

EXHIBIT 3

EXHIBIT 3

1 2540
2 ROBERT A. DOTSON, ESQ.
3 Nevada State Bar No. 5285
4 rdotson@laxalt-nomura.com
5 ANGELA M. BADER, ESQ.
6 Nevada State Bar No. 5574
7 abader@laxalt-nomura.com
8 LAXALT & NOMURA, LTD.
9 9600 Gateway Drive
10 Reno, Nevada 89521
11 Tel: (775) 322-1170
12 Fax: (775) 322-1865
13 Attorneys for Plaintiff

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

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

16 GOLDEN ROAD MOTOR INN, INC., a Nevada
17 Corporation, d/b/a ATLANTIS CASINO
18 RESORT SPA

Case No.: CV12-01171

Dept No.: B7

19 Plaintiff,

20 vs.

21 SUMONA ISLAM, an individual; MEI-GSR
22 HOLDINGS LLC, a Nevada limited liability
23 company, d/b/a GRAND SIERRA RESORT;
24 ABC CORPORATIONS; XYZ
25 PARTNERSHIPS; AND JOHN DOES I through
26 X, inclusive.

27 Defendants.

28 **NOTICE OF ENTRY OF FINDINGS OF
FACT AND CONCLUSIONS OF LAW AND ORDER**

29 PLEASE TAKE NOTICE, that a Findings of Fact and Conclusions of Law and Order
30 was entered on August 26, 2013. A copy of said Findings of Fact and Conclusions of Law and
31 Order is attached hereto as Exhibit 1.

32 ///

33 ///

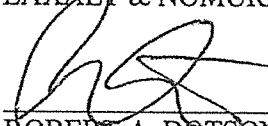
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Affirmation Pursuant to NRS 239B.030

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

Dated this 1 day of October, 2013.

LAXALT & NOMURA, LTD.



ROBERT A. DOTSON
Nevada State Bar No. 5285
ANGELA M. BADER
Nevada State Bar No. 5574
9600 Gateway Drive
Reno, Nevada 89521
(775) 322-1170
Attorneys for Plaintiff

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on this date, I caused to be served a true and correct copy of the
4 foregoing by:

- 5 ☒ (BY MAIL) on all parties in said action, by placing a true copy thereof enclosed
6 in a sealed envelope in a designated area for outgoing mail, addressed as set forth
7 below. At the Law Offices of Laxalt & Nomura, mail placed in that designated
8 area is given the correct amount of postage and is deposited that same date in the
9 ordinary course of business, in a United States mailbox in the City of Reno,
10 County of Washoe, Nevada.
11 ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-
12 Flex system, which will electronically mail the filing to the following individuals.
13 ☐ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand
14 delivered this date to the address(es) at the address(es) set forth below, where
15 indicated.
16 ☐ (BY FACSIMILE) on the parties in said action by causing a true copy thereof to
17 be telecopied to the number indicated after the address(es) noted below.
18 ☐ Reno/Carson Messenger Service.
19 ☒ By email to the email addresses below.

20 addressed as follows:

21 Steven B. Cohen, Esq.
22 Stan Johnson, Esq.
23 Terry Kinnally, Esq.
24 Cohen-Johnson, LLC
25 255 E. Warm Springs Rd, Ste 100
26 Las Vegas, NV 89119

Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, NV 89509

mwwray@markwraylaw.com

scohen@cohenjohnson.com
sjohnson@cohenjohnson.com
tkinnally@cohenjohnson.com

27 DATED this 1st day of October, 2013.

28 
L. MORGAN BOGUMIL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGES
1	Findings of Fact and Conclusions of Law and Order	17

EXHIBIT 1

FILED
Electronically
10-01-2013:02:40:57 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4034875

EXHIBIT 1

FILED

Electronically

08-26-2013:03:58:44 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3952084

1 ROBERT A. DOTSON, ESQ.

Nevada State Bar No. 5285

2 rdotson@laxalt-nomura.com

ANGELA M. BADER, ESQ.

3 Nevada State Bar No. 5574

abader@laxalt-nomura.com

4 LAXALT & NOMURA, LTD.

9600 Gateway Drive

5 Reno, Nevada 89521

6 Tel: (775) 322-1170

Fax: (775) 322-1865

7 Attorneys for Plaintiff

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

9 IN AND FOR THE COUNTY OF WASHOE

10 GOLDEN ROAD MOTOR INN, INC., a Nevada
11 Corporation, d/b/a ATLANTIS CASINO
12 RESORT SPA

Case No.: CV12-01171

Dept No.: B7

13 Plaintiff,

14 vs.

15 SUMONA ISLAM, an individual; MEI-GSR
16 HOLDINGS LLC, a Nevada limited liability
17 company, d/b/a GRAND SIERRA RESORT;
18 ABC CORPORATIONS; XYZ
19 PARTNERSHIPS; AND JOHN DOES I through
20 X, inclusive.

Defendants.

21 ~~PROPOSED~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

22 This matter came on for a non-jury trial on July 1, 2013 before the Court, Honorable
23 Patrick Flanagan, District Judge, presiding. The Court heard evidence for 9 days and the
24 arguments of counsel on the 10th day of trial. The Court, having carefully considered all of the
25 exhibits in evidence, the testimony of the witnesses, trial statements of the parties, and the
arguments of counsel, hereby issues the following Findings of Fact and Conclusions of Law:

26 ///

27 ///

28 ///

1 Findings of Fact

2 1. On or about April 15, 2008, ISLAM became an employee of the Golden Road
3 Motor Inn, Inc., dba Atlantis Casino Resort Spa ("ATLANTIS").

4 2. On April 15, 2008, ISLAM executed the ATLANTIS Online System User
5 Agreement ("Online System User Agreement"). Among other terms, the Online System User
6 Agreement prohibits unauthorized downloading or uploading of software and information.

7 3. On April 15, 2008, in conjunction with her employment with ATLANTIS,
8 ISLAM also executed an agreement with ATLANTIS concerning its Business Ethics Policy
9 and Code of Conduct Acknowledgement and Conflicts of Interest Statement. This agreement
10 ("Business Ethics Policy"), was again signed by ISLAM on January 23, 2009, February 26,
11 2010 and January 19, 2011. This policy in section 3.1 identifies confidential information as all
12 nonpublic information regarding the company's operation and business activities and those of
13 its customers and suppliers. Nonpublic means any information that is not officially disclosed
14 through means such a press releases or other forms of publication, where it is not common
15 knowledge. Section 4.4 prohibits the disclosure of inside information to persons outside the
16 company or other persons within the company who are not authorized to receive such
17 information. Pursuant to the terms of the Business Ethics Policy, ISLAM agreed not to disclose
18 confidential information including customer lists or customer information (such as player
19 tracking or club information) to any unauthorized persons, either during or after her
20 termination, and not to take any documents or records belonging to ATLANTIS after her
21 departure. She also agreed not to profit from confidential information of ATLANTIS.
22 ISLAM's agreement to the terms of this contract was a condition of her employment with
23 ATLANTIS.

24 4. On April 15, 2008, in conjunction with commencing her employment with
25 ATLANTIS, ISLAM executed the ATLANTIS Company Policy regarding Company Property,
26 Proprietary Information, and Trade Secrets (hereinafter referred to as "Trade Secret
27 Agreement"). This agreement, including any updates, was again signed by ISLAM on January
28 23, 2009, February 26, 2010 and January 19, 2011. This agreement provides that any improper

1 use or dissemination of ATLANTIS intellectual property is a breach of the policy and may be a
2 violation of state and federal trade secrets laws and also warns that such violation is punishable
3 both civilly and criminally.

4 5. ISLAM was hired to be an Executive Casino Host at ATLANTIS. When she
5 was hired, she was under a contractual obligation to her former employer, Harrah's, which
6 prohibited her from working in a same or similar position within six months after separation
7 from employment at Harrah's. In order to honor this obligation, ATLANTIS placed her in the
8 position of concierge manager. She worked in the hotel side of the operation of the
9 ATLANTIS and not in the gaming side of the operation until the expiration of the six month
10 restriction imposed by her agreement with Harrah's. Thereafter, she was transferred to the
11 gaming operation and began her employment as a host.

12 6. When ISLAM began to work as a host at ATLANTIS, she brought with her
13 what she claimed to be her personal book of trade. ISLAM has identified Exhibits 75 and 80
14 as her book of trade.

15 7. Steve Ringkob, indeed almost every witness, testified that there were certain
16 items that hosts were entitled to take with them from property to property and that a host's
17 book of trade is the host's property and "nothing is wrong with her taking this information
18 wherever she goes." However, he also testified that the player's gaming history and tracking at
19 the ATLANTIS would become proprietary information.

20 8. Although the term "casino host book of trade" has been defined variously, it has
21 generally been defined as those names and contact information of guests with whom the host
22 has developed relationships through their own efforts. Ringkob defined it as those guests with
23 whom the host has developed a relationship and it was not information coming from the casino.

24 9. The evidence is clear that ISLAM intentionally downloaded, by hand copying
25 from the ATLANTIS computer screen, players' names, contact information, level of play,
26 game preferences and other proprietary information from the ATLANTIS Casino's, casino
27 management system, Patron Management Program.

28

1 10. On February 26, 2010, ISLAM signed a Non-Compete/Non-Solicitation
2 Agreement with ATLANTIS ("Non-Compete Agreement"). Pursuant to the terms of the Non-
3 Compete Agreement, ISLAM agreed that she would not, without the prior written consent of
4 ATLANTIS, be employed by, in any way affiliated with, or provide services to any gaming
5 operation located within 150 miles of ATLANTIS for a cooling off period of one year after the
6 date that the employment relationship between she and the ATLANTIS ended.

7 11. During ISLAM'S employment at ATLANTIS, she had access to and worked
8 with highly sensitive trade secrets and proprietary and confidential information of the
9 ATLANTIS. This information included customer and guest lists, customer information and
10 data including player contact information, tracking and club information, guest preferences and
11 gaming tendencies of the guests. This information included not just the information for guests
12 assigned to her, but also information for guests assigned to other hosts.

13 12. Before and during ISLAM'S employment, ATLANTIS undertook significant
14 precautions to maintain the secrecy of its confidential information. These efforts included
15 disabling USB ports in the computers at ATLANTIS, not providing or allowing printers, and
16 monitoring all emails that are sent to recipients off property.

17 13. Despite the precautions taken to protect ATLANTIS' confidential trade secret
18 information, during her employment at ATLANTIS ISLAM copied guest information by hand
19 from the screen of the ATLANTIS computer onto spiral note pads. Ms. ISLAM, in her
20 handwritten notes in spiral notebooks, which she identified as hers, copied players' names,
21 contact information and also the designation of whether or not they played table games or slots.
22 The information copied had the notation of the guests' marker information, for purposes of
23 knowing what their credit limit was. Some notations included information regarding previous
24 gaming results and losses incurred by that player. This is information Ms. ISLAM testified that
25 she wrote down from the ATLANTIS computer. A copy of some of those spirals is found in
26 Exhibit 80.

27 14. Ms. ISLAM testified that in the fall of 2011, she was becoming dissatisfied with
28 her employment at the ATLANTIS. She testified that she had not been given a raise, that she

1 had only been given one bonus and not the quarterly bonuses that she states were promised to
2 her, she felt isolated in her interpersonal relationships with other employees at the ATLANTIS
3 and she had come to a point in her career where she believed that if she was ever going to make
4 more money, she would have to seek employment elsewhere.

5 15. The evidence is that on or around October, Ms. ISLAM learned from Ms.
6 Antonetti that the Grand Sierra Resort ("GSR") was hiring new employees. Through an online
7 application, ISLAM applied for and interviewed with the GSR to obtain a position as a host.

8 16. At about that time, Ms. ISLAM asked Mr. DeCarlo for a copy of her Non-
9 Compete Agreement with the ATLANTIS.

10 17. Sometime in December and January, two interviews took place. The first was
11 with Ms. Hadley, at the GSR. Ms. Hadley testified that she was impressed with Ms. ISLAM.
12 She testified she did not ask for ISLAM's book of business at that time.

13 18. A second interview was arranged between ISLAM and Hadley and Flaherty of
14 the GSR. At that time, a more in-depth discussion took place relative to Ms. ISLAM's book of
15 business. Mr. Flaherty testified and it's confirmed by the transcript of a subsequent interview
16 that he told Ms. ISLAM not to bring anything from the ATLANTIS to the GSR, to bring
17 nothing, but herself and her relationships.

18 19. During the course of the interview process, ISLAM and representatives of GSR
19 discussed the fact that ISLAM was subject to an agreement restricting her employment with a
20 competitor of ATLANTIS and ISLAM provided GSR with a copy of the Non-Compete
21 Agreement. This conduct is consistent with ISLAM's testimony of her behavior when applying
22 for the position with the ATLANTIS. She testified that she provided a copy of the Harrah's
23 Non-Compete to the ATLANTIS prior to their offering of employment to her.

24 20. The testimony is that GSR then passed the ATLANTIS Non-Compete
25 Agreement to its legal counsel. Legal counsel apparently reviewed that and gave the green
26 light to hire Ms. ISLAM.

1 21. Ms. ISLAM was concerned that ATLANTIS would initiate litigation against her
2 and sought assurances that GSR would provide legal representation to her should there be
3 litigation over the Non-Compete. GSR agreed.

4 22. ISLAM terminated her employment as an Executive Casino Host with the
5 ATLANTIS on January 19, 2012 and accepted an offer with GSR as an Executive Casino Host
6 on the same day.

7 23. ISLAM began work at GSR at the end of January, 2012.

8 24. The ATLANTIS alleges that soon after ISLAM terminated her employment,
9 ATLANTIS employees discovered that ISLAM had falsely modified, destroyed, falsely
10 changed and/or sabotaged confidential, proprietary, trade secret information of ATLANTIS,
11 including customer data belonging to the ATLANTIS on its online system to her benefit and
12 the benefit of GSR and to the detriment of ATLANTIS.

13 25. The evidence adduced in this matter by Ms. ISLAM herself and other witnesses
14 of the Plaintiff is that Ms. ISLAM did change the addresses, telephone number and/or the email
15 addresses of guests that had been coded to her in the ATLANTIS' casino customer or guest
16 database.

17 26. The evidence shows that shortly after Ms. ISLAM left the employ of the
18 ATLANTIS, the guests who had been assigned to her at the ATLANTIS were distributed
19 amongst the remaining ATLANTIS hosts who attempted to contact those guests to maintain
20 and establish a continued relationship with the ATLANTIS. Shortly thereafter, those hosts
21 reported difficulty, indeed inability to contact the guests. It quickly became apparent that the
22 contact information had been sabotaged. ATLANTIS staff testified that they restored old
23 copies of the Patron Management data to a location in the computer system where the auditors
24 could access the information and the information was restored to the Patron Management
25 Program, the guest marketing database, in a relatively short period of time.

26 27. Additionally, the evidence showed that none of the information was changed in
27 the LMS database, which is the database known as the Lodging Management System that
28 controls the hotel operations.

1 28. ISLAM testified that she did not show either Ms. Hadley or Mr. Flaherty the
2 spiral notebooks which contained the information she had wrongfully taken from the
3 ATLANTIS' database. Nevertheless, after her employment by the GSR began, Ms. ISLAM
4 began to input that information, the information taken from the ATLANTIS and contained on
5 the spiral notebooks, into the GSR database.

6 29. The testimony from the GSR representatives is that the database fields accessed
7 and completed by ISLAM are limited. They restrict the information that a host could input to
8 name, address, telephone number and contact information. There are no fields for a host to
9 themselves input information regarding a player's gaming history, level of play or preference of
10 game.

11 30. Both Ms. Hadley and Mr. Flaherty testified they never saw the spiral notebooks
12 containing the information ISLAM had wrongfully taken from the ATLANTIS' database.

13 31. After the database sabotage was discovered by the ATLANTIS, ATLANTIS'
14 general counsel, Debra Robinson, wrote a letter to GSR advising them that Ms. ISLAM was
15 subject to a Non-Compete, Non-Disclosure Agreement and that she may have confidential
16 information and ATLANTIS demanded the GSR cease and desist from the use of that
17 information and return it forthwith.

18 32. In response to the cease and desist letter from ATLANTIS to the GSR and Ms.
19 ISLAM relating to the ATLANTIS' concerns about ISLAM's employment, the counsel for the
20 GSR sent a letter rejecting the assertions of the ATLANTIS and essentially maintaining that
21 there was nothing confidential or proprietary that had been acquired by GSR and that all
22 information provided by Ms. ISLAM came from her own personal relationships and her book
23 of business.

24 33. The ATLANTIS reasonably initiated litigation.

25 34. On April 27, 2012, ATLANTIS filed its Complaint for relief with seven causes
26 of action.

27 35. On May 9, 2012, this Court, through its sister Department, entered a Temporary
28 Restraining Order barring Ms. ISLAM from any employment with GSR. That Order was

1 extended by Order of this Court dated July 5, 2012 which also applied to GSR. Thereafter, the
2 parties stipulated to a Preliminary Injunction ending this case pending the case's resolution.

3 36. To the extent appropriate and to give intent to this order, any finding of fact
4 should be found to be a conclusion of law. Similarly, to the extent appropriate any conclusion
5 of law shall be deemed a finding of fact.

6 CONCLUSIONS OF LAW

7 Breach of Contract – Online Systems User Agreement, Business Ethics Policy, Trade 8 Secrets Agreement as to ISLAM

9
10 1. The elements for establishing a breach of contract claim are: (1) A valid and
11 existing contract was entered into between Plaintiff and Defendant; (2) Plaintiff performed or
12 was excused from performance of the contract; (3) Defendant breached; and (4) Plaintiff
13 sustained damages as a result of the breach. *Reichert vs. General Insurance Co. of Amer.*, 68
14 Cal. 2d 822, 69 Cal. Rptr. 321, 442 P.2d 377 (1968); *Marwan Ahmed Harara vs. Conoco*
15 *Phillips Co.*, 375 F. Supp. 2d 905, 906 (9th Cir. 2005).

16 2. In order to succeed on a breach of contract claim in Nevada, a plaintiff must
17 show "(1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a
18 result of the breach." *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-920 (D. Nev. 2006),
19 citing *Richardson v. Jones*, 1 Nev. 405, 405 (1865).

20 3. In its first cause of action the Plaintiff alleges the violation of three contracts.
21 These are the Online User Agreement, the Business Ethics Policy, and the Trade Secrets
22 Agreement. These agreements were signed by Defendant ISLAM and a representative of
23 Plaintiff, ATLANTIS. This Court finds that these are valid contracts. The Court further finds
24 that the Defendant ISLAM breached these contracts.

25 4. Based upon the fact that ISLAM downloaded players' names, contact
26 information, level of play, game preferences and other proprietary information from the
27 ATLANTIS Casino's, casino management system, Patron Management Program, the Court
28 finds that she has breached these contracts and that the ATLANTIS has suffered damages as a

1 result of the breach. Consequently, the Court finds in favor of the Plaintiff and against
2 Defendant Sumona ISLAM on the first cause of action.

3 5. The Court finds that damages should be awarded in favor of ATLANTIS and
4 against ISLAM on this claim. These are made up of compensatory damages of \$10,941 plus an
5 additional \$2,119 to repair the database, totaling \$13,060.

6 **Breach of Contract—Non-Compete Agreement as to ISLAM**

7 6. The Non-compete/Non-solicitation Agreement was signed by ISLAM and a
8 representative of ATLANTIS in 2010. The law presumes that all parties have the freedom to
9 contract and establish the terms of employment between themselves. However, restrictive
10 covenants are not favored in the law. The determination of the validity of such a contract as
11 written is governed by whether or not it imposes upon the employee any greater restraint than
12 is reasonably necessary to protect the business and the goodwill of the employer.

13 7. A restraint of trade is unreasonable if it is greater than that required to protect
14 the person for whose benefit the restraint is imposed or imposes an undue hardship on the
15 person restricted. *Hansen v. Edwards*, 83 Nev. 189, 426 P.2d 792 (1967). *See also, Jones v.*
16 *Deeter*, 112 Nev. 291, 294, 913 P.2d 1272, 1274 (1996).

17 8. The public has an interest in seeing that competition is not unreasonably limited
18 or restricted.

19 9. In the instant matter, this Court finds that the term restricting employment for a
20 period of one year is reasonable and necessary to protect the interests of the ATLANTIS.

21 10. This Court finds that the term restricting employment within 150 miles from
22 ATLANTIS is reasonable. It encompasses the markets of Sacramento and the evidence
23 supports the threat that Thunder Valley and indeed other Northern California casinos pose to
24 the casinos of Northern Nevada.

25 11. The Court finds, however, that the total exclusion from employment with a
26 competitor is unreasonable. This Court finds that excluding the employment of an individual
27 such as Ms. ISLAM, who has attempted to create a career in this industry from any role in any
28 casino in any capacity is an unreasonable restraint on her and it imposes an undue hardship on

1 Ms. ISLAM and it is a restraint that is greater than that required for the protection of the person
2 for whose benefit the restraint is imposed, the ATLANTIS. Therefore, the Court finds the
3 Non-Competition contract unenforceable and dismisses the second cause of action related to
4 breach of that contract.

