> <p>4 was constantly check-ins, check-outs. We could have up to</p> <p>5 1,500 check-ins on any given day.</p> <p>6 Q Did you ever, did you ever make any --</p> <p>7 THE COURT: You have got to let him finish. Were</p> <p>8 you done, sir?</p> <p>9 THE WITNESS: No. So when you have 1,500</p> <p>10 check-ins they are going, they are cleaning up to 20 rooms a</p> <p>11 day, which is we were paying over-time. We had to raise our</p> <p>12 prices for housekeepers. Because of the competitive market</p> <p>13 we could not hire housekeepers.</p> <p>14 After COVID, I don't know if you know this, but</p> <p>15 there was a labor shortage. Nobody wanted to work. So to</p> <p>16 actually hire anybody, everybody raised their rates. So it</p> <p>17 was, it was quite frankly a nightmare and everybody was</p> <p>18 working over-time. Everybody was exhausted. And so, yes,</p> <p>19 the expenses went up and, yes, we are a casino. We are</p> <p>20 opened 365 days a year and they have to constantly clean.</p> <p>21 BY MR. MILLER:</p> <p>22 Q So my question is did you ever make any effort to</p> <p>23 adjust the monthly unit statements for those days where the</p> <p>24 rooms weren't cleaned because it was a multi-day stay?</p>	<p style="text-align: right;">Page 24</p> <p>1 Are you familiar with the original calculations</p> <p>2 that were circulated in 2007 when the units were purchased</p> <p>3 in 2008?</p> <p>4 A Oh, I'm sorry, I took this, the original as 2020.</p> <p>5 Q No. So you were not --</p> <p>6 A I'm sorry.</p> <p>7 Q Okay. So I assume you were not in attendance</p> <p>8 during the days of hearings that we had on the propriety of</p> <p>9 the fees, the fees that were calculated in January of 2020</p> <p>10 that were ultimately rejected by the Court?</p> <p>11 A You said 2007. I'm sorry, 2020, yes.</p> <p>12 Q You were in attendance at those hearings?</p> <p>13 A In 2020?</p> <p>14 Q Yes.</p> <p>15 A What, in May?</p> <p>16 Q Yes.</p> <p>17 A Yeah.</p> <p>18 Q Okay.</p> <p>19 A Well, I was in the crowd.</p> <p>20 Q Do you recall Mr. Teischner being cross-examined</p> <p>21 about the original 2007 calculations versus the calculations</p> <p>22 that were being used in 2020?</p> <p>23 A I don't recall, I'm sorry.</p> <p>24 Q Have you ever went back in making your</p>
<p style="text-align: right;">Page 23</p> <p>1 A We -- that would be nearly impossible.</p> <p>2 Q Okay. So the answer is no?</p> <p>3 A No, due to the fact that we probably could not do</p> <p>4 it.</p> <p>5 Q All right. Let me have you refer to Exhibit 119.</p> <p>6 A Okay.</p> <p>7 Q Specifically let me have you refer to page 4 of</p> <p>8 Exhibit 119.</p> <p>9 A Okay.</p> <p>10 Q Starting at line 3, this portion of the Court's</p> <p>11 order, which is dated December 24th, 2020, states, "While</p> <p>12 the Receiver has some discretion in his calculations, he has</p> <p>13 no discretion to include in the fees any expense that is not</p> <p>14 specifically referenced in the Governing Documents."</p> <p>15 "As just one example, the record reflects that the</p> <p>16 Shared Facilities Unit is limited by definition in the CC&Rs</p> <p>17 to components located within the Condominium Property.</p> <p>18 Accordingly, the Receiver may not include in the Shared</p> <p>19 Facilities fees or expenses any expenses that are not</p> <p>20 derived from the limited Shared Facilities Unit."</p> <p>21 This next sentence is very important. It states,</p> <p>22 "Further, the Receiver should use the original fee</p> <p>23 calculations as a guide to compliance with the Governing</p> <p>24 Documents."</p>	<p style="text-align: right;">Page 25</p> <p>1 calculations under the Governing Documents and looked at</p> <p>2 those original calculations that were provided in</p> <p>3 approximately 2007, 2008 when nobody was trying to unduly</p> <p>4 increase or decrease the calculations?</p> <p>5 A I have gone through the CC&Rs. I don't</p> <p>6 specifically know about the 2007, but what I can say is that</p> <p>7 from 2007 until now GSR is 100 percent different.</p> <p>8 Q Okay. But are the CC&Rs 100 percent different</p> <p>9 than they were when they were adopted?</p> <p>10 A No.</p> <p>11 Q Okay. And do you think that Mr. Teischner and</p> <p>12 Ms. Sharp would have followed the Court's order in redoing</p> <p>13 their calculations and looked at the original calculations</p> <p>14 as specifically ordered by the Court?</p> <p>15 MR. McELHINNEY: Objection; speculation.</p> <p>16 THE COURT: Overruled.</p> <p>17 THE WITNESS: The original in 2007 -- well, when I</p> <p>18 see this, the original fee calculations, I'm thinking of the</p> <p>19 2020, because this was in December 24, so I'm not sure which</p> <p>20 one this reference is to, I'm sorry.</p> <p>21 BY MR. MILLER:</p> <p>22 Q Does that make any sense to you that the Court</p> <p>23 would order them to go back and look at the calculations</p> <p>24 that the Court just rejected?</p>

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<p style="text-align: right;">Page 26</p> <p>1 A Mr. Miller, I don't think I would ever go back to</p> <p>2 any of my files from 2007 --</p> <p>3 Q All right.</p> <p>4 A -- or worksheets and use those worksheets because</p> <p>5 the accounting principles change, GAAP changes, so I can't</p> <p>6 use 2007 because in 2020 there is so many different things</p> <p>7 that have changed since then that I would not be able to use</p> <p>8 the 2007.</p> <p>9 I could maybe use the, you know, the 10,000 foot</p> <p>10 level, but for 2007 numbers I cannot honestly use, or the</p> <p>11 worksheets, I cannot honestly use them because of a</p> <p>12 multitude of things.</p> <p>13 Q Okay. Let me have you -- did I give you the</p> <p>14 binder with Exhibit 1?</p> <p>15 A No, I have 39.</p> <p>16 Q Okay.</p> <p>17 A Thank you, sir.</p> <p>18 Q In the top left-hand corner of Exhibit 1, which is</p> <p>19 the 7th Amendment to the Condominium Declaration, what we</p> <p>20 have been referring to as the CC&Rs, do you see in the top</p> <p>21 left-hand corner where it states Shawn Oliphant, Esquire and</p> <p>22 that's where it's supposed to go when it is recorded?</p> <p>23 A Yes.</p> <p>24 Q Okay. Has anyone ever indicated to you that</p>	<p style="text-align: right;">Page 28</p> <p>1 too limited in the scope based on the CC&Rs.</p> <p>2 Q If you are a neutral attorney representing a</p> <p>3 Receiver do you think it would make more sense for you to</p> <p>4 rely upon Shawn Oliphant, the drafter of the CC&R's opinions</p> <p>5 about what should and should not be included or rely upon</p> <p>6 counsel for the Defendants?</p> <p>7 MR. McELHINNEY: Asked and answered, Your Honor.</p> <p>8 Objection.</p> <p>9 THE COURT: Overruled. You can answer.</p> <p>10 THE WITNESS: I think that's one thing, yeah, you</p> <p>11 would have to go to the original person that drafted it, but</p> <p>12 at the same time this was drafted in 2007, so things have</p> <p>13 changed.</p> <p>14 BY MR. MILLER:</p> <p>15 Q But, again -- sorry, I thought you were done.</p> <p>16 THE COURT: Had you finished?</p> <p>17 THE WITNESS: Sure.</p> <p>18 BY MR. MILLER:</p> <p>19 Q But, again, the CC&Rs have not changed; is that</p> <p>20 correct?</p> <p>21 A No, they have not changed.</p> <p>22 Q Let me have you refer to Exhibit 130 if it's in</p> <p>23 front of you.</p> <p>24 A Yeah.</p>
<p style="text-align: right;">Page 27</p> <p>1 Shawn Oliphant is the attorney that drafted these CC&Rs?</p> <p>2 A No.</p> <p>3 Q Okay. Assuming Shawn Oliphant is the attorney</p> <p>4 that drafted these CC&Rs, would it make more sense for</p> <p>5 Stephanie Sharp in inquiring about what should and shouldn't</p> <p>6 go in the CC&R's to converse with Mr. Shawn Oliphant, the</p> <p>7 drafter, rather than Gayle Kern who represents the</p> <p>8 Defendants?</p> <p>9 A I can't answer that, I'm sorry. I don't know</p> <p>10 either.</p> <p>11 Q So Stephanie Sharp, right, she is the counsel for</p> <p>12 the Receiver. You understand that, right?</p> <p>13 A Correct.</p> <p>14 Q And we have heard a lot of testimony from</p> <p>15 Mr. Teischner that he relied upon Stephanie Sharp, right, in</p> <p>16 determining what should and should not be included in the</p> <p>17 calculations?</p> <p>18 A That is correct.</p> <p>19 Q Okay. So you understand that. And then I</p> <p>20 believe -- oh, this is, I believe your counsel had indicated</p> <p>21 that Ms. Kern didn't agree with some of the stuff that</p> <p>22 Stephanie Sharp did. Is that accurate?</p> <p>23 A I believe Mr. McElhinney said yesterday that it</p> <p>24 was too limited, so I would assume that Stephanie Sharp was</p>	<p style="text-align: right;">Page 29</p> <p>1 THE COURT: Do you have 130?</p> <p>2 THE WITNESS: Yes, Your Honor.</p> <p>3 THE COURT: Thank you.</p> <p>4 BY MR. MILLER:</p> <p>5 Q Exhibit 130 is Defendants' Reply in Support of</p> <p>6 Motion for Instructions to Receiver Regarding Reimbursement</p> <p>7 of Capital Expenditures, and it's dated July 10th, 2020.</p> <p>8 A Yes.</p> <p>9 Q Let me have you refer to page 13 of this document.</p> <p>10 A Okay.</p> <p>11 Q This document states at page 13, starting at</p> <p>12 line 2, "For these reasons, Defendants request the Court</p> <p>13 instruct the Receiver to allow Defendants to withdraw</p> <p>14 \$8,030,701 out of the reserves for the cost of capital</p> <p>15 expenditures to the property and impose a special assessment</p> <p>16 on all Unit Owners to maintain the reserves at the</p> <p>17 appropriate levels consistent with an independent Reserve</p> <p>18 Study."</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q I don't understand why if in July of 2020 you are</p> <p>22 specifically asking the Court for permission to withdraw</p> <p>23 money from the reserves, why then in 2021 and 2022 do you</p> <p>24 withdraw over \$16 million from the reserves without any</p>

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<p style="text-align: right;">Page 30</p> <p>1 permission from the Court?</p> <p>2 A I think I answered this with Mr. McElhinney, but I</p> <p>3 met with legal counsel and the executive team and it was</p> <p>4 determined that due to us doing the Summit remodel and it</p> <p>5 was specifically for the condo units themselves that it was</p> <p>6 imperative, and millions of dollars of expenses were coming</p> <p>7 in for the condo units, that it was imperative that -- and</p> <p>8 there was no motion that actually denied us of taking money</p> <p>9 out of the reserves, so we concluded that we would take</p> <p>10 money out of the reserves.</p> <p>11 Q Who was on this condo committee that gave you the</p> <p>12 instruction that it was okay to take the money out of the</p> <p>13 reserves?</p> <p>14 A I think I said condo legal team and executive</p> <p>15 team.</p> <p>16 Q Okay. Who were the members of the executive team?</p> <p>17 A On the executive team, it's all VP's and executive</p> <p>18 directors, so there is, I think there is 12 of us. I can</p> <p>19 list them, if you want.</p> <p>20 Q I would like that, please.</p> <p>21 A Sure. The GM, myself, Kent Vaughan.</p> <p>22 Q Who is the GM?</p> <p>23 A Sorry, Shannon Keel.</p> <p>24 Q Okay.</p>	<p style="text-align: right;">Page 32</p> <p>1 collectively it was decided with input from our legal</p> <p>2 counsel, of course.</p> <p>3 Q Could the Grand Sierra Resort have waited for an</p> <p>4 order from the Court to withdraw any funds from the reserves</p> <p>5 during the period of 2021, 2022 or even this year?</p> <p>6 A Again, we all got together and after looking at</p> <p>7 all of the orders there was no, and the CC&Rs, there was no</p> <p>8 order that said that we could not withdraw the funds, so</p> <p>9 then we determined at that time that it was okay to withdraw</p> <p>10 the funds due to the fact that we were starting the condo</p> <p>11 units themselves, floor 17 through 24, so, for Summit Tower.</p> <p>12 Q Okay. My question was different than your answer.</p> <p>13 It is could the GSR, MEI-GSR, have not withdrawn those funds</p> <p>14 from the reserves that are at issue in these Motions for</p> <p>15 Order to Show Cause, could the GSR have not drawn those,</p> <p>16 withdrawn those reserves until such time as a Court order</p> <p>17 was issued?</p> <p>18 A Could we have?</p> <p>19 Q That's exactly my question.</p> <p>20 A Yes, we could have.</p> <p>21 Q You could have waited for a Court order?</p> <p>22 A Again, we discussed this. This was part of it.</p> <p>23 We looked at all of the Court orders. There was nothing</p> <p>24 ordering us that we could not take the funds out.</p>
<p style="text-align: right;">Page 31</p> <p>1 A The, excuse me, the Senior Vice President of Hotel</p> <p>2 Operations, Ken Vaughan. The Senior VP of Marketing,</p> <p>3 Christopher Abraham. At that time it was, people go in and</p> <p>4 out, but for the most part that deal with the condos, I'm</p> <p>5 only going to list the people who deal with the condos, or</p> <p>6 do you want me to list them all?</p> <p>7 Q The individuals that authorized the withdrawal of</p> <p>8 these reserves without Court permission.</p> <p>9 A Sure. So it was, where was I, VP of F & B,</p> <p>10 Matt Mascali; VP of Security, Tim Cook; VP of HR, Virginia</p> <p>11 Crowe. I believe this is in 2021, '20, or '21, '22, sorry,</p> <p>12 excuse me. Executive Director of Marketing, Kaycea Grignon.</p> <p>13 VP of Purchasing and Warehouse, I'm drawing a blank.</p> <p>14 George -- wow, I'm drawing a blank on that. I will have to</p> <p>15 come back to that one.</p> <p>16 Q Do you recall the names of the legal counsel that</p> <p>17 agreed to this decision to withdraw from the reserves</p> <p>18 without a Court order?</p> <p>19 A Mr. McElhinney, Ann Hall, Abe Vigil. There were</p> <p>20 some Mervelo Group; Al Stoller, who is the corporate CFO,</p> <p>21 and Luis Armona.</p> <p>22 Q So Luis Armona agreed to this decision to withdraw</p> <p>23 from the reserves without a Court order?</p> <p>24 A I'm not sure if he 100 percent agreed, but</p>	<p style="text-align: right;">Page 33</p> <p>1 Q Now, this might, in my mind this is an important</p> <p>2 but a simple question. Could the Grand Sierra Resort have</p> <p>3 waited for a Court order to withdraw any funds from the</p> <p>4 reserves?</p> <p>5 A I thought I answered that, I'm sorry.</p> <p>6 Q I'm not asking you why. I just want a clear</p> <p>7 response for the record, and that is could the Grand Sierra</p> <p>8 Resort or MEI-GSR Holdings have waited for an order from the</p> <p>9 Court before it withdrew any funds from the reserves?</p> <p>10 A We could have gone either way.</p> <p>11 Q This is taking a lot longer I think than it</p> <p>12 should. Just listen to my question very carefully.</p> <p>13 A Mr. Miller, I heard your question and I believe I</p> <p>14 answered it. It could have gone either way.</p> <p>15 THE COURT: Let me ask the question slightly</p> <p>16 differently. Were any of the expenses of an emergent nature</p> <p>17 that required you to make the withdrawals?</p> <p>18 THE WITNESS: Emergent, yes.</p> <p>19 THE COURT: Emergency.</p> <p>20 THE WITNESS: Yes, these were all --</p> <p>21 THE COURT: Tell me why.</p> <p>22 THE WITNESS: Millions of dollars we were spending</p> <p>23 for these rooms, for specifically for these rooms. Deposits</p> <p>24 that were coming in for these rooms, we spent millions of</p>

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<p style="text-align: right;">Page 34</p> <p>1 dollars for the rooms and then we capitalized them for, you</p> <p>2 know, we had to pay our bills.</p> <p>3 THE COURT: And you believe that to be an</p> <p>4 emergency?</p> <p>5 THE WITNESS: An emergency for --</p> <p>6 THE COURT: That's why I'm asking if it was</p> <p>7 emergent.</p> <p>8 THE WITNESS: Yes. If a vendor comes after us and</p> <p>9 takes us to collections or we get in a fight with them about</p> <p>10 money, it is very detrimental to the company and our</p> <p>11 business.</p> <p>12 THE COURT: So your paying deposits to buy FF&E to</p> <p>13 do a remodel six years in the future was an emergency?</p> <p>14 THE WITNESS: Six years?</p> <p>15 THE COURT: It's still not done, right?</p> <p>16 THE WITNESS: Yeah. It will be done in 2024, but</p> <p>17 we did it in phases, Your Honor.</p> <p>18 THE COURT: Okay.</p> <p>19 BY MR. MILLER:</p> <p>20 Q So just for the record, and I believe this is a</p> <p>21 yes or no question, could MEI-GSR Holdings have waited for</p> <p>22 an order from the Court to withdraw funds from the reserves?</p> <p>23 A That was one of the things, yes, we could have.</p> <p>24 We could not have. I, I -- we discussed it.</p>	<p style="text-align: right;">Page 36</p> <p>1 paid 275 this morning, ish, sorry, so right now the</p> <p>2 Plaintiffs owe us \$171,000. So, again, it's not millions.</p> <p>3 There was never millions that the Plaintiffs, that we owed</p> <p>4 the Plaintiffs or the Plaintiffs owed us even with, you</p> <p>5 know, waiting on the net revenues. You know, that we</p> <p>6 applied the bond, that was a million dollars.</p> <p>7 We had to deposit \$7 million in order for us to</p> <p>8 get the furniture in time so the rooms would be ready in</p> <p>9 2024. This is a timing issue. So when you are talking</p> <p>10 about a million dollars, I'm talking about \$7 million.</p> <p>11 Q When did the Grand Sierra Resort or MEI-GSR</p> <p>12 Holdings contractually obligate itself to make these</p> <p>13 deposits for the FF&E for this furniture? Do you recall</p> <p>14 when GSR contractually obligated itself to make these</p> <p>15 payments?</p> <p>16 A I'm not -- I don't understand the question, I'm</p> <p>17 sorry.</p> <p>18 Q So roughly, right, \$3 million, \$3.6 million or so</p> <p>19 was the first amount that was withdrawn without Receiver</p> <p>20 approval, correct?</p> <p>21 A Correct.</p> <p>22 Q And you believe that that \$3.6 million was</p> <p>23 withdrawn as a result of some contractual obligation and</p> <p>24 that you would incur penalties if it wasn't withdrawn; is</p>
<p style="text-align: right;">Page 35</p> <p>1 THE COURT: Mr. Miller, you got your answer. Move</p> <p>2 on.</p> <p>3 MR. MILLER: All right.</p> <p>4 BY MR. MILLER:</p> <p>5 Q At the time that you withdrew these funds from the</p> <p>6 reserves without a Court order, were there any other source</p> <p>7 of funds that GSR held, MEI-GSR held in their bank accounts</p> <p>8 that could have been used to pay these what you consider to</p> <p>9 be emergency deposits or these deposits that you referenced?</p> <p>10 A We are, we -- I just want to make sure I answer</p> <p>11 this correctly and without going too far into our</p> <p>12 financials, but we are a company that holds our cash very</p> <p>13 tight and we know down to the penny of what pretty much our</p> <p>14 bank account will be.</p> <p>15 And the fact that we have to pay interest on a</p> <p>16 loan, we have a hundred, hundreds of million dollar loan</p> <p>17 that we have to pay interest on. Interest is rising</p> <p>18 drastically, I'm not sure if you are aware. So was there</p> <p>19 any other funds for this amount of money, I would say it</p> <p>20 would be tight.</p> <p>21 Q Was this not at the same time that you had been</p> <p>22 holding all of the rental income from the Plaintiffs' units</p> <p>23 going back to January 2020?</p> <p>24 A If you look at the statements currently, and we</p>	<p style="text-align: right;">Page 37</p> <p>1 that correct?</p> <p>2 A Yes, our vendors needed to get --</p> <p>3 Q What contract was that?</p> <p>4 A We have thousands of vendors that go into that.</p> <p>5 We have, we have to pay labor. We have to pay the</p> <p>6 furniture, FF&E. There is thousands of vendors, so I</p> <p>7 couldn't specifically pick a contract, I'm sorry.</p> <p>8 Q So the entire amount didn't apply to some specific</p> <p>9 contract. This was just a variation of expenses; is that</p> <p>10 correct?</p> <p>11 A That is correct.</p> <p>12 Q Good. Okay. And does that same principle hold</p> <p>13 true for the subsequent, was it 2. or \$12.8 million</p> <p>14 according to the Receiver's calculations that was taken from</p> <p>15 the reserves without Court approval?</p> <p>16 A The biggest one was \$7.2 million for a deposit for</p> <p>17 Graniti for FF&E furniture, and we needed to make that</p> <p>18 deposit because if we did not we would not get the furniture</p> <p>19 on time and we could not remodel the rooms in time.</p> <p>20 Q So if I understand your testimony correct,</p> <p>21 \$7.5 million of the \$12.8 million concerned a specific</p> <p>22 contract that had a penalty in it; is that correct?</p> <p>23 A It was due for us to start shipping the FF&E, so</p> <p>24 it would, the equipment, they will not ship the equipment</p>

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<p style="text-align: right;">Page 38</p> <p>1 unless you send, sorry, they will not build the equipment, 2 then ship it from China to get here in time. So, yes, there 3 is a lag and, yes, we had to make that deposit or -- 4 Q All right. 5 A -- the rooms would not get remodeled. It's been 6 eight years since the rooms were remodeled, even more now. 7 Q What about the other \$5 million, so even if we 8 assumed your proposition is correct that the 7.5 was going 9 to result in some interest penalties, what about the other 10 5 million that was taken on top of the 7 during that time 11 period when there was no approval from the Court? 12 A I have every single invoice, and Mr. Teischner 13 just like the last time in 2020, which still did not get, I 14 don't think it got, I don't think it got looked at for over 15 a year. So in 2020 he came by, extensively looked at all of 16 my invoices, and he actually agreed. 17 And it went to I believe you guys, your legal 18 counsel, and there was no, I think you guys had some 19 questions and it kind of stalled out. So he was in 20 agreement with me. He had questions back and forth like we 21 always do, but he went over invoices. 22 I have invoices for everything that we took out, 23 and if the Receiver would like to see them during this time, 24 he was not working. He said clearly that he was not doing</p>	<p style="text-align: right;">Page 40</p> <p>1 THE COURT: Mr. Smith and I both know about that 2 case. 3 MR. SMITH: Yes, Your Honor. 4 THE COURT: Mr. Smith would you like to address 5 the issue? 6 MR. SMITH: I would, Your Honor. I think my name 7 is on that one, too. 8 THE COURT: Mine, too. 9 MR. SMITH: That is right. And the rule there is, 10 one of the factors, the deciding factor is who requested a 11 break. If it is the witness' lawyer who requested a break 12 during the middle of testimony, then under certain 13 circumstances perhaps that's right. 14 Here my memory is Mr. Miller requested this break 15 and since it was not a break requested by Mr. Brady's 16 counsel, then, no, you cannot get into those conversations. 17 Those are still protected by privilege and work product. 18 THE COURT: And Mr. Brady didn't request the 19 break. 20 MR. SMITH: That is also correct, Your Honor. 21 THE COURT: Sometimes there is a request that is 22 made to confer with counsel about a privileged issue, which 23 is clearly protected, but there are other circumstances 24 where it's not.</p>
<p style="text-align: right;">Page 39</p> <p>1 anything. He was not doing the reserve calculation. He was 2 not doing the net rent calculations. He was not doing the 3 SFU calculations. He wasn't doing any of his calculations 4 that he was Court ordered to do. 5 MR. MILLER: Your Honor, could we have a 6 five-minute break? 7 THE COURT: You can. 8 9 (Whereupon a break was taken from 9:42 a.m. to 9:51 a.m.) 10 11 THE COURT: We are back on the record. 12 MR. MILLER: If we are back on the record, I 13 understand that under a recent Nevada Supreme Court case 14 involving Harvey Whittemore -- 15 THE COURT: It is not recent. 16 MR. MILLER: Relatively recent, in Bob Eisenberg 17 time. Bob thought that was funny for the record. 18 My esteemed counsel Mr. Eisenberg informs me that 19 there is a recent case involving Mr. Whittemore which 20 indicates that the discussions between counsel and a witness 21 that occurred during the pendency of either a deposition or 22 a court proceeding are discoverable, and I believe that I 23 would have the ability to go into those discussions when 24 Mr. Brady returns.</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. SMITH: That's right. 2 THE COURT: So I understand, but I will wait and 3 see what happens. 4 MR. SMITH: Very good. 5 THE COURT: Your next question, Mr. Miller. 6 MR. MILLER: So I understand, the Court is not 7 permitting me to go into those discussions? 8 THE COURT: I do not think you fall within the 9 narrow confines of what happened in Whittemore. 10 MR. MILLER: Very well. Thank you, Your Honor. 11 BY MR. MILLER: 12 Q I actually have one final question for you, and 13 that is do you understand that under the Unit Rental 14 Agreement there is a 50/50 revenue split, correct? 15 A After the DUF, correct. 16 Q Okay. So does it make any sense to you that if 17 you have a 50/50 revenue split for the income that's coming 18 into the Plaintiffs' units that you would also have a 19 corresponding very limited scope of fees, expenses that can 20 be attributable to the Plaintiff units? 21 A I'm sorry, repeat the question. 22 Q So the Unit Rental Agreement calls for a 50/50 23 revenue split, right? The MEI-GSR keeps half of the 24 revenue?</p>

<p style="text-align: right;">Page 42</p> <p>1 A After the DUF.</p> <p>2 Q After the DUF. You understand that, right?</p> <p>3 A I do.</p> <p>4 Q And then you have got the Unit Maintenance</p> <p>5 Agreement, Unit Rental Agreement, and the CC&Rs, correct?</p> <p>6 A Correct.</p> <p>7 Q And all of those documents are more or less</p> <p>8 drafted so they interact with each other or work in concert.</p> <p>9 Do you understand that?</p> <p>10 A Governing Documents, I do.</p> <p>11 Q Okay. And if you are drafting a Unit Rental</p> <p>12 Agreement that provides for a 50/50 revenue split, does it</p> <p>13 not also make sense that you would limit the expenses that</p> <p>14 are going to be attributable to the third party, the</p> <p>15 Plaintiff units in this case, under the CC&Rs?</p> <p>16 A And our numbers that were modified after Judge</p> <p>17 Sattler in December, it does that. The Plaintiffs and the</p> <p>18 other non-Plaintiffs, they don't get charged off all of the</p> <p>19 expenses. They get a very small portion of the expenses, so</p> <p>20 it is a limited scope, yes.</p> <p>21 Q So you agreed with my question, then, that the</p> <p>22 CC&Rs limit the amounts that can be attributable to the</p> <p>23 Plaintiffs?</p> <p>24 A I don't agree as far as Mr. Teischner's numbers,</p>	<p style="text-align: right;">Page 44</p> <p>1 Q So Mr. Miller had asked you doesn't it make sense</p> <p>2 that you limit the expenses that the Plaintiff Unit Owners</p> <p>3 are responsible for. Out of that 44 million what percentage</p> <p>4 are the Unit Owners responsible for?</p> <p>5 A They, depending on if it's a shared facility or a</p> <p>6 hotel and Mr. Teischner uses the same square footage</p> <p>7 percentage, it's either, most of it is a shared facility and</p> <p>8 it's based on square footage, so there is roughly 339,000 of</p> <p>9 condo units square footage.</p> <p>10 And as the property I believe, compare that to the</p> <p>11 property and it is 13 percent that they get applied to, and</p> <p>12 then hotel expenses, which is, you know, directly for the</p> <p>13 hotel itself per the CC&Rs, that is 24 percent because you</p> <p>14 take the 339, 339,00 square feet and divide that by the</p> <p>15 hotel square feet percentage.</p> <p>16 Q So roughly for Shared Facilities Unit expense the</p> <p>17 Unit Owners are responsible for about 13 percent of that?</p> <p>18 A Correct.</p> <p>19 Q Of the total?</p> <p>20 A Correct.</p> <p>21 Q And then about 24 percent when it comes to hotel</p> <p>22 expenses?</p> <p>23 A Yes.</p> <p>24 Q Okay. And is that in accordance with the 7th</p>
<p style="text-align: right;">Page 43</p> <p>1 no. I agree to our numbers, yes.</p> <p>2 MR. MILLER: No further questions, Your Honor.</p> <p>3 Thank you.</p> <p>4 THE COURT: Redirect.</p> <p>5 MR. McELHINNEY: Thank you, Your Honor.</p> <p>6</p> <p>7 REDIRECT EXAMINATION</p> <p>8 BY MR. McELHINNEY:</p> <p>9 Q Mr. Brady, give me and the Court an idea, please,</p> <p>10 what are the total expenses on an annual basis to run this</p> <p>11 hotel? Can you give me a broad number like that?</p> <p>12 A So the budget that is provided, the total amount</p> <p>13 expenses for a year for just the departments that are</p> <p>14 included in the current fees that go in for the hotel and</p> <p>15 the SFU is, our expenses that we pay is \$44 million and</p> <p>16 those are just the direct departments that we include.</p> <p>17 Q So is that a budget for a year?</p> <p>18 A That was actual numbers for a year, \$44 million.</p> <p>19 It goes back 12 months, like I said before, and that was for</p> <p>20 our 2023 budget. That's what GSR has paid out-of-pocket and</p> <p>21 that's just a very small portion. We take into account food</p> <p>22 and beverage and casino and all of the other departments</p> <p>23 that don't go into this and it's hundreds of millions of</p> <p>24 dollars.</p>	<p style="text-align: right;">Page 45</p> <p>1 Amended CC&Rs?</p> <p>2 A Yes. It specifically spells out that you can use</p> <p>3 square footage, and Mr. Teischner's numbers said he used the</p> <p>4 square footage, too.</p> <p>5 Q Okay. I want to sort of pursue a little bit</p> <p>6 further these questions about pulling the money out of the</p> <p>7 capital reserve accounts. Is there an order, as you sit</p> <p>8 here today, is there an order in existence that says you</p> <p>9 have to have Court or Receiver permission before you pull</p> <p>10 the money out of the reserve accounts?</p> <p>11 A No.</p> <p>12 Q According to the CC&Rs who is in control of the</p> <p>13 reserve accounts?</p> <p>14 A The declarant, MEI-GSR.</p> <p>15 Q Do you recall Mr. Teischner's testimony where he</p> <p>16 said he has never asked to take control of the reserve</p> <p>17 accounts; do you recall that?</p> <p>18 A I do.</p> <p>19 Q He also said, he also testified I don't want to be</p> <p>20 in control of the reserve accounts; do you recall that?</p> <p>21 A I do.</p> <p>22 Q We did file motions in May of 2020 and in June</p> <p>23 of 2021 asking for the Court to instruct the Receiver to</p> <p>24 approve those withdrawals?</p>

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<p style="text-align: right;">Page 46</p> <p>1 A That is correct.</p> <p>2 Q How long did we wait for a decision on those two</p> <p>3 motions; do you recall?</p> <p>4 A A year, year and a half.</p> <p>5 Q We finally got a decision from Her Honor in 2023,</p> <p>6 correct?</p> <p>7 A We did.</p> <p>8 Q Now, the money, the obligations, the money that</p> <p>9 you pulled out of those reserve accounts, those were for</p> <p>10 existing contracts?</p> <p>11 A Yes.</p> <p>12 Q For materials or labor?</p> <p>13 A Correct.</p> <p>14 Q And did you outsource some of the labor for the</p> <p>15 tower improvements?</p> <p>16 A Absolutely.</p> <p>17 Q So when did this project begin on the Summit</p> <p>18 Tower?</p> <p>19 A I believe in 2021.</p> <p>20 Q All right. And were you -- did you sign contracts</p> <p>21 in advance of that work commencing to get furniture built</p> <p>22 and delivered and labor onboard?</p> <p>23 A Absolutely. Because of COVID, I don't know if</p> <p>24 everyone is aware, but there was a lot of shipping issues,</p>	<p style="text-align: right;">Page 48</p> <p>1 not entered into that contract, could you have proceeded</p> <p>2 with the improvements to the units in the Summit Tower?</p> <p>3 A No.</p> <p>4 Q Is it part of your obligation under the CC&Rs to</p> <p>5 maintain the high level of this hotel?</p> <p>6 A Yes. Per the CC&Rs there is a stipulation that we</p> <p>7 have to be a 4 diamond resort.</p> <p>8 Q And we covered that earlier under, as I recall,</p> <p>9 Section 4.5C of the CC&Rs that talks about the building</p> <p>10 FF&E; is that correct?</p> <p>11 A That's correct.</p> <p>12 Q So from an accounting standpoint can you just go</p> <p>13 get the money from someplace else? In other words, let's</p> <p>14 not pull it from the reserve accounts, let's pull it from</p> <p>15 some other operational budget. Is that appropriate under</p> <p>16 any circumstances?</p> <p>17 A No. The only place that we would be able to get</p> <p>18 it is from our revolver, but, again, that interest expense</p> <p>19 is so high and depending on where we are, because we have</p> <p>20 slow months, we do have to pull money out of the revolver</p> <p>21 and it's sometimes maxed out.</p> <p>22 So depending on the slow months or the busy</p> <p>23 months, we have to be, and our interest expenses when they</p> <p>24 are due and our loan payment, we have to, we have to be sure</p>
<p style="text-align: right;">Page 47</p> <p>1 especially from materials from China, so a lot of, it would</p> <p>2 get held up so you have to be years out to order almost any</p> <p>3 materials.</p> <p>4 And it's getting better, but it's still pretty</p> <p>5 bad. We still have issues. An example is we are putting a</p> <p>6 piece of equipment and it was supposed to be in here this</p> <p>7 month and it got delayed, so we can't put it in until next</p> <p>8 year.</p> <p>9 Q Okay. And when did you sign as an example the</p> <p>10 \$7 million, \$7.5 million contract that you identified to</p> <p>11 build furniture and ship it from China, when did you enter</p> <p>12 into that contract?</p> <p>13 A You enter it before -- I don't personally, MEI-GSR</p> <p>14 enters into it before, before payment obviously, so.</p> <p>15 Q So would this, would this contract have been</p> <p>16 entered before the construction, before the project began in</p> <p>17 2021?</p> <p>18 A Yes.</p> <p>19 Q And when you are dealing with China, they require</p> <p>20 a substantial deposit before they will ever start the work;</p> <p>21 is that correct?</p> <p>22 A Not so much with China, but with the company</p> <p>23 itself, yes.</p> <p>24 Q Okay. And so if you had not ordered, if you had</p>	<p style="text-align: right;">Page 49</p> <p>1 that we have adequate money. Also, we have to be sure that</p> <p>2 we have adequate per Gaming Control Board for minimums that</p> <p>3 we have to have as far as cash on the floor. That's</p> <p>4 something separate, so we have to be able to fund the cash</p> <p>5 on the floor.</p> <p>6 So it's not like we can just take money from the</p> <p>7 casino and pay. The GCB limits us on how much money can be,</p> <p>8 you know, how barebones we can get and it's not dollars.</p> <p>9 It's millions of dollars, so there are very --</p> <p>10 Q Do you -- I'm sorry, I interrupted you.</p> <p>11 A There are very, there is a lot of moving parts</p> <p>12 that we are constantly navigating in looking at the future,</p> <p>13 because we do have to pay our loan, we do have to pay our</p> <p>14 interest, and we do have to pay our vendors and our labor,</p> <p>15 because, again, this machine does not stop.</p> <p>16 Q Did you regard it as a legitimate emergency</p> <p>17 circumstance when you withdrew the money from, when I say</p> <p>18 you, when a decision was made to withdraw money from the</p> <p>19 reserve accounts?</p> <p>20 A Yes. We did not take it lightly.</p> <p>21 Q And judging from Mr. Teischner's past behavior did</p> <p>22 you think about calling him in and say please look at all of</p> <p>23 these back-up documents and invoices and approve this</p> <p>24 withdrawal?</p>

<p style="text-align: right;">Page 50</p> <p>1 A I believe there was a Court order in January</p> <p>2 telling Mr. Teischner to complete this in 90 days. In</p> <p>3 90 days it was not completed. Then they gave another, I</p> <p>4 believe they gave him another order during that time to</p> <p>5 complete it. He did not complete it.</p> <p>6 Also, during this time there were, oh, man, I know</p> <p>7 at least 10 orders out there that Judge Saitta was not</p> <p>8 making any decisions on, so we were at a standstill and as a</p> <p>9 business you can't be at a standstill.</p> <p>10 Q Okay. You said there were orders out there. Did</p> <p>11 you mean motions?</p> <p>12 A I'm sorry, motions.</p> <p>13 Q That's fine.</p> <p>14 A I'm just an accountant.</p> <p>15 Q So given that experience with Mr. Teischner, how</p> <p>16 likely was it that you thought he would come in and take a</p> <p>17 look at your invoices for your withdrawal of the \$7 million</p> <p>18 and the \$12 million from the reserve account?</p> <p>19 A Based on previous experiences and the disorder</p> <p>20 with the Courts and the different Judges very highly</p> <p>21 unlikely.</p> <p>22 Q Do the -- I'm going to shift gears with you here.</p> <p>23 The balances we paid -- GSR wired money into the Receiver's</p> <p>24 account either last night or early this morning \$275,000 in</p>	<p style="text-align: right;">Page 52</p> <p>1 Q And do I understand correctly that the Plaintiffs</p> <p>2 who have debits, they never meet that obligation?</p> <p>3 A That is correct.</p> <p>4 Q There was a line of questioning primarily</p> <p>5 yesterday about if you get an instruction from the Receiver,</p> <p>6 if you don't follow it immediately you are interfering with</p> <p>7 his ability to be a Receiver. Aren't you allowed to object</p> <p>8 to the Receiver or have a discussion with the Receiver if he</p> <p>9 makes a demand on you?</p> <p>10 A Yes. We have good communication. He is to</p> <p>11 oversee it and, you know, as a business and company we</p> <p>12 always balance each other, you know, well, before he stopped</p> <p>13 working we always had a communication and bounced ideas off</p> <p>14 each other.</p> <p>15 Because, again, as far as I know, this was his</p> <p>16 first, at least this large, was his first hotel-casino case.</p> <p>17 So he was coming into this pretty green, so he, you know, he</p> <p>18 had a lot of questions and we would always answer them.</p> <p>19 And, you know, especially in those 2019, 2020</p> <p>20 years, we were in constant communication either with him or</p> <p>21 with his assistant Robin, constant communication. They</p> <p>22 would ask questions. I would provide answers, worksheets,</p> <p>23 whatever they needed.</p> <p>24 And we still to this day upload to the shared</p>
<p style="text-align: right;">Page 51</p> <p>1 round numbers, correct?</p> <p>2 A Correct. That was the balance due to the owners</p> <p>3 that had a due to them. Again, yesterday I believe it was</p> <p>4 around 48 Unit Owners of the 93 Unit Owners.</p> <p>5 Q And I just want to review once again, I think we</p> <p>6 touched on this yesterday, but those balances vary from</p> <p>7 month-to-month and year-to-year; is that correct? Meaning</p> <p>8 sometimes it's a credit, sometimes it's a debit?</p> <p>9 A Correct.</p> <p>10 Q When is it -- when the Plaintiffs owe GSR money,</p> <p>11 do the Plaintiffs ever take care of that balance and pay it?</p> <p>12 A No. Like I said earlier, since 2020 there has</p> <p>13 been five instances.</p> <p>14 Q Okay. So, in other words, if during the slow</p> <p>15 months if there is not enough rental revenue coming in to</p> <p>16 cover their share of the SFUE, HE, and reserves, under the</p> <p>17 URA, the Unit Rental Agreement, they are supposed to pay</p> <p>18 that, aren't they?</p> <p>19 A They are, yes.</p> <p>20 Q As a matter of fact, contractually anyway, whether</p> <p>21 or not the Court would allow it, but contractually you are</p> <p>22 actually allowed to terminate that Unit Rental Agreement if</p> <p>23 they don't meet that obligation; is that accurate?</p> <p>24 A That is correct.</p>	<p style="text-align: right;">Page 53</p> <p>1 folder. I don't know if he looks at it. From what I</p> <p>2 gathered, he didn't even know if the statements were in</p> <p>3 there, so I don't think he has looked at it lately, but we</p> <p>4 still provide everything that the Court said and he asked</p> <p>5 for to a shared folder.</p> <p>6 Q Is it -- what I hear you telling me is you had a</p> <p>7 good relationship with Mr. Teischner in 2020?</p> <p>8 A Yes.</p> <p>9 Q At some point did that relationship change?</p> <p>10 A Yes. When he got counsel it was very lawyer-like,</p> <p>11 I guess. It was not good or bad, just lawyer-like.</p> <p>12 Q So I want to make sure I understand it. So in</p> <p>13 2020 you guys had interaction. You talked. You arrived at</p> <p>14 a consensus?</p> <p>15 A Yes.</p> <p>16 Q And once Stephanie Sharp came onboard did that</p> <p>17 nature of the relationship end?</p> <p>18 A Yes. We still get along and, you know, we still</p> <p>19 e-mail and stuff like that, but it wasn't like it was in</p> <p>20 '19 or '20.</p> <p>21 Q And during cross-examination of you yesterday,</p> <p>22 Mr. Miller wanted you to look at just one order out of a</p> <p>23 series of orders that were issued. Have you noticed that</p> <p>24 all of those orders have the exact same date and timestamp?</p>

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<p style="text-align: right;">Page 54</p> <p>1 A Yes.</p> <p>2 Q To the second?</p> <p>3 A To the second, yes.</p> <p>4 Q And so they were filed as a group. They were</p> <p>5 filed as one document, weren't they?</p> <p>6 A Yes.</p> <p>7 Q So looking at one order to ask if it's clear</p> <p>8 really misses the point, does it not?</p> <p>9 A Correct, because you can read them in any order</p> <p>10 and then you shuffle them around and then it tells you a</p> <p>11 different story.</p> <p>12 Q And my understanding is that the orders, there</p> <p>13 were at least two if not three orders that conflicted with</p> <p>14 one another; is that correct?</p> <p>15 A Yes, as I said yesterday.</p> <p>16 Q And did that cause you confusion?</p> <p>17 A Yes, and I believe it caused Mr. Teischner</p> <p>18 confusion, too.</p> <p>19 Q Well, Mr. Teischner testified to that on the first</p> <p>20 day, didn't he?</p> <p>21 A Yes.</p> <p>22 Q Now, we have the January 7, 2015 order. The</p> <p>23 testimony has been that that order basically lays dormant</p> <p>24 for 6 1/2 years before it starts to raise, raise its head</p>	<p style="text-align: right;">Page 56</p> <p>1 Q Was that confusing to you?</p> <p>2 A Very confusing, yes.</p> <p>3 Q Because for a year and eight months you had been</p> <p>4 working with Mr. Teischner to calculate the net rents,</p> <p>5 correct?</p> <p>6 A Correct. And he even stated that he needed to</p> <p>7 calculate the net rents so he could provide it to me so I</p> <p>8 could pay to his bank account, which he never opened, that</p> <p>9 was a different story, but yes.</p> <p>10 Q So did you rely upon his representations about net</p> <p>11 rent that that is what was required under the January 7,</p> <p>12 2015 order?</p> <p>13 A Yes. We had several conversations about it back</p> <p>14 and forth, because the logistics of this, it's not as easy</p> <p>15 just providing, you know, the net rent. There is a lot of</p> <p>16 stuff that goes into it.</p> <p>17 A lot from our side that we have to do for him and</p> <p>18 a lot on his side, too. And, again, it's him and I believe</p> <p>19 a part-time assistant Robin. I'm not sure if she is</p> <p>20 full-time or not.</p> <p>21 So me, I, you know, I have a team, right, that can</p> <p>22 help, that helps out with the condos, so I can provide stuff</p> <p>23 fairly fast depending on what time of the month or what time</p> <p>24 of the year, so I would provide it and then I would wait and</p>
<p style="text-align: right;">Page 55</p> <p>1 for lack of a better term. Do you agree with that?</p> <p>2 A Yes. It was never referenced until a year or two</p> <p>3 ago.</p> <p>4 Q About September 15th, 2021, when Stephanie Sharp</p> <p>5 sent that e-mail to Justice Saitta, correct?</p> <p>6 A Especially from the Receiver or the counsel, that</p> <p>7 was the first time, yes.</p> <p>8 Q And I want to make sure, I think we have been</p> <p>9 through this testimony, but I want to make sure I</p> <p>10 understand, that was the first time the Receiver had said I</p> <p>11 want to start to receive the rent?</p> <p>12 A Yes.</p> <p>13 Q And for the next year and eight months or</p> <p>14 thereabouts, their request for rent was net rent, correct?</p> <p>15 A Yes.</p> <p>16 Q And their authority for citing to net rent was the</p> <p>17 January 7, 2015 order, correct?</p> <p>18 A Correct.</p> <p>19 Q And it changed to a demand for gross rent in May</p> <p>20 of 2023, correct?</p> <p>21 A That is correct.</p> <p>22 Q And what authority did they cite for the gross</p> <p>23 rent? Wasn't it the same order, January 7, 2015?</p> <p>24 A It was.</p>	<p style="text-align: right;">Page 57</p> <p>1 then he would finally get back to me. And it was all about</p> <p>2 the net rent, it was never about gross, and there was</p> <p>3 multiple, multiple conversations about net rent.</p> <p>4 Q Mr. Miller during his cross-examination of you</p> <p>5 yesterday said you control rent. Why didn't you just give</p> <p>6 him rent to get him paid. Do you recall those questions?</p> <p>7 A I do.</p> <p>8 Q Wasn't Mr. Teischner telling you that he was going</p> <p>9 to get himself paid out of the net rents that he was</p> <p>10 calculating?</p> <p>11 A Yes.</p> <p>12 MR. McELHINNEY: Court's indulgence, please.</p> <p>13 BY MR. McELHINNEY:</p> <p>14 Q Do you have any books in front of you?</p> <p>15 A Just the Plaintiffs'.</p> <p>16 MR. McELHINNEY: May I have Defendants' book,</p> <p>17 let's just try one book right now, I think. Well, let me</p> <p>18 have all of the books I guess to be safe, please. Thank</p> <p>19 you.</p> <p>20 May I approach, Your Honor?</p> <p>21 THE COURT: You may.</p> <p>22 MR. McELHINNEY: Thank you.</p> <p>23 THE WITNESS: Thank you, sir.</p> <p>24 MR. McELHINNEY: Yes, sir.</p>

