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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant/Cross-Respondent,
vs.

SUMONA ISLAM, an individual,
Respondent/Cross-Appellant
and

MEI-GSR HOLDINGS LLC, a Nevada
limited liability company d/b/a GRAND
SIERRA RESORT which claims to be
the successor in interest to NAV-RENO-
GS, LLC,

Respondent.

SUMONA ISLAM, an individual,
Appellant

vs.

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

Respondent.

MEI-GSR HOLDINGS LLC d/b/a
GRAND SIERRA RESORT,

Appellant/Cross-Respondent,
vs.

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

Respondent/Cross-Appellant.

Case No.: 64349

FILED

NOV 07 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

Case No.: 64452

Case No.: 65497

**JOINT APPENDIX
VOLUME IV – FILED UNDER SEAL**

This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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VOLUME XII – FILED UNDER SEAL

This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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VOLUME XVII – FILED UNDER SEAL

This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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17	Trial Exhibit 17	
18	Remainder of employment file of Sumona Islam (GSR 00001 – 00003, 00006, 00009 – 00025, 00028 - 00029)	App. 4347-4370
19		
20	Trial Exhibit 18	
21	Order Granting Golden Road Motor Inn, Inc.’s Motion For Temporary Restraining Order Against Defendant Sumona Islam and Agreement Between Defendant Nav-Reno-GS, LLC dba Grand Sierra Resort and Golden Road Motor Inn Inc., entered on July 5, 2012	App. 4371-4375
22		
23	Trial Exhibit 19	
24	GSR list of guests coded to Islam at GSR (GSR 00740-00752)	App. 4376-4389
25	Trial Exhibit 20	
26	Atlantis’ job description for Executive Casino Host (ATL 0284 – 0285)	App. 4390-4392
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28	Atlantis’ job description for Concierge Manager (ATL 0286)	App. 4393-4394

1	Trial Exhibit 22	
2	Emails to / from Rackenberg/ DeCarlo (ATL 0592).....	App. 4395-4396
3	Trial Exhibit 23	
4	Email regarding the hiring of Sumona Islam (ATL 0210).....	App. 4397-4398
5	Trial Exhibit 24	
6	Frank DeCarlo's sent email (ATL 0564).....	App. 4399-4400
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8	Frank DeCarlo's sent email (ATL 0492).....	App. 4401-4402
9	Trial Exhibit 26	
10	Frank DeCarlo's deleted email (ATL 0321).....	App. 4403-4404
11	Trial Exhibit 27	
12	Frank DeCarlo's sent email (ATL 0462).....	App. 4405-4406
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14	Frank DeCarlo's deleted email (ATL 0298).....	App. 4407-4408
15	Trial Exhibit 29	
16	Frank DeCarlo's deleted email (ATL 0347).....	App. 4409-4410
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18	Frank DeCarlo's deleted email (ATL 0339).....	App. 4411-4412
19	Trial Exhibit 31	
20	GSR Rated Players of Sumona Islam prepared by The Financial Planning and Analysis Group and GSR Guest Reports regarding Sumona Islam	
21	(ATL 1001 - 1004).....	App. 4413-4417
22	Trial Exhibit 32	
23	Expert report and CV of Jeremy A. Aguero.....	App. 4418-4450
24	Trial Exhibit 33	
25	Spreadsheet for offer dated April 1-23 (GSR-AMBROSE 0052-0061).....	App. 4451-4461
26	Trial Exhibit 34	
27	Spreadsheet for offer dated April 24-May 23 (GSR-AMBROSE 0001-0015).....	App. 4462-4477
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1	Trial Exhibit 35 Spreadsheet for offer dated April 24- May 23 Non-Locals Duplicates (GSR-AMBROSE 0016-0018).....	App. 4478-4481
3	Trial Exhibit 36 Spreadsheet for offer dated May 24 – June 19 Non-locals (GSR-AMBROSE 0092-0121).....	App. 4482-4512
5	<u>VOLUME XXII – FILED UNDER SEAL</u>	
6	This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).	
8	Trial Exhibit 37 Spreadsheet for offer dated June20 – July17 Non-Locals (GSR-AMBROSE 0062-0091).....	App. 4513-4543
10	Trial Exhibit 38 Spreadsheet for offer dated April 1- 23 Locals (GSR-AMBROSE 0032-0051).....	App. 4544-4564
12	Trial Exhibit 39 Spreadsheet for offer dated April 24- May 23 (GSR-AMBROSE 0019-0026).....	App. 4565-4573
14	Trial Exhibit 40 Spreadsheet for offer dated May 24 – Jun 19 Locals (GSR-AMBROSE 0027-0031).....	App. 4574-4579
16	Trial Exhibit 41 Ambrose Emails (GSR-AMBROSE 0122-0159).....	App. 4580-4618
18	Trial Exhibit 42 Revenue Spreadsheets (GSR-Singh 0001-0007).....	App. 4619-4626
20	Trial Exhibit 43 Harrah’s June 26, 2008 letter to Islam (ATL 0266 – 0279).....	App. 4627-4641
22	Trial Exhibit 44 Harrah’s October 22, 2009 letter to Islam (ATL 0280, ATL 0283 and ATL 0283a).....	App. 4642-4645
24	Trial Exhibit 45 Email from Tomelden 1/19/12 and from DeCarlo to Finn 1/20/12 and privileged emails (ATL 0281 – 0282).....	App. 4646-4648
26	Trial Exhibit 46 Correspondence between Atlantis and counsel for Fitzgeralds related to Chau non-compete (ATL 0604–0625).....	App. 4649-4671

1	Trial Exhibit 47 Harrah's Employment Agreement provided to Atlantis by Sumona Islam (ATL 0628-0638).....	App. 4672-4683
3	Trial Exhibit 48 Emails between Shelly Hadley to Sumona Islam (GSR 01932 - 01934).....	App. 4684-4687
5	Trial Exhibit 49 GSR Free Play Adjustments and Comps GSR 1935 - 1981	App. 4688-4735
7	Trial Exhibit 50 Hadley emails GSR 2029 - 2033.....	App. 4736-4741
9	<u>VOLUME XXIII – FILED UNDER SEAL</u>	
10	This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).	
12	Trial Exhibit 51 Hadley emails GSR 1982 - 2028	App. 4742-4789
14	Trial Exhibit 52 Grand Sierra Resort Employee Handbook (GSR 02034 - 2064).....	App. 4790-4821
16	Trial Exhibit 53 Resume of Abraham Pearson	App. 4822-4824
18	Trial Exhibit 54 Concierge Lounge Schedules (ATL 0137 - 0151).....	App. 4825-4840
20	Trial Exhibit 55 March 12, 2010 memo re Host Internet Access Agreement (ATL 0153).....	App. 4841-4842
22	Trial Exhibit 56 Network Access Requests signed by Sumona Islam (ATL 0154-0165).....	App. 4843-4855
24	Trial Exhibit 57 Online System User Agreement signed by Sumona Islam (ATL 0166 - 0169).....	App. 4856-4860
26	Trial Exhibit 58 Grand Sierra Flyer (ATL 0626 - 0627).....	App. 4861-4863
28	Trial Exhibit 59 Plaintiff's Seventeenth Supplemental NRCP 16.1 Disclosure.....	App. 4864-4899

1	Trial Exhibit 60	
2	Resume of Brandon C. McNeely (ATL 0992 – 0994)	App. 4900-4903
3	Trial Exhibit 61	
4	Atlantis Customer Lifetime Value calculations and Harvard Business Review case study (ATL 0973 – 0990).....	App. 4904-4922
5	Trial Exhibit 62	
6	Black’s Law Dictionary and Webster’s Dictionary definition of “sabotage” (ATL 0995 – 1000).....	App. 4923-4929
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8	Trial Exhibit 63	
9	Guest contact list prepared by Frank DeCarlo at the direction of Debra Robinson (ATL 1609).....	App. 4930-4931
10	Trial Exhibit 64	
11	Email string dated 4/5/12 regarding guest Arsenault (ATL 1617 – 1618).....	App. 4932-4934
12	Trial Exhibit 65	
13	Email string dated 4/10/12 regarding guest Davidson (ATL 1619 – 1620).....	App. 4935-4937
14	Trial Exhibit 66	
15	Email dated 4/17/12 regarding guest Scheider (ATL 1621).....	App. 4938-4939
16	Trial Exhibit 67	
17	Portions of David Law’s personnel file, redacted as to Social Security number (ATL 1667 – 1681).....	App. 4940-4955
18		
19	Trial Exhibit 68	
20	Portions of Lilia Santos’ personnel file, redacted as to Social Security number (ATL 1682 – 1695).....	App. 4956-4970
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22	This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).	
23		
24	Trial Exhibit 69	
25	Concierge Desk Schedules (ATL 1740 – 1766).....	App. 4971-4998
26	Trial Exhibit 70	
27	Emails regarding Ramon Mondragon (ATL 1776 – 1785).....	App. 4999-5009
28	///	