5 **Conversion of Property as to ISLAM**

6 12. The elements of conversion are that a defendant exercises an act of dominion
7 wrongfully exerted over the personal property of another in denial of or inconsistent with title
8 rights therein, or in derogation, exclusion or defiance of such rights. *M.C. Multi Family*
9 *Development, L.L.C. v. Crestdale Associates Ltd.*, 124 Nev. 901, 910, 196 P.3d 536 (2008)
10 *citing Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000).

11 13. The caselaw here states that conversion generally is limited to those severe,
12 major and important interferences with the right to control personal property that justified
13 requiring the actor to pay the property's full value. Courts have noted that this remedy in
14 general is harsh and is reserved for the most severe interferences with personal property.

15 14. The Court finds that the evidence adduced shows that the interference with the
16 property of the ATLANTIS was not severe, that the information, although altered, was not lost
17 and was easily restored. One measure of that is the fact that the damages sought for the
18 restoration expense is de minimus in light of the value of not only Ms. ISLAM's book of trade,
19 which she estimated at \$3.5 to \$4 million, but the operation of the ATLANTIS itself.
20 Therefore, this Court finds that the Plaintiff has failed to establish the elements of conversion
21 and the third cause of action is therefore dismissed.

22 **Tortious Interference with Contractual Relations and Prospective Economic Advantage as**
23 **to ISLAM**

24 15. To establish intentional interference with contractual relations, ATLANTIS
25 must show: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3)
26 intentional acts intended or designed to disrupt the contractual relationship; (4) actual
27
28

1 disruption of the contract; and (5) resulting damage. *Sutherland v. Gross*, 105 Nev. 192, 772
2 P.2d 1287, 1290 (1989).

3 16. The elements of the tort of wrongful interference with a prospective economic
4 advantage are: (1) a prospective contractual relationship between the plaintiff and a third
5 party; (2) the defendant's knowledge of this prospective relationship; (3) the intent to harm the
6 plaintiff by preventing the relationship; (4) the absence of a privilege or justification by the
7 defendant; and, (5) actual harm to the plaintiff as a result of the defendant's conduct. *Leavitt v.*
8 *Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987); *Las Vegas-Tonopah-Reno*
9 *Stage v. Gray Line*, 106 Nev. 283, 792 P.2d 386, 388 (1990).

10 17. Based upon the Nevada Supreme Court's decision in *Frantz v. Johnson*, 116
11 Nev. 455, 999 P.2d 351(2000), this Court is directed to look to the specific evidence adduced at
12 trial to determine whether or not the acts of a defendant are more appropriately adjudicated
13 under the Uniform Trade Secrets Act than under a claim for tortious interference with contract
14 or prospective economic advantage. In an examination of the facts here, this Court has
15 determined that the facts adduced in this trial make it more appropriate that the claim against
16 Sumona ISLAM be adjudicated under the Uniform Trade Secrets Act.

17 **Violation of Uniform Trade Secret Act, NRS 600A.010 et. seq. as to ISLAM and GSR**

18 18. To establish a misappropriation claim under NRS § 600A.010 et. seq., the
19 plaintiff must show: (1) a valuable trade secret; (2) misappropriation¹ of the trade secret
20

21 ¹ "Misappropriation" per NRS 600A.030(2) means:

- 22 (a) Acquisition of the trade secret of another by a person by improper means;
23 (b) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was
acquired by improper means; or
24 (c) Disclosure or use of a trade secret of another without express or implied consent by a person who:
25 (1) Used improper means to acquire knowledge of the trade secret;
26 (2) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade
secret was:
(I) Derived from or through a person who had used improper means to acquire it;
27 (II) Acquired under circumstances giving rise to a duty to maintain its secrecy or limits its
use; or
(III) Derived from or through a person who owed a duty to the person seeking relief to
28 (3) Before a material change of his or her position, knew or had reason to know that it was a trade secret
and that knowledge of it had been acquired by accident or mistake.

1 through use, disclosure, or nondisclosure of the use of the trade secret; and (3) the requirement
2 that the misappropriation be wrongful because it was made in breach of an express or implied
3 contract or by a party with a duty not to disclose. *Frantz v. Johnson*, 116 Nev. 455, 466, 999
4 P.2d 351, 358 (2000).

5 19. A trade secret is information that derives independent economic value, actual or
6 potential, from not being generally known to and not being readily ascertainable by proper
7 means by the public, as well as information that is subject to efforts that are reasonable under
8 the circumstances to maintain its secrecy. NRS 600A.040.

9 20. The determination of what is a trade secret is a question of fact for the trier of
10 fact. *Frantz*, 116 Nev. at 466, 999 P.2d at 358. The caselaw indicates that contractual
11 restrictions alone or designations alone do not control whether or not a particular design,
12 compilation, or mechanism is a trade secret. To determine whether or not an item is a trade
13 secret, the Court considers these factors. First, the extent to which the information is known
14 outside the business and the ease or difficulty with which the information could be properly
15 acquired by others. Second, whether the information was confidential or secret. Third, the
16 extent and manner in which the employer guarded the secrecy of the information. Fourth, the
17 former employee's knowledge of the customer's buying habits and other customer data and
18 whether this information is known by the employer's competitors.

19 21. There was a consensus amongst all the witnesses that in the case of a customer
20 with whom a host has established a relationship, that customer's name, address, contact
21 information is not a trade secret. All of the witnesses here have identified certain items that
22 they consider trade secrets in the gaming industry and these are well-qualified witnesses who
23 have spent decades in this industry. Those items have been identified as, (1) player tracking
24 records; (2) other hosts' customers; (3) initial buy-ins; (4) level of play; (5) whether the player
25 plays table games or slots; (6) time of play; (7) customers' personal information that is personal
26 to them, such as a Social Security number; (8) customers' casino credit; (9) customer's location,
27 whether they are an international, regional or local player; (10) marketing strategy; (11)
28 customers' birth date, which one witness testified was critical for credit accounts; (12) tier

1 levels, which is different than player ratings, they are more specific in terms of measurement;
2 (13) comp information for the player; (14) players' history of play; (15) players' demographics;
3 (16) players' financial information; (17) the company's financial information; (18) the
4 company's marketing strategy; (19) other employees' information and customer information.
5 The Court does not by this list deem this list to be exclusive. There may be other instances and
6 other items that are properly designated as trade secrets, however, this was the evidence
7 adduced in this trial.

8 22. This Court finds that this information is not known outside of the business of the
9 ATLANTIS. Indeed, the previous 19 items are not easy to learn, in fact, it is difficult to
10 acquire this information properly.

11 23. This Court further finds that there is no question that this information was
12 confidential within the ATLANTIS and that has been demonstrated amply by the extent and
13 manner in which the ATLANTIS took steps to guard the secrecy of this information.
14 Specifically, Mr. Woods testified that there were no printers and that the USB ports on the
15 computers were restricted, that the hosts had no ability to print or download guest lists. He
16 further explained that security access was determined by the job designation. There was
17 testimony that the passwords for this access were changed frequently and therefore it has been
18 established beyond any reasonable doubt that the ATLANTIS considered all of this
19 information a trade secret and this Court does so find.

20 24. This Court finds that the information written down in the spiral notebooks
21 which Ms. ISLAM identified as hers was taken from the ATLANTIS' computer and is not
22 information open to the public.

23 25. This Court finds that Ms. ISLAM has violated not only the terms and conditions
24 of her contract, but also has committed a violation of the Uniform Trade Secrets Act.

25 26. This Court finds that Damages are appropriately awarded against ISLAM for
26 violation of the Uniform Trade Secrets Act and awards damages totaling \$10,814.

27 ///

28 ///

1 **Declaratory Relief**

2 27. The sixth cause of action filed by the Plaintiff is a request for declaratory relief.
3 The Courts grants and denies this claim as follows.

4 28. This Court finds that the Online System User Agreement is a valid contract.
5 This Court finds that the Business Ethics Policy and Code of Conduct Agreement is a valid
6 contract. This Court finds that the Trade Secrets Agreement is a valid contract. This Court
7 finds that the Non-compete Agreement is overbroad and unenforceable. This Court also finds
8 that those contracts have been breached.

9 29. This Court finds that the Defendant has violated the Uniform Trade Secrets Act
10 and that the Plaintiff has suffered damages.

11 **Proof of Damages**

12 30. There are two distinct damage models proffered in this case. One is based on
13 theoretical win based upon a customer lifetime value analysis proffered by the Plaintiff. The
14 other is a damage analysis based on actual win - loss proffered by the Defendants in this case.

15 31. This Court has examined all of the exhibits in support of both models. This
16 Court has listened to the testimony of Brandon McNeely, who testified on behalf of the
17 Plaintiff in support of a valuation based upon theoretical wins. This Court finds that the
18 customer lifetime value analysis is a solid one and is supported by scholarly research and
19 empirical data.

20 32. This Court has also considered Mr. Aguero's testimony and reviewed his expert
21 report, which is Exhibit 32. The Court has also reviewed Brandon McNeely's reports and the
22 Exhibits included within Exhibit 59, A, B, C, D and E.

23 33. The Court has also considered the testimony of Mr. Frank DeCarlo when he
24 testified about the mitigation marketing costs, and Lilia Santos, who testified to the loss of
25 guests of the ATLANTIS to the GSR.

26 34. Having considered both models, this Court feels the more appropriate model in
27 this particular case is the actual win-loss model. That model is based upon the data provided by
28

1 both parties, the hard data and an analysis that is well reasoned and supported not only by the
2 evidence, but scholarly review.

3 35. Therefore, the compensatory damages as to Defendant ISLAM, as previously
4 described will be on the first count for breach of contract, \$10,941 plus an additional \$2,119.
5 As to the violation of the Uniform Trade Secret Act, judgment will be in favor of Plaintiff,
6 against Defendant ISLAM in the amount of \$10,814.

7 **Punitive Damages**

8 36. The Plaintiff has requested punitive damages be awarded in this case and this
9 Court finds that punitive damages are warranted here.

10 37. Ms. ISLAM testified that her actions were malicious, as they were intended to
11 hurt the ATLANTIS. Despite whatever reason she may have felt justified her actions, her
12 actions were unjustified, they were willful, they were malicious, and they were intentional.

13 38. Punitive damages have a two-pronged effect. One is to punish the transgressor
14 and the other is to serve as an example to deter others similarly situated from engaging in the
15 same conduct. Therefore, there are several factors to be taken into consideration, including the
16 willfulness of the conduct, the public interest that is at stake, and not the least of which is the
17 Defendant's financial condition. Ms. ISLAM testified that she makes \$80,000 per year. This
18 Court is assessing significant compensatory damages against her. However, the Court feels
19 that a significant punitive damage is necessary in order to deter others from violating those
20 contracts between the ATLANTIS and its employees. This Court therefore has determined that
21 a punitive damage award of \$20,000, representing one quarter of her annual salary, is an
22 appropriate punishment to Ms. ISLAM.

23 **Attorney Fee Award**

24 39. The Uniform Trade Secrets Act also provides for the award of Attorney's fees in
25 the case of willful and malicious misappropriation.

26 40. Having found in favor of the Plaintiff as the prevailing party against the
27 Defendant ISLAM, under the circumstances of this case, this Court will award attorney's fees
28

1 and litigation costs. Those fees will be awarded after appropriate affidavit of fees and the
2 memorandum of costs are timely submitted.

3 **Injunctive Relief**

4 41. This Court further finds that this is an appropriate matter in which to impose a
5 Permanent Injunction, pursuant to NRS 600A.040, prohibiting ISLAM from any further use of
6 the trade secret information at issue until such time as the information becomes ascertainable
7 by proper means by the public or is otherwise no longer a Trade Secret as defined by NRS
8 600A.030(5). In this regard, ISLAM is Ordered to destroy any and all customer lists obtained
9 from or originating from ATLANTIS, including specifically the spiral notebooks, copies of
10 which have been marked at trial as Exhibits 6, 80 and 81. Further, ISLAM is Ordered to purge
11 from any electronic record or physical records, any and all information (including any
12 information not previously produced by her in the litigation which is subsequently located)
13 which has been identified in this decision as a trade secret, originating from the ATLANTIS.

14 **CONCLUSION**

15
16 42. Judgment in favor of ATLANTIS against Defendant ISLAM.

17 DATED AND DONE this 26 day of August, 2013.

18 
19 DISTRICT JUDGE

20 Respectfully submitted,

21 LAXALT & NOMURA, LTD
22

23 By:

24 ROBERT A. DOTSON (NSB # 5285)
25 ANGELA M. BADER, ESQ. (NSB #5574)
26 9600 Gateway Dr.
27 Reno, NV 89521
28 T: (775) 322-1170
F: (775) 322-1865

1 2540
2 ROBERT A. DOTSON, ESQ.
3 Nevada State Bar No. 5285
4 rdotson@laxalt-nomura.com
5 ANGELA M. BADER, ESQ.
6 Nevada State Bar No. 5574
7 abader@laxalt-nomura.com
8 LAXALT & NOMURA, LTD.
9 9600 Gateway Drive
10 Reno, Nevada 89521
11 Tel: (775) 322-1170
12 Fax: (775) 322-1865
13 Attorneys for Plaintiff

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

10 IN AND FOR THE COUNTY OF WASHOE

11 GOLDEN ROAD MOTOR INN, INC., a Nevada
12 Corporation, d/b/a ATLANTIS CASINO
13 RESORT SPA

Case No.: CV12-01171

Dept No.: B7

14 Plaintiff,

15 vs.

16 SUMONA ISLAM, an individual; MEI-GSR
17 HOLDINGS LLC, a Nevada limited liability
18 company, d/b/a GRAND SIERRA RESORT;
19 ABC CORPORATIONS; XYZ
20 PARTNERSHIPS; AND JOHN DOES I through
21 X, inclusive.

22 Defendants.

23 NOTICE OF ENTRY OF FINDINGS OF
24 FACT AND CONCLUSIONS OF LAW AND JUDGMENT

25 PLEASE TAKE NOTICE, that a Findings of Fact and Conclusions of Law and Judgment
26 was entered on September 27, 2013. A copy of said Findings of Fact and Conclusions of Law
27 and Judgment is attached hereto as Exhibit 1.
28

///

///

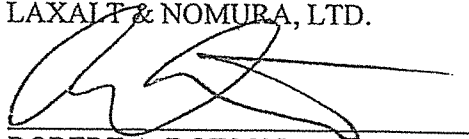
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Affirmation Pursuant to NRS 239B.030

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

Dated this 1 day of October, 2013.

LAXALT & NOMURA, LTD.



ROBERT A. DOTSON
Nevada State Bar No. 5285
ANGELA M. BADER
Nevada State Bar No. 5574
9600 Gateway Drive
Reno, Nevada 89521
(775) 322-1170
Attorneys for Plaintiff

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCp 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on this date, I caused to be served a true and correct copy of the
4 foregoing by:

- 5 ☒ (BY MAIL) on all parties in said action, by placing a true copy thereof enclosed
6 in a sealed envelope in a designated area for outgoing mail, addressed as set forth
7 below. At the Law Offices of Laxalt & Nomura, mail placed in that designated
8 area is given the correct amount of postage and is deposited that same date in the
9 ordinary course of business, in a United States mailbox in the City of Reno,
10 County of Washoe, Nevada.
11 ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-
12 Flex system, which will electronically mail the filing to the following individuals.
13 ☐ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand
14 delivered this date to the address(es) at the address(es) set forth below, where
15 indicated.
16 ☐ (BY FACSIMILE) on the parties in said action by causing a true copy thereof to
17 be telecopied to the number indicated after the address(es) noted below.
18 ☐ Reno/Carson Messenger Service.
19 ☒ By email to the email addresses below.

16 addressed as follows:

17 Steven B. Cohen, Esq.
18 Stan Johnson, Esq.
19 Terry Kinnally, Esq.
20 Cohen-Johnson, LLC
21 255 E. Warm Springs Rd, Ste 100
22 Las Vegas, NV 89119

Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, NV 89509

mwray@markwraylaw.com

scohen@cohenjohnson.com
sjohnson@cohenjohnson.com
tkinnally@cohenjohnson.com

23 DATED this 1st day of October, 2013.

24 
25 L. MORGAN BOGUMIL
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGES
1	Findings of Fact and Conclusions of Law and Judgment	8

FILED

Electronically

10-01-2013:02:42:03 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 4034881

EXHIBIT 1

EXHIBIT 1

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

1 COHEN-JOHNSON, LLC
2 H. STAN JOHNSON
3 Nevada Bar No. 00265
4 sjohnson@cohenjohnson.com
5 BRIAN A. MORRIS, ESQ.
6 Nevada Bar No. 11217
7 bam@cohenjohnson.com
8 255 E. Warm Springs Road, Suite 100
9 Las Vegas, Nevada 89119
10 Telephone: (702) 823-3500
11 Facsimile: (702) 823-3400
12 Attorneys for Grand Sierra Resort

FILED
Electronically
09-27-2013:03:42:55 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4028835

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

15 GOLDEN ROAD MOTOR INN, INC., a Nevada
16 Corporation, d/b/a ATLANTIS CASINO
17 RESORT SPA,

18 Plaintiff,

19 vs.

20 SUMONA ISLAM, an individual; MEI-GSR
21 HOLDINGS LLC d/b/a GRAND SIERRA
22 RESORT; et.al.

23 Defendants.

Case No.: CV12-01171
Dept. No.: B7

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
JUDGMENT**

24 This matter came on for a non-jury trial on July 1, 2013 before the Honorable Patrick
25 Flanagan, District Judge, presiding. The Court having heard the testimony of witnesses, reviewed
26 the exhibits submitted into evidence and having heard the argument of Counsel finds in favor of
27 the Defendant MEI-GSR HOLDINGS, LLC, d/b/a GRAND SIERRA RESORT on all causes of
28 action alleged against it and awards Defendant MEI-GSR HOLDINGS LLC d/b/a GRAND
SIERRA RESORT attorneys' fees pursuant to NRS 600A.060 and costs pursuant to NRS 18.110
and further makes the following findings of fact and conclusions of law

FINDINGS OF FACTS:

1. That in 2005 Sumona Islam became a casino host for Harrah's Casino in Reno.
2. That during the course of her employment with Harrah's she developed a list of players with information concerning those players commonly known as her "book of trade"
3. In April 2008 Sumona Islam left Harrah's and became employed by Plaintiff

1 Golden Road Motor Inn as a host at the Atlantis Casino.

2 4. At the time of her employment at Atlantis, Sumona provided a copy of her "book
3 of trade" to Atlantis which was incorporated into the Atlantis data base. During her employment
4 with Atlantis, she obtained additional players whom she included in her "book of trade".

5 5. In January 2011 Sumona Islam entered into a non-competition agreement with the
6 Atlantis which provided that she could not be employed by any casino in any capacity within 150
7 mile radius for one year from her termination of employment with Atlantis.

8 6. In January 2012 she applied for a position as an executive casino host with GSR,
9 a hotel casino in Reno owned by Defendant MEI-GSR HOLDINGS INC.

10 7. She informed GSR of her non-competition agreement with Atlantis and provided
11 a copy of that document to GSR. GSR sent the document to its counsel for review and received
12 an opinion that the agreement was unenforceable as written.

13 8. At the time of her hiring GSR through its agents told Sumona Islam not to bring
14 any information from Atlantis, except for herself and her relations.

15 9. Although Ms. Islam was in possession of spiral notebooks in which she had
16 copied information from the Atlantis' data base, she did not give or show those notebooks to
17 anyone at GSR.

18 10. Upon her hiring in January 2012, Sumona entered certain information from her
19 "book of trade" into the GSR database. This consisted of approximately 200 guests, that she
20 wished to be assigned to her as a host based on her statement that she had prior relationships with
21 these individuals.

22 11. The GSR database restricted the information which could be inputted by hosts to
23 a player's name, address telephone number and contract information and has no fields in which
24 Sumona could have inputted player ratings, casino credit history, or player history.

25 12. A customer's name, address and contact information are not trade secrets.

26 For purposes of this litigation it was determined that the following would constitute a trade secret

27 a) player tracking records;

28 b) other hosts customers;

- c) initial buy-ins;
- d) level of play;
- e) table games;
- f) time of play;
- g) customer's personal information such as a Social Security number
- h) customer's casino credit;
- i) customer's location, whether they're international, regional or local player beyond any information contained within the customer's address;
- j) marketing strategy;
- k) customer's birth date;
- l) customer's tier ratings;
- m) comp information ;
- n) player's history of play;
- o) player's demographics;
- p) players' financial information;
- q) company's financial information;
- r) company's marketing strategy;
- s) other employee's information and customer information.

13. In April 2012 house counsel for Atlantis sent a letter to GSR stating that Sumona had taken proprietary information from the Atlantis computers and changed other customer information in the Atlantis database.

14. Counsel for GSR informed plaintiff that Ms. Islam denied taking any proprietary information from Atlantis and requested Atlantis to provide the information which it believed had been misappropriated by Ms. Islam. Plaintiff did not provide any information.

15. Atlantis filed suit against Ms. Islam and GSR alleging that GSR had tortuously interfered with Atlantis' non-competition agreement, tortuously interfered with a prospective economic advantage belonging to Atlantis and violation of NRS 600A.010 commonly known as the Nevada Trade Secret Act.