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<p style="text-align: right;">Page 58</p> <p>1 BY MR. McELHINNEY:</p> <p>2 Q Mr. Brady, would you look at Exhibit 29, and I</p> <p>3 believe that is in book -- I apologize, I can't tell exactly</p> <p>4 what book it's in. I believe it's in book number 3.</p> <p>5 A It's in 3. I'm on it.</p> <p>6 Q Okay.</p> <p>7 THE COURT: Is this the November 14th, 2022,</p> <p>8 letter?</p> <p>9 MR. McELHINNEY: It is, Your Honor.</p> <p>10 THE COURT: Thank you.</p> <p>11 BY MR. McELHINNEY:</p> <p>12 Q Look at page 4 of his, the very first letter</p> <p>13 that's dated November 14, 2022. The very last sentence of</p> <p>14 the very last paragraph, "Once the revised charges, once the</p> <p>15 revised charges would be determined by me and submitted to</p> <p>16 the Defendants and Plaintiffs for review and approval by the</p> <p>17 Court, then I would collect the net rents in arrears and on</p> <p>18 a monthly basis going forward with which I would pay the</p> <p>19 Receiver's monthly fees and the Unit Owners their shares of</p> <p>20 the net rents."</p> <p>21 Is that consistent with what Mr. Teischner was</p> <p>22 telling you?</p> <p>23 A It is, but I couldn't find it on the page.</p> <p>24 Q I apologize, page 4.</p>	<p style="text-align: right;">Page 60</p> <p>1 A Correct.</p> <p>2 Q So when Mr. Miller is asking you why didn't you</p> <p>3 just give him rent, he was telling you I'm going to give you</p> <p>4 the net rents, I will tell you what to give me, and I will</p> <p>5 pay myself out of those rents?</p> <p>6 A That is correct.</p> <p>7 Q Did you find, last night you were going through</p> <p>8 the CC&Rs and you found a reference in the 7th Amended CC&Rs</p> <p>9 that shows easements. Do you recall that?</p> <p>10 A Yes.</p> <p>11 MR. MILLER: Objection; exceeds the extent of</p> <p>12 cross-examination.</p> <p>13 THE COURT: I will allow it; overruled. You can</p> <p>14 answer it.</p> <p>15 BY MR. McELHINNEY:</p> <p>16 Q I remember the Court had asked you questions about</p> <p>17 that yesterday about is there some kind of depiction of the</p> <p>18 easements on the map. Did you make it -- as I recall, you</p> <p>19 showed me the language and it looks like a chicken walked</p> <p>20 across the page. They made it so small you can't read it.</p> <p>21 Did you find a bigger copy?</p> <p>22 A Yes. Something was bugging me about the easements</p> <p>23 Your Honor brought up, and I was like, I was like I know</p> <p>24 it's on there. I know I have seen it, but I couldn't at</p>
<p style="text-align: right;">Page 59</p> <p>1 A Yeah.</p> <p>2 Q Very bottom of the page. It's actually the last</p> <p>3 full sentence.</p> <p>4 A Gotcha, yes, sorry.</p> <p>5 Q And if we read the sentence just ahead of that, it</p> <p>6 says, "The amount that would be needed to cover any</p> <p>7 shortfall," well, I apologize. That's not the section I was</p> <p>8 looking for.</p> <p>9 I was looking at, and we have covered this before,</p> <p>10 the top of that paragraph, page 4, Exhibit 29. "Certainly,</p> <p>11 the amount of the net rents would first need to be</p> <p>12 calculated before the Receiver could inform GSR of the</p> <p>13 amount that it would need to turn over to the Receiver for</p> <p>14 past due amounts as well as for the most current months</p> <p>15 now," correct?</p> <p>16 A Correct.</p> <p>17 Q And that's what Mr. Teischner was telling you as</p> <p>18 well, correct, that he was going to calculate it and give</p> <p>19 you the numbers for the net rents so that you could pay him</p> <p>20 and he could deposit that into his separate account?</p> <p>21 A Always until May of 2023.</p> <p>22 Q And he also told you once I calculate the net</p> <p>23 rents, I will take my fees and Stephanie Sharp's fees out of</p> <p>24 that net rent number and that's how I will get paid?</p>	<p style="text-align: right;">Page 61</p> <p>1 that time, so it was driving me nuts last night.</p> <p>2 So, yeah, I tried to find other copies of the</p> <p>3 CC&Rs where it was more legible, because there is a certain</p> <p>4 page in Exhibit A of the CC&Rs that has the site map and</p> <p>5 there is several writings there that actually talk about</p> <p>6 easements that's very hard to read because I think it's a</p> <p>7 copy over a copy over a copy over a copy over the years.</p> <p>8 Q Did you make notes of what it actually says?</p> <p>9 A I did.</p> <p>10 Q And do you have those with you?</p> <p>11 A I do.</p> <p>12 Q And if you would look at Exhibit 1, direct the</p> <p>13 Court to that page, and then share with us your notes and I</p> <p>14 will ask you how you figured out what it said.</p> <p>15 A Sure. So it's the -- do you know what exhibit the</p> <p>16 CC&Rs are?</p> <p>17 Q It's Exhibit 1 and I think you have the book</p> <p>18 already.</p> <p>19 THE COURT: This is where I miss my big magnifying</p> <p>20 glass that was in my courtroom in the other courthouse.</p> <p>21 MR. McELHINNEY: I don't even know if that would</p> <p>22 help.</p> <p>23 THE WITNESS: You could read certain -- and if it</p> <p>24 doesn't look right, just let me know, and I don't even know</p>

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<p style="text-align: right;">Page 62</p> <p>1 if this copy is any better, but all right.</p> <p>2 So a couple things I just want to point out and I</p> <p>3 typed it out last night just so I had it. If you go to</p> <p>4 Owner's Certificate, and I know it's blurry, but I have a</p> <p>5 copy here of another one that I was able to get that I</p> <p>6 looked at, but it says Owner's Certificate on the upper</p> <p>7 left-hand side. Are you --</p> <p>8 BY MR. McELHINNEY:</p> <p>9 Q It's okay. Proceed.</p> <p>10 THE COURT: It's on the page that has the title</p> <p>11 Hotel Condominiums at Grand Sierra Resort, Phase 7.</p> <p>12 MR. MILLER: Sorry to interrupt, but does the</p> <p>13 witness have a clear copy that we can look at as well?</p> <p>14 THE COURT: You are all welcome to come look over</p> <p>15 the witness' shoulders since you have mics on that are with</p> <p>16 you.</p> <p>17 THE WITNESS: And it's on the back, too.</p> <p>18 MR. MILLER: All right. Do you need this?</p> <p>19 THE WITNESS: No, I typed it out.</p> <p>20 THE COURT: Mr. Miller, you have to give it back.</p> <p>21 Don't write on it.</p> <p>22 MR. MILLER: This was not marked as an exhibit,</p> <p>23 but you still want me to give it back?</p> <p>24 THE COURT: Uh-huh.</p>	<p style="text-align: right;">Page 64</p> <p>1 excluding all hotel units and the common element parcel."</p> <p>2 Then number 2, "Common elements are privately</p> <p>3 maintained and perpetually funded by the Homeowners</p> <p>4 Association."</p> <p>5 Number 3, "The hotel units and the common element</p> <p>6 parcel contain only," and I couldn't, I think it said UR</p> <p>7 space, I'm not really sure. That was the only letter I</p> <p>8 couldn't or word that I didn't know, but I don't think it</p> <p>9 pertains. "But all lath, fittings, wallboard, plasterboard,</p> <p>10 plaster, paneling, tiles, wallpaper, paint, finished</p> <p>11 flooring, and any other materials constituting any part of</p> <p>12 the building are owned and maintained by the owner of the</p> <p>13 Shared Facilities Unit."</p> <p>14 And then number 4 goes into the dimensions of the</p> <p>15 hotel units and the boundaries. Number 5 goes to the</p> <p>16 heights of the ceilings and also talks about the vertical on</p> <p>17 the floors, the elevation, I mean.</p> <p>18 And then number 6 is, "Sewer utilities within this</p> <p>19 subdivision are to be maintained by the Owner of the S.F.U."</p> <p>20 Number 7 says, "A blanket public utility easement</p> <p>21 is hereby granted across all common elements and the S.F.U.</p> <p>22 for the purpose of installing, assessing, and maintaining</p> <p>23 said utilities."</p> <p>24 Number 8 says, "All public utility easements</p>
<p style="text-align: right;">Page 63</p> <p>1 MR. MILLER: All right. Can I hold it while he</p> <p>2 is --</p> <p>3 THE COURT: Yes.</p> <p>4 MR. MILLER: Okay. Thank you.</p> <p>5 THE WITNESS: So Owner's Certificate, upper</p> <p>6 left-hand side. "This is to certify the undersigned, Grand</p> <p>7 Sierra Operating Corp., that has now changed to MEI-GSR,</p> <p>8 "is the owner of the tract of land represented on this plat</p> <p>9 and has consented to the preparation and recordation --" I</p> <p>10 will slow down -- "of this plat and that the same is</p> <p>11 executed in compliance with and subject to the provisions of</p> <p>12 NRS Chapters 115 and 275 --" that one I was not sure, so if</p> <p>13 you look it is very hard to read.</p> <p>14 "The owners hereby grant to all public utilities a</p> <p>15 blanket easement for the construction, maintenance, and use</p> <p>16 of utility systems and drainage facilities, together with</p> <p>17 the right of access thereto, over all common elements and</p> <p>18 the S.F.U. as shown hereon. Also, all other easements as</p> <p>19 shown and noted on this plat are hereby granted, and</p> <p>20 reserving therefrom any and all water and/or water rights</p> <p>21 from any dedications."</p> <p>22 Then if you go to the next page, which on the</p> <p>23 notes which is even harder to read, but so number 1 says,</p> <p>24 "Shared Facilities Unit, S.F.U., is the entire subdivision</p>	<p style="text-align: right;">Page 65</p> <p>1 include cable television."</p> <p>2 Number 9, "A blanket easement is granted over all</p> <p>3 common elements and the S.F.U. to Unit Owners for access to</p> <p>4 their unit."</p> <p>5 Number 10 says, "All unit boundaries are parallel</p> <p>6 or perpendicular to the exterior boundary of the building."</p> <p>7 Number 11 says, "See Declaration of Covenants,</p> <p>8 Conditions, Restrictions and Reservations of Easements for</p> <p>9 hotel condominiums at the Grand Sierra Resort."</p> <p>10 Number 12 says, "See Declarations of Covenants,</p> <p>11 Conditions, Restrictions and Reservations of Easements for</p> <p>12 hotel condominiums at the Grand Sierra Resort for granting</p> <p>13 of blanket access and utility easements to this</p> <p>14 subdivision."</p> <p>15 And then the last it talks about, "The remaining</p> <p>16 parcel as shown hereon was surveyed as a part of this</p> <p>17 subdivision. The existing monuments along Greg Street,</p> <p>18 Glendale Avenue, and US 395 were used to determine the</p> <p>19 boundary of the remainder parcel and differ from the record</p> <p>20 dimensions as shown hereon."</p> <p>21 THE COURT: Thank you, sir.</p> <p>22 THE WITNESS: You are welcome.</p> <p>23 MR. MILLER: Thank you, Mr. Brady.</p> <p>24 MR. McELHINNEY: Thank you.</p>

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<p style="text-align: right;">Page 66</p> <p>1 BY MR. McELHINNEY:</p> <p>2 Q During cross-examination yesterday Mr. Miller was</p> <p>3 showing you an e-mail or I believe it was a letter from</p> <p>4 Mr. Teischner and it said, look, I have asked -- I'm going</p> <p>5 to back up. It was Mr. Teischner or his attorney saying</p> <p>6 that the Plaintiffs were, the Defendants were instructed to</p> <p>7 apply his 2021 fees retroactive to January 2020 and they</p> <p>8 refused to do that. Do you recall that line of questioning?</p> <p>9 A Yes.</p> <p>10 Q And Mr. Miller was asking you why didn't you</p> <p>11 comply with that direction from the Receiver; do you recall?</p> <p>12 A Yes.</p> <p>13 Q Is it your understanding that you are supposed to</p> <p>14 disregard Court orders and instead follow the instructions</p> <p>15 of the Receiver?</p> <p>16 A No.</p> <p>17 Q When the Receiver is telling you to apply his 2021</p> <p>18 fees retroactive to January 2020, he is talking about just</p> <p>19 one of the orders that were all simultaneously issued,</p> <p>20 correct?</p> <p>21 A Correct.</p> <p>22 Q There is a competing conflicting order that says,</p> <p>23 issued at the exact same moment, that he has to complete his</p> <p>24 2020 fee calculations and until such time as he does you</p>	<p style="text-align: right;">Page 68</p> <p>1 A Once a month during close, which is between the</p> <p>2 1st and the 10th of the month.</p> <p>3 Q And if that gross rent was to be handed over to</p> <p>4 the Receiver, what are the logistical concerns or the</p> <p>5 practical concerns that you would have about doing that, and</p> <p>6 if it would create hardship for GSR I would like to know</p> <p>7 about that in detail, please.</p> <p>8 A Sure. So in my accounting department, which is</p> <p>9 accounts payable, accounts receivable, revenue audit, GL,</p> <p>10 there is over, you know, 30 employees just in those areas</p> <p>11 alone, so it takes a team of not necessarily 30, but it</p> <p>12 takes a team to produce this.</p> <p>13 Also, at the same time we have a condo system that</p> <p>14 attaches to our, what we call LMS, which is our Lodge</p> <p>15 Management System, so in order for us to produce these</p> <p>16 numbers, we rely on this condo system.</p> <p>17 If we were to, which also we upload the fees, the</p> <p>18 DUF, all of that, so if we were to provide this to</p> <p>19 Mr. Teischner the gross revenue, he has two people that work</p> <p>20 there. Per the CC&Rs, he has 20 days to get the statements</p> <p>21 out. Our condo system produces the statements.</p> <p>22 If we provide the gross rents just for the</p> <p>23 Plaintiffs alone let's say, that's 93 statements that have</p> <p>24 to go out that he has to do. He would have to do manually.</p>
<p style="text-align: right;">Page 67</p> <p>1 don't apply his fees retroactive. You apply the fees that</p> <p>2 were in place September 29, prior to September 29, 2021,</p> <p>3 Court order. Is that your understanding?</p> <p>4 A Yes.</p> <p>5 Q So is that why you declined to follow his</p> <p>6 instruction to apply his 2021 fees retroactive to</p> <p>7 January 2020?</p> <p>8 A I questioned it and, you know, declined it and</p> <p>9 cited my reasons and so, yes.</p> <p>10 Q Do I understand correctly all of the invoices are</p> <p>11 attached to the capital expenditure requests or records?</p> <p>12 A Yes.</p> <p>13 Q In other words, if I look at, if the Receiver were</p> <p>14 to come over to the GSR and look at the capital expenditure</p> <p>15 withdrawals, he would see invoices attached to each and</p> <p>16 every one, correct?</p> <p>17 A Yes.</p> <p>18 Q Okay. Yesterday the Court was talking about gross</p> <p>19 rent. She was asking you how long it would take to</p> <p>20 calculate gross rent per day, per week, per month. I would</p> <p>21 like to spend a little bit of time talking to you about</p> <p>22 that. How often do you calculate gross rent at the GSR?</p> <p>23 A Pertaining to just condo units?</p> <p>24 Q Yes.</p>	<p style="text-align: right;">Page 69</p> <p>1 He doesn't have a condo system.</p> <p>2 Also, it takes more than one person for all of</p> <p>3 this to happen. He has two people. He would, he would have</p> <p>4 to hire more people.</p> <p>5 Also, during that time if we were to provide and</p> <p>6 if it is all 670 units, I don't know how long that would</p> <p>7 take, because right now we only provide statements to the</p> <p>8 third party owners because we own the other, so we provide</p> <p>9 statements to 110 Unit Owners.</p> <p>10 Q But if he took it over he would have to supply</p> <p>11 statements for 670 Unit Owners?</p> <p>12 A That is correct.</p> <p>13 Q So his team would have to expand substantially,</p> <p>14 his costs would go up substantially; is that correct?</p> <p>15 A Correct. And they would have to be trained,</p> <p>16 because, you know, it's no easy task to put this together.</p> <p>17 We have been doing this for years, you know, many years. I</p> <p>18 have a team that knows the routine that knows this.</p> <p>19 Also, at the same time if we provide gross rents</p> <p>20 to them, that means we can't pay our bills and we would</p> <p>21 have, we would front load all of the expenses for those</p> <p>22 670 units. That means that is 33 percent of our condo, of</p> <p>23 our hotel.</p> <p>24 Q So what kind of dollars and cents would we be</p>

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<p style="text-align: right;">Page 70</p> <p>1 talking about that you would have to front load because you</p> <p>2 didn't have access to that money?</p> <p>3 A So it's, you know, whether you -- millions,</p> <p>4 millions of dollars we would have to front load.</p> <p>5 Q Okay.</p> <p>6 A Not millions, because like we calculated earlier</p> <p>7 with the 93 units or the 110 ADR, it was between 150 to</p> <p>8 300,000, and then if you -- again, that's only 16 percent of</p> <p>9 the pool. You add the other pool, we are handing over a lot</p> <p>10 of money to them and at the same time we are paying all of</p> <p>11 the bills.</p> <p>12 Twenty days to do all of those calculations for</p> <p>13 Mr. Teischner when I can't get him that until the 10th and</p> <p>14 we are paying the, we are front loading. We are paying the</p> <p>15 housekeepers. We are paying the accountants. And, by the</p> <p>16 way, my salary, Mr. Miller the other day talked about if I</p> <p>17 wasn't getting paid.</p> <p>18 According to Mr. Teischner's calculations, I'm not</p> <p>19 getting paid. My whole team is not getting paid. We</p> <p>20 produce the statements. We do all of the back end stuff.</p> <p>21 He is going to go hire a team to do what we do right now.</p> <p>22 He is going to get paid by that, but I'm not getting paid</p> <p>23 according to his new, based on the CC&Rs, my team is not</p> <p>24 getting paid.</p>	<p style="text-align: right;">Page 72</p> <p>1 Also, with the, the non-Plaintiffs third party</p> <p>2 owners, they most likely would not get their statements.</p> <p>3 They would come after us because it's an agreement between</p> <p>4 us and them, the Unit Maintenance Agreement, the Unit Rental</p> <p>5 Agreement. It's an agreement between us and them, so they</p> <p>6 would come after us. We would get sued by them.</p> <p>7 It would be, again, we are talking, you know,</p> <p>8 depending on when he can turn this around, which I don't</p> <p>9 think he can within a month, I don't think so. Two months,</p> <p>10 probably not.</p> <p>11 So we would be at two months of us paying, you</p> <p>12 know, turning over the revenue and also paying the bills,</p> <p>13 paying the labor for the housekeeping, paying the vendors</p> <p>14 for, you know, the supplies that go up to the rooms for the</p> <p>15 toilet paper and, you know, the towels and the shampoo and</p> <p>16 stuff. We would still have to run a business. We couldn't</p> <p>17 run the business.</p> <p>18 Q Okay. Who would train Mr. Teischner and his team</p> <p>19 to take over this function?</p> <p>20 A Oh, he would be working directly with me, which</p> <p>21 would take away from my time actually doing my other job</p> <p>22 that is not only condo.</p> <p>23 Q But he doesn't have to work with you. He could</p> <p>24 just go out and try and figure it out on his own, correct?</p>
<p style="text-align: right;">Page 71</p> <p>1 Q So I want to make sure. I'm going to stop you</p> <p>2 just for a minute to make sure I understand that point. You</p> <p>3 are talking about his August 2021 calculations, correct?</p> <p>4 A Correct, that were approved on January 4th of</p> <p>5 2022.</p> <p>6 Q January 4th, 2022, correct?</p> <p>7 A Yes.</p> <p>8 Q So when you look at his calculations, there is no</p> <p>9 entry for accounting or finance?</p> <p>10 A No.</p> <p>11 Q Is that contrary to the CC&Rs?</p> <p>12 A Yes.</p> <p>13 Q So I'm going to give you a hypothetical. The</p> <p>14 Court orders you to hand over gross rent for all of the</p> <p>15 units every 30 days. What happens to the GSR if</p> <p>16 Mr. Teischner who has never done this -- has he ever done</p> <p>17 something like this before, to your knowledge?</p> <p>18 A Not that I know of.</p> <p>19 Q What happens if he is not able to turn that around</p> <p>20 and give the money back to you for your operating expenses</p> <p>21 at GSR?</p> <p>22 A It will be detrimental. We would, we wouldn't be</p> <p>23 able to pay our bills. We wouldn't be able to pay our</p> <p>24 vendors. We would start being sued.</p>	<p style="text-align: right;">Page 73</p> <p>1 A He could.</p> <p>2 Q And with the delays that you have described that</p> <p>3 sounds like that would be catastrophic to the GSR; is that</p> <p>4 fair?</p> <p>5 A Absolutely.</p> <p>6 MR. McELHINNEY: Court's indulgence, please.</p> <p>7 THE COURT: Sure.</p> <p>8 MR. McELHINNEY: As a matter of fact, may we take</p> <p>9 a five-minute break, Your Honor?</p> <p>10 THE COURT: As long as it's really only five</p> <p>11 minutes this time.</p> <p>12 MR. McELHINNEY: Okay.</p> <p>13</p> <p>14 (Whereupon a break was taken from 10:41 a.m. to 10:45 a.m.)</p> <p>15</p> <p>16 THE COURT: You may proceed.</p> <p>17 MR. McELHINNEY: Thank you.</p> <p>18 BY MR. McELHINNEY:</p> <p>19 Q Mr. Brady, the Court had discussed a -- I suppose</p> <p>20 I'm going to phrase it as a hypothetical. I don't know if</p> <p>21 it was an actual order, but there was an earlier order from</p> <p>22 the Court that the Receiver would take over the renting of</p> <p>23 the units, and Her Honor just indicated awhile ago that she</p> <p>24 may amend that to say that the Defendants continue to rent</p>

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<p style="text-align: right;">Page 74</p> <p>1 the units going forward.</p> <p>2 The hypothetical is let's assume the Court orders</p> <p>3 the application of Mr. Teischner's 2021 fee calculations</p> <p>4 going forward. Are there, are there any hardships that you</p> <p>5 can envision other than the fact that we are subsidizing the</p> <p>6 costs, but is that doable for the GSR?</p> <p>7 A To change to their, to change to</p> <p>8 Mr. Teischner's -- which fees, the 20, the fees that were</p> <p>9 approved on January 4th?</p> <p>10 Q In my hypothetical, I'm not saying I would be in</p> <p>11 favor of it and would probably argue against it, but I'm</p> <p>12 trying to give you a hypothetical that you can work with.</p> <p>13 Yes, his January, his August 2021 calculations that I</p> <p>14 understand you view as being in violation of the CC&Rs, what</p> <p>15 sort of hardships would be involved for the GSR if they were</p> <p>16 to implement those numbers as to Plaintiffs' and Defendants'</p> <p>17 units?</p> <p>18 A It would be, currently right now we only have the</p> <p>19 third party Owner Units in the condo system, and this was</p> <p>20 one of the issues that I talked to Mr. Teischner about is</p> <p>21 that currently we do not have the other, excuse me,</p> <p>22 560 units that the Defendants own in the condo system.</p> <p>23 Q And why is that?</p> <p>24 A Well, because MEI-GSR owns them, so there is no</p>	<p style="text-align: right;">Page 76</p> <p>1 So that would be another aspect that we would have</p> <p>2 to think of. I wish it was just turnkey, but accounting is</p> <p>3 not like that. There are repercussions that go on that I</p> <p>4 can't even think about now.</p> <p>5 And me and Mr. Teischner, just about the rent we</p> <p>6 were going back and forth, so I asked him if I turn over the</p> <p>7 rent and anybody who owes you money, that's not on us now.</p> <p>8 You took over the rent. So if anybody owes you money, you</p> <p>9 have to collect it, not us, not my AR team. You have to</p> <p>10 collect it now.</p> <p>11 Q So it sounds like if we are talking about all</p> <p>12 670 units and we take over that rental program and have to</p> <p>13 apply fees and turn that money over to Mr. Teischner, that's</p> <p>14 going to be a substantial burden as it concerns the</p> <p>15 Defendant-owned units, correct?</p> <p>16 A Correct.</p> <p>17 Q If we narrow it to the Plaintiff units only, is</p> <p>18 that less of a burden?</p> <p>19 A Yes.</p> <p>20 Q Because they are already in the condo program, you</p> <p>21 track them that way, so it would be just a matter of</p> <p>22 plugging in whatever fees Her Honor might order and then</p> <p>23 turning over net rent to Mr. Teischner?</p> <p>24 A Yes, that's always been the discussion with</p>
<p style="text-align: right;">Page 75</p> <p>1 point having a rental unit agreement to ourselves. There</p> <p>2 are units. We pay for all of the expenses, so there was no</p> <p>3 need to put them in there.</p> <p>4 The only thing we calculate for them, which is</p> <p>5 fairly easy, is the reserve amounts, because it's a flat</p> <p>6 dollar amount per square footage and that's easy to</p> <p>7 calculate. But what is not easy is, you know, per the CC&Rs</p> <p>8 and all of the stuff we would have to go through and see in</p> <p>9 the Unit Rental Agreement, we would have to determine, find</p> <p>10 out what the cash revenue is for these units, because they</p> <p>11 are not in the condo system, so we would have to do it</p> <p>12 separate on this just to keep order.</p> <p>13 Also, by providing this to them it would be very</p> <p>14 hard to close the books because I would have to account for</p> <p>15 this, because we are giving money to, we are sending money</p> <p>16 to the Receiver expecting money to get back. So as far as</p> <p>17 the accounting that would, I would have to talk to our</p> <p>18 outside firm, CPA firm, Eide Bailly, and see how I would go</p> <p>19 about with the accounting of this.</p> <p>20 Because, again, at the end of the day it's on me</p> <p>21 and the company to have accurate financials and balance</p> <p>22 sheets that we have to give to the bank in order to meet our</p> <p>23 covenants. If we don't meet our covenants, then, you know,</p> <p>24 they may hold us in default for our loan.</p>	<p style="text-align: right;">Page 77</p> <p>1 Mr. Teischner and that's the discussion we had back when I</p> <p>2 believe this order came out, because, you know, this order,</p> <p>3 you know, throws you a curve ball in there and there is all</p> <p>4 of these logistics. It's not a turnkey, turn the money over</p> <p>5 and that's it. No, it goes way beyond that. I have to</p> <p>6 account for that.</p> <p>7 He has to account for that on his side. Now he is</p> <p>8 getting all of this money. That's a lot of money cash in</p> <p>9 the bank and he has got to account for the money that goes</p> <p>10 out, the money that is due. He has to have his own AR</p> <p>11 system, you know, just to track this money.</p> <p>12 It's not a simple worksheet that you can do.</p> <p>13 There is a lot more that goes into it than anybody realizes</p> <p>14 here that's not an accountant, especially for this size of a</p> <p>15 company. If it was a small mom and pop, yeah, that would be</p> <p>16 pretty easy, but this is not a mom and pop operation.</p> <p>17 Q And if he is --</p> <p>18 THE COURT: Wait a second. In order to avoid that</p> <p>19 challenge, sir, would MEI-GSR agree to pay the Receiver's</p> <p>20 pro rata fees on a regular basis rather than sending the</p> <p>21 gross rental for the 560 units owned by entities affiliated</p> <p>22 with the Defendants?</p> <p>23 MR. McELHINNEY: Your Honor, I'm going to object.</p> <p>24 I mean, I would like to address that with my client.</p>

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<p style="text-align: right;">Page 78</p> <p>1 THE COURT: I won't ask him, then.</p> <p>2 MR. SMITH: May I confer with counsel?</p> <p>3 THE COURT: Yes.</p> <p>4 MR. McELHINNEY: One moment, please, Your Honor.</p> <p>5 MR. SMITH: And can you repeat that question for</p> <p>6 me?</p> <p>7 THE COURT: No. You know what I said to him.</p> <p>8 (A discussion was held off the record.)</p> <p>9 MR. McELHINNEY: Your Honor, if I may, I can</p> <p>10 probably answer that question better than Mr. Brady. The</p> <p>11 answer is, yes, we have that authority as long as it is</p> <p>12 understood that that does not constitute a waiver of our</p> <p>13 appeals, the continuation of the receivership, the</p> <p>14 preliminary injunction, et cetera.</p> <p>15 THE COURT: That's a lovely decision. Thank you.</p> <p>16 BY MR. McELHINNEY:</p> <p>17 Q And, Mr. Brady, had we finished talking about if</p> <p>18 it was just the Plaintiffs' units how much, I know it varies</p> <p>19 tremendously, but as an example during busy months if you</p> <p>20 are just talking about the revenue, rental revenue from the</p> <p>21 Plaintiffs' units, how much would be handed over to the</p> <p>22 Receiver and would it be enough to cover his -- well, just</p> <p>23 tell me that. How much would it be in round numbers?</p> <p>24 A Gross or net?</p>	<p style="text-align: right;">Page 80</p> <p>1 A Two to three times.</p> <p>2 Q And that means that GSR would have to pick up that</p> <p>3 slack if, in fact, Mr. Teischner's numbers are applied?</p> <p>4 A Correct.</p> <p>5 Q Okay.</p> <p>6 A Which over the two years was over a million</p> <p>7 dollars, so.</p> <p>8 Q And that's money we have posted with the Court,</p> <p>9 correct?</p> <p>10 A Correct.</p> <p>11 MR. McELHINNEY: I don't think I have any further</p> <p>12 questions. Court's indulgence one second.</p> <p>13 Nothing further, Your Honor.</p> <p>14 MR. SMITH: That's correct, Your Honor. I just</p> <p>15 want to, as the nerdy appellate --</p> <p>16 THE COURT: Hold on. Mr. Miller, are you going to</p> <p>17 have any additional questions for the witness?</p> <p>18 MR. MILLER: Yes.</p> <p>19 THE COURT: Yes, Mr. Smith.</p> <p>20 MR. SMITH: I just want to make sure as the nerdy</p> <p>21 appellate guy here, I believe Mr. McElhinney was clear when</p> <p>22 he answered yes to your question. In addition to what</p> <p>23 Mr. McElhinney said I just want to clarify that includes the</p> <p>24 agreement without any waiver about our arguments about the</p>
<p style="text-align: right;">Page 79</p> <p>1 Q Net, applying his fees. Now, I know you have got</p> <p>2 to kind of spitball that because you haven't done the</p> <p>3 calculations.</p> <p>4 A Applying his fees?</p> <p>5 Q Yes.</p> <p>6 A So for, what was it, two years the difference was</p> <p>7 a million dollars, so divide that by 24. It would be right</p> <p>8 around, so 500,000, 12, I believe -- hold on. I have to get</p> <p>9 my calculator out now.</p> <p>10 Q Okay.</p> <p>11 A I am nothing without my 10 key.</p> <p>12 Since we applied our fees and we owed them a net,</p> <p>13 it was 102,000, you would add another 41,000, so about 51,</p> <p>14 150,000, 140,000 a month.</p> <p>15 Q Okay. How much, how much of a shortfall is that</p> <p>16 for GSR? I know we had talked about you have to subsidize</p> <p>17 to pick up the balance. Your calculations are based upon</p> <p>18 real numbers, correct?</p> <p>19 A Correct.</p> <p>20 Q Mr. Teischner's are not, correct?</p> <p>21 A Currently, no.</p> <p>22 Q So what's the delta percentage-wise between the</p> <p>23 two? How much higher are your calculations compared to</p> <p>24 Mr. Teischner's?</p>	<p style="text-align: right;">Page 81</p> <p>1 status of the receivership being terminated. I think that</p> <p>2 was clear, but I just wanted to make that --</p> <p>3 THE COURT: When I tell you what I'm going to do,</p> <p>4 you can then say anything else you want, but I appreciate</p> <p>5 you giving me the guidance so I can use the alternate path I</p> <p>6 had come up with.</p> <p>7 MR. SMITH: Very good. And I believe</p> <p>8 Mr. McElhinney was clear, but I just wanted to make sure</p> <p>9 that point was sharp enough. Thank you.</p> <p>10 THE COURT: Mr. Miller.</p> <p>11</p> <p>12 RECCROSS-EXAMINATION</p> <p>13 BY MR. MILLER:</p> <p>14 Q Mr. Brady, will you refer to Exhibit 66.</p> <p>15 A I have both here, one second. Yes.</p> <p>16 Q Do you recognize that as a monthly statement?</p> <p>17 A Yes, for December of 2021.</p> <p>18 Q So if the gross rents are turned over monthly to</p> <p>19 Mr. Teischner, how does that stop you guys from continuing</p> <p>20 to issue the monthly statements, right? You still have all</p> <p>21 of the programming. You still have got to take in all of</p> <p>22 the data for the room usage; is that correct?</p> <p>23 A Why would that stop us? Because he is supposed to</p> <p>24 calculate it.</p>

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<p style="text-align: right;">Page 82</p> <p>1 Q No.</p> <p>2 A Accounting purposes, I turn over the money.</p> <p>3 I'm -- I can't account for any of the fees or anything else.</p> <p>4 Q You are going to account for how much gross</p> <p>5 revenue comes in, correct, before you turn it over?</p> <p>6 A I will account for gross revenue and turn them --</p> <p>7 sorry, excuse me, go ahead.</p> <p>8 Q So the existing Court orders, or at least the</p> <p>9 January 7th, 2015, calls for the turning over of all rents.</p> <p>10 So the way this would work as I would understand it, right,</p> <p>11 is at the end of the month you would look in your system and</p> <p>12 see what all gross rents were, right, which shows up on the</p> <p>13 monthly statements anyways; is that correct? We are talking</p> <p>14 about the Plaintiffs' units here.</p> <p>15 A Yes.</p> <p>16 Q If you look at this, every month you are</p> <p>17 accounting for the gross rents anyways; is that right?</p> <p>18 A For the Plaintiffs, yes.</p> <p>19 Q Yes.</p> <p>20 A Yeah.</p> <p>21 Q Okay. So every month you are accounting for all</p> <p>22 of the gross rents, so you are ending up with that number</p> <p>23 anyways, right?</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. McELHINNEY: I object to the line of</p> <p>2 questioning, Your Honor. It's just mischaracterizing the</p> <p>3 testimony.</p> <p>4 THE COURT: Can you rephrase your question,</p> <p>5 please?</p> <p>6 BY MR. MILLER:</p> <p>7 Q If the Court orders the turnover of the gross</p> <p>8 rents and those amounts are deposited to Mr. Teischner, and</p> <p>9 then he determines how much you get back for whatever your</p> <p>10 expenses were and he tells you what amounts to put in these</p> <p>11 monthly statements, how does that increase your workload at</p> <p>12 all?</p> <p>13 A Turning over the gross revenue?</p> <p>14 Q Yes.</p> <p>15 A When I turn over the gross revenue, it stops. I</p> <p>16 cannot calculate this, because he is calculating it. He has</p> <p>17 got to account for it on his books. He is taking on that.</p> <p>18 Then when it comes back to me, I can account for it based on</p> <p>19 his thing.</p> <p>20 So pretty much it's I'm going to send him money,</p> <p>21 so it's going to be in AR or AP depending on that. When he</p> <p>22 gives it back, then I can calculate the expenses. During</p> <p>23 that time, once I turn over that gross revenue I am done.</p> <p>24 As accounting I have to, I can't just say, oh,</p>
<p style="text-align: right;">Page 83</p> <p>1 Q Okay. So then you take that amount, right, and</p> <p>2 you deposit it into the Receiver's account. How does that</p> <p>3 stop you from issuing these monthly statements every month?</p> <p>4 A That's stops me because I'm not doing the rest.</p> <p>5 He is doing the rest. So in accounting I'm handing over</p> <p>6 that money.</p> <p>7 Q And he is --</p> <p>8 A That's now a, now I'm handing over the money so</p> <p>9 now, I would have to get with Eide Bailly, but I'm not</p> <p>10 accounting for the daily use fees. I'm not accounting for</p> <p>11 any of that. Daily use fees I will be, but all of the other</p> <p>12 fees I'm not. That's on him now.</p> <p>13 Q As it already should have been, right? So he will</p> <p>14 tell you --</p> <p>15 A Okay.</p> <p>16 Q -- what fees to apply, correct? And if he tells</p> <p>17 you what fees to apply in these statements, you run those</p> <p>18 calculations, right, and then you turn over the gross rents</p> <p>19 to him. He looks at the statements and says I agree with</p> <p>20 those amounts or I don't, and then presumably he issues you</p> <p>21 back some fee or some amount, right?</p> <p>22 The point is that it takes away the situation</p> <p>23 that's gone on for three years now where you just do</p> <p>24 whatever you want and hold all of the money?</p>	<p style="text-align: right;">Page 85</p> <p>1 hypothetically it could be this, it could be this. I have</p> <p>2 to, my books have to be correct.</p> <p>3 And when I do the gross revenue, I'm handing the</p> <p>4 money over. It's not fake money. It's actual money that's</p> <p>5 going out of our account. I have to account for that on the</p> <p>6 balance sheet and/or financials if that is the case when he</p> <p>7 turns the money back.</p> <p>8 Q Okay. And that accounting can be done; is that</p> <p>9 correct?</p> <p>10 A On my side?</p> <p>11 Q Yes.</p> <p>12 A It actually makes it easier for me, because I'm</p> <p>13 just going to calculate the gross and turn over the money</p> <p>14 and he has to do all of the work.</p> <p>15 Q But if he gives you the amount of the daily use</p> <p>16 fee and the amount of the hotel fees, right, all you have to</p> <p>17 do is input that into these monthly statements; is that</p> <p>18 correct?</p> <p>19 A As far as I know, when I give him the gross</p> <p>20 revenue he is doing all of the work, not me. Like you said,</p> <p>21 we can't be trusted, so once I hand over that money, it's on</p> <p>22 him.</p> <p>23 Q So could the Court order that you turn over the</p> <p>24 gross revenues, and then Mr. Teischner instructs you on what</p>

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<p style="text-align: right;">Page 86</p> <p>1 daily use fee you are going to put in here and what hotel</p> <p>2 fees you are going to put in here, and then you give him the</p> <p>3 calculation as to the amounts due back and then he wires</p> <p>4 those funds back to you? Could that work?</p> <p>5 A No. These fees are tied to accounts. These fees</p> <p>6 go on our income statement. I can't hypothetically do that</p> <p>7 because it wouldn't balance to the cash out that I send. Do</p> <p>8 you understand that? The cash out I send is this. I cannot</p> <p>9 produce these statements, because if I produce these</p> <p>10 statements it has to tie to my balance sheet. It has to tie</p> <p>11 to my financials.</p> <p>12 By producing these statements, it doesn't work.</p> <p>13 I'm sorry, it just doesn't work. So once -- I could produce</p> <p>14 these statements. All you are going to see is gross</p> <p>15 revenue. You will not see any of that.</p> <p>16 Q Okay.</p> <p>17 A And I can't do, and it will be a -- so the gross</p> <p>18 revenue will be due to, due to the Receiver.</p> <p>19 Q Okay. So then I guess Mr. Teischner at that point</p> <p>20 will then just need to put in the amount that he believes</p> <p>21 for the daily use fee, the amount that he believes for the</p> <p>22 hotel fees, and then wire you back those amounts that he</p> <p>23 deems appropriate?</p> <p>24 A Once he brings it back, then I can do my</p>	<p style="text-align: right;">Page 88</p> <p>1 THE COURT: Anything else, Mr. McElhinney?</p> <p>2 MR. McELHINNEY: Nothing further, Your Honor.</p> <p>3 THE COURT: Do you rest?</p> <p>4 MR. McELHINNEY: Court's indulgence.</p> <p>5 (A discussion was held off the record.)</p> <p>6 MR. McELHINNEY: Your Honor, I just want to</p> <p>7 confirm all of our exhibits are in evidence. That would be</p> <p>8 1 through, I believe it's 1 through 38, 1 through 39.</p> <p>9 THE COURT: Gracie, can you confirm that?</p> <p>10 THE CLERK: They have been marked, Your Honor.</p> <p>11 THE COURT: Have they been admitted?</p> <p>12 THE CLERK: 130, 131, 132, 133, 134 -- I'm sorry.</p> <p>13 MR. McELHINNEY: No, I'm interested in Exhibits 1</p> <p>14 through 39, please.</p> <p>15 THE COURT: I believe I admitted them on the first</p> <p>16 day of the proceedings.</p> <p>17 THE CLERK: You are correct, Your Honor. 1</p> <p>18 through 38 Defendants' exhibits have been admitted --</p> <p>19 THE COURT: Thank you.</p> <p>20 THE CLERK: -- on June 6.</p> <p>21 MR. McELHINNEY: Thank you. With that</p> <p>22 understanding that those were admitted, Defense rests.</p> <p>23 THE COURT: Thank you.</p> <p>24 Mr. Brady, you can step down and go back to your</p>
<p style="text-align: right;">Page 87</p> <p>1 accounting. I will need his backup on how he calculated it.</p> <p>2 Then I will do my accounting and I will apply my expenses</p> <p>3 and I will apply, you know, whatever the, whatever we sent</p> <p>4 out again with the reserves. Again, this is all logistics.</p> <p>5 Right now I can't answer that question, because I don't</p> <p>6 know.</p> <p>7 Q Okay. All right.</p> <p>8 A Mr. Teischner had something set up for net</p> <p>9 revenues, but that went out the window when he demanded</p> <p>10 gross revenues. That's a completely different beast and</p> <p>11 that's a completely different accounting that I would have</p> <p>12 to, one, talk with my outside CPA firm to be sure that I'm</p> <p>13 accounting for it correctly, because at the end of the day</p> <p>14 my, my name is, you know, or my CFO's name or MEI-GSR is</p> <p>15 signing saying that we attest to these financials to be true</p> <p>16 and accurate.</p> <p>17 Q Yes. So that process could work then, right? You</p> <p>18 turn over the gross rents to him, to Mr. Teischner. He</p> <p>19 assigns the amounts of the daily use fee, he assigns the</p> <p>20 amounts of the hotel fees, and then he wires you back the</p> <p>21 difference. And how you account for it that's your issue;</p> <p>22 is that correct?</p> <p>23 A Hypothetically, yes.</p> <p>24 MR. MILLER: Thank you. No further questions.</p>	<p style="text-align: right;">Page 89</p> <p>1 corporate representative chair. Thank you, Mr. Brady, for</p> <p>2 your patience, and leave the stuff there and we will get it.</p> <p>3 Mr. Miller, did you want to present a deposition</p> <p>4 reading as part of your rebuttal case?</p> <p>5 MR. MILLER: Yes, Your Honor.</p> <p>6 THE COURT: Do you have the original deposition?</p> <p>7 MR. MILLER: Yes. I have four copies of the</p> <p>8 deposition.</p> <p>9 THE COURT: Do you have a copy of that deposition,</p> <p>10 Mr. McElhinney, or would you like a copy?</p> <p>11 MR. McELHINNEY: I don't with me.</p> <p>12 THE COURT: You do now.</p> <p>13 Do you have the original or a certified copy</p> <p>14 somewhere for the Clerk?</p> <p>15 MR. MILLER: I do not have the certified copy. I</p> <p>16 believe that would be in the possession of the Defendants.</p> <p>17 THE COURT: Usually it's in the possession of the</p> <p>18 person who took the deposition, which would be you.</p> <p>19 MR. MILLER: It is not in our possession.</p> <p>20 THE COURT: Does everyone stipulate to use the</p> <p>21 document that Mr. Miller is handing -- I see a no nodding</p> <p>22 from Mr. McElhinney.</p> <p>23 MR. McELHINNEY: Your Honor, I don't want to be</p> <p>24 unfair to Mr. Miller, but if I have ever seen this document</p>

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<p style="text-align: right;">Page 90</p> <p>1 it was years ago and I can't possibly attest to the fact</p> <p>2 that this is a true and accurate copy, so I will not</p> <p>3 stipulate.</p> <p>4 THE COURT: Mr. Miller, can you call your office</p> <p>5 to see if they have the envelope or a certified copy?</p> <p>6 MR. MILLER: I know that we do not.</p> <p>7 THE COURT: So where is it?</p> <p>8 MR. MILLER: I don't believe we ever received it,</p> <p>9 Your Honor. I can make an offer of proof if the --</p> <p>10 THE COURT: Depositions, I have got to either have</p> <p>11 a certified copy or the original or a stipulation. Those</p> <p>12 are my three ways to do it.</p> <p>13 MR. MILLER: These are marked original. This is</p> <p>14 what we have.</p> <p>15 THE COURT: It is a photocopy?</p> <p>16 MR. MILLER: Yes, Your Honor.</p> <p>17 THE COURT: Where did you make the copy from,</p> <p>18 though? Somebody had the original at the time they made the</p> <p>19 photocopy.</p> <p>20 MR. MILLER: Yeah. I can check our files --</p> <p>21 THE COURT: Call your office.</p> <p>22 MR. MILLER: -- at lunch.</p> <p>23 THE COURT: Call your office. Well, no, call your</p> <p>24 office now.</p>	<p style="text-align: right;">Page 92</p> <p>1 Exhibit 1 to that motion that I referenced be admitted into</p> <p>2 evidence pursuant to the parties' stipulation.</p> <p>3 THE COURT: Any objection, Mr. McElhinney?</p> <p>4 MR. McELHINNEY: Your Honor, my objection is that</p> <p>5 without the original I still think it is inappropriate.</p> <p>6 Additionally, this deposition was taken 10 years ago. I</p> <p>7 think it's relevancy at this period 10 years later is highly</p> <p>8 speculative and I object on that basis.</p> <p>9 THE COURT: So I have an objection to the</p> <p>10 deposition portion that was not an exhibit that was</p> <p>11 previously marked at the beginning of the case, so I am not</p> <p>12 going to expand the scope to include it at this point.</p> <p>13 MR. MILLER: Thank you, Your Honor.</p> <p>14 THE COURT: I have asked the Clerk to look to see</p> <p>15 if the original was used at a prior hearing at an</p> <p>16 evidentiary hearing or a prove-up trial at which it might</p> <p>17 have been deposited with the Clerk's Office and she is</p> <p>18 trying to find out the answer.</p> <p>19 MR. MILLER: Okay. Thank you, Your Honor. And in</p> <p>20 all honesty, it's not entirely necessary because we have in</p> <p>21 evidence that Mr. Armona and Mr. Meruelo are the managers of</p> <p>22 the entity and under the case law the managers of the legal</p> <p>23 entity are the ones ultimately responsible for the contempt.</p> <p>24 THE COURT: So do you want to rest since it's not</p>
<p style="text-align: right;">Page 91</p> <p>1 MR. MILLER: Okay.</p> <p>2 THE COURT: Because we are not breaking for lunch</p> <p>3 this early. I need every moment at this point.</p> <p>4 MR. MILLER: Can we take a five-minute recess?</p> <p>5 THE COURT: Yes.</p> <p>6 MR. MILLER: Thank you.</p> <p>7</p> <p>8 (Whereupon a recess was taken from 11:11 a.m. to 11:14 a.m.)</p> <p>9</p> <p>10 THE COURT: What did you find out?</p> <p>11 MR. MILLER: My belief was confirmed. We do not</p> <p>12 have in our possession a copy of the original.</p> <p>13 THE COURT: So you don't have a certified copy or</p> <p>14 an original with a little red thing on the back?</p> <p>15 MR. MILLER: Yeah, no, we do not.</p> <p>16 THE COURT: So given the lack of an original or a</p> <p>17 certified copy or a stipulation, I will defer to a</p> <p>18 consultation between you and Mr. Eisenberg if you have</p> <p>19 another option.</p> <p>20 MR. MILLER: Your Honor, portions of the</p> <p>21 deposition transcript were submitted in the Reply in Support</p> <p>22 of Motion to Compel Discovery Responses dated</p> <p>23 September 22nd, 2020 as Exhibit 1. We would request that</p> <p>24 those portions of the deposition transcript submitted as</p>	<p style="text-align: right;">Page 93</p> <p>1 really necessary?</p> <p>2 MR. MILLER: I have temptation to ask the Court if</p> <p>3 I can make an offer of proof as to what the --</p> <p>4 THE COURT: Absolutely you can make an offer of</p> <p>5 proof of what it would just like I let Mr. McElhinney,</p> <p>6 because there appears to be a lost deposition transcript. I</p> <p>7 am then not going to consider that evidence, but it would be</p> <p>8 part of your record for appellate purposes only.</p> <p>9 MR. McELHINNEY: And Mr. Smith may supplement</p> <p>10 this. We have a deposition transcript that is inadmissible</p> <p>11 because the original is not available. I think it's</p> <p>12 different than --</p> <p>13 THE COURT: Original or certified copy.</p> <p>14 MR. McELHINNEY: Or certified copy, neither one.</p> <p>15 So the document is inadmissible. I don't know that we can</p> <p>16 get around that by reading excerpts of it to the Court as an</p> <p>17 offer of proof. It's irrelevant. It's inadmissible,</p> <p>18 whereas Ms. Kern was a live witness here ready to testify.</p> <p>19 THE COURT: And the issue is somebody in</p> <p>20 Carson City may disagree with all of us, and so in an</p> <p>21 abundance of caution I'm going to let Mr. Miller say</p> <p>22 whatever he is going to say, and you are going to make</p> <p>23 whatever objection or Mr. Smith is, and then I'm not going</p> <p>24 to listen to it because it doesn't really matter to me and</p>