1	Trial Exhibit 71 IT Help Desk Notes for Frank DeCarlo's email (ATL 1786 – 1798).....	App. 5010-5023
2		
3	Trial Exhibit 72 Internet Authorization Form signed by Sumona Islam (ATL 0152).....	App. 5024-5025
4		
5	Trial Exhibit 73 Transcript of May 3, 2012 GSR Investigatory Interview Recording with Sumona Islam (GSR02130 – GSR02133).....	App. 5026-5030
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7	Trial Exhibit 74 Demonstrative exhibit List of emails prepared by Mark Wray (Deposition Exhibit 53).....	App. 5031-5036
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10	Trial Exhibit 75 Islam's Book of Trade produced to Atlantis with notes from Atlantis (ATL 0213 – 0265).....	App. 5037-5090
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12	Trial Exhibit 76 Sumona Islam's Hallmark card	App. 5091-5092
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14	Trial Exhibit 77 Compilation of GSR/Islam Emails in chronological order.....	App. 5093-5220
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16	<u>VOLUME XXV – FILED UNDER SEAL</u>	
17	This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).	
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19	[Continued] Trial Exhibit 77 Compilation of GSR/Islam Emails in chronological order.....	App. 5221-5428
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21	Trial Exhibit 78 Additional signature pages to Trade Secret Agreement and Business Ethics policy and Code of Conduct Agreement (ATL 0100 - 0101, 0103, 0128 - 0130).....	App. 5429-5435
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23	Trial Exhibit 80 Full handwritten client list produced by Islam (ISLAM 1- 276).....	App. 5436-5470
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26	///	
27	///	
28	///	

VOLUME XXVI – FILED UNDER SEAL

This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

[Continued] Trial Exhibit 80
Full handwritten client list produced by Islam
(ISLAM 1- 276).....App. 5471-5712

Trial Exhibit 81
Letter to Mark Wray, Esq. from
Angela Bader, Esq. dated 10/15/12App. 5713-5718

VOLUME XXVII – FILED UNDER SEAL

This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

Trial Exhibit 82
Email from Frank DeCarlo filed 2/22/11
and Declining Player Report as of 12/21/11.....App. 5719-5729

Trial Exhibit 83
Copy of handwritten client list
produced by Islam with notations
made during review on July 6-7, 2013App. 5730-5968

VOLUME XXVIII – FILED UNDER SEAL

This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

[Continued] Trial Exhibit 83
Copy of handwritten client list
produced by Islam with notations
made during review on July 6-7, 2013App. 5969-6020

Trial Exhibit 84
Defendant’s Responses to Plaintiff’s
First Set of Request for Admission to Defendant
Nav-Reno-GS, LLC dba Grand Sierra Resort.....App. 6021-6049

Trial Exhibit 85
Handwritten note of Lilia Santos.....App. 6050-6052

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Clerk of the Court
Transaction # 3751476

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,

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

18 Plaintiff,

19 vs.

20 SUMONA ISLAM, an individual; NAV-RENO
21 GS, LLC a Nevada limited liability Company
22 d/b/a GRAND SIERRA RESORT; ABC
23 CORPORATIONS; XYZ PARTNERSHIPS; and
24 JOHN DOES I through X, inclusive,

25 Defendants.

26 **MOTION TO EXCLUDE TESTIMONY OF BRANDON MCNEELEY**
27 **EITHER IN SUPPORT OF PLAINTIFF'S CASE OR IN REBUTTAL**
28 **TO THE TESTIMONY OF DEFENDANT'S EXPERT JEREMY AGUARARO**
AND ALL EVIDENCE OF DAMAGES BASED ON THEORETICAL
REVENUE, LOST GAMBLIN DAYS AND LIFE TIME VALUE OF PLAYERS

29 Defendant, GRAND SIERRA RESORT ("GSR" or "Defendant"), by and through its
30 counsel of record, Cohen-Johnson, LLC, hereby files its Motion in Limine to exclude the
31 testimony of Brandon McNeeley, Plaintiff's non-retained expert from testifying at the trial of this
32 matter, and further moves to exclude all evidence based on his report, including damages based
33 on Theoretical Revenue, Lost Gambling Days, and Life Time Value of Players.

34 ...

35 ...

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1 This motion is based on the following Points and Authorities, the pleading and papers on
2 file, herein, the exhibits attached hereto, and the argument of counsel at the hearing of this
3 matter.

4 Dated this 28th day May, 2013.

5 COHEN-JOHNSON, LLC

6
7 By: /s/ H. Stan Johnson
8 H. Stan Johnson, Esq.
9 Nevada Bar No. 00265
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14 Attorneys for Grand Sierra Resort

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 This motion is being brought to exclude any and all testimony or other evidence of
18 damages based on opinions of Brandon McNeeley as set forth in his report and deposition
19 testimony concerning damages claimed by Atlantis in this matter. Mr. McNeeley is not qualified
20 under NRS 50.275 to offer expert opinions in this matter either in Plaintiff's case in chief or as a
21 witness to rebut the testimony or report of Defendant's expert Jeremy Aguero.

22 **II. BRIEF STATEMENT OF FACTS**

23 This is an action brought by Golden Road Motor Inn (Atlantis) against Sumona Islam and
24 GSR. The allegations against GSR are: 1) Tortious interference with Contractual Relations and
25 Prospective Economic Advantage; 2) Violation of the Uniform Trade Secret Act; 3) Declaratory
26 and Injunctive relief. Plaintiff alleges that at the time Ms. Islam left the Atlantis and began
27 working at GSR she misappropriated the names of 202 individuals who played at the Atlantis
28 and placed these names into the GSR data base. GSR admits that Ms. Islam incorporated the
names of these individuals into the database, but disputes whether Atlantis sustained any
damages as a result of this alleged conduct. In support of their claim Plaintiff's rely on the
testimony of an Atlantis employee named Brandon McNeeley. Mr. McNeeley works in the

1 marketing department of the Atlantis and is not qualified to testify on the question of damages in
2 this matter

3 **III. LAW AND ARGUMENT**

4 **A. Brandon McNeeley Is Not Qualified To Testify As An Expert In Damages**

5 Atlantis has the burden of providing the evidentiary basis for any award of damages.

6 Atlantis is relying for this proof solely on the testimony of, Brandon McNeeley who is employed
7 in the marketing department for Atlantis and whom they have identified as a non-retained expert
8 in this matter.

9 Under Nevada law, expert witness testimony is governed by NRS 50.2756 which
10 provides:

11 50.275 Testimony by experts

12 If scientific, technical or other specialized knowledge will assist the trier of
13 fact to understand the evidence or to determine a fact in issue, a witness
14 qualified as an expert by special knowledge, skill, experience, training or
15 education may testify to matters within the scope of such knowledge.

16 Mr. McNeely lacks any specialized knowledge concerning the computation of damages
17 in gaming litigation. As his resume demonstrates (a copy of which is attached hereto as Exhibit
18 1) he has no background in finance, and no experience which qualifies him to determine the
19 actual damages allegedly sustained by Atlantis. He has Bachelor of General Studies Degree in
20 Communications with a concentration in psychology and all his work experience has been in the
21 marketing department. While this might qualify Mr. McNeeley to testify concerning marketing
22 at the Atlantis, it does not provide a basis to allow him to testify as to financial damages. Aside
23 from his lack of the necessary qualification and experience; he admits that all of his opinions and
24 calculations are based on an analysis of *theoretical* not actual revenues. When asked if damage
25 calculations based on actual not theoretical numbers would be more accurate, he testified that:

26 A. No it would not. We would always use theoretical for
27 *marketing purposes*. Theoretical is the house advantage. Regardless
28 of what you walk in the door or walk out of the door with, the house
emphasis added)

1 As the foregoing illustrates, any expertise Mr. McNeeley may possess is in terms of
2 marketing not financial analysis of actual revenue. Even if he possessed some iota of skill, or
3 specialized knowledge in the calculation of actual not theoretical damages, his failure to utilize
4 actual figures renders his opinions valueless.

5 **B Calculations based on theoretical damages are speculative**

6 An expert's calculation of damages cannot be speculative. *Wallin v. Comercial Cabinet*
7 *Co. Inc. 105 Nev 855 (Nev 1989) Frantz v. Johnson, 116 Nev. 455, 999 P. 2d 351 (2000)* In the
8 present case the testimony of Plaintiff's expert is pure speculation and as such is inadmissible
9 under Nevada law. On May 14, 2013 the deposition of Mr. McNeeley was taken, at which
10 time he explained the three methodologies by which he calculated damages. These are 1) A
11 comparison of *theoretical* revenue expected from players in 2012 and the *theoretical* revenue
12 expected in 2011. 2) A comparison of the number of days a player played in 2012 versus the
13 number of days played in 2012. 3) a calculation of the lifetime value of a player to the Atlantis.
14 An examination of these three methods demonstrates their inherent unreliability and speculative
15 nature.