1 16. Plaintiff sought a preliminary injunction which enjoined GSR from using any
2 information provided to it from Sumona Islam. GSR took reasonable steps to insure good faith
3 and timely compliance with the injunction.

4 17. Atlantis knew that among the names it claimed were misappropriated were names
5 which were legally and properly included in Ms. Islam's "book trade" but despite this knowledge
6 brought and obtained an injunction preventing GSR from marketing to these individuals from
7 August 27, 2012 through the trial of this matter in 2013.

8 18. Atlantis presented no credible evidence that GSR had a duty to investigate the
9 names in Ms. Islam's "book of trade" beyond making inquiries of Ms. Islam. To the contrary
10 there was credible testimony that casinos have a right to rely on the host's statements.

11 19. GSR provided a list of all the names and information concerning those individuals
12 added to the GSR data base by Ms. Islam which showed that the information was limited to the
13 individual player's name, address and contact information. None of which constitutes a trade
14 secret under NRS 600A .10.

15 20. Atlantis presented no credible evidence that GSR had tortuously interfered with
16 its non-competition agreement with Islam. Atlantis knew that GSR had hired Ms. Islam based on
17 its attorneys legal opinion that the agreement was overly broad in denying Ms. Islam the right to
18 work in any capacity in any casino. Atlantis further knew or should have known that the non-
19 competition agreement was overly broad and unenforceable and unenforceable as a matter of law
20 but continued to prosecute the claim.

21 21. Atlantis presented no credible evidence that GSR misappropriated any
22 information constituting a trade secret and in fact maintained the litigation and the injunction to
23 include names of persons which it knew and admitted at trial were legally in Ms. Islam's book of
24 business and that she was entitled to provide to GSR.

25 22. Atlantis continued and maintained the litigation against GSR for misappropriation
26 of trade secrets even when it knew that GSR was acting in good faith by relying on Ms. Islam's
27 assertions concerning her "book of trade" and knew that the customer information provided by
28 Ms. Islam was limited to the customers' name, address, telephone number and contact

1 information.

2 23. GSR did not misappropriate a trade secret belonging to Atlantis;

3 24. GSR did not tortuously interfere with a contract between Sumona Islam and
4 Atlantis.

5 25. GSR did not interfere with a prospective economic advantage belonging to
6 Atlantis.

7 26. There is a lack of any evidence in the record that supports the claim of Atlantis
8 that GSR misappropriated Atlantis' trade secrets and therefore, Atlantis has failed to meet its
9 burden of proof.

10 27. That early on in the litigation Defendant Islam admitted that she had taken certain
11 information from ATLANTIS in the form certain spiral notebooks.

12 28. That early on in the litigation Defendant Islam testified that she had not shown the
13 information in the form of the spiral notebooks to any representative of GRS.

14 29. That early on in the litigation Defendant Islam testified and confirmed that she
15 was told by the representatives of GSR not to bring anything with her except for herself and her
16 relationships.

17 30. That early on in the litigation Defendant Islam testified and confirmed that she
18 had told representatives of GSR that she did not bring trade secret information with her or that
19 she had information belonging to ATLANTIS.

20
21 **CONCLUSIONS OF LAW:**

22 1. The non-competition agreement between Sumona Islam and Atlantis, in
23 prohibiting casino employment in any capacity was overly broad and unenforceable as a matter
24 of law.

25 2. That absent an enforceable employment contract or non-competition agreement
26 with Atlantis, GSR could not as a matter of law, interfere with contractual relations between
27 Sumona and Atlantis.

28 3. A customer's name address, and contact information is not a trade secret under

1 NRS 600A.010. GSR did not misappropriate any trade secrets which belonged to Atlantis by
2 allowing Sumona Islam to upload this information into its data base.

3 4. GSR did not improperly obtain the information concerning players listed above as
4 set forth in 600A.030 and had a good faith reliance on Ms. Islam's assurances that all the names
5 provided were part of her personal "book of trade"

6 5. The failure of Atlantis to produce any credible evidence at trial that GSR
7 misappropriated trade secrets belonging to Atlantis constitutes ~~"objective speciousness"~~. ~~That~~ ^{that} ~~subjective~~ ^{that} bad faith is shown by the Plaintiff's knowledge of certain facts as set forth in the
8 findings of facts above; the decision to move forward against GSR and the extent of the litigation
9 against GSR despite a lack of direct evidence against GSR. This is a sufficient basis for an
10 award of attorney fees pursuant to NRS 600.060. Defendants are not required to prove a
11 negative and under the objective specious standard a lack of evidence in the record of
12 misappropriation; in addition to the actions as set forth above; is enough to show that the claim
13 of misappropriation was made in bad faith (*Sasco v. Rosendin Electric Inc.*, 143 Cal. Rptr. 3d
14 828, 207 Cal. App 4th 837 (CA 2012)) and entitles GSR to Attorney's fees and costs in this
15 matter.
16

17 6. That Atlantis sought, obtained, and maintained a preliminary injunction in this
18 matter that included names which Atlantis knew were not trade secrets under NRS 600A.010 and
19 continued to maintain that injunction even when it knew that those names were art of Sumona
20 Islam's personal book of trade in order to thwart competition for those players from GSR and
21 said conduct is evidence of bad faith entitling GSR to an award of attorney's fees and costs.

22 7. That the claims against GSR are dismissed and judgment entered in favor of the
23 Defendant GSR and GSR is entitled to an award of costs pursuant to NRS 18.110.

24 8. GSR is also entitled to bring an appropriate motion for fees and costs pursuant to
25 an offer of judgment dated May 20, 2013 under NRCP 68 and NRS 17.115.
26
27
28

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

CONCLUSION

9. Judgment in favor of Defendant GSR against Plaintiff ATLANTIS.

DATED THIS 27 DAY OF SEPTEMBER 2013

Barick Flanagan
DISTRICT JUDGE

Submitted by:

/s/ H. Stan Johnson
H. Stan Johnson, Esq.
Nevada Bar No. 00265
Terry Kinnally, Esq.
Nevada Bar No. 06379
COHEN JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Attorneys for MEI-GSR HOLDINGS LLC

1 **2540**
2 ROBERT A. DOTSON, ESQ.
3 Nevada State Bar No. 5285
4 rdotson@laxalt-nomura.com
5 ANGELA M. BADER, ESQ.
6 Nevada State Bar No. 5574
7 abader@laxalt-nomura.com
8 LAXALT & NOMURA, LTD.
9 9600 Gateway Drive
10 Reno, Nevada 89521
11 Tel: (775) 322-1170
12 Fax: (775) 322-1865
13 Attorneys for Plaintiff

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

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

16 GOLDEN ROAD MOTOR INN, INC., a Nevada
17 Corporation, d/b/a ATLANTIS CASINO
18 RESORT SPA

Case No.: CV12-01171

Dept No.: B7

19 Plaintiff,

20 vs.

21 SUMONA ISLAM, an individual; MEI-GSR
22 HOLDINGS LLC, a Nevada limited liability
23 company, d/b/a GRAND SIERRA RESORT;
24 ABC CORPORATIONS; XYZ
25 PARTNERSHIPS; AND JOHN DOES I through
26 X, inclusive.

27 Defendants.

28 **NOTICE OF ENTRY OF FIRST AMENDED ORDER**

PLEASE TAKE NOTICE that a First Amended Order awarding attorney's fees and costs
was entered on March 10, 2014. A copy of said Order is attached hereto as Exhibit 1.

///

///

///

///

Affirmation Pursuant to NRS 239B.030

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

Dated this 13th day of March, 2014.

LAXALT & NOMURA, LTD.



ROBERT A. DOTSON

Nevada State Bar No. 5285

ANGELA M. BADER

Nevada State Bar No. 5574

9600 Gateway Drive

Reno, Nevada 89521

(775) 322-1170

Attorneys for Plaintiff

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCp 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on this date, I caused to be served a true and correct copy of the
4 foregoing by:

- 5 ☒ (BY MAIL) on all parties in said action, by placing a true copy thereof enclosed
6 in a sealed envelope in a designated area for outgoing mail, addressed as set forth
7 below. At the Law Offices of Laxalt & Nomura, mail placed in that designated
8 area is given the correct amount of postage and is deposited that same date in the
9 ordinary course of business, in a United States mailbox in the City of Reno,
10 County of Washoe, Nevada.
- 11 ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-
12 Flex system, which will electronically mail the filing to the following individuals.
- 13 ☐ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand
14 delivered this date to the address(es) at the address(es) set forth below, where
15 indicated.
- 16 ☐ (BY FACSIMILE) on the parties in said action by causing a true copy thereof to
17 be telecopied to the number indicated after the address(es) noted below.
- 18 ☐ Reno/Carson Messenger Service.
- 19 ☒ By email to the email addresses below.

20 addressed as follows:

21 Steven B. Cohen, Esq.
22 Stan Johnson, Esq.
23 Terry Kinnally, Esq.
24 Cohen-Johnson, LLC
25 255 E. Warm Springs Rd, Ste 100
26 Las Vegas, NV 89119

Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, NV 89509

mwray@markwraylaw.com

scohen@cohenjohnson.com
sjohnson@cohenjohnson.com
tkinnally@cohenjohnson.com

27 DATED this 13 day of March, 2014.

28 
L. MORGAN BOGUMIL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGES
1	First Amended Order [awarding attorney's fees and costs]	7

FILED
Electronically
2014-03-13 01:40:13 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4342406

EXHIBIT 1

EXHIBIT 1

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

GOLDEN ROAD MOTOR INN, INC.,
a Nevada corporation, dba ATLANTIS
CASINO RESORT SPA,

Plaintiff,

vs.

Case No.: CV12-01171

SUMONA ISLAM, an individual,
NAV-RENO-GS, LLC, a Nevada
limited liability company, dba GRAND
SIERRA RESORT; ABC
CORPORATIONS; XYZ
PARTNERSHIPS; and JOHN DOES I
through X, inclusive,

Dept. No.: 7

Defendants.

FIRST AMENDED ORDER

On August 5, 2013, Plaintiff, GOLDEN ROAD MOTOR INN, INC., dba
ATLANTIS CASINO RESORT SPA (hereafter Atlantis), filed its *Verified*
Memorandum of Costs. On August 7, 2013 Defendant, SUMONA ISLAM (hereafter
Islam), filed her *Motion to Retax Costs*. On August 19, 2013, Atlantis filed its
Opposition to Defendant Sumona Islam's Motion to Retax Costs and Affidavit of
Counsel in Support of Plaintiff's Opposition to Defendant Sumona Islam's Motion to
Retax Costs. On September 3, 2013, Islam filed her *Reply in Support of Motion to*
Retax Costs.

1 On August 21, 2013, Atlantis filed its *Motion for Costs and Attorney's Fees*,
2 and *Affidavit of Counsel in Support of Plaintiff's Motion for Costs and Attorney's*
3 *Fees*. On September 3, 2013, Islam filed her *Opposition to Atlantis' Motion for*
4 *Attorney's Fees and Costs*. On September 10, 2013, Atlantis filed its *Reply* and
5 *Affidavit of Counsel in Support of Plaintiff's Reply to Motion* and submitted the
6 matter for decision.

7 On September 30, 2013, Defendant, MEI-GSR HOLDINGS LLC dba GRAND
8 SIERRA RESORT (hereafter Grand Sierra), filed its *Memorandum of Costs*. On
9 October 3, 2013, Atlantis filed its *Motion to Retax Costs of Defendant Grand Sierra*
10 *Resort*. On October 9, 2013, Grand Sierra filed its *Reply to Plaintiff's Objection to*
11 *Defendant GSR's Memorandum of Costs*. On October 17, 2013, Atlantis filed its
12 *Reply in Support of Plaintiff's Motion to Retax Costs of Defendant Grand Sierra*
13 *Resort* and submitted the matter for decision.

14 On October 19, 2013, Grand Sierra filed its *Motion for Attorney's Fees*. On
15 November 1, 2013, Islam filed her *Response to Grand Sierra's Motion for Attorney's*
16 *Fees*. On November 4, 2013, Atlantis filed its *Opposition to GSR's Motion for Award*
17 *of Attorney's Fees and Costs* and *Affidavit of Counsel in Support of Plaintiff's*
18 *Opposition to GSR's Motion for Award of Attorney's Fees and Costs*.

19 Costs: Atlantis

20 The Atlantis seeks recovery of \$17,130.61 in costs pursuant to NRS 18.020.
21 This court has reviewed the invoices filed in support of the requests for cost
22 reimbursement. This court finds the costs expended by the Plaintiff in this matter
23 to be both reasonable and necessary. This Court has also reviewed the
24 documentation and billing to determine the allocation of costs attributable to work
25 performed against Defendant Islam and co-defendant Grand Sierra. This court finds
26 that all but \$60.00 is attributed to Ms. Islam. Therefore, Plaintiff is hereby awarded
27 costs in the amount of \$17,070.61.
28

1 Costs: Grand Sierra

2 Grand Sierra seeks recovery of \$37,009.74 in costs pursuant to NRS 18.110.
3 Included in the request is \$18,026.15 in expert witness fees for Mr. Aguero. This
4 request is extraordinary. This requests is deficient in itemization and justification.
5 This court has reviewed Mr. Aguero's report.(Ex. 37) The majority of his report
6 consists of his resume. While this court relied upon Mr. Aguero's report in
7 formulating its finding, this resulted in an award of damages of \$23,874.00.¹ Based
8 upon the court's review of the expert report, the witness' testimony and the final
9 award, the court reduces the award of expert witness fees to \$3,000.00.

10 Grand Sierra seeks an award of \$2,073.24 for two volumes of the trial
11 transcripts. While undoubtedly of some assistance to trial counsel, this expense is
12 not a necessary cost of litigation.

13 Grand Sierra seeks \$11,337.79 in travel and lodging expenses for counsel.
14 Grand Sierra is seeking to recoup the expenses of air, rental car, meals and lodging
15 for both Mr. Johnson and Mr. Cohen.² Mr. Johnson represented the Grand Sierra
16 at trial, giving the opening statement, cross-examining witnesses, presenting the
17 Grand Sierra's case-in-chief and closing arguments. While Mr. Cohen undoubtedly
18 provided some assistance to Grand Sierra, his participation was more opaque.³ This
19 court is without any information as to Mr. Cohen's participation in pretrial
20 proceedings or incurred other expenses involved in this litigation. Grand Sierra
21 provides scant documentation and itemization to support these expenses. As such,
22 this court finds an award for costs of travel and lodging for Mr. Johnson to be more
23 appropriate in this case. This court will excise the \$4,369.50 sought for Mr. Cohen's
24 airfare travel to Reno. Therefore, Defendant Grand Sierra Resort is awarded costs
25 in the amount of \$15,540.85.

26
27
28 ¹ The final award of \$43,874 included \$20,000 in punitive damages not attributable to Mr. Aguero's work.

² Defendant Grand Sierra Resorts employed Johnson/Cohen, a Las Vegas firm whose principals attended every day of trial. Any adjustment in the award of costs is no reflection on the client's choice of Las Vegas counsel.

³ Mr. Cohen did raise one objection at trial, which was sustained.

1 The Award of Attorney's Fees

2 Generally speaking, the district court may not award attorneys' fees absent
3 authority under statute, rule, or contract.⁴ The Nevada Supreme Court has upheld
4 an award of attorney's fees to a "prevailing party."⁵ After weighing all the relevant
5 factors, the district court may award up to the full amount of fees requested.

6 On the other hand, where the court has failed to consider many factors,
7 and/or has made no findings based upon the evidence that the attorney's fees are
8 reasonable and justified, it is an abuse of discretion for the court to award the full
9 amount of fees requested. *Beattie v. Thomas*, 99 Nev. 579, 588, 688 P.2d 268, 274
10 (1983); *but see MRO Communications, Inc. v. AT&T Co.*, 197 F.3d 1276, 1284 (9th
11 Cir. 1999)(where affidavits and exhibits submitted in support, and in opposition to,
12 the motion for attorneys' fees were sufficient to enable a court to consider each of
13 the four factors outlined in *Beattie* and conclude the amount of fees was reasonable
14 and justified, the court did not abuse its discretion in awarding attorney's fees
15 without making specific findings on the four factors).

16 In this case, this court presided over this entire litigation, culminating in a
17 multi-week bench trial. As such, this court is familiar with the quality of the
18 advocacy of the attorneys, the character of the work performed by the lawyers and
19 the result of those efforts. The court has considered the *Beattie* factors in reaching
20 its findings.

21 This court has also considered Defendant Islam's objections and request for
22 apportionment of fees between herself and co-defendant Grand Sierra Resort. This
23 court has reviewed plaintiff's billing invoices in an attempt to allocate fees between
24 the co-defendants. This court has reviewed, *in camera*, the billing statements of
25

26
27 ⁴ See *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 132 P.3d 1022, 1028 (2006), *citing State Department of*
28 *Human Resources v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375,376 (1993).

⁵ For attorneys' fees purposes, a plaintiff is prevailing if he succeeds on any significant issue in litigation which achieves some of the benefit he sought in bringing the suit. See *Women's Federal Savings & Loan Association v. Nevada National Bank*, 623 F.Supp. 401, 404 (D. Nev. 1987).

1 counsel for the Atlantis and Grand Sierra. This court finds apportionment of fees
2 sought by Atlantis against Ms. Islam to be appropriate in this case.

3 **The Atlantis Attorney's Fees**

4 The Atlantis seeks an award of \$364,422.00 in attorney's fees against Ms.
5 Islam. In reviewing the invoices of Atlantis counsel, this court finds that 84.71% of
6 the fees in this matter were expended toward the claims asserted against Ms.
7 Islam. This court finds the fees to be reasonable and justified. Based upon said
8 review, Plaintiff is hereby awarded attorney's fees in the amount of **\$308,711.00**.

9 **The Grand Sierra Resort Attorney's Fees**

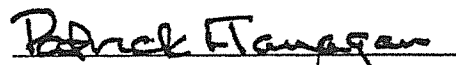
10 By separate *Order* dated November 6, 2013, this court has directed counsel
11 for the Grand Sierra to submit a more detailed billing statement in support of their
12 *Motion for Attorney's Fees*. Therefore, at this time, Grand Sierra's *Motion for*
13 *Attorney's Fees* is **DENIED** without prejudice.

14 **IT IS ORDERED:**

15 Plaintiff Atlantis is awarded \$17,070.61 in costs and \$308,711.00 in
16 attorney's fees.

17 Defendant Grand Sierra is awarded \$15,540.85 in costs. Grand Sierra's
18 *Motion for Attorney's Fees* is **DENIED** without prejudice.

19 DATED this 10 day of ^{MARCH, 2014}~~October, 2013~~.

21 
22 Patrick Flanagan
23 DISTRICT COURT JUDGE
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Robert Dotson, Esq. for Golden Road Motor Inn, Inc.,
Mark Wray, Esq. for Sumona Islam; and
H. Johnson, Esq. for GSR Enterprises



Judicial Assistant

EXHIBIT 2

EXHIBIT 2

1 ROBERT A. DOTSON, ESQ.
Nevada State Bar No. 5285
2 rdotson@laxalt-nomura.com
ANGELA M. BADER, ESQ.
3 Nevada State Bar No. 5574
abader@laxalt-nomura.com
4 LAXALT & NOMURA, LTD.
9600 Gateway Drive
5 Reno, Nevada 89521
6 Tel: (775) 322-1170
Fax: (775) 322-1865
7 Attorneys for Plaintiff

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

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

10 GOLDEN ROAD MOTOR INN, INC., a Nevada
11 Corporation, d/b/a ATLANTIS CASINO
12 RESORT SPA

Case No.: CV12-01171

Dept No.: B7

13 Plaintiff,

14 vs.

15 SUMONA ISLAM, an individual; MEI-GSR
HOLDINGS LLC, a Nevada limited liability
16 company, d/b/a GRAND SIERRA RESORT;
ABC CORPORATIONS; XYZ
17 PARTNERSHIPS; AND JOHN DOES I through
X, inclusive.

18 Defendants.
19

20 **~~PROPOSED~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER**

21 This matter came on for a non-jury trial on July 1, 2013 before the Court, Honorable
22 Patrick Flanagan, District Judge, presiding. The Court heard evidence for 9 days and the
23 arguments of counsel on the 10th day of trial. The Court, having carefully considered all of the
24 exhibits in evidence, the testimony of the witnesses, trial statements of the parties, and the
25 arguments of counsel, hereby issues the following Findings of Fact and Conclusions of Law:

26 ///

27 ///

28 ///

Findings of Fact

1. On or about April 15, 2008, ISLAM became an employee of the Golden Road Motor Inn, Inc., dba Atlantis Casino Resort Spa ("ATLANTIS").

2. On April 15, 2008, ISLAM executed the ATLANTIS Online System User Agreement ("Online System User Agreement"). Among other terms, the Online System User Agreement prohibits unauthorized downloading or uploading of software and information.