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<p style="text-align: right;">Page 94</p> <p>1 then we will go on, because --</p> <p>2 MR. McELHINNEY: All right. Thank you,</p> <p>3 Your Honor.</p> <p>4 THE COURT: -- I'm not putting anybody in jail.</p> <p>5 Just so we are clear, I got it. He is going to argue it,</p> <p>6 but I'm not putting somebody in jail. I have another plan</p> <p>7 those of you will like less than somebody going to jail.</p> <p>8 MR. MILLER: With that said, Your Honor, I see no</p> <p>9 reason to waste the Court's time with this issue.</p> <p>10 THE COURT: So you don't have anything you want to</p> <p>11 present in rebuttal, then?</p> <p>12 MR. MILLER: No, Your Honor.</p> <p>13 THE COURT: Are you ready to do your closing now</p> <p>14 and then we will break for lunch after you finish your</p> <p>15 closing?</p> <p>16 MR. MILLER: Yes, Your Honor.</p> <p>17 THE COURT: All right. Let's go.</p> <p>18 MR. MILLER: Your Honor, we heard one portion of</p> <p>19 Mr. Brady's testimony this morning that was right on point,</p> <p>20 sort of the theme of this case, and if it's quoted correctly</p> <p>21 it was, "We are a company that holds our money very tight."</p> <p>22 At every turn in this case it's been stop the flow of money</p> <p>23 to the Plaintiffs.</p> <p>24 If the Defendants disagreed with the Court orders</p>	<p style="text-align: right;">Page 96</p> <p>1 different motions for Order to Show Cause the Court looks at</p> <p>2 whether or not the orders were clear and ambiguous, whether</p> <p>3 Defendants complied and whether compliance was possible.</p> <p>4 For the basic timeline, as we all know the</p> <p>5 January 7th, 2015, order was the Order of Appointment.</p> <p>6 Contrary to the assertions of the Defendant, that order has</p> <p>7 always been at issue and has been referenced in connection</p> <p>8 we believe with every, with all seven of the granted Motions</p> <p>9 for Order to Show Cause and, in fact, is the controlling</p> <p>10 document over the receivership.</p> <p>11 I won't belabor the language of the order because</p> <p>12 the Court is keenly aware, but it unambiguously requires</p> <p>13 payment of the Receiver from the rents. We know that GSR</p> <p>14 held the rents. It unambiguously requires the turning over</p> <p>15 of control or cooperation by the Defendants with regard to</p> <p>16 all rents, all reserves.</p> <p>17 We then had the several January 4th, 2022,</p> <p>18 confirming orders that really when you look at them they are</p> <p>19 all the result of the Defendants' lack of compliance with</p> <p>20 the January 7th, 2015 orders.</p> <p>21 We went through and looked at the provisions of</p> <p>22 each of those orders and two in particular, the 122 and 124</p> <p>23 we reviewed repeatedly. And, in fact, as we have referenced</p> <p>24 the Defendants filed Motions for Reconsideration as to all</p>
<p style="text-align: right;">Page 95</p> <p>1 or the Receiver's actions, their remedy was to go back to</p> <p>2 the Court to seek guidance or relief. Many of these orders</p> <p>3 have stood for years. Some of the orders the Defendant</p> <p>4 specifically sought reconsideration on on points that are</p> <p>5 different than what they argue now about them being</p> <p>6 ambiguous.</p> <p>7 If we look at the standard for contempt, it's</p> <p>8 disobedience or resistance to any lawful writ, order, rule</p> <p>9 or process issued by the court and that's under</p> <p>10 NRS 22.010.3. We believe that we have demonstrated by clear</p> <p>11 and convincing evidence that this is, that this has</p> <p>12 occurred. And in the event that the contemnor claims</p> <p>13 inability to comply with the Court orders, the contemnor is</p> <p>14 to satisfy the burden by showing categorically and in detail</p> <p>15 why the contemnor cannot comply.</p> <p>16 Again, the issues of contempt are the refusal to</p> <p>17 implement Receiver fees, refusal to turn over rents, whether</p> <p>18 to the Receiver or the Plaintiffs, mishandling, withdrawing</p> <p>19 without authority from the reserves, obtaining reserve</p> <p>20 studies in direct conflict with the Court's orders, and then</p> <p>21 finally the failure to rent the Plaintiffs' units, and then</p> <p>22 also interference with the source of payment to the Receiver</p> <p>23 stopping his work.</p> <p>24 In reviewing these proceedings and the seven</p>	<p style="text-align: right;">Page 97</p> <p>1 of those or all of those key orders, which in their Motions</p> <p>2 for Reconsideration I believe they argued that they were</p> <p>3 clearly erroneous rather than their arguments here during</p> <p>4 these proceedings.</p> <p>5 And then you have the November 18th, 2022, order</p> <p>6 wherein the Court denied the reconsideration of those</p> <p>7 motions, yet the same continued, conduct continued.</p> <p>8 If we look back to the first Motion for Order to</p> <p>9 Show Cause, which was filed September 27th, 2021, the issues</p> <p>10 in that motion were refusal to permit the Receiver to</p> <p>11 calculate the reserves and the refusal to turn over rental</p> <p>12 revenues.</p> <p>13 And, again, that motion rests on the January 7th,</p> <p>14 2015, Appointment Order and it also rests on the Findings of</p> <p>15 Fact and Conclusions of Law and Judgment, which is Exhibit</p> <p>16 116, on page 22, which specifically dictates that the</p> <p>17 Receiver will determine a reasonable amount of FF&E, shared</p> <p>18 facilities, and hotel reserve fees.</p> <p>19 Exhibits 39, 40, and 47 are all internal e-mails</p> <p>20 of the GSR demonstrating that they knew that the Receiver</p> <p>21 had control over the reserve accounts. In fact, Exhibit 47,</p> <p>22 the specific language is the charges for the reserve should</p> <p>23 be left to the sound discretion of Teischner in accordance</p> <p>24 with the Governing Documents.</p>

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<p style="text-align: right;">Page 98</p> <p>1 Most telling, though, on this point is the motions 2 requesting that the Court permit or instruct the Receiver to 3 allow the withdrawal of certain reserves, and we looked at 4 the last reply that they filed on this issue, which I 5 believe was July 10th of 2022 specifically saying, you know, 6 asking the Court for instruction to permit the withdrawal of 7 those funds. We then admittedly had multiple withdrawals 8 from the reserves after the date of even that filing that 9 just clearly demonstrates contempt.</p> <p>10 As far as interference with the Receiver, if we 11 look at Exhibit 42, for example, it states, it's an e-mail 12 from Stephanie Sharp to the Court, "Defendant sent the 13 reserve before these documents were reviewed by the 14 Receiver, not withstanding the direct request from the 15 Receiver that the undersigned, that they not do so."</p> <p>16 Defendants have expressed their opposition to the 17 Receiver or their opinion that the Receiver does not have 18 authority to interfere with the determination of the 19 reserves.</p> <p>20 If you go to Exhibit 43, you have the reserve 21 study that was issued which includes expenses that the Court 22 categorically rejected. An important point on this is that 23 absent a stay of an order, the Defendants have to promptly 24 comply with that order, and that's under Maness versus</p>	<p style="text-align: right;">Page 100</p> <p>1 Plaintiffs. We know from the testimony of Mr. Teischner 2 that he didn't approve that.</p> <p>3 If we look at Exhibit 46, it's an e-mail from the 4 Receiver with regard to not turning over the rents and that 5 he was denied read only access to even the reserve accounts, 6 which is clearly resisting or not cooperating, interfering 7 with the receivership.</p> <p>8 We had the numerous issues about bank accounts, 9 whether it should go into a certain bank account, whether it 10 should be net rents, gross rents. Yet at every turn it was 11 interference with seeking a result that would result in no 12 payment. We can't turn over the rents because we can't, you 13 don't have the bank account. You have got the Receiver 14 specifically requesting that the rents go into the UOA bank 15 account. Refusal to do that.</p> <p>16 But the most telling with regard to all of the 17 rental issues or the refusal to turn over the rents is their 18 own balances showed that certain amounts were due in rents 19 to certain Plaintiffs, and yet they refused to do that. And 20 then at the last minute Hail Mary last night the Defendants 21 wire transfer in what's showed under their balances, which 22 we know are incorrect balances.</p> <p>23 But the years of preceding this of not even paying 24 out the amounts that are owed under the statements is just</p>
<p style="text-align: right;">Page 99</p> <p>1 Meyers, 419 U.S. 449, 1975.</p> <p>2 And in that same case it states, "While a party or 3 an attorney can disagree with an order, they may not refuse 4 to comply, otherwise such refusal constitutes contempt. 5 Indeed, persons who make private determinations of law and 6 refuse to obey an order generally risk criminal contempt 7 even if the order is ultimately ruled to be incorrect." And 8 that's from Meyers at 458.</p> <p>9 So the Defendants don't have the ability to do 10 what they want to do while reconsideration is pending. And 11 then we heard a great deal of testimony about how Mr. Brady 12 believes that the Receiver's calculations are wrong and they 13 don't comply with the Governing Documents.</p> <p>14 Clearly those initially I objected on the grounds 15 of relevance, because what Mr. Brady believes about what 16 goes in the Governing Documents, what should go into these 17 calculations are indeed irrelevant to this contempt 18 proceeding. As we know under the case that I just 19 referenced, even if there was a subsequent order saying, oh, 20 that was wrong, you are still in contempt because you can't 21 just violate a Court order because you don't agree with the 22 result.</p> <p>23 If you look at Exhibit 44, it's a \$26 million 24 special assessment that was levied by the Defendants on the</p>	<p style="text-align: right;">Page 101</p> <p>1 clearly contemptuous, failure to return, or failure to 2 release the rents, whether it be to the Receiver or the 3 Plaintiffs.</p> <p>4 Exhibit 56 is another e-mail wherein Mr. Teischner 5 e-mailed to Mr. Brady concerning the release of the rents, 6 and this was May 9th of 2023 demanding the gross rents, and 7 rather than staying in compliance you get more argument 8 that, no, we only have to release the net rents.</p> <p>9 And then we come to learn that the excuse was, 10 well, you don't have a bank account, but yet the Receiver's 11 counsel had sent the bank account information I believe on 12 the 5th. And I will, you know, give deference to defense 13 counsel that it just wasn't opened because it was encrypted.</p> <p>14 But, again, it's always the result of nonpayment 15 on every issue. In the end it's, well, we couldn't pay 16 because of this, we couldn't pay because of this, and it's 17 at every single turn, other than last night on the eve of 18 the closing of these proceedings.</p> <p>19 And if we look at the second Motion for Order to 20 Show Cause, that Motion for Order to Show Cause is in 21 connection with not using the Receiver's calculation of 22 fees. Again, we have the Appointment Order, Exhibit 115, 23 which unequivocally the Receiver controls the governing, the 24 implementation of the Governing Documents. He is in charge</p>

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<p style="text-align: right;">Page 102</p> <p>1 of the rents. The Defendants have a duty to turn over all 2 rents.</p> <p>3 Preceding this Motion for Order to Show Cause, we 4 also have the December 24th, 2020, order which states, "The 5 Receiver shall recalculate the DUF, the Hotel Expense Fees, 6 and Shared Utilities Fees to include only those expenses 7 that are specifically provided for in the Governing 8 Documents." And that's page 3, lines 24 to 26.</p> <p>9 So you have got the Appointment Order and that 10 December 24th order confirming, look, only the Receiver 11 calculates these fees. The Receiver's fees are to be 12 applied, or are the fees to be used.</p> <p>13 We then look at Exhibit 58, which is the 14 September, the September monthly account statements for 15 2021. Those account statements showed a DUF of 24.54 and a 16 hotel fees column of \$610.26.</p> <p>17 And then Exhibit 59 is the November statements for 18 that same year wherein the Defendants increase the daily use 19 fee to 32.47 and doubled the contracted hotel fees to 20 \$1,225.63.</p> <p>21 So you have got orders, the Appointment Orders 22 saying the Receiver is in charge of implementation of the 23 Governing Documents, in charge of the rents. You have got 24 the December 24th, 2020, order specifically stating that the</p>	<p style="text-align: right;">Page 104</p> <p>1 the Receiver even had to go to the extent of filing a Motion 2 for Instructions to have this contemptuous conduct more or 3 less unwound.</p> <p>4 Something very interesting happens around this 5 same time, right? So the Receiver files his Motion for 6 Instructions on these issues October 18th, 2021, and then 7 his last invoice is paid October of 2021 pursuant to the 8 testimony of the Receiver.</p> <p>9 And we heard testimony from Mr. Brady that the HOA 10 ran out of money at that time. I believe Mr. Teischner 11 referenced that, but the fact of the matter was at that time 12 the Defendants were still taking in all of Plaintiffs' 13 rental revenue, taking in the rental revenue from their 14 units, not paying, we know going back to January of 2020 not 15 paying a dollar to the Plaintiffs in their rental revenue.</p> <p>16 So they are holding all of the rents for these 17 units and they can't write a check from all of the rents 18 that they are in possession of to Mr. Teischner to keep him 19 going so the necessary work could be done? Rather they just 20 sat on the funds and made arguments about whether net rents 21 applied or didn't apply.</p> <p>22 The issue was simple. The Appointment Order 23 clearly dictates the Receiver is paid from the rents. 24 MEI-GSR is holding all of the rents. The order requires</p>
<p style="text-align: right;">Page 103</p> <p>1 Receiver is the one that does these calculations for these 2 fees, and yet between September and November the Defendants 3 unilaterally on their own increase these fees.</p> <p>4 And their excuse was, or is now, it wasn't in 5 their Motions for Reconsideration, is now that these orders 6 couldn't be read in harmony, that we didn't know what to 7 apply. So is an excuse to contempt that you increase the 8 fees?</p> <p>9 There is no way you can look at either of those 10 orders and come to the result that, oh, yes, we have 11 authority to increase the fees, which is exactly what 12 occurred.</p> <p>13 We look at the Exhibit 61, which is an e-mail from 14 I believe the Receiver's counsel dated November 17th, 2021, 15 and this just confirms that the Receiver did not authorize 16 the fees, did not authorize the special assessment, and that 17 was also confirmed by the testimony of the Receiver. For 18 the Defendants to unilaterally recalculate and increase the 19 fees was an act of contempt of court.</p> <p>20 And then we look at Exhibit 64, which was a letter 21 from the Receiver to the Court where he addresses the 22 impropriety of the large special assessment and requests 23 that certain actions be taken to unwind these events. And 24 as a follow-up to that letter, that letter is Exhibit 65,</p>	<p style="text-align: right;">Page 105</p> <p>1 that the Defendants release the rents to the Receiver upon 2 request and here we sit month after month unpaid invoice 3 which stopped all work.</p> <p>4 And then the Receivers, the Defendants' primary 5 excuses time after time from the deposition, or I mean the 6 testimony of Mr. Brady, is that we had to take all of these 7 actions because Mr. Teischner was no longer doing work, so 8 we were just forced to do this. We have an excuse for 9 contempt because all work stopped.</p> <p>10 The problem with that is you can't create your own 11 basis for proceeding in contempt, right? They are the 12 entity that set this into motion, so every argument that we 13 had to do the reserves because Teischner wouldn't, we had to 14 do X because Teischner wouldn't, all of that falls on its 15 face because you created this situation.</p> <p>16 All the work stopped because you were holding all 17 of the rents, not releasing any of the rents, not even 18 releasing rents under your calculations and Mr. Teischner is 19 not getting paid. The solution was simple.</p> <p>20 Instead, their plan was to try to force a special 21 assessment so that Plaintiffs would have to come out of 22 their pocket for more money to pay the Receiver at a time 23 when the rents had been cut off to them since January 24 of 2020.</p>

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<p style="text-align: right;">Page 106</p> <p>1 And it goes back to the theme when we started.</p> <p>2 "We are a company that holds our money very tight." Every</p> <p>3 penny stopped to the Plaintiffs and after October of 2021</p> <p>4 every penny stopped to the Receiver up until a couple of</p> <p>5 months ago.</p> <p>6 And the only impetus for that was because you had</p> <p>7 the Court granting the unit, you have the Court granting</p> <p>8 permission to terminate the Unit Rental Agreement, I mean</p> <p>9 the association, and then you have the Stipulation and Order</p> <p>10 that, in fact, terminates or dissolves the UOA.</p> <p>11 And once that's in place, the Defendants know, oh,</p> <p>12 the Receiver has to get some money, because we are not going</p> <p>13 to be able to terminate this or actually sell the units</p> <p>14 until the Receiver does certain work.</p> <p>15 But we have a conflict there now, too, because the</p> <p>16 Defendants are trying to assert the position that the</p> <p>17 Receiver has no authority to do anything for lack of</p> <p>18 jurisdiction, which if you take that to conclusion I guess</p> <p>19 the units will just sit indefinitely held in trust with the</p> <p>20 Receiver because that's what the termination agreement</p> <p>21 states, is that the units terminate I believe and that the</p> <p>22 units are held by the Association with the Receiver as</p> <p>23 trustee.</p> <p>24 That issue also goes back to don't you turn over</p>	<p style="text-align: right;">Page 108</p> <p>1 And, in fact, the only logical conclusion, right,</p> <p>2 when you have specifically Court-approved fees that the</p> <p>3 Receiver went to the, to the effort of calculating, the</p> <p>4 Court reviewed and approved clearly those were the fees that</p> <p>5 should have been applied at that time.</p> <p>6 And even if we look at the Exhibit 22, which was</p> <p>7 the order that talked about leaving those fees in place that</p> <p>8 were there prior to September 27th, '21, that order even</p> <p>9 references in the following sentence I believe that until</p> <p>10 Court fees are approved.</p> <p>11 Well, you have approved fees. How could you reach</p> <p>12 any other conclusion other than to apply the Court-approved</p> <p>13 fees? But, again, too, this is just one element or one</p> <p>14 minor component of the repeated contempt in connection with</p> <p>15 the refusal to turn over the rents.</p> <p>16 So even if the Court thought that that was a</p> <p>17 source of confusion and there was a basis under those</p> <p>18 grounds to not hold the Defendants in contempt, you still</p> <p>19 look at what occurred prior to January 4th, 2022, when they</p> <p>20 applied their own fees.</p> <p>21 When they issued certain statements that showed</p> <p>22 Plaintiffs were owed money. Refused to even turn that money</p> <p>23 over to the Plaintiffs. Refused to turn it over to the</p> <p>24 Receiver.</p>
<p style="text-align: right;">Page 107</p> <p>1 the gross rents for all of the units at this point? At this</p> <p>2 point the units are owned by the UOA, right? So upon</p> <p>3 termination of the Association, title to the units transfers</p> <p>4 to the UOA. Teischner is now trustee for the UOA holding</p> <p>5 all of those units and yet Defendants are still taking and</p> <p>6 holding all of the rental revenue that's derived from this</p> <p>7 asset that's held by the Receiver, or as trustee for the</p> <p>8 UOA.</p> <p>9 We then move to the third Motion for Order to Show</p> <p>10 Cause dated February 1st, 2022, and this is, this motion</p> <p>11 concerns the first unauthorized withdrawal of the reserves</p> <p>12 in the amount of \$3,562,441.28.</p> <p>13 THE COURT: What's the date of that motion, again?</p> <p>14 MR. MILLER: That motion is dated February 1st,</p> <p>15 2022.</p> <p>16 THE COURT: Thank you.</p> <p>17 MR. MILLER: And then the second component of</p> <p>18 contempt in connection with that motion is the issuing of</p> <p>19 the monthly statements that don't track the January 4th,</p> <p>20 2022 orders, and I won't belabor that point again. We have</p> <p>21 the two orders, Exhibit 22 and Exhibit 24, but we also have</p> <p>22 the Motions for Reconsideration that don't reference that,</p> <p>23 that the issue of any, that those, that those orders can't</p> <p>24 be read in harmony.</p>	<p style="text-align: right;">Page 109</p> <p>1 And then you have the most recent conduct where</p> <p>2 the Receiver, we have already talked about this, I believe</p> <p>3 it was Exhibit 55 or Exhibit 56, this year the Receiver says</p> <p>4 turn over the gross rents. And instead of giving the</p> <p>5 affirmative response it will turn over the gross rents, you</p> <p>6 have Mr. Brady e-mailing back his arguments as to why that's</p> <p>7 not right, which, again, is interference or failure to</p> <p>8 cooperate with the receivership.</p> <p>9 If you look at the orders that were at issue in</p> <p>10 the February 1st, 2022, Motion for Order to Show Cause, you</p> <p>11 have got violations of Exhibit 22, which another component</p> <p>12 of Exhibit 22 is the order granting Receiver's Motions for</p> <p>13 Instructions. It states that the special assessment be</p> <p>14 immediately withdrawn and refunded, and that's at page 7,</p> <p>15 lines 22 to 28.</p> <p>16 You have got another order issued on that date</p> <p>17 which is 1/20 which states that the special assessments to</p> <p>18 fund the receivership were to be withdrawn and refunded.</p> <p>19 The contempt that occurred in connection with the</p> <p>20 withdraw of the special assessments as we put Mr. Brady on</p> <p>21 the stand, where was the letter that went out to the</p> <p>22 Plaintiffs to let them know that the special assessment that</p> <p>23 they had received, which purportedly obligated them I think</p> <p>24 to pay about \$25,000 a year for the next three years under</p>

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<p style="text-align: right;">Page 110</p> <p>1 the special assessment, where is the letter indicating that</p> <p>2 the special assessment had been withdrawn?</p> <p>3 We think the special assessment was just</p> <p>4 harassment, more of the continuation of you need to abandon</p> <p>5 your unit. You need to abandon this case. This is what you</p> <p>6 are in for.</p> <p>7 There is a key, the key portion of that order was</p> <p>8 to send out notice to these people that that's no longer a</p> <p>9 financial obligation that they have to be concerned about</p> <p>10 over the next three years. \$25,000 a year, it's a fair</p> <p>11 amount of money.</p> <p>12 There is no evidence that that was complied with.</p> <p>13 In fact, the only evidence on the withdrawal of either of</p> <p>14 those special assessments and the dictates under that is a</p> <p>15 letter that came from Associa Management and that is</p> <p>16 Exhibit 70. First, that's not a letter from the Defendants.</p> <p>17 The Defendants were under the obligation to do this.</p> <p>18 And then if we look at that letter, it has a false</p> <p>19 statement in it. It says only one of the special</p> <p>20 assessments was withdrawn, and then it admittedly states</p> <p>21 that the timeline is not going to be complied with under the</p> <p>22 dictates of the order. It states that it's going to take</p> <p>23 some time to unwind these special assessments, yet when you</p> <p>24 look at Exhibit 22 and Exhibit 120 that withdraw the special</p>	<p style="text-align: right;">Page 112</p> <p>1 Exhibit 76, which is from Ms. Sharp. Again, she confirms,</p> <p>2 "The Receiver did not approve the statements. The</p> <p>3 Defendants refused to apply the Court-ordered fees to all</p> <p>4 670 units, thus the receivership is insolvent."</p> <p>5 That's a critical statement from Ms. Sharp's</p> <p>6 e-mail. I will read it one more time, "The Receiver did not</p> <p>7 approve the statements. The Defendants refused to apply the</p> <p>8 Court-ordered fees to all 670 units, thus the receivership</p> <p>9 is insolvent. Nothing can be done because there are no</p> <p>10 funds to operate the receivership. No rents have been</p> <p>11 turned over to date."</p> <p>12 And then, again, Exhibit 77 is another owner</p> <p>13 account statement, which the owner account statements if you</p> <p>14 had to limit yourself to one piece of evidence, they are the</p> <p>15 clear and convincing evidence, right, that the Defendants</p> <p>16 aren't doing what they are ordered to do, what they are</p> <p>17 supposed to do. They are unilaterally applying their own</p> <p>18 fees. They are not even holding those in place. They</p> <p>19 continually are gradually increased.</p> <p>20 Exhibit 78 is the Receiver report dated</p> <p>21 March 31st, 2022, and this is the one where Mr. Teischner</p> <p>22 indicates that he wants to use the UOA bank account to</p> <p>23 deposit the rents. Rather than cooperate with</p> <p>24 Mr. Teischner, there is a refusal to do that. Mr. Teischner</p>
<p style="text-align: right;">Page 111</p> <p>1 assessments, they provide specific timelines.</p> <p>2 You also had a violation of Exhibit 123, which has</p> <p>3 never been challenged as ambiguous by the Defendants. In</p> <p>4 that Exhibit 123, that order again reiterates that the</p> <p>5 Receiver is to prepare a reimbursement report. So, again,</p> <p>6 the Receiver is the one that decides what's reimbursed out</p> <p>7 of the reserves, not the Defendants, and then we have this</p> <p>8 unauthorized withdrawal of \$3.5 million.</p> <p>9 The first exhibit that demonstrates that these</p> <p>10 actions occurred is Exhibit 66. It's the January 2022</p> <p>11 monthly statements.</p> <p>12 We then have Exhibit 68, which is an e-mail from</p> <p>13 Stephanie Sharp confirming that the Receiver didn't</p> <p>14 authorize this conduct. We have the testimony of</p> <p>15 Mr. Teischner confirming he didn't authorize the conduct.</p> <p>16 If we then move on to the fourth Motion for Order</p> <p>17 to Show Cause, which is dated April 25th, 2022, the issues</p> <p>18 of contempt in that motion concern the refusal to turn over</p> <p>19 rents and the refusal to pay the Receiver.</p> <p>20 Orders violated by that conduct are the</p> <p>21 Appointment Order; again, Exhibit 115, Exhibit 122, and</p> <p>22 Exhibit 124. And, again, I won't go over the Exhibits 122</p> <p>23 and 124 again, but you have those issues there.</p> <p>24 Under additional evidence in that, you have got</p>	<p style="text-align: right;">Page 113</p> <p>1 provides his analysis that your argument that this is going</p> <p>2 to impact the non-profit status, he doesn't agree with that,</p> <p>3 but still no compliance with his request.</p> <p>4 We then move on to the fifth Motion for Order to</p> <p>5 Show Cause, which is dated December 28, 2022, and this</p> <p>6 concerns applying Defendants' fees, not the Receiver's fees,</p> <p>7 and a refusal to release the rents.</p> <p>8 And what is interesting about this motion and the</p> <p>9 reason it was filed is the Court on November 14th, 2022,</p> <p>10 filed an order confirming the January 4, 2022, orders. So</p> <p>11 we had some resistance during that prior period that, well,</p> <p>12 we don't need to do those things because we are seeking</p> <p>13 reconsideration of those motions and as a result of that</p> <p>14 reconsideration these issues aren't entirely resolved. We</p> <p>15 know that's just not the law, but that's sort of the</p> <p>16 repeated theme of the Defendants.</p> <p>17 But then on November 14, 2022, the Court affirms</p> <p>18 those orders. And, again, when you look at the motions on</p> <p>19 those orders, many of the complaints that they make about</p> <p>20 the orders aren't addressed in those Motions for</p> <p>21 Reconsideration.</p> <p>22 But you have affirmance of the orders, and then</p> <p>23 the very next statement that's issued after those orders,</p> <p>24 which I believe is Exhibit 126 -- oh, no, sorry, it's not</p>

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<p style="text-align: right;">Page 114</p> <p>1 Exhibit 126. Where is that? Oh, Exhibit 82 and Exhibit 83 2 demonstrate that despite the affirming order you are still 3 getting Defendant-imposed fees that are much higher than 4 what Mr. Teischner had applied. 5 And then the other, they want to say Mr. Teischner 6 didn't do his job. Mr. Teischner didn't complete these 7 fees, didn't get these things done. 8 Well, we all know that he wasn't being paid, but 9 where are the e-mails from GSR to Mr. Teischner or where is 10 the reaching out to Mr. Teischner to say do you want us to 11 implement such and such fee? Do you want us to do this? 12 No, it's the road blocks, right? We need a full 13 recalculation of such and such years as we deem it is 14 required under these orders and we are not doing anything 15 until those are done and until it goes into a certain 16 account. There is no cooperation whatsoever, but 17 interference. 18 And then I won't go back through the specific 19 violations under the fifth Motion for Order to Show Cause 20 because it relates to the same conduct. It's just 21 particularly egregious once you have that affirming order 22 issued by the Court. 23 So that leads us to the sixth Motion for Order to 24 Show Cause, which is dated December 29th, 2022, and the</p>	<p style="text-align: right;">Page 116</p> <p>1 Conclusions of Law and Judgment. 2 The conduct violated Exhibit 120, which states 3 when the Appointment Order was issued all authority vested 4 in the Receiver, or transferred to the Receiver, et cetera, 5 et cetera. It violated Exhibit 121, which is also a 6 January 4th, 2022, order wherein the Court says, in quotes, 7 "The Court finds the Defendants' reserve study to be flawed 8 and untrustworthy and finds that the Receiver has the proper 9 and sole authority to order, oversee, and implement the new 10 reserve study," and that's from page 5, lines 16 to 18. 11 It goes on to state that the Receiver alone has 12 authority to direct and audit the reserve study, not the 13 Defendants. We heard testimony from Mr. Teischner that he 14 did not approve the reserve study or the special assessment. 15 We heard testimony from Mr. Brady confirming that they used 16 the same reserve study specialist despite the prior order. 17 Exhibit 90 is the actual reserve study that 18 conflicts with the, with the Court's prior orders. 19 Exhibit 91 is an e-mail from Stephanie Sharp confirming that 20 the Receiver did not approve the reserve study. 21 And then we have Exhibit 100 with regard to the 22 failure to pay or turn over the rents, which is a 23 declaration of Mr. Brady, but at the end of that declaration 24 there is an e-mail chain included with that declaration</p>
<p style="text-align: right;">Page 115</p> <p>1 issues with the sixth Motion for Order to Show Cause is the 2 Defendants' procured a reserve study and sent out a 3 \$44 million special assessment, I think which was 4 approximately \$65,000 per unit without Receiver approval. 5 In addition to the special assessment, which was 6 based on a reserve study from a company that the year before 7 the Defendant had, or the Court had specifically rejected 8 that company's reserve study, the Court ordered that the 9 reserve study was untrustworthy. The Court ordered that you 10 couldn't have certain expenses such as the pool expenses. 11 And what did the Defendants do? They turn around 12 the following year, use the same company with the same 13 defects that were previously litigated. How does that not 14 interfere with the receivership when you are going out and 15 using the same company with the same flaws that were 16 previously litigated? 17 The other issue at that time is the second 18 substantial withdrawal from the reserve funds without 19 Receiver approval, and I believe under the Receiver's 20 calculations it was approximately \$12.8 million that was 21 taken out of the reserves without Receiver approval. 22 That conduct violated again Exhibit 116, the 23 Appointment Order, or Exhibit 115, the Appointment Order. 24 Also, it violated Exhibit 116, the Findings of Fact,</p>	<p style="text-align: right;">Page 117</p> <p>1 which includes e-mails from Mr. Teischner to Mr. Brady 2 stating, "Have the fees that I calculated for 2021 been 3 retroactively applied to the Plaintiffs? Also, if the 4 adjustments for the revised fee charges for the 2021 have 5 been made have they also been retroactively applied to 2020 6 as ordered?" 7 We then move on to the seventh Motion for Order to 8 Show Cause, which is perhaps the most simple, and that's 9 dated May 2nd of this year, of 2023, and the issue with that 10 contemptuous conduct is that they stopped renting the 11 Plaintiffs' units. 12 We know that the Receiver order is still in 13 effect. We know that there was never an order granting 14 termination of the Unit Rental Agreements. We know that the 15 Defendants in the past when they sought to terminate the 16 Unit Rental Agreements they filed a Motion to Terminate Unit 17 Rental Agreements, which was denied. So we know the Unit 18 Rental Agreements were still in place. 19 If we look at Exhibit 128, which is dated 20 March 14th, 2023, the Court actually issued a confirming 21 order confirming that the units, I believe the language is 22 need to continue to be rented. 23 If we look at Exhibit 102, which is an e-mail 24 dated April 5th, 2023, from Mr. McElhinney, that e-mail</p>

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<p style="text-align: right;">Page 118</p> <p>1 states, "Ms. Sharp, on March 14th, 2023, the Court entered 2 its order granting Motion for Instructions to Receiver. 3 Therein the Court ordered the Receiver to continue to rent 4 the former units under the Unit Rental Agreement so as to 5 avoid economic waste." 6 "On March 30th, 2023, Plaintiffs' counsel sent you 7 an e-mail asking you to confirm that the units are still 8 being rented," ellipsis, there is some missing sections in 9 there that were more or less irrelevant, but this last 10 sentence of that e-mail is critical. 11 "Defendants, therefore, will perform the above 12 described servicing under protest with a reservation of 13 rights and without waiving any issues or arguments on appeal 14 from the December 5th, 2022, order, the final judgment, or 15 any other appealable rulings." 16 So on March 30th, 2023, the Defendants' counsel 17 confirms that the units will continue to be rented. We get, 18 we get the statement for March, for the March rental 19 activity, which is Exhibit 103, and it shows despite the 20 representations in that March 30th e-mail the units were not 21 rented at all during that time period. 22 So not only do you have contempt, but you have a 23 misleading as of March 30th that they would continue to be 24 rented, and it's not until the following month that we get</p>	<p style="text-align: right;">Page 120</p> <p>1 The case law further indicates that, "Those who 2 are officially responsible for the conduct of the entity's 3 affairs no less than the entity itself are guilty of 4 disobedience and may be punished for contempt," and that's 5 under Wilson versus U.S., 221 U.S. 361 at 376, 1911. 6 I believe Exhibit 147 submitted today is pages 7 from the Nevada Secretary of State web pages wherein it's 8 demonstrated that both Luis Armona and Alex Meruelo are the 9 managers of MEI-GSR Holding, which is the entity that is 10 perpetuating the contempt. 11 What was more interesting I thought this morning 12 was that Mr. Brady admitted, or not admitted, testified that 13 when they had these meetings to discuss withdrawing the 14 funds from the reserves without Court approval that 15 Luis Armona was one of the individuals involved in those 16 meetings, and Luis Armona is a managing member of the, of 17 the entity unless under the case law apparently he would be 18 the individual that would be subject to the imprisonment. 19 And I would resubmit to the Court that the Court 20 should condition compliance with its orders on some term of 21 imprisonment if, under the 25 day regulation. The purpose 22 of civil contempt is to get compliance with civil orders, 23 and the Court is well within its authority to dictate that 24 certain events occur or that the Defendants undertake</p>
<p style="text-align: right;">Page 119</p> <p>1 the statements that we learn that, no, they weren't rented. 2 And it's a month and, I believe we are looking at a little 3 over a month and a week. 4 So in the grand scheme of this case, it's not, 5 it's not comparable to the other damages, but under I 6 believe the testimony of Mr. Reed Brady for every month for 7 these Plaintiffs' units you are looking between 150, 8 \$300,000 of gross rents coming in that's not, that's not 9 going to rents for the Plaintiffs and it's not money that 10 can be used to offset any expenses that are applied to. So 11 it's really a double, I guess kind of a double whammy for 12 the Plaintiffs for lack of a better word. 13 Plaintiffs are requesting that the Court find the 14 Defendants in contempt of court. Pursuant to NRS 22.100, 15 "If a person is found guilty of contempt, a fine may be 16 imposed on the person not exceeding \$500 or the person may 17 be imprisoned not exceeding 25 days, or both. Again, that's 18 NRS 22.100. 19 Now, the Court has already indicated that nobody 20 is going to jail as a result of these proceedings. We will 21 submit that we believe that's the only remedy that would get 22 the attention or action from these Defendants, but, 23 obviously, this is within the purview and discretion of the 24 Court.</p>	<p style="text-align: right;">Page 121</p> <p>1 certain actions in compliance with the Court's orders. 2 And then if they don't do so or fail to do so 3 within a specific time period that that sentence of 4 imprisonment will then go into effect. And that's really 5 where this case is at, in my opinion, when you look at all 6 of the orders that have been issued, all of the attempts to 7 stop the transfer of any money to either the Receiver or the 8 Plaintiffs. 9 The repeated orders don't seem to get the job done 10 for lack of a better word and we think that a condition of 11 the Court's order having some term of imprisonment with a 12 warrant being issued not exceeding 25 days may be the lever 13 that finally gets the Defendants to comply. 14 We heard testimony from Mr. Brady that it would be 15 difficult for the GSR to deposit and transfer to the 16 Receiver the gross rents. We believe that that is the 17 appropriate remedy under these circumstances. 18 The only way you move authority or real authority 19 over to the Receiver from these Defendants is to move the 20 money over to the Receiver and in his control. So long as 21 they have control, the track record in this case has been we 22 do whatever we want. We apply our fees. We don't send out 23 money to you even if it's owed under our fee calculations. 24 So the money that's generated from the rents, not</p>

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<p style="text-align: right;">Page 122</p> <p>1 only because the Receiver is now the one who holds the asset 2 as trustee of the units, but also because that's the other 3 method that gets compliance from these Defendants. 4 If the Receiver has the money and he decides if it 5 goes back to the Defendants or goes back, or gets paid out 6 to the Plaintiffs for rental revenue after approval from the 7 Court, he has all of the control. He was supposed to have 8 control from the beginning. That has obviously failed. 9 We think that as another critical component of the 10 Court's order would be, to get compliance with the 11 Defendants, is the removal of control from the Defendants, 12 which is provided for under the, under the law and the Court 13 can issue that as a remedy. 14 We think that as a result of these proceedings the 15 Court should hold the Defendants in contempt. We think that 16 the improperly, the Court should order that the improperly 17 withdrawn reserve amounts should be refunded to the 18 reserves. 19 We believe that the reserves should be transferred 20 into the Defendants', or not the Defendants', the Receiver's 21 reserve account, or the Receiver's account. Clearly the 22 Defendants should not be left in control of the reserves. 23 There was a process in place before where the 24 Receiver would get the monthly account statements. We knew</p>	<p style="text-align: right;">Page 124</p> <p>1 do, tried to leave them in control where they could issue 2 the monthly rent statements directly to the Plaintiffs, and 3 they just didn't do it. 4 So the only way to resolve that issue is to take 5 those funds and have them immediately transferred over, not 6 immediately, at the end of the month transferred over to the 7 Receiver. And while the GSR may not like the additional 8 accounting work that's going to be required with that 9 transfer, that's the consequence of doing the things that 10 you have done. That's the consequence of being in a 11 position where you committed fraud and a Receiver has to be 12 appointed. That's the consequence of violating numerous 13 Court orders. 14 At some point you have to suffer the consequence, 15 and the consequence for them is, look, you are going to have 16 some additional accounting costs here because those monies 17 need to go to the Receiver. The Receiver then determines 18 what the fee should be applied, and then he transfers back 19 the amounts with the instructions of how to distribute them. 20 And if the Defendants are unwilling to do that, 21 then every month the Receiver will just continue to build 22 those revenues, which are the asset of the UOA anyways, 23 right? I mean, the UOA now holds title to those units. 24 And then finally the Court had asked for some</p>
<p style="text-align: right;">Page 123</p> <p>1 they were properly being funded. The Defendants weren't to 2 withdraw any money unless the Receiver and the Court 3 approved the withdraw. That process has failed. That 4 process failed when the \$3.6 million was taken out of the 5 reserves. 6 We believe it's time now to transfer those 7 reserves into the exclusive control of the Receiver and, 8 again, not only because we have got violations of the 9 Receiver order, but now the GSRUOA is the one that owns 10 those reserves. Ownership and control of the GSRUOA has 11 been exclusively transferred to the Receiver. 12 The GSRUOA now also holds title to the units. For 13 that, for the reserves -- for that entity to still be in the 14 control of Defendants that have committed fraud and 15 withdrawn money from the reserves, that we believe that time 16 has passed and we are just asking for more misappropriation 17 from the reserves by not turning over those accounts and 18 having the funds withdrawn, redeposited in there. 19 We believe that starting with the next monthly 20 statements that are issued to the Plaintiffs that all gross 21 rents should be turned over to the Receiver. Again, this is 22 not only because it puts the Receiver in control as he is 23 supposed to be in control, because we tried this other 24 method where the Receiver gave them instruction on what to</p>	<p style="text-align: right;">Page 125</p> <p>1 additional briefing on -- 2 THE COURT: Not additional briefing, additional 3 thoughts. 4 MR. MILLER: I'm sorry, you are correct. I 5 apologize, I'm wrong. You asked for additional thoughts on 6 what additional remedies the Court could award in connection 7 with the contemptuous conduct. 8 I thought that the Court would ask for instruction 9 on that prior to my closing, so Bri, my associate 10 Mrs. Collings, was prepared to deliver that argument on the, 11 on what additional remedies the Court can order, and I know 12 this is a little bit unorthodox -- 13 THE COURT: Does she want to do it before or after 14 lunch? Do you want to do it before or after we break for 15 lunch? Would you like to go before or after we break for 16 lunch? It's okay. I will let two of you -- 17 MS. COLLINGS: Then after lunch would be 18 preferable. 19 THE COURT: What? 20 MS. COLLINGS: After lunch would be preferable. 21 THE COURT: After lunch. 22 All right. Anything else, Mr. Miller? 23 MR. MILLER: Your Honor, I would like to -- 24 THE COURT: You can reserve time for rebuttal.</p>

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<p style="text-align: right;">Page 126</p> <p>1 MR. MILLER: Yeah, and the only addition would be</p> <p>2 that I would include the statements of Mrs. Collings once</p> <p>3 she makes those as far as appropriate remedies for the Court</p> <p>4 to issue.</p> <p>5 THE COURT: Yes, she is going to make them right</p> <p>6 after lunch and then we will go to Mr. McElhinney</p> <p>7 afterwards.</p> <p>8 MR. MILLER: Perfect. Thank you.</p> <p>9 THE COURT: And then if Mr. Smith wants to talk,</p> <p>10 he will talk. And then I will go back to your table, and if</p> <p>11 Mr. Eisenberg wants to talk he can talk, if Ms. Collings</p> <p>12 wants to talk she can talk, if you want to talk you can</p> <p>13 talk, and we will be done, and then I will read to you what</p> <p>14 I have been typing in my notes for four days.</p> <p>15 MR. MILLER: Thank you.</p> <p>16 THE COURT: See you in an hour.</p> <p>17</p> <p>18 (Whereupon a break was taken from 12:18 p.m. to 1:13 p.m.)</p> <p>19</p> <p>20 THE COURT: Ms. Collings.</p> <p>21 MS. COLLINGS: Your Honor, as Mr. Miller</p> <p>22 mentioned, I'm just going to address the very limited issue</p> <p>23 of what contempt sanctions the Court might award following</p> <p>24 this proceeding.</p>	<p style="text-align: right;">Page 128</p> <p>1 interpleader has brought the Receiver current, but during</p> <p>2 those times the Plaintiffs were effectively without an</p> <p>3 operating receivership.</p> <p>4 Accordingly, these other reasonable expenses that</p> <p>5 fall into subsection 3 should absolutely include the</p> <p>6 following four things. First, the Receiver's invoices for</p> <p>7 this proceeding that just undeniably arises from the</p> <p>8 Defendants' contempt. That's the only reason we are here</p> <p>9 this week, that's the only reason Mr. Teischner was on the</p> <p>10 stand for as long as he was.</p> <p>11 Secondly, any portion of the Receiver's invoices</p> <p>12 and his counsel's invoices that the Receiver believes is</p> <p>13 attributable to the Defendants' contemptuous conduct. This</p> <p>14 would be work that the Receiver was not doing to further his</p> <p>15 obligations to implement the Governing Documents, but simply</p> <p>16 the work he did to address the Defendants' repeated</p> <p>17 violations of those Governing Documents and also of the</p> <p>18 Court's orders.</p> <p>19 Third, interest on the unpaid rents. As I just</p> <p>20 mentioned, the Defendants have not received a single penny</p> <p>21 of their rents for almost 2 1/2 years. We believe then that</p> <p>22 the legal remedy for that would be for them to be awarded</p> <p>23 interest at a legal rate for those amounts.</p> <p>24 Fourth, and finally, would be interest on the</p>
<p style="text-align: right;">Page 127</p> <p>1 NRS 22.100(3) allows a party to recover "other</p> <p>2 reasonable expenses" as you mentioned yesterday afternoon.</p> <p>3 The Court has brought authority in determining what these</p> <p>4 expenses as part of a civil contempt sanction may be. These</p> <p>5 other reasonable expenses include "any actual loss caused by</p> <p>6 the contemptuous conduct." That's Detwiler vs. Eighth</p> <p>7 Judicial District Court, 137 Nev. 202, 2021.</p> <p>8 The Plaintiffs have incurred a substantial amount</p> <p>9 of "actual loss" as a result of Defendants' contempt. These</p> <p>10 effectively fall into three categories. First, the</p> <p>11 Plaintiffs' loss of rental revenues. As has been discussed</p> <p>12 ad nauseam this week, the Plaintiffs have not received a</p> <p>13 single penny of rental revenue from their units from</p> <p>14 January 2020 until today. That's almost two and a half</p> <p>15 years with no rental revenue.</p> <p>16 Second, they lost the amounts in the reserves. As</p> <p>17 we've heard, the Defendants have unilaterally withdrawn</p> <p>18 millions of dollars from the reserves to which the</p> <p>19 Plaintiffs might have a right upon the dissolution of the</p> <p>20 UOA.</p> <p>21 Third, the Plaintiffs have effectively lost their</p> <p>22 hard won appointment of the Receiver as a result of the</p> <p>23 Defendants' contemptuous not paying the Receiver from</p> <p>24 October 2021 until just recently. I appreciate that the</p>	<p style="text-align: right;">Page 129</p> <p>1 improperly withdrawn funds in the amount that would have</p> <p>2 been earned had the funds not been withdrawn. So this is</p> <p>3 different than the previous category of interest in that</p> <p>4 what we are requesting is only the amount of interest that</p> <p>5 would have been earned on the funds had the Defendants not</p> <p>6 withdrawn them.</p> <p>7 I understand that Defendants previously moved the</p> <p>8 reserve funds from one bank to another, and one of the</p> <p>9 reasons for doing so was because the second bank had a more</p> <p>10 favorable interest rate. The Plaintiffs should be entitled</p> <p>11 to enjoy that better interest rate.</p> <p>12 Civil contempt sanctions ultimately serve to make</p> <p>13 the innocent party whole. Plaintiffs are undoubtedly the</p> <p>14 innocent parties here and absolutely have been harmed by</p> <p>15 Defendants' contemptuous conduct.</p> <p>16 The expense items that I just described for you</p> <p>17 will only serve to make the Plaintiffs whole following the</p> <p>18 Defendants' contempt. So to answer Your Honor's question</p> <p>19 posed yesterday afternoon about whether the Receiver's fees</p> <p>20 for his testimony this week should be included in the "other</p> <p>21 expenses" in subsection 3, we believe the answer is</p> <p>22 unequivocally yes. Those fees absolutely should be included</p> <p>23 along with the rest of the expenses that I have just</p> <p>24 described.</p>

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<p style="text-align: right;">Page 130</p> <p>1 THE COURT: Thank you, Ms. Collings.</p> <p>2 Mr. McElhinney.</p> <p>3 MR. McELHINNEY: Your Honor, give us a moment</p> <p>4 please to set up.</p> <p>5 THE COURT: Are you using a PowerPoint?</p> <p>6 MR. McELHINNEY: I am.</p> <p>7 THE COURT: Can you make sure a copy of it is</p> <p>8 provided to the Clerk?</p> <p>9 MR. McELHINNEY: Absolutely.</p> <p>10 MR. MILLER: Your Honor, can I make just one quick</p> <p>11 point of clarification and that is the interest from the</p> <p>12 reserves would be deposited into the reserve accounts, not</p> <p>13 damages to the Plaintiff.</p> <p>14 THE COURT: I got that part.</p> <p>15 MR. MILLER: Thank you.</p> <p>16 THE COURT: I understood that from Ms. Collings'</p> <p>17 argument.</p> <p>18 MR. McELHINNEY: Your Honor, would you like a</p> <p>19 copy?</p> <p>20 THE COURT: Absolutely. Thank you. We are going</p> <p>21 to mark this as D-2.</p> <p>22</p> <p>23 (Exhibit Number D-2 was marked for identification.)</p> <p>24</p>	<p style="text-align: right;">Page 132</p> <p>1 violated a specific and definite order of the Court. During</p> <p>2 this presentation we are going to be reviewing those orders,</p> <p>3 looking for clarity whether or not there is ambiguity in</p> <p>4 those orders.</p> <p>5 Clear and convincing evidence means evidence</p> <p>6 establishing every factual element to a highly probable,</p> <p>7 high probability or evidence which must be clear, so clear</p> <p>8 as to leave no substantial doubt.</p> <p>9 Generally, an order for civil contempt must be</p> <p>10 grounded upon one's disobedience of an order that spells out</p> <p>11 the details of compliance in clear and specific and</p> <p>12 unambiguous terms so that such person will readily know</p> <p>13 exactly what duties or obligations are imposed on him or</p> <p>14 her. And this is set forth in more detail in our trial</p> <p>15 statement that was filed March 27, 2023.</p> <p>16 At the end of my closing, Mr. Smith is going to</p> <p>17 make some representations to the Court concerning NRS 22 and</p> <p>18 the standards there.</p> <p>19 Governing Documents, I want to start there because</p> <p>20 this defines and controls the relationship between the</p> <p>21 parties. We've talked about that already. Let's revisit it</p> <p>22 again. 7th Amended CC&Rs, 2007 Unit Rental Agreement, the</p> <p>23 Unit Maintenance Agreement, and I'm going to tell you in</p> <p>24 advance I did this PowerPoint. There are typos in here</p>
<p style="text-align: right;">Page 131</p> <p>1 MR. McELHINNEY: Good afternoon, Your Honor.</p> <p>2 As we stand here today, we know that Defendants</p> <p>3 have wired \$275,000 into the Receiver's account, so we have</p> <p>4 purged contempt as to any withheld money from the Unit</p> <p>5 Owners.</p> <p>6 We have posted, I don't have the exact number, but</p> <p>7 it was \$1,030,000 in round numbers, we posted that with the</p> <p>8 Court. We have a Supreme Court stay in effect. That takes</p> <p>9 care of the delta that Mr. Teischner represented between his</p> <p>10 fees and our fees from January 2020 through I believe the</p> <p>11 testimony was December 31, 2021. That has purged that</p> <p>12 allegation of contempt.</p> <p>13 We have interplead \$135,000 to pay the Receiver's</p> <p>14 and Ms. Sharp's bills, so any representation that we haven't</p> <p>15 paid the Receiver to date has been purged.</p> <p>16 We have agreed on the record to pay</p> <p>17 Mr. Teischner's fees going forward, including Ms. Sharp's</p> <p>18 bills, so we will be keeping up with that as we go forward,</p> <p>19 so that has been purged as well.</p> <p>20 We have discussed this before actually in opening.</p> <p>21 I would like to revisit it before I get started with my</p> <p>22 PowerPoint. Procedurally we know that the Plaintiffs have</p> <p>23 the burden of showing by clear and convincing evidence that</p> <p>24 the contemnors, in this case Defendants, alleged contemnors,</p>	<p style="text-align: right;">Page 133</p> <p>1 so --</p> <p>2 THE COURT: That's all right.</p> <p>3 MR. McELHINNEY: -- I apologize. It isn't pretty.</p> <p>4 So these three are the Governing Documents that</p> <p>5 define the respective rights and responsibilities of the</p> <p>6 parties. GSRUOA is a domestic non-profit corporation, stand</p> <p>7 alone, distinct, and separate from MEI-GSR.</p> <p>8 MEI-GSR Holdings, LLC is discussed as the owner of</p> <p>9 the GSR. It has roles in the 7th Amended CC&Rs as a</p> <p>10 Declarant and as the Shared Facilities Owner of the private</p> <p>11 and Public Shared Facilities.</p> <p>12 And when you look at the other documents, the 2007</p> <p>13 Unit Rental Agreement and Unit Maintenance Agreement you see</p> <p>14 reference to the company, that is also MEI-GSR, and of</p> <p>15 course it defines the relationship of the Unit Owners as</p> <p>16 well.</p> <p>17 Let's start with the 7th Amended CC&Rs, Exhibit 1</p> <p>18 that is in evidence. A covenant that runs with the land and</p> <p>19 is incorporated by reference into the Plaintiffs' deeds to</p> <p>20 their units, and I mentioned this repeatedly because it</p> <p>21 literally defines the Unit Owners' interests in their unit.</p> <p>22 So to the extent that document gets modified or</p> <p>23 altered, it has a substantial impact on the Unit Owner's</p> <p>24 interest. It defines the Unit Owner's use of the Common</p>