16 **1. Comparison of Theoretical Losses**

17 The first category is a calculation of an alleged decrease in *theoretical* revenues Atlantis
18 received from certain players from 2/1/11 through 8/31/11 compared with that same period in
19 2012. Atlantis purports that its loss can be determined by a simple subtraction of the *theoretical*
20 revenue from 2012 from the corresponding *theoretical* revenue of 2011. While *theoretical* may
21 be practical for marketing purposes it does not provide the reliability necessary for calculation of
22 actual damages. In fact Mr. McNeeley testified that:

23 Q. Now wouldn't a more proper measure of
24 Damages be the actual numbers that actually occurred?

25 A. No because *theoretical* is a more consistent
26 measure. There's a lot of volatility in actual, a lot of
27 volatility in actual. *Theoretical* is more consistent. (See Exhibit 2 P. 25 ll 1-5)

28 While consistency may be sufficient for marketing projections, it is not accurate as a
measure of actual damages. The standard for calculating damages at trial is not consistency but

1 accuracy. Mr. McNeeley testified that the actual numbers involved were available and that in
2 fact he even reviewed some of them, but rejected that approach to rely solely on *theoretical*
3 calculations. (See Exhibit 2 P. 24 ll 1 – 10) and admitted “The actual amount and the theoretical
4 amount may or may not differ over time.” (See Exhibit 2 P. 29 ll 16-17.) It is this admitted
5 difference that mandates that theoretical damages be rejected as an appropriate measure of
6 damages. It is the actual numbers, whether or no volatile, or subject to fluctuation, that provide
7 the only admissible basis for any award of damages.

8 The following exchange also occurred:

9 Q. Well, if I want to know real revenue for a
10 period of time, would I use real wins and losses
to figure that out?

11 A. Along with other things.

12 Q. What other things?

13 A. Promotional expenses.

14 Q. Well, that would come out of revenue
15 Correct?

16 A. You would factor in other expenses to get a
net profit, sure.

17 Q. But if I’m just looking at gross gaming
18 revenue, then I would use the actual money wagered and
the money won and the money lost to determine that.
19 Correct?

20 A. If that’s your evaluation. (Exhibit 2 P. 46 ll 5 – 21)

21 Mr. McNeeley also testified that *theoretical revenue* is used for purposes of marketing
22 and evaluation of players. (See Exhibit 2 P. 47 ll 23 through P. 48 ll 7). There is no evidence or
23 indication that theoretical revenue has ever been accepted as a measure of damages at trial. For
24 purposes of a trial, the only proper evaluation would be a comparison between the actual wins
25 and losses for each player that Atlantis claims was “pirated” by Sumona Islam. This figure
26 would then be used to establish either the gross gaming revenue, or to take it another step further
27 and deduct promotional and other expenses to determine the amount of net profit allegedly lost.
28 Having failed to do so, these calculations lack the reliability necessary to be admissible at trial.

1 As Mr. McNeeley testified "The actual amount and the theoretical amount may or may not differ
2 over time." (See Exhibit 2 P. 29 ll16-17.) Therefore any evidence based on theoretical damages
3 should be excluded from the trial of this matter.

4 **2. Comparison of Days Played**

5 Mr. McNeeley's second theory involves a comparison based on the number of days
6 which players played at Atlantis during these same periods and claiming lost revenue for each
7 day played in 2011 and not played in 2012. For this calculation he took the *theoretical* revenue
8 expected to be obtained in 2011 from a specific player and then divided that figure by the
9 number of days the player played to determine a "theoretical daily average". Mr. McNeeley
10 then took this average and multiplied it by the difference in the amount of days played by each
11 player in 2012 and arrived at its second damages calculation, but only when calculation involved
12 a player playing fewer days. No calculations were done for players who played more days at
13 Atlantis in 2012.

14 Again this calculation rests on the unsupported assumption that every Atlantis player
15 always loses their daily average. As Mr. McNeeley testified:

16 Q. So for every single player we have listed on
17 This sheet, there is no instance where that person has
18 indicated that they won any money. Is that correct?

19 A. That is the underlying assumption for house advantage. (see
20 Exhibit 2. P. 25 ll10-14)

21 He then further stated:

22 A. The theoretical values do not take into
23 account—jackpots are not included in the theoretical values.
24 (p. 28 ll 19-21)

25 Again this calculation makes no allowance for players who played more days at Atlantis
26 in 2012 than 2011, (See Exhibit B P. 97 ll 12 through P. 98 ll 14). Nor did he consider players
27 whose history indicated that in prior years there was a decrease in days played. (Exhibit 2 P. 41 ll
28 7 through P. 42 ll 11).

Nor did Mr. McNeeley make any attempt to obtain information from any players which
would support his assumption that any changes in days or amount played were attributed to

1 Sumona Islam. (Exhibit 2 P. 40 ll 1 -15) but stated “There are a lot of reasons why these guests
2 could’ve played more or less, but I would say that she targeted these individuals specifically”
3 (See Exhibit 2 P. 58 ll 17-19) finally admitting “We do not know the exact causes for the
4 decreases or increases in play.” (See Exhibit 2 P. 60 ll 9-10).

5 **3. Calculations of the Life Time Value of Player to Plaintiff is Speculative**

6 Mr. McNeeley testified that he used millions of players to determine the average life time
7 value of a player to the Atlantis and that these figures are not limited to the period of loss
8 claimed in this case. (See Exhibit 2 P. 68 ll 8-17):

9 A. It’s based off a formula. We extended it to
10 25 years, but that doesn’t mean the player will stay with
11 us for 25 years, because it’s based on a formula and your
12 survivability. (See Exhibit 2 P. 67 ll 21-24)

13 Mr. McNeeley admitted that the “The numbers are in there to show that if these guests
14 were to stop gambling, this is the value of that segment.” Absent evidence that these players have
15 abandoned the Atlantis as a gaming venue, and will never return, these figures are mere
16 speculation and irrelevant to this case and have no applicability to the damages being alleged.

17 **4. Mr. McNeeley Did Not Review Defendant’s Expert Report.**

18 Although Mr. McNeeley is the Plaintiff’s Designated Expert, he did not even bother to
19 read the report of the Plaintiff’s expert. Therefore he must be excluded from offering any
20 testimony in rebuttal or critical of Mr. Aguerro’s findings and opinions. In fact Plaintiff’s
21 Counsel has admitted that Mr. McNeeley was not offering any rebuttal testimony. (See Exhibit 2
22 P. 95 ll 24 to P. 96 ll 1) Because Mr. McNeeley chose not to read Mr. Aguerro’s report beyond
23 page 6 he was unable to comment on the fact that in Mr. Aguerro’s report on page 9 calculates the
24 fact that out of the 202 players which Atlantis claimed were “pirated” of those who actually
25 played at GSR the total profit in actual not *theoretical* revenue to GSR was \$15, 174.00. (See
26 Exhibit 3 attached) This alone demonstrates the fallacy inherent in using *theoretical* revenue as
27 a basis for actual damages.

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IV. CONCLUSION

Mr. McNeeley's report and testimony demonstrate no specialized knowledge, under NRS 50.275 which would assist the Court in determining damages. Instead of using the actual win and loss figures available, he chose to rely on calculations based on *theoretical revenue*, which is used for purposes of marketing and player evaluations. He admits that such theoretical revenue assumes that no players ever win, and may differ from actual revenue. As such his testimony is purely speculative and unreliable and should not be permitted at trial. Therefore Defendant GSR requests this Honorable Court to enter a Motion in Limine

1. Excluding Brandon McNeeley from testifying as an expert in this matter;
2. Excluding any and all evidence of damages based on the report prepared by Mr. McNeeley at trial of this matter;
3. Barring any argument or cross-examination of Defendant's expert based on the testimony or report of Brandon McNeeley at the trial of this matter.
4. Excluding any and all testimony in rebuttal to the testimony and report of Jeremy Aguero at the trial of this matter;
5. Excluding all testimony by any other plaintiff's witnesses based on information contained in Mr. McNeeley's report or testimony at the trial of this matter;
6. For such other and further relief as this Court deems equitable and just.

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Affirmation Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion in Limine to exclude
Brandon McNeeley does not contain the social security number of any person.

Dated this 28 th day May, 2013.

COHEN-JOHNSON, LLC

By: /s/ H. Stan Johnson
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(702) 823-3500 FAX: (702) 823-3400

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of May, 2013, I served a copy of the foregoing
**MOTION TO EXCLUDE TESTIMONY OF BRANDON MCNEELEY EITHER IN
SUPPORT OF PLAINTIFF'S CASE OR IN REBUTTAL TO THE TESTIMONY OF
DEFENDANT'S EXPERT JEREMY AGUARARO AND ALL EVIDENCE OF
DAMAGES BASED ON THEORETICAL REVENUE, LOST GAMBLIN DAYS AND
LIFE TIME VALUE OF PLAYERS** upon each of the parties by depositing a copy of the same
in a sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully
prepaid, and addressed to:

Robert A. Dotson, Esq.
Angela M. Bader, Esq.
Laxalt & Nomura, Ltd.
9600 Gateway Drive
Reno, Nevada 89521
Attorney for Plaintiff

Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, Nevada 89509
Attorney for Sumona Islam

and that there is a regular communication by mail between the place of mailing and the places so
addressed.

/s/ Jennifer Russell
Jennifer Russell, an employee of Cohen-Johnson, LLC

FILED
Electronically
05-29-2013:09:44:08 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3751476

EXHIBIT 1

BRANDON C. MCNEELY

7481 Celeste Dr. Reno, NV 89511. Cell (775) 450-7175

QUALIFICATION HIGHLIGHTS

Highly organized, motivated, and detail-oriented self-starter with a complete sense of commitment and the willingness to master new concepts, ideas, and practices. High learning curve. Superior written and verbal communication skills. The ability to handle simultaneous tasks in a fast-paced environment. Works well independently or within a group. Experience with Database Marketing. Experience with system architecture and system implementation. Good analytical skills and computer knowledge; major software applications, including Microsoft, Internet, SQL, Cognos, Crystal Reports, AS400, Strong Mail, Biz^2, Aerial, Delphi.