3. On April 15, 2008, in conjunction with her employment with ATLANTIS, ISLAM also executed an agreement with ATLANTIS concerning its Business Ethics Policy and Code of Conduct Acknowledgement and Conflicts of Interest Statement. This agreement ("Business Ethics Policy"), was again signed by ISLAM on January 23, 2009, February 26, 2010 and January 19, 2011. This policy in section 3.1 identifies confidential information as all nonpublic information regarding the company's operation and business activities and those of its customers and suppliers. Nonpublic means any information that is not officially disclosed through means such a press releases or other forms of publication, where it is not common knowledge. Section 4.4 prohibits the disclosure of inside information to persons outside the company or other persons within the company who are not authorized to receive such information. Pursuant to the terms of the Business Ethics Policy, ISLAM agreed not to disclose confidential information including customer lists or customer information (such as player tracking or club information) to any unauthorized persons, either during or after her termination, and not to take any documents or records belonging to ATLANTIS after her departure. She also agreed not to profit from confidential information of ATLANTIS. ISLAM's agreement to the terms of this contract was a condition of her employment with ATLANTIS.

4. On April 15, 2008, in conjunction with commencing her employment with ATLANTIS, ISLAM executed the ATLANTIS Company Policy regarding Company Property, Proprietary Information, and Trade Secrets (hereinafter referred to as "Trade Secret Agreement"). This agreement, including any updates, was again signed by ISLAM on January 23, 2009, February 26, 2010 and January 19, 2011. This agreement provides that any improper

1 use or dissemination of ATLANTIS intellectual property is a breach of the policy and may be a
2 violation of state and federal trade secrets laws and also warns that such violation is punishable
3 both civilly and criminally.

4 5. ISLAM was hired to be an Executive Casino Host at ATLANTIS. When she
5 was hired, she was under a contractual obligation to her former employer, Harrah's, which
6 prohibited her from working in a same or similar position within six months after separation
7 from employment at Harrah's. In order to honor this obligation, ATLANTIS placed her in the
8 position of concierge manager. She worked in the hotel side of the operation of the
9 ATLANTIS and not in the gaming side of the operation until the expiration of the six month
10 restriction imposed by her agreement with Harrah's. Thereafter, she was transferred to the
11 gaming operation and began her employment as a host.

12 6. When ISLAM began to work as a host at ATLANTIS, she brought with her
13 what she claimed to be her personal book of trade. ISLAM has identified Exhibits 75 and 80
14 as her book of trade.

15 7. Steve Ringkob, indeed almost every witness, testified that there were certain
16 items that hosts were entitled to take with them from property to property and that a host's
17 book of trade is the host's property and "nothing is wrong with her taking this information
18 wherever she goes." However, he also testified that the player's gaming history and tracking at
19 the ATLANTIS would become proprietary information.

20 8. Although the term "casino host book of trade" has been defined variously, it has
21 generally been defined as those names and contact information of guests with whom the host
22 has developed relationships through their own efforts. Ringkob defined it as those guests with
23 whom the host has developed a relationship and it was not information coming from the casino.

24 9. The evidence is clear that ISLAM intentionally downloaded, by hand copying
25 from the ATLANTIS computer screen, players' names, contact information, level of play,
26 game preferences and other proprietary information from the ATLANTIS Casino's, casino
27 management system, Patron Management Program.

28

1 10. On February 26, 2010, ISLAM signed a Non-Compete/Non-Solicitation
2 Agreement with ATLANTIS ("Non-Compete Agreement"). Pursuant to the terms of the Non-
3 Compete Agreement, ISLAM agreed that she would not, without the prior written consent of
4 ATLANTIS, be employed by, in any way affiliated with, or provide services to any gaming
5 operation located within 150 miles of ATLANTIS for a cooling off period of one year after the
6 date that the employment relationship between she and the ATLANTIS ended.

7 11. During ISLAM'S employment at ATLANTIS, she had access to and worked
8 with highly sensitive trade secrets and proprietary and confidential information of the
9 ATLANTIS. This information included customer and guest lists, customer information and
10 data including player contact information, tracking and club information, guest preferences and
11 gaming tendencies of the guests. This information included not just the information for guests
12 assigned to her, but also information for guests assigned to other hosts.

13 12. Before and during ISLAM'S employment, ATLANTIS undertook significant
14 precautions to maintain the secrecy of its confidential information. These efforts included
15 disabling USB ports in the computers at ATLANTIS, not providing or allowing printers, and
16 monitoring all emails that are sent to recipients off property.

17 13. Despite the precautions taken to protect ATLANTIS' confidential trade secret
18 information, during her employment at ATLANTIS ISLAM copied guest information by hand
19 from the screen of the ATLANTIS computer onto spiral note pads. Ms. ISLAM, in her
20 handwritten notes in spiral notebooks, which she identified as hers, copied players' names,
21 contact information and also the designation of whether or not they played table games or slots.
22 The information copied had the notation of the guests' marker information, for purposes of
23 knowing what their credit limit was. Some notations included information regarding previous
24 gaming results and losses incurred by that player. This is information Ms. ISLAM testified that
25 she wrote down from the ATLANTIS computer. A copy of some of those spirals is found in
26 Exhibit 80.

27 14. Ms. ISLAM testified that in the fall of 2011, she was becoming dissatisfied with
28 her employment at the ATLANTIS. She testified that she had not been given a raise, that she

1 had only been given one bonus and not the quarterly bonuses that she states were promised to
2 her, she felt isolated in her interpersonal relationships with other employees at the ATLANTIS
3 and she had come to a point in her career where she believed that if she was ever going to make
4 more money, she would have to seek employment elsewhere.

5 15. The evidence is that on or around October, Ms. ISLAM learned from Ms.
6 Antonetti that the Grand Sierra Resort ("GSR") was hiring new employees. Through an online
7 application, ISLAM applied for and interviewed with the GSR to obtain a position as a host.

8 16. At about that time, Ms. ISLAM asked Mr. DeCarlo for a copy of her Non-
9 Compete Agreement with the ATLANTIS.

10 17. Sometime in December and January, two interviews took place. The first was
11 with Ms. Hadley, at the GSR. Ms. Hadley testified that she was impressed with Ms. ISLAM.
12 She testified she did not ask for ISLAM's book of business at that time.

13 18. A second interview was arranged between ISLAM and Hadley and Flaherty of
14 the GSR. At that time, a more in-depth discussion took place relative to Ms. ISLAM's book of
15 business. Mr. Flaherty testified and it's confirmed by the transcript of a subsequent interview
16 that he told Ms. ISLAM not to bring anything from the ATLANTIS to the GSR, to bring
17 nothing, but herself and her relationships.

18 19. During the course of the interview process, ISLAM and representatives of GSR
19 discussed the fact that ISLAM was subject to an agreement restricting her employment with a
20 competitor of ATLANTIS and ISLAM provided GSR with a copy of the Non-Compete
21 Agreement. This conduct is consistent with ISLAM's testimony of her behavior when applying
22 for the position with the ATLANTIS. She testified that she provided a copy of the Harrah's
23 Non-Compete to the ATLANTIS prior to their offering of employment to her.

24 20. The testimony is that GSR then passed the ATLANTIS Non-Compete
25 Agreement to its legal counsel. Legal counsel apparently reviewed that and gave the green
26 light to hire Ms. ISLAM.

1 21. Ms. ISLAM was concerned that ATLANTIS would initiate litigation against her
2 and sought assurances that GSR would provide legal representation to her should there be
3 litigation over the Non-Compete. GSR agreed.

4 22. ISLAM terminated her employment as an Executive Casino Host with the
5 ATLANTIS on January 19, 2012 and accepted an offer with GSR as an Executive Casino Host
6 on the same day.

7 23. ISLAM began work at GSR at the end of January, 2012.

8 24. The ATLANTIS alleges that soon after ISLAM terminated her employment,
9 ATLANTIS employees discovered that ISLAM had falsely modified, destroyed, falsely
10 changed and/or sabotaged confidential, proprietary, trade secret information of ATLANTIS,
11 including customer data belonging to the ATLANTIS on its online system to her benefit and
12 the benefit of GSR and to the detriment of ATLANTIS.

13 25. The evidence adduced in this matter by Ms. ISLAM herself and other witnesses
14 of the Plaintiff is that Ms. ISLAM did change the addresses, telephone number and/or the email
15 addresses of guests that had been coded to her in the ATLANTIS' casino customer or guest
16 database.

17 26. The evidence shows that shortly after Ms. ISLAM left the employ of the
18 ATLANTIS, the guests who had been assigned to her at the ATLANTIS were distributed
19 amongst the remaining ATLANTIS hosts who attempted to contact those guests to maintain
20 and establish a continued relationship with the ATLANTIS. Shortly thereafter, those hosts
21 reported difficulty, indeed inability to contact the guests. It quickly became apparent that the
22 contact information had been sabotaged. ATLANTIS staff testified that they restored old
23 copies of the Patron Management data to a location in the computer system where the auditors
24 could access the information and the information was restored to the Patron Management
25 Program, the guest marketing database, in a relatively short period of time.

26 27. Additionally, the evidence showed that none of the information was changed in
27 the LMS database, which is the database known as the Lodging Management System that
28 controls the hotel operations.

1 28. ISLAM testified that she did not show either Ms. Hadley or Mr. Flaherty the
2 spiral notebooks which contained the information she had wrongfully taken from the
3 ATLANTIS' database. Nevertheless, after her employment by the GSR began, Ms. ISLAM
4 began to input that information, the information taken from the ATLANTIS and contained on
5 the spiral notebooks, into the GSR database.

6 29. The testimony from the GSR representatives is that the database fields accessed
7 and completed by ISLAM are limited. They restrict the information that a host could input to
8 name, address, telephone number and contact information. There are no fields for a host to
9 themselves input information regarding a player's gaming history, level of play or preference of
10 game.

11 30. Both Ms. Hadley and Mr. Flaherty testified they never saw the spiral notebooks
12 containing the information ISLAM had wrongfully taken from the ATLANTIS' database.

13 31. After the database sabotage was discovered by the ATLANTIS, ATLANTIS'
14 general counsel, Debra Robinson, wrote a letter to GSR advising them that Ms. ISLAM was
15 subject to a Non-Compete, Non-Disclosure Agreement and that she may have confidential
16 information and ATLANTIS demanded the GSR cease and desist from the use of that
17 information and return it forthwith.

18 32. In response to the cease and desist letter from ATLANTIS to the GSR and Ms.
19 ISLAM relating to the ATLANTIS' concerns about ISLAM's employment, the counsel for the
20 GSR sent a letter rejecting the assertions of the ATLANTIS and essentially maintaining that
21 there was nothing confidential or proprietary that had been acquired by GSR and that all
22 information provided by Ms. ISLAM came from her own personal relationships and her book
23 of business.

24 33. The ATLANTIS reasonably initiated litigation.

25 34. On April 27, 2012, ATLANTIS filed its Complaint for relief with seven causes
26 of action.

27 35. On May 9, 2012, this Court, through its sister Department, entered a Temporary
28 Restraining Order barring Ms. ISLAM from any employment with GSR. That Order was

1 extended by Order of this Court dated July 5, 2012 which also applied to GSR. Thereafter, the
2 parties stipulated to a Preliminary Injunction ending this case pending the case's resolution.

3 36. To the extent appropriate and to give intent to this order, any finding of fact
4 should be found to be a conclusion of law. Similarly, to the extent appropriate any conclusion
5 of law shall be deemed a finding of fact.

6 CONCLUSIONS OF LAW

7 Breach of Contract – Online Systems User Agreement, Business Ethics Policy, Trade 8 Secrets Agreement as to ISLAM

9 1. The elements for establishing a breach of contract claim are: (1) A valid and
10 existing contract was entered into between Plaintiff and Defendant; (2) Plaintiff performed or
11 was excused from performance of the contract; (3) Defendant breached; and (4) Plaintiff
12 sustained damages as a result of the breach. *Reichert vs. General Insurance Co. of Amer.*, 68
13 Cal. 2d 822, 69 Cal. Rptr. 321, 442 P.2d 377 (1968); *Marwan Ahmed Harara vs. Conoco*
14 *Phillips Co.*, 375 F. Supp. 2d 905, 906 (9th Cir. 2005).

15 2. In order to succeed on a breach of contract claim in Nevada, a plaintiff must
16 show "(1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a
17 result of the breach." *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-920 (D. Nev. 2006),
18 citing *Richardson v. Jones*, 1 Nev. 405, 405 (1865).

19 3. In its first cause of action the Plaintiff alleges the violation of three contracts.
20 These are the Online User Agreement, the Business Ethics Policy, and the Trade Secrets
21 Agreement. These agreements were signed by Defendant ISLAM and a representative of
22 Plaintiff, ATLANTIS. This Court finds that these are valid contracts. The Court further finds
23 that the Defendant ISLAM breached these contracts.

24 4. Based upon the fact that ISLAM downloaded players' names, contact
25 information, level of play, game preferences and other proprietary information from the
26 ATLANTIS Casino's, casino management system, Patron Management Program, the Court
27 finds that she has breached these contracts and that the ATLANTIS has suffered damages as a
28

1 result of the breach. Consequently, the Court finds in favor of the Plaintiff and against
2 Defendant Sumona ISLAM on the first cause of action.

3 5. The Court finds that damages should be awarded in favor of ATLANTIS and
4 against ISLAM on this claim. These are made up of compensatory damages of \$10,941 plus an
5 additional \$2,119 to repair the database, totaling \$13,060.

6 **Breach of Contract—Non-Compete Agreement as to ISLAM**

7 6. The Non-compete/Non-solicitation Agreement was signed by ISLAM and a
8 representative of ATLANTIS in 2010. The law presumes that all parties have the freedom to
9 contract and establish the terms of employment between themselves. However, restrictive
10 covenants are not favored in the law. The determination of the validity of such a contract as
11 written is governed by whether or not it imposes upon the employee any greater restraint than
12 is reasonably necessary to protect the business and the goodwill of the employer.

13 7. A restraint of trade is unreasonable if it is greater than that required to protect
14 the person for whose benefit the restraint is imposed or imposes an undue hardship on the
15 person restricted. *Hansen v. Edwards*, 83 Nev. 189, 426 P.2d 792 (1967). *See also, Jones v.*
16 *Deeter*, 112 Nev. 291, 294, 913 P.2d 1272, 1274 (1996).

17 8. The public has an interest in seeing that competition is not unreasonably limited
18 or restricted.

19 9. In the instant matter, this Court finds that the term restricting employment for a
20 period of one year is reasonable and necessary to protect the interests of the ATLANTIS.

21 10. This Court finds that the term restricting employment within 150 miles from
22 ATLANTIS is reasonable. It encompasses the markets of Sacramento and the evidence
23 supports the threat that Thunder Valley and indeed other Northern California casinos pose to
24 the casinos of Northern Nevada.

25 11. The Court finds, however, that the total exclusion from employment with a
26 competitor is unreasonable. This Court finds that excluding the employment of an individual
27 such as Ms. ISLAM, who has attempted to create a career in this industry from any role in any
28 casino in any capacity is an unreasonable restraint on her and it imposes an undue hardship on

1 Ms. ISLAM and it is a restraint that is greater than that required for the protection of the person
2 for whose benefit the restraint is imposed, the ATLANTIS. Therefore, the Court finds the
3 Non-Competition contract unenforceable and dismisses the second cause of action related to
4 breach of that contract.

5 **Conversion of Property as to ISLAM**

6 12. The elements of conversion are that a defendant exercises an act of dominion
7 wrongfully exerted over the personal property of another in denial of or inconsistent with title
8 rights therein, or in derogation, exclusion or defiance of such rights. *M.C. Multi Family*
9 *Development, L.L.C. v. Crestdale Associates Ltd.*, 124 Nev. 901, 910, 196 P.3d 536 (2008)
10 *citing Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000).

12 13. The caselaw here states that conversion generally is limited to those severe,
13 major and important interferences with the right to control personal property that justified
14 requiring the actor to pay the property's full value. Courts have noted that this remedy in
15 general is harsh and is reserved for the most severe interferences with personal property.

17 14. The Court finds that the evidence adduced shows that the interference with the
18 property of the ATLANTIS was not severe, that the information, although altered, was not lost
19 and was easily restored. One measure of that is the fact that the damages sought for the
20 restoration expense is de minimus in light of the value of not only Ms. ISLAM's book of trade,
21 which she estimated at \$3.5 to \$4 million, but the operation of the ATLANTIS itself.
22 Therefore, this Court finds that the Plaintiff has failed to establish the elements of conversion
23 and the third cause of action is therefore dismissed.

25 **Tortious Interference with Contractual Relations and Prospective Economic Advantage as**
26 **to ISLAM**

27 15. To establish intentional interference with contractual relations, ATLANTIS
28 must show: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3)
intentional acts intended or designed to disrupt the contractual relationship; (4) actual

1 disruption of the contract; and (5) resulting damage. *Sutherland v. Gross*, 105 Nev. 192, 772
2 P.2d 1287, 1290 (1989).

3 16. The elements of the tort of wrongful interference with a prospective economic
4 advantage are: (1) a prospective contractual relationship between the plaintiff and a third
5 party; (2) the defendant's knowledge of this prospective relationship; (3) the intent to harm the
6 plaintiff by preventing the relationship; (4) the absence of a privilege or justification by the
7 defendant; and, (5) actual harm to the plaintiff as a result of the defendant's conduct. *Leavitt v.*
8 *Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987); *Las Vegas-Tonopah-Reno*
9 *Stage v. Gray Line*, 106 Nev. 283, 792 P.2d 386, 388 (1990).

10 17. Based upon the Nevada Supreme Court's decision in *Frantz v. Johnson*, 116
11 Nev. 455, 999 P.2d 351(2000), this Court is directed to look to the specific evidence adduced at
12 trial to determine whether or not the acts of a defendant are more appropriately adjudicated
13 under the Uniform Trade Secrets Act than under a claim for tortious interference with contract
14 or prospective economic advantage. In an examination of the facts here, this Court has
15 determined that the facts adduced in this trial make it more appropriate that the claim against
16 Sumona ISLAM be adjudicated under the Uniform Trade Secrets Act.

17 **Violation of Uniform Trade Secret Act, NRS 600A.010 et. seq. as to ISLAM and GSR**

18 18. To establish a misappropriation claim under NRS § 600A.010 et. seq., the
19 plaintiff must show: (1) a valuable trade secret; (2) misappropriation¹ of the trade secret
20

21 ¹ "Misappropriation" per NRS 600A.030(2) means:

- 22 (a) Acquisition of the trade secret of another by a person by improper means;
23 (b) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was
acquired by improper means; or
24 (c) Disclosure or use of a trade secret of another without express or implied consent by a person who:
25 (1) Used improper means to acquire knowledge of the trade secret;
26 (2) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade
secret was:
(I) Derived from or through a person who had used improper means to acquire it;
27 (II) Acquired under circumstances giving rise to a duty to maintain its secrecy or limits its
use; or
(III) Derived from or through a person who owed a duty to the person seeking relief to
maintain its secrecy or limit its use; or
28 (3) Before a material change of his or her position, knew or had reason to know that it was a trade secret
and that knowledge of it had been acquired by accident or mistake.

1 through use, disclosure, or nondisclosure of the use of the trade secret; and (3) the requirement
2 that the misappropriation be wrongful because it was made in breach of an express or implied
3 contract or by a party with a duty not to disclose. *Frantz v. Johnson*, 116 Nev. 455, 466, 999
4 P.2d 351, 358 (2000).

5 19. A trade secret is information that derives independent economic value, actual or
6 potential, from not being generally known to and not being readily ascertainable by proper
7 means by the public, as well as information that is subject to efforts that are reasonable under
8 the circumstances to maintain its secrecy. NRS 600A.040.

9 20. The determination of what is a trade secret is a question of fact for the trier of
10 fact. *Frantz*, 116 Nev. at 466, 999 P.2d at 358. The caselaw indicates that contractual
11 restrictions alone or designations alone do not control whether or not a particular design,
12 compilation, or mechanism is a trade secret. To determine whether or not an item is a trade
13 secret, the Court considers these factors. First, the extent to which the information is known
14 outside the business and the ease or difficulty with which the information could be properly
15 acquired by others. Second, whether the information was confidential or secret. Third, the
16 extent and manner in which the employer guarded the secrecy of the information. Fourth, the
17 former employee's knowledge of the customer's buying habits and other customer data and
18 whether this information is known by the employer's competitors.

19 21. There was a consensus amongst all the witnesses that in the case of a customer
20 with whom a host has established a relationship, that customer's name, address, contact
21 information is not a trade secret. All of the witnesses here have identified certain items that
22 they consider trade secrets in the gaming industry and these are well-qualified witnesses who
23 have spent decades in this industry. Those items have been identified as, (1) player tracking
24 records; (2) other hosts' customers; (3) initial buy-ins; (4) level of play; (5) whether the player
25 plays table games or slots; (6) time of play; (7) customers' personal information that is personal
26 to them, such as a Social Security number; (8) customers' casino credit; (9) customer's location,
27 whether they are an international, regional or local player; (10) marketing strategy; (11)
28 customers' birth date, which one witness testified was critical for credit accounts; (12) tier

1 levels, which is different than player ratings, they are more specific in terms of measurement;
2 (13) comp information for the player; (14) players' history of play; (15) players' demographics;
3 (16) players' financial information; (17) the company's financial information; (18) the
4 company's marketing strategy; (19) other employees' information and customer information.
5 The Court does not by this list deem this list to be exclusive. There may be other instances and
6 other items that are properly designated as trade secrets, however, this was the evidence
7 adduced in this trial.