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<p style="text-align: right;">Page 134</p> <p>1 Elements and the Public Shared Facilities, including</p> <p>2 easements for use and enjoyment of facilities and the</p> <p>3 expenses they are responsible for, including, and we talked</p> <p>4 about this, fees, costs and use charges for easements and</p> <p>5 facilities within the Shared Facilities Unit or the parcel.</p> <p>6 We know from definition that the parcel is the entire tract</p> <p>7 of land.</p> <p>8 FF&E expenses for refurbishment and renovation of</p> <p>9 the units themselves and that is covered under Section 4.3</p> <p>10 or 4.4 of the CC&Rs. The building FF&E is distinct and</p> <p>11 separate from the FF&E and it's for refurbishment and</p> <p>12 renovation of the Public Shared Facilities and property</p> <p>13 outside of the condo property. We know about the shared</p> <p>14 facilities and hotel expenses. Those are defined in the</p> <p>15 7th Amended CC&Rs, as are the reserves.</p> <p>16 Let's start, do a little bit deeper dive on the</p> <p>17 7th Amended CC&Rs, Article 4, Section 4.3. Public Shared</p> <p>18 Facilities Easements appears on page 14 of Exhibit 1. It's</p> <p>19 an easement for reasonable ingress, egress, and access over</p> <p>20 and across, without limitation, all of the items listed</p> <p>21 there.</p> <p>22 Now, I'm going into this, Your Honor. It's</p> <p>23 relevant again because the Plaintiffs have alleged that we</p> <p>24 have hyperinflated our fees. We have engaged in wild, rogue</p>	<p style="text-align: right;">Page 136</p> <p>1 directing me to his attorney to get answers.</p> <p>2 Section 4.3(e)(i), Public Shared Facilities</p> <p>3 Easements, page 14. I think we have already been through</p> <p>4 that.</p> <p>5 Section 4.3(e)(iii), Public Shared Facilities</p> <p>6 Easements on page 15. Easements to use the loading area and</p> <p>7 to have access between the loading area and the hotel. That</p> <p>8 is the back of the hotel, as I recall Mr. Brady told us,</p> <p>9 and, of course, that's essential. That is one of the</p> <p>10 expenses they have to carry because we buy, my client buys</p> <p>11 in bulk. They store it in those areas. It's necessary that</p> <p>12 they incur some of those expenses as well.</p> <p>13 Section 4.3(e)(iv), easements to use and enjoy</p> <p>14 portions of the Shared Facilities Unit which from time to</p> <p>15 time are made available by the Owner of the Shared</p> <p>16 Facilities Unit for use by the Unit Owners.</p> <p>17 Now, I appreciate the fact that the CC&Rs don't</p> <p>18 expressly state pool, but I cannot imagine another</p> <p>19 definition that wouldn't include the pool other than</p> <p>20 easement to use and enjoy portions of the Shared Facilities</p> <p>21 Unit which from time to time are made available by the Owner</p> <p>22 of the Shared Facilities Unit to the Unit Owners.</p> <p>23 And it expressly states in here that the Unit</p> <p>24 Owners are subject to fees, costs and other use charges as</p>
<p style="text-align: right;">Page 135</p> <p>1 behavior in marking up the fees.</p> <p>2 I think the testimony demonstrates here today that</p> <p>3 our fees are in accordance with the CC&Rs. They track the</p> <p>4 CC&Rs and they are authorized under the CC&Rs. So we see</p> <p>5 walkways, hallways, corridors, hotel lobby.</p> <p>6 And in one of the orders there is a distinct, and</p> <p>7 perhaps it's an argument in a motion from the Plaintiffs</p> <p>8 that you can't include charges for the lobby. That is just</p> <p>9 false.</p> <p>10 It is expressly identified in Section 4.3,</p> <p>11 elevators and stairways that provide access to and from the</p> <p>12 hotel, residential and commercial units, and then easements</p> <p>13 for reasonable pedestrian access ways on, over, upon,</p> <p>14 et cetera, access ways that are located even outside the</p> <p>15 hotel building, so clearly far beyond the condominiums.</p> <p>16 And I mention this, and I will probably come back</p> <p>17 to it in a moment, but if you recall the Receiver said in</p> <p>18 his calculations that he only includes those expenses for</p> <p>19 the Summit Tower. That's a clear violation of the 7th</p> <p>20 Amended CC&Rs, and when I asked him for details about that,</p> <p>21 he kept referring me back to his attorney who appears, and I</p> <p>22 don't mean to be unkind, but she appears to be acting as</p> <p>23 sort of a de facto Receiver at this point because the</p> <p>24 Receiver couldn't answer many questions for me and kept</p>	<p style="text-align: right;">Page 137</p> <p>1 may be adopted or imposed from time to time by the Shared</p> <p>2 Facilities Unit Owner, including, without limitation, each</p> <p>3 Unit Owner's proportionate share of the Shared Facilities</p> <p>4 Expenses as covered under Section 6.9.</p> <p>5 So I think what I suggest to the Court is when you</p> <p>6 are looking at Section 6.9, you necessarily have to go back</p> <p>7 to Section 4.3 to see what is covered and what they are</p> <p>8 responsible for.</p> <p>9 We jump to Section 4.5(b)(i), in each instance</p> <p>10 that the Declarant makes a determination that the FF&E is in</p> <p>11 need of replacement, for purposes of including refurbishment</p> <p>12 or renovation, each Unit Owner will be required to</p> <p>13 participate in each FF&E replacement program, and the costs</p> <p>14 will be assessed either unit-by-unit for actual cost, a</p> <p>15 percentage of interest, square footage basis or such other</p> <p>16 reasonable cost allocation as the Declarant shall determine.</p> <p>17 The decision of the Declarant shall be conclusive and</p> <p>18 binding upon the Unit Owners.</p> <p>19 You can see that what has happened is that has</p> <p>20 been displaced. That has been a modification of the</p> <p>21 7th Amended CC&Rs where we have the Plaintiffs, the Unit</p> <p>22 Owners coming in and saying I don't like what you did. I</p> <p>23 think you did too much. I think it's too expensive.</p> <p>24 That is an alteration of the express terms of the</p>

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<p style="text-align: right;">Page 138</p> <p>1 CC&Rs, and part of the confusion in this case and, let's 2 face it, what this case really comes down to is are the 3 orders clear or are they ambiguous? Do they lend themselves 4 to multiple interpretations?</p> <p>5 Several of the orders say that the 7th Amended 6 CC&Rs cannot be amended as long as a Receiver is in place, 7 and yet some of those same orders that we will look at in a 8 moment effectively modify some of these Governing Documents.</p> <p>9 This section, Section 4.5(c) is the building FF&E, 10 distinct and separate from the FF&E, and this includes 11 property outside of the condominium property. It includes 12 the lobby, front desk, concierge, reception area 13 furnishings, fixtures, equipment and facilities. Corridors 14 and hallways are included when they must be replaced, 15 repaired or refurbished as deemed necessary by the 16 Declarant.</p> <p>17 Again, we see the Plaintiffs interjecting 18 themselves into this process saying, no, we think that's 19 excessive. We think that's too much. That's outrageous 20 because of the special assessments that we are receiving.</p> <p>21 This is a determination to be made by the 22 Declarant under the 7th Amended CC&Rs. And, again, these 23 calculations could be based upon actual unit-by-unit cost or 24 square footage or such other reasonable cost allocations as</p>	<p style="text-align: right;">Page 140</p> <p>1 footage that the Court deemed resulted in excessive fees to 2 the Unit Owners. I just want to point out repeatedly we see 3 square footage is permitted or such other reasonable cost 4 allocation as the Declarant shall determine.</p> <p>5 Summarize building FF&E. The Declarant makes the 6 determination for the need of replacement, repair or 7 refurbishment. Not the Plaintiffs. We don't need the 8 Receiver's permission, at least not according to the 9 7th Amended CC&Rs.</p> <p>10 It includes furnishings, fixtures, for not only 11 the Shared Facilities Unit, but property outside the 12 condominium property. It includes lobby, front desk, 13 concierge, et cetera. Costs, again we have a list of how 14 they can be assessed, including square footage.</p> <p>15 Now, let's jump to Section 6.9, page 37 of the 16 CC&Rs, and this is Exhibit 1. In addition to defining 17 responsibility for fees and expenses, it defines the rights 18 and responsibilities of the Shared Facilities Unit Owner, 19 that's MEI-GSR, to prepare a detailed proposed budget for 20 the ensuing calendar year to establish the Shared Facilities 21 Unit Expense.</p> <p>22 They are instructed to order an independent 23 reserve study to set independent Shared Facilities Unit 24 reserves for capital expenditures and costs of deferred</p>
<p style="text-align: right;">Page 139</p> <p>1 the Declarant deems necessary and the decision of the 2 Declarant is conclusive and binding upon the Unit Owners.</p> <p>3 So let's summarize. We were talking about Public 4 Shared Facilities easements. We know from reading the 5 7th Amended CC&Rs the Unit Owners have easements for 6 reasonable ingress, egress, et cetera, as listed; walkways, 7 hallways, corridors, hotel lobby, elevators, stairways, et 8 cetera. Easements in Shared Facilities Unit and/or parcel, 9 that's clearly far outside any interpretation that it's 10 limited to just the tower as Mr. Teischner testified.</p> <p>11 Easements to use the loading areas, we talked 12 about that. Easements to use and enjoy portions of the 13 Shared Facilities Unit which are made available to the 14 Unit Owners, and subject at all times to the fees, costs and 15 use charges as may be imposed by the Declarant MEI-GSR.</p> <p>16 Summarize the FF&E for units. The Declarant makes 17 the determination of need for the replacement or renovation. 18 Each unit owner is required to participate and pay his or 19 her share of the costs. The costs can be assessed multiple 20 ways as listed, including square footage.</p> <p>21 And I keep mentioning that I think because it came 22 up, it came up during the four days of hearings, I think it 23 was in 2021, when Mr. Teischner was on the stand for quite 24 sometime, and he was criticized for having used square</p>	<p style="text-align: right;">Page 141</p> <p>1 maintenance. It is at the sole and absolute discretion of 2 the Shared Facilities Unit Owner.</p> <p>3 Again, a modification of the 7th Amended because 4 now we have the Receiver interjecting himself into that 5 process and the Unit Owners objecting if we come up with 6 fees or costs with which they do not agree.</p> <p>7 7th Amended CC&Rs, Section 6.10, page 40, it is 8 really the identical responsibilities that the Declarant has 9 for setting hotel expenses. 6.9 is talking about Shared 10 Facilities Unit Expenses. The responsibilities and duties 11 are the same.</p> <p>12 It also defines, the CC&Rs also define how they 13 can be modified or changed. Not only do we have orders 14 saying they can't be modified while the Receiver is in 15 power, but Section 13.6 on page 59 says no provision of the 16 CC&Rs affecting the rights, privileges and duties of the 17 Declarant may be modified without its written consent.</p> <p>18 We see that there are modifications going on 19 pursuant to Court orders and yet by the very terms of the 20 7th Amended CC&Rs that the Receiver had been duty bound to 21 implement, they are being modified.</p> <p>22 And these are the orders that say, stand for the 23 proposition or state that the 7th Amended CC&Rs cannot be 24 amended until the Receiver is relieved of his duties.</p>

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<p style="text-align: right;">Page 142</p> <p>1 That's Exhibit 25, the Order Granting Receiver's Motion for 2 Orders and Instructions, and Exhibit 23, the Order Granting 3 Plaintiffs' Motion for Instructions to Receiver. 4 Take a look at the 2007 Unit Rental Agreement, 5 Exhibit 2. It defines the agreement between the company, 6 that's MEI-GSR, which has the sole and exclusive right to 7 rent the unit of those Unit Owners who voluntarily entered 8 into the rental agreement. 9 Not all of the Plaintiffs entered into a rental 10 agreement. It is voluntary. It sets forth the rental 11 procedures. The company calculates the net rental revenue 12 after deducting the DUF and amounts payable by Unit Owners 13 per the CC&Rs. 14 I put it in the bold print because it appears in 15 the Unit Rental Agreement. I think you will -- one of the 16 basic arguments of the Plaintiffs is if we are not making 17 money on our unit, somebody is stealing our money. 18 And what I find so interesting, even in the 19 Court's Findings of Fact and Conclusions of Law, Judge 20 Sattler decides this is investment property. And yet when 21 you look at the Unit Rental Agreement, it acknowledges that 22 there are no rental income guarantees of any nature. 23 Neither the company nor manager guarantees that the owner 24 will receive, there is a typo, any minimum payments under</p>	<p style="text-align: right;">Page 144</p> <p>1 company nor any of their representatives made any statements 2 or representations with respect to the economic benefits or 3 tax benefits to be derived from the ownership of the units. 4 One of the exhibits that is in evidence is 5 actually a Purchase and Sale Agreement. I encourage 6 Your Honor to look at that exhibit. Exhibit L that is 7 attached to that exhibit has similar disclosures and 8 certifications from the buyers that nobody told them they 9 would make money on these units, that they are not good 10 investment properties. That it is a good buy for you if you 11 are looking for a vacation home. 12 What is a Receiver's relationship with these 13 Governing Documents we have been talking about. The 14 Receiver is appointed over the GSRUOA, is specifically 15 assigned the task of implementing compliance with the very 16 documents that we have been talking about, the Governing 17 Documents. 18 The 7th Amended CC&Rs cannot be amended until the 19 Receiver is relieved of his duties, we talked about that and 20 the orders that stand for that proposition. 21 The Receiver does not have discretion to deviate 22 from the Governing Documents, and yet the testimony we heard 23 from Mr. Teischner certainly appears that he has deviated 24 substantially from the Governing Documents. And I think in</p>
<p style="text-align: right;">Page 143</p> <p>1 this agreement or that the owner will receive -- I'm so 2 stuck on Receiver, I keep saying Receiver -- the owner will 3 receive rental income equivalent to that generated by any 4 other unit in the hotel. 5 It defines the company's sole right to terminate 6 the agreement or modify the services in its sole and 7 absolute discretion with or without cause. 8 Judge Sattler, we had filed a motion to terminate 9 this agreement sometime ago. It was no longer financially 10 beneficial to the Defendants. We were locked in a 11 disagreement with the Plaintiffs, and Judge Sattler said, 12 no, you are not going to be able to exercise that right, at 13 least not right now. 14 Unit Maintenance Agreement, Exhibit 3, establishes 15 services to be provided by the company, again that's 16 MEI-GSR. The company is to charge Unit Owners a monthly 17 reserve, FF&E reserve, for the sole purpose of funding 18 replacement of the FF&E for the units. It defines the 19 company's right to modify the services to be provided and/or 20 adjust the charges payable for services provided and to 21 reflect actual changes in the cost of providing services. 22 There is a similar disclosure in the Unit 23 Maintenance Agreement that they signed. Owner understands, 24 acknowledges, represents and warrants that neither the</p>	<p style="text-align: right;">Page 145</p> <p>1 order to reach that conclusion, Your Honor can look at 2 Mr. Brady's testimony and look at Mr. Teischner's testimony. 3 They are remarkably different. Both of them can't be right. 4 You know, Mr. Brady's testimony is, look, these 5 are my actual costs. These are my actual out-of-pocket and 6 they are in accordance with the 7th Amended CC&Rs. 7 Mr. Teischner said I only charged for what's in 8 the tower. Do I believe it's consistent with the CC&Rs, I 9 do, but there is, again, he has excluded items such as 10 accounting, human resources, other charges that just 11 undisputedly are covered under the 7th Amended CC&Rs. 12 This Exhibit 8 in evidence, this is the 13 Receiver's, Mr. Proctor's determination of fees and 14 reserves. He provides his calculations, and in his 15 calculations he notes that the 2014 Reserve Study is deemed 16 reliable and reasonable, pending an updated Reserve Study, 17 so his SFU and hotel reserve calculations remained the same 18 as the most recent amounts charged by the Defendants, 19 meaning that nobody disputes that the Receiver is to 20 calculate the reserves. We have never, we have never 21 contested that. 22 What the Plaintiffs have done is they have argued 23 by implication if he is to calculate the reserve studies for 24 SFU and hotel calculations, by implication he must take over</p>

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<p style="text-align: right;">Page 146</p> <p>1 the reserve studies as well. There was no order that said 2 that until it came out on January 2nd, 2022.</p> <p>3 He also observed that pursuant to the Governing 4 Documents, the GSR is to submit to the Receiver the annual 5 budget for the units for 2017 in November of 2016. The 6 point being, he looked to GSR to submit that budget. He 7 wasn't taking over that role, as Mr. Teischner has allegedly 8 done now.</p> <p>9 What did the Receiver not request. It's important 10 because what I'm going to be talking to you a lot about 11 today, Your Honor, is the course of conduct. Course of 12 conduct can actually define the terms of a contract, the 13 terms of an order as well. How did the parties treat that 14 order over the years and did it appear that they had reached 15 an agreement of sorts as to the content or execution of that 16 order.</p> <p>17 From his appointment on January 7, 2015, through 18 his removal as Receiver on December of 2018, Mr. Proctor 19 never claimed, nor did the Plaintiffs, that he could or 20 should take control of the net or gross rental income of the 21 units, nor the distribution of the rental income to the 22 Plaintiffs and Defendants.</p> <p>23 Why is that important? Because Your Honor has 24 pointed out a couple of times, as has Plaintiffs, doesn't</p>	<p style="text-align: right;">Page 148</p> <p>1 Again, there could be an argument made I suppose by 2 implication that he could have exercised that under the 3 January 7, 2015 order, but he never did.</p> <p>4 Never claimed that upon his appointment all 5 authority that had been vested in the board, managers, the 6 Declarant, and other decisionmakers was immediately 7 transferred to the Receiver. That argument never came up.</p> <p>8 Could the argument be made that that was his right 9 or his power under the January 7, 2015 order? I'm not going 10 to concede that it does, but the argument could be made he 11 never exercised that power.</p> <p>12 Mr. Proctor never claimed that he was appointed 13 Receiver over the GSRUOA and certain Defendants' assets, 14 which I find remarkable, because I think that's contrary to 15 Nevada law, but that is a representation made by Plaintiffs 16 in their Motion for Instructions to Receiver on 17 September 28, 2021. That is Exhibit 15, page 4, lines 27 18 through 28.</p> <p>19 So Mr. Teischner is appointed January 25, 2019, in 20 place and in stead of James Proctor. From the date of his 21 appointment in January of 2019 to September of 2021, 22 Mr. Teischner never claimed, as Receiver over the GSRUOA, 23 entitlement to take control of the net or gross rental 24 income that belongs to MEI-GSR.</p>
<p style="text-align: right;">Page 147</p> <p>1 the January 7, 2015, order say that? It does. And they 2 never executed on it, never. Which indicates to me a course 3 of conduct that the Receiver will not take on those 4 responsibilities until, unless and until he elects to do so 5 and that is a course of conduct in this case repeatedly.</p> <p>6 Now, I'm going to point out, because I know 7 Mr. Miller will point it out, when Mr. Proctor was the 8 Receiver this thing went up on appeal from May of 2016, 9 didn't come back until December of 2018, clearly there 10 wasn't much he could do. There was nothing he could do 11 during that period.</p> <p>12 THE COURT: Well, the case was dismissed.</p> <p>13 MR. McELHINNEY: It was, absolutely. It was 14 dismissed and then went up on appeal. It came back and was 15 remanded December of 2018, but, nonetheless, the fact 16 remains for that period of time Mr. Proctor never brought it 17 up.</p> <p>18 He never claimed that the reserve studies were 19 flawed and untrustworthy. As a matter of fact, he said they 20 were prepared by third party professionals and he relied 21 upon them.</p> <p>22 So there was no allegation that they were flawed 23 or untrustworthy or that he should be solely in control of 24 ordering or overseeing the independent reserve studies.</p>	<p style="text-align: right;">Page 149</p> <p>1 He never claimed exclusive authority to order and 2 oversee independent reserve studies that per the CC&Rs were 3 the sole responsibility of the Declarant and the Owner of 4 the Shared Facilities Unit, which document is not supposed 5 to be amended or altered.</p> <p>6 He never argued that he replaced and usurped any 7 and all authority and power of the GSRUOA Board of 8 Directors, the Declarant or any other agent, placing that 9 power and authority instead into the exclusive hands of the 10 Receiver.</p> <p>11 Course of conduct, Your Honor. If that power 12 resided in the Receiver from January 7, 2015, and we are to 13 be held in contempt for that, you have to ask yourself what 14 were the, how were the parties treating one another pursuant 15 to that order? Was anybody coming up and saying, hey, 16 McElhinney, that order exists from 2015. You have to 17 immediately turn that power over.</p> <p>18 That did not happen until 6 1/2 years after that 19 order was issued. That is a course of conduct and that can 20 create confusion and a latent ambiguity in the contents of 21 that order. Meaning you could read it in plain English. 22 You can look at it in a vacuum, but if you put it in context 23 there is a lot going on here. The parties are conducting 24 themselves in a certain manner in relationship to that</p>

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<p style="text-align: right;">Page 150</p> <p>1 order.</p> <p>2 So for the first time following entry of the</p> <p>3 January 7, 2015, order appointing the Receiver, the Receiver</p> <p>4 on September 15th, 2021, through his attorney asks the Court</p> <p>5 to approve and order the following: Open his own separate</p> <p>6 account upon which he has exclusive signatory authority,</p> <p>7 collect rents for the Plaintiff-owned units, including the</p> <p>8 daily resort fee, net of total charges for DUF, SFUE, and</p> <p>9 HE fees plus reserves, and he cites, what is his authority,</p> <p>10 January 7, 2015.</p> <p>11 So here we are 6 1/2 years later. He is saying</p> <p>12 I'm demanding net rent and my authority is the January 7,</p> <p>13 2015, order.</p> <p>14 One month following his e-mail to the Court, the</p> <p>15 Receiver filed his motion, and this is Exhibit 19, and in</p> <p>16 that his requests are very similar. He requests that he be</p> <p>17 allowed to take over the Reserve Studies to make sure they</p> <p>18 comply with the Governing Documents. The first time that</p> <p>19 demand has ever been made is 6 1/2 years after that order</p> <p>20 was entered, arguing that any other conclusion is illogical.</p> <p>21 He requests that he be ordered to open a separate</p> <p>22 account into which he will deposit "all rents", including</p> <p>23 daily resort fees, received by GSR currently and in the</p> <p>24 future, net of the total charges for the DUF, SFUE, and HE</p>	<p style="text-align: right;">Page 152</p> <p>1 that all of the issues addressed in the Receiver's motion</p> <p>2 have been previously fully litigated in this case and are</p> <p>3 the subject of existing orders. And the Plaintiffs request</p> <p>4 that the Court grant the Receiver's motion exactly as the</p> <p>5 Receiver had set forth in his motion. However -- well, we</p> <p>6 will look at it in a second.</p> <p>7 What did the Receiver mean when he requested,</p> <p>8 "Those fees in place prior to the Court's September 27,</p> <p>9 2021, order shall remain in place until the fees for 2020</p> <p>10 are recalculated and approved by the Court such that only a</p> <p>11 single account adjustment will be necessary"?</p> <p>12 Well, if we look at his October 18, 2021, motion</p> <p>13 he says it means that he wanted the prior Receiver's fee</p> <p>14 calculations to remain in place until his revised fees are</p> <p>15 calculated for 2020 and approved by the Court, and that's</p> <p>16 Exhibit 19, pages 10 and 11.</p> <p>17 However, in his omnibus reply that is filed more</p> <p>18 than a year later on December 19, 2022, it is Exhibit 32, he</p> <p>19 changes. He says, well, no, I didn't mean Proctor's</p> <p>20 numbers. I meant by that phrase my 2021 fee calculations.</p> <p>21 Now that's extraordinarily material. It means</p> <p>22 either Mr. Teischner -- Mr. Teischner strikes me as a very</p> <p>23 honest fellow, but he changed his idea about what that</p> <p>24 phrase meant. Now, either he is confused or he is being</p>
<p style="text-align: right;">Page 151</p> <p>1 fees and for reserves combined.</p> <p>2 The Receiver is using the term all rents to define</p> <p>3 net rents and he is citing at his authority the January 7,</p> <p>4 2015, order. My clients, it is not unreasonable for them to</p> <p>5 conclude at that point that the power that the Receiver</p> <p>6 feels he has under the January 7, 2015, order is a power</p> <p>7 over net rents, and they conduct themselves accordingly as</p> <p>8 we will look coming up here shortly.</p> <p>9 This is the language that appears in his motion.</p> <p>10 He is to calculate the DUF, SFUE, and HE for 2020. Let's</p> <p>11 not make a mistake. These were not calculations for 2021.</p> <p>12 It was for 2020.</p> <p>13 And he says in his motion that until such time as</p> <p>14 he completes those calculations and they are approved by the</p> <p>15 Court, in quotes, "Those fees in place prior to the Court's</p> <p>16 September 27, 2021 order shall remain in place until the</p> <p>17 fees for 2020 are recalculated and approved by the Court</p> <p>18 such that only a single account adjustment will be</p> <p>19 necessary." That's in his motion, Exhibit 19, page 8, lines</p> <p>20 13 through 15.</p> <p>21 Four days later the Plaintiffs file a joinder.</p> <p>22 They don't need much time to think about it. They jump on</p> <p>23 it. October 22nd, 2021, the Plaintiffs filed a joinder to</p> <p>24 the Receiver's Motion for Orders and Instructions, observing</p>	<p style="text-align: right;">Page 153</p> <p>1 dishonest with the Court.</p> <p>2 But the point that I want Your Honor to take away</p> <p>3 is at first he said that phrase means Proctor's numbers and</p> <p>4 then out of his own mouth he says one year later, no, I</p> <p>5 meant my 2021 numbers. And, of course, this position about</p> <p>6 his 2021 fee calculations being referred to in that phrase</p> <p>7 is impossible. I mean, the Receiver's 2021 fee calculations</p> <p>8 were not approved until January 4, 2022, so, obviously, that</p> <p>9 phrase is not referring to his 2021 fees.</p> <p>10 The Plaintiffs file a joinder, as I had indicated,</p> <p>11 four days later, and the Plaintiffs join the Receiver's</p> <p>12 request but they express concern about one particular</p> <p>13 provision in the Receiver's motion. The Plaintiffs' caution</p> <p>14 that the phrase, "Those fees in place prior to the Court's</p> <p>15 September 27, 2021, order shall remain in place until the</p> <p>16 fees for 2020 are recalculated and approved by the Court</p> <p>17 such that only a single account adjustment will be</p> <p>18 necessary," will create, "the glaring issue of what fees</p> <p>19 will be applied."</p> <p>20 They are concerned, aren't they? What they are</p> <p>21 saying here is don't use that phrase, Receiver, because it's</p> <p>22 going to create confusion, exactly the confusion that we are</p> <p>23 acknowledging and yet they still want to hold us in contempt</p> <p>24 for that language for violating what they say is the meaning</p>

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<p style="text-align: right;">Page 154</p> <p>1 of that language.</p> <p>2 The Plaintiffs' recommendation to avoid this</p> <p>3 glaring issue of what fees will be applied is to insert the</p> <p>4 following language instead: "The Receiver's new fee</p> <p>5 calculations are approved retroactive to January 2020 and</p> <p>6 shall be applied for 2020, 2021, and going forward until a</p> <p>7 subsequent order from the Court." That's Exhibit 20,</p> <p>8 page 4, lines 20 through 22, and page 5, line 1.</p> <p>9 So the order comes out. That's Exhibit 25. The</p> <p>10 Order Granting the Receiver's Motion for Orders and</p> <p>11 Instruction. Who prepared that order? Mr. Miller's office</p> <p>12 prepared that order, and the very language that he said</p> <p>13 should not be used because it would create a glaring issue</p> <p>14 of what fees would be applied showed up in the order, didn't</p> <p>15 it?</p> <p>16 It says, "Those fees in place prior to the Court's</p> <p>17 September 27, 2021 order shall remain in place until the</p> <p>18 fees for 2020 are recalculated and approved by the Court</p> <p>19 such that only a single account adjustment will be</p> <p>20 necessary." The language he told us it would cause</p> <p>21 confusion he put it in the order. Justice Saitta signed it.</p> <p>22 And to stand before the Court and say that</p> <p>23 provision is clear and not ambiguous I think is just</p> <p>24 disingenuous. In writing he admitted it would create</p>	<p style="text-align: right;">Page 156</p> <p>1 calculations as submitted to the Court should immediately be</p> <p>2 applied retroactively to January 2020 and going forward</p> <p>3 until a subsequent order from the Court is issued."</p> <p>4 Well, wait a minute. That's the language that the</p> <p>5 Plaintiff said should have appeared in Exhibit 25, right?</p> <p>6 They said you want to avoid that confusion, use this</p> <p>7 language. But they didn't, did they? They prepared an</p> <p>8 order that had confusing language.</p> <p>9 You cannot reconcile these documents, you can't,</p> <p>10 and yet incredibly, and we will look at a slide of this in a</p> <p>11 moment, the Plaintiffs showed up in court on May 24, 2022,</p> <p>12 and said to Justice Saitta, no, these two orders don't</p> <p>13 conflict.</p> <p>14 And I'm arguing to the Court they do conflict. We</p> <p>15 need resolution here. We don't know which order to follow.</p> <p>16 If you follow one you are in breach of the other and that's</p> <p>17 inescapable, and their argument was, no, they can be read</p> <p>18 harmoniously.</p> <p>19 Now, I think I heard Mr. Miller say during this</p> <p>20 trial they are ambiguous. That's the closest I have ever</p> <p>21 gotten him, at least getting him to abandon that</p> <p>22 indefensible position of they are harmonious.</p> <p>23 They are not harmonious, and we point that out</p> <p>24 repeatedly to the Court, and yet here we are facing contempt</p>
<p style="text-align: right;">Page 155</p> <p>1 confusion and, in fact, it did.</p> <p>2 I'm putting these orders side-by-side. It's</p> <p>3 similar to the demonstrative exhibit that we already had</p> <p>4 marked. Conflicting language in the orders regarding what</p> <p>5 fees should be applied, it's critical to Your Honor's</p> <p>6 analysis. You can't hold us in contempt if these orders are</p> <p>7 conflicting and render themselves unclear.</p> <p>8 Remember, Mr. Miller's solution was, Mr. Brady,</p> <p>9 just look at the one order. Don't look at the other order,</p> <p>10 just look at this order, is it clear? Well, the problem is</p> <p>11 all of the orders were filed as one order. They are</p> <p>12 separately labeled, but they are on the same date at the</p> <p>13 exact same time, I mean right to the second.</p> <p>14 So, obviously, they were filed as one document.</p> <p>15 You cannot read them in isolation. What does one say,</p> <p>16 Exhibit 25, Order Granting Receiver's Motion for Orders and</p> <p>17 Instructions, it says, "Those fees in place prior to the</p> <p>18 Court's September 27, 2021 order shall remain in place until</p> <p>19 the fees for 2020 are recalculated and approved by the Court</p> <p>20 such that only a single account adjustment will be</p> <p>21 necessary."</p> <p>22 Compare that language to the language that appears</p> <p>23 in the Order Approving the Receiver's Request to Approve</p> <p>24 Updated Fees, Exhibit 26. "The Receiver's new fee</p>	<p style="text-align: right;">Page 157</p> <p>1 charges before Your Honor because we didn't follow the order</p> <p>2 that he wanted us to follow, Exhibit 26. No, we followed</p> <p>3 Exhibit 25. We pointed out the conflict. Nobody resolved</p> <p>4 it.</p> <p>5 You know, part of all of this is, it doesn't</p> <p>6 really lend itself to contempt proceedings. What we should</p> <p>7 be doing is seeking clarification rather than contempt.</p> <p>8 These orders are without dispute conflicting with one</p> <p>9 another, and yet we turned our back on them and we end up</p> <p>10 with Motions for Order to Show Cause instead of Motions for</p> <p>11 Clarification.</p> <p>12 This is a May 24th, 2022, Order to Show Cause.</p> <p>13 Yeah, I think, I don't think I meant -- I meant to be</p> <p>14 referring to the hearing. Oh, I take that back. The</p> <p>15 May 24, 2022, hearing was on the Motion for Order to Show</p> <p>16 Cause, so we are kind of doing this hearing twice.</p> <p>17 We did this, a smaller version of this in front of</p> <p>18 Justice Saitta on May 24, 2022, on their Motion for Order to</p> <p>19 Show Cause. This precise issue was addressed. I identified</p> <p>20 the conflict between the orders.</p> <p>21 Plaintiffs' Counsel Mr. Tew responds that the</p> <p>22 orders do not conflict with one another and he says they can</p> <p>23 be read in harmony with one another. Harmony I sort of</p> <p>24 throw in that definition equals agreement or accord.</p>

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<p style="text-align: right;">Page 158</p> <p>1 But despite having made that argument that they 2 can be read in harmony, Plaintiffs never explained how those 3 two orders can be read in harmony. As I sit here today, I 4 don't believe they can. 5 More conflicting language appears in the orders 6 that adds to the confusion in this case. We are looking at 7 the Order Granting Receiver's Motion for Orders and 8 Instructions and, again, that's that language we have been 9 talking about. 10 Receiver shall open a separate account into which 11 all rents received by Defendants, net of total charges for 12 DUF, SFUE, and HE fees and reserves are to be deposited. So 13 we see again Plaintiffs using the term all rents meaning net 14 rents. 15 Look at the Order Granting Plaintiffs' Motion to 16 Stay Special Assessment, and if you will bear with me, I was 17 going to say I would get the Exhibit Number. Bear with me, 18 Your Honor, I want to find it. 19 Excuse me, that's Exhibit 27, Order Granting 20 Plaintiffs' Motion to Stay Special Assessment. The Receiver 21 shall open a separate account into which all rental revenue 22 from the units is deposited. Huh, I wonder what they meant? 23 Did they mean net rent? They meant net rent. 24 If this was filed in Plaintiffs' motion filed on</p>	<p style="text-align: right;">Page 160</p> <p>1 and then we get this e-mail saying, oh, by the way, that 2 January 7, 2015, order is not net rents, not anymore. It's 3 gross rents. That is not fair, it's inappropriate, and it 4 shows the confusion that is created by course of conduct by 5 the parties in this case. 6 And this slide sort of goes to that issue. The 7 Receiver and the Plaintiffs have defined rent to mean net 8 rent. The Receiver filed his October 18, 2021, motion 9 seeking permission to deposit all rents net of the total 10 charges for the DUF, SFUE, HE, and reserves, and he cites 11 the January 7, 2015, Appointment Order as his authority. 12 The Plaintiffs file a Joinder 4 days later citing 13 the exact same authority. The Court entered its Order 14 Granting Receiver's Motion for Orders and Instructions on 15 January 4, 2022. 16 Now, we have heard repeatedly that, well, the 17 Receiver stopped doing his work because he wasn't getting 18 paid. It is our position, Your Honor, and there is 19 documentation to support it in Exhibit 29, that he wasn't 20 getting paid because he had not calculated the net rent. 21 The Receiver filed his letter to the Court wherein 22 he acknowledged his obligation to calculate the net rent. 23 That is in his November 14, 2022, letter. This is, this is 24 11 months after entry of the January 4, 2022, order that</p>
<p style="text-align: right;">Page 159</p> <p>1 August 20, 2021 and reply on September 17th and on 2 page 4:24-28 of the order itself, it references the 3 Receiver's intention to collect net rents. 4 So we know that even in this order while it is not 5 completely clear when they say all rental revenue, on 6 page 4, lines 24 through 28, it references the Receiver's 7 intention to collect net rent; therefore, again, they are 8 using not only all rents, but all rental revenue as a 9 reference to net rents. 10 More confusion from the Plaintiffs. On May 4, 11 2023, the Plaintiffs again change course filing a Supplement 12 to Plaintiffs' Motion for Order to Show Cause, which was 13 filed September 27, 2021. This is not really a supplement 14 at all, rather it sets forth a new demand. 15 Now if you look at their September 27, 2021, 16 motion, they are seeking to hold us in contempt for not 17 handing over net rent. In their supplement they ask 18 Your Honor to hold us in contempt for not handing over gross 19 rent. 20 And this is a shift that is not fair to the 21 Defendants. There is a course of conduct here. They have 22 said our authority comes from January 7, 2015, and that 23 authority is to collect all rents, which is net rents. 24 We lived with that for a year and eight months,</p>	<p style="text-align: right;">Page 161</p> <p>1 told him he had to calculate the net rent and that's what he 2 would put into that separate account. 3 Now, by this time he still has not opened the 4 separate account. And his explanation is, well, you know, I 5 don't, it's hard to open an account, so I'm just going to 6 put it into the GSRUQA account. 7 That would be a violation of Chapter 82, 8 Your Honor. I mean, that would be an ultra vires act for a 9 non-profit corporation to start collecting money, profit 10 money that would be distributed to parties. That would lead 11 to problems for our corporation through the non-profit. We 12 objected. 13 The point, though, is there is an order saying, 14 Receiver, you will open a separate account. And instead of 15 coming to Your Honor and saying, well, I don't want to open 16 a separate account, let me use something else, he just 17 ignores it and does what he wants. He is in violation of 18 the Court order and it's ignored by the parties. The 19 Plaintiffs don't do anything about it. 20 And in that letter of November 14, 2022, he says 21 certainly the amount of the net rents would first need to be 22 calculated before the Receiver could inform GSR of the 23 amount that it would need to turn over to the Receiver. 24 We are allowed to rely upon that representation</p>

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<p style="text-align: right;">Page 162</p> <p>1 and yet you see what's happening today? Well, the 2 January 7, 2015, order says you got to hand over the rents. 3 McElhinney, what are you doing? You are violating the Court 4 order. 5 Wait a minute, Receiver, you said all rent means 6 net rents. You asked for permission to calculate the net 7 rents and put them into a separate account. The Court 8 granted that and 11 months later you are admitting that you 9 still haven't done it and it is your job to calculate it. 10 And you can't turn it back on us at this 11th hour 11 and say why didn't you just hand over rents? I don't know, 12 because the Receiver said he was calculating them and he 13 told them he was going to hand them over to me, and he said 14 in that same letter that I will look to those net rents to 15 pay my bills and Stephanie Sharp's bills. 16 So when Mr. Miller is saying to Mr. Brady on the 17 stand you had rent money, why didn't you just give it to him 18 so you could get him paid? Because he told me he was 19 calculating the net rents and once he got that calculation 20 he would give that number to me, meaning Reed Brady, and 21 then he would pay himself out of that net rent. 22 My client is allowed to rely upon that 23 representation. That is a course of conduct that we are 24 talking about that arises from how did we treat the</p>	<p style="text-align: right;">Page 164</p> <p>1 We are allowed to rely upon that representation 2 from our Receiver. It's totally consistent with the 3 Plaintiffs' position. You cannot hold us in contempt, 4 Your Honor, by looking back at the January 7, 2025 order and 5 saying -- 6 THE COURT: 2015. 7 MR. McELHINNEY: I'm sorry? 8 THE COURT: 2015. 9 MR. McELHINNEY: 2015 order and saying, well, it's 10 clear in the order, Mr. McElhinney. That's missing, I think 11 that's missing the context in which this order was created 12 and how it was carried out by the parties. It literally 13 identifies how those terms are to be executed. 14 I think I'm going to skip this one, because I 15 don't know that I got this into evidence. It is an e-mail 16 exchange. I'm going to skip over it. 17 And then things change remarkably on May 4, 2023. 18 The Receiver and the Plaintiff demand gross rent for the 19 first time ever from the date of the issuance of the 20 January 4, 2022 order granting Receiver's Motion for Orders 21 and Instructions, Exhibit 25, through as recently as the 22 evening of May 4, 2023, Receiver and the Plaintiffs are 23 demanding net rent. 24 However, on May 4, 2023, Reed Brady receives an</p>
<p style="text-align: right;">Page 163</p> <p>1 January 5th -- January 7th, 2015, order? We treated it like 2 this. 3 Even as late as December 1, 2022, the Receiver in 4 a Motion for Orders and Instructions, he requests 5 clarification as to whether his net rent calculations 6 defined in the 1/4/22 order apply to only Plaintiffs' units 7 or Defendants' units. That is page 3, lines 6 through 16. 8 There is no mention of handing over gross rent. And that's 9 Exhibit 31, by the way, Your Honor, I apologize. 10 Plaintiffs' counsel, their admissions as to net 11 rent, Exhibit 30. Plaintiffs' counsel in an e-mail dated 12 November 23, 2022, states, "In summary, the Affirmed Order 13 demonstrates that it would be yet another patent and willful 14 violation of the Court's November 14, 2022, Order/Affirmed 15 Orders if the rents for the Plaintiffs' and Defendants' 16 units, after applying the Receiver's approved updated fees, 17 are not turned over to the Receiver so that both the 18 Receiver, Receiver's counsel, and Plaintiffs can be paid 19 within 30 days of the November 14, 2022 Order." 20 Again, course of conduct. Not gross rent, net 21 rent. And the Receiver isn't saying give me rent money so I 22 can be paid. He is saying I will take my payment out of 23 that net rent that I'm calculating and I will give to you, 24 GSR. I will tell you what that number is.</p>	<p style="text-align: right;">Page 165</p> <p>1 e-mail from the Receiver demanding that rather than handing 2 over the net rent that we have been talking about for the 3 last 1 year and 8 months, the Receiver now wants Defendants 4 to hand over gross rent, again, citing the authority under 5 the January 7, 2015, Appointment Order. 6 The Plaintiffs join in on May 5 stating, "It is 7 simply contempt of court for the Defendants to not properly 8 tender the incoming gross rents." 9 Receiver acknowledges his confusion. He talked 10 about it on the stand. He said it in writing in this e-mail 11 exchange on May 5, 2023, an e-mail from Mr. Teischner to the 12 parties. "This order," he is referring to the January 4, 13 2022, order granting Receiver's Motion for Orders and 14 Instructions, "conflicts, conflicts with both the Court's 15 January 7, 2015 order, which clearly says rents and nowhere 16 says or implies net rents, and with the Court's January 26, 17 2023, order. However, this may be a legal argument that the 18 Plaintiffs and Defendants need to address and about which 19 filings with the Court for clarification might need to be 20 sought." 21 If he is confused, and we are confused, and 22 Mr. Brady is confused, it's probably because these orders 23 are confusing or at the very least ambiguous, and Your Honor 24 I believe cannot hold us in contempt if you determine one or</p>

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<p style="text-align: right;">Page 166</p> <p>1 more of these orders are ambiguous.</p> <p>2 I think the January 7, 2015 order is a little</p> <p>3 different, because I think if we read it on its face, I have</p> <p>4 a lot of problems with it because I think it violates Nevada</p> <p>5 law which can lead to some confusion, but, more importantly,</p> <p>6 it's the course of conduct.</p> <p>7 It's the fact that this order laid dormant for</p> <p>8 6 1/2 years, and then once it started to appear, that is to</p> <p>9 say once the Receiver elected to start to exercise authority</p> <p>10 under that order, he said all rents mean net rents and then</p> <p>11 he changed it as recently as May of 2023 to gross rents.</p> <p>12 I believe that the Receiver and the Plaintiff</p> <p>13 should be judicially estopped to now demand that what they</p> <p>14 meant by all rent was gross rent. Again, I say in this tab</p> <p>15 it's been for the last 17 months both the Receiver and</p> <p>16 Plaintiffs have taken the position in their moving papers</p> <p>17 filed with this Court, and their arguments before the Court,</p> <p>18 and e-mails amongst the parties, that the January 7, 2015</p> <p>19 Order Appointing Receiver and giving him power to review</p> <p>20 and/or control the rent that belongs to MEI-GSR was a</p> <p>21 reference to net rents, which they have been demanding</p> <p>22 Defendants hand over ever since up until May of this year</p> <p>23 when it turned into gross rents.</p> <p>24 In an about face on May 4, 2022, they began</p>	<p style="text-align: right;">Page 168</p> <p>1 administrative proceedings, clearly applicable here.</p> <p>2 The party was successful in asserting the first</p> <p>3 position, clearly applicable here. You have got a Court</p> <p>4 order for God's sake saying all rent means net rents and</p> <p>5 that's what you will calculate. And, number 4, the two</p> <p>6 positions are totally inconsistent, which they are.</p> <p>7 And, number 5, the first position was not taken as</p> <p>8 a result of ignorance, fraud or mistake. Clearly it was</p> <p>9 not. That was their interpretation of the January 7, 2015,</p> <p>10 order and they have decided to change their minds 1 year and</p> <p>11 8 months later. They should be judicially estopped from</p> <p>12 doing so.</p> <p>13 I'm going to take a minute and look at Exhibit 5,</p> <p>14 which is the Motion for Appointment of Receiver filed</p> <p>15 October 16, 2014, because there is an important admission in</p> <p>16 there and I want to take a look at it. Court's indulgence.</p> <p>17 In their Complaint, the Plaintiffs sought</p> <p>18 appointment of the Receiver over the GSRUOA only. In their</p> <p>19 motion, they sought appointment of the Receiver over the</p> <p>20 GSRUOA and the MEI-GSR, and in their motion in their</p> <p>21 conclusion on page 8, bottom of the page 8, top of page 9,</p> <p>22 "The appointment of James S. Proctor as Receiver over</p> <p>23 Defendant Grand Sierra Resort Unit Owners' Association, a</p> <p>24 Nevada Non-Profit Corporation." And, number 2, "Over</p>
<p style="text-align: right;">Page 167</p> <p>1 claiming that that reference to rent in the January 7, 2022</p> <p>2 order didn't mean net rent like we told you for the last</p> <p>3 1 year, 8 months. Now we say it means gross rent, and now</p> <p>4 they are saying you have to hand over all of the rent</p> <p>5 otherwise you are in contempt.</p> <p>6 Judicial estoppel, just a quick look at it,</p> <p>7 Your Honor. Judicial estoppel applies to protect the</p> <p>8 judiciary's integrity and prevents a party from taking</p> <p>9 inconsistent positions by intentional wrongdoing or an</p> <p>10 attempt to obtain an unfair advantage.</p> <p>11 And I think that's what's going on here. Look at</p> <p>12 how they changed at the last minute to gross rent and they</p> <p>13 want you to hold us in contempt for not handing over gross</p> <p>14 rent.</p> <p>15 And I cite cases NOLM, LLC versus County of Clark,</p> <p>16 120 Nev. 736, 743, 100 P.3d 658 at page 663, that's a 2004</p> <p>17 case, and they quote, Kitty, K-i-t-t-y, Anne, A-n-n-e, Music</p> <p>18 Company versus Swan, S-w-a-n, 112 Cal. App. 4th 30, 4 Cal.</p> <p>19 Rptr.3d 796 at page 800. That's Court of Appeals</p> <p>20 California, 2003, where it says this court may invoke the</p> <p>21 doctrine at its discretion.</p> <p>22 Judicial estoppel may apply when, number 1, the</p> <p>23 same party has taken two positions, clearly the case here.</p> <p>24 The positions were taken in judicial or quasi-judicial</p>	<p style="text-align: right;">Page 169</p> <p>1 Defendant MEI-GSR Holdings, LLC, a Nevada Limited Liability</p> <p>2 Company for the limited purposes of monitoring and</p> <p>3 controlling," this is important, "if the Receiver in his</p> <p>4 sole discretion deems necessary, the operation, rental,</p> <p>5 maintenance, fees, dues, and reserve collection of all</p> <p>6 condominium units governed by the GSRUOA."</p> <p>7 Here is what is important about that and is worthy</p> <p>8 of Your Honor's consideration. This is an admission by them</p> <p>9 that before they could control the rents or reserves, they</p> <p>10 needed that Receiver appointed over the MEI-GSR. That's</p> <p>11 consistent with Nevada law.</p> <p>12 You cannot bring into the receivership estate</p> <p>13 property or items that do not belong to the entity over whom</p> <p>14 you were appointed Receiver. That's just basic Nevada law.</p> <p>15 That's why they asked for appointment over the Receiver.</p> <p>16 And the second important point is their</p> <p>17 envisionment was that the Receiver in his sole and absolute</p> <p>18 discretion when he deems it necessary he can exercise that</p> <p>19 authority. And I think, in fact, if you look at the course</p> <p>20 of conduct that is exactly what has happened in this case.</p> <p>21 So when you see an entry in the January 7, 2015,</p> <p>22 order that says he can take, you know, you have to turn the</p> <p>23 reserves over to him, that's not how the parties treated it.</p> <p>24 Look at this point. Mr. Teischner is on the stand</p>