PROFESSIONAL HISTORY

Atlantis Casino Resort Spa, Reno, NV **2004 - Present**
*Direct Marketing Database Coordinator (3yrs) / Marketing Analyst (4yrs) /
Data Integration Manager (Current)*

- Collaborate with various departments and manage internal focus groups for new product launch and enhancements.
- Review and organize all current data within various databases for marketing purposes, including 3rd party data integration.
- Help create products (as the product manager) for various departments to use to help enhance guest services.
- Work directly with upper-management to help build customer relations by initiating marketing campaigns designed to appeal to the current marketing environment
- Generate reports on a weekly, monthly and as needed basis for various divisions via SQL Query Analyzer, IBM COGNOS and Crystal Reports; Analyze reports in the context of data mining/CRM initiative and incorporate into the CRM infrastructure.
- Prepare budget development and revenue forecasting.
- Email Marketing Analyst, responsible for executing email marketing campaigns and providing feedback to upper-management.
- More than 6 years of managing multiple direct marketing programs.
- Assist with developing effective marketing segmentation strategies.
- Analyze a series of Executive summary reports measuring trends and growth patterns in the current business environment.

ATL 0992

App. 0696

- Execute marketing initiatives while meeting company deadlines, including mail file extraction, processing, and approvals, reporting.
- Coordinate with outside vendors and suppliers.
- Provide feedback and competitive marketing analysis to maximize future return on investment.
- Discuss goals & initiatives with business owners to facilitate requirements gathering and develop appropriate campaigns.

Affinitas, Lawrence, KS
Sales Representative

2000-2004

- Generated cold call phone sales, significantly increasing subscribers to nationwide phone service.
- Promoted enhanced business cellular products and consolidation of services to management professionals and corporate officials.
- Consistently met or exceeded sales goals established by company.

International Game Technology, Reno, NV
Administrative Intern

1998-1999

- Key liaison between warehouse and assembly line, resolving discrepancies in parts lot sizing.
- Inventoried and traced parts identified problem areas.
- Generated comprehensive reports to upper management to meet specific purchasing needs.
- Awarded special certificate for performance.

Atlantis Casino Resort Spa, Reno, NV
Marketing Intern

1997-1998

- Assisted in organization of special events, concerts, tournaments, and other special promotions.
- Compiled and input data, and generated reports from information supplied by participants.
- Hands-on setup, decoration, and teardown of stands, booths, and entertainment areas.

EDUCATION

University of Nevada, Reno, NV
Currently pursuing (2010 -)... MBA specializing in Business Management

University of Kansas, Lawrence, KS
BGS in Communications, 2003
Concentration in Psychology, 2003

ATL 0993

App. 0697

REFERENCES

Available upon request.

ATL 0994

App. 0698

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Transaction # 3751476

EXHIBIT 2

1 IN THE SECOND JUDICIAL DISTRICT COURT
 2 OF THE STATE OF NEVADA
 3 IN AND FOR THE COUNTY OF WASHOE
 4 --oOo--
 5
 6 GOLDEN ROAD MOTOR INN, INC.,
 7 a Nevada corporation, d/b/a
 8 ATLANTIS CASINO RESORT SPA,
 9 Plaintiff,
 10 vs. Case No. CV12-01171
 11 SUMONA ISLAM, an individual; Dept. No. 7
 12 GSR ENTERPRISES, LLC, a Nevada
 13 limited liability company,
 14 d/b/a GRAND SIERRA RESORT;
 15 et al.,
 16 Defendants.
 17
 18 DEPOSITION OF BRANDON CHARLES MCNEELY
 19 Tuesday, May 14, 2013
 20 Reno, Nevada
 21
 22
 23
 24 REPORTED BY: Romona Malnerich
 25 Nevada CCR #269
 California CSR #7526

MOLEZZO REPORTERS 775.322.3334

1
 2
 3 APPEARANCES
 4
 5 FOR THE PLAINTIFF:
 6 Lavalt & Nomura, Ltd.
 7 BY: ROBERT A. DOTSON, ESQ.
 8 9600 Gateway Drive
 9 Reno, Nevada 89521
 10 DEBRA B. ROBINSON, ESQ.
 11 General Counsel
 12 Atlantis Casino Resort Spa
 13 3800 South Virginia Street
 14 Reno, Nevada 89502
 15
 16 FOR DEFENDANT SUMONA ISLAM:
 17 Law Offices of Mark Wray
 18 BY: MARK WRAY, ESQ.
 19 608 Lander Street
 20 Reno, Nevada 89509
 21
 22 FOR DEFENDANT GSR ENTERPRISES:
 23 Cohen-Johnson, LLC
 24 BY: H. STAN JOHNSON, ESQ.
 25 255 East Warm Springs Road, Suite 100
 Las Vegas, Nevada 89119

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1 PURSUANT TO NOTICE, and on Tuesday, the 14th
 2 day of May, 2013, at the hour of 1:42 p.m. of said day,
 3 at the Law Offices of Mark Wray, 608 Lander Street, Reno,
 4 Nevada, before me, Romona Malnerich, a notary public,
 5 personally appeared BRANDON CHARLES MCNEELY.
 6
 7 BRANDON CHARLES MCNEELY,
 8 called as a witness by the defendants herein,
 9 being first duly sworn, was examined and
 10 testified as follows:
 11
 12 EXAMINATION
 13 BY MR. JOHNSON:
 14 Q Would you please state your name for the
 15 record.
 16 A Brandon Charles McNeely.
 17 Q Mr. McNeely, my name's Stan Johnson. I
 18 represent the Grand Sierra Resorts in this litigation,
 19 and, of course, you're here for your deposition. Have
 20 you ever had your deposition taken before?
 21 A No.
 22 Q As you know, the court reporter takes down
 23 everything that's said by anybody in the room, and the
 24 reason she does that is, it's going to be put in the form
 25 of a booklet, which you'll be able to review and see if

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5

1 you think it's accurate. If you think something is
2 inaccurate or you think you need to make a change, you
3 can do so. However, I'd caution you that if you make a
4 substantive change, that's something I could comment on
5 or other counsel could comment on at the time of a trial
6 or a hearing. Do you understand that?

7 A Yes, I do.

8 Q If you want to take a break, you can just say
9 so and we'll take a break whenever you want. We try to
10 have a clean record; meaning, let me finish my question
11 and I'll let you finish your answer, so we don't talk
12 over each other. It makes it hard for the court reporter
13 to take down things if we do that. Of course, you have
14 to answer verbally. A lot of times we might nod our head
15 or say "uh-huh" or "uh-uh" or something like that, which
16 is hard for the court reporter to take down. So if you
17 would answer verbally, that would be good.

18 A Okay.

19 Q If you don't understand a question, let me
20 know. If you don't say anything, I'm going to assume
21 that you understand it. Is that fair?

22 A Sure.

23 Q Are you under any kind of medication or
24 anything that would affect your ability to give testimony
25 today?

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6

1 A No.

2 Q Why don't we start with your current
3 position. What's your current position at Atlantis?

4 A Data integration manager.

5 Q Can you explain to me what your duties are?

6 A Sure. I oversee database marketing, which is
7 the gathering of information analytics for the marketing
8 department, as well as oversee system integration from a
9 marketing perspective to frontline team members.

10 Q So tell me what you do on a daily basis, what
11 your job functions are.

12 A Market analysis, gathering information and
13 interpreting it for business decisions. I oversee our
14 direct mail channel for marketing, pushing out offers to
15 individual players based off of gaming information,
16 gaming behavior, reporting of our different promotions
17 and offers that we send to different players, as well as
18 system integration and developing -- assisting in
19 development of products.

20 Q When you say "system integration," is that
21 integrating your marketing programs with the database?
22 Or what do you mean by that?

23 A For example -- we have a player tracking
24 system we use called Patron. If we develop an internal
25 application that uses some of that information, we have

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7

1 to teach our employees, our team members, how to use that
2 application and the business knowledge behind it. So I
3 assist with the implementation of those types of
4 integration.

5 Q All right. Have you had any other positions
6 at the Atlantis?

7 A Yes.

8 Q Well, first let me ask, how long have you
9 been the data integration manager?

10 A Approximately two years.

11 Q And then prior to that, what was your
12 position?

13 A Database analyst.

14 Q How long were you a database analyst?

15 A Approximately four to five years.

16 Q Any other positions at the Atlantis?

17 A Database coordinator, approximately three
18 years.

19 Q And is that all of your positions at the
20 Atlantis?

21 A Correct.

22 Q Prior to the Atlantis, where were you
23 employed?

24 A In Kansas, at a call center called Affinitas.

25 Q And what was your job at Affinitas?

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8

1 A A call sales rep.

2 Q Any other jobs prior to that job?

3 A I was a marketing intern for IGT over a
4 summer. Prior to that, Boston Market, in high school.

5 Q That's far enough.

6 Where did you graduate high school?

7 A Reno High School, in '99.

8 Q And then did you attend college?

9 A Yes, I did, the University of Kansas.

10 Q And did you obtain a degree there?

11 A Yes, I did. I graduated with an
12 undergraduate degree in communications, with a
13 concentration in psychology, in 2004.