8 22. This Court finds that this information is not known outside of the business of the
9 ATLANTIS. Indeed, the previous 19 items are not easy to learn, in fact, it is difficult to
10 acquire this information properly.

11 23. This Court further finds that there is no question that this information was
12 confidential within the ATLANTIS and that has been demonstrated amply by the extent and
13 manner in which the ATLANTIS took steps to guard the secrecy of this information.
14 Specifically, Mr. Woods testified that there were no printers and that the USB ports on the
15 computers were restricted, that the hosts had no ability to print or download guest lists. He
16 further explained that security access was determined by the job designation. There was
17 testimony that the passwords for this access were changed frequently and therefore it has been
18 established beyond any reasonable doubt that the ATLANTIS considered all of this
19 information a trade secret and this Court does so find.

20 24. This Court finds that the information written down in the spiral notebooks
21 which Ms. ISLAM identified as hers was taken from the ATLANTIS' computer and is not
22 information open to the public.

23 25. This Court finds that Ms. ISLAM has violated not only the terms and conditions
24 of her contract, but also has committed a violation of the Uniform Trade Secrets Act.

25 26. This Court finds that Damages are appropriately awarded against ISLAM for
26 violation of the Uniform Trade Secrets Act and awards damages totaling \$10,814.

27 ///

28 ///

1 **Declaratory Relief**

2 27. The sixth cause of action filed by the Plaintiff is a request for declaratory relief.
3 The Courts grants and denies this claim as follows.

4 28. This Court finds that the Online System User Agreement is a valid contract.
5 This Court finds that the Business Ethics Policy and Code of Conduct Agreement is a valid
6 contract. This Court finds that the Trade Secrets Agreement is a valid contract. This Court
7 finds that the Non-compete Agreement is overbroad and unenforceable. This Court also finds
8 that those contracts have been breached.

9 29. This Court finds that the Defendant has violated the Uniform Trade Secrets Act
10 and that the Plaintiff has suffered damages.

11 **Proof of Damages**

12 30. There are two distinct damage models proffered in this case. One is based on
13 theoretical win based upon a customer lifetime value analysis proffered by the Plaintiff. The
14 other is a damage analysis based on actual win - loss proffered by the Defendants in this case.

15 31. This Court has examined all of the exhibits in support of both models. This
16 Court has listened to the testimony of Brandon McNeely, who testified on behalf of the
17 Plaintiff in support of a valuation based upon theoretical wins. This Court finds that the
18 customer lifetime value analysis is a solid one and is supported by scholarly research and
19 empirical data.

20 32. This Court has also considered Mr. Aguero's testimony and reviewed his expert
21 report, which is Exhibit 32. The Court has also reviewed Brandon McNeely's reports and the
22 Exhibits included within Exhibit 59, A, B, C, D and E.

23 33. The Court has also considered the testimony of Mr. Frank DeCarlo when he
24 testified about the mitigation marketing costs, and Lilia Santos, who testified to the loss of
25 guests of the ATLANTIS to the GSR.

26 34. Having considered both models, this Court feels the more appropriate model in
27 this particular case is the actual win-loss model. That model is based upon the data provided by
28

1 both parties, the hard data and an analysis that is well reasoned and supported not only by the
2 evidence, but scholarly review.

3 35. Therefore, the compensatory damages as to Defendant ISLAM, as previously
4 described will be on the first count for breach of contract, \$10,941 plus an additional \$2,119.
5 As to the violation of the Uniform Trade Secret Act, judgment will be in favor of Plaintiff,
6 against Defendant ISLAM in the amount of \$10,814.

7 **Punitive Damages**

8 36. The Plaintiff has requested punitive damages be awarded in this case and this
9 Court finds that punitive damages are warranted here.

10 37. Ms. ISLAM testified that her actions were malicious, as they were intended to
11 hurt the ATLANTIS. Despite whatever reason she may have felt justified her actions, her
12 actions were unjustified, they were willful, they were malicious, and they were intentional.

13 38. Punitive damages have a two-pronged effect. One is to punish the transgressor
14 and the other is to serve as an example to deter others similarly situated from engaging in the
15 same conduct. Therefore, there are several factors to be taken into consideration, including the
16 willfulness of the conduct, the public interest that is at stake, and not the least of which is the
17 Defendant's financial condition. Ms. ISLAM testified that she makes \$80,000 per year. This
18 Court is assessing significant compensatory damages against her. However, the Court feels
19 that a significant punitive damage is necessary in order to deter others from violating those
20 contracts between the ATLANTIS and its employees. This Court therefore has determined that
21 a punitive damage award of \$20,000, representing one quarter of her annual salary, is an
22 appropriate punishment to Ms. ISLAM.

23 **Attorney Fee Award**

24 39. The Uniform Trade Secrets Act also provides for the award of Attorney's fees in
25 the case of willful and malicious misappropriation.

26 40. Having found in favor of the Plaintiff as the prevailing party against the
27 Defendant ISLAM, under the circumstances of this case, this Court will award attorney's fees
28

1 and litigation costs. Those fees will be awarded after appropriate affidavit of fees and the
2 memorandum of costs are timely submitted.

3 **Injunctive Relief**

4 41. This Court further finds that this is an appropriate matter in which to impose a
5 Permanent Injunction, pursuant to NRS 600A.040, prohibiting ISLAM from any further use of
6 the trade secret information at issue until such time as the information becomes ascertainable
7 by proper means by the public or is otherwise no longer a Trade Secret as defined by NRS
8 600A.030(5). In this regard, ISLAM is Ordered to destroy any and all customer lists obtained
9 from or originating from ATLANTIS, including specifically the spiral notebooks, copies of
10 which have been marked at trial as Exhibits 6, 80 and 81. Further, ISLAM is Ordered to purge
11 from any electronic record or physical records, any and all information (including any
12 information not previously produced by her in the litigation which is subsequently located)
13 which has been identified in this decision as a trade secret, originating from the ATLANTIS.

14 **CONCLUSION**

15
16 42. Judgment in favor of ATLANTIS against Defendant ISLAM.

17 DATED AND DONE this 26 day of AUGUST, 2013.

18 
19 DISTRICT JUDGE

20 Respectfully submitted,

21 LAXALT & NOMURA, LTD

22
23 By:

24 ROBERT A. DOTSON (NSB # 5285)
25 ANGELA M. BADER, ESQ. (NSB #5574)
26 9600 Gateway Dr.
27 Reno, NV 89521
28 T: (775) 322-1170
F: (775) 322-1865

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

1 COHEN-JOHNSON, LLC
2 H. STAN JOHNSON
3 Nevada Bar No. 00265
4 sjohnson@cohenjohnson.com
5 BRIAN A. MORRIS, ESQ.
6 Nevada Bar No. 11217
7 bam@cohenjohnson.com
8 255 E. Warm Springs Road, Suite 100
9 Las Vegas, Nevada 89119
10 Telephone: (702) 823-3500
11 Facsimile: (702) 823-3400
12 Attorneys for Grand Sierra Resort

FILED
Electronically
09-27-2013:03:42:55 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4028835

13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE

16 GOLDEN ROAD MOTOR INN, INC., a Nevada
17 Corporation, d/b/a ATLANTIS CASINO
18 RESORT SPA,

19 Plaintiff,

20 vs.

21 SUMONA ISLAM, an individual; MEI-GSR
22 HOLDINGS LLC d/b/a GRAND SIERRA
23 RESORT; et.al.

24 Defendants.

Case No.: CV12-01171
Dept. No.: B7

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
JUDGMENT**

25 This matter came on for a non-jury trial on July 1, 2013 before the Honorable Patrick
26 Flanagan, District Judge, presiding. The Court having heard the testimony of witnesses, reviewed
27 the exhibits submitted into evidence and having heard the argument of Counsel finds in favor of
28 the Defendant MEI-GSR HOLDINGS, LLC, d/b/a GRAND SIERRA RESORT on all causes of
action alleged against it and awards Defendant MEI-GSR HOLDINGS LLC d/b/a GRAND
SIERRA RESORT attorneys' fees pursuant to NRS 600A.060 and costs pursuant to NRS 18.110
and further makes the following findings of fact and conclusions of law

FINDINGS OF FACTS:

1. That in 2005 Sumona Islam became a casino host for Harrah's Casino in Reno.
2. That during the course of her employment with Harrah's she developed a list of players with information concerning those players commonly known as her "book of trade"
3. In April 2008 Sumona Islam left Harrah's and became employed by Plaintiff

1 Golden Road Motor Inn as a host at the Atlantis Casino.

2 4. At the time of her employment at Atlantis, Sumona provided a copy of her "book
3 of trade" to Atlantis which was incorporated into the Atlantis data base. During her employment
4 with Atlantis, she obtained additional players whom she included in her "book of trade".

5 5. In January 2011 Sumona Islam entered into a non-competition agreement with the
6 Atlantis which provided that she could not be employed by any casino in any capacity within 150
7 mile radius for one year from her termination of employment with Atlantis.

8 6. In January 2012 she applied for a position as an executive casino host with GSR,
9 a hotel casino in Reno owned by Defendant MEI-GSR HOLDINGS INC.

10 7. She informed GSR of her non-competition agreement with Atlantis and provided
11 a copy of that document to GSR. GSR sent the document to its counsel for review and received
12 an opinion that the agreement was unenforceable as written.

13 8. At the time of her hiring GSR through its agents told Sumona Islam not to bring
14 any information from Atlantis, except for herself and her relations.

15 9. Although Ms. Islam was in possession of spiral notebooks in which she had
16 copied information from the Atlantis' data base, she did not give or show those notebooks to
17 anyone at GSR.

18 10. Upon her hiring in January 2012, Sumona entered certain information from her
19 "book of trade" into the GSR database. This consisted of approximately 200 guests, that she
20 wished to be assigned to her as a host based on her statement that she had prior relationships with
21 these individuals.

22 11. The GSR database restricted the information which could be inputted by hosts to
23 a player's name, address telephone number and contract information and has no fields in which
24 Sumona could have inputted player ratings, casino credit history, or player history.

25 12. A customer's name, address and contact information are not trade secrets.
26 For purposes of this litigation it was determined that the following would constitute a trade secret

27 a) player tracking records;

28 b) other hosts customers;

- 1 c) initial buy-ins;
- 2 d) level of play;
- 3 e) table games;
- 4 f) time of play;
- 5 g) customer's personal information such as a Social Security number
- 6 h) customer's casino credit;
- 7 i) customer's location, whether they're international, regional or local player beyond
- 8 any information contained within the customer's address;
- 9 j) marketing strategy;
- 10 k) customer's birth date;
- 11 l) customer's tier ratings;
- 12 m) comp information ;
- 13 n) player's history of play;
- 14 o) player's demographics;
- 15 p) players' financial information;
- 16 q) company's financial information;
- 17 r) company's marketing strategy;
- 18 s) other employee's information and customer information.

19 13. In April 2012 house counsel for Atlantis sent a letter to GSR stating that Sumona
20 had taken proprietary information from the Atlantis computers and changed other customer
21 information in the Atlantis database.

22 14. Counsel for GSR informed plaintiff that Ms. Islam denied taking any proprietary
23 information from Atlantis and requested Atlantis to provide the information which it believed
24 had been misappropriated by Ms. Islam. Plaintiff did not provide any information.

25 15. Atlantis filed suit against Ms. Islam and GSR alleging that GSR had tortuously
26 interfered with Atlantis' non-competition agreement, tortuously interfered with a prospective
27 economic advantage belonging to Atlantis and violation of NRS 600A.010 commonly known as
28 the Nevada Trade Secret Act.

1 16. Plaintiff sought a preliminary injunction which enjoined GSR from using any
2 information provided to it from Sumona Islam. GSR took reasonable steps to insure good faith
3 and timely compliance with the injunction.

4 17. Atlantis knew that among the names it claimed were misappropriated were names
5 which were legally and properly included in Ms. Islam's "book trade" but despite this knowledge
6 brought and obtained an injunction preventing GSR from marketing to these individuals from
7 August 27, 2012 through the trial of this matter in 2013.

8 18. Atlantis presented no credible evidence that GSR had a duty to investigate the
9 names in Ms. Islam's "book of trade" beyond making inquiries of Ms. Islam. To the contrary
10 there was credible testimony that casinos have a right to rely on the host's statements.

11 19. GSR provided a list of all the names and information concerning those individuals
12 added to the GSR data base by Ms. Islam which showed that the information was limited to the
13 individual player's name, address and contact information. None of which constitutes a trade
14 secret under NRS 600A .10.

15 20. Atlantis presented no credible evidence that GSR had tortuously interfered with
16 its non-competition agreement with Islam. Atlantis knew that GSR had hired Ms. Islam based on
17 its attorneys legal opinion that the agreement was overly broad in denying Ms. Islam the right to
18 work in any capacity in any casino. Atlantis further knew or should have known that the non-
19 competition agreement was overly broad and unenforceable and unenforceable as a matter of law
20 but continued to prosecute the claim.

21 21. Atlantis presented no credible evidence that GSR misappropriated any
22 information constituting a trade secret and in fact maintained the litigation and the injunction to
23 include names of persons which it knew and admitted at trial were legally in Ms. Islam's book of
24 business and that she was entitled to provide to GSR.

25 22. Atlantis continued and maintained the litigation against GSR for misappropriation
26 of trade secrets even when it knew that GSR was acting in good faith by relying on Ms. Islam's
27 assertions concerning her "book of trade" and knew that the customer information provided by
28 Ms. Islam was limited to the customers' name, address, telephone number and contact

1 information.

2 23. GSR did not misappropriate a trade secret belonging to Atlantis;

3 24. GSR did not tortuously interfere with a contract between Sumona Islam and
4 Atlantis.

5 25. GSR did not interfere with a prospective economic advantage belonging to
6 Atlantis.

7 26. There is a lack of any evidence in the record that supports the claim of Atlantis
8 that GSR misappropriated Atlantis' trade secrets and therefore, Atlantis has failed to meet its
9 burden of proof.

10 27. That early on in the litigation Defendant Islam admitted that she had taken certain
11 information from ATLANTIS in the form certain spiral notebooks.

12 28. That early on in the litigation Defendant Islam testified that she had not shown the
13 information in the form of the spiral notebooks to any representative of GRS.

14 29. That early on in the litigation Defendant Islam testified and confirmed that she
15 was told by the representatives of GSR not to bring anything with her except for herself and her
16 relationships.

17 30. That early on in the litigation Defendant Islam testified and confirmed that she
18 had told representatives of GSR that she did not bring trade secret information with her or that
19 she had information belonging to ATLANTIS.

20
21 **CONCLUSIONS OF LAW:**

22 1. The non-competition agreement between Sumona Islam and Atlantis, in
23 prohibiting casino employment in any capacity was overly broad and unenforceable as a matter
24 of law.

25 2. That absent an enforceable employment contract or non-competition agreement
26 with Atlantis, GSR could not as a matter of law, interfere with contractual relations between
27 Sumona and Atlantis.

28 3. A customer's name address, and contact information is not a trade secret under

1 NRS 600A.010. GSR did not misappropriate any trade secrets which belonged to Atlantis by
2 allowing Sumona Islam to upload this information into its data base.

3 4. GSR did not improperly obtain the information concerning players listed above as
4 set forth in 600A.030 and had a good faith reliance on Ms. Islam's assurances that all the names
5 provided were part of her personal "book of trade"

6 5. The failure of Atlantis to produce any credible evidence at trial that GSR
7 misappropriated trade secrets belonging to Atlantis constitutes ~~"objective speciousness". That~~ ^{that} ~~subjective~~ ^{bad faith} ~~is~~ ^{is} shown by the Plaintiff's knowledge of certain facts as set forth in the
8 findings of facts above; the decision to move forward against GSR and the extent of the litigation
9 against GSR despite a lack of direct evidence against GSR. This is a sufficient basis for an
10 award of attorney fees pursuant to NRS 600.060. Defendants are not required to prove a
11 negative and under the objective specious standard a lack of evidence in the record of
12 misappropriation; in addition to the actions as set forth above; is enough to show that the claim
13 of misappropriation was made in bad faith (*Sasco v. Rosendin Electric Inc.*, 143 Cal. Rptr. 3d
14 828, 207 Cal. App 4th 837 (CA 2012)) and entitles GSR to Attorney's fees and costs in this
15 matter.
16

17 6. That Atlantis sought, obtained, and maintained a preliminary injunction in this
18 matter that included names which Atlantis knew were not trade secrets under NRS 600A.010 and
19 continued to maintain that injunction even when it knew that those names were art of Sumona
20 Islam's personal book of trade in order to thwart competition for those players from GSR and
21 said conduct is evidence of bad faith entitling GSR to an award of attorney's fees and costs.

22 7. That the claims against GSR are dismissed and judgment entered in favor of the
23 Defendant GSR and GSR is entitled to an award of costs pursuant to NRS 18.110.

24 8. GSR is also entitled to bring an appropriate motion for fees and costs pursuant to
25 an offer of judgment dated May 20, 2013 under NRCP 68 and NRS 17.115.
26
27
28

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

CONCLUSION

9. Judgment in favor of Defendant GSR against Plaintiff ATLANTIS.

DATED THIS 27 DAY OF SEPTEMBER 2013

Breck Flanagan
DISTRICT JUDGE

Submitted by:

/s/ H. Stan Johnson

H. Stan Johnson, Esq.
Nevada Bar No. 00265
Terry Kinnally, Esq.
Nevada Bar No. 06379
COHEN JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Attorneys for MEI-GSR HOLDINGS LLC

FILED

Electronically

11-08-2013:03:20:15 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 4125122

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

GOLDEN ROAD MOTOR INN, INC.,
a Nevada corporation, dba ATLANTIS
CASINO RESORT SPA,

Plaintiff,

vs.

Case No.: CV12-01171

SUMONA ISLAM, an individual,
NAV-RENO-GS, LLC, a Nevada
limited liability company, dba GRAND
SIERRA RESORT; ABC
CORPORATIONS; XYZ
PARTNERSHIPS; and JOHN DOES I
through X, inclusive,

Dept. No.: 7

Defendants.

ORDER

On August 5, 2013, Plaintiff, GOLDEN ROAD MOTOR INN, INC., dba ATLANTIS CASINO RESORT SPA (hereafter Atlantis), filed its *Verified Memorandum of Costs*. On August 7, 2013 Defendant, SUMONA ISLAM (hereafter Islam), filed her *Motion to Retax Costs*. On August 19, 2013, Atlantis filed its *Opposition to Defendant Sumona Islam's Motion to Retax Costs and Affidavit of Counsel in Support of Plaintiff's Opposition to Defendant Sumona Islam's Motion to Retax Costs*. On September 3, 2013, Islam filed her *Reply in Support of Motion to Retax Costs*.

1 On August 21, 2013, Atlantis filed its *Motion for Costs and Attorney's Fees*,
2 and *Affidavit of Counsel in Support of Plaintiff's Motion for Costs and Attorney's*
3 *Fees*. On September 3, 2013, Islam filed her *Opposition to Atlantis' Motion for*
4 *Attorney's Fees and Costs*. On September 10, 2013, Atlantis filed its *Reply and*
5 *Affidavit of Counsel in Support of Plaintiff's Reply to Motion* and submitted the
6 matter for decision.

7 On September 30, 2013, Defendant, MEI-GSR HOLDINGS LLC dba GRAND
8 SIERRA RESORT (hereafter Grand Sierra), filed its *Memorandum of Costs*. On
9 October 3, 2013, Atlantis filed its *Motion to Retax Costs of Defendant Grand Sierra*
10 *Resort*. On October 9, 2013, Grand Sierra filed its *Reply to Plaintiff's Objection to*
11 *Defendant GSR's Memorandum of Costs*. On October 17, 2013, Atlantis filed its
12 *Reply in Support of Plaintiff's Motion to Retax Costs of Defendant Grand Sierra*
13 *Resort* and submitted the matter for decision.

14 On October 19, 2013, Grand Sierra filed its *Motion for Attorney's Fees*. On
15 November 1, 2013, Islam filed her *Response to Grand Sierra's Motion for Attorney's*
16 *Fees*. On November 4, 2013, Atlantis filed its *Opposition to GSR's Motion for Award*
17 *of Attorney's Fees and Costs and Affidavit of Counsel in Support of Plaintiff's*
18 *Opposition to GSR's Motion for Award of Attorney's Fees and Costs*.

19 **Costs: Atlantis**

20 The Atlantis seeks recovery of \$17,130.61 in costs pursuant to NRS 18.020.
21 This court has reviewed the invoices filed in support of the requests for cost
22 reimbursement. This court finds the costs expended by the Plaintiff in this matter
23 to be both reasonable and necessary. This Court has also reviewed the
24 documentation and billing to determine the allocation of costs attributable to work
25 performed against Defendant Islam and co-defendant Grand Sierra. This court finds
26 that all but \$60.00 is attributed to Ms. Islam. Therefore, Plaintiff is hereby awarded
27 costs in the amount of \$17,070.61.
28

1 Costs: Grand Sierra

2 Grand Sierra seeks recovery of \$37,009.74 in costs pursuant to NRS 18.110.
3 Included in the request is \$18,026.15 in expert witness fees for Mr. Aguero. This
4 request is extraordinary. This requests is deficient in itemization and justification.
5 This court has reviewed Mr. Aguero's report.(Ex. 37) The majority of his report
6 consists of his resume. While this court relied upon Mr. Aguero's report in
7 formulating its finding, this resulted in an award of damages of \$23,874.00.¹ Based
8 upon the court's review of the expert report, the witness' testimony and the final
9 award, the court reduces the award of expert witness fees to \$3,000.00.