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<p style="text-align: right;">Page 170</p> <p>1 and I say to him have you ever asked for the reserves, 2 Mr. Teischner? No. Do you want them? No. 3 So even though that order says we are supposed to 4 do it immediately, Mr. Teischner never asked for it and he 5 darn well doesn't want it. And it's consistent with that 6 representation, it is subject to the discretion of the 7 Receiver when he wants to exercise that power. That's a 8 course of conduct by which this January 7th, 2015 order was 9 enforced. 10 And this is just sort of following up. The Court, 11 when the Court issued the Appointment Order on January 7, 12 2015, the Court denied in part and granted in part the 13 Plaintiffs' motion appointing the receiver over the GSRUOA, 14 a Nevada non-Profit Corporation, but not MEI-GSR for the 15 express purposes of implementing compliance with the three 16 Governing Documents, and importantly the Court denied 17 Plaintiffs' request to appoint the Receiver over MEI-GSR 18 Holdings, which Plaintiffs acknowledged in their motion was 19 necessary to monitor and control the operation of the condo 20 units and the rental, fee, dues, and reserve collections, 21 all of which are owned and controlled by MEI-GSR, not 22 GSRUOA. 23 In the January 7, 2015, order as part of his 24 obligation to implement compliance with the Governing</p>	<p style="text-align: right;">Page 172</p> <p>1 Motion for Instructions to the Receiver, they admit that the 2 Appointment Order appointed the Receiver over the GSRUOA and 3 certain Defendants' assets. How could that be? If he is 4 not appointed over those Defendants, then those are not part 5 of the receivership estate, including rents and revenues, 6 which, again, they admitted belong to MEI-GSR. 7 If the Receiver is ordered to implement compliance 8 with the Governing Documents, then how is it that he is 9 ignoring or modifying the terms of the Governing Documents 10 by having the GSRUOA review and/or take control of MEI-GSR 11 assets? 12 Those are defined -- MEI-GSR's rights to collect 13 and control the rent and to do budgets and order independent 14 third party reserve studies all are controlled by the 15 Governing Documents. Governing Documents that he has sworn, 16 the Receiver has sworn to implement and yet they are being 17 modified. 18 Why? Because when you appoint the Receiver over 19 the GSRUOA, you are really substituting that party in place 20 of MEI-GSR. You can call it what you want, but it's a 21 modification of the agreements and something that is not 22 allowed. 23 And this was just sort of my, I think, stream of 24 consciousness looking at the law and why I think that</p>
<p style="text-align: right;">Page 171</p> <p>1 Documents, the Receiver of the GSRUOA was granted the power 2 to review and/or take control over the rent that, according 3 to the Governing Documents and Plaintiffs' Motion for 4 Appointment of Receiver belongs to MEI-GSR. 5 That particular paragraph talks about review and 6 control. We know that for the first 6 1/2 years there was a 7 review. After 6 1/2 years, starting on September 15, 2021, 8 he decided to take control for the first time and without 9 any notice. I mean, I think it would be reasonable to say 10 if you want to change from review to control, maybe you 11 ought to ask for clarification from the Court or file 12 another motion. It is a distinct change of circumstance 13 from reviewing to actually taking control. 14 This sort of gets into my argument about is this 15 order even legal. How did the Receiver of the GSRUOA obtain 16 power to control and take possession of rents that according 17 to the Governing Documents and even Plaintiffs' Motion for 18 Appointment belong to the MEI-GSR? 19 Now, you know, I'm sure you could say, well, if 20 you were going to object you should have done that a long 21 time ago, McElhinney. I'm talking about confusion. I'm 22 talking about ambiguity which is relevant to these 23 proceedings. 24 Recall even in the Plaintiffs' September 28, 2021,</p>	<p style="text-align: right;">Page 173</p> <p>1 January 7, 2015, order is confusing. NRS 32.155, the owner 2 is defined and it means the person for whose property a 3 Receiver is appointed. That's GSRUOA. 4 NRS 32.185, receivership property is defined as 5 receivership property means the property of an owner, okay, 6 that's the person over whom the Receiver is appointed, that 7 is described in the order appointing a Receiver or a 8 subsequent order. That term includes proceeds, products, 9 offspring, rents or profits of or from the property. Again, 10 that's GSRUOA property. 11 NRS 32.295, powers and duties of the Receiver. To 12 collect, control, manage, conserve and protect receivership 13 property. Not property belonging to somebody else, 14 receivership property, and that by definition means property 15 that is owned by the owner over whom the Receiver is 16 appointed. 17 I think Your Honor understands the point I'm 18 trying to make. That order is contrary to Nevada law and it 19 is inherently confusing. It is latently ambiguous, not only 20 because of that conflict with the law, but because of the 21 manner in which the custom of practice, the manner in which 22 it has been enforced, for the reasons I have been talking 23 about for the last whatever it's been, an hour. 24 Plaintiff's claim that the January 7, 2015</p>

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<p style="text-align: right;">Page 174</p> <p>1 Appointment Order immediately removed the Board of 2 Directors. Plaintiffs' counsel argued this at a hearing 3 before Justice Saitta on July 2nd, 2021, and it was denied 4 by the Court. The Court observing that for the last 6 years 5 no one has ever claimed any of the January 7, 2015, order 6 provisions were being violated. That's Exhibit 13, page 34. 7 Now, why she reversed field in the January 4, 8 2022, orders I don't know, but clearly at the July 2021 9 hearing at the very least her comments show that she is 10 confused by the status of this Receiver as well, because 11 when John Tew said no, no, no, as a matter of law this 12 Receiver immediately took over the entire operation of the 13 board. Justice Saitta did not agree and she, in fact, let 14 the board go forward with a vote that very afternoon. 15 So I think at the end of the day, the January 7, 16 2015, order is very confusing. Plaintiff did not seek to 17 have the Receiver take control of the non-receivership 18 property for 6 1/2 years after issuance of that order, and 19 this was not what they requested in their Second Amended 20 Complaint. 21 This adds to our confusion. So I know the 22 January 7, 2015, order is in violation of NRS Chapter 32, 23 which makes it confusing in and of itself, and/or the Court 24 by entering the order materially modified the Governing</p>	<p style="text-align: right;">Page 176</p> <p>1 GSR what to hand over until I finish my calculations, but 2 I'm not going to do that until I get paid. 3 The Receiver didn't go to the Court and say I want 4 to be relieved of these responsibilities. He just said I'm 5 not going to do it and he put my clients squarely on the 6 horns of a dilemma. 7 Either they are going to follow the order and sit 8 back and wait for an independent third party reserve study 9 that the Receiver had said I'm not going to do, or they can 10 carry out the mandatory provisions of the 7th Amended CC&Rs 11 to keep themselves out of trouble so they can set a budget 12 and operate their business. 13 And this is a slide discussing that. The Receiver 14 shall order, oversee, and implement a new reserve study 15 which is in accordance with the Governing Documents. That's 16 in the January 4, 2022, Order Granting Plaintiffs' Motion 17 for Instructions to the Receiver. That is Exhibit 23, 18 page 5, lines 23 through 24. 19 Nobody disputes that's what the order says. This 20 power arose by implication based upon the Findings of Fact, 21 Conclusions of Law and Judgment that required the Receiver 22 to calculate the reserves. 23 Now, again, when Mr. Miller is going through the 24 e-mail exchanges between me and Ms. Sharp or me and</p>
<p style="text-align: right;">Page 175</p> <p>1 Documents to assign the GSRUOA ownership interest in the 2 unit rents in order to make the rents part of the 3 receivership estate. 4 And then, again, we have been talking about course 5 of conduct, I won't bore you further with that, at least not 6 on this slide, but course of conduct is all important in the 7 way, in the manner in which this order was enforced. 8 The Receiver refuses to carry out his Court- 9 ordered responsibility to calculate the net rent. The order 10 was clear, the Receiver shall open a separate account on 11 which Receiver has sole signatory authority, and into which 12 all rents, all rents, net of total charges for DUF, SFUE, 13 and HE fees and reserves are to be deposited. 14 That's the January 4, 2022, Order Granting 15 Receiver's Motion for Orders and Instructions, page 8, lines 16 6 through 9. This gets accomplished 1 year and 4 months 17 later on May 4, 2023, when the Receiver actually gets that 18 account opened. 19 Let's talk about the Receiver's refusal to carry 20 out his Court-ordered responsibility. And I get it. I hear 21 the Plaintiffs just saying, well, you created the 22 impossibility. You didn't pay him. Well, wait a minute. 23 He said he was going to calculate net rents. He admitted in 24 his November 14, 2022, letter to the Court that I can't tell</p>	<p style="text-align: right;">Page 177</p> <p>1 Ann Hall, we are discussing his responsibility to calculate 2 the reserves. Nobody has disputed that. Mr. Proctor was 3 doing that back in 2016, 2017. We don't dispute it. 4 What we do dispute is this new power by 5 implication where, okay, if I'm supposed to calculate the 6 reserves, then it's only logical that I should also take 7 over the independent third party reserve study. That 8 interpretation showed up for the first time in an order on 9 January 4, 2022. 10 This substantially modifies and amends the 7th 11 Amended CC&Rs that required the Shared Facilities Unit Owner 12 and the Declarant to prepare the detailed proposed budget 13 for the ensuing calendar year to establish SFUE and HE, and 14 ordering an independent reserve study to set independent 15 reserves for capital expenditures and costs of deferred 16 maintenance at the sole and absolute discretion of the 17 Shared Facilities Unit Owner and the Declarant in accordance 18 with the express terms of the 7th Amended CC&Rs. 19 Given the Receiver's refusal to order, oversee, 20 and implement a new reserve study, set reserves, set SFUE 21 and HE fees and reserves, and any necessary special 22 assessments, all in accordance with the Governing Documents, 23 Defendants carried out those functions as they have done 24 historically and as required under the 7th Amended CC&Rs</p>

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<p style="text-align: right;">Page 178</p> <p>1 that may not as a matter of a Court order be amended.</p> <p>2 And now instead of somebody coming after the</p> <p>3 Receiver and seeking to hold him in contempt for refusing,</p> <p>4 because, again, he doesn't come to the Court and say I'm not</p> <p>5 being paid, I want to be relieved of these duties, instead</p> <p>6 he just does nothing putting us in that difficult position</p> <p>7 of what do we do?</p> <p>8 We need to act quickly. We can't file a motion</p> <p>9 and go through a 30 day process. We need a budget.</p> <p>10 Otherwise, we are in all kinds of trouble in our business</p> <p>11 for the particular reasons that Mr. Brady described to</p> <p>12 Your Honor. And as he told you, ordering the independent</p> <p>13 third party study is essential to set a budget and without</p> <p>14 it we are extraordinarily handicapped.</p> <p>15 So let's summarize. The January 7, 2015 Order</p> <p>16 Appointing Receiver is inherently vague and ambiguous. It</p> <p>17 is latently ambiguous because of the manner in which it was</p> <p>18 executed and no action having taken place on that order for</p> <p>19 6 1/2 years.</p> <p>20 The conflicting orders. Defendants have followed</p> <p>21 one of the orders, applying their fees that were in place</p> <p>22 prior to the Court's order of September 27, 2021. I don't</p> <p>23 think we talked about that. Let's spend a minute on it.</p> <p>24 Plaintiffs keep suggesting that we are just</p>	<p style="text-align: right;">Page 180</p> <p>1 the CC&Rs do require the Unit Owners to pay for costs of</p> <p>2 refurbishment and renovation for areas including, but not</p> <p>3 limited to, the lobby, the front desk, concierge, reception</p> <p>4 area furnishings, fixtures, equipment and facilities,</p> <p>5 corridor and hallway furnishings, et cetera, and that's not</p> <p>6 only the FF&E, but it's the building FF&E.</p> <p>7 And our Director of Finance, Mr. Brady told us, he</p> <p>8 has explained to the Court how and why he calculated the</p> <p>9 actual expenses, all of which include the categories of</p> <p>10 expenses included in the CC&Rs, demonstrating that these are</p> <p>11 not hyperinflated or excessive fees.</p> <p>12 Your Honor, there is no order that requires</p> <p>13 Defendant to seek permission of the Receiver before</p> <p>14 withdrawing money from the reserve accounts. We have</p> <p>15 looked. It doesn't exist.</p> <p>16 Recall that we filed two motions, and I know</p> <p>17 Your Honor knows, two motions for Instructions to the</p> <p>18 Receiver Regarding Reimbursement for Capital Expenditures,</p> <p>19 one on May 21, 2020 and the second on June 24, 2021.</p> <p>20 We filed the motions seeking the Receiver's</p> <p>21 approval since per Court order he was charged with the</p> <p>22 accounting for all income and expenses associated with</p> <p>23 compliance with the Governing Documents. We do not argue</p> <p>24 that he has sole authority to approve withdrawal from the</p>
<p style="text-align: right;">Page 179</p> <p>1 applying whatever fees we want. I think Mr. Brady made</p> <p>2 clear that dealing with that confusing language you will</p> <p>3 apply those fees in place prior to September 27, 2021, we</p> <p>4 went through a checklist of what that means exactly.</p> <p>5 And first it went Proctor's numbers. Then</p> <p>6 according to Mr. Teischner, it meant his 2021 numbers, which</p> <p>7 we regard as impossible because those were not approved</p> <p>8 until January 4, 2022.</p> <p>9 So the only fees that were left, Your Honor, were</p> <p>10 our fees, and they were the fees, we used the same model,</p> <p>11 the same approach as was used by Mr. Teischner in 2020, but</p> <p>12 we eliminated those particular items that Judge Sattler said</p> <p>13 you can't put that in the DUF. It has to be fixed. We</p> <p>14 fixed it. Those are the numbers we used.</p> <p>15 You've heard the testimony, Your Honor. You have</p> <p>16 to judge, but Mr. Brady was specific about his costs. They</p> <p>17 are actual costs and they comply with the 7th Amended CC&Rs,</p> <p>18 a far cry from rogue Defendants who are doing whatever they</p> <p>19 want and trying to hyperinflate their costs so as to punish</p> <p>20 the Plaintiffs. That's not what's going on here and the</p> <p>21 evidence shows that.</p> <p>22 I think we have talked about the rest of those</p> <p>23 items. I believe we have presented testimony that contrary</p> <p>24 to the Plaintiffs' arguments and the Receiver's arguments</p>	<p style="text-align: right;">Page 181</p> <p>1 reserve accounts.</p> <p>2 The Receiver refused to prepare a report on</p> <p>3 Defendants' requests as ordered to do so. That's the</p> <p>4 January 4, 2022, Order Directing Receiver to Prepare a</p> <p>5 Report on Defendants' Request for Reimbursement of 2020</p> <p>6 Capital Expenditures that only addressed the second of the</p> <p>7 two motions.</p> <p>8 And I will be honest with you, Your Honor, for</p> <p>9 years we were ignored by the Court. These were put to the</p> <p>10 bottom of the Court's priority list. We have spent,</p> <p>11 according to testimony we heard yesterday, over \$500 million</p> <p>12 on this property in improvements. All we are asking for is</p> <p>13 reimbursement from the capital reserve accounts for a small</p> <p>14 portion of those expenditures which represent the</p> <p>15 Defendants' share in that responsibility, which is without</p> <p>16 question clearly set forth in the 7th Amended CC&Rs.</p> <p>17 The Defendants have a business to run. They</p> <p>18 require budgets. They have spent this money. I show</p> <p>19 \$300 million. It's \$500 million that directly benefit the</p> <p>20 Plaintiffs.</p> <p>21 After waiting for nearly 3 years for the Receiver</p> <p>22 to carry out his responsibilities, the Defendants looked to</p> <p>23 the express terms of the 7th Amended CC&Rs that allow them</p> <p>24 to withdraw the funds from the reserves in order to</p>

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<p style="text-align: right;">Page 182</p> <p>1 reimburse themselves for a small fraction of their capital 2 expenditures and likewise looked through the orders and saw 3 no orders that required us to seek Court permission prior to 4 withdrawing money from our reserve accounts. 5 On May 24, 2023, Your Honor determined that cause 6 had been shown for failing to comply with the December 5, 7 2022, order related to the dissolution plan for not 8 continuing to rent the former units following recordation of 9 the Termination Agreement of the condominium hotel units, 10 signed by all parties and the Receiver and recorded on 11 February 27, 2023. That may be February 28, 2023. 12 Our position is as follows. Following the 13 recording of the Termination Agreement, as a matter of law 14 each unit owner has an exclusive right to occupancy -- it 15 doesn't say anything about renting -- occupancy of a portion 16 of the real estate that formerly constituted their unit. 17 Their unit doesn't even exist anymore. 18 And the respective interests of the Unit Owners in 19 their former units are the fair market values of their 20 units. And I'm reading from NSR 116.2118 and NRS 116.21185. 21 There is no provision in NRS Chapter 116 that authorizes the 22 continuing rental of units that no longer exist. 23 There is no provision in the NRS Chapter 116 that 24 says the Unit Owners of their former units can continue to</p>	<p style="text-align: right;">Page 184</p> <p>1 continue to rent the former units under the URA. 2 I want to be clear. Defendants' units are not 3 under the URA. And if you think about it, why would we 4 enter into a Unit Rental Agreement with ourselves, because 5 we own the units, we are renting the units, so a literal 6 reading of this order would mean it's only the units under 7 the URA. 8 It's probably a good time for me to ask you that 9 question, because the last thing I want to be facing is 10 another Order to Show Cause. Do I understand that 11 correctly, that you are instructing whether it's the 12 Receiver or us to continue to rent these units that is only 13 those units under the URA? 14 THE COURT: You can rent any of the units you want 15 as long as you do it fairly, Mr. McElhinney. 16 MR. McELHINNEY: Okay. I appreciate that, 17 Your Honor. Thank you. I appreciate that clarification. 18 Now, on March 30, Plaintiffs' counsel sends an 19 e-mail to counsel for the Receiver, and on March 14 the 20 Receiver -- oh, saying, he says in his e-mail to Ms. Sharp, 21 "On March 14th the Receiver was instructed by the Court to 22 continue to rent the former units. Can you please confirm 23 the following?" And then he asks questions about are the 24 units being, in fact, being rented?</p>
<p style="text-align: right;">Page 183</p> <p>1 rent their units. And as pointed out by Mr. Teischner, they 2 don't even own their units anymore. Those units are now 3 titled in the name of the GSRUOA, the Receiver. 4 Now, it's in trust for the Unit Owners, but I can 5 tell you the Receiver is not a party to any Unit Rental 6 Agreement, not with us. And the units no longer exist, so 7 we have trouble understanding why Your Honor -- well, I'm 8 going to take it back. I understand what you said. 9 You said that would be an economic waste not to 10 rent these units, but our position is if you follow the law 11 these units don't exist and it is a theoretical if not 12 actual impossibility to rent units that no longer exist and 13 that are no longer owned in the name of the units or titled 14 in the name of the units. 15 So our position was upon recordation of the 16 termination agreement, the Defendants ceased renting the 17 former units. Now, on March 14th we received Your Honor's 18 order -- let me back up a little bit. 19 On January 26, 2023, the Plaintiffs actually filed 20 a Motion for Instructions to clarify that the units were to 21 be rented until they were sold. That resulted in 22 Your Honor's order of March 14, 2023, order determining that 23 allowing Unit Owners to only occupy their former units would 24 promote economic waste and you ordered the Receiver to</p>	<p style="text-align: right;">Page 185</p> <p>1 On April 5, Defendants' counsel sends an e-mail to 2 Receiver's counsel, and I definitely skipped some e-mails in 3 there. I don't mean to make any misrepresentations. There 4 were some back and forth where Ms. Sharp said, well, you 5 know the Defendants are in complete control of the rental 6 program and we are not doing anything until we get paid. 7 I jumped in on April 5, 2023, not March 30, and 8 I'm sorry I did. I probably shouldn't have, but what I say 9 in here is given the Receiver's refusal, once again, to 10 carry out his Court-ordered responsibilities and the Court's 11 concern to avoid economic waste, Defendant will, under 12 protest, and with a full reservation of rights continue 13 renting all units in accordance with the express terms of 14 the URA as it had been doing prior to the termination of the 15 Common Interest Community. 16 Now, we stopped for March for the reasons I have 17 already expressed. That Termination Agreement was recorded 18 February 28th, 2023, and in our view the units didn't exist. 19 On March 14th Your Honor issues an order not 20 telling us to continue to rent the property, but telling the 21 Receiver to continue to rent the property. We sat back and 22 waited to see what the Receiver was going to do. It was 23 crickets, nothing going on. 24 That's when I stepped up and said, look, I don't</p>

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<p style="text-align: right;">Page 186</p> <p>1 think, you know, it's under protest, but I don't think the 2 Receiver is capable of taking on this task anyway. As 3 ordered by the Court to avoid economic waste, we will take 4 it over. 5 Now, about 2 or 3 days later, their units were put 6 back in the queue and we started renting them. I got a 7 letter, an e-mail back from Mr. Miller saying why did you 8 lie to us? 9 I didn't lie. When I sent this e-mail on 10 April 5th I said we will continue that rental, meaning, I 11 suppose I could have been more explicit, but meaning I will 12 start now. I mean, the Court on March 14th said it was the 13 Receiver's job, not ours, but now that he is not doing 14 anything, and I don't think he is capable anyway, we will 15 take it over. 16 And no good deed goes unpunished, I suppose. Now 17 I'm being held in contempt or my client is in contempt for 18 not having rented the units in the month of March. I think 19 we had a reasonable excuse for not doing so. I think it is 20 consistent with Nevada law, and I don't think Your Honor can 21 hold us in contempt. We started up right away again on 22 April 7th renting their units. 23 I think this is the rest of the e-mail. I 24 probably had them out of order. I'm going to skip it.</p>	<p style="text-align: right;">Page 188</p> <p>1 I have no idea what kind of representations were made to 2 them. 3 But my client comes in, rescues this property from 4 being shut down and proceeds to spend millions of dollars. 5 Their units arguably were worth virtually nothing when we 6 bought the property. They are now up to values of \$25,000, 7 \$30,000 thereabouts. Is it even approaching what they paid 8 for it? No, but that's not our fault. We are doing the 9 best we can. 10 The money we have spent has helped them 11 immeasurably. It puts heads in the beds, which I think 12 that's a terminology I'm hearing from some of the people at 13 GSR, which is their job, put people in the rooms. And that 14 place is full all the time. It really, they really do a 15 fine job because of the money we have spent, and they 16 benefit from that. 17 So I hate to see them fighting this way. In some 18 ways we should be in the same camp, because to the extent 19 they beat us up, they beat themselves up and probably vice 20 versa. 21 These conflicts and clarifications are not things 22 to be resolved by a contempt of court process. We are 23 trying to present a solution, and I think we have done that 24 in the things that we have done just recently to purge the</p>
<p style="text-align: right;">Page 187</p> <p>1 Yeah, this is just the final e-mail from Mr. Miller to me 2 that said, "So did you intentionally mislead the Plaintiffs 3 and the Receiver? We will proceed with the Motion for Order 4 to Show Cause." Again, no good deed goes unpunished, I 5 suppose. 6 That's the rest of the exchange if Your Honor 7 wants to see it. That concludes my PowerPoint. I 8 appreciate Your Honor's patience. Just some final thoughts 9 before I turn this over to Mr. Smith, if I may. 10 It's probably neither here nor there. I guess I 11 want to have my moment here. I think it's sad that these 12 parties are fighting with one another. 13 I have a lot of respect for MEI-GSR. I think it 14 is an upstanding organization. The people that I see 15 everyday at the GSR are good, honest people. They have 16 spent \$500 million on this property rising up the values in 17 this property. 18 I mean, when my clients bought this property in 19 2011, it was bank-owned, had been banked-owned for about 20 8 years. It was about ready to be boarded up. 21 My client didn't sell any of these units to these 22 Plaintiffs. And, quite frankly, I feel bad for them that 23 they paid hundreds of thousands of dollars for units 24 probably -- well, buying all of them from our predecessor.</p>	<p style="text-align: right;">Page 189</p> <p>1 contempt. 2 I know Your Honor wants this case done, so do the 3 Defendants. Even though we think the Court lacks 4 jurisdiction over the continuing receivership, we think the 5 solution is to require the Receiver to complete the work and 6 wind down. And I would hope Your Honor would give us a 7 deadline. Tell them you need to complete these things 8 within 45 days, 60 days, whatever, to put an end to this 9 long drawn-out process. 10 And require us to pay net rents. I hope it was 11 clear from Mr. Brady's testimony that it would be virtually 12 catastrophic if you ordered us to turn over gross rent. Not 13 only am I concerned for my client, but I don't think 14 Mr. Teischner can do it. 15 Your Honor has concerns I think because that's why 16 you are going to modify your order and say the Receiver is 17 not going to run the rental program, you guys are. If you 18 turn gross rent over to the Receiver, he is going to have to 19 hire a whole crew. His fees will go astronomically high. 20 And if he is slow, it could lead to irreparable harm to my 21 client, so I would hope you would be entertaining net rent, 22 not gross rent. 23 THE COURT: You will be surprised by my plan, 24 Mr. McElhinney. We just have to let Mr. Smith speak first,</p>

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<p style="text-align: right;">Page 190</p> <p>1 and then I hear last from the Plaintiffs, and then you will 2 hear my plan.</p> <p>3 MR. McELHINNEY: Mr. Smith has a few words to say 4 I believe before we turn it back over to Mr. Miller.</p> <p>5 MR. SMITH: Thank you, Your Honor, and thanks, 6 Mr. McElhinney, for letting me take a few moments of his 7 time. So I want to address the homework assignment and the 8 issues raised by it that you gave us last night.</p> <p>9 Under NRS 22.100(3), the categories of available 10 damages are actually quite narrow. It doesn't include the 11 many categories of monetary amounts or affirmative action 12 that the Plaintiffs asked Your Honor to impose. Remember, 13 we started this proceeding talking about jail and now we 14 have shifted a little bit to talking about monetary amounts, 15 so let me address --</p> <p>16 THE COURT: That's because I said I wasn't going 17 to put anybody in jail.</p> <p>18 MR. SMITH: No, I understand that, but this was in 19 the Plaintiffs' plan and it clearly pivoted a little bit 20 here and now they are asking for many categories that just 21 simply aren't available by statute. In many ways they are 22 treating this now as a wish list of things they could get 23 monetarily or affirmative action that has never been ordered 24 to begin with. That's just simply not there.</p>	<p style="text-align: right;">Page 192</p> <p>1 don't think it's immaterial that the Plaintiffs are seeking 2 to enforce rights and duties that belong to the Receiver. 3 They don't belong to the Plaintiff.</p> <p>4 That January 2015 order allowed the Receiver to do 5 many things. The Receiver is not here. The Receiver is not 6 claiming the Defendants violated that order or any other 7 order. It is the Plaintiffs, and so I don't think they have 8 standing, but they certainly don't have standing to receive 9 amounts that do not belong to a party who under the terms of 10 the statute is seeking to enforce the writ.</p> <p>11 Ms. Collings brought up the Detwiler case. 12 Detwiler also talks about this and there is a couple 13 important words in Detwiler. What Detwiler says is that 14 these sanctions, civil sanctions, must be limited to the 15 opponent's actual loss caused by the contemptuous conduct of 16 the opponent.</p> <p>17 The opponent here, again, is the Plaintiffs, not 18 the Receiver. The Receiver then, they can't recover his 19 fees and expenses for this proceeding, can't recover the 20 cost of his participation.</p> <p>21 There was another important passage in Detwiler I 22 want to point out to Your Honor. It says, 718 of the 23 opinion, it says, "If the relief provided is a fine, it is 24 remedial when it is paid to the complainant." Complainant</p>
<p style="text-align: right;">Page 191</p> <p>1 So let me first start with the language of the 2 statute like we always do. Your Honor was asking about 3 receivership expenses and the cost of the receivership's 4 participation.</p> <p>5 But here is what subsection 3 of NRS 22.100 6 actually says. And Ms. Collings, I'm sure it was 7 inadvertent, but she left out a couple really important 8 words in that statute. Subsection 3 says, "In addition to 9 the penalties provided in subsection 2, if a person is found 10 guilty of contempt pursuant to subsection 3 of NRS 22.010, 11 the court may require the person to pay," here is the 12 important part, "the court may require the person to pay to 13 the party seeking to enforce the writ, order, rule or 14 process the reasonable expenses, including, without 15 limitation, attorney's fees, incurred by the party as a 16 result of the contempt."</p> <p>17 So plain language of the statute, who is the party 18 here seeking to enforce the writ? It is the Plaintiffs. 19 The Receiver in an odd turn of events is not here enforcing 20 any of the orders, not claiming we interfered with him, not 21 claiming any of these things. Instead, it is the Plaintiffs 22 who are now trying to enforce the Receiver's orders.</p> <p>23 And I think there is questions not only about 24 injury, which I will discuss, but also about standing. I</p>	<p style="text-align: right;">Page 193</p> <p>1 here, Plaintiffs again, not Receiver.</p> <p>2 The passage continues, "And punitive when it is 3 paid to the Court, though a fine that would be payable to 4 the court is also remedial when the defendant can avoid 5 paying the fine simply by performing the affirmative act 6 required by the court's order."</p> <p>7 Detwiler continues, well, what civil fines are 8 available? How do you calculate those? And what Detwiler 9 says, again, on 720, I believe, it says, "Civil sanctions 10 are limited to the opponent's actual loss resulting from the 11 contempt."</p> <p>12 Actual loss resulting from the contempt and that 13 involves only the period of alleged contemptuous conduct. 14 So what evidence do we have of the Plaintiffs' actual loss 15 arising from the contempt? Actual loss resulting from the 16 contempt, we have no evidence of the Plaintiffs.</p> <p>17 Each individual Plaintiffs, all 92 of them, what 18 evidence is there of each of theirs, their actual loss? We 19 heard evidence that some of them actually owe GSR money. 20 You can't recover any damages for the Plaintiffs that owe 21 GSR money.</p> <p>22 What loss do these 92 Plaintiffs have they shown 23 resulted from the contemptuous conduct? This isn't a class 24 action, Your Honor, so they can't just simply point to a</p>

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<p style="text-align: right;">Page 194</p> <p>1 couple cherry-picked statements and say, well, let's</p> <p>2 extrapolate that, multiply it by 92, and that must be our</p> <p>3 losses.</p> <p>4 They got Mr. Brady today to talk about generally</p> <p>5 over time what the gross amounts might be, but your actual</p> <p>6 loss they would have to say, well, you should have rented it</p> <p>7 X number of times. Mr. Brady explained how that is</p> <p>8 inherently speculative. There is seasonality. There is</p> <p>9 comps. There is all of these factors that go into it, so</p> <p>10 it's highly speculative and they have simply not proven what</p> <p>11 their actual damages are arising from the contempt.</p> <p>12 Each of these statements which they cherry picked</p> <p>13 are just snapshots. One month we might owe them money, the</p> <p>14 next month they might owe us money. What happens when they</p> <p>15 owe us money? They never ever pay us. So they have not</p> <p>16 shown any actual loss arising from the contempt.</p> <p>17 And Mr. McElhinney pointed out in his closing the</p> <p>18 documents say, Plaintiffs, you have no guarantee that your</p> <p>19 units are actually going to be rented. We make no guarantee</p> <p>20 about how many nights per week, how many nights per month</p> <p>21 somebody might have a head in your bed, so they did not</p> <p>22 establish it and it's wholly speculative.</p> <p>23 Other issues, Your Honor, civil contempt, Detwiler</p> <p>24 again tells us sanctions must be remedial, meaning they look</p>	<p style="text-align: right;">Page 196</p> <p>1 Receiver. How have they been harmed and how would a</p> <p>2 monetary amount fix that? The one that keeps coming to me</p> <p>3 is this argument that, well, you had an order to rescind the</p> <p>4 special assessments. The statements weren't sufficient or I</p> <p>5 guess didn't go out fast enough.</p> <p>6 How did they suffer any monetary injury from that?</p> <p>7 They didn't. So this amorphous interference concept that we</p> <p>8 keep hearing about, they have not established how it</p> <p>9 actually harmed the Plaintiff.</p> <p>10 The Receiver is not here claiming he was</p> <p>11 interfered with. Mr. McElhinney asked him two questions and</p> <p>12 basically he just said, well, the interference is I wasn't</p> <p>13 paid.</p> <p>14 Mr. McElhinney has explained and the evidence has</p> <p>15 shown you why it's not something we have done. It is a</p> <p>16 product of the Receiver's own making. So the Plaintiffs</p> <p>17 shouldn't be compensated and the Defendants shouldn't have</p> <p>18 to pay any monetary sanction as a result of things that</p> <p>19 didn't actually cause any monetary injury to the Plaintiffs.</p> <p>20 Interest on unpaid rents. I think I have</p> <p>21 addressed that. If you are not entitled to unpaid rents and</p> <p>22 do not establish that, you are certainly not entitled to</p> <p>23 interest on it.</p> <p>24 Same with the reserves, I still don't understand</p>
<p style="text-align: right;">Page 195</p> <p>1 backwards, make you whole for what happened. Well, how does</p> <p>2 that work with all of the affirmative action? Set aside the</p> <p>3 monetary amounts they are requesting, they are asking again</p> <p>4 for a wish list of all of these things; modifications of</p> <p>5 orders, things that prior orders have never actually said</p> <p>6 asking for affirmative action.</p> <p>7 That is not a type of civil contempt sanction that</p> <p>8 is simply available. You can't order affirmative relief.</p> <p>9 This isn't an injunction proceeding. They are not asking to</p> <p>10 modify prior orders, so affirmative action like this is not</p> <p>11 an appropriate or available form of civil contempt.</p> <p>12 It's try and make you whole, I agree with</p> <p>13 Ms. Collings on that. They have got to establish what</p> <p>14 amounts would make them whole, and these prior affirmative</p> <p>15 acts in the future do not fit that bill and are an</p> <p>16 inappropriate type of civil sanction.</p> <p>17 I do want to address a couple other categories</p> <p>18 that Ms. Collings referenced. I think I addressed the first</p> <p>19 category of loss of rental income. No evidence of that.</p> <p>20 Highly speculative to show actual loss there.</p> <p>21 The reserves, they have not established how have</p> <p>22 the Plaintiffs, individual 92 Plaintiffs, been harmed by the</p> <p>23 withdrawal of reserves? They have not established that.</p> <p>24 Right to interfere, this interference with the</p>	<p style="text-align: right;">Page 197</p> <p>1 how the individual Plaintiffs, all 92 of them, have been</p> <p>2 harmed by that. And they could have got up and testified.</p> <p>3 Not one Plaintiff in this entire case has ever taken that</p> <p>4 witness stand, not at the default proceeding and not in this</p> <p>5 proceeding.</p> <p>6 Many of them have been here all week. They could</p> <p>7 have and they chose not to. And that choice, that strategic</p> <p>8 choice for whatever reason has consequences and it has</p> <p>9 consequences for the outcome of this proceeding. Thank you.</p> <p>10 THE COURT: Thank you.</p> <p>11 Mr. Miller, briefly.</p> <p>12 MR. MILLER: Yes, Your Honor.</p> <p>13 Your Honor, as I understood much of the</p> <p>14 Defendants' argument, it was disagreement with past orders,</p> <p>15 attempts to reargue past orders. For instance, the most</p> <p>16 prevailing theme is to try to sew some level of distrust in</p> <p>17 the Receiver's fees, even though we have had four days of</p> <p>18 hearings on fees. We have had motions to approve the fees.</p> <p>19 We have had the fees approved.</p> <p>20 And then there is a lot of misstatements about the</p> <p>21 Receiver's calculation of fees. The Receiver's calculation</p> <p>22 of fees is Exhibit 140. We get the argument that there is</p> <p>23 no costs in there that could be attributable to the</p> <p>24 accounting services.</p>

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<p style="text-align: right;">Page 198</p> <p>1 Yet if the Court looks through the fees, which 2 again have been litigated, they have been opposed by 3 Defendants. The arguments have been made. The Court has 4 issued an order approving these fees. There was no Motion 5 for Reconsideration, but yet we have heard countless hours 6 about how Mr. Brady's calculations are right and 7 Mr. Teischner's are wrong. 8 In reviewing Mr. Teischner's fee request about 9 the, in connection with the claim that there is just no 10 expenses for the payroll or the accounting, if you look at 11 the calculations themselves, room administration payroll for 12 the period, director of revenue management, director of 13 hotel operations, you have got a couple hundred thousand 14 dollars here that's attributable to those types of services. 15 So claims that the things like that were just 16 excluded are wrong. They don't justify the contemptuous 17 conduct. Again, even if an order was subsequently 18 determined to be wrong, it's still contempt to not comply 19 with the order. 20 Second, on a factual note, we heard the claim that 21 the Plaintiffs complained that there must be something 22 wrong, that they believe they were guaranteed money. 23 Plaintiffs have never represented that they are guaranteed 24 money.</p>	<p style="text-align: right;">Page 200</p> <p>1 Defendants, and then they never get applied. 2 And then you have got this argument, well, you are 3 only entitled to net rents and we can't come up with net 4 rents because we don't agree with the Receiver's fees. We 5 think it's ambiguous how to interpret them. 6 So argument after argument we are not going to 7 apply fees that were calculated by the Receiver, which is 8 exactly what his job is, and we can never get to net rents 9 because now your Receiver is not getting paid. Fine, you 10 want to go for something that's more reasonable, net rents 11 under the Receiver's calculations, you refuse to do that. 12 You want to push it out, play games, then let's 13 ask the Court to enforce the unambiguous order that needs to 14 be enforced at this point, which is the January 7, 2015, 15 order wherein the Court clearly has authority. 16 I'm not saying you are going to -- I'm sure you 17 are not going to exercise that authority based on your 18 comments, but you are 100 percent within the Court's order, 19 the existing Appointment Order to at the end of these 20 hearings order the Defendants to be found in contempt of 21 court until they deposit all of those gross rents into the 22 Receiver's accounts. 23 And that's the reality of it. They say you are 24 not entitled to this remedy. We have come here seeking</p>
<p style="text-align: right;">Page 199</p> <p>1 What Plaintiffs are entitled to is exactly what 2 the Appointment Order requires and that is compliance with 3 the Governing Documents. Apply all of the fees as 4 determined by the Receiver. Equally rotate the rental of 5 the rooms. 6 Don't push the high paying cash revenue room 7 nights to your rooms, which is all stuff that the Receiver 8 is going to have to go look at over the last 2 years, and 9 then the cards shake out where they are. If they make 10 money, they make money. But what the Plaintiffs are 11 entitled to is for the Receiver to perform these tasks under 12 the Governing Documents without interference from the 13 Defendants. 14 The other item or argument I believe I heard was 15 that there was never any opposition to the 2014 Reserve 16 Study. No, because the 2014 study was done by a different 17 entity and as best I can tell relatively properly, so, no, 18 they were never challenged because they were significantly 19 different. 20 Again, turning back to Exhibit 140, which is the 21 Receiver's calculation of fees, it really sort of is the 22 crux of all of these problems, right, because you have the 23 Receiver doing his job, performing calculations after days 24 of hearings, submitting those calculations to the</p>	<p style="text-align: right;">Page 201</p> <p>1 compliance with all of these orders. They haven't been 2 complied with. 3 Clearly the Court has broad discretion on this, 4 but to say that that's not a remedy that you could, that you 5 can order as a result of these hearings, it's just not 6 accurate, right? I mean that's what the order, that's what 7 the January 15th, '20 -- or the January 7th, 2015, order 8 dictates. 9 And the only reason we are in this position is 10 because we get calculations of fees, you don't like the 11 fees, so what do you do? You stop paying the Receiver and 12 then you say, oh, he is not updating his fees so we can't 13 comply with this. 14 And it comes back to that idea that you can't 15 manufacture your own excuses for contemptuous conduct. You 16 can't set up the situation where the goalpost can never be 17 reached because, one, you refuse to do the obvious and just 18 apply the Receiver's calculated fees and then, two, you cut 19 off payment to him so he won't do any additional work. And 20 with that, Your Honor, we rest. 21 THE COURT: Thank you. So let me get through the 22 whole thing, and then if you want to ask questions or ask me 23 for clarification, please do. But I want to get through the 24 whole thing and I have been typing on it all week, so it's</p>

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<p style="text-align: right;">Page 202</p> <p>1 four pages long single spaced.</p> <p>2 Okay. Counsel, I want to thank all of you for the</p> <p>3 professional and competent way in which you have all</p> <p>4 participated in this difficult proceeding. As we all know,</p> <p>5 I am the most recent in a long succession of judicial</p> <p>6 officers assigned or making decisions in this matter. Those</p> <p>7 include Discovery Commissioner Ayers, Judge Sattler,</p> <p>8 Judge Sigurdson, Chief Judge Freeman, Senior Judge Kosach,</p> <p>9 Senior Judge Maddox, Senior Justice Saitta, and Chief Judge</p> <p>10 Simons.</p> <p>11 I am not in a position to second-guess the</p> <p>12 decisions of the judicial officers who have made decisions</p> <p>13 before my assignment or to modify the decisions that those</p> <p>14 officers have made.</p> <p>15 Senior judges assigned to a case under the senior</p> <p>16 judge program do not have a dedicated staff to rely upon to</p> <p>17 assist with the necessary judicial tasks and do not have the</p> <p>18 same electronic access as judges in the judicial district.</p> <p>19 This creates substantial difficulty for any senior who takes</p> <p>20 on a case through the AOC under SCR 10.</p> <p>21 Regardless of the difficulties, my responsibility</p> <p>22 in this matter is to get this case to the finish line, which</p> <p>23 at this stage includes resolving the pending issues related</p> <p>24 to contempt before me, the dissolution plan detailed in the</p>	<p style="text-align: right;">Page 204</p> <p>1 lawfully imposed upon the Property."</p> <p>2 "It is further ordered that Defendants and any</p> <p>3 other person or entity who may have possession, custody or</p> <p>4 control of any Property, including any of their agents,</p> <p>5 representatives, assignees, and employees shall do the</p> <p>6 following: Turn over to the Receiver all rents, dues,</p> <p>7 reserves, and revenues derived from the Property wherever</p> <p>8 and in whatsoever mode maintained."</p> <p>9 Regardless of the terms of the Appointment Order,</p> <p>10 the Defendant chose not to pay any of the rents, dues,</p> <p>11 reserves, and revenues to the Receivership Estate. As a</p> <p>12 result, the Receivership Estate was not funded. Therefore,</p> <p>13 the Receiver was not paid for his ongoing work, and as a</p> <p>14 result the Receiver made a decision not to continue with</p> <p>15 those tasks which were assigned to him after the last</p> <p>16 payment of his fees in October of 2019.</p> <p>17 Despite repeated requests to the Court and the</p> <p>18 parties over several years, the Defendants did not pay any</p> <p>19 portion of the rents regardless of whatever interpretations</p> <p>20 Defendants believed the definition of rents to be. This</p> <p>21 failure to pay rents of any sort is the genesis of the</p> <p>22 problems which have plagued the Receivership Estate and the</p> <p>23 Receiver's work for many years.</p> <p>24 Merely because Defendants believed the orders to</p>
<p style="text-align: right;">Page 203</p> <p>1 December 5th, 2022 order, and the windup of the</p> <p>2 receivership.</p> <p>3 In addition to Gracie Dawson and the officers who</p> <p>4 have assisted us during this contempt trial, I would like to</p> <p>5 thank the administration of the Second Judicial District, in</p> <p>6 particular Chief Judge Lynne Simons, Court Administrator</p> <p>7 Alicia Lerud, and Judge Simons' JA Holly Longe who were</p> <p>8 critical in providing resources for my assignment.</p> <p>9 With respect to this contempt trial, the Order</p> <p>10 Appointing Receiver and Directing Defendants' Compliance</p> <p>11 filed January 7th, 2015, which I will refer to as the</p> <p>12 Appointment Order, is critical to my analysis. The</p> <p>13 Appointment Order governs the conduct of the parties in this</p> <p>14 matter.</p> <p>15 The Appointment Order provides in pertinent part,</p> <p>16 "It is further ordered that, to enforce compliance with the</p> <p>17 Governing Documents the Receiver shall have the following</p> <p>18 powers, and responsibilities, and shall be authorized and</p> <p>19 empowered to pay and discharge out of the Property's rents</p> <p>20 and/or GSRUOA monthly dues collections all the reasonable</p> <p>21 and necessary expenses of the receivership and the costs and</p> <p>22 expenses of operation and maintenance of the Property,</p> <p>23 including all of the Receiver's and related fees, taxes,</p> <p>24 governmental assessments and charges and the nature thereof</p>	<p style="text-align: right;">Page 205</p> <p>1 be wrong and the analysis of the judicial officers</p> <p>2 misplaced, disobedience to these orders is not the</p> <p>3 appropriate path. The correct path is an appeal under</p> <p>4 NRAP 3(A), which is related to injunctive relief orders or</p> <p>5 appointment of a Receiver or failure to terminate the</p> <p>6 Receivership, or a petition for extraordinary relief under</p> <p>7 NRAP 21 and any associated motion to stay.</p> <p>8 Instead, here the Defendants substituted their own</p> <p>9 judgment for the judgment of the Receiver and the Court,</p> <p>10 because Defendants disagreed with the assessment of</p> <p>11 appropriate expenses by the Court and the Receiver.</p> <p>12 The Defendants' dissatisfaction with the Court's</p> <p>13 analysis is not a basis for the Defendants to replace those</p> <p>14 determinations with their own preferred analysis. Simple</p> <p>15 disobedience of the orders is not the appropriate approach.</p> <p>16 As a result of the multiple judicial officers that</p> <p>17 have been assigned to this matter, at times different words</p> <p>18 and phrases have been used in orders. The judicial turnover</p> <p>19 is relevant in this contempt trial.</p> <p>20 In order to hold a party in contempt under the</p> <p>21 Nevada statutory process set forth under NRS 22.090, the</p> <p>22 presiding judicial officer must find by clear and convincing</p> <p>23 evidence that there has been a knowing and willful violation</p> <p>24 of a clear and unambiguous order. In this matter, ambiguity</p>