14 Q Do you have any other advance degrees?

15 A I'm currently pursuing my Master's of
16 business administration degree from the University of
17 Nevada, Reno.

18 Q And how far along into that are you?

19 A I have a year remaining.

20 Q You understand you've been designated as an
21 expert witness in this case?

22 A Yes.

23 Q Have you ever served as an expert witness in
24 any other case or matter?

25 A No, I have not.

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9

1 Q Have you ever been involved in any
2 litigation, either as a plaintiff or a defendant?
3 A No, I have not.
4 Q Have you ever been convicted of a felony?
5 A No, I have not.
6 Q Have you ever been arrested for anything?
7 A I had a DUI several years ago.
8 Q All right. Now, when did you first become
9 aware of this litigation involving Sumona Islam?
10 A The actual litigation process?
11 Q Well, at some point, someone came to you and
12 talked to you about this case, I assume.
13 A It was brought to my attention, the end of
14 January, that there had been some misrepresentation of
15 information in our database.
16 Q And who brought that to your attention?
17 A The director of VIP Services, Frank DeCarlo.
18 Q And what did he say to you?
19 A He brought to my attention that a host,
20 Sumona Islam, changed information in our system -- or
21 could have changed information in our system and asked if
22 we can do a discovery to assess damages or anything of
23 that nature.
24 Q And this was towards the end of January?
25 A Correct.

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10

1 Q 2012.
2 A Correct.
3 Q So as a result of that conversation, what did
4 you do?
5 A We identified names in our system who were --
6 we have an audit trail. We can tell if -- once you sign
7 into our player tracking system, any changes or
8 modifications made to our database are tied to this user
9 name. We purposely identified any users that were
10 changed by Sumona Islam prior to her leaving the
11 Atlantis.
12 Q And you've looked at Exhibit 10, I assume.
13 Correct?
14 A That is correct.
15 Q Which is Sumona Islam's audit trail history.
16 Did you actually compile this document?
17 A It was under my supervision.
18 Q Who actually prepared the document, if you
19 know?
20 A I prepared the document, as well as our
21 database coordinator, Anthony Porras. And he works
22 underneath me, under my supervision.
23 Q So once the information was gathered, did you
24 put it in this form or did you give that information to
25 someone else who put it in this form?

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11

1 A Working with Vinh Luong, who's my direct
2 boss, we put together this summary.
3 Q Now, how did you determine which entries into
4 the database were ones that were to change information
5 improperly or which entries into the database just had to
6 do with normal, everyday activities of a casino host?
7 A We took several approaches. We looked at the
8 average amount of changes that a host could potentially
9 make and then we looked at the amount of changes that
10 were done by Sumona Islam in the time leading up to her
11 departure. She made more modifications in that short
12 amount of time than she had done prior. Looking at those
13 changes, there were small iterations -- a few digits in
14 an address here or there, really obvious changes that she
15 was trying to misrepresent the data.
16 Q And that was with 87 records?
17 A That is correct, 87 unique guest changes.
18 Q And of those 87, did you feel all 87 of those
19 were changes that were not made in the ordinary course of
20 her job as a casino host?
21 A That is correct. These changes were not
22 ordinary for a casino host.
23 Q So when you looked at this initially, were
24 there more than 87 and then you narrowed it down to 87?
25 Or how did that work?

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12

1 A Can you please repeat the question, or
2 rephrase it?
3 Q You went into the database to identify
4 records that had been changed by Sumona Islam. Correct?
5 A Correct.
6 Q Some of those changes could've just been in
7 the ordinary course of her employment and were not meant
8 to change information in a malicious way or anything of
9 that nature. Correct?
10 A These changes were made towards the last few
11 weeks leading up to her termination or departure.
12 Normally if a host makes a change, they contact database
13 marketing. We make a lot of the changes for hosts and
14 players. So it was not ordinary for her to make these
15 types of changes, and the time period when she made the
16 changes was pretty obvious of her intentions.
17 Q Okay. You've made it clear she made changes.
18 I guess what I'm trying to say is, did you verify that
19 the changes were a modification of data that was
20 malicious or inaccurate?
21 A Yes.
22 Q And how did you do that?
23 A We looked at the audit trail and we noticed
24 that her changes were slight modifications to the data
25 that one wouldn't ordinarily make.

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13

1 Q Well, a host could go in, if the address was
2 wrong in that record, and change the address to make it
3 correct. Is that also true?

4 A Sumona Islam made several changes. For
5 example, she could make 10 changes in a day, changing
6 addresses from maybe 134 to 137 Street. The amount of
7 changes that she did in that time frame was very obvious
8 of her intentions.

9 Q I guess what I'm saying is, yeah, there were
10 changes, but did you verify those changes against other
11 data to verify that they were wrong?

12 A We received phone calls from some of these
13 players notifying us as well that they weren't receiving
14 information. That was another tip-off that she was
15 maliciously changing information.

16 Q So you got some phone calls from people
17 saying, "Hey, I'm not getting my mailers." Is that
18 accurate?

19 A That's true.

20 Q Do you know how many people did that?

21 A The calls were brought to my attention by VIP
22 Services.

23 Q Did they give you a number?

24 A A specific number?

25 Q Yeah.

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14

1 A As the calls came in, we researched it.

2 Q Do you remember how many people this
3 involved? Was it five, was it 10, was it 20?

4 A I don't recall at this moment.

5 Q And I'm not trying to give you a hard time.
6 I just don't think I'm getting the answer to my question,
7 which is, when you identified a record that was changed,
8 did you then compare it to a prior version of the record
9 or a version of the record in a different database?

10 A We have an application that's called QAS;
11 it's an address verification software. In the software,
12 it'll also tell us if the address is valid and who may or
13 may not live at this address. We -- in conjunction with
14 our discovery, we cross-referenced some of these
15 addresses with this QAS database.

16 Q Did you do that for all 87 records?

17 A I don't recall.

18 MR. JOHNSON: Okay. Let's mark this as 74.
19 (Exhibit 74 marked.)

20 BY MR. JOHNSON:

21 Q Do you mind if I call you Brandon?

22 A That's fine.

23 Q Brandon, I've had marked as Exhibit 74 a
24 notice of taking deposition. Are you familiar with that
25 document? Have you seen it before?

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1 A If I have, I don't recall.

2 Q This is a notice of taking your deposition,
3 which means it sets the time and date, but it also
4 requests you to bring certain documents with you, which
5 is attached as Exhibit 1. Did you do anything to gather
6 these documents requested in Exhibit 1?

7 A Can you please repeat it?

8 Q Did you do anything to gather the requested
9 documents in Exhibit 1?

10 A Yes, I have supplied some of the information
11 that was asked of me.

12 Q So, for example, number one, we have your
13 resume. Number two, you haven't testified as an expert
14 in any other cases. Correct?

15 A Correct.

16 Q Number three, in regards to this case
17 involving Grand Sierra and Sumona Islam, do you have a
18 file that you have maintained where you've gathered
19 information?

20 A All the information that I've gathered for
21 this case has been supplied.

22 Q So you don't have any other documents or
23 anything?

24 A I didn't bring any extra documents with me,
25 correct.

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16

1 Q Are there extra documents? Are there lists
2 or are there memos or emails or anything of that nature?

3 A Everything that I have has been supplied.

4 Q Have you sent and received emails concerning
5 this matter?

6 A Only correspondence with my legal counsel.

7 Q That's it? No other correspondence with
8 anyone else?

9 A Not specifically related to information in
10 this case.

11 Q And I'm not asking about any emails you've
12 sent, because obviously you're sending emails probably
13 all the time. I'm just talking about emails that relate
14 to this case. Are there any others?

15 A No.

16 Q So you didn't send any emails to your boss or
17 to a colleague or anyone?

18 A I believe the emails that were in
19 correspondence with my direct boss have been supplied to
20 legal counsel.

21 Q So as far as you know, all the emails were
22 supplied to legal counsel.

23 A Correct.

24 MR. JOHNSON: I'll ask counsel, have those
25 been produced?

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1 MR. DOTSON: Yeah, I believe so. I think --
2 in particular, the ones that I'm thinking are responsive
3 are the ones between he and gaming. In that production,
4 in that set, I think is where you're going to find it,
5 but I'm going to confirm that, in fact, they've been
6 produced. I know those have and I can't think of any
7 others.

8 MR. JOHNSON: All right.

9 BY MR. JOHNSON:

10 Q Number four talks about producing all data
11 reviewed or relied upon in preparing any documents
12 produced by plaintiff. Have you brought any copies of
13 data reviewed or relied upon?

14 A No, I have not.

15 Q What did you review or rely upon in
16 formulating your report in this matter?

17 A If I understand you correctly, all the
18 information that I used for the documents that I've
19 supplied are in the documents that I've supplied. I
20 don't have any outside information.

21 Q Just so we're clear, this is what we've had
22 marked as Exhibit 72, which contains the latest version
23 of the damages that have been claimed. So let me direct
24 your attention to page 14. Do you see halfway down the
25 page, it says, "Plaintiff calculates its past lost

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1 revenue by the following two alternate methods?"