10 Grand Sierra seeks an award of \$2,073.24 for two volumes of the trial
11 transcripts. While undoubtedly of some assistance to trial counsel, this expense is
12 not a necessary cost of litigation.

13 Grand Sierra seeks \$11,337.79 in travel and lodging expenses for counsel.
14 Grand Sierra is seeking to recoup the expenses of air, rental car, meals and lodging
15 for both Mr. Johnson and Mr. Cohen.² Mr. Johnson represented the Grand Sierra
16 at trial, giving the opening statement, cross-examining witnesses, presenting the
17 Grand Sierra's case-in-chief and closing arguments. While Mr. Cohen undoubtedly
18 provided some assistance to Grand Sierra, his participation was more opaque.³ This
19 court is without any information as to Mr. Cohen's participation in pretrial
20 proceedings or incurred other expenses involved in this litigation. Grand Sierra
21 provides scant documentation and itemization to support these expenses. As such,
22 this court finds an award for costs of travel and lodging for Mr. Johnson to be more
23 appropriate in this case. This court will excise the \$4,369.50 sought for Mr. Cohen's
24 airfare travel to Reno. Therefore, Defendant Grand Sierra Resort is awarded costs
25 in the amount of \$15,540.85.

26
27

¹ The final award of \$43,874 included \$20,000 in punitive damages not attributable to Mr. Aguero's work.

28 ² Defendant Grand Sierra Resorts employed Johnson/Cohen, a Las Vegas firm whose principals attended every day of trial. Any adjustment in the award of costs is no reflection on the client's choice of Las Vegas counsel.

³ Mr. Cohen did raise one objection at trial, which was sustained.

1 The Award of Attorney's Fees

2 Generally speaking, the district court may not award attorneys' fees absent
3 authority under statute, rule, or contract.⁴ The Nevada Supreme Court has upheld
4 an award of attorney's fees to a "prevailing party."⁵ After weighing all the relevant
5 factors, the district court may award up to the full amount of fees requested.

6 On the other hand, where the court has failed to consider many factors,
7 and/or has made no findings based upon the evidence that the attorney's fees are
8 reasonable and justified, it is an abuse of discretion for the court to award the full
9 amount of fees requested. *Beattie v. Thomas*, 99 Nev. 579, 588, 688 P.2d 268, 274
10 (1983); but see *MRO Communications, Inc. v. AT&T Co.*, 197 F.3d 1276, 1284 (9th
11 Cir. 1999)(where affidavits and exhibits submitted in support, and in opposition to,
12 the motion for attorneys' fees were sufficient to enable a court to consider each of
13 the four factors outlined in *Beattie* and conclude the amount of fees was reasonable
14 and justified, the court did not abuse its discretion in awarding attorney's fees
15 without making specific findings on the four factors).

16 In this case, this court presided over this entire litigation, culminating in a
17 multi-week bench trial. As such, this court is familiar with the quality of the
18 advocacy of the attorneys, the character of the work performed by the lawyers and
19 the result of those efforts. The court has considered the *Beattie* factors in reaching
20 its findings.

21 This court has also considered Defendant Islam's objections and request for
22 apportionment of fees between herself and co-defendant Grand Sierra Resort. This
23 court has reviewed plaintiff's billing invoices in an attempt to allocate fees between
24 the co-defendants. This court has reviewed, *in camera*, the billing statements of
25

26
27 ⁴ See *Albion v. Horizon Communities, Inc.*, 122 Nev. 409, 132 P.3d 1022, 1028 (2006), citing *State Department of*
28 *Human Resources v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375,376 (1993).

⁵ For attorneys' fees purposes, a plaintiff is prevailing if he succeeds on any significant issue in litigation which achieves some of the benefit he sought in bringing the suit. See *Women's Federal Savings & Loan Association v. Nevada National Bank*, 623 F.Supp. 401, 404 (D. Nev. 1987).

1 counsel for the Atlantis and Grand Sierra. This court finds apportionment of fees
2 sought by Atlantis against Ms. Islam to be appropriate in this case.

3 **The Atlantis Attorney's Fees**

4 The Atlantis seeks an award of \$364,422.00 in attorney's fees against Ms.
5 Islam. In reviewing the invoices of Atlantis counsel, this court finds that 84.71% of
6 the fees in this matter were expended toward the claims asserted against Ms.
7 Islam. This court finds the fees to be reasonable and justified. Based upon said
8 review, Plaintiff is hereby awarded attorney's fees in the amount of \$308,711.00.

9 **The Grand Sierra Resort Attorney's Fees**

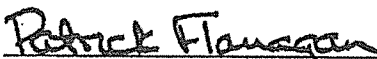
10 By separate *Order* dated November 6, 2013, this court has directed counsel
11 for the Grand Sierra to submit a more detailed billing statement in support of their
12 *Motion for Attorney's Fees*. Therefore, at this time, Grand Sierra's *Motion for*
13 *Attorney's Fees* is **DENIED** without prejudice.

14 **IT IS ORDERED:**

15 Plaintiff Atlantis is awarded \$17,070.61 in costs and \$303,711.00 in
16 attorney's fees.

17 Defendant Grand Sierra is awarded \$15,540.85 in costs. Grand Sierra's
18 *Motion for Attorney's Fees* is **DENIED** without prejudice.

19 DATED this 8 day of October, 2013.

20
21 
22 Patrick Flanagan
23 DISTRICT COURT JUDGE
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 8 day of November, 2013, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Robert Dotson, Esq. for Golden Road Motor Inn, Inc.,

Mark Wray, Esq. for Sumona Islam; and

H. Johnson, Esq. for GSR Enterprises

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


Judicial Assistant

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

GOLDEN ROAD MOTOR INN, INC.,
a Nevada corporation, dba ATLANTIS
CASINO RESORT SPA,

Plaintiff,

vs.

Case No.: CV12-01171

SUMONA ISLAM, an individual,
NAV-RENO-GS, LLC, a Nevada
limited liability company, dba GRAND
SIERRA RESORT; ABC
CORPORATIONS; XYZ
PARTNERSHIPS; and JOHN DOES I
through X, inclusive,

Dept. No.: 7

Defendants.

FIRST AMENDED ORDER

On August 5, 2013, Plaintiff, GOLDEN ROAD MOTOR INN, INC., dba ATLANTIS CASINO RESORT SPA (hereafter Atlantis), filed its *Verified Memorandum of Costs*. On August 7, 2013 Defendant, SUMONA ISLAM (hereafter Islam), filed her *Motion to Retax Costs*. On August 19, 2013, Atlantis filed its *Opposition to Defendant Sumona Islam's Motion to Retax Costs and Affidavit of Counsel in Support of Plaintiff's Opposition to Defendant Sumona Islam's Motion to Retax Costs*. On September 3, 2013, Islam filed her *Reply in Support of Motion to Retax Costs*.

1 On August 21, 2013, Atlantis filed its *Motion for Costs and Attorney's Fees*,
2 and *Affidavit of Counsel in Support of Plaintiff's Motion for Costs and Attorney's*
3 *Fees*. On September 3, 2013, Islam filed her *Opposition to Atlantis' Motion for*
4 *Attorney's Fees and Costs*. On September 10, 2013, Atlantis filed its *Reply and*
5 *Affidavit of Counsel in Support of Plaintiff's Reply to Motion* and submitted the
6 matter for decision.

7 On September 30, 2013, Defendant, MEI-GSR HOLDINGS LLC dba GRAND
8 SIERRA RESORT (hereafter Grand Sierra), filed its *Memorandum of Costs*. On
9 October 3, 2013, Atlantis filed its *Motion to Retax Costs of Defendant Grand Sierra*
10 *Resort*. On October 9, 2013, Grand Sierra filed its *Reply to Plaintiff's Objection to*
11 *Defendant GSR's Memorandum of Costs*. On October 17, 2013, Atlantis filed its
12 *Reply in Support of Plaintiff's Motion to Retax Costs of Defendant Grand Sierra*
13 *Resort* and submitted the matter for decision.

14 On October 19, 2013, Grand Sierra filed its *Motion for Attorney's Fees*. On
15 November 1, 2013, Islam filed her *Response to Grand Sierra's Motion for Attorney's*
16 *Fees*. On November 4, 2013, Atlantis filed its *Opposition to GSR's Motion for Award*
17 *of Attorney's Fees and Costs and Affidavit of Counsel in Support of Plaintiff's*
18 *Opposition to GSR's Motion for Award of Attorney's Fees and Costs*.

19 **Costs: Atlantis**

20 The Atlantis seeks recovery of \$17,130.61 in costs pursuant to NRS 18.020.
21 This court has reviewed the invoices filed in support of the requests for cost
22 reimbursement. This court finds the costs expended by the Plaintiff in this matter
23 to be both reasonable and necessary. This Court has also reviewed the
24 documentation and billing to determine the allocation of costs attributable to work
25 performed against Defendant Islam and co-defendant Grand Sierra. This court finds
26 that all but \$60.00 is attributed to Ms. Islam. Therefore, Plaintiff is hereby awarded
27 costs in the amount of **\$17,070.61**.
28

1 Costs: Grand Sierra

2 Grand Sierra seeks recovery of \$37,009.74 in costs pursuant to NRS 18.110.
3 Included in the request is \$18,026.15 in expert witness fees for Mr. Aguero. This
4 request is extraordinary. This requests is deficient in itemization and justification.
5 This court has reviewed Mr. Aguero's report.(Ex. 37) The majority of his report
6 consists of his resume. While this court relied upon Mr. Aguero's report in
7 formulating its finding, this resulted in an award of damages of \$23,874.00.¹ Based
8 upon the court's review of the expert report, the witness' testimony and the final
9 award, the court reduces the award of expert witness fees to \$3,000.00.

10 Grand Sierra seeks an award of \$2,073.24 for two volumes of the trial
11 transcripts. While undoubtedly of some assistance to trial counsel, this expense is
12 not a necessary cost of litigation.

13 Grand Sierra seeks \$11,337.79 in travel and lodging expenses for counsel.
14 Grand Sierra is seeking to recoup the expenses of air, rental car, meals and lodging
15 for both Mr. Johnson and Mr. Cohen.² Mr. Johnson represented the Grand Sierra
16 at trial, giving the opening statement, cross-examining witnesses, presenting the
17 Grand Sierra's case-in-chief and closing arguments. While Mr. Cohen undoubtedly
18 provided some assistance to Grand Sierra, his participation was more opaque.³ This
19 court is without any information as to Mr. Cohen's participation in pretrial
20 proceedings or incurred other expenses involved in this litigation. Grand Sierra
21 provides scant documentation and itemization to support these expenses. As such,
22 this court finds an award for costs of travel and lodging for Mr. Johnson to be more
23 appropriate in this case. This court will excise the \$4,369.50 sought for Mr. Cohen's
24 airfare travel to Reno. Therefore, Defendant Grand Sierra Resort is awarded costs
25 in the amount of \$15,540.85.

26
27
28 ¹ The final award of \$43,874 included \$20,000 in punitive damages not attributable to Mr. Aguero's work.

² Defendant Grand Sierra Resorts employed Johnson/Cohen, a Las Vegas firm whose principals attended every day of trial. Any adjustment in the award of costs is no reflection on the client's choice of Las Vegas counsel.

³ Mr. Cohen did raise one objection at trial, which was sustained.

1 **The Award of Attorney's Fees**

2 Generally speaking, the district court may not award attorneys' fees absent
3 authority under statute, rule, or contract.⁴ The Nevada Supreme Court has upheld
4 an award of attorney's fees to a "prevailing party."⁵ After weighing all the relevant
5 factors, the district court may award up to the full amount of fees requested.

6 On the other hand, where the court has failed to consider many factors,
7 and/or has made no findings based upon the evidence that the attorney's fees are
8 reasonable and justified, it is an abuse of discretion for the court to award the full
9 amount of fees requested. *Beattie v. Thomas*, 99 Nev. 579, 588, 688 P.2d 268, 274
10 (1983); *but see MRO Communications, Inc. v. AT&T Co.*, 197 F.3d 1276, 1284 (9th
11 Cir. 1999)(where affidavits and exhibits submitted in support, and in opposition to,
12 the motion for attorneys' fees were sufficient to enable a court to consider each of
13 the four factors outlined in *Beattie* and conclude the amount of fees was reasonable
14 and justified, the court did not abuse its discretion in awarding attorney's fees
15 without making specific findings on the four factors).

16 In this case, this court presided over this entire litigation, culminating in a
17 multi-week bench trial. As such, this court is familiar with the quality of the
18 advocacy of the attorneys, the character of the work performed by the lawyers and
19 the result of those efforts. The court has considered the *Beattie* factors in reaching
20 its findings.

21 This court has also considered Defendant Islam's objections and request for
22 apportionment of fees between herself and co-defendant Grand Sierra Resort. This
23 court has reviewed plaintiff's billing invoices in an attempt to allocate fees between
24 the co-defendants. This court has reviewed, *in camera*, the billing statements of
25

26
27 ⁴ See *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 132 P.3d 1022, 1028 (2006), *citing State Department of*
28 *Human Resources v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375,376 (1993).

⁵ For attorneys' fees purposes, a plaintiff is prevailing if he succeeds on any significant issue in litigation which achieves some of the benefit he sought in bringing the suit. See *Women's Federal Savings & Loan Association v. Nevada National Bank*, 623 F.Supp. 401, 404 (D. Nev. 1987).

1 counsel for the Atlantis and Grand Sierra. This court finds apportionment of fees
2 sought by Atlantis against Ms. Islam to be appropriate in this case.

3 **The Atlantis Attorney's Fees**

4 The Atlantis seeks an award of \$364,422.00 in attorney's fees against Ms.
5 Islam. In reviewing the invoices of Atlantis counsel, this court finds that 84.71% of
6 the fees in this matter were expended toward the claims asserted against Ms.
7 Islam. This court finds the fees to be reasonable and justified. Based upon said
8 review, Plaintiff is hereby awarded attorney's fees in the amount of **\$308,711.00**.

9 **The Grand Sierra Resort Attorney's Fees**

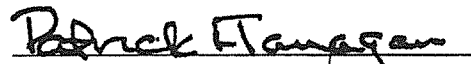
10 By separate *Order* dated November 6, 2013, this court has directed counsel
11 for the Grand Sierra to submit a more detailed billing statement in support of their
12 *Motion for Attorney's Fees*. Therefore, at this time, Grand Sierra's *Motion for*
13 *Attorney's Fees* is **DENIED without prejudice**.

14 **IT IS ORDERED:**

15 Plaintiff Atlantis is awarded **\$17,070.61** in costs and **\$308,711.00** in
16 attorney's fees.

17 Defendant Grand Sierra is awarded **\$15,540.85** in costs. Grand Sierra's
18 *Motion for Attorney's Fees* is **DENIED without prejudice**.

19 DATED this 10 day of ^{MARCH, 2014}~~October, 2013~~.

20
21 
22 Patrick Flanagan
23 DISTRICT COURT JUDGE
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

8
9
10
11
12
13

9
10

10

11
12
13

14
15
16

17
18
19
20
21
22
23
24
25
26
27
28

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

GOLDEN ROAD MOTOR INN, INC.,
a Nevada corporation, dba ATLANTIS
CASINO RESORT SPA,

Plaintiff,

vs.

Case No.: CV12-01171

SUMONA ISLAM, an individual,
NAV-RENO-GS, LLC, a Nevada
limited liability company, dba GRAND
SIERRA RESORT; ABC
CORPORATIONS; XYZ
PARTNERSHIPS; and JOHN DOES I
through X, inclusive,

Dept. No.: 7

Defendants.

ORDER

Procedural History

On October 19, 2013, Defendant, NAV-RENO-GS, LLC, a Nevada limited liability company, dba GRAND SIERRA RESORT (hereafter GSR), filed its *Motion for Attorney Fees*, and *Affidavit of Counsel in Support*. On November 1, 2013, Defendant, SUMONA ISLAM, filed her *Response to Grand Sierra's Motion for Attorney's Fees*. On November 4, 2013, Plaintiff, GOLDEN ROAD MOTOR INN, INC., a Nevada corporation, dba ATLANTIS CASINO RESORT SPA (hereafter Atlantis), filed its *Opposition to GSR's Motion for Award of Attorney's Fees and Costs*, and *Affidavit of Counsel in Support of Plaintiff's Opposition to GSR's Motion*

1 for Award of Attorney's Fees and Costs. On November 6, 2013, this court entered its
2 Order requesting GSR provide more detailed invoices to allow it to determine the
3 reasonableness of GSR's fees. On January 21, 2014, GSR filed its *Renewed Motion*
4 *for Award of Attorney's Fees & Costs and Affidavit of Counsel in Support*. On
5 February 6, 2014, Atlantis filed its *Opposition to GSR's Renewed Motion for Award*
6 *of Attorney Fees & Costs and Affidavit of Counsel in Support*. On February 18, 2014,
7 GSR filed its *Reply* and submitted this matter for decision on February 25, 2014.

8 **The Award of Attorney Fees**

9 1. NRCP 68 and NRS § 17.115

10 Legal Standard

11 GSR claims attorney fees as the prevailing party based upon Plaintiff's
12 rejection of its Offer of Judgment under NRCP 68 and NRS §17.115. In
13 determining whether to award attorney fees in the offer of judgment context, a
14 district court is required to weigh and consider the factors outlined in *Beattie v.*
15 *Thomas*, 99 Nev. 579, 668 P.2d 268 (1983). As a threshold matter, however, this
16 court must determine the validity of GSR's Offer of Judgment.

17 When determining the validity of an offer of judgment the court must apply
18 general contract principles. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254,
19 1257 (2005) (holding that contract principles apply to settlement agreements); *and*
20 *see Albios v. Horizon Communities Inc.*, 122 Nev. 409, 424, 132 P.3d 1022, 1032
21 (2006) (contract principles apply to NRS 17.115 and NRCP 68's unapportioned
22 offers of judgment). Under general contract principles, the offer must invite
23 acceptance in the offeree. "An offer is the manifestation of willingness to enter into
24 a bargain, so made as to justify another person in *understanding* that his assent to
25 that bargain is invited and will conclude it. Restatement (Second) of Contracts § 24
26 (1981) (emphasis added).

27 Applying these principles to NRCP 68 and NRS 17.115, the court's focus is
28 placed on the offeree's understanding of the offer and whether the offeree had a

1 meaningful opportunity to weigh the attendant risks of the offer. *Edwards*
2 *Industries, Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 923 P.2d 569 (1996); *see also*
3 *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993). The purpose of NRCP 68
4 and NRS 17.115 is settlement. Where there is a single theory of liability, calling for
5 the same person or entity to decide whether or not to settle, this purpose is
6 furthered. *RTTC Commc'ns, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 42, 110 P.3d
7 24, 29 (2005).

8 Analysis

9 The Offer of Judgment was made on May 20, 2013, on behalf of Nav-Reno-
10 GS, LLC. Prior to that date, Nav-Reno-GS, LLC merged into MEI-GSR-Holdings,
11 LLC. Nav-Reno-GS, LLC had no further association with GSR after October 1,
12 2012, and ceased to be the licensee. Additionally, the Offer of Judgment names Nav-
13 Reno-GS, LLC as a "d/b/a of Grand Sierra Resort" and was tendered to Plaintiff's
14 counsel by GSR's counsel, who remained the same throughout the litigation.
15 Plaintiff does not dispute these facts. In fact, the parties stipulated to the
16 substitution of MEI-GSR-Holdings, LLC in place of Nav-Reno-GS, LLC on June 21,
17 2013, one month after the offer was tendered to Plaintiff.

18 These facts more than suggest that Plaintiff was aware of the identity of the
19 offeror, *i.e.* Plaintiff knew that GSR was the principal entity. Moreover, two theories
20 of liability were asserted against GSR (tortious interference with contract and a
21 violation of the Uniform Trade Secret Act); however, both arose from one contract
22 and the offer was tendered to just one party – Plaintiff. Finally, GSR maintained
23 the same attorneys throughout this litigation with whom Plaintiff consistently dealt
24 with and were familiar with. Thus, in determining what the offeree understood
25 during the negotiation process, the court finds Plaintiff understood the nature of the
26 offer, the party making the offer, and was able to adequately weigh the attendant
27 risks of pursuing litigation against GSR. Thus, the purpose of the rules is furthered
28 and the Offer of Judgment is valid.