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<p style="text-align: right;">Page 206</p> <p>1 exists because of the language in multiple orders related to</p> <p>2 the term rent.</p> <p>3 The Court is very critical of both the Defendants'</p> <p>4 substitution of its own judgment and the Defendants' failure</p> <p>5 to pay the undisputed amounts to the Receivership Estate</p> <p>6 during the pendency of the Receivership. During this trial</p> <p>7 for the first time, Defendants submitted an undisputed</p> <p>8 amount of rents to the Receivership Estate in the amount of</p> <p>9 \$274,679.44.</p> <p>10 Given the ambiguity in the orders, the Court</p> <p>11 concludes that these failures do not rise to the level of</p> <p>12 contempt for four of the seven applications for OSC.</p> <p>13 Defendants are to prepare an order reflecting this decision</p> <p>14 on the applications filed September 27, 2021, November 19th,</p> <p>15 2021, April 25th, 2022, and December 28th, 2022.</p> <p>16 With respect to the May 23rd, 2023, Application</p> <p>17 for Order to Show Cause, the Court recognizes the concerns</p> <p>18 expressed by all parties and the Receiver about his ability</p> <p>19 to rent the units during the period of the implementation of</p> <p>20 the dissolution plan. As such, the Court declines to hold</p> <p>21 the Defendants in contempt for failure to rent the units</p> <p>22 during the limited period which is the subject of that</p> <p>23 motion.</p> <p>24 The Court modifies its March 14th, 2023 Order</p>	<p style="text-align: right;">Page 208</p> <p>1 Any objection to the calculation of the net rents</p> <p>2 to be paid to each unit owner shall be filed within three</p> <p>3 business days with an Application for Order Shortening Time</p> <p>4 concurrently submitted to the Court. If no objection is</p> <p>5 filed, or after a ruling by the Court on any objection, the</p> <p>6 net rents will be distributed for the 95 units beneficially</p> <p>7 owned by Plaintiffs.</p> <p>8 Defendants will forward the pro rata share of</p> <p>9 expenses of the Receivership for the 95 units beneficially</p> <p>10 owned by Plaintiffs after deduction from the gross rents of</p> <p>11 the 95 units beneficially owned by Plaintiffs. If the</p> <p>12 Receiver and MEI-GSR Finance agree, the Receiver may provide</p> <p>13 that spreadsheet with the net rents to be paid to each unit</p> <p>14 owner, including those entities affiliated with the</p> <p>15 Defendants, Defendants may then process those payments.</p> <p>16 If the Receiver and MEI-GSR Finance do not agree</p> <p>17 to the Defendants processing the payments, the Receiver</p> <p>18 shall process those payments and charge that work as an</p> <p>19 expense to the Receivership Estate. The Court upon</p> <p>20 application of the parties will true up the actual expenses</p> <p>21 prior to the windup of the Receivership. Plaintiffs are to</p> <p>22 prepare an order reflecting this decision and an order</p> <p>23 amending the March 14, 2023 Order filed at 12:42 p.m.</p> <p>24 With respect to the Applications for Order to Show</p>
<p style="text-align: right;">Page 207</p> <p>1 filed at 12:42 p.m. to accommodate those issues. As those</p> <p>2 units are now being rented through Defendants, the Court</p> <p>3 orders that, one, Defendants will rent the units in a fair</p> <p>4 rotation; two, rather than providing the gross rents or</p> <p>5 revenue for the 95 units beneficially owned by the</p> <p>6 Plaintiffs and 560 units beneficially owned by entities</p> <p>7 affiliated with the Defendants as outlined in the</p> <p>8 Appointment Order, GSR will pay its pro rata share of all</p> <p>9 expenses of the Receivership on a monthly basis as submitted</p> <p>10 by the Receiver.</p> <p>11 The amount of gross rents or revenue for the</p> <p>12 95 units beneficially owned by the Plaintiffs will be</p> <p>13 provided to the Receiver on a monthly basis after the</p> <p>14 internal accounting controls by Defendants' Finance</p> <p>15 Department have been completed.</p> <p>16 Within 10 business days of receipt, the Receiver</p> <p>17 will calculate the estimated expenses previously approved by</p> <p>18 the Court as set forth in the January 26, 2023, Order filed</p> <p>19 at 8:31 a.m. and the pro rata share of expenses of the</p> <p>20 Receivership for the 95 units beneficially owned by the</p> <p>21 Plaintiffs to be deducted from the gross rents and forward a</p> <p>22 spreadsheet to all counsel by electronic mail calculating</p> <p>23 the net rents to be paid to each unit owner, including those</p> <p>24 entities affiliated with the Defendants.</p>	<p style="text-align: right;">Page 209</p> <p>1 Cause filed February 1st, 2022, and December 29th, 2022, the</p> <p>2 Appointment Order provides in pertinent part: "It is further</p> <p>3 ordered that Defendants and any other person or entity who</p> <p>4 may have possession, custody or control of any Property,</p> <p>5 including any of their agents, representatives, assignees,</p> <p>6 and employees shall do the following: Turn over to the</p> <p>7 Receiver all rents, dues, reserves, and revenues derived</p> <p>8 from the Property wherever and in whatsoever mode</p> <p>9 maintained."</p> <p>10 This language is clear and unambiguous. While the</p> <p>11 Receiver has testified that he initially chose to monitor</p> <p>12 the existing reserve accounts rather than opening new</p> <p>13 accounts, this did not change the entity who was in control</p> <p>14 of those funds.</p> <p>15 On September 15th, 2021, a request was renewed by</p> <p>16 Receiver's counsel for the transfer of funds, including the</p> <p>17 reserve funds. Regardless of the account the reserve funds</p> <p>18 were in, since the appointment of the Receiver, the reserve</p> <p>19 funds have been under the control of the Receiver pursuant</p> <p>20 to the Appointment Order.</p> <p>21 Neither the Court nor the Receiver authorized any</p> <p>22 withdrawal of funds from the reserve account. Although the</p> <p>23 Defendants filed motions with the Court to approve certain</p> <p>24 capital expenditures, they did not obtain a decision.</p>

CONTEMPT TRIAL, DAY 4 (THOMAS VS. MEI-GSR) - 06/09/2023

<p style="text-align: right;">Page 210</p> <p>1 The Court finds by clear and convincing evidence</p> <p>2 that Defendants willfully violated the Appointment Order by</p> <p>3 withdrawing \$3,562,441.28 in 2021 and \$12,892,660.18 in 2022</p> <p>4 from the reserve accounts without approval by the Receiver</p> <p>5 or the Court. These funds have not been returned to the</p> <p>6 reserve accounts.</p> <p>7 Defendants claim those amounts were largely for</p> <p>8 prepayment of expenses for the remodel of the condominiums.</p> <p>9 Less than 300 units have been remodeled, most owned by</p> <p>10 entities affiliated with the Defendants. As the Association</p> <p>11 has been dissolved at the request of Defendants prior to</p> <p>12 completing the remodel, this wrongful conduct is magnified.</p> <p>13 Despite the willful misappropriation of the</p> <p>14 reserve funds by Defendants, the Court is limited to the</p> <p>15 penalties in NRS 22.100. The Court orders the following:</p> <p>16 Within 30 days of the entry of the written order, Defendants</p> <p>17 are to return the \$16,455,101.46 misappropriated from the</p> <p>18 reserve fund along with interest that would have been earned</p> <p>19 in the reserve account, or statutory interest, whichever is</p> <p>20 higher, from the date of the withdrawals.</p> <p>21 Within 45 days of the entry of the written order,</p> <p>22 transfer all of the reserve funds to a separate interest</p> <p>23 bearing account designated by the Receiver. Fines will be</p> <p>24 the maximum statutory amount under NRS 22.100(2) of \$500 for</p>	<p style="text-align: right;">Page 212</p> <p>1</p> <p>2 STATE OF NEVADA)</p> <p>3) ss.</p> <p>4 WASHOE COUNTY)</p> <p>5 I, CORRIE L. WOLDEN, an Official Reporter of the</p> <p>6 Second Judicial District Court of the State of Nevada, in and</p> <p>7 for Washoe County, DO HEREBY CERTIFY;</p> <p>8 That I am not a relative, employee or</p> <p>9 independent contractor of counsel to any of the parties; or a</p> <p>10 relative, employee or independent contractor of the parties</p> <p>11 involved in the proceeding, or a person financially interested</p> <p>12 in the proceeding;</p> <p>13 That I was present in Department No. 10 of the</p> <p>14 above-entitled Court on June 9, 2023, and took verbatim</p> <p>15 stenotype notes of the proceedings had upon the matter</p> <p>16 captioned within, and thereafter transcribed them into</p> <p>17 typewriting as herein appears;</p> <p>18 That the foregoing transcript, consisting of</p> <p>19 pages 1 through 212, is a full, true and correct transcription</p> <p>20 of my stenotype notes of said proceedings.</p> <p>21 DATED: At Reno, Nevada, this 14th day of</p> <p>22 October, 2023.</p> <p>23 /s/Corrie L. Wolden</p> <p>24 <u>CORRIE L. WOLDEN</u> CSR #194, RPR, CP</p>
<p style="text-align: right;">Page 211</p> <p>1 this blatantly contemptuous conduct to be paid to the</p> <p>2 Plaintiffs, and determines that the following additional</p> <p>3 reasonable expenses under NRS 22.100(3) are to be paid by</p> <p>4 Defendants:</p> <p>5 The reasonable attorney fees for the Plaintiffs in</p> <p>6 preparing orders from the contempt proceeding; 75 percent of</p> <p>7 the reasonable attorney fees for the Plaintiffs preparing</p> <p>8 for the contempt proceeding, not previously awarded by the</p> <p>9 Court, and 75 percent of the reasonable attorney fees for</p> <p>10 the Plaintiffs participating in the contempt proceeding, and</p> <p>11 the Plaintiffs' share of the reasonable expenses of the</p> <p>12 Receiver in preparing for and testifying at the June 6</p> <p>13 through 8 proceedings. The Plaintiffs are to prepare an</p> <p>14 order related to this decision.</p> <p>15 Questions? Okay. Thank you. We will be in</p> <p>16 recess.</p> <p>17 (Whereupon the proceedings concluded at 3:13 p.m.</p> <p>18 -o0o-</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	

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18 Attorneys for Plaintiffs

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

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

22 Plaintiffs,

23 vs.

Case No. CV12-02222
Dept. No. OJ41

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

Defendants.

ORDER FINDING DEFENDANTS IN CONTEMPT

On June 6 through 8, 2023, the Court held a hearing on Plaintiffs' various Motions for Orders to Show Cause. Based upon the pleadings, papers on file herein, and the oral argument and evidence admitted at the hearing, the Court rules as follows on two such motions:

1 With respect to the Applications for Order to Show Cause filed February 1st, 2022, and
2 December 29th, 2022, the Appointment Order dated January 7, 2015 provides in pertinent part,
3 “It is further ordered that Defendants and any other person or entity who may have possession,
4 custody or control of any property, including any of their agents, representatives, assignees, and
5 employees shall do the following: . . . Turn over to the Receiver all rents, dues, reserves and
6 revenues derived from the Property wherever and in whatsoever mode maintained.”

7 This language is clear and unambiguous. While the Receiver has testified that he initially
8 chose to monitor the existing reserve accounts rather than opening new accounts, this did not
9 change the entity who was in control of those funds.

10 On September 15th, 2021, a request was renewed by Receiver’s counsel to transfer the
11 funds, including the reserve funds, regardless of the account the reserve funds were in. Since the
12 appointment of the Receiver, the reserve funds have been under the control of the Receiver
13 pursuant to the Appointment Order.

14 Neither the Court nor the Receiver authorized any withdrawal of funds from the reserve
15 account. Although the Defendants filed motions with the Court to approve certain capital
16 expenditures, they did not obtain a decision.

17 The Court finds by clear and convincing evidence that Defendants willfully violated the
18 Appointment Order by withdrawing \$3,562,441.28 in 2021 and \$12,892,660.18 in 2022 from the
19 reserve accounts without approval by the Receiver or the Court. These funds have not been
20 returned to the reserve accounts.

21 Defendants claim those amounts were largely for prepayment of expenses for the remodel
22 of the condominiums. Less than 300 units have been remodeled, most owned by entities
23 affiliated with the Defendants. As the Grand Sierra Resort Unit Owners’ Association has been
24 dissolved at the request of Defendants prior to completing the remodel, this wrongful conduct is
25 magnified.

26 Despite the willful misappropriation of the reserve funds by Defendants, the Court is
27 limited to the penalties in NRS 22.100. The Court orders the following:

1 (1) Within 30 days of the entry of this written order, Defendants are to return the
2 \$16,455,101.46 misappropriated from the reserve fund along with interest that would
3 have been earned in the reserve account, or statutory interest, whichever is higher,
4 from the date of the withdrawal; and

5 (2) Within 45 days of the entry of this written order, transfer all of the reserve funds to a
6 separate interest-bearing account designated by the Receiver.

7 Fines will be the maximum statutory amount under NRS 22.100(2) of \$500 for this
8 blatant and contemptuous conduct to be paid to the Plaintiffs and the Court determines the
9 following additional reasonable expenses under NRS 22.100(3) are to be paid to the Plaintiffs by
10 Defendants:

11 (1) The reasonable attorney fees for the Plaintiffs in preparing orders from the contempt
12 proceeding;

13 (2) 75 percent of the reasonable attorney fees for the Plaintiffs preparing for the contempt
14 proceeding not previously ordered by the Court and 75 percent of the reasonable
15 attorney fees for the Plaintiffs participating in the contempt proceeding; and

16 (3) The Plaintiffs' share of the reasonable expenses of the Receiver in preparing for and
17 testifying at the June 6 through 8 proceedings.

18 DATED this 27 day of July, 2023.

19
20
21 
22 THE HONORABLE ELIZABETH G. GONZALEZ
(RET.)

23 Submitted by:

24 ROBERTSON, JOHNSON,
25 MILLER & WILLIAMSON

26 /s/ Jarrad C. Miller

27 Jarrad C. Miller, Esq. (NV Bar No. 7093)
28 Briana N. Collings, Esq. (NV Bar No. 14694)
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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
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MEI-GSR HOLDINGS, LLC, a Nevada
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RESORT UNIT OWNERS' ASSOCIATION,
a Nevada nonprofit corporation, GAGE
VILLAGE COMMERCIAL
DEVELOPMENT, LLC, a Nevada limited
liability company; AM-GSR HOLDINGS,
LLC, a Nevada limited liability company; and
DOE DEFENDANTS 1 THROUGH 10,
inclusive,

Defendants.

MOTION FOR ATTORNEYS' FEES INCURRED FOR
ORDER TO SHOW CAUSE TRIAL

COME NOW, Plaintiffs by and through their attorneys of record, the law firm of
Robertson, Johnson, Miller & Williamson, and hereby file this Motion for Attorneys' Fees

1 Incurred for Order to Show Cause Trial (“Motion”). This Motion is based upon the below
2 memorandum of points and authorities, all exhibits attached thereto, all papers on file herein, and
3 any oral argument this Court may desire to hear.

4 DATED this 16th day of August, 2023

5 ROBERTSON, JOHNSON,
6 MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
7 Reno, Nevada 89501

8 *And*

9 LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
10 Reno, Nevada 89519

11 By: /s/ Briana N. Collings

Jarrad C. Miller, Esq.
12 Briana N. Collings, Esq.
13 *Attorneys for Plaintiffs*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 At the conclusion of a four-day trial before this Court on seven (7) of Plaintiffs' motions for
4 orders to show cause ("Show Cause Trial"), the Court issued a verbal order which awarded
5 Plaintiffs attorneys' fees incurred (1) to prepare for and attend the Show Cause Trial, and (2) to
6 prepare all orders stemming from the Show Cause Trial. The Court limited Plaintiffs' recovery
7 for the first category of fees to seventy-five percent (75%) thereof.

8 This award was made pursuant to NRS 22.100(3), which expressly allows for the Court
9 to require the party found in contempt to pay the other party's fees. Accordingly, Plaintiffs
10 should be awarded their fees in the total amount of \$140,032.50, which is comprised of seventy-
11 five percent (75%) of Plaintiffs' fees incurred to prepare for and attend the Show Cause Trial,
12 and all of Plaintiffs' fees incurred to prepare the numerous orders necessitated by the Show
13 Cause Trial and ordered by the Court.

14 **II. FACTUAL BACKGROUND**

15 Following Defendants' numerous violations of Court orders, and Plaintiffs' multiple
16 motions for orders to show cause, the Court issued orders to show cause and set a trial on seven
17 (7) of Plaintiffs' motions. This trial was initially set for April 3-6, 2023. (Order, filed February
18 1, 2023.) Defendants initially filed an unsuccessful motion to continue this trial. (Order, filed
19 March 15, 2023.) Later, however, the Court continued the trial on Defendants' request after
20 Defendants' counsel had a family emergency. (Minutes, filed March 29, 2023.) The trial was
21 ultimately reset for June 6-9, 2023.

22 After the Court initially set the Show Cause Trial, Plaintiffs began their preparations for
23 the critical four-day trial. Plaintiffs' counsel understandably spent a considerable amount of time
24 preparing for this trial as the issues to be determined were of the utmost importance, and a
25 substantial amount of money was on the line. Namely, whether Defendants were required to turn
26 over rental proceeds to the Receiver to then be disbursed to Plaintiffs (after certain fees were
27 applied), and whether Defendants had authority to unilaterally withdraw over \$16 million from
28 the reserve accounts—both of these issues involved substantial amounts of money that

1 Defendants had misappropriated. Unfortunately, less than one week before trial, Defendants'
2 counsel suffered a family emergency which caused the trial to be rescheduled to a date two
3 months in the future. Plaintiffs' preparations were therefore put aside until the new trial date in
4 early June 2023.

5 Plaintiffs, as June 2023 came closer, resumed preparing for the trial, but understandably
6 were required to revisit those issues that had been grappled with in their initial preparations. The
7 parties ultimately attended the Show Cause Trial from June 6 through 9, 2023. The Court issued
8 an order from the bench wherein the Court found Defendants were in contempt for violating
9 certain Court orders, that certain orders were ambiguous which thwarted additional findings of
10 contempt, and that one prior order would be revised to provide a mechanism for Plaintiffs to
11 receive their net rents going forward. These verbal orders were later reduced to writing. (See
12 Order Modifying March 14, 2023 Order re Continued Rental of the Parties' Units Until Sale,
13 filed July 17, 2023; Order Finding Defendants in Contempt, filed July 17, 2023; and Order
14 Denying Certain Motions for Orders to Show Cause, filed July 31, 2023.)

15 The Court also awarded Plaintiffs seventy-five percent (75%) of their fees incurred
16 preparing for the Show Cause Trial and all their fees incurred in preparing the orders deriving
17 therefrom. Plaintiffs now move the Court to award the exact amounts of those fees.

18 **III. ARGUMENT**

19 **A. The Court Has Awarded Plaintiffs Their Fees for the Show Cause Trial**

20 At the conclusion of the Show Cause Trial, and later in a written order, the Court
21 determined

22 the following additional reasonable expenses under NRS 22.100(3)
23 are to be paid to the Plaintiffs by Defendants: (1) The reasonable
24 attorney fees for the Plaintiffs in preparing orders from the
25 contempt proceeding; (2) 75 percent of the reasonable attorney
26 fees for the Plaintiffs preparing for the contempt proceeding not
previously ordered by the Court and 75 percent of the reasonable
attorney fees for the Plaintiffs participating in the contempt
proceeding;

27 (Order Finding Defendants in Contempt, filed July 17, 2023 at 2:8-15.) Plaintiffs are therefore
28 entitled to their fees as described by the Court.

1 **B. Plaintiffs' Should be Awarded All Their Attorneys' Fees Ordered**

2 “In Nevada, the method upon which a reasonable fee is determined is subject to the
3 discretion of the court, which is tempered only by reason and fairness.” Shuette v. Beazer
4 Homes Holdings Corp., 121 Nev. 837, 865, 124 P.3d 530, 548-49 (2005) (quotations omitted).

5 In cases such as this one, the lodestar figure is the starting point in determining a
6 reasonable fee to award. See, e.g., Hsu v. Clark County, 123 Nev. 625, 636, 173 P.3d 724, 732
7 (2007) (“attorney fees awarded pursuant to Nevada law may be based on either a ‘lodestar’
8 amount or a contingency fee”). In fact, the United States Supreme Court describes the lodestar
9 formula as “‘the guiding light of its fee-shifting jurisprudence’ and that it has ‘established a
10 ‘strong presumption’ that the lodestar represents the ‘reasonable fee.’” Cuzzie v. University and
11 Community College System of Nev., 123 Nev. 598, 606, 172 P.3d 131, 136-37 (2007) (quoting
12 Burlington v. Dague, 505 U.S. 557, 559, 562 (1992)).

13 To determine the lodestar amount, the Court multiplies the reasonable number of hours
14 spent on the case by a reasonable hourly rate. See Hsu, 123 Nev. at 637, 173 P.3d at 733. Once
15 the Court calculates the lodestar figure, it “must continue its analysis by considering the
16 requested amount in light of the factors enumerated . . . in Brunzell v. Golden Gate National
17 Bank, namely, the advocate’s professional qualities, the nature of the litigation, the work
18 performed, and the result.” Shuette, 121 Nev. at 865, 124 P.3d at 549.

19 Plaintiffs’ counsel worked a total of four hundred thirty-three and one-tenth (433.1) hours
20 to prepare for and attend the Show Cause Trial, and worked a total of four and one-half (4.5)
21 hours to prepare the orders from the Show Cause Trial. These hours were actually and
22 necessarily incurred in the course of this litigation. The actual time entries are set forth in the
23 attached exhibits. (See Ex. 1, RJMW Time Listing for Trial, Ex. 2, RJMW Time Listing for
24 Orders, Ex. 3, Lemons, Grundy & Eisenberg Time Listing for Trial.) As illustrated herein and in
25 the attached exhibits, the number of hours expended is reasonable given the work performed.

26 Plaintiffs are entitled to recover the reasonable hourly rates for those services ranging
27 from \$500 (for the most experienced attorney) to \$175 (for paralegal work). These hourly rates
28 are customary for this area and are routinely used by courts in awarding fees. See, e.g., Evans v.

1 Skolnik, No. 3:08-cv-0353, 2011 U.S. Dist. LEXIS 8689, at *3 (D. Nev. Jan. 21, 2011) (Judge
2 Cooke found \$350 to be a reasonable hourly rate); Marshall v. Kirby, No. 3:07-cv-00222, 2010
3 U.S. Dist. LEXIS 131162, at *15 (D. Nev. Nov. 29, 2010) (Judge McQuaid found \$350 to be a
4 reasonable hourly rate); Fed'n of Fly Fishers v. Daley, 200 F.Supp.2d 1181, 1192-93 (N.D. Cal.
5 2002) (acknowledging that rates of \$150 for paralegals and between \$350 and \$450 for
6 experienced litigators are customary). Indeed, this Court has already, on multiple occasions,
7 awarded Plaintiffs attorneys' fees based upon the rates, in place at the time of the fees request,
8 for the undersigned counsel.

9 In this case, the lodestar is calculated as follows:

Timekeeper	Hours	Rate	Lodestar ¹
Jarrad C. Miller, Esq.	260.9	\$475	\$123,927.50
Richard D. Williamson, Esq.	0.5	\$400	\$200.00
Briana N. Collings, Esq.	146.1	\$325	\$47,482.50
General Paralegal	1.5	\$175	\$262.50
Robert L. Eisenberg, Esq.	28.6	\$500	\$14,300.00
	437.6		\$186,172.50

15 Accordingly, the lodestar figure at issue for Plaintiffs totals \$186,172.50. However, the Court
16 awarded Plaintiffs seventy-five percent (75%) of their fees incurred to prepare and attend the
17 Show Cause Trial, and one hundred percent (100%) of their fees incurred to prepare the orders
18 arising from the Show Cause Trial.

19 Those amounts are calculated as follows:

Task	Fees	Amount Awarded	Total Awarded Lodestar
Preparing and Attending Trial	\$184,560.00	75%	\$138,420.00
Preparing Orders	\$1,612.50	100%	\$1,612.50
Total Awarded			\$140,032.50

24 Thus, the total lodestar amount awarded to Plaintiffs is \$140,032.50.

26 ¹ As the Court will also note, the undersigned "NO CHARGED" a number of entries. Those voluntary write-downs
27 were given to Plaintiffs because they are valued clients. Indeed, Plaintiffs' counsel reserves the right to reverse the
28 no charges. Plaintiffs' counsel intends to so reverse the no charge amounts upon the payment of the Second
Amended Final Monetary Judgment. Moreover, any discounts that the Plaintiffs received are irrelevant for purposes
of calculating the lodestar, and the Defendants should not receive the benefit of the no charges.

1 **C. The Brunzell Factors Support Awarding Plaintiffs the Full Lodestar Amount**
2 **Awarded by the Court**

3 Once the Court calculates the lodestar figure, it “must continue its analysis by
4 considering the requested amount in light of the factors enumerated . . . in Brunzell v. Golden
5 Gate Nat’l Bank” Shuette, 121 Nev. at 865, 124 P.3d at 549.

6 The Brunzell court set forth the following factors to consider whether the entire lodestar
7 amount is appropriate to award to the prevailing party:

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

16 Brunzell v. Golden Gate Nat’l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

17 ***i. Qualities of the Advocate***

18 The Court is well-aware of the quality of advocacy and level of professionalism which
19 Plaintiffs’ attorneys exhibited during the Show Cause Trial specifically, and generally
20 throughout this case, as demonstrated in their various court appearances and court filings. In
21 order to provide a more tangible record, however, Plaintiffs hereby attach short biographies for
22 each of the attorneys whose fees are sought hereby. (See Ex. 4, Biographies.) From the Court’s
23 observation of the Show Cause Trial and other hearings, review of the filings in this matter, and
24 the attached exhibits, this first Brunzell factor concerning the quality of the advocate clearly
25 supports awarding Plaintiffs the entire awarded lodestar amount.

26 ***ii. Quality, Character, and Importance of the Work***

27 As to the second and third Brunzell factors, the quality, character, and importance of the
28 work performed, it should be apparent that these factors also support awarding the entire
awarded lodestar amount of fees to Plaintiffs.

Generally, the trial court should compensate a party for all of the hours incurred on the
case. “Under the lodestar method, a party who qualified for a fee should recover for all hours

1 reasonably spent unless special circumstances would render an award unjust.” Vo v. Las
2 Virgenes Municipal Water Dist., 94 Cal. Rptr. 2d 143, 148 (Cal. Ct. App. 2000); see also Serrano
3 v. Unruh, 652 P.2d 985, 992 (Cal. 1982).

4 Defendants might attempt to argue the number of hours which Plaintiffs incurred with
5 respect to the Show Cause Trial was excessive and unwarranted. However, the mere fact that
6 Plaintiffs’ counsel was required to stop its preparations in March 2023 and resume them later in
7 May 2023, undeniably leading to some overlap of preparing for the Show Cause hearing,
8 explains any potentially “excessive” time. Plaintiffs should not be denied their fees because
9 Defendants required the Show Cause Trial to be continued.

10 Moreover, Plaintiffs have attached documentation showing that the number of hours
11 expended in this case was entirely reasonable and of the type that is normally billed to a client.
12 (Ex. 5, Declaration of Briana N. Collings.)

13 The issues presented during the Show Cause Trial were of the utmost importance.
14 Namely, whether Defendants have unilateral control to make substantial withdrawals from the
15 reserve accounts, and whether Defendants have to turn over rental proceeds to Plaintiffs dictate
16 the rights of Plaintiffs to enjoy the benefits of their owning their units. If Defendants were
17 rightfully allowed to continue misappropriating all of these funds, Plaintiffs’ rights would be
18 demolished. The Court is well aware of the central nature of these issues, and the magnitude of
19 motion practice these issues have prompted. Indeed, the Court witnessed how hard-fought these
20 issues were at the Show Cause Trial—indicating their importance in this litigation. Had
21 Plaintiffs lost on these issues, they would have continue suffering severe harm at the hands of
22 Defendants. Instead, Plaintiffs prevailed and now are enjoying the benefits of owning their units
23 (although they will not receive the full, retroactive benefit until the Receiver completes his true
24 up going back to January 2020).

25 These hours are thus all reasonable and necessary.

26 ***iii. Result Obtained***

27 With regard to the final Brunzell factor, Plaintiffs’ counsel obtained a very good and just
28 result: a finding of contempt against Defendants, an order requiring Defendants to return the over

1 \$16 million of misappropriated reserve funds to the proper accounts with legal interest and then
2 transfer such accounts to the Receiver, and an order requiring Defendants to turn over rental
3 proceeds to the Receiver such that the Receiver can calculate the applicable fees and then
4 distribute the net rents accordingly. Typically, the result obtained is the “most critical factor” in
5 awarding fees. Farrar v. Hobby, 506 U.S. 103, 114 (1992). Plaintiffs obtained a significantly
6 beneficial result in the Show Cause Trial. Moreover, to the extent the Court did not ultimately
7 find Defendants were in contempt under certain of Plaintiffs’ motions for orders to show cause,
8 the Court has already reduced the total lodestar amount to be paid to Plaintiffs accordingly.

9 In sum, the Brunzell factors warrant the award of the lodestar awarded fees to Plaintiffs.

10 **IV. CONCLUSION**

11 The Court has exercised its authority under NRS 22.100(3) to award Plaintiffs their
12 attorneys’ fees. Those fees sought in this Motion are reasonable and were necessarily incurred to
13 prepare for and attend the Show Cause Trial and to prepare all orders coming from the Show
14 Cause Trial.

15 Thus, the Court should grant Plaintiffs the entire amount of awarded fees: \$140,032.50.

16 **AFFIRMATION**

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

19 DATED this 16th day of August, 2023

20 ROBERTSON, JOHNSON,
21 MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501

22 *And*

23 LEMONS, GRUNDY & EISENBERG
24 6005 Plumas Street, Third Floor
25 Reno, Nevada 89519

26 By: /s/ Briana N. Collings
27 Jarrad C. Miller, Esq.
Briana N. Collings, Esq.
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson,
3 Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of
4 18, and not a party within this action. I further certify that on the 16th day of August, 2023, I
5 electronically filed the foregoing **MOTION FOR ATTORNEYS' FEES INCURRED FOR**
6 **ORDER TO SHOW CAUSE TRIAL** with the Clerk of the Court by using the ECF system
7 which served the following parties electronically:

8 Abran Vigil, Esq.
9 Meruelo Group, LLC
10 Legal Services Department
11 5th Floor Executive Offices
12 2535 Las Vegas Boulevard South
13 Las Vegas, NV 89109
14 *Attorneys for Defendants*
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Gage Village Commercial
Development, LLC, and
AM-GSR Holdings, LLC

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Robison, Sharp Sullivan & Brust
71 Washington Street
Reno, NV 89503
Attorneys for Receiver
Richard M. Teichner

21 /s/ Briana N. Collings

22 An Employee of Robertson, Johnson, Miller & Williamson

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EXHIBIT INDEX

Ex. No.	Description	Pages
1	RJMW Time Listing for Trial	8
2	RJMW Time Listing for Orders	1
3	Lemons, Grundy and Eisenberg Time Listing for Trial	1
4	Biographies	8
5	Declaration of Briana N. Collings	3

EXHIBIT “1”

FILED
Electronically
CV12-02222
2023-08-16 06:27:23 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9835409

EXHIBIT “1”

**RJMW Hours Incurred to Prepare
for and Attend Trial**

<u>Lawyer</u>	<u>Date</u>	<u>Explanation</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Jarrad Miller	2/6/23	Work on strategy and consider recent orders and implication of MOSC hearing	0.1	475.00	47.50
Jarrad Miller	2/15/23	Work on briefing consider strategy re supporting documents; prepare for trial on MOSC	3.2	475.00	1520.00
Jarrad Miller	2/16/23	documents resume	1.9	475.00	902.50
Jarrad Miller	2/18/23	Work on MOSC hearing preparation and strategy	0.9	475.00	427.50
Briana Collings	2/20/23	Conference with attorney Miller re determining extensions, timing of OSC trial	0.2	325.00	65.00
Jarrad Miller	2/20/23	Work on MOSC hearing preparation and strategy; review pleadings re same; work on witness list;	6.2	475.00	2945.00
Jarrad Miller	2/21/23	Review briefing and prepare for trial on MOSC; work on witness list	2.9	475.00	1377.50
Jarrad Miller	2/21/23	Work on briefing; outline arguments on several motions	1.6	475.00	760.00
Jarrad Miller	2/23/23	Work on briefing re receivership issues and MOSC hearing issue	3.7	475.00	1757.50
Jarrad Miller	2/28/23	Exchange email with opposing counsel re briefing issues; work on same and strategy for trial on MOSC	1.2	475.00	570.00
Briana Collings	3/1/23	Conferences with attorney Miller re preparing brief for OSC trial //NO CHARGE//	0.4	325.00	130.00
Jarrad Miller	3/6/23	Work on briefing and prepare for trial on multiple MOSC	3.2	475.00	1520.00
Briana Collings	3/7/23	Receive, review and analyze defendants' motion to continue OSC trials; Review and analyze docket for case requiring continuance	0.2	325.00	65.00
Jarrad Miller	3/7/23	Review GSR email production and prepare for trial; consider strategy re use of new evidence	3.1	475.00	1472.50
Jarrad Miller	3/7/23	Review and consider motion for continuance	0.4	475.00	190.00
Jarrad Miller	3/8/23	Review GSR new email production; prepare for MOSC trial	3.3	475.00	1567.50
Briana Collings	3/9/23	Prepare opposition to their motion to continue OSC hearings, supporting declaration	3.2	325.00	1040.00
Briana Collings	3/10/23	Review and revise our opposition to their motion to continue the OSC trials	1.3	325.00	422.50
Jarrad Miller	3/10/23	Review defendants email production and prepare for trial	3.9	475.00	1852.50
Jarrad Miller	3/10/23	Work on briefing re continuance of trial; review court order re same; exchange emails re same	0.5	475.00	237.50
Jarrad Miller	3/13/23	Review defendants email production and prepare for hearing	1.9	475.00	902.50
Jarrad Miller	3/14/23	Receive and review defendants' motion to continue April 3, 2023 trial	0.1	475.00	47.50
Briana Collings	3/15/23	Review and analyze flagged emails for OSC hearings; Combine those with missing attachments	1	325.00	325.00

**RJMW Hours Incurred to Prepare
for and Attend Trial**

		Conferences with attorney Miller re preparing for OSC trial, drafting reply in support of our motion for attorneys' fees //NO CHARGE//	0.2	325.00	65.00
Briana Collings	3/20/23	Prepare for trial; review pleading and past order prepare			
Jarrad Miller	3/21/23	exhibits and outlines	4.2	475.00	1995.00
		Prepare for trial; review pleading and past orders			
Jarrad Miller	3/21/23	prepare exhibits and outlines	4.4	475.00	2090.00
Briana Collings	3/21/23	Review and revise draft trial subpoena	0.3	325.00	97.50
General Paralegal	3/21/23	Prepare trial subpoena to Ann Hall //NO CHARGE//	0.2	175.00	35.00
		Conference with attorney Miller re trial statement for			
Briana Collings	3/22/23	OSC trials; Consider same //NO CHARGE//	0.2	325.00	65.00
		Conference with assistants Fleming and Wright re preparing exhibits and binder for OSC trial //NO			
Briana Collings	3/22/23	CHARGE//	0.2	325.00	65.00
Briana Collings	3/22/23	Prepare AV equipment request form for OSC trial	0.2	325.00	65.00
		Conference with attorney Miller and assistant Fleming re preparing exhibits for OSC trial //NO CHARGE//	0.2	325.00	65.00
Briana Collings	3/22/23	Begin drafting trial statement for OSC trial; Review and analyze OSC briefing for same	1.4	325.00	455.00
		Prepare for trial; review pleading and past order prepare			
Jarrad Miller	3/22/23	exhibits and outlines	5.5	475.00	2612.50
		Prepare e-mail correspondence to attorney Miller re reviewing trial subpoena draft //NO CHARGE//	0.1	325.00	32.50
Briana Collings	3/22/23	Prepare for trial; review pleading and past order prepare			
Jarrad Miller	3/23/23	exhibits and outlines	6.3	475.00	2992.50
		Conference with assistant Fleming re preparing exhibits for OSC trial //NO CHARGE//	0.1	325.00	32.50
Briana Collings	3/23/23	Conference with attorney Miller re introduction to trial statement brief //NO CHARGE//	0.2	325.00	65.00
		Continue drafting trial statement for OSC trial; Continue reviewing OSC briefing for same	3.2	325.00	1040.00
Briana Collings	3/23/23				
		Prepare for trial; conduct research re hearing issues and work on witness questions and evidentiary issues	5.1	475.00	2422.50
Jarrad Miller	3/24/23	Continue drafting trial statement brief; Continue reviewing OSC briefing re same	4.3	325.00	1397.50
Briana Collings	3/24/23	Prepare detailed, lengthy e-mail correspondence to attorneys McElhinney and Sharp re stipulating to exhibits' admissibility and accepting subpoenas	0.7	325.00	227.50
		Conference with attorney Miller re outline of brief, argument on fee application, potential witnesses, other trial issues //NO CHARGE//	0.9	325.00	292.50
Briana Collings	3/24/23	Receive, review and analyze email from attorney McElhinney re acceptance of subpoena; Respond to same	0.1	325.00	32.50
Briana Collings	3/25/23	Continue drafting trial statement brief	1.4	325.00	455.00
		Receive, review and analyze emails from attorney Sharp re accepting subpoena for Teichner; Respond to same	0.2	325.00	65.00
Briana Collings	3/25/23				

**RJMW Hours Incurred to Prepare
for and Attend Trial**

Jarrad Miller	3/25/23	Prepare for trial	4.1	475.00	1947.50
Jarrad Miller	3/26/23	Prepare for trial	5.1	475.00	2422.50
		Prepare trial subpoenas to Reed Brady and Richard Teichner; prepare acceptance of service for subpoenas to Brady and Teichner; perform legal research into whether witness fees can be calculated using a business address in lieu of personal residence	1.2	175.00	210.00
General Paralegal	3/27/23	Continue preparing trial statement brief	7	325.00	2275.00
Briana Collings	3/27/23	Multiple telephone conferences to court re av equipment request (could not get through to technology team) //NO CHARGE//	0.2	325.00	65.00
Briana Collings	3/27/23	CHARGE//	0.2	325.00	65.00
Jarrad Miller	3/27/23	Prepare for trial; revise trial statement	9.2	475.00	4370.00
		Review and analyze all post-Sattler orders to study same for upcoming hearing and applicability to our arguments			
Briana Collings	3/27/23	//NO CHARGE//	1.2	325.00	390.00
		Review and analyze transcript of previous order to show causehearing; Analyze applicability to current orders to show cause and arguments on same //NO CHARGE//	0.5	325.00	162.50
Briana Collings	3/27/23	show cause and arguments on same //NO CHARGE//	0.5	325.00	162.50
Jarrad Miller	3/28/23	Prepare for trial	5.2	475.00	2470.00
		Exchange emails and attend telephone conferences re continuance of trial	0.5	475.00	237.50
Jarrad Miller	3/28/23	continuation of trial	0.5	475.00	237.50
Briana Collings	3/28/23	Receive, review and analyze defendants' trial statement	0.8	325.00	260.00
		Research for and draft motion in limine re Gayle Kern			
Briana Collings	3/28/23	as witness for defendants	1.8	325.00	585.00
		Prepare e-mail correspondence to Judge Gonzalez re conferencecall information	0.1	325.00	32.50
Briana Collings	3/28/23	Legal research re standard for trial statement, other issues for trial statement; Generate notes re same	0.9	325.00	292.50
Briana Collings	3/28/23	Review and revise prehearing statement	2.7	325.00	877.50
		Prepare for and attend conference call with Judge Gonzalez and all counsel re emergency request for continuance of trial	0.2	325.00	65.00
Briana Collings	3/28/23	Prepare e-mail correspondence to plaintiffs re order continuing trial; Receive, review and analyze response to same	0.1	325.00	32.50
		Work on opposition to motion for stay and hearing			
Jarrad Miller	3/30/23	strategy	4.4	475.00	2090.00
		Receive and review defendants' trial statement and motion in limine	0.1	475.00	47.50
Jarrad Miller	4/3/23	motion in limine	0.1	475.00	47.50
Jarrad Miller	4/3/23	Receive and review order continuing trial	0.1	475.00	47.50
		Conference with attorneys Robertson and Miller re brief update of the case and upcoming trial //NO CHARGE//	0.2	325.00	65.00
Briana Collings	4/3/23	Continue review and analysis of post-Sattler orders in preparation for OSC trial	0.3	325.00	97.50
		Receive and review receipt for documents (check returned) //NO CHARGE//	0.1	475.00	47.50
Jarrad Miller	4/3/23	returned) //NO CHARGE//	0.1	475.00	47.50

**RJMW Hours Incurred to Prepare
for and Attend Trial**

Briana Collings	4/3/23	Receive, review and analyze letter from attorney Sharp re returned subpoena check //NO CHARGE//	0.1	325.00	32.50
Briana Collings	4/7/23	Continue review and analysis of post-Sattler orders; Generate notes re same	1.9	325.00	617.50
Briana Collings	4/10/23	Finish review and analysis of all post-Sattler orders; Generate notes re same	1	325.00	325.00
Jarrad Miller	4/12/23	Receive and review letter from Stefanie Sharp returning trial subpoena check	0.1	475.00	47.50
Briana Collings	4/19/23	Conference with assistant Fleming re locating their exhibits from trial statement; Review file for same //NO CHARGE//	0.3	325.00	97.50
Briana Collings	4/24/23	Conference with attorney Miller re strategy on appeal, show cause trial //NO CHARGE//	0.3	325.00	97.50
Briana Collings	5/2/23	Telephone conference with plaintiff re trial logistics	0.1	325.00	32.50
Briana Collings	5/3/23	Conference with attorney Miller re strategy to prepare for upcoming OSC trial //NO CHARGE//	0.1	325.00	32.50
Jarrad Miller	5/3/23	Recommence trial prep; consider strategy re motions in limine and testimony of receiver; review defendants' trial exhibits and pleadings	2.5	475.00	1187.50
Jarrad Miller	5/11/23	Exchange emails re status and strategy and order on attorneys' fees; work on receivership issues and MOSC hearing; calls re same; work on strategy re motion to dismiss appeal; consider strategy re supplement to pending MOSC	2.3	475.00	1092.50
Jarrad Miller	5/12/23	Review pleading and work on receivership issues and MOSC trial	5.1	475.00	2422.50
Briana Collings	5/15/23	Conference with attorney Miller re upcoming trial, shifting focus thereto while briefing streams are ongoing //NO CHARGE//	0.1	325.00	32.50
Jarrad Miller	5/15/23	Prepare for trial and work on receivership strategy	4.2	475.00	1995.00
Jarrad Miller	5/16/23	Prepare for MOSC trial; review documents and draft notes for same; gather exhibits	4.9	475.00	2327.50
Jarrad Miller	5/17/23	Prepare for MOSC trial; review documents and draft notes for same; gather exhibits	5.1	475.00	2422.50
Briana Collings	5/18/23	Conference with attorney Miller re order to show cause trial strategy //NO CHARGE//	0.2	325.00	65.00
Jarrad Miller	5/18/23	Prepare for MOSC trial; review documents and draft notes for same; gather exhibits	5.1	475.00	2422.50
Jarrad Miller	5/19/23	Prepare for MOSC trial; review defendants' voluminous exhibits	4.5	475.00	2137.50
Jarrad Miller	5/20/23	Prepare for MOSC trial; review defendants' voluminous exhibits	3.1	475.00	1472.50
Jarrad Miller	5/21/23	Prepare for MOSC trial; review defendants' voluminous exhibits	1.9	475.00	902.50
Briana Collings	5/22/23	Receive, review and analyze emails re stipulating to admissibility of exhibits for OSC trial //NO CHARGE//	0.1	325.00	32.50
Jarrad Miller	5/22/23	Prepare for MOSC trial; review defendants' voluminous exhibits	4.7	475.00	2232.50

**RJMW Hours Incurred to Prepare
for and Attend Trial**

Richard Williamson	5/22/23	Conference with Jarrad Miller re potential evidentiary issues and strategies for OSC hearing //NO CHARGE//	0.1	400.00	40.00
Jarrad Miller	5/23/23	Prepare for trial	4.1	475.00	1947.50
Briana Collings	5/23/23	Prepare and submit request for A/V equipment for trial; Receive, review and analyze email confirming request	0.1	325.00	32.50
Jarrad Miller	5/24/23	Work on trial statement and prepare for hearing	3.2	475.00	1520.00
Briana Collings	5/24/23	Conference with attorney Miller re strategy in OSC trial, remedies from same //NO CHARGE//	0.1	325.00	32.50
Briana Collings	5/24/23	Conference with attorney Miller re strategy for OSC trial	0.2	325.00	65.00
Jarrad Miller	5/24/23	Review and consider Court orders; update hearing binders	0.8	475.00	380.00
Jarrad Miller	5/25/23	Review email from opposing counsel re evidence stipulation; circulate emails re same	0.5	475.00	237.50
General Paralegal	5/25/23	Revise trial subpoenas to Teichner and Brady	0.1	175.00	17.50
Briana Collings	5/25/23	Telephone conference with attorney Miller re attorney McElhinney's response to stipulation //NO CHARGE//	0.1	325.00	32.50
Briana Collings	5/25/23	Receive, review and analyze email from attorney McElhinney restipulating to admissibility of exhibits; Review and analyze recent filings to determine veracity of certain statements; Respond to email with info re same	0.4	325.00	130.00
Briana Collings	5/25/23	Prepare e-mail correspondence to attorneys McElhinney and Sharp re accepting trial subpoenas for receiver and Reed Brady; Multiple follow up emails to and from attorneys re same	0.1	325.00	32.50
Jarrad Miller	5/25/23	Prepare for trial; work on trial statement and witness testimony	4.3	475.00	2042.50
Briana Collings	5/25/23	Conferences with assistant Fleming re finalizing exhibit binders, other items for trial //NO CHARGE//	0.2	325.00	65.00
Briana Collings	5/26/23	Review and revise trial subpoenas to receiver and Reed Brady	0.2	325.00	65.00
Briana Collings	5/26/23	Conference with assistant Fleming re attempt to hand deliver trial subpoena for Reed Brady //NO CHARGE//	0.1	325.00	32.50
Briana Collings	5/26/23	Prepare e-mail correspondence to attorney McElhinney re subpoena for Reed Brady	0.1	325.00	32.50
Jarrad Miller	5/26/23	Prepare for trial; work on trial statement and exhibits	5.8	475.00	2755.00
Jarrad Miller	5/28/23	Work on hearing strategy; exchange email re same	0.1	475.00	47.50
Richard Williamson	5/30/23	Conference with Jarrad Miller re fees and costs issues //NO CHARGE//	0.1	400.00	40.00
Jarrad Miller	5/30/23	Work on trial exhibits and trial statement; exchange email with opposing counsel	7.9	475.00	3752.50
Briana Collings	5/30/23	Conference with attorney Miller re trial strategy, prioritizing tasks, strategy re appeal //NO CHARGE//	0.2	325.00	65.00

**RJMW Hours Incurred to Prepare
for and Attend Trial**

Briana Collings	5/30/23	Telephone conference with assistant Fleming re trial exhibits//NO CHARGE//	0.1	325.00	32.50
Briana Collings	5/30/23	Receive, review and analyze email from attorney Sharp re timing for Receiver's testimony during trial	0.1	325.00	32.50
Briana Collings	5/30/23	Begin preparing draft of our opposition to their motion in limine	2.3	325.00	747.50
Briana Collings	5/30/23	Review and analyze docket to confirm supplement to motion for order to show cause was filed	0.1	325.00	32.50
Briana Collings	5/30/23	Review and revise trial statement	1.7	325.00	552.50
Jarrad Miller	5/31/23	Work on witness examination	1.7	475.00	807.50
Jarrad Miller	5/31/23	Work on trial statement, exhibits	3.3	475.00	1567.50
Jarrad Miller	5/31/23	Conduct legal research re various evidentiary and contempt issues	1.1	475.00	522.50
Jarrad Miller	5/31/23	Draft outline for hearing and presentation	2.1	475.00	997.50
Briana Collings	5/31/23	Review and revise trial statement further	7.4	325.00	2405.00
Briana Collings	5/31/23	Receive, review and analyze email from attorney McElhinney re exhibits and other trial logistics	0.1	325.00	32.50
Briana Collings	5/31/23	Prepare e-mail correspondence to paralegal Martinez re contacting court to confirm trial logistics //NO CHARGE//	0.1	325.00	32.50
Briana Collings	5/31/23	Multiple emails to and from attorney McElhinney re receiver's testimony, exhibit list	0.2	325.00	65.00
Briana Collings	5/31/23	Review and analyze all trial exhibits; Generate notes re which, if any, do not fall within stipulation for admissibility	0.9	325.00	292.50
Briana Collings	5/31/23	Legal research re burden of proof for order to show cause evidentiary hearing; Draft bench brief re same	1.1	325.00	357.50
Briana Collings	5/31/23	Multiple emails re setting up visit to courtroom for tech equipment purposes	0.2	325.00	65.00
Briana Collings	5/31/23	Legal research re corporate liability for contempt; Draft bench brief re same	0.8	325.00	260.00
Briana Collings	5/31/23	Receive, review and analyze emails from plaintiffs re trial logistics	0.1	325.00	32.50
Jarrad Miller	5/31/23	Exchange numerous emails re scheduling, exhibits and court room	0.5	475.00	237.50
Briana Collings	6/1/23	Continue legal research re liability for entity's contempt; Continue drafting bench brief re same	0.1	325.00	32.50
Briana Collings	6/1/23	Finalize and file trial statement and exhibits	0.4	325.00	130.00
Briana Collings	6/1/23	Legal research re propriety of invoking rule of exclusion; Draft bench brief re same	1.2	325.00	390.00
Briana Collings	6/1/23	Review and revise exhibit with statements	0.3	325.00	97.50
Briana Collings	6/1/23	Legal research re their authority on ambiguity of orders; Generate notes re same	1.6	325.00	520.00
Briana Collings	6/1/23	Prepare e-mail correspondence to Judge Gonzalez re courtesy copy of trial statement; Prepare email correspondence to attorney Sharp re same for receiver	0.2	325.00	65.00
Briana Collings	6/1/23	Review and analyze their supplemental trial statement and opposition to our motion in limine	0.3	325.00	97.50