2 A Yes.

3 Q Now, as far as the verbiage that's here, did
4 you actually draft this or was this drafted by counsel?

5 A It was drafted by counsel.

6 Q And would that be true of the next page also,
7 page 15?

8 A Drafted by counsel as well.

9 Q And then let's look at Exhibit C. Do you
10 recognize Exhibit C?

11 A Yes, I do.

12 Q And did you draft that?

13 A Yes, I did.

14 Q Did anyone assist you with that, or did you
15 do that by yourself?

16 A It was my methodology.

17 Q But as far as the actual verbiage?

18 A My methodology and my verbiage, with the
19 assistance of senior management.

20 Q Let me ask you a more direct question. Who
21 actually typed this report?

22 A I did.

23 Q And it was reviewed by senior management?

24 A That is correct.

25 Q Who would that have been?

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1 A David Farahi, who was our COO.

2 Q So he reviewed it. Did anyone else?

3 A Darlene Sullivan, our general manager.

4 Q And anyone else?

5 A Legal counsel.

6 Q And by legal counsel, who do you mean?

7 A Debbie Robinson.

8 Q So the report was sent to her for review
9 also.

10 A Yes.

11 Q Did anyone else have input into this report?

12 A No.

13 Q Well, we'll come back to that.

14 Let's go back to number four. For example,
15 when we talk about theoretical variance or days played or
16 some of this information, did you have any underlying
17 data or reports that you relied on to gather that
18 information?

19 A Yes. I gathered the information through a
20 software called Microsoft Studio. It is a querying tool.

21 Q Okay, Microsoft Studio. Is that used to
22 query a database?

23 A That is correct.

24 Q So what you would do -- correct me if I'm
25 wrong, but you would formulate a query of the database

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1 and it would then examine the database and come back with
2 that information.

3 A That is correct.

4 Q So if we look at the printout of the 202
5 names -- in fact, we have a bigger version of this,
6 Exhibit No. 73. So, for example, where it says "Days
7 Played Variance," is that an example of a query you
8 would've done to the database in order to obtain that
9 information?

10 A Essentially, yes.

11 Q Well, correct me if I'm not stating it
12 correctly, but, for example, Coy Sanders, number one,
13 14 days less, how was that information obtained?

14 A That information would be obtained by
15 evaluating the time period we used in this analysis, 2012
16 over 2011. The dates played variance is the difference
17 between those two time periods.

18 Q I understand that it's the difference between
19 the two time periods. Was that specific information
20 gathered by using this program from the database, by
21 making that query, saying "Compare days played in 2011 to
22 days played in 2012 and then give us the difference"?

23 A That is one way you could do it. I proceeded
24 to extract the information by year and then had Excel do
25 the calculation.

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21

1 Q Now, Exhibit 73, this particular summary
 2 sheet -- it's entitled "Supporting Data for Summary
 3 Sheet." Did you, yourself, prepare this summary sheet?
 4 A Yes, I did.
 5 Q Did anyone help prepare it?
 6 A No.
 7 Q Did anyone tell you what they wanted the
 8 summary sheet to include?
 9 A Yes.
 10 Q Who was that?
 11 A Legal counsel.
 12 Q Is that Debra Robinson?
 13 A Correct.
 14 Q Was anyone else present during this
 15 conversation?
 16 A I believe senior management.
 17 Q And who would that have been?
 18 A David Farahi.
 19 Q When would this meeting have occurred?
 20 A We've made several iterations to this
 21 supporting data sheet.
 22 Q When do you think the first meeting occurred?
 23 A Early spring.
 24 Q So maybe March, April, something like that?
 25 A I don't have the exact --

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22

1 Q What was said by David Farahi at this
 2 meeting?
 3 A I don't remember his exact words.
 4 Q Since he's the COO, did he indicate how he
 5 thought this should be laid out?
 6 A It was more of a question of what we actually
 7 needed to produce. Some of the information that we have
 8 is proprietary information, such as account numbers and
 9 those sort of things.
 10 Q So there were discussions about what not to
 11 include in this report.
 12 A Correct.
 13 Q Do you recall other things that were not to
 14 be included in the report?
 15 A Certain demographic information, like birth
 16 date.
 17 Q What about actual play versus theoretical
 18 play?
 19 A That was my call, in conjunction with senior
 20 management. We typically look at theoretical, as opposed
 21 to actual. Theoretical is our standard measure.
 22 Q Were there discussions about which to use in
 23 this report?
 24 A No. It was clear.
 25 Q Now, when you say it was your call, you

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23

1 decided to use theoretical and not actual numbers?
 2 A It was a recommendation, with the underlying
 3 assumption that this is how we measure performance.
 4 Q Whose recommendation was it?
 5 A It was my recommendation.
 6 Q Okay. And did you ever look at the actual
 7 numbers?
 8 A Possibly in the very beginning, but I don't
 9 recall the numbers.
 10 Q So, in the beginning, you may have done a
 11 version of this report using the actual numbers?
 12 MR. DOTSON: Objection. Misstates his
 13 testimony.
 14 Go ahead and answer.
 15 THE WITNESS: Could you please repeat the
 16 question?
 17 BY MR. JOHNSON:
 18 Q You indicated that, at the beginning, you may
 19 have looked at the actual numbers. Is that correct?
 20 A Normally when running a report, you would
 21 pull all relevant information out. Theoretical is our
 22 measurement that we use across the board for marketing
 23 purposes, especially when calculating losses. So
 24 theoretical, from the beginning, would've been the
 25 approach we would've taken.

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24

1 Q But didn't you say that you looked at actual
 2 numbers at the beginning?
 3 A I looked at actual information, along with
 4 other information as well.
 5 Q And when you looked at the actual
 6 information, do you recall what you found regarding these
 7 numbers, as far as losses?
 8 A I don't recall. Theoretical is my primary --
 9 understanding the theoretical value is my primary
 10 concern.
 11 Q I understand you use theoretical when you're
 12 doing projections and you want to know what if this, what
 13 if that, but in a circumstance where the actual play has
 14 taken place, wouldn't the actual numbers be a more
 15 accurate measure of what actually happened?
 16 A No, it would not. We would always use
 17 theoretical for marketing purposes. Theoretical is the
 18 house advantage. Regardless of what you walk in the door
 19 or walk out the door with, the house advantage is what we
 20 measure.
 21 Q And you indicated, for marketing purposes,
 22 that's what's always used. Now, you understand you've
 23 been asked to be an expert witness in regard to the
 24 damages suffered by the Atlantis. You understand that?
 25 A Correct.

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1 Q Now, wouldn't a more proper measure of
2 damages be the actual numbers that actually occurred?

3 A No, because theoretical is a more consistent
4 measure. There's a lot of volatility in actual, a lot of
5 volatility in actual. Theoretical is more consistent.

6 Q Okay. For example, this summary indicates
7 that no one could win while gambling at Atlantis. Is
8 that correct?

9 A That's the house advantage.

10 Q So for every single player we have listed on
11 this sheet, there is no instance where that person has
12 indicated that they won any money. Is that correct?

13 A That is the underlying assumption for the
14 house advantage.

15 Q Is that reality?

16 A Yes, it is.

17 Q So, in reality, no one ever wins.

18 A That's not correct.

19 Q The fact that there are winners and losers is
20 reality. Is that correct?

21 A The fact that there are winners and losers,
22 that is correct. We use theoretical because it's a
23 better measure.

24 Q A better measure to show what? What you want
25 it to show?

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1 MR. DOTSON: Objection. Argumentative.

2 Go ahead and answer. There's no judge here
3 to rule on my objection. So, on occasion, I may object.
4 Unless I instruct you not to answer, if you understand
5 the question, you should answer the question. So the
6 question was, to show what you want it to show.

7 THE WITNESS: Regardless of whether somebody
8 wins or loses, the casino uses the house advantage as a
9 way to measure profitability. You can't use actual.

10 BY MR. JOHNSON:

11 Q Now, when the financial statements of the
12 casino are prepared, are they prepared based on actual
13 numbers or theoretical numbers?

14 A Financial numbers are based on a lot of
15 factors.

16 Q Aren't they based off of real revenue?

17 A Theoretical is considered real revenue.

18 Q So you're saying the financial statements of
19 the Atlantis, a publicly-traded company, are based off of
20 theoretical numbers and not actual numbers?

21 MR. DOTSON: Objection. Foundation.

22 THE WITNESS: No, that's not what I'm saying.

23 BY MR. JOHNSON:

24 Q Explain what you're saying.

25 A Please rephrase the question.

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1 Q Are the financial statements of the Atlantis
2 based on theoretical numbers or real numbers?

3 MR. DOTSON: Objection. Foundation.

4 Go ahead and answer, if you can.

5 THE WITNESS: There are a lot of things that
6 go into the financial numbers.

7 BY MR. JOHNSON:

8 Q Isn't it based on cash?

9 A I believe so.

10 Q And these theoretical numbers are not based
11 on cash, they're based on a theoretical calculation.
12 Correct?

13 A Theoretical is based on the house advantage.

14 Q But they're not based on cash. Correct?

15 A They are based on cash.

16 Q These theoretical numbers are based on the
17 actual cash that is either won or lost by the casino?

18 A It's based off of the coin-in in the machine
19 or on the table.

20 Q For example, so we're clear, let's take Coy
21 Sanders. In 2011, the theoretical was 141,519. Correct?

22 A That is correct.

23 Q Did you look at the actual numbers, the
24 actual revenue, the actual cash for Coy Sanders?

25 A As I stated in the beginning, we didn't use

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1 it for this analysis, because theoretical is a measure of
2 cash in the machine.