1 2. The reasonableness of the fees pursuant to *Brunzell*

2 Legal Standard

3 In considering the reasonableness of an award of attorney fees, this court
4 must consider and weigh the following factors:

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

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

16 Analysis

17 As to the first *Brunzell* factor, Mr. Johnson has been practicing law for 25
18 years in the area of complex civil and business litigation. He has demonstrated
19 professional skill and expertise in the area of trade secrets and gaming law. This
20 factor is met. Second, this trial involved complex trade secrets issues including
21 issues of first impressions involving the definition of "trade secret" as it applied to a
22 casino host's "book of business." There was a significant employment law issue
23 involving an employment contract's restrictive non-compete covenant. There were
24 multiple parties, including an intricate defense of a co-defendant. There was a
25 substantial damage issue requiring expert testimony, analysis and argument over
26 disputed theoretical and actual damages models unique to the gaming industry. The
27 court finds the second *Brunzell* factor is met. Third, it appears Mr. Johnson did the
28

1 bulk of the litigation work.¹ This court had an opportunity to observe Mr. Johnson
2 in trial and finds the third factor is met. Finally, the result of the trial was the
3 complete vindication of GSR, thereby fulfilling the fourth factor.

4 The satisfaction of the four-part analysis of *Brunzell* does not automatically
5 terminate this court's inquiry. This court must also determine whether the attorney
6 fees sought are reasonable and justified in timing and amount. *See Beattie*, at 588-
7 89. The court is limited to reviewing the fees incurred from the service of the Offer
8 of Judgment forward. NRCP 68(f)(2); NRS 17.115.

9 GSR seeks \$391,932.80 in attorney fees. However, the Offer of Judgment was
10 served on May 20, 2013. Beginning with May 20, 2013, GSR is entitled to the fees
11 incurred from the date of service of the Offer of Judgment forward, which totals
12 \$190,124.50.

13 This court presided over this case from the temporary restraining order
14 hearing to closing arguments after a bench trial. From this vantage point, the court
15 finds the amount of \$190,124.50 is a reasonable amount of attorney fees when
16 compared with the fees of the other parties to this litigation, and is justified from
17 the date of the Offer of Judgment forward.

18 3. NRS § 600A.060

19 In light of the award of attorney's fees pursuant to NRCP 68 and NRS 17.115,
20 the court declines to award additional fees pursuant to NRS 600A.060.

21 Conclusion

22 This court finds that Grand Sierra Resort is entitled to an award of attorney
23 fees in the amount of \$190,124.50 and reconfirms the prior order awarding Grand
24 Sierra Resort \$15,540.85 in costs. Defendant Grand Sierra Resort is awarded post-
25 judgment interest in the statutory amount.

26
27 ¹ Previously, this court disallowed the award of trial-related fees and costs as to Mr. Cohen, while
28 allowing his fees and costs for pretrial assistance in the analysis of co-defendant ISLAM's
employment contract. Likewise, this court finds the fees for the work done by the associates and
paralegal to be reasonable and necessarily incurred in the defense of GSR.

1 IT IS FURTHER ORDERED that Grand Sierra Resort submit a redacted
2 copy of its billing statements to Plaintiff within fifteen (15) days of entry of this
3 Order.

4 DATED this 14 day of March, 2014.

5
6
7 Patrick Flanagan
8 Patrick Flanagan
9 DISTRICT COURT JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 14 day of March, 2014, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Robert Dotson, Esq. for Golden Road Motor Inn, Inc.,

Mark Wray, Esq. for Sumona Islam; and

H. Johnson, Esq. for GSR Enterprises

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

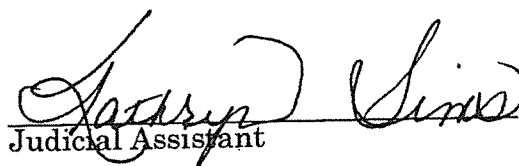

Judicial Assistant

EXHIBIT 1

EXHIBIT 1

1 1090
2 ROBERT A. DOTSON, ESQ.
3 Nevada State Bar No. 5285
4 rdotson@laxalt-nomura.com
5 ANGELA M. BADER, ESQ.
6 Nevada State Bar No. 5574
7 abader@laxalt-nomura.com
8 LAXALT & NOMURA, LTD.
9 9600 Gateway Drive
10 Reno, Nevada 89521
11 Tel: (775) 322-1170
12 Fax: (775) 322-1865
13 Attorneys for Plaintiff

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

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

11 GOLDEN ROAD MOTOR INN, INC., a Nevada
12 Corporation, d/b/a ATLANTIS CASINO
13 RESORT SPA

Case No.: CV12-01171

Dept No.: B6

14 Plaintiff,

15 vs.

16 SUMONA ISLAM, an individual; NAV-RENO-
17 GS, LLC, a Nevada limited liability company,
18 d/b/a GRAND SIERRA RESORT; ABC
19 CORPORATIONS; XYZ PARTNERSHIPS;
20 AND JOHN DOES I through X, inclusive.

21 Defendants.

22 **AMENDED VERIFIED COMPLAINT FOR DAMAGES**

23 **Business Court Requested**

24 Plaintiff GOLDEN ROAD MOTOR INN, INC. d/b/a ATLANTIS CASINO RESORT
25 SPA ("PLAINTIFF" or "ATLANTIS"), by and through its counsel of record, Laxalt & Nomura,
26 Ltd., amends its Verified Complaint For Damages filed with this Court on April 27, 2012 and
27 alleges the following complaint against Defendants SUMONA ISLAM ("ISLAM") and NAV-
28 RENO-GS, LLC d/b/a GRAND SIERRA RESORT ("GSR"), as follows:

///

I.

PARTIES AND JURISDICTION

1. GOLDEN ROAD MOTOR INN, INC. is a Nevada domestic corporation with its principal place of business in the State of Nevada.

2. ISLAM is a resident of Washoe County, Nevada.

3. GSR is a Nevada limited liability company with its principal place of business in the State of Nevada.

4. Plaintiff does not know the true names and capacities or involvement, whether individual, corporate or otherwise, of the Defendants named herein as ABC CORPORATIONS, XYZ PARTNERSHIPS, and JOHN DOES I through X, inclusive. Plaintiff is informed and believes, and upon such information and belief alleges that each of the Defendants designated herein as ABC CORPORATIONS, XYZ PARTNERSHIPS, and/or DOE is negligently or otherwise legally responsible in some manner for the events and happenings referred to herein, and that each negligently or otherwise caused injury or damages proximately suffered by the Plaintiff, as more particularly alleged herein. Plaintiff is informed and believes, and upon such information and belief alleges that ABC CORPORATIONS or LLC's, XYZ PARTNERSHIPS, and/or DOE engaged in the operation of gaming and the hosting of gaming clients at the premises commonly known as the Grand Sierra Resort/GSR. Plaintiff prays leave to amend this Complaint to show their true names and capacities when the same have been finally determined.

5. The actions of the Defendants and their employees and/or agents, whether or not within the scope of their agency, were ratified by the other remaining individual, corporate or partnership Defendants.

6. This Court has subject matter jurisdiction over ATLANTIS' Amended Complaint due to the venue clause contained in the agreement between ATLANTIS and ISLAM regarding company property, proprietary information, and trade secrets and because the allegations complained of below occurred in Washoe County.

///

///

1 II.

2 GENERAL ALLEGATIONS

3 7. ATLANTIS hired ISLAM on or about April 16, 2008 as a Concierge Manager.

4 8. On April 15, 2008, prior to commencing her employment with ATLANTIS,
5 ISLAM executed the ATLANTIS Online System User Agreement ("Online System User
6 Agreement").

7 9. On April 15, 2008, prior to commencing her employment with ATLANTIS,
8 ISLAM also executed an agreement with the ATLANTIS concerning its Business Ethics Policy
9 and Code of Conduct Acknowledgement and Conflicts of Interest Statement. This agreement
10 ("Business Ethics Policy and Code of Conduct Agreement"), including any updates, was again
11 signed by ISLAM on January 23, 2009, February 26, 2010 and January 19, 2011.

12 10. On April 15, 2008, prior to commencing her employment with ATLANTIS,
13 ISLAM also executed the ATLANTIS Company Policy regarding Company Property,
14 Proprietary Information, and Trade Secrets (hereinafter referred to as "Trade Secret
15 Agreement"). This agreement, including any updates, was again signed by ISLAM on January
16 23, 2009, February 26, 2010 and January 19, 2011.

17 11. On February 26, 2010, ISLAM signed a Non-Compete/Non-Solicitation
18 Agreement with the ATLANTIS ("Non-Compete Agreement").

19 12. ISLAM terminated her employment as an Executive Casino Host with the
20 ATLANTIS on January 19, 2012.

21 13. Throughout ISLAM's employment at ATLANTIS she had access to and worked
22 with highly sensitive trade secrets and proprietary and confidential information of the
23 ATLANTIS, both online and offline, including but not limited to customer lists or customer
24 information or data (such as player tracking or club information), related to matters of
25 ATLANTIS' business.

26 14. In or about March, 2012, ATLANTIS began receiving complaints, and continues
27 to receive complaints, from its established guests that ISLAM contacted them on behalf of GSR
28 and extended offers for them to play at GSR.

15. In or about March, 2012, ATLANTIS discovered that ISLAM had modified, destroyed, changed or sabotaged confidential, proprietary, trade secret information of ATLANTIS, including but not limited to customer data belonging to the ATLANTIS on its online system.

16. On April 6, 2012, ATLANTIS issued cease and desist letters to ISLAM and GSR with respect to their use and potential use of the confidential, proprietary and trade secret information of the ATLANTIS. ATLANTIS received a response on April 18, 2012 from counsel for GSR and ISLAM wherein all allegations against ISLAM and GSR were denied.

III.

FIRST CLAIM FOR RELIEF

(Breach of Contract— Confidentiality Agreement as to Islam)

17. ATLANTIS repeats, realleges and incorporates herein each and every allegation set forth in paragraphs 1-16 of its Amended Complaint, as well as each and every allegation contained in every other Claim for Relief, as if fully set forth herein.

18. Pursuant to the terms of the Online System User Agreement, ISLAM, among other things, agreed that all information on ATLANTIS' online system, including but not limited to communications created, sent and received using ATLANTIS' online systems was the property of ATLANTIS, and agreed to maintain confidentiality of the proprietary information / trade secrets of the ATLANTIS including but not limited to guests or perspective guests of the ATLANTIS.

19. Pursuant to the terms of the Business Ethics Policy and Code of Conduct Agreement, ISLAM agreed not to disclose confidential information including customer lists or customer information (such as player tracking or club information) to any unauthorized persons, either during or after her termination and not to take any documents or records belonging to ATLANTIS after her departure. She also agreed not to profit from confidential information of the ATLANTIS.

20. Pursuant to the terms of the Trade Secret Agreement, ISLAM agreed, among other things, that all ATLANTIS property including intellectual property such as hotel or casino

1 customer/guest lists with facts about those customers' preferences, histories and other personal
2 or business information, was to remain with the ATLANTIS both during and after her term of
3 employment. ISLAM also agreed that any knowledge of ATLANTIS' intellectual property had
4 by her must not be used or disseminated to any other person or entity for any purpose. Finally,
5 ISLAM also agreed not to use or disseminate any ATLANTIS property, tangible, intellectual or
6 otherwise, in any way that may potentially benefit any person or entity other than ATLANTIS.

7 21. ISLAM breached the above agreements with the ATLANTIS both during and
8 after her employment by taking confidential information and intellectual property owned by the
9 Atlantis and using it to her advantage and the advantage of GSR, her subsequent employer, and
10 to the detriment of ATLANTIS.

11 22. As a direct, proximate and foreseeable result of ISLAM's breaches of
12 confidentiality, ATLANTIS has suffered general and special damages in an amount in excess of
13 Ten Thousand Dollars (\$10,000).

14 23. ATLANTIS has been required to retain the services of an attorney to prosecute its
15 claim against ISLAM and is entitled to reasonable attorney's fees and costs of suit incurred
16 herein.

17 24. Wherefore, Plaintiff pleads for judgment against Defendants, and each of them, as
18 more fully set forth below.

19 IV.

20 **SECOND CLAIM FOR RELIEF**

21 **(Breach of Contract— Non-Compete Agreement as to Islam)**

22 25. ATLANTIS repeats, realleges and incorporates herein each and every allegation
23 set forth in paragraphs 1-24 of its Amended Complaint, as well as each and every allegation
24 contained in every other Claim for Relief, as if fully set forth herein.

25 26. Pursuant to the terms of the Non-Compete Agreement, ISLAM agreed that she
26 would not without the prior written consent of the ATLANTIS be employed by, in any way
27 affiliated with, or provide services to any gaming business or enterprises located within 150
28

1 miles of ATLANTIS for a period of one year after the date that the employment relationship
2 between she and the ATLANTIS ended.

3 27. ISLAM also agreed that the Non-Compete Agreement was the minimum
4 necessary to protect the ATLANTIS in the use and enjoyment of the confidential information
5 and good will of the business of the ATLANTIS.

6 28. ISLAM further agreed that damages cannot fully and adequately compensate
7 ATLANTIS in the event of a breach or violation and that, without limiting the right of
8 ATLANTIS to seek all other legal and equitable remedies available to it, ATLANTIS shall be
9 entitled to injunctive relief, including but not limited to a temporary restraining order, temporary
10 injunction and permanent injunction to prevent any such violations or any continuation of such
11 violations.

12 29. ISLAM terminated her employment with ATLANTIS on January 19, 2012, and,
13 upon information and belief, became employed with GSR on or about January 30, 2012.

14 30. GSR is a gaming business or enterprise located within 150 miles of ATLANTIS.

15 31. ATLANTIS has not consented to ISLAM'S employment with GSR.

16 32. ISLAM has breached the Non-Compete Agreement by accepting employment
17 with GSR prior to January 19, 2013.

18 33. As a direct, proximate and foreseeable result of ISLAM's breach of the Non-
19 Compete Agreement, ATLANTIS has suffered general and special damages in an amount in
20 excess of Ten Thousand Dollars (\$10,000).

21 34. ATLANTIS has been required to retain the services of an attorney to prosecute its
22 claim against ISLAM and is entitled to reasonable attorney's fees and costs of suit incurred
23 herein.

24 35. Wherefore, Plaintiff pleads for judgment against Defendants, and each of them, as
25 more fully set forth below.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V.

THIRD CLAIM FOR RELIEF

(Conversion of Property as to Islam)

36. ATLANTIS repeats, realleges and incorporates herein each and every allegation set forth in paragraphs 1-35 of its Amended Complaint, as well as each and every allegation contained in every other Claim for Relief, as if fully set forth herein.

37. Pursuant to the terms of the Business Ethics Policy and Code of Conduct Agreement, ISLAM agreed that ATLANTIS' online systems are ATLANTIS' property, were provided for her business purposes use to increase her production and effectiveness and that the purpose of the agreement was to ensure use of ATLANTIS' online systems in a productive manner. ISLAM further agreed not to profit from confidential information of the ATLANTIS and not to make false or artificial entries in the books and records of the company for any reason.

38. Within 18 days before she voluntarily terminated her employment with ATLANTIS, ISLAM falsely modified, destroyed, falsely changed and/or sabotaged confidential, proprietary, trade secret information of ATLANTIS, including but not limited to customer data belonging to the ATLANTIS on its online system to her benefit and the benefit of GSR and to the detriment of ATLANTIS.

39. Specifically, ISLAM exercised wrongful control over ATLANTIS property without legal justification and without the consent of ATLANTIS by making address, telephone number and/or email address changes to ATLANTIS hotel or casino customer/guest data that she knew to be false or incorrect which resulted in a taking, use or interference with ATLANTIS property.

40. As a result of ISLAM's wrongful conversion, ATLANTIS customers and guests did not receive regular ATLANTIS offers, and in some cases instead received offers of play from ISLAM and GSR. The fact that some ATLANTIS customers received these direct communications is known as they called ATLANTIS to complain that they had been solicited by ISLAM and GSR.

41. As a direct, proximate and foreseeable result of ISLAM's Conversion, ATLANTIS has suffered general and special damages in an amount in excess of Ten Thousand Dollars (\$10,000).

42. ATLANTIS has been required to retain the services of an attorney to prosecute its claim against ISLAM and is entitled to reasonable attorney's fees and costs of suit incurred herein.

43. Wherefore, Plaintiff pleads for judgment against Defendants, and each of them, as more fully set forth below.

VI.

FOURTH CLAIM FOR RELIEF

(Tortious Interference with Contractual Relations and Prospective Economic Advantage as to Islam and GSR)

44. ATLANTIS repeats, realleges and incorporates herein each and every allegation set forth in paragraphs 1-43 of its Amended Complaint, as well as each and every allegation contained in every other Claim for Relief, as if fully set forth herein.

45. ATLANTIS has an actual Non-Compete Agreement with ISLAM.

46. GSR was aware of the Non-Compete Agreement before or immediately after it hired ISLAM.

47. ATLANTIS has a business relationship with the individuals on its customer/guest lists.

48. ISLAM intentionally, improperly and without privilege, interfered with the prospective economic advantage between ATLANTIS and the individuals on its customer/guest lists by inducing or otherwise causing the prospective economic advantage not to occur. ISLAM did this by: (1) sabotaging ATLANTIS customer/guest lists which caused its customers/guests not to receive offers from ATLANTIS which they might otherwise have accepted and (2) transmitting offers of play at GSR to existing customers of ATLANTIS contained on its confidential and proprietary customer/guest lists which either caused them to play at GSR

1 instead of ATLANTIS or caused ATLANTIS to increase its offer of play or incentives to them in
2 competition with GSR.

3 49. GSR intentionally, improperly and without privilege, interfered with the
4 performance of the Non-Compete Agreement between ATLANTIS and ISLAM by inducing or
5 otherwise causing ISLAM to accept employment with GSR in breach of the Non-Compete
6 Agreement wherein ISLAM agreed that said agreement was the minimum necessary to protect
7 ATLANTIS in the use and enjoyment of confidential information and the good will and business
8 of the ATLANTIS and by facilitating the interference or directly causing the interference
9 through the transmittal of offers and solicitations.

10 50. As a direct, proximate and foreseeable result of ISLAM and GSR's tortious
11 interferences, ATLANTIS has suffered general and special damages in an amount in excess of
12 Ten Thousand Dollars (\$10,000).

13 51. At all times material hereto, the Defendants, and each of them, have acted
14 fraudulently, oppressively, in conscious and malicious disregard of the rights of Plaintiff, and in
15 furtherance of their own financial interests, such as to justify the assessment of punitive damages
16 for the sake of punishment and to deter similar action in the future in a just and reasonable
17 amount in excess of Ten Thousand Dollars (\$10,000).

18 52. ATLANTIS has been required to retain the services of an attorney to prosecute its
19 claim against ISLAM and GSR and is entitled to reasonable attorney's fees and costs of suit
20 incurred herein.

21 53. Wherefore, Plaintiff pleads for judgment against Defendants, and each of them, as
22 more fully set forth below.

23 VII.

24 FIFTH CLAIM FOR RELIEF

25 (Violation of Uniform Trade Secret Act, NRS 600.A.010 *et. seq.*, as to Islam and GSR)

26 54. ATLANTIS repeats, realleges and incorporates herein each and every allegation
27 set forth in paragraphs 1-53 of its Amended Complaint, as well as each and every allegation
28 contained in every other Claim for Relief, as if fully set forth herein.

1 55. Pursuant to the terms of the Trade Secret Agreement, ISLAM agreed, among
2 other things, that all ATLANTIS property including intellectual property such as hotel or casino
3 customer/guest lists with facts about those customers' preferences, histories and other personal
4 or business information, was to remain with the ATLANTIS both during after her term of
5 employment. ISLAM also agreed that any knowledge of ATLANTIS' intellectual property had
6 by her must not be used or disseminated to any other person or entity for any purpose. Finally,
7 ISLAM also agreed not to use or disseminate any ATLANTIS property, tangible, intellectual or
8 otherwise, in any way that may potentially benefit any person or entity other than ATLANTIS.

9 56. ISLAM breached the above referenced agreement(s) with the ATLANTIS both
10 during and after her employment by taking confidential information and intellectual property
11 owned by the Atlantis and using it to her advantage and the advantage of GSR, her subsequent
12 employer, and to the detriment of ATLANTIS.

13 57. Said confidential information of the ATLANTIS constitutes a trade secret as it
14 derives independent economic value, actual or potential, from not being generally known to, and
15 not being readily ascertainable by proper means by the public or any other persons who can
16 obtain commercial or economic value from its disclosure or use and ATLANTIS took reasonable
17 efforts to maintain its secrecy.

18 58. ISLAM and GSR, through improper means, have and will likely continue to
19 misappropriate the trade secrets of ATLANTIS.

20 59. As a direct, proximate and foreseeable result of ISLAM and GSR's
21 misappropriation of the trade secrets of ATLANTIS, ATLANTIS has suffered general and
22 special damages in an amount in excess of Ten Thousand Dollars (\$10,000).

23 60. At all times material hereto, the Defendants, and each of them, have acted with
24 willful, wanton and reckless behavior in misappropriating the trade secrets of the ATLANTIS
25 such as to justify the assessment of exemplary damages in an amount not exceeding twice the
26 award for the misappropriation.

61. ATLANTIS has been required to retain the services of an attorney to prosecute its claim against ISLAM and GSR and is entitled to reasonable attorney's fees and costs of suit incurred herein.