**RJMW Hours Incurred to Prepare
for and Attend Trial**

Jarrad Miller	6/1/23	Prepare for trial; work on exhibits; search for emails and document concerning Defendants' witnesses	6.7	475.00	3182.50
Jarrad Miller	6/1/23	Work on motions in limine briefing	0.7	475.00	332.50
		Legal research re whether corporate representative must be present for hearing; Draft bench brief re same //NO CHARGE//			
Briana Collings	6/1/23	Review defendants' supplemental trial statement and work on trial statement	1.1	325.00	357.50
Jarrad Miller	6/1/23	Work on proposed orders and strategy	0.4	475.00	190.00
Jarrad Miller	6/1/23	Prepare competing proposed order re our motions for orders to show cause that were denied	0.3	475.00	142.50
Briana Collings	6/1/23	Conference with attorney Miller re trial strategy	0.5	325.00	162.50
Briana Collings	6/2/23	Review and analyze various transcripts; Generate notes for impeachment purposes	0.3	325.00	97.50
Briana Collings	6/2/23	Review and analyze various documents for cross-examination exhibits; Generate notes re same	2.7	325.00	877.50
Briana Collings	6/2/23	Work on motion in limine strategy; conduct additional research	1.7	325.00	552.50
Jarrad Miller	6/2/23	Prepare for hearing, search for documents re defendants' witnesses for impeachment	1.4	475.00	665.00
Jarrad Miller	6/2/23	Attend tour of courtroom for trial to understand all technical issues and set up //NO CHARGE//	5.9	475.00	2802.50
Briana Collings	6/2/23	Receive, review and analyze emails from attorney Miller re reply in support of our motion in limine, trial preparation strategy //NO CHARGE//	0.4	325.00	130.00
Briana Collings	6/2/23	Receive, review and analyze email from Judge Gonzalez re receipt of trial statements //NO CHARGE//	0.1	325.00	32.50
Briana Collings	6/2/23	Review and analyze various documents for cross-examination exhibits; Generate notes re same	0.1	325.00	32.50
Briana Collings	6/3/23	Work on examination and cross-examination materials	1.4	325.00	455.00
Briana Collings	6/3/23	Prepare for hearing; work on witness examination; search for documents re impeachment of Defendants' witnesses	5.1	325.00	1657.50
Jarrad Miller	6/3/23	Continue reviewing orders at issue for trial	8.2	475.00	3895.00
Briana Collings	6/4/23	Prepare for hearing; work on witness examination for Receiver and defendant witnesses and opening	0.5	325.00	162.50
Jarrad Miller	6/4/23	Continue preparing for trial; Review and analyze pleadings; Generate questionings for witnesses; Review and analyze documents for impeachment purposes	7.9	475.00	3752.50
Briana Collings	6/4/23	Continue preparing for trial; Review and analyze our exhibits for admissibility pursuant to stipulation with attorney McElhinney; Continue preparing examination materials; Continue preparing bench briefs and conducting legal research; Prepare argument for motions in limine	9.4	325.00	3055.00
Briana Collings	6/5/23		8.3	325.00	2697.50

**RJMW Hours Incurred to Prepare
for and Attend Trial**

Briana Collings	6/5/23	Receive, review and analyze their reply in support of motion in limine; Draft supplemental opposition to address new arguments made in their reply; Prepare amended affidavits; Perform legal research re timing of presenting affidavits; Finalize and file supplemental objection with eight exhibits(four new affidavits)	2.5	325.00	812.50
Jarrad Miller	6/5/23	Review all exhibits and work on opening; conduct legal research re various issue; review rules of evidence likely applicable to certain evidence; work on strategy re same	8.1	475.00	3847.50
Briana Collings	6/5/23	Receive, review and analyze email re transcript from day 1 of trial	0.1	325.00	32.50
Richard Williamson	6/5/23	Legal analysis re evidentiary issues for hearing	0.1	400.00	40.00
Briana Collings	6/6/23	Prepare for and attend trial, day one; Prepare for day two, redirect of receiver, attorney Kern	12.1	325.00	3932.50
Jarrad Miller	6/6/23	Prepare for trial, attend trial, prepare for next day of trial	11.9	475.00	5652.50
Jarrad Miller	6/6/23	Receive and review rough draft transcript of June 9th proceedings	0.1	475.00	47.50
Briana Collings	6/7/23	Prepare for and attend day two of trial; Continue preparing for Reed Brady cross-examination and closing arguments	11.6	325.00	3770.00
Jarrad Miller	6/7/23	Prepare for trial, attend trial, prepare for next day of trial	12.4	475.00	5890.00
Richard Williamson	6/8/23	Legal research and analysis re potential use of deposition in hearing	0.2	400.00	80.00
Briana Collings	6/8/23	Prepare for and attend day three of trial; Research re potential "other" remedies as requested by court; Work on continued cross-examination of Brady and closing	13.6	325.00	4420.00
Jarrad Miller	6/8/23	Prepare for trial, attend trial, prepare for next day of trial	13.3	475.00	6317.50
Briana Collings	6/9/23	Prepare for and attend day four of trial; Debrief with attorney Miller after ruling; Assist in preparing email to clients re outcome of trial	9.5	325.00	3087.50
Jarrad Miller	6/9/23	Prepare for trial, attend trial, prepare for next day of trial	9.9	475.00	4702.50
Jarrad Miller	6/11/23	Review transcript; consider strategy	0.3	475.00	142.50
Briana Collings	6/12/23	Receive, review and analyze email from court reporter re rough transcript of order on order to show cause trial; Respond to same	0.1	325.00	32.50
Jarrad Miller	6/12/23	Work on filing and sorting of hearing documents //NO CHARGE//	1	475.00	475.00
Jarrad Miller	6/12/23	Receive and review June 7th email from court clerk attaching exhibit list //NO CHARGE//	0.1	475.00	47.50

EXHIBIT “2”

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2023-08-16 06:27:23 PM
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Clerk of the Court
Transaction # 9835409

EXHIBIT “2”

**RJMW Hours Incurred to Prepare
for and Attend Trial**

<u>Lawyer</u>	<u>Date</u>	<u>Explanation</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Briana Collings	6/12/23	Prepare proposed orders following hearings on orders to show cause	1.9	325.00	617.50
Briana Collings	6/12/23	Receive, review and analyze attorney Miller's comments to proposed orders from contempt hearing	0.1	325.00	32.50
Jarrad Miller	6/12/23	Work on proposed orders	0.2	475.00	95.00
Briana Collings	6/13/23	Review and revise proposed order on motions in limine	0.2	325.00	65.00
Jarrad Miller	6/13/23	Work on proposed orders	0.4	475.00	190.00
Briana Collings	6/17/23	Receive, review and analyze attorney Eisenberg's revisions to proposed orders from trial; Revise same accordingly	0.2	325.00	65.00
Jarrad Miller	6/17/23	Work on review of proposed orders	0.4	475.00	190.00
Briana Collings	6/17/23	Prepare e-mail correspondence to attorneys McElhinney and Smith re proposed orders from trial for review //NO CHARGE//	0.1	325.00	32.50
Briana Collings	6/17/23	Prepare e-mail correspondence to attorney Eisenberg re proposed orders from trial //NO CHARGE//	0.1	325.00	32.50
Briana Collings	6/24/23	Receive, review and analyze email from attorney McElhinney re their comments to our proposed orders	0.1	325.00	32.50
Briana Collings	6/25/23	Review and analyze defendants' redlines to our proposed orders; Consider same	0.2	325.00	65.00
Briana Collings	6/25/23	Prepare e-mail correspondence to Judge Gonzalez with our proposed orders from trial; Receive, review and analyze multiple follow up emails re same	0.2	325.00	65.00
Briana Collings	6/30/23	Prepare e-mail correspondence to attorney McElhinney re their proposed orders and our competing proposed order	0.1	325.00	32.50
Briana Collings	8/1/23	Receive, review and analyze email from attorney McElhinney re response to our proposed order	0.1	325.00	32.50
Briana Collings	8/1/23	Receive, review and analyze email submitting their proposed orders; Respond to same submitting ours	0.1	325.00	32.50
Briana Collings	8/1/23	Receive, review and analyze order denying some of our motions for orders to show cause	0.1	325.00	32.50

EXHIBIT “3”

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Clerk of the Court
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EXHIBIT “3”

**LGE Hours Incurred to Prepare
for and Attend Trial**

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>LODESTAR</u>
6/5/2023	RLE	Review pleadings recently received re hearing tomorrow (.8); multiple emails with counsel re	1	500.00
6/6/2023	RLE	Go to Mr. Miller's office and back (.6) meet with Miller and Collings (.4) go to court and attend	6	3000.00
6/7/2023	RLE	Review file materials, then go to courthouse for contempt hearing, then back to office (5.2); review	5.6	2800.00
6/8/2023	RLE	Go to court and back (.5); attend contempt hearing (7.0); research re contempt sanctions (1.0)	8.5	4250.00
6/9/2023	RLE	Review notes for court today (.3); to court from office and back (.6); attend court hearing (time includes brief conference with Mr. Miller at lunch break re	7.5	3750.00
		Totals	28.6	14300.00

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EXHIBIT “4”

EXHIBIT “4”



Robertson • Johnson • Miller • Williamson

ROBERTSON, JOHNSON, MILLER & WILLIAMSON HAS BEEN PROVIDING clients with superior representation and vigorous advocacy for over twenty (20) years. The firm prides itself on providing high-quality legal services with special attention to individual client needs. The firm also utilizes state-of-the-art technology to economically manage all complex transactional and litigation tasks.

OUR LITIGATION TEAM has achieved many multi-million dollar jury verdicts, including a recent award in excess of One Hundred Million Dollars (\$100,000,000.00). Similarly, the firm has obtained defense verdicts for many of our clients against large damage claims. The firm's track record in trial, and particularly in jury trials, is truly outstanding.

OUR TRANSACTIONAL TEAM offers over fifty (50) years of combined experience in business law. We counsel clients in all matters relating to conducting successful business enterprises. Our attorneys also have in-depth and practical experience to devise legal strategies that address many corporate challenges. Recognizing that our clients' corporate needs involve virtually every aspect of their businesses, we work closely with the other practice areas in our firm to provide a balanced, thoughtful approach to our clients' requirements. For example, coordinating with our litigation team helps to avoid future litigation with properly drafted documents. Our inter-disciplinary team approach thus places the talent and resources of the entire firm at our clients' disposal.

LICENSED IN NEVADA, CALIFORNIA, ARIZONA AND COLORADO, the firm provides representation throughout the Western United States. The firm is centrally located in the West, and has a private aircraft on call to meet our clients' immediate needs. As a result, our attorneys, staff and experts can reach any location on the West Coast in a matter of minutes, or at most, a few hours.



ROBERTSON, JOHNSON,
MILLER & WILLIAMSON



Jarrad Miller

Impact Statement

Jarrad Miller is a partner admitted to the state bars of Nevada and California as well as the United States District Court for the District of Nevada and the Eastern District of California.

As a graduate of the National Institute for Trial Advocacy, Jarrad has successfully represented clients in jury trials, bench trials, arbitrations, administrative hearings, appellate practice and mediations.

In his transactional practice, Jarrad has represented the owners of commercial properties, ranches, Tahoe estates, mining operations and a large-scale casino/resort in multi-million dollar conveyances. An experienced litigator for more than two decades, Mr. Miller is now focused on complex transactional law in the areas of real estate, business and natural resources. He prides himself on his ability to get matters resolved.

Practice Areas

- Business & Corporate
- Complex Civil Litigation
- Environmental Law
- Natural Resources & Agriculture
- Real Estate Law & Litigation
- Water Law

EDUCATION

Michigan State University College of Law
J.D., 1999 Cum Laude (Honors)
Honor Roll, 6 of 6 terms
Academic Merit Scholarship Award
Recipient

University of Nevada, Reno
B.A., 1995

Career

Mr. Miller was raised in the Reno/Sparks area where he graduated from Edward C. Reed High School. He received his undergraduate degree from the University of Nevada, Reno ("UNR") in 1995. He earned his Juris Doctor Cum Laude from Michigan State University College of Law, where he attended on an academic Merit Scholarship Award. Mr. Miller was the top Real Property student receiving a Book Award in that subject, and graduated with honors in 1999. From 1994-1996, he was a licensed Nevada Real Estate Sales Agent and has continued that interest in real estate law.

Mr. Miller has received an AV Preeminent Martindale-Hubbell Peer Review Rating by his peers ranking him at the highest level of professional excellence in both legal ability and ethical standards. This distinction is awarded to less than five percent of all United States lawyers. Martindale-Hubbell's Peer Review Ratings are not sold. An attorney awarded the "AV" rating has earned that distinction based on the anonymous opinions of attorneys and judges who have witnessed the ethics

and legal abilities of the rated lawyer. He was selected as a Super Lawyers Rising Star, one of the state's outstanding young lawyers. No more than 2.5 percent of the lawyers in the state are named to the list. His listing was published in the July 2009 issue of Mountain States Super Lawyers and on SuperLawyers.com. Mr. Miller has been featured in *Nevada Business Magazine* as one of Northern Nevada's Top Attorneys for 2011 and 2015 as chosen by his peers and has earned an AVVO 10.0 superb rating.

Personal

Born and raised in Nevada, Mr. Miller enjoys outdoor pursuits that include skiing, cycling, golfing and camping with his family and friends. Mr. Miller met his wife while both were attending UNR and all three of their children have studied at UNR.



ROBERTSON, JOHNSON,
MILLER & WILLIAMSON



ADMISSIONS

- U.S. District Court – Nevada, 2005
- U.S. District Court – E. D. CA, 2003
- California, 2000
- Nevada, 1999



AFFILIATIONS

- Washoe County Bar Association
- Western Trial Lawyers Association
(past president)



ROBERTSON, JOHNSON,
MILLER & WILLIAMSON



Richard D. Williamson

Shareholder

Richard Williamson is a shareholder admitted to the state bars of Nevada and California as well as the U.S. District Court for the District of Nevada, the U.S. District Court for the Northern District of California, the U.S. Court of Appeals for the Ninth Circuit, and the U.S. Supreme Court. He has represented clients in numerous jury trials, bench trials, arbitration hearings, mediations, and administrative proceedings. His practice primarily focuses on Commercial Real Estate Law and Commercial and Complex Civil Litigation.

“The best preparation for tomorrow is to work hard today.”

Practice Areas

- Commercial & Complex Civil Litigation
 - Commercial Real Estate Law
 - Condemnation & Eminent Domain
-

Education and Career

Mr. Williamson grew up in Reno and is a graduate of Bishop Manogue Catholic High School. He received his undergraduate degree from the University of San Diego in 2002, where he earned a B.A. in History. He received his Juris Doctorate from American University's Washington College of Law in 2005, where he was Managing Editor of the Journal of Gender, Social Policy & the Law and a member of the Moot Court Honor Society. Upon completing his studies on the East Coast, Mr. Williamson was eager to return home where he began his career as a law clerk to the Honorable Brent Adams of the Second Judicial District Court for the State of Nevada.

Mr. Williamson has received a Distinguished Martindale-Hubbell Peer Review Rating by his peers, recognizing his professional excellence in both legal ability and ethical standards. Martindale-Hubbell's Peer Review Ratings are not sold. He was selected as a Super Lawyers Rising Star for 2012 through 2019. Mr. Williamson has also been featured in *Nevada Business Magazine* as one of Northern Nevada's Top Attorneys for 2011 through 2018 as

chosen by his peers and has earned an Avvo 10.0 superb rating.

Personal

Mr. Williamson is currently a member of the Washoe County Bar Association and the American Bar Association. He also contributes a great deal of his time to volunteer activities. His professional commitments include serving on the State Bar of Nevada's Northern Nevada Disciplinary Board, and holding various leadership positions within the American Bar Association. A father of two, Mr. Williamson serves his community as a volunteer for the Boy Scouts of America and frequently participates in the Washoe County Law Library's "Lawyer in the Library" program. Mr. Williamson has previously served as a member of the Western Trial Lawyers Association, Nevada Trial Lawyers Association and the American Inns of Court.



ROBERTSON, JOHNSON,
MILLER & WILLIAMSON



EDUCATION

Washington College of Law

- J.D., 2005
- Journal of Gender, Social Policy & the Law, Managing Editor
- Moot Court Honor Society

University of San Diego

- B.A., 2002



ADMISSIONS

- Nevada, 2006
- California, 2007
- U.S. District Court – Nevada, 2006



AFFILIATIONS

- Washoe County Bar Association
- American Bar Association



ROBERTSON, JOHNSON,
MILLER & WILLIAMSON



Briana N. Collings

Associate

Briana N. Collings is an associate admitted to practice in both Nevada and California. After a clerkship with The Honorable Peter C. Lewis (Ret.) and working at a business boutique firm in Southern California, Brie now represents clients in both Nevada and California in litigation and transactional matters. Brie brings her passionate advocacy and high standard of excellence to our clients.

“Persistence is the twin sister of excellence. One is a matter of quality; the other, a matter of time.”

—Habeeb Akande

Practice Areas

- Commercial & Complex Litigation
 - Commercial Real Estate Law
 - Business Formation & Corporate Transactions
-

Education and Career

Ms. Collings is a Northern Nevada native who, after spending a number of years in Southern California, is pleased to have returned to her roots. Brie’s practice focuses on complex commercial litigation both at the federal and state levels as well as transactional business matters. Brie has significant experience with corporate governance matters, including drafting entity formation documents, shareholder agreements, buy-sell agreements, and annual meeting minutes. Brie also has experience in employment law, commercial real estate transactions, complex business transactions, and intellectual property disputes.

Brie graduated from the University of Nevada, Reno with Bachelors of Arts degrees in Economics and Criminal Justice. After graduating, Brie moved to San Diego, California to obtain her Juris Doctorate from California Western School of Law, where she graduated magna cum laude and as a member of the school’s Public Service Honors Society. There, Brie was a Diversity Fellow through the San Diego County Bar Association and she worked for Sempra Energy as well as

San Diego Gas & Electric Company. She also externed for The Honorable Anthony J. Battaglia in the United States Federal District Court for the Southern District of California.

During law school, Brie tutored constitutional law courses as well as intensive legal writing courses for first-year students.

Personal Interests

In her personal time, Brie serves as a remote collegiate advisor to Delta Gamma-Epsilon Iota as Vice President of Delta Gamma-Eta Iota’s House Corporation. She enjoys traveling, hiking, and baking.

briana@nvlawyers.com



ROBERTSON, JOHNSON,
MILLER & WILLIAMSON



EDUCATION

California Western School of Law

- San Diego, CA
- J.D. magna cum laude, 2017
- Concentration in Business Law, with Honors; Academic Merit Scholarship Recipient

University of Nevada, Reno

- Reno, NV
- B.A., Criminal Justice, 2014
- B.A., Economics, 2014



ADMISSIONS

- California, 2017
- Nevada, 2018
- U.S. District Court, Southern District of California, 2018
- U.S. District Court, District of Nevada 2020
- U.S. District Court, Eastern District of California, 2020



AFFILIATIONS

- Northern Nevada Women Lawyers Association
- Washoe County Bar Association
- American Bar Association

Robert Eisenberg

Robert Eisenberg is the managing partner at Lemons, Grundy & Eisenberg. He received his J.D. degree from the University of San Diego School of Law in 1976 (magna cum laude). He is a member of the California and Nevada Bars. He was a civil trial attorney in California until he moved to Nevada in 1979. From 1979 through 1984, he worked on the Central Legal Staff of the Nevada Supreme Court. During most of that time he was the Supervising Staff Attorney. He joined Lemons, Grundy & Eisenberg in 1985.

Since joining the firm, Mr. Eisenberg has practiced in the fields of civil trial litigation and civil appeals, in state and federal courts. He has been trial counsel in numerous jury trials and bench trials. He has also had numerous civil appeals, with preparation of hundreds of appellate briefs, and presenting more than 100 oral arguments in the Nevada Supreme Court.

Mr. Eisenberg is a fellow in the American Academy of Appellate Lawyers. He has served as President of the American Inns of Court (Reno); President of the Northern Nevada Association of Defense Counsel; member of the Board of Directors of the Association of Defense Counsel of Northern California and Nevada; Chairman of the Nevada Continuing Legal Education Committee; and member of the Board of Directors of the ABA Committee of Appellate Staff Attorneys (and National Education Chairman). He has served on numerous professional committees, including the Nevada Appellate Advocacy Handbook Committee, the Nevada Supreme Court Bench-Bar Committee, Nevada Supreme Court select commissions for revising the Rules of Civil Procedure and the Rules of Appellate Procedure, and various other committees established by the Nevada Supreme Court.

Mr. Eisenberg is an AV rated Preeminent attorney with Martindale-Hubbell (peer rated for the highest level of professional excellence), and he is recognized by Best Lawyers in the fields of civil litigation and appeals.

EXHIBIT “5”

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Transaction # 9835409

EXHIBIT “5”

1 CODE: 1520
Jarrad C. Miller, Esq. (NV Bar No. 7093)
2 Briana N. Collings, Esq. (NV Bar No. 14694)
Robertson, Johnson, Miller & Williamson
3 50 West Liberty Street, Suite 600
Reno, Nevada 89501
4 Telephone: (775) 329-5600
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5 jarrad@nvlawyers.com
briana@nvlawyers.com

6 Robert L. Eisenberg, Esq. (NV Bar No. 0950)
7 Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
8 Reno, Nevada 89519
Telephone: (775) 786-6868
9 Facsimile: (775) 786-9716
rle@lge.net

10 Attorneys for Plaintiffs

11 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12 **IN AND FOR THE COUNTY OF WASHOE**
13

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

15 Plaintiffs,

16 vs.

Case No. CV12-02222
Dept. No. OJ41

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

22 Defendants.
23

24 **DECLARATION OF BRIANA N. COLLINGS**

25 I, Briana N. Collings, state:

26 1. I am an associate attorney at the law firm of Robertson, Johnson, Miller &
27 Williamson, counsel for the Plaintiffs herein.

2. A copy of my personal biography, along with the biographies for all of the other attorneys whose fees are currently being sought, is attached as Exhibit 4 to Plaintiffs' Motion for Attorneys' Fees Incurred for Order to Show Cause Trial.

3. A true and correct copy of my firm's detailed and itemized time records showing time spent preparing for and attending the Show Cause Trial held on June 6-9, 2023 is attached to the Motion as Exhibit 1. A true and correct copy of my firm's itemized time records showing time spent preparing the orders from the Show Cause Trial is attached to the Motion as Exhibit 2.

4. These itemizations represent a summary compiled from the fully documented and detailed time records maintained in the regular course of the law practice of Robertson, Johnson, Miller & Williamson. These detailed time records are maintained on a current basis and are set forth in chronological order, showing the date, the timekeeper, the task performed, the time actually expended, and the actual charges for all the work included in each entry. These records were the basis for the periodic billings maintained pursuant to our engagement to work throughout the preparation of this case.

5. Further, a true and correct copy of Lemons, Grundy and Eisenberg's detailed and itemized time records showing time spent preparing for and attending the Show Cause Trial is attached to the Motion as Exhibit 3. I was provided this time listing on June 22, 2023. I attended the Show Cause Trial and believe these time entries for Mr. Eisenberg are true and correct.

6. In this case, the lodestar is calculated as follows:

Timekeeper	Hours	Rate	Lodestar
Jarrad C. Miller, Esq.	260.9	\$475	\$123,927.50
Richard D. Williamson, Esq.	0.5	\$400	\$200.00
Briana N. Collings, Esq.	146.1	\$325	\$47,482.50
General Paralegal	1.5	\$175	\$262.50
Robert L. Eisenberg, Esq.	28.6	\$500	\$14,300.00
	437.6		\$186,172.50

Accordingly, the lodestar figure at issue for Plaintiffs totals \$186,172.50.

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7. The Court awarded Plaintiffs seventy-five percent (75%) of their fees incurred to prepare for and attend the Show Cause Trial, and all of their fees incurred to prepare the orders therefrom. Thus, the awarded lodestar amounts are as follows:

Task	Fees	Amount Awarded	Total Awarded Lodestar
Preparing and Attending Trial	\$184,560.00	75%	\$138,420.00
Preparing Orders	\$1,612.50	100%	\$1,612.50
Total Awarded			\$140,032.50

The Total lodestar amount awarded is therefore \$140,043.50.

8. All the litigation fees set forth above were, in my opinion, reasonable and necessary to the preparation of the Show Cause Trial, especially given the importance of the issues ultimately being litigated and decided at this hearing.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: August 16, 2023

/s/ Briana N. Collings
Briana N. Collings

1 **2645**

2 ABRAN VIGIL, ESQ.
3 Nevada Bar No. 7548
4 ANN HALL, ESQ.
5 Nevada Bar No. 5447
6 DAVID C. MCELHINNEY, ESQ.
7 Nevada Bar No. 0033
8 MERUELO GROUP, LLC
9 Legal Services Department
10 5th Floor Executive Offices
11 2535 Las Vegas Boulevard South
12 Las Vegas, NV 89109
13 Tel: 562.454.9786
14 abran.vigil@meruelogroup.com
15 ann.hall@meruelogroup.com
16 david.mcelhinney@meruelogroup.com

17 JORDAN T. SMITH, ESQ.
18 Nevada Bar No. 12097
19 PISANELLI BICE PLLC
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24 *Attorneys for Defendants MEI-GSR Holdings,*
25 *LLC, AM-GSR Holdings, LLC, and GAGE*
26 *Village Commercial Development, LLC*

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

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

19 ALBERT THOMAS, et al.,

20 Plaintiffs,

21 v.

22 MEI-GSR HOLDINGS, LLC, a Nevada
23 Limited Liability Company; AM-GSR
24 Holdings, LLC, a Nevada Limited Liability
25 Company; GRAND SIERRA RESORT
26 UNIT OWNERS' ASSOCIATION, a
27 Nevada Nonprofit Corporation; GAGE
28 VILLAGE COMMERCIAL
DEVELOPMENT, LLC, a Nevada Limited
Liability Company; and, DOES I through X
inclusive,

Defendants.

Case No. CV12-02222

Dept. No.: OJ37

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1 Motion for Attorneys' Fees Incurred for Order to Show Cause, ("Motion for Attorneys' Fees") and
2 in exhibit 1 attached thereto they set forth their time and charges for preparation and attendance at
3 trial and preparation of orders and in exhibit 2 they included the time and charges for their appellate
4 counsel, Robert Eisenberg who sat in on the trial. For the reasons set forth in this Opposition,
5 Plaintiffs fee requests are inappropriate as a matter of law and must be substantially reduced.

6 **II. LAW AND ANALYSIS:**

7 **A. An Award of Attorneys' Fees to Plaintiffs is Limited to Attorneys' Fees Actually**
8 **Incurred by the Plaintiffs**

9 The Court awarded attorneys' fees to the Plaintiffs pursuant to NRS 22.100(3), which
10 provides as follows:

11 In addition to the penalties provided in subsection 2, if a person is found guilty of
12 contempt pursuant to subsection 3 of NRS 22.010, the court may require the person
13 **to pay to the party** seeking to enforce the writ, order, rule or process the reasonable
14 expenses, including, without limitation, attorney's fees, **incurred by the party** as
15 a result of the contempt. (emphasis added).

16 According to the express terms of NRS 22.100(3), highlighted above, the attorneys fee
17 award belongs to the Plaintiffs, not to their lawyers, and it must be based, not on a theoretical
18 "reasonable hourly rate" but rather, on the attorney's fees actually charged to and incurred by the
19 Plaintiffs.

20 **B. Plaintiffs' Counsel's Hourly Rates of Pay, and Those Fees Actually Incurred by**
21 **Plaintiffs, are Defined by Contract**

22 On May 5, 2023, pursuant to the Court's Minute Order issued April 26, 2023, Plaintiffs filed
23 their Notice of Submission of Plaintiffs' Fee Agreements, which included a copy of their Agreement
24 for Legal Services.² The Agreement for Legal Services identifies the following billing rates
25 allowed and agreed to by Plaintiffs for Plaintiffs' attorneys and it is these agreed upon rates that are
26 the reasonable rates to be used in calculating Plaintiffs' award of attorneys' fees:

- 27 • Jarrad Miller: \$315.00 an hour;
- 28 • Richard Williamson \$295.00 an hour;
- Jon Tew \$275.00 an hour; and

² Defendants are unclear as to whether or not the Agreement for Legal Services, ("Agreement") was filed under seal so out of an abundance of caution, they are not attaching a copy of the Agreement to this Opposition but represent to the Court that all representations as to the content of the Agreement set forth in this Opposition are true and accurate.

- Paralegals \$135.00 to \$145.00 an hour

There is no indication in the May 5, 2023 filing, nor in Ms. Collings Declaration that accompanied the filing as Exhibit 3, that any of those hourly fees have been subsequently amended and agreed to by Plaintiffs, which, according to the Agreement can only be accomplished if a “separate fee arrangement is agreed upon prior to the performance of the work.” (Agreement for Legal Service, Paragraph 4). It follows then that the hourly rates reflected in the Agreement for Legal Services have not been amended.

Plaintiffs’ counsel, in their Motion for Attorneys’ Fees, without explanation, seek hourly rates much higher than those set forth in the Agreement with their clients, showing hourly rates as follows:

- Jarrad Miller: \$475.00 an hour, (\$160 an hour more than the agreed upon contract rate);
- Richard Williamson: \$400.00 an hour, (\$105 an hour more than the agreed upon contract rate)
- Briana Collings: \$325.00 an hour, (\$50 an hour more than the agreed upon contract rate of Jon Tew)³

Plaintiffs Request for Attorneys’ Fees must be reduced to match those billable rates actually agreed to and incurred by Plaintiffs, as reflected in the Agreement for Legal Service.

C. Nevada Rules of Professional Conduct Prohibit an Increase in Hourly Rates Unless Communicated to the Client, Preferably in Writing

The Agreement for Legal Service sets forth the agreed upon hourly rates that Plaintiffs may charge in this case and it specifies that the work performed by the attorneys shall be charged at the hourly rates described in the Agreement unless a separate fee arrangement is agreed upon prior to the performance of work. Rule 1.5(b) of the Nevada Rules of Professional Conduct provides as follows:

³ Briana Collings, who was admitted to the Nevada Bar in 2018, is not listed as an approved attorney in the Agreement for Legal Service but, assuming she is allowed to bill on the case at all, it is fair to conclude that she took over associate John Tew’s role as counsel when Mr. Tew left the firm and she, like Jon Tew, should be billing at an hourly rate of \$275.00.

1 Rule 1.5. Fees.

2 (b) The scope of the representation and the basis or rate of the fee and expenses
3 for which the client will be responsible shall be communicated to the client,
4 preferably in writing, before or within a reasonable time after commencing the
5 representation, except when the lawyer will charge a regularly represented client
6 on the same basis or rate. Any changes in the basis or rate of the fee or expenses
7 shall also be communicated to the client.

8 Here the hourly rate of the fees for which the Plaintiffs are responsible has been
9 communicated to the Plaintiffs in writing in the Agreement for Legal Service and Plaintiffs' counsel
10 has not presented the Court with any communication to the Plaintiffs regarding any agreed upon
11 increase in those legal fees. In the event Plaintiffs' counsel is unable to provide evidence of such
12 communication to its clients, that predates the providing of those services, then Plaintiffs' counsel's
13 attempt to increase the hourly rates is not only a violation of the Agreement for Legal Services but
14 it is additionally a violation of the Nevada Rules of Professional Conduct as outlined above.

15 **D. The Hourly Rate Charged by the Lawyers to the Plaintiffs as set Forth in the**
16 **Agreement for Legal Services is the Best Evidence of What is Reasonable in this**
17 **Particular Case**

18 The Ninth Circuit has held that an attorney's usual hourly rate is relevant, but not
19 determinative, evidence of the prevailing market rate. See *Carson v. Billings Police Dept.*, 470 F.3d
20 889, 892 (9th Cir. 2006). Other jurisdictions take a much stronger position, determining that in
21 commercial litigation, courts begin by determining the actual billing rate that the lawyer charged in
22 the particular matter. *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 187, 673 P.2d 927, 931
23 (Ct. App. 1983). "[I]n corporate and commercial litigation between fee-paying clients, there is no
24 need to determine the reasonable hourly rate prevailing in the community for similar work because
25 the rate charged by the lawyer to the client is the best indication of what is reasonable under the
26 circumstances of the particular case." *Id.* at 187-88, 673 P.2d at 931-32. If persuaded that the
27 contracted hourly rates are unreasonable, courts may use a lesser rate. *Id.* at 188, 673 P.2d at 931.
28 *Andes Indus. V. EZconn Corp.*, 2018 U.S. Dist. LEXIS 58211, *24-25, (Arizona Dist. Ct. 2018);
 Schweiger v. China Doll Restaurant, 138 Ariz. 183, 187-188, 673 P.2d 927 (1983) (Unlike public-
 rights litigation, and contingent-fee litigation, for example, in corporate and commercial litigation

1 between fee paying clients, there is no need to determine the reasonable hourly rate prevailing in
2 the community for similar work because the rate charged by the lawyer to the client is the best
3 indication of what is reasonable under the circumstances of the particular case. Thus, the affidavit
4 submitted in connection with an application for fees must indicate the agreed upon hourly billing
5 rate between the lawyer and the client for the services performed in connection with the appeal.).
6 *See also Dillard v. City of Greensboro*, 213 F.3d 1347, 1355 (11th Cir. 2000) (referring to
7 "lawyer's actual billing rate" as "superior evidence" when determining reasonable hourly rate). (The
8 "actual billing rate" the Funds paid is the "presumptively appropriate" market rate). *People Who*
9 *Care v. Rockford Bd. of Educ.*, 90 F.3d 1307, 1311 (7th Cir. 1996). This line of cases is particularly
10 compelling when read in conjunction with NRS 22.100(3) that allows for an award of only those
11 attorneys' fees actually incurred by the party. And in this case those agreed to hourly rates for which
12 the Plaintiffs are responsible are set forth in the Agreement for Legal Service.

13 **E. Fees Must not be Unconscionable and Cannot be a Windfall**

14 As previously argued in this Opposition, Plaintiffs' counsel filed 11 motions for orders to
15 show cause. Each of those motions were detailed and resulted in extensive and time consuming
16 oppositions and replies, both sides, in the process, incurring substantial attorneys' fees. Both the
17 trial and its preparation were complex at least in part because the parties and the Court were
18 addressing, simultaneously, 7 separate motions for Order to Show Cause that involved a multitude
19 of issues.⁴ It is reasonable and likely that had the parties only had to prepare for the 2 Motions for
20 OSC that Plaintiffs ultimately prevailed on, rather than all 7, the preparation time would have been

21
22 ⁴ The 7 Motions for Order to Show Cause upon which the parties proceeded to trial included a multitude of factual
23 allegations of alleged contempt that were addressed during trial and upon which Plaintiffs did not prevail including, but
24 not limited to allegations that Defendants, (1) doubled the Contracted Hotel Fees charged to the Plaintiffs and increased
25 the Daily Use Fee without Receiver approval; (2) impose unauthorized new special assessments on each of the Plaintiffs
26 units. (3) refused to permit the Receiver to calculate and apply the reserves through a reserve study prepared in
27 accordance with the Governing Documents; (4) issued special assessments for the years 2021, 2022 and 2023 based
28 upon an unauthorized reserve study; (5) issued monthly owner account statements without Receiver approval containing
hyperinflated fees that violate the Court's Orders, and (6) failing to hand over to the Receiver the Plaintiffs monthly
rental revenue after deducting the Court approved fees, retroactive to January 2020. (See Plaintiffs' Motions for Orders
to Show cause filed November 19, 2021; September 27, 2021; December 28, 2022; and, April 25, 2022.). While
Plaintiffs will likely address those issues once again in their reply brief, the fact remains they were not successful in
persuading the Court that said conduct constituted contempt of existing orders. In fact, Plaintiffs fell far short of their
objectives articulated in their 11 motions for Orders to Show Cause, including Plaintiffs repeated requests that
Defendants principals be put in jail.

1 reduced substantially and that is a factor that should be taken into consideration as to what fees
2 should be awarded Plaintiffs.⁵

3 **F. Plaintiffs' Counsel are not Entitled to any Award of Fees not Incurred by Plaintiffs,**
4 **Including Those Services That were "No Charged" in Exhibit 1**

5 A review of Exhibit 1 attached to Plaintiffs' Motion for Attorneys' Fees reveals 39 separate
6 time entries wherein Plaintiffs' counsel "no charged" the Plaintiffs for services rendered. Those 39
7 time entries represent a total of \$3,037.50 in fees that the Plaintiffs did not incur and therefore should
8 not be included in an award of attorneys' fees. Despite the Plaintiffs not having incurred these fees,
9 Plaintiffs' counsel has included them in their Motion for Attorneys' Fees arguing that they have the
10 right to reverse the "no charges" and that they intend to do so at some point in the future, upon the
11 payment of the Second Amended Final Monetary Judgment. (Motion for Attorneys' Fees, pg. 6,
12 f.n. 1). Until such time as counsel elects to reverse the "no charges", it appears that Plaintiffs'
13 counsel intends to pocket the \$3,037.50 as a windfall for which they did not bill and which their
14 clients did not incur.⁶ These fees that were "no charged" by Plaintiffs' counsel, and that, as a result,
15 were not incurred by Plaintiffs, should not be awarded by the Court.

16 **G. Plaintiffs' Attorneys are claiming Excessive Charges for Document Review**

17 A review of the billing records reveals that the senior and most expensive attorney, Jarrad
18 Miller charged \$4,512.50 for review of Defendants' Exhibits and associate attorney Briana Collings
19 charged an additional \$2,232.50 for a total of 14.2 hours for review of the Defendants trial exhibits.⁷
20 It is not only a duplication of work but it is excessive for a senior attorney, at a claimed hourly rate
21 of \$475 to perform a review that Ms. Collings or a paralegal could have accomplished and charged
22 at a much lower rate. At the very least, this review could and should have been conducted by Ms.
23 Collings at the contracted rate of \$275 an hour which would have lowered the document review fees
24

25 ⁵ The factors to be considered by the Court in awarding attorneys' fees include "the results" of the trial. See Brunzell
26 v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

27 ⁶ Paragraph 6 of the Agreement for Legal Service states that if the court awards attorneys' fees to the client or the
28 attorney in an amount in excess of that which the client owes its attorney under this Agreement, said excess shall be the
sole property of Attorney, (Agreement for Legal Service, paragraph 6)

⁷ See exhibit 1 attached to Plaintiffs' Motion for Attorneys' Fees, Jarrad Miller and Briana Collings time entries dated
5/18/2023 through 5/22/23 "review defendants' voluminous exhibits".

1 from \$6,745.00 to \$3,905.00, resulting in a reduction in fees of an additional \$2,840.00.⁸ The
2 requested award of attorneys' fees should be reduced an additional \$2,840.00.

3 **H. Plaintiffs' Attorneys Cannot Claim the Charges From Robert Eisenberg**

4 Mr. Eisenberg is Plaintiffs' appellate attorney. While he sat in on all 4 days of the trial he
5 presented no argument nor did he conduct any direct or cross examination of witnesses. A review
6 of the billing in the exhibits that accompany Plaintiffs' Motion for Attorneys' Fees reveals that he
7 performed no substantive work of any nature in preparation for or in the conducting of the June 6th
8 through June 9th trial nor did he work on any of the proposed orders. Nonetheless, Plaintiffs include
9 Mr. Eisenberg's charges totaling 28.6 hours for a total of \$14,300.00.⁹ Further there is no evidence
10 that Plaintiffs have incurred any of the attorneys' fees for Mr. Eisenberg's services. Do they have
11 a separate fee agreement with Mr. Eisenberg's office? If they do, it certainly has not been presented
12 as part of Plaintiffs' Motion for Attorneys' Fees.

13 The Court, in its July 27, 2023 Order Finding Defendants in Contempt awarded 75% of the
14 reasonable attorney fees for the Plaintiffs preparing for and participating in the contempt proceeding.
15 Based on the time entries presented by Plaintiffs as part of their Motion for Award of Attorneys'
16 Fees, Mr. Eisenberg neither prepared for nor participated in the contempt proceedings and therefore
17 his fees should not be awarded.

18 The *Brunzell v. Golden Gate Nat'l Bank* factors are: (1) the quality of the advocate; (2) the
19 character of the work, e.g., its difficulty, importance, etc.; (3) **the work actually performed by the**
20 **advocate**; and (4) the result. See *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d
21 31, 33 (1969). Here, while Mr. Eisenberg's appellate experience may have been of some benefit to
22 Plaintiffs' counsel there was no advocacy nor work presented by Mr. Eisenberg in relation to the
23
24

25 ⁸ It would have been even more reasonable to have a paralegal review the trial exhibits which would have lowered the
26 fees from \$6,745.00 down to \$2,059.00 resulting in a savings of \$4,686.00. It is noteworthy that the paralegals were
27 significantly underutilized in these proceedings with their total billings being only 1.5 hours, while the most senior
28 attorney, Mr. Miller, who billed at the highest rate was over utilized, billing 60% of the total charges, (a total of 260.9
hours) which resulted in unnecessarily high fees.

⁹ See Exhibit 2 that accompanies Plaintiffs' Motion for Attorneys' Fees that appears to even include Mr. Eisenberg's
travel from his Reno office to Mr. Miller's office and back and forth to the courthouse.

1 preparation of or participating in the June 6-9th trial or preparation of orders. Taking these factors
2 into consideration, Mr. Eisenberg's charges should be excluded from any award of attorneys' fees.

3 **I. Plaintiffs Failed to Prevail on 9 of Their 11 Motions for Order to Show Cause**
4 **Resulting in the Granting of Relief That Fell far Short of Plaintiffs' Objectives at**
5 **Trial**

6 Plaintiffs filed 11 motions for orders to show cause in which they sought orders holding
7 Defendants in contempt for a number of alleged violations of court orders. Four of those motions
8 failed at their inception, the Court, after reviewing the motions, oppositions and replies, concluding
9 that Plaintiffs had failed to present sufficient evidence to demonstrate that Defendants had violated
10 the court orders identified by Plaintiffs in their motions.¹⁰ The parties proceeded to trial on June 6,
11 2023 on Plaintiffs' remaining Motions for Order to Show Cause wherein Plaintiffs insisted, up to
12 the time of trial, that there was no ambiguity in any of the Court Orders and requested that the Court
13 hold Defendants in contempt for a number of alleged violations of "clear and unambiguous court
14 orders", including but not limited to allegations of the following alleged misconduct of Defendants:

- 15 • Failing to pay Plaintiffs monthly revenues for Defendants rental and
16 usage of Plaintiffs' rooms;
- 17 • Refusing to hand over the gross rent for all 670 units;
- 18 • Refusing to implement the Receiver's new fee calculations and directive
19 that they be applied retroactive to January 2020;
- 20 • Hyperinflating the contracted Hotel Fees and Daily Use Fees charged to
21 the Plaintiffs;
- 22 • Overhauling and hyperinflating the fee structure, including pool fees;
- 23 • Unilaterally issuing monthly owner account statements containing
24 hyperinflated fees;
- 25 • Imposing new special assessments;
- 26 • Refusing to withdraw special assessments
- 27 • Failing to refund the special assessments to those unit owners who paid;

28 ¹⁰ See Court's three Orders, filed February 1, 2023, February 6, 2023 and May 23, 2023.

- Using a new hyperinflated reserve study that included improper expenses such as pool, front desk and lobby expenses;
- Failure to rent the Plaintiffs' Units for the month of March, 2023; and
- Stealing money from the reserve accounts.

After sitting through 4 days of trial, listening to the testimony of the Receiver and Mr. Reed Brady, and entertaining the arguments of counsel, the Court entered its Order on July 27, 2023, making only one finding of contempt in its determination that Defendants willfully violated the Appointment Order by withdrawing money from the reserve accounts in order to reimburse itself for out of pocket capital improvement expenditures, having done so without approval from the Receiver or the Court. (July 27, 2023, Order Finding Defendants in Contempt, pg. 2:17-20). That's it. The Court made no further determinations or findings of contempt despite Plaintiffs pages and pages of assertions of alleged contemptuous conduct by Defendants as outlined above for which they sought to hold Defendants in contempt and to even have one or more of the principles of the Defendants put in jail.

Taking all of the above into considered, the results reached by Plaintiffs and their counsel was a very, very small fraction of what they had requested in their 11 motions for order to show cause. And it can be argued that the results that the Plaintiffs' counsel achieved at trial were no greater than the results achieved by the Defendants in their successfully defending against all but two of Plaintiffs 11 motions.

Quoting the Arizona court in *Schwartz v. Schwerin*, 336 P.2d 144, 146 (Ariz. 1959) our Nevada Supreme Court in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349-350, 455 P.2d 31(1969) identified the basic elements to be considered in determining the reasonable value of an attorney's services, including (1) the qualities of the advocacy; (2) the character of the work to be done; (3) the work actually performed by the lawyer, and (4) the result, whether the attorney was successful and what benefits were derived. The *Brunzell* court further determined that good judgment dictated that each of these factors be given consideration by the Court in assessing the reasonable value of the attorneys' services.

1 These factors regarding “the result” justify a further overall reduction of 25% in accessing
2 the reasonable value of the Plaintiffs’ attorneys’ services.

3 **III. CONCLUSION**

4 Based upon the foregoing, Defendants respectfully request this Court use its discretion to
5 reduce the attorneys’ fees sought in Plaintiffs’ Motion for Attorneys’ Fees Incurred For Order To
6 Show Cause Trial as follows:

- 7 1. Reduce Jarrad Miller’s hourly rate from \$475 to the agreed upon contract rate of \$315
8 which lowers his fees to \$82,183.50;
- 9 2. Reduce Richard Williamson’s hourly rate from \$400 to the agreed upon contract rate of
10 \$295.00 which lowers his fees to \$147.50;
- 11 3. Reduce Briana Collings hourly rate from \$325 to the agreed upon contract rate of \$275
12 which lowers her fees to \$40,177.50
- 13 4. Reduce the General Paralegal hourly rate from \$175.00 to the agreed upon contract rate
14 of \$145.00 which lowers their fees to \$217.00;
- 15 5. Eliminate the fees billed by Robert Eisenberg in the amount of \$14,300.00;
- 16 6. Eliminate the 39 separate “No Charge” entries in the total sum of \$3,037.50;
- 17 7. Reduce the excessive charges for review of documents in the amount of \$2,840.00.

18 Applying these above described reductions results in the following:

- 19 • Preparing for and attending trial from \$184,560.00 down to \$121,448.00, (reduced
20 by 25% per Court Order) equals \$91,086.00;
- 21 • Preparing Orders from \$1,612.50 down to \$1,277.50 (100% awarded per Court
22 Order).
- 23 • Subtotal: \$92,363.50
 - 24 ○ Less Robert Eisenberg’s fees of \$14,300.00
 - 25 ○ Less “No Charge” entries of \$3,037.50;
 - 26 ○ Less excessive document review charges of \$2,840.00

27 Applying the math set forth above, results in a total of \$72,186.00. Defendants respectfully
28 submit that those fees should be further reduced by an additional 25% based on the overall “result”

1 achieved by Plaintiffs' counsel at trial, as more particularly set forth above, resulting in an award to
2 Plaintiffs' counsel in the amount of \$57,748.80.

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

5 The undersigned does hereby affirm that this document does not contain the social
6 security number of any person.

7 RESPECTFULLY SUBMITTED this August 25, 2023.

8 /s/ David C. McElhinney
9 ABRAN VIGIL, ESQ.
Nevada Bar No. 7548
10 ANN HALL, ESQ.
Nevada Bar No. 5447
11 DAVID C. MCELHINNEY, ESQ.
Nevada Bar No. 0033
12 MERUELO GROUP, LLC
Legal Services Department
13 5th Floor Executive Offices
2535 Las Vegas Boulevard South
14 Las Vegas, NV 89109
Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am employed in County of Washoe, State of Nevada
3 and on this date, I served a true and correct copy of the foregoing **OPPOSITION TO**
4 **PLAINTIFFS' MOTION FOR ATTORNEY'S FEES INCURRED FOR ORDER TO SHOW**
5 **CAUSE TRIAL** to the parties listed below, via electronic service through the Second Judicial
6 District Court's eFlex Electronic Filing System:

7
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9 Jarrad C. Miller, Esq., SBN 7093
10 Briana N. Collings, Esq. SBN 14694
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Richard M. Teichner

29 DATED this August 25, 2023.

30 /s/ Jennifer L. Hess
31 Jennifer L. Hess

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Attorneys for Plaintiffs

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

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ41

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

Defendants.

REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES INCURRED FOR
ORDER TO SHOW CAUSE TRIAL

COME NOW, Plaintiffs by and through their attorneys of record, the law firm of
Robertson, Johnson, Miller & Williamson, and hereby file this Reply in Support of Motion for

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

1 Attorneys' Fees Incurred for Order to Show Cause Trial ("Reply"). This Reply is based upon the
2 below memorandum of points and authorities, all exhibits attached thereto, all papers and
3 pleadings on file herein, and any oral argument the Court desires to hear.

4 DATED this 5th day of September, 2023

5 ROBERTSON, JOHNSON,
6 MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
7 Reno, Nevada 89501

8 *And*

9 LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
10 Reno, Nevada 89519

11 By: /s/ Briana N. Collings
Jarrad C. Miller, Esq.
12 Briana N. Collings, Esq.
13 *Attorneys for Plaintiffs*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants' Opposition to Plaintiffs' Motion for Attorney's Fees Incurred for Order to
4 Show Cause Trial ("Opposition") is devoid of substance; instead, Defendants have opted to
5 oppose Plaintiffs' Motion for Attorneys' Fees Incurred for Order to Show Cause Trial
6 ("Motion") by presenting contradictory arguments and launching personal attacks. The Court
7 should see through these and grant Plaintiffs' Motion in full.

8 The Court held a four-day evidentiary hearing ("Show Cause Trial") on seven (7)¹
9 motions for orders to show cause ("MOSCs"). At the conclusion of the Show Cause Trial, the
10 Court ordered Defendants to pay Plaintiffs seventy-five percent (75%) of their attorneys' fees
11 incurred to prepare for and attend the Show Cause Trial and all of their fees to prepare the orders
12 deriving therefrom. Plaintiffs filed their Motion on August 16, 2023, setting forth their total
13 lodestar, and total awarded lodestar, totaling \$140,032.50. This request is based upon those fees
14 actually charged to Plaintiffs by their attorneys, meaning Plaintiffs' counsel's 2023 hourly rates.

15 Given the case's lengthy history, a number of attorneys at Plaintiffs' counsel's firms have
16 worked on this matter. However, in the Motion, Plaintiffs are requesting only four attorneys'
17 fees, and those charged by a general paralegal: Jarrad C. Miller, Richard D. Williamson, and
18 Briana N. Collings of Robertson, Johnson, Miller & Williamson, and Robert L. Eisenberg of
19 Lemons, Grundy & Eisenberg. (Motion at 6.) Attorneys Miller, Collings, and Eisenberg
20 represent the overwhelming bulk of the requested amount.