3 Q It's a partial measure of the cash that goes
4 through the machine.

5 A That is correct.

6 Q And it's the cash going through the machine,
7 times the hold or the — there's various names for it,
8 but what the machine should theoretically hold. Is that
9 correct?

10 A That is correct.

11 Q So this number, 141,519, does not reflect any
12 type of jackpots or winnings by Coy Sanders. Correct?

13 A The theoretical value strips off the
14 volatility of actual. So it strips off the lucky streak.

15 Q But you didn't answer my question. My
16 question was, does this number, 141,519, show any
17 winnings or any jackpots that, in reality, Coy Sanders
18 experienced in 2011?

19 A The theoretical values do not take into
20 account — jackpots are not included in the theoretical
21 values.

22 Q Okay. So if Coy Sanders had a \$50,000
23 jackpot in 2011, then, in reality, the cash received by
24 the Atlantis would've been reduced by that jackpot. Is
25 that correct?

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1 A Can you please rephrase that?

2 Q Well, when we're looking at the amount of

3 actual money wagered by Coy Sanders, you're assuming that

4 there's going to be a theoretical win of \$141,519.

5 Correct?

6 A The theoretical is derived from coin-in and

7 the other factors we mentioned. So it's the total number

8 of cash in the machine. A percentage of it is considered

9 the house advantage, regardless of whether that player

10 won or lost.

11 Q And that's what the question was. If we look

12 at the total amount of money wagered by Coy Sanders in

13 2011 and then we subtract from that any jackpots or

14 winnings, that number might be very different from the

15 \$141,519. Is that correct?

16 A The actual amount and the theoretical amount

17 may or may not differ over time.

18 Q But you didn't look at that in comparing

19 these variations from 2011 to 2012.

20 A Are you asking if I analyzed the win for each

21 year?

22 Q The actual win, yes.

23 A No, I did not.

24 Q And when you talk about the theoretical win

25 and the hold and the amount of coin put in the machine --

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1 now, I wonder if these players were table game players.

2 A I'd imagine there's a mix of slot and table

3 game players.

4 Q How would you know, for a table game player,

5 how much money was wagered in 2011?

6 A It would be recorded through our player

7 tracking system.

8 Q Which consists of what?

9 A Gaming behavior.

10 Q Gaming behavior?

11 A Yes.

12 Q So it's not an actual tracking system.

13 A No, it is a tracking system.

14 Q Is it a similar tracking system as with the

15 machines or a different type of tracking system?

16 A It's a different type of tracking system,

17 but --

18 Q Describe for me the tracking system used with

19 table games.

20 A Table games uses -- our property essentially

21 uses Patron Management. That is our player tracking

22 software. Table games also, in addition, uses another

23 application called Pit Boss Pro. All the information

24 makes it back to Patron.

25 Q How does Pit Boss Pro work?

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1 A It's a player tracking system that table game

2 supervisors and table game employees use to help track

3 individual players.

4 Q So, basically, it's a system where the pit

5 supervisor looks at some guys playing and he estimates

6 how long they're playing and what size bets they're

7 making and things of that nature. Is that correct?

8 A In a roundabout way.

9 Q Well, what's incorrect about that?

10 A I'm not familiar with all the inner workings

11 of the actual process, but from my understanding, the end

12 result is they evaluate players and enter that

13 information into the system. That information in the

14 system is what we use for tracking.

15 Q Isn't it more based on recording how many

16 hours a particular player might play and it's some sort

17 of estimate of the amount of money wagered, but it's not

18 really an accurate tracking system?

19 A I think that's an assumption you're making.

20 I think it's as accurate as the person tracking it.

21 Q All right, that makes sense. And some people

22 may be more accurate than other people. Correct?

23 A We have standards and procedures. I would

24 hope there wouldn't be much volatility.

25 Q Well, that's a hope, but you don't know.

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1 Correct?

2 A As I said, I'm not familiar with the inner

3 workings of the table games department.

4 Q Would the same apply to roulette as it would

5 with blackjack?

6 A What would apply?

7 Q As far as how play is tracked.

8 A Those are considered table games, if that's

9 what you mean.

10 Q Is it the same methodology to track somebody

11 who plays roulette as somebody who plays 21?

12 A As I said, I'm not familiar with the inner

13 workings of how they actually -- procedure wise.

14 Q Okay. Do you know how many of these people

15 are table game players versus machine game players?

16 A I don't recall.

17 Q You didn't research that information?

18 A I don't recall. Sumona Islam cherry-picked

19 these individuals.

20 Q Well, I'm not asking you whether you recall.

21 I asked you whether you looked at that information.

22 A As I said, I don't recall.

23 Q Then we have to assume that you didn't look

24 at that information. Correct?

25 A As I said, I don't recall if I looked at the

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1 information.

2 Q In any event, it wasn't taken into

3 consideration in formulating this summary. Is that

4 correct?

5 A That part is correct. Whether they were slot

6 or tables, it didn't --

7 Q All right. Let's look at Coy Sanders again.

8 If he's a table game player, how do we know what his cash

9 wagers were? If he's a table game player, how do we know

10 with any accuracy what his actual wagers were?

11 A As far as what was wagered, that information

12 would be entered in the system.

13 Q Into the Pit Boss Pro system that you

14 described?

15 A That is correct.

16 Q Would there be any other way of knowing what

17 his actual wagers were?

18 A Yes.

19 Q And how is that?

20 A All that information -- the hands that you

21 play, the amounts that you wager, all that information is

22 kept in our player tracking system. So, yes, I can tell.

23 Q But that's entered into the system through

24 this Pit Boss Pro system that you talked about. Correct?

25 A Correct.

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1 Q So that's based upon the observation of the

2 pit boss. Correct?

3 A It's based on whoever's evaluating.

4 Q But there's no precise way of measuring what

5 amount is wagered, as there is with machine tracking. Is

6 that correct?

7 A It's based upon the observation of whoever is

8 evaluating.

9 Q And when the pit boss is busy with one table

10 game and there's five games behind him, is he also

11 tracking those five games behind him to know what's being

12 wagered there too?

13 A As I said before, I'm not as well versed in

14 the inner workings of the table games department.

15 Q And the reason I'm asking that is, if you're

16 taking the amount to arrive at the -- if you're taking

17 the amount that's played and you're taking that times a

18 theoretical win or hold, that would be how you would

19 arrive at the theo for that particular player. Correct?

20 A Can you repeat that?

21 Q For table game players, in order to arrive at

22 the theo, you'd have to take the amount actually wagered

23 times the theoretical win for that particular game.

24 Correct?

25 A I believe so.

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1 Q So if the amount that is wagered is

2 inaccurate -- because we didn't correctly record it, we

3 didn't correctly track it, we didn't track it with

4 accuracy -- wouldn't the theoretical number also be

5 inaccurate?

6 A It is possible.

7 Q Kind of like garbage in, garbage out?

8 A That's your assumption.

9 Q Let's say Coy Sanders is a table game player

10 and the information indicates he wagered a hundred

11 thousand dollars, and that's what you base your

12 theoretical off of, but if in reality he wagered

13 \$200,000, then your theoretical number would be

14 inaccurate. Correct?

15 A Our theoretical tracking has been the same

16 year over year. There have been no changes in our table

17 game tracking.

18 Q I'm not asking you that. You want me to

19 repeat the question?

20 A Sure.

21 Q In order to calculate your theo for any

22 particular table game player, if you start with the

23 wager, that the number wagered is a hundred thousand, but

24 in reality he wagered \$200,000, then your theoretical

25 number would be inaccurate. Correct?

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1 A If we have inaccurate information in the

2 system, we're more than likely going to get inaccurate

3 information.

4 Q Like I said, garbage in, garbage out. Right?

5 A That's your assumption.

6 Q Now, let's look at the Days Played Variance.

7 This is also based upon the comparison of the numbers

8 from 2011 to 2012. Correct?

9 A That's correct.

10 Q For example, for Coy Sanders, we have 80 days

11 played in 2011 and we have 66 days played in 2012. Is

12 that correct?

13 A That is correct.

14 Q Which gives a variance of a negative 14.

15 Correct?

16 A Correct.

17 Q Now, those numbers, 80 and 66, do you know

18 how those numbers were obtained or tracked?

19 A They would be tracked the moment the player

20 used his card.

21 Q Now, players don't use their cards at table

22 games. Correct?

23 A No, that's not correct.

24 Q How do they use their card at a table game?

25 A You would present your card to the dealer or

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1 a supervisor, so they can track you.

2 Q Does everyone do that?

3 A Does everybody do that?

4 Q Yeah.

5 A Not everybody.

6 Q Do you know which of these players -- let me

7 ask you this: Did you look to see that every person on

8 this list had a player tracking card?

9 A Every player that's on this list has a player

10 tracking card.

11 Q Now, if a player has a card, but they don't

12 bother to use it on certain occasions, would you be able

13 to track their play?

14 A If a player did not use their player's card,

15 I would not be able to record his information and report

16 off of it. We, as a property, stress card usage.

17 Q But, again, if someone chooses not to use

18 their card, then you wouldn't know whether they had

19 played more days in 2012 than is actually reported.

20 Correct?

21 A If a player did not use their card, we would

22 not have the information, that is correct.