62. Wherefore, Plaintiff pleads for judgment against Defendants, and each of them, as more fully set forth below.

VIII.

SIXTH CLAIM FOR RELIEF

(Declaratory Relief as to Islam and GSR)

63. ATLANTIS repeats, realleges and incorporates herein each and every allegation set forth in paragraphs 1-62 of its Amended Complaint, as well as each and every allegation contained in every other Claim for Relief, as if fully set forth herein.

64. NRS 30.030 *et seq.*, among other things authorizes the Courts of this State to declare the rights, status, validity and other legal relations of and between persons as they may be affected by a contract, statute or deed.

65. Plaintiff herein asserts that the aforementioned agreements are valid contracts that the respective Defendants have breached as alleged above and that Defendants have violated NRS 600A.010 *et. seq.* also as alleged above.

66. Accordingly, this Court has the power and authority to declare the rights and obligations of these parties in connection with the various contracts and the applicable Nevada statute and laws. Specifically, and without limitation, this Court can and should declare that the aforementioned agreements are valid contracts that have been respectively breached by Defendants and that Defendants have violated the Uniform Trade Secrets Act at NRS 600A.010 *et. seq.* entitling Plaintiff to immediate injunctive relief and damages.

67. ATLANTIS has been required to retain the services of an attorney to prosecute its claim against ISLAM and GSR and is entitled to reasonable attorney's fees and costs of suit incurred herein.

68. Wherefore, Plaintiff pleads for judgment against Defendants and each of them as more fully set forth below.

IX.

SEVENTH CLAIM FOR RELIEF

(Injunctive Relief as to Islam and GSR)

69. ATLANTIS repeats, realleges and incorporates herein each and every allegation set forth in paragraphs 1-68 of its Amended Complaint, as well as each and every allegation contained in every other Claim for Relief, as if fully set forth herein.

70. ATLANTIS has an interest in protecting confidential and proprietary information and trade secrets related to its business.

71. In an effort to protect its confidential and proprietary matters related to its business, ATLANTIS mandates that its employees execute the aforementioned agreements both upon commencement of their employment and regularly throughout their employment.

72. ISLAM executed all such agreements referenced above, some multiple times.

73. ISLAM breached these agreements and continues to breach them.

74. ATLANTIS is entitled to an injunction precluding ISLAM from further breaching the terms of the agreements.

75. ATLANTIS will suffer irreparable harm by ISLAM'S continual breaches of the terms of the agreements if the relief requested by ATLANTIS is not granted.

76. ISLAM will not be burdened by complying with the terms of the agreements to which she previously agreed to abide.

77. ATLANTIS requests injunctive relief in the form of an order precluding ISLAM from further breaching the terms of the agreements.

78. ISLAM and GSR are subject to injunctive relief per NRS 600A.040 due to actual or threatened misappropriation of the trade secrets of ATLANTIS.

79. ATLANTIS has been required to retain the services of an attorney to prosecute its claim against ISLAM and GSR and is entitled to reasonable attorney's fees and costs of suit incurred herein.

80. Wherefore, Plaintiff pleads for judgment against Defendants and each of them as more fully set forth below.

1 X.

2 PRAYER FOR RELIEF

3 WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as
4 more fully set forth below.

5 WHEREFORE, Plaintiff, while expressly reserving its right to amend this Amended
6 Complaint up to and including the time of trial to include additional Defendants, additional
7 theories of recovery, and items of damage not yet ascertained, demands judgment against the
8 Defendants, and each of them, as follows:
9

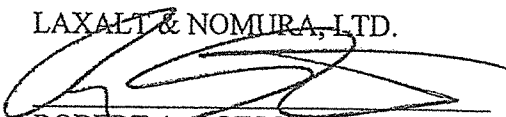
- 10 1. General damages in excess of \$10,000;
11 2. Special damages in excess of \$10,000;
12 3. Punitive or exemplary damages in an amount in excess of \$10,000;
13 4. For a temporary restraining order;
14 5. For declaratory and permanent injunctive relief;
15 6. For pre and post-judgment interest;
16 7. For reasonable attorney's fees and costs of suit; and
17 8. For such other and further relief as the Court deems to be just and appropriate.

18 Affirmation Pursuant to NRS 239B.030

19 The undersigned does hereby affirm that the preceding document does not contain the
20 social security number of any person.

21 Dated this 7 day of May, 2012.

22 LAXALT & NOMURA, LTD.

23 
24 ROBERT A. DOTSON
25 Nevada State Bar No. 5285
26 ANGELA M. BADER
27 Nevada State Bar No. 5574
28 9600 Gateway Drive
Reno, Nevada 89521
(775) 322-1170
Attorneys for Plaintiff

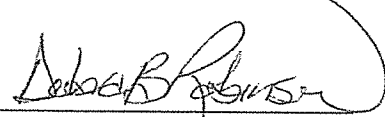
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION


STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

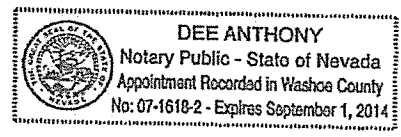
Debra Robinson does hereby swear under penalty of perjury that the assertions are true:

That I am the General Counsel for Plaintiff in the above-entitled action; that I have read the foregoing **VERIFIED COMPLAINT FOR DAMAGES** and know the contents thereof; that the same is true of my own knowledge, except as to those matters which are therein stated upon information and belief, and as to those matters, I believe it to be true.


DEBRA B. ROBINSON

Subscribed and sworn to before me this
27th day of April, 2012.


NOTARY PUBLIC



1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on this date, I caused to be served a true and correct copy of the
4 foregoing by:

5 ☐ (BY MAIL) on all parties in said action, by placing a true copy thereof enclosed
6 in a sealed envelope in a designated area for outgoing mail, addressed as set forth
7 below. At the Law Offices of Laxalt & Nomura, mail placed in that designated
8 area is given the correct amount of postage and is deposited that same date in the
ordinary course of business, in a United States mailbox in the City of Reno,
County of Washoe, Nevada.

9 ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-
Flex system, which will electronically mail the filing to the following
10 individuals.

11 ☒ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand
12 delivered this date to the address(es) at the address(es) set forth below.

13 ☐ (BY FACSIMILE) on the parties in said action by causing a true copy thereof to
14 be telecopied to the number indicated after the address(es) noted below.

15 ☐ Reno/Carson Messenger Service

16 addressed as follows:

17 DATED this 7th day of May, 2012.

18 /s/ Deborah Penhale for
19 L. MORGAN BOGUMIL

1
2
3 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

4 GOLDEN ROAD MOTOR INN, INC., a
5 Nevada Corporation, d/b/a ATLANTIS
6 CASINO RESORT SPA

7 Plaintiff,

8 vs.

9 SUMONA ISLAM, an individual; MEI-GSR
10 HOLDINGS LLC, a Nevada limited liability
11 company, d/b/a GRAND SIERRA RESORT;
12 ABC CORPORATIONS; XYZ
13 PARTNERSHIPS; AND JOHN DOES I
14 through X, inclusive.

15 Defendants.

Electronically Filed
May 20 2014 09:40 a.m.
Trace K. Lindeman
Clerk of Supreme Court
64349
and
65497

District Court Case No.: CV12-01171

**AMENDED DOCKETING
STATEMENT CIVIL APPEALS**

16 **GENERAL INFORMATION**

17 All appellants not in proper person must complete this docketing statement. NRAP 14(a).
18 The purpose of the docketing statement is to assist the Supreme Court in screening
19 jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling
20 statistical information and identifying parties and their counsel.

21 **WARNING**

22 This statement must be completed fully, accurately and on time. NRAP 14(c). The
23 Supreme Court may impose sanctions on counsel or appellant if it appears that the
24 information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement
25 completely or to file it in a timely manner constitutes grounds for the imposition of
26 sanctions, including a fine and/or dismissal of the appeal.

27 A complete list of the documents that must be attached appears as Question 26 on this
docketing statement. Failure to attach all requested documents will result in the delay of
your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under
NRAP 14 to complete the docketing statement properly and conscientiously, they waste the
valuable judicial resources of this court, making the imposition of sanctions appropriate.
See KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1220 (1991). Please use tab
dividers to separate any attached documents.

1. Judicial District Second Department B7
County Washoe Judge Hon. Patrick Flanagan
District Court Docket No. CV12-01171

2. **Attorney filing this docketing statement:**

Attorney Robert A. Dotson; Angela M. Bader Telephone (775) 322-1170
Firm Laxalt & Nomura, Ltd.
Address 9600 Gateway Dr.
Reno, Nevada 89521

Attorney Robert L. Eisenberg Telephone (775) 786-6868
Firm Lemons, Grundy & Eisenberg
Address 6005 Plumas St, 3rd Floor
Reno, Nevada 89519

Client(s) Golden Road Motor Inn, Inc., a Nevada Corporation dba Atlantis Casino
Resort Spa ("Atlantis")

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing respondent(s):**

Attorney Stan Johnson, Esq. Telephone (702) 823-3500
Firm Cohen-Johnson, LLC
Address 255 E. Warm Springs Rd, Ste 100
Las Vegas, Nevada 89119

Client(s) MEI-GSR Holdings, LLC, a Nevada Limited Liability Company dba
Grand Sierra Resort ("GSR")

Attorney Mark Wray, Esq. Telephone (775) 348-8877
Firm Law Office of Mark Wray
Address 608 Lander Street
Reno, Nevada 89509

Client(s) Sumona Islam, an individual ("Islam")

(List additional counsel on separate sheet if necessary)

4. **Nature of disposition below (check all that apply):**

- ☒ Judgment after bench trial
☐ Judgment after jury verdict
☐ Summary judgment
☐ Default judgment
☐ Grant/Denial of NRCP 60(b) relief
☐ Grant/Denial of injunction
☐ Grant/Denial of declaratory relief
☐ Review of agency determination

- ☐ Dismissal
☐ Lack of jurisdiction
☐ Failure to state a claim
☐ Failure to prosecute
☐ Other (specify): _____
☐ Divorce decree
☐ Original ☐ Modification
☐ Other disposition (specify) _____

///

5. **Does this appeal raise issues concerning any of the following:** No.

- ☐ Child custody
☐ Venue
☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

1. Golden Road Motor Inn, Inc. dba Atlantis Casino Resort Spa v. Sumona Islam and MEI-GSR Holdings, LLC dba Grand Sierra Resort, Case No. 64349;
2. Sumona Islam v. Golden Road Motor Inn, Inc. dba Atlantis Casino Resort Spa, Case No. 64452; and
3. MEI-GSR Holdings, LLC dba Grand Sierra Resort v. Golden Road Motor Inn, Inc. dba Atlantis Casino Resort Spa, Case No. 65497.

Atlantis filed an Amended Notice of Appeal on April 21, 2014, which was docketed in Case No. 65497. The parties are stipulating to file a consolidation of these cases.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Not applicable.

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

This is a commercial civil lawsuit involving claims sounding in breach of contract, conversion of property, tortious interference with contractual relations and prospective economic advantage and violations of the Nevada Uniform Trade Act. Atlantis brought these claims, as appropriate, against Islam and GSR and the results of each are outlined below.

1. Breach of Contract

This claim was brought only against Islam as contractual privity only existed between Islam and Atlantis. The suit was brought based upon the contended breach of four contracts between Islam and Atlantis. The District Court found in favor of the Atlantis, finding a breach as to three of these. However, the District Court found the fourth contract, the Non-Compete/Non-Solicitation Agreement, unenforceable. Although finding the restriction appropriate as to length and geography, the District Court determined that the total exclusion from employment with a competitor within the geographic region was an unreasonable restraint on trade, greater than required for the protection of the Atlantis. Therefore, the District Court found the Non-Compete/Non-Solicitation Agreement unenforceable and dismissed the breach of contract claim grounded upon that agreement.

2. Conversion of Property

The Atlantis sought to hold Islam liable for conversion of its property. In particular, Atlantis contended, and Islam admitted, that she had made false entries into the Atlantis marketing database for the purpose of interfering with the business relationship between the Atlantis and its established and known guests. Atlantis contended that this resulted in the property of the Atlantis, the correct information regarding these 87 guests, to be

1 withheld from the Atlantis for a period of time during which Islam, on behalf of the GSR,
2 could market and solicit to these guests without having to compete with marketing and
3 solicitation efforts from the Atlantis. The District Court found in favor of Islam as to this
4 claim, determining that the interference with the property of the Atlantis was not severe,
5 that the information, although altered, was not lost and was easily restored.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

3. Tortious Interference With Contractual Relations and Prospective Economic Advantage

A. Tortious Interference With Contract pled against GSR.

Atlantis alleged that GSR interfered with the Non-Compete/Non-Solicitation Agreement between Atlantis and Islam by employing Islam in a position which was the same position she held at the Atlantis and in direct and purposeful competition with the Atlantis. It was further contended that GSR did so with the expectation (and then following employment with the knowledge) that Islam was utilizing the intellectual property of the Atlantis in her efforts on behalf of the GSR. The District Court below found in favor of the GSR on this claim based upon the fact that it found the Non-Compete/Non-Solicitation Agreement between Islam and Atlantis to be unenforceable.

B. Tortious Interference With Prospective Economic Advantage pled against GSR and ISLAM

The Atlantis also contended that Islam and GSR had tortiously interfered with the prospective economic advantage held by it with regard to the trade secrets in question and particularly the commercial relationship between the Atlantis and the over 200 known gaming guests of Atlantis whose information had been misappropriated by Islam. The District Court determined that based upon this Court's decision in *Franz v. Johnson*, 116 Nev. 455 (2000) that the claims were more appropriately adjudicated under the Uniform Trade Secrets Act than under a claim for tortious interference with contract or prospective economic advantage. Thus, the claim was considered in that light and as described below, the District Court found violations by Islam, but no violation by GSR.

4. Violations of the Nevada Uniform Trade Secret Act as against Islam and GSR

Atlantis contended violations of the Uniform Trade Secret Act ("UTSA") by both Islam and GSR. Although Islam was working for GSR, the District Court found in favor of GSR and against Atlantis on this claim.

In reaching its decision the District Court awarded general and punitive damages against Islam finding that her violation was unjustified and that her actions were willful, malicious and intentional. Further, the District Court imposed a Permanent Injunction pursuant to NRS 600A.040, prohibiting Islam from any further use of the trade secret information. The District Court also awarded attorney's fees in favor of Atlantis and against Islam, pursuant to statute and based upon its finding that Islam's actions constituted willful and malicious misappropriation.

In addition to finding no violation of the UTSA by GSR, the District Court awarded attorney's fees against Atlantis and in favor of GSR. This award was sua sponte and no basis was given by the District Court in its oral decision from the bench. The Findings of Fact and Conclusions of Law and Judgment, from which Atlantis appeals, grounded the award upon a finding that the litigation was maintained in bad faith and that attorney's fees were appropriately awarded under an objective specious standard.

Atlantis' Amended Notice of Appeal is from the Order dated March 14, 2014, awarding fees and costs of \$190,124.50 and \$15,540.85 to GSR pursuant to its Offer of Judgment.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

This appeal raises five primary issues. They are as follows:

1. Whether the District Court's ruling represents appropriate enforcement of the UTSA against GSR.
2. Whether the District Court's determination that the Non-Competition/Non-Solicitation Agreement between Atlantis and Islam was overbroad and unenforceable based upon its prohibition of employment with "any gaming business or enterprise" is erroneous.
3. Whether the District Court erred by making a sua sponte award of GSR's attorney's fees against Atlantis and whether the District Court erred in its eventual award of GSR attorney's fees pursuant to GSR's Offer of Judgment.
4. Whether the District Court erred by finding in favor of Islam and against Atlantis on the conversion claim.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

None.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- ☒ N/A
☐ Yes
☐ No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
☐ An issue arising under the United States and/or Nevada Constitutions
☒ A substantial issue of first impression
☒ An issue of public policy
☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions.
☐ A ballot question

If so, explain:

As described above, this case will frame two issues of important Nevada public policy, one of which is also an issue of first impression. The issue of first impression is related to what is and is not a trade secret within the primary industry in Nevada, gaming, and

more particularly whether a guest list including the name, address and contact information is or is not a trade secret and whether intellectual property which is not found to be a trade secret is property that can and should be ordered returned when in the possession of and used by a non-owner.

The second issue of important public policy is the legality of a non-compete agreement which contains a blanket prohibition of employment with any competitor in any position versus a requirement that Nevada employers utilize a prohibition that is more narrowly tailored, prohibiting only employment with competitors if the employment is in the same specific type of position previously held by the employee; and whether in a circumstance where the employee subsequently becomes employed in the same position, broad language in a non-compete agreement, prohibiting employment in any position, is grounds to defeat the enforcement of the contract.

13. **Trial.** If this action proceeded to trial, how many days did the trial last? 11 days
Was it a bench or jury trial? Bench Trial

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from** August 26, 2013, September 27, 2013 and March 14, 2014.

See EXHIBIT 2.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. **Date written notice of entry of judgment or order served** October 1, 2013 and April 11, 2014.

See EXHIBIT 3.

Was service by:

- ☐ Delivery
☒ Mail/electronic/fax

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing. N/A.

- | | |
|-------------------------------------|----------------------|
| <input type="checkbox"/> NRCP 50(b) | Date of filing _____ |
| <input type="checkbox"/> NRCP 52(b) | Date of filing _____ |
| <input type="checkbox"/> NRCP 59 | Date of filing _____ |

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

- 1 (b) Date of entry of written order resolving tolling motion _____
- 2 (c) Date written notice of entry of order resolving tolling motion was served _____
- 3 Was service by:
- 4 ☐ Delivery
- 5 ☐ Mail
- 6 18. **Date notice of appeal was filed** October 30, 2013 and April 21, 2014.
- 7 If more than one party has appealed from the judgment or order, list the date each notice
- 8 of appeal was filed and identify by name the party filing the notice of appeal:
- 9 Sumona Islam filed a Notice of Appeal on November 8, 2013 and an Amended Notice of
- 10 Appeal on November 15, 2013.
- 11 GSR filed its notice of appeal on April 14, 2014 and amended notices on May 5, 2014
- 12 and May 8, 2014.
- 13 19. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g.,**
- 14 **NRAP 4(a) or other:**
- 15 NRAP 4(a)(1)

16 **SUBSTANTIVE APPEALABILITY**

- 17 20. **Specify the statute or other authority granting this court jurisdiction to review the**
- 18 **judgment or order appealed from:**
- 19 (a)
- 20 ☒ NRAP 3A(b)(1) ☐ NRS 38.205
- 21 ☐ NRAP 3A(b)(2) ☐ NRS 233B.150
- 22 ☐ NRAP 3A(b)(3) ☐ NRS 703.376
- 23 ☐ Other (specify) _____
- 24 (b) Explain how each authority provides a basis for appeal from the judgment or order:
- 25 The appealed from Judgments and Orders are final judgments entered in an action or
- 26 proceeding commenced in the court in which the judgment is rendered.
- 27 21. **List all parties involved in the action or consolidated actions in the district court:**
- 28 (a) Parties:
- 29 Plaintiff: Golden Road Motor Inn Inc. dba Atlantis Casino Resort Spa.
- 30 Defendants: Sumona Islam, an individual and MEI-GSR Holdings, LLC, a Nevada
- 31 Limited Liability Company, successor in interest to Nav-Reno-GS, LLC,
- 32 dba Grand Sierra Resort.
- 33 (b) If all parties in the district court are not parties to this appeal, explain in detail why
- 34 those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

All parties in the District Court action are parties to this appeal.

22. **Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.**

Only Atlantis had a claim and those are set forth in response to question 8 which is incorporated here. The formal disposition of the claims occurred in part in the District Court's decision from the bench on July 18, 2013, formally memorialized in the appealed from Findings of Fact, Conclusions of Law and Judgments dated August 26, 2013 and September 27, 2013 and the subsequent Order awarding costs and fees dated November 8, 2013, the First Amended Order dated March 10, 2014 and the Order awarding attorney's fees and costs to GSR dated March 14, 2014.

23. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes
☐ No

24. **If you answered "No" to question 23, complete the following:** Not applicable.

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

☐ Yes
☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes
☐ No

25. **If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

Not applicable.

26. **Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaim, cross-claim and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

///

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Golden Road Motor Inn Inc.
dba Atlantis Casino Resort Spa

Name of Appellant

Robert A. Dotson, Esq.

Angela M. Bader, Esq.

Name of counsel of record

May 19, 2014

Date

Signature of counsel of record

Washoe, County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 19th day of May, 2014, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: if all names and addresses cannot fit below, please list name below and attach a separate sheet with the addresses.)

Steven B. Cohen, Esq.
Stan Johnson, Esq.
Brian A. Morris, Esq.
Terry Kinnally, Esq.
Cohen-Johnson, LLC
255 E. Warm Springs Rd, Ste 100
Las Vegas, NV 89119

Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, NV 89509

mwray@markwraylaw.com

scohen@cohenjohnson.com
sjohnson@cohenjohnson.com
bmorris@cohenjohnson.com
tkinnally@cohenjohnson.com

Robert L. Eisenberg, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St, 3rd Floor
Reno, NV 89519

rle@lge.net

Dated this 19 day of May, 2014.



L. MORGAN BOGUMIL