21 Plaintiffs' attorneys' fees are entirely reasonable, provided the importance of the issues
22 presented at the Show Cause Trial and the result obtained. Indeed, the seven (7) MOSCs
23 presented five (5) issues. Each of these five (5) major issues was resolved by the Show Cause
24 Trial—either through Defendants' voluntary remediation of the issue or, more commonly, the
25

26 ¹ Defendants' Opposition repeatedly refers to the fact that Plaintiffs have filed eleven (11) MOSCs in this case. This
27 is a clear attempt to muddy the waters and suggest that Plaintiffs are requesting their fees for all eleven (11)
28 MOSCs—which is obviously not the case. Plaintiffs are simply requesting what the Court has already awarded:
seventy-five percent (75%) of their attorneys' fees to prepare for and attend the Show Cause Trial and all of their
attorneys' fees to prepare the orders arising therefrom.

1 Court ordering the issue be remedied (regardless of whether the Court held Defendants in
2 contempt for such conduct).

3 As a result of this favorable outcome, the Court awarded Plaintiffs their fees in the above-
4 described amounts. Accordingly, Plaintiffs request the Court award them their attorneys' fees in
5 the total amount of \$140,032.50.

6 **II. ARGUMENT**

7 Defendants' Opposition is replete with nonsensical and illogical arguments. Plaintiffs
8 address each in turn below, combining those which were duplicative.

9 **A. Plaintiffs Have Submitted the "Actually Incurred" Fees**

10 In their Motion, Plaintiffs attached all of those fees incurred by Plaintiffs to prepare for
11 and attend the Show Cause Trial, and to prepare the orders deriving therefrom. These fees were
12 actually charged to Plaintiffs. Defendants argue that because Plaintiffs' counsel "no charged"
13 certain such fees, Plaintiffs should not be compensated for those fees. (Opposition at 3:6-16.)
14 This would lead to absurd results.

15 Attorneys may exercise discretion in providing discounts to their clients; but courts
16 should not limit an award of attorneys' fees to such discounted amounts. Regions Bank v.
17 Chicago Title Ins. Co., 10-CV-80043-RYSKAMP/VITUNAC, 2011 WL 13225146 at *4 (S.D.
18 Fla. Aug. 16, 2011) (where prevailing party was awarded its attorneys' fees at the non-
19 discounted rate). Here, Plaintiffs' counsel elected to make voluntary write-downs for Plaintiffs
20 because they are valued clients. Plaintiffs' counsel retains its right to reverse such charges,
21 however, as is clearly stated in Plaintiffs' fee agreement. Indeed, Plaintiffs' counsel intends to
22 reverse such write-downs upon payment of the Second Amended Final Monetary Judgment.

23 Given Plaintiffs' counsel's intent to reverse all write-downs, these amounts are actually
24 incurred by Plaintiffs—simply on a deferred basis. Thus, all of Plaintiffs' attorneys' fees set
25 forth in the Motion should be awarded as the Court has already ordered.

26 **B. Plaintiffs' Counsels' Fees Should Not Be Confined to the 2012 Rates**

27 Paradoxically, Defendants next argue that Plaintiffs' counsels' hourly rates "*and those*
28 *fees actually incurred by Plaintiffs*" are identical and identified in the Fee Agreement.

(Opposition at 3:17-4:18, emphasis added.) Defendants continue to argue that, while Plaintiffs are only entitled to the attorneys' fees they actually incurred (\$140,032.50, as set forth in the Motion), Plaintiffs are also somehow entitled only to those hourly rates set forth in the Fee Agreement signed in 2012—over a decade ago. These two positions cannot be harmonized. More importantly, imposing hourly rates that are over a decade old—especially when the fees sought here were all incurred during 2023—would certainly effect an injustice.

It is commonplace for law firms to increase their various attorneys' hourly rates each year to adjust for inflation, the cost of doing business, and other factors. See Gonzalez v. Bratton, 247 F.Supp.2d 432, 435 (S.D.N.Y. 2003) (finding hourly rates that were raised to adjust to higher costs of doing business to be reasonable); Gulino v. Bd. of Educ. Of City Sch. Dist. of City of New York, No. 96 CIV. 8414, 2021 WL 4463116, at *5 (S.D.N.Y. Sept. 24, 2021) ("hourly rates continue to increase over time and more current rates should be used in setting reasonable hourly rates"); Manhattan Rev. LLC v. Yun, No. 16CIV0102LAKRWL, 2019 WL 5722216, at *8 (S.D.N.Y. July 1, 2019) (finding increases in attorneys' hourly rates reasonable and awarding same); Bales on behalf of J.B.A. v. Sec'y of Health & Hum. Servs., No. 15-882V, 2017 WL 2243094, at *4 (Fed. Cl. Apr. 26, 2017) ("the rate increases for work performed in [later years of a proceeding] are reasonable").

In fact, during Defendants' lead counsel's tenure at Lewis Roca Rothgerber, LLP, David McElhinney's hourly rates increased \$195 over a five-year period. Compare Garrett v. Bullock, No. 3:14-CV-00141-LRH, 2015 WL 3439243, at *6 (D. Nev. May 28, 2015) (noting attorney McElhinney's hourly rate as \$340 per hour) with Ex. 1, Lewis Roca January 2022 Invoice at 7 (noting attorney McElhinney's hourly rate as \$535 per hour). Thus, Defendants' arguments that Plaintiffs' counsels' fees that were charged over a decade ago should still be charged now is wholly undercut by the reality of attorney McElhinney's own fee increases—largely done during the time attorney McElhinney's former firm represented Defendants. Certainly, if the tables were turned, attorney McElhinney would be seeking his increased fees as they were charged.

The Court itself has approved the increased fees on a number of occasions, and in fact, has approved the increased fees in every order granting Plaintiffs' their attorneys' fees, save the

1 most recent. Just prior to the most recent order granting Plaintiffs' their attorneys' fees, the
2 Court granted Plaintiffs' Motion for Fees Pursuant to NRCP 37. (Order, filed March 14, 2023.)
3 Therein, the Court awarded Plaintiffs \$46,571 in attorneys' fees. (*Id.* at 3.) This amount was
4 based on attorney Miller's then-current hourly rate of \$375 per hour, and attorney Tew's then-
5 current hourly rate of \$310 per hour. (Plaintiffs' Motion for Fees Pursuant to NRCP 37, filed
6 November 20, 2019 at Ex. 1.) These hourly rates were increased from attorney Miller's and
7 attorney Tew's 2012 hourly rates of \$315 and \$275 per hour, respectively.

8 Similarly, the Court approved increased fees in its Order Granting Plaintiffs'
9 Supplemental Motion for Fees. (Order Granting Plaintiffs' Supplemental Motion for Fees, filed
10 January 4, 2022.) Therein, the Court awarded Plaintiffs \$17,885 in attorneys' fees. This award
11 was based on an hourly fee for attorney Tew of \$325 and an hourly fee for general paralegal of
12 \$135. (Supplemental Motion for Fees Pursuant to the Court's December 24, 2020 Order
13 Granting Motion for Clarification and Sanctioning the Defendants, filed April 7, 2021 at Ex. 1.)
14 These fees similarly exceed those 2012 hourly rates for attorney Tew and general paralegal;
15 however, the Court took no issue with awarding Plaintiffs these reasonably increased fees.

16 Put simply, it is only recently that Defendants have begun to take umbrage with the fact
17 that Plaintiffs' counsel modestly increased their fees through the duration of this protracted
18 litigation. (*See, e.g.*, Defendants' Opposition to Motion for Attorneys' Fees, filed November 9,
19 2015, where Defendants did not argue Plaintiffs' attorneys' fees must be capped to the 2012
20 rates, although Plaintiffs' claimed increases to their fees as charged.) Defendants have therefore
21 waived this argument by failing to make it previously and, by belatedly raising this point, only
22 emphasize the transparency of the argument. The Court should therefore grant Plaintiffs their
23 attorneys' fees as set forth in Plaintiffs' Motion—and at the rates charged by Plaintiffs' counsel
24 at the time such tasks were completed.

25 **C. The Increased Fees Are Communicated Each Year Through the Invoices**

26 The Court has previously requested Plaintiffs' counsel file their fee agreement in this
27 matter. (*See* Notice of Submission of Plaintiffs' Fee Agreements, filed May 1, 2023.) The
28 Agreement for Legal Services, as produced by Plaintiffs, specifically sets forth the then-current

1 hourly rates for the then-current roster of attorneys. (Id. at Ex. 1.) These then-current rates,
2 however, are preceded by express language which states that “The billing rates listed below shall
3 apply until further notice, *which notice will be reflected as amended billing rates on the Client*
4 *invoices.*” (Id. at ¶ 3.)

5 Not only then did Plaintiffs and Plaintiffs’ counsel agree that Plaintiffs’ counsel has the
6 right to increase their fees, but notice of such increases will be provided by noting such increased
7 hourly rates on Plaintiffs’ monthly invoices. Indeed, the invoices provided to Plaintiffs in this
8 matter by Plaintiffs’ counsel reflects such increased hourly rates. Moreover, attorneys generally
9 have the right to unilaterally increase their fees. Jackson v. Los Lunas Ctr., 489 F. Supp. 2d
10 1267, 1272-73 (D.N.M. 2007) (where attorneys’ fees reflected a ten percent increase from
11 previous hourly rates, the Court found the argument that “Plaintiffs cannot unilaterally increase
12 their attorneys’ fees is, therefore, without merit”).

13 This argument is yet another meritless grasp at straws by Defendants in an attempt to
14 undermine the sanction award the Court granted after attending a four-day hearing and finding
15 Defendants in contempt of Court. This argument should be denied wholesale.

16 **D. Plaintiffs’ Counsel’s Fees Are Reasonable, as Produced**

17 Defendants next bizarrely argue that what Plaintiffs’ counsel *actually charged* to
18 Plaintiffs is the hourly rate that should be awarded. (Opposition at 5:13-6:12.) Again, however,
19 in the same breath, Defendants appear to be arguing that the 2012 hourly rates, which are what
20 Plaintiffs’ counsel charged *in 2012 and 2013 only*, are the best evidence of what reasonable
21 hourly rate should be used to calculate the lodestar. These positions again cannot be harmonized
22 but instead are directly contradictory.

23 To begin, Plaintiffs’ counsel’s fees which are being sought here were actually charged at
24 Plaintiffs’ counsel’s 2023 hourly rates. These rates are reflected in the time summary as set forth
25 in the Motion. Defendants cite a litany of cases from non-Nevada jurisdictions which set forth
26 the basic premise that the best indication of what is reasonable under the circumstances of a
27 particular case is the actual rate charged by the attorney to the client. (Opposition at 5:13-6:12,
28 citing, among other cases, Schweiger v. China Doll Rest., Inc., 138 Ariz. 183, 187, 673 P.2d 927,

1 931 (Ct. App. 1983) (“there is no need to determine the reasonable hourly rate prevailing in the
2 community for similar work because the rate charged by the lawyer to the client is the best
3 indication of what is reasonable under the circumstances of the particular case”).) It cannot be
4 overstated that the actual rates charged to Plaintiffs here are what is shown in Plaintiffs’ Motion.
5 Thus, according to Defendants’ own authority, the reasonable rate here is presumed to be the
6 hourly rates set forth in the Motion: \$475 for attorney Miller, \$400 for attorney Williamson,
7 \$325 for attorney Collings, \$175 for general paralegal, and \$500 for attorney Eisenberg.
8 (Motion at 6.) Defendants’ argument for lesser rates is wholly belied by their authority.

9 In any case, these hourly rates are customary for this area and are routinely used by
10 courts in awarding fees. See, e.g., Evans v. Skolnik, No. 3:08-cv-0353, 2011 U.S. Dist. LEXIS
11 8689, at *3 (D. Nev. Jan. 21, 2011) (Judge Cooke found \$350 to be a reasonable hourly rate for
12 work performed over a decade ago); Marshall v. Kirby, No. 3:07-cv-00222, 2010 U.S. Dist.
13 LEXIS 131162, at *15 (D. Nev. Nov. 29, 2010) (Judge McQuaid found \$350 to be a reasonable
14 hourly rate also over a decade ago); Fed’n of Fly Fishers v. Daley, 200 F.Supp.2d 1181, 1192-93
15 (N.D. Cal. 2002) (acknowledging that rates of \$150 for paralegals and between \$350 and \$450
16 for experienced litigators were customary two decades ago). Indeed, as discussed above, this
17 Court has already awarded Plaintiffs attorneys’ fees based upon their attorneys’ then-current
18 rates—almost all of which exceeded their 2012 rates.

19 Plaintiffs’ attorneys’ hourly rates, as charged in 2023, are reasonable considering the
20 experience and performance of each attorney whose fees are sought here. Accordingly, the
21 Court should not cap Plaintiffs’ attorneys’ fee award—obtained as a sanction for Defendants’
22 contempt—to their 2012 rates.

23 **E. Plaintiffs Prevailed on the Major Issues Presented by the MOSCs**

24 At the close of the Show Cause Trial, the Court awarded Plaintiffs seventy-five percent
25 (75%) of their fees incurred in preparing for and attending the four-day trial, along with all of
26 their fees incurred to prepare the orders arising from the trial. Now, Defendants appear to be
27 arguing that the Court’s already imposed reduction of Plaintiffs’ fees should be increased further.
28 Any further reduction should be rejected outright.

1 To begin, Defendants, in arguing the fees must be reduced wholesale, appear to be
2 seeking reconsideration of the Court's award of fees to Plaintiffs. (Opposition at 6:14-7:2.) This
3 is entirely inappropriate as more than fourteen (14) days have passed since the Court's order was
4 issued. DCR 13(7); WDCR 12(8). Indeed, Defendants have sought reconsideration of one of the
5 orders arising from the Show Cause Trial—evidencing Defendants' ability to properly pursue
6 reconsideration to the extent desired. Thus, this belated attempt to have the Court reconsider its
7 already imposed reduction of fees should be rejected on this procedural basis.

8 This argument fails both procedurally, for the reason set forth above, and substantively.
9 Defendants argue that because the Court only made formal contempt findings on two (2) of the
10 seven (7) MOSCs, Plaintiffs' attorneys' fee award should be decreased substantially. But,
11 Defendants conveniently refuse to acknowledge that the seven (7) MOSCs arose from five
12 recurring actions by Defendants that were favorably addressed by the Show Cause Trial: (1)
13 refusing to implement Court-approved and Receiver-calculated fees, (2) refusing to turn over the
14 rental proceeds, (3) mishandling and stealing the reserve accounts, (4) failing to rent Plaintiffs'
15 units, and (5) refusing to pay the Receiver for his work. (See generally, Prehearing Statement,
16 filed June 1, 2023.)

17 Every one of these issues was remedied as a result of the Show Cause Trial. First,
18 Defendants had previously refused to implement the Receiver-calculated and Court-approved
19 fees and apply the same to Plaintiffs' units. The Court, following the Show Cause Trial, issued
20 an order which required the Receiver to apply his previously-calculated and approved fees to
21 Plaintiffs' units. (Order Modifying March 14, 2023 Order re Continued Rental of the Parties'
22 Units Until Sale ("July 27, 2023 Order").) The Court thus clarified which fees were to be
23 applied (the Receiver's) and confirmed the Receiver was to apply these fees—not Defendants.
24 This July 27, 2023 Order therefore resolved the first major issue presented at the Show Cause
25 Trial.

26 Second, Defendants had abjectly refused to turn over any rental proceeds earned from
27 Plaintiffs' units to Plaintiffs, either directly or through the Receiver. In the same July 27, 2023
28 Order, the Court instructed Defendants to provide "the amount of gross rents or revenue" for

1 Plaintiffs’ units “to the Receiver on a monthly basis” (Id. at 2:12-14.) The Receiver was
2 then to apply his previously calculated and approved fees, and, after providing the parties an
3 opportunity to object to such application, disseminate the net proceeds to Plaintiffs. This issue
4 was thus also resolved by the Court as a result of the Show Cause Trial.

5 Third, Defendants misappropriated approximately \$16 million from the reserve accounts.
6 The Court found Defendants in contempt of Court for this conduct. (Order Finding Defendants
7 in Contempt, filed July 27, 2023.) The Court further ordered Defendants to return the
8 misappropriated amounts, plus interest, to the reserve accounts and thereafter transfer the
9 accounts to the Receiver. (Id.) This issue was therefore addressed and resolved by the Court at
10 the Show Cause Trial.

11 Fourth, Defendants had failed to rent Plaintiffs’ units for almost an entire month. The
12 Court, in the July 27, 2023 Order, addressed this conduct and ordered “that (1) Defendants will
13 rent the units in a fair rotation;” (July 27, 2023 Order at 2:6-7.) This conduct was therefore
14 fully addressed and remedied by the Court’s July 27, 2023 Order as a result of the Show Cause
15 Trial—handing Plaintiffs another success.

16 Fifth and finally, Defendants had refused to remit payment to the Receiver such that the
17 receivership was ground to a halt. The Court’s July 27, 2023 Order addressed this issue as well.
18 Therein, the Court ordered that Defendants “will pay [their] pro rata share of all expenses of the
19 receivership on a monthly basis as submitted by the Receiver.” (Id. at 2:10-11.) Additionally,
20 during the Show Cause Trial, Defendants did pay the Receiver’s then-outstanding invoice,
21 including his attorneys’ fees. However, this conduct was prompted **only** by the fact that the
22 Court granted Plaintiffs’ MOSCs and held the Show Cause Trial. Stated another way, Plaintiffs
23 were required to prepare for and attend the Show Cause Trial in order to obtain this satisfactory
24 result. Plaintiffs therefore also prevailed on this issue.

25 Defendants clearly would not have curbed their unjust conduct without Plaintiffs’ filing
26 the MOSCs and the Court holding the Show Cause Trial—as evidenced by Defendants boldly
27 continuing their unjust conduct after the MOSCs were filed, granted, and the Show Cause Trial
28 was set. Thus, the Show Cause Trial was critical in remedying these issues and Plaintiffs

1 therefore achieved their objective of filing the MOSCs: to obtain Defendants' compliance with
2 the letter and spirit of the Court's orders.

3 The Court has already considered the fact that not all of Plaintiffs' MOSCs resulted in
4 actual findings of contempt by reducing their award of attorneys' fees in part. Any further
5 reduction in this award based upon the outcome of the Show Cause Trial would have properly
6 been the subject of a motion for reconsideration; however, Defendants did not file any such
7 motion with respect to this award. The Court's award of Plaintiffs' attorneys' fees is therefore
8 proper as a sanction under NRS 22.100(3) and should not be altered.

9 **F. Defendants Identified 982 Pages of Exhibits for the Trial; Necessitating Intense**
10 **Review by Lead Trial Counsel**

11 In the only substantive argument relating to Plaintiffs' counsels' actual time entries,
12 Defendants complain that attorney Miller expended an excessive amount of time reviewing
13 Defendants' trial exhibits, and that attorney Collings duplicated these efforts, although on a
14 much smaller scale. The time entries identified by Defendants explain the issue: Plaintiffs'
15 counsel were required to "review Defendants' voluminous exhibits." (Opposition at 7 n.7.)
16 Defendants identified thirty-eight (38) trial exhibits. These exhibits altogether totaled almost
17 1,000 pages, which standing alone can attest for the length of time necessary to fully review and
18 analyze the trial exhibits.

19 Defendants proclaim that attorney Miller charged \$4,512.50 and attorney Collings
20 charged \$2,232.50 to review Defendants' trial exhibits. Defendants then cite to time entries
21 dated May 18, 2023 through May 22, 2023 to support these numbers. Problematically, attorney
22 Collings has no entries during this period that indicate there was any review of Defendants' trial
23 exhibits. Indeed, there appear to be no time entries at all for attorney Collings relating to the
24 review of Defendants' trial exhibits (although there are entries for emails to and from
25 Defendants' counsel about the admissibility of exhibits). (Motion at Ex. 1.)

26 This misrepresentation highlights the issue with Defendants' further proclamation that
27 Plaintiffs' counsel duplicated work and/or worked inefficiently in having lead trial counsel,
28 attorney Miller, review the voluminous trial exhibits identified by Defendants. (Opposition at

1 7:19-8:1.) Certainly, there was no duplication here when there are no time entries for attorney
2 Collings that reflect time spent reviewing Defendants' trial exhibits. Similarly, the review could
3 not have been done by attorney Collings or a paralegal without duplication by attorney Miller
4 because, as lead trial counsel, it was critical for attorney Miller to review and consider these
5 exhibits in detail.

6 Finally, it is hypocritical for Defendants to mark almost 1,000 pages of trial exhibits and
7 then complain that Plaintiffs' counsel took too much time to review the documents. As this
8 proceeding has made abundantly clear by now, aggressive litigation strategies serve only to drive
9 up litigation costs. (See Findings of Fact, Conclusions of Law and Judgement, filed October 9,
10 2015 at 2:15-25, noting that Defendants' "systematic attempts at obfuscation and intentional
11 deception" alongside their discovery abuses made "the proceedings unjust, dilatory, *and costly*,"
12 emphasis added.) Defendants simply cannot complain that their own aggressive litigation tactics
13 have resulted in too much time spent by Plaintiffs' counsel in meeting and matching this level of
14 intensity. See Martini v. Fed. Nat. Mortg. Ass'n, 977 F. Supp. 482, 487 (D.D.C. 1997) (noting
15 that defendants there employed an "aggressive litigation strategy" and thus could not be heard to
16 complain about the attorneys' fees incurred by plaintiff to match those efforts).

17 Accordingly, this complaint that Plaintiffs' counsels' work was somehow duplicative or
18 inefficient with respect to reviewing Defendants' "voluminous" trial exhibits is meritless.
19 Instead, Plaintiffs' counsel was efficient and mindful of their time spent preparing for and
20 attending the Show Cause Trial.

21 **G. Attorney Eisenberg's Fees Must Be Included and Awarded**

22 Finally, Defendants argue that attorney Eisenberg's fees should not be awarded because
23 "while he sat in on all four days of the trial he presented no argument nor did he conduct any
24 direct or cross examination of witnesses." (Opposition at 8:4-5.) This argument is absurd.
25 Attorney Eisenberg provided valuable assistance, guidance, and input on strategy during the
26 Show Cause Trial. Simply because Defendants' counsel was not privy to the numerous sidebar
27 discussions between Plaintiffs' attorneys, including attorney Eisenberg, does not negate the value
28 attorney Eisenberg brought to Plaintiffs' presentation at the Show Cause Trial.

1 Additionally, the Court is well aware that Defendants had two (2) attorneys at counsel
2 table **and** two (2) attorneys in the gallery who routinely spoke with trial counsel and presumably
3 provided input. As set forth at length above, it is ludicrous and hypocritical for Defendants to
4 argue that Plaintiffs' attorneys' fees are excessive when they are largely incurred simply to meet
5 the manner in which Defendants have staffed this litigation. Indeed, at the time the MOSCs
6 began to be filed, Defendants were represented by six (6) attorneys, including three (3) at a
7 private law firm and three (3) in-house attorneys. (See, e.g., Defendants' Opposition to
8 Plaintiffs' Motion for Order to Show Cause as to Why the Defendants Should Not be Held in
9 Contempt of Court and Request for Oral Argument on Motion During Hearing Set for May 12,
10 2022, filed May 9, 2022, listing Daniel F. Polsenberg, Jennifer K. Hostetler, and Dale Kotchka-
11 Alanes from Lewis Roca along with Abran Vigil, Ann Hall, and attorney McElhinney from
12 Meruelo Group as counsel for Defendants.)

13 It is thus disingenuous for Defendants to complain that Plaintiffs apparently overstaffed
14 this Show Cause Trial, when, instead, Plaintiffs were simply ensuring they had "equivalent legal
15 resources representing [their] interests." Martini, 977 F. Supp. at 487. Defendants made it clear
16 their appellate counsel would be attending the Show Cause Trial and indeed, Jordan Smith
17 attended and argued for Defendants, largely to preserve issues on appeal. It was therefore
18 necessary for Plaintiffs to also have attorney Eisenberg present so they had "equivalent legal
19 resources [to represent their] interests." Id. For Defendants to now complain that because
20 attorney Eisenberg elected not to make any argument at trial, but instead offered guidance and
21 input to lead trial counsel, attorney Eisenberg's fees should be denied in their entirety is
22 hypocritical, disingenuous, and absurd. This argument therefore must be rejected outright and
23 Plaintiffs should be granted attorney Eisenberg's fees as awarded.

24 **III. CONCLUSION**

25 Plaintiffs incurred a substantial amount of attorneys' fees as a result of the Show Cause
26 Trial. This trial was prompted by Defendants' bad acts and Defendants' refusal to cure such bad
27 acts. Ultimately, Defendants opted to cure some of their bad acts in the midst of the Show Cause
28 Trial; and, those that were not cured, were ultimately remedied by the Court's various orders

1 following the Show Cause Trial. Plaintiffs thus substantially prevailed and accordingly were
2 awarded most of their attorneys' fees. These fees sought are reasonable and were actually
3 incurred at Plaintiffs' counsel's 2023 rates—not their 2012 rates as argued.

4 Accordingly, Plaintiffs request this Court award their fees in the amount of \$140,032.50.

5 **AFFIRMATION**

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

8 DATED this 5th day of September, 2023

9 ROBERTSON, JOHNSON,
10 MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
11 Reno, Nevada 89501

12 *And*

13 LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
14 Reno, Nevada 89519

15 By: /s/ Briana N. Collings
Jarrad C. Miller, Esq.
16 Briana N. Collings, Esq.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of 18, and not a party within this action. I further certify that on the 5th day of September, 2023, I electronically filed the foregoing **REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES INCURRED FOR ORDER TO SHOW CAUSE TRIAL** with the Clerk of the Court by using the ECF system which served the following parties electronically:

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An Employee of Robertson, Johnson, Miller & Williamson

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EXHIBIT INDEX

Ex. No.	Description	Pages
1	Lewis Roca Invoice	9

EXHIBIT “1”

FILED
Electronically
CV12-02222
2023-09-05 03:33:07 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9868848

EXHIBIT “1”

Lewis Roca
ROTHGERBER CHRISTIE

 Centralized Accounting Dept.
 201 East Washington Street
 Suite 1200
 Phoenix, Arizona 85004-2595

 602.262.5311 main
 602.239.7486 accounting
 ar@lrc.com
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ACCT. NO. 301684-00001

January 22, 2020

Invoice No. 1341787

 MEI-GSR Holdings LLC
 c/o Grand Sierra Resort
 2500 E. 2nd Street
 Reno, NV 89595
 astoller@meruelogroup.com
 cc: Ann.Hall@meruelogroup.com

LEGAL SERVICES RENDERED THROUGH DECEMBER 27, 2019

MEI-GSR Holdings adv. Thomas

12-02-2019	J. Hostetler Draft Opposition to Motion for Attorneys' Fees	5.2	2,340.00
12-03-2019	J. Hostetler Draft Opposition to Plaintiffs' Motion for Attorneys' Fees	4.5	2,025.00
12-04-2019	J. Hostetler Draft and revise Opposition to Plaintiffs' Motion for Attorneys' Fees	6.6	2,970.00
12-05-2019	D. McElhinney Received and reviewed draft Opposition to Plaintiffs' Motion for Attorneys' Fees and made some changes. (1.3); Forwarded to Ann Hall for review and approval. (no charge)	1.3	695.50
12-05-2019	J. Hostetler Finalize revisions to Opposition to Plaintiffs' Motion for Fees	2.3	1,035.00
12-06-2019	J. Hostetler Review emails from D. McElhinney and A. Hall re funding reserves	0.1	45.00
12-09-2019	D. McElhinney Received an email from Jarrad Miller this morning regarding: (1) missing documents from our Barracuda System Production in September, and (2) Mare's access to the computers of 20 key employees. Sent the same on to Ben, Ann and Dean Benz for their review and response. (.40); Received and reviewed a response from Dean Benz and from Tara Popp. Forwarded Tara's email on to Jarrad Miller and Jon Tew asking if this satisfies his inquiry as to the Barracuda System production. (.50); Received a second email from Jarrad Miller regarding the reserve accounts and his unwillingness to wait until January for us to fully fund the reserves.	1.2	642.00

Albuquerque / Colorado Springs / Denver / Las Vegas / Los Angeles / Phoenix / Reno / Silicon Valley / Tucson

Lewis Roca
ROTHGERBER CHRISTIE

ACCOUNT NO.
 Invoice No.
 January 22, 2020

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 1341787
 Page 2

	Sent that on to Ben, Ann, Sean and Rachel. (.30); Received and reviewed the Receiver's November Report. Sent the same to client for their review. (.60)		
12-09-2019	J. Hostetler Review emails between D. McElhinney and J. Miller re funding the reserves and discovery production; review Receiver's November Report	0.3	135.00
12-09-2019	T. Smith Review Barracuda email archive production to confirm email attachments were produced and native documents were provided for all those with document placeholders, and advise D. McElhinney of same in preparation of response to opposing counsel's claims of not complying with the Court Order	0.4	94.00
12-10-2019	D. McElhinney Sent an email to Jarrad Miller and Jon Tew responding to their meet and confer yesterday about Mr. Mare being denied access to computers. Copied Ben and Ann on the same. (.30); T/C with Ben and Ann last night wherein Ben advised he was using best efforts to get the reserves funded in December 2019. (.20)	0.5	267.50
12-10-2019	J. Hostetler Review email from D. McElhinney to J. Miller re meet and confer on Mr. Mare's access	0.1	45.00
12-12-2019	D. McElhinney Completed the offer of judgment, after conducting some additional research into NRCF Rule 68. (1.30); Reviewed Stipulation and Order for Dismissal filed in the Cheah matter back in September 2019. (.30); Received and reviewed email from Miller and Tew regarding the claim we are denying Mares access to computers and their claimed right to access the computers of Alex Meruelo, Luis Armona, Ben Vega and Allen Stoller. (all are Meruelo employees. (.50); Conference call with Ben and Ann to discuss the above referenced topics. (.70)	2.8	1,498.00
12-12-2019	J. Hostetler Review emails from J. Miller re L. Mare's access to client computers and missing email attachments	0.2	90.00
12-13-2019	D. McElhinney Prepared an email response to Miller and Tew about the email they send me yesterday, with attachment, about a missing attachment in our Barracuda System production. (.50); Prepared a draft email to Miller and Tew regarding their renewed allegation that we are refusing to hand over computers to Mare. I sent the draft to Ann	1.0	535.00

Lewis Roca
ROTHGERBER CHRISTIE

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	for her review and approval. (.50);		
12-13-2019	J. Hostetler Review emails from D. McElhinney re meet and confer on computer access and document production	0.1	45.00
12-13-2019	T. Smith Review Barracuda email production to locate an email provided by opposing counsel that references an attachment; communicate with opposing counsel to explain that the email is a reply to an earlier string referencing an attachment, and locate the attachments referenced to confirm attachments were not withheld	0.8	188.00
12-16-2019	D. McElhinney Received and reviewed several emails from Sean Clarke, forwarding emails he had received from Teichner. (.20); Reviewed early rough draft of our Reply in support of our Motion to Withdraw from Rental Agreements (.80)	1.0	535.00
12-17-2019	D. McElhinney Reviewed Miller's latest draft of the Stipulated Protective Order. Sent it to Ben and Ann with my recommendations. Based upon Ann's suggestion I added some additional language into Paragraph 2 of the draft and sent it back to Miller and Tew for their approval. (.60); Worked on three proposed orders from the October 30th hearing. Reading the transcript of the hearing, trying to figure out just what the Court said and incorporating that into the three proposed orders. (4.5)	5.5	2,942.50
12-17-2019	J. Hostetler Review Order Denying Motion for Reconsideration on Motion to Amend/Alter Judgment	0.1	45.00
12-17-2019	D. Kotchka-Alanes Study briefing and October 30, 2019 transcript in preparation to draft reply in support of motion to terminate rental unit agreement	1.2	480.00
12-18-2019	D. McElhinney Continued detailed review and analysis of October 30th hearing transcript as I continue to work on proposed orders resulting from that hearing (2.8); Email exchange and phone call with Ben and Ann about our position with the Motion to Terminate Rental agreement (.30)	2.8	1,498.00
12-18-2019	J. Hostetler Review email from A. Hall re Motion to Terminate Rental Agreement	0.1	45.00

Lewis Roca
ROTHGERBER CHRISTIE

ACCOUNT NO.
 Invoice No.
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12-18-2019	D. Kotchka-Alanes Begin to draft reply in support of motion to terminate unit rental agreement	0.3	120.00
12-18-2019	D. Kotchka-Alanes Analyze October 30, 2019 transcript and correspond with D. McElhinney re: strategy for reply in support of motion to terminate rental unit agreement	0.6	240.00
12-19-2019	D. McElhinney Re-read our Motion to Terminate Unit Rental Agreement and Plaintiffs' Opposition and assisted in the preparation of an outline to assist in prep of the Reply. (2.50); Made some additional red line changes to the proposed Order re our Motion for Clarification. (.40)	2.9	1,551.50
12-19-2019	D. Kotchka-Alanes Continue to draft reply in support of motion to terminate rental unit agreement	1.6	640.00
12-19-2019	D. Kotchka-Alanes Research case law to use in reply in support of motion to terminate unit rental agreement	2.6	1,040.00
12-20-2019	D. McElhinney Reviewed the final draft Reply in Support of our Motion to Terminate Unit Rental Agreement, making some changes. (.70); Received recommended additions from Ben Vega and I incorporated those comments into a new draft of the Reply (.80)	1.5	802.50
12-20-2019	D. Kotchka-Alanes Study and correspond with D. McElhinney re: revisions to reply in support of motion to terminate unit rental agreement	0.4	160.00
12-20-2019	D. Kotchka-Alanes Continue to draft reply in support of motion to terminate rental unit agreement	2.3	920.00
12-21-2019	D. McElhinney Sent proposed order regarding our Motion for Clarification to Miller and Tew for their review and comment. (.20);	0.2	107.00
12-23-2019	J. Hostetler Review emails from J. Miller re not agreeing to changes in the draft protective order	0.1	45.00
12-23-2019	T. Smith Review correspondence from opposing counsel advising of corrupt	0.6	141.00

Lewis Roca
ROTHGERBER CHRISTIE

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	files within the production; communicate with e-Discovery team re errors and to request export of native files to determine validity of opposing counsel's claims		
12-24-2019	D. McElhinney Email exchanges with Miller regarding (1) Miller's claim that he will file a motion to compel if we do not make the 20 custodian's computers available to Mare and (2) the Protective Order. (.50); Got client approval to accept Miller's latest draft of the Protective Order, ran in final, signed and sent to Miller and Tew (.40)	0.9	481.50
12-24-2019	S. Bender Research potential issues with most recent production from discovery database and prepare report for Ms. T. Popp.	0.2	50.00
12-27-2019	J. Hostetler Review email from J. Miller re recent owner account statement	0.1	45.00
	TOTAL HOURS	52.4	
	TOTAL FEES		\$ 24,539.00

Lewis Roca
ROTHGERBER CHRISTIE

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TIMEKEEPER SUMMARY

<u>Timekeeper</u>	<u>Billed Per Hour</u>	<u>Hours Billed</u>	<u>Billed Amount</u>
D. McElhinney	535.00	21.6	11,556.00
J. Hostetler	450.00	19.8	8,910.00
S. Bender	250.00	0.2	50.00
D. Kotchka-Alanes	400.00	9.0	3,600.00
T. Smith	235.00	1.8	423.00
Total All Timekeepers		52.4	\$24,539.00

TOTAL FEES AND ADVANCES

\$24,539.00
(U.S. FUNDS)

DUE AND PAYABLE UPON RECEIPT

\$24,539.00

Lewis Roca
ROTHGERBER CHRISTIE

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 STATEMENT PAGE
 January 22, 2020

January 22, 2020

MEI-GSR Holdings LLC
 c/o Grand Sierra Resort
 2500 E. 2nd Street
 Reno, NV 89595
 astoller@meruelogroup.com
 cc: Ann.Hall@meruelogroup.com

Billing Attorney: D. Polsenberg

Account No. 301684-00001

MEI-GSR Holdings adv. Thomas

Invoice Number	Invoice Date	Fees	Advances	Total Invoice
1334973	11/25/19	72,770.00	626.86	73,396.86
Invoice Balance		72,770.00	626.86	73,396.86
1338604	12/20/19	15,393.50	621.00	16,014.50
Invoice Balance		15,393.50	621.00	16,014.50
1341787	01/22/20	24,539.00	0.00	24,539.00
Invoice Balance		24,539.00	0.00	24,539.00
BALANCE:		112,702.50	1,247.86	113,950.36
Cumulative Late Payment Charges				430.82
Current Balance Due				\$114,381.18 (U.S.FUNDS)

DUE AND PAYABLE UPON RECEIPT

Lewis Roca
ROTHGERBER CHRISTIE

ACCOUNT NO. 301684-00001
REMITTANCE PAGE
January 22, 2020

Lewis Roca
ROTHGERBER CHRISTIE

ACCOUNT NO. 301684-00001
 REMITTANCE PAGE
 January 22, 2020

January 22, 2020

Billing Attorney: D. Polsenberg

Account No. 301684-00001

MEI-GSR Holdings adv. Thomas

✓ 1334973	11/25/19	73,396.86
1338604	12/20/19	16,014.50
1341787	01/22/20	24,539.00
Cumulative Late Payment Charges		430.82

TOTAL BALANCE DUE \$114,381.18
 (U.S. FUNDS)

REMITTANCE COPY

* * Please return this Remittance page with your Payment. * *

DUE AND PAYABLE UPON RECEIPT

Remit Payments to:

Lewis Roca Rothgerber Christie LLP
 Accounting Department
 201 East Washington Street
 Suite 1200
 Phoenix, AZ 85004-2595

Wire/ACH Details:

Bank Name: Wells Fargo Bank, NA
 Bank Address: One Montgomery St., San Francisco, CA 94104
 Account Name: Lewis Roca Rothgerber Christie LLP
 Account #: 6334401020
 Routing #: 122105278 (For ACH)
 Routing #: 121000248 (For wires)
 Swift Code: WFBUS65

****Please reference account number or invoice number(s)****

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 MOTION FOR ATTORNEYS' FEES INCURRED FOR ORDER TO SHOW CAUSE TRIAL ("Motion for Fees re Contempt").¹ After consideration of the briefing, the Court grants, in part, this Motion for Fees re Contempt.

The basis for the award of these fees is statutory. NRS 22.100(3) provides as a penalty for contempt:

In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the

¹ The Court has reviewed the MOTION FOR ATTORNEYS' FEES INCURRED FOR ORDER TO SHOW CAUSE TRIAL filed August 16, 2023; OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEY'S FEES INCURRED FOR ORDER TO SHOW CAUSE TRIAL filed August 25, 2023; and the REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES INCURRED FOR ORDER TO SHOW CAUSE TRIAL filed on September 5, 2023.

1 party seeking to enforce the writ, order, rule or process the reasonable expenses, including,
2 without limitation, attorney's fees, incurred by the party as a result of the contempt.

3 At the conclusion of the contempt trial, the Court determined that not all of the fees incurred by
4 Plaintiffs at the contempt trial were appropriate to be awarded under the statute as Defendants were
5 not found in contempt related to all of the Orders to Show Cause which were the subject of the
6 contempt trial. As a result, the Court made an allocation to be followed in awarding fees at that
7 time.

8
9 The determination of 75% of the preparation and attendance time and 100% of the order time is
10 reasonable and appropriate given the observations made by the Court of the overlap among the
11 issues presented at the contempt trial.

12 While Plaintiffs seek to utilize a "lodestar analysis", the Court declines to award fees based upon that
13 analysis. This case is not of such complexity that such an award is appropriate. While significant
14 investigation and document review was required, this case primarily involves forensic accounting
15 case. While a Receivership is in place that is not an added layer of complexity as the Receiver's duties
16 relate in large part to the allegations made by Plaintiffs in this matter.

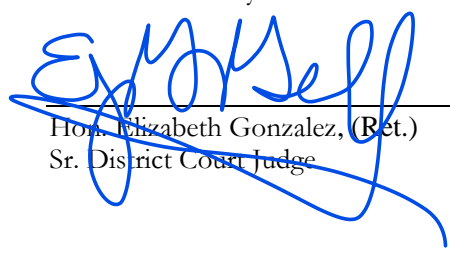
17
18 In evaluating the amount of fees, the Court analyzes the factors enumerated in Brunzell v. Golden
19 Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The factors to be considered in
20 determining whether the requested amount is appropriate to award to the prevailing party include:
21

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

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

1 The Court finds that the hourly rates identified in the redacted fee agreements are reasonable given
2 the nature of the litigation and experience of the various timekeepers. The hours that have been
3 identified in the Motion for Fees re Contempt are also reasonable especially given the nature of the
4 multiple Orders to Show Cause.² The Court finds that the procedural posture of the case and the
5 continuation of the contempt trial in this matter did multiply the work needed and does not militate
6 in favor of a reduction of the number of hours recorded by Plaintiffs' counsel. Mr. Eisenberg's
7 participation in the contempt trial was also appropriate given the procedural posture of this matter.
8 The work in this matter was performed and the result has been beneficial to the Plaintiffs.
9 After evaluating the *Brunzell* factors and considering all the evidence and arguments related to the
10 Motions for Fees, the Court, awards the total hours sought by the Plaintiffs at the hourly rate
11 contained in the redacted fee agreements³ less the "No Charge" amounts.
12 Plaintiffs counsel to submit an order for the fees as awarded for review by Defendants and, if no
13 objection, to the Court.
14
15
16
17

18 Dated this 3rd day October 2023.

19 
20 _____
21 Hon. Elizabeth Gonzalez, (Ret.)
22 Sr. District Court Judge
23

24 _____
25 ² The Court agrees with Defendants that it is appropriate to eliminate the 39 separate "No Charge" entries.

26 ³ These fees are:

27 Jarrad C. Miller, Esq.	\$315
Richard D. Williamson, Esq.	\$295
Briana N. Collings, Esq.	\$275
General Paralegal	\$135
28 Robert L. Eisenberg, Esq.	\$500

CERTIFICATE OF SERVICE

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

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



1 CODE: 2490
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2 Briana N. Collings, Esq. (NV Bar No. 14694)
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3 50 West Liberty Street, Suite 600
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4 Telephone: (775) 329-5600
Facsimile: (775) 348-8300
5 jarrad@nvlawyers.com
briana@nvlawyers.com

6 Robert L. Eisenberg, Esq. (NV Bar No. 0950)
7 Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
8 Reno, Nevada 89519
Telephone: (775) 786-6868
9 Facsimile: (775) 786-9716
rle@lge.net

10 Attorneys for Plaintiffs

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

13 ALBERT THOMAS, individually; *et al.*,
14
15 Plaintiffs,
16
17 vs.

Case No. CV12-02222
Dept. No. OJ41

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

23 Defendants.
24

25 **AMENDED ORDER**

26 Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents
27 and being fully informed rules on MOTION TO CERTIFY AMENDED FINAL JUDGMENT
28

1 AS FINAL PURSUANT TO NRCP 54(b) (“Motion to Certify”)¹. In an abundance of caution,
2 the Motion to Certify is granted. This Court expressly determines that there is no just reason for
3 delay. Accordingly, the Court expressly directs entry of final judgment pursuant to NRCP 54(b).

4 While it is clear that the claim for a Receiver has previously been adjudicated through the
5 Order Appointing Receiver and Directing Defendants’ Compliance filed January 7, 2015
6 (“Appointment Order”), the oversight of the Receivership and the Receivership Estate is a
7 continuing judicial responsibility. The Court has repeatedly stated that it retains jurisdiction over
8 the dissolution plan detailed in the December 5, 2022 order, and the wind up of the Receivership.
9 The December 5, 2022 order provides in pertinent part:

10 Therefore the Court issues the following Orders:

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

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

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

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

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

IT IS FURTHER ORDERED that the bond posted by Plaintiffs in
the amount of \$50,000, following the Court’s granting a

¹ The Court has reviewed the Motion to Certify Amended Final Judgment as Final Pursuant to NRCP 54(b) filed on May 26, 2023; Defendants’ Opposition to Plaintiff’s Motion to Certify Amended Final Judgment as Final pursuant to NRCP 54(b) (filed 5/26/23) filed on June 14, 2023 and Plaintiffs’ Reply in Support of Motion to Certify Amended Final Judgment as Final Pursuant to NRCP 54(b) filed June 23, 2023.

1 Temporary Restraining Order on March 11, 2022, remain in place
2 as adequate security for this Preliminary Injunction.

3 By choosing the process detailed under the December 5, 2022 preliminary injunction and
4 moving forward with the termination of the GSRUOA under that framework, the Defendants
5 have voluntarily elected to proceed with the process outlined in the December 5, 2022 order.

6 On February 6, 2023, the parties entered into a stipulation related to the termination and
7 agreed that the agreement to terminate was consistent with the January 26, 2023 order filed at
8 11:06 a.m. That order provides in pertinent part:

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

11 Based upon the February 6, 2023 stipulation, on February 7, 2023 the Court entered an
12 order approving the stipulation. In compliance with the February 7, 2023 order, the Receiver on
13 February 14, 2023 executed the agreement to terminate and now is the trustee over the property
14 interests previously held by the unit owners and GSRUOA pending approval of the sale.

15 As the Receiver's past due fees have now been paid, within 10 judicial days of this order,
16 the Receiver shall file a written status report related to the status of calculation of the actual
17 historical permissible expenses for Defendants to deduct from the revenue of the Parties units as
18 well as the amount of correct expenses to deduct from ongoing revenue.

19 The Receiver's calculations, payment by Plaintiffs of any shortfall, and return of any
20 excess expenses unilaterally deducted from the Plaintiffs' revenues by Defendants since the
21 appointment of the Receiver may affect one of the accepted valuation methods. Additionally
22 return of the reserve funds related to the recently completed contempt trial may affect another
23 valuation methodology.

24 It is the Court's intention to complete the true up of these calculations and accounts prior
25 to Plaintiffs submitting their appraisals for consideration by the Court as part of the dissolution
26 plan set forth in the December 5, 2022 order.

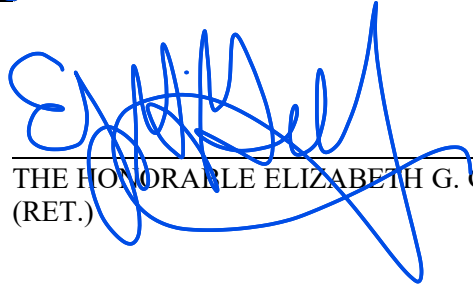
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28 //

1 IT IS SO ORDERED.

2 DATED this 28th day of November 2023.

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THE HONORABLE ELIZABETH G. GONZALEZ
(RET.)

Submitted by:

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

/s/ Briana N. Collings

Jarrad C. Miller, Esq. (NV Bar No. 7093)

Briana N. Collings, Esq. (NV Bar No. 14694)

Attorneys for Plaintiffs

CODE: 3105
Jarrad C. Miller, Esq. (NV Bar No. 7093)
Briana N. Collings, Esq. (NV Bar No. 14694)
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briana@nvlawyers.com

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Facsimile: (775) 786-9716
rle@lge.net

Attorneys for Plaintiffs

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

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ41

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

Defendants.

ORDER GRANTING IN PART PLAINTIFFS' FEES

Based upon the analysis set forth in the Court's Order filed October 3, 2023, the Court awards to Plaintiffs attorneys' fees in the amount of **\$100,942.13**, based on the below table for hours expended in preparing for and attending the trial:

<u>Attorney/Timekeeper</u>	<u>Awarded Rate</u>	<u>Awarded Hours</u>	<u>Total Awarded Fees</u>
Jarrad C. Miller, Esq.	\$315	258.7	\$81,490.50
Richard D. Williamson, Esq.	\$295	0.3	\$88.50
Briana N. Collings, Esq.	\$275	134.2	\$36,905.00
General Paralegal	\$135	1.3	\$175.50
Robert L. Eisenberg, Esq.	\$500	28.6	\$14,300
		Total:	\$132,959.50
	<u>Total Awarded (75%)</u>		<u>\$99,719.63</u>

And the following table for preparing the orders arising from the order to show cause trial:

<u>Attorney/Timekeeper</u>	<u>Awarded Rate</u>	<u>Awarded Hours</u>	<u>Total Awarded Fees</u>
Jarrad C. Miller, Esq.	\$315	1	\$315.00
Briana N. Collings, Esq.	\$275	3.3	\$907.50
	<u>Total Awarded (100%)</u>		<u>\$1,222.50</u>

Defendants shall pay such amount to Plaintiffs within 20 days of entry of this order.

IT IS SO ORDERED.

DATED this 4 day of January, 2024.


 THE HONORABLE ELIZABETH G. GONZALEZ
 (RET.)

Submitted by:

ROBERTSON, JOHNSON,
 MILLER & WILLIAMSON

/s/ Briana N. Collings

Jarrad C. Miller, Esq. (NV Bar No. 7093)
 Briana N. Collings, Esq. (NV Bar No. 14694)
 Attorneys for Plaintiffs