23 Q And, again, if a player is a table game

24 player and he walks up to the table, things are busy,

25 people are playing, a lot of people there, he might not

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1 present his card to the dealer or the pit boss. Is that

2 correct?

3 A Not necessarily. We incentivize players to

4 use their card. That's a part of our loyalty programs.

5 We encourage participation in using your player's card,

6 and out of that, you receive rewards and benefits from

7 the casino. It's in the player's best interest to use

8 their card, and all of these players on this list are all

9 club card members.

10 Q But it's possible that a player who has a

11 card could choose not to use it. Correct?

12 A It is possible. If a player does not want to

13 be tracked, we cannot force them to be tracked.

14 Q Now, on some of these players, the number of

15 days played actually increased. For example, number

16 eight, Robert Hunt, his days played increased by 13 days.

17 Do you see that?

18 A Yes.

19 Q What would account for the increase in the

20 number of days played by Robert Hunt?

21 A Over the relevant time period, using this

22 analysis, he played 13 more days in 2012 than he did in

23 2011, but he played less.

24 Q He wagered less, is that what you're saying?

25 A Played, wagered.

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1 Q What accounts for the fact that he played 13

2 more days in 2012?

3 A On average, the individuals in this analysis

4 were increasing their trips prior to -- we noticed they

5 declined in game behavior once Sumona Islam started

6 soliciting these players.

7 Q That wasn't my question.

8 A He could have played more.

9 Q My question was, what accounts for the

10 increase in play of Robert Hunt? What factors caused him

11 to play more days in 2012 than he did in 2011?

12 A Without any certainty, I can't pinpoint the

13 exact reasons why he played more.

14 Q Well, let's take Jose Lim, number 14. He

15 played 10 days more in 2012. Do you know why he played

16 10 days more?

17 A There could be a lot of factors that go into

18 why a guest plays more.

19 Q Do you know any fact that would allow you to

20 say why Jose played more days in 2012?

21 A I can't say what drove this guest in, without

22 specifically asking the player.

23 Q Did you talk to any of these players?

24 A No, I have not spoken with any of these

25 players.

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1 Q So you never asked any of these players why

2 they played more in 2012 or less in 2012 than in 2011.

3 A That is the responsibility of the VIP

4 Services department and the host assigned to each player.

5 They're the communication point for these players. They

6 may know.

7 Q But you're the expert designated by Atlantis

8 to indicate what damages they suffered as a result of the

9 actions of Sumona Islam or the Grand Sierra Resorts. Is

10 that correct?

11 A That is correct.

12 Q So I'm asking you, did you speak to any of

13 these players to determine why their play had changed?

14 A I did not speak directly with any of these

15 players.

16 Q Again, let's look at Robert Hunt, and he had

17 45 less days played in 2012. Do you know why Robert Hunt

18 played less days in 2012?

19 A You said number eight, Robert Hunt?

20 MR. DOTSON: Hunt played more days in --

21 BY MR. JOHNSON:

22 Q Okay. Let's look at the one below him,

23 Belinda Fuller. It looks like she played 45 days less in

24 2012. Do you know why?

25 A I can't say with certainty the exact reasons

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1 why she has 45 days less. I can infer that she would've
2 maintained those number of trips had she not been
3 solicited by the Grand Sierra.

4 Q And you infer that based on what?

5 A Over the years, she's down 45 days of play
6 and has a negative theoretical variance of 18,890.

7 Q Okay. Well, let's look at the same player.
8 In 2012, 117 days; in 2011, 194 days; in 2010 -- excuse
9 me, I've got this wrong. Okay. 2012, 72 days.
10 Correct?

11 A Correct.

12 Q 2012, 117 days. Correct?

13 A Correct.

14 Q In 2010, there was 194 days. Correct?

15 A Correct.

16 Q So there was a decrease from 2010 to 2011,
17 which Sumona Islam or Grand Sierra could've had no effect
18 on. Is that correct?

19 A Her theoretical value isn't much different.

20 Q That's not my question. My question was, she
21 went from 194 days down to 117 days from 2010 to 2011.
22 Now, you're not telling me that anything Sumona Islam did
23 affected that reduction. Is that correct?

24 A I can't make that assumption.

25 Q Because you don't know. Right?

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1 A Without specifically asking the player.

2 Q And there's nothing that Grand Sierra Resorts
3 did that would've reduced the days from 194 down to 117
4 from 2010 to 2011. Is that correct?

5 A I can't say.

6 Q Well, do you know of anything?

7 A We'd have to specifically ask the player.

8 Q But as you sit here today, do you know of
9 anything that either defendant would've done to cause
10 that reduction in the number of days played?

11 A I don't know.

12 Q And of course, if we look at 2009, they
13 played no days. Do we know what caused the increase --

14 MR. DOTSON: I think you have the wrong line
15 again, counsel.

16 MR. JOHNSON: Oh, I'm sorry, 69 days.

17 BY MR. JOHNSON:

18 Q So there was an increase from 2009 to 2010.
19 Do we know what caused that?

20 A There could've been reasons.

21 Q Do you know of the reasons?

22 A I'm not aware of the reasons, but she was
23 trending up.

24 Q And then trended down.

25 A With the same level of play.

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1 Q But, of course, that's theoretical, that's
2 not actual.

3 A Theoretical is a consistent measure.

4 Q But actual is the real measure. Correct?

5 A No, it's not.

6 Q In the real world --

7 MR. DOTSON: Objection. Please let the
8 witness answer the question.

9 MR. JOHNSON: I thought he was done.
10 Were you done?

11 THE WITNESS: No. Theoretical is the house
12 advantage, it's more of a consistent measure.

13 BY MR. JOHNSON:

14 Q But in the real world, if I go into a casino
15 and I wager a thousand dollars and I lose 500, then I've
16 lost 500 and the casino has gained 500. Is that correct?

17 A That's correct.

18 Q In the real world, in the world of real cash,
19 which is what counts.

20 A That's not how the casino evaluates you.

21 Q That's how a casino pays its bills, with real
22 cash.

23 MR. DOTSON: Objection. Argumentative.
24 You can answer that question if you know.

25 THE WITNESS: I can't answer the question.

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1 BY MR. JOHNSON:

2 Q And if I wager the same thousand dollars and
3 I win 500, then the casino has lost \$500 in the real
4 world. Correct?

5 A If you wagered a thousand dollars and you
6 lost your thousand dollars, the casino would win a
7 thousand dollars. You would be out of pocket a thousand
8 dollars. You would generate a certain number of
9 theoretical based off of that wager, and as an industry
10 standard, the casino would evaluate you based off a few
11 different metrics.

12 Q For marketing purposes.

13 A For a lot of purposes, more than marketing.

14 Q But it wouldn't show up on the tax return
15 that way. Correct?

16 MR. DOTSON: Objection. Foundation.
17 I don't know if he knows what the tax return
18 looks like for the Atlantis. But if you know, go ahead.

19 THE WITNESS: No, I don't know what the tax
20 return looks like for the Atlantis.

21 BY MR. JOHNSON:

22 Q If I was going to put gaming wins or losses
23 on my tax return, I'd have to use the real cash numbers.
24 Correct?

25 MR. DOTSON: Same objection, foundation.

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1 THE WITNESS: Theoretical is a conservative
2 approach. It would've been a lot higher if we used the
3 actual.
4 BY MR. JOHNSON:
5 Q Do you know that?
6 A It's an assumption.
7 Q Based on what?
8 A My experience.
9 Q So your experience is that the winnings would
10 exceed the theoretical loss?
11 A The win is very volatile. It can be positive
12 or negative.
13 Q But you testified you didn't look at the
14 actual numbers in composing this summary. Correct?
15 A The win was not put in the summary. I said
16 that at the very beginning. We pulled out all of the
17 information, but we focused on theoretical because it's
18 more of a consistent measure and it's a conservative
19 measure.
20 Q It's conservative when it shows that no
21 player ever wins?
22 A If you're familiar with the industry, it's a
23 zero-sum game. Over the lifetime of a customer, the
24 casino should be up. That's why we're in the business.
25 Q But if we take a finite period of time and we

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1 want to know what the casino actually earned, what the
2 revenue was during that time period, wouldn't we use real
3 revenue, not theoretical revenue?
4 A It depends on the evaluation.
5 Q Well, if I want to know real revenue for a
6 period of time, wouldn't I use real wins and losses to
7 figure that out?
8 A Along with other things.
9 Q What other things?
10 A Promotional expenses.
11 Q Well, that would come out of revenue.
12 Correct?
13 A You would factor in other expenses to get a
14 net profit, sure.
15 Q But if I'm just looking at gross gaming
16 revenue, then I would use the actual money wagered and
17 the money won and the money lost to determine that.
18 Correct?
19 A If that's your evaluation.
20 Q So have you developed an opinion as to the
21 damages suffered by Atlantis in this case?
22 A Yes.
23 Q And what is your opinion?
24 A My opinion is referenced in this document
25 that I supplied.

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1 Q So that would be Exhibit 72. Look at page
2 14. Is that what you were looking for?
3 A Yes.
4 Q So this indicates there were two alternative
5 methods. It says, "Lost revenue from Atlantis guests
6 added to GSR database by Islam, when compared to revenue
7 from these guests during the same period, the year prior,
8 \$313,174." Now, that's not really accurate, is it?
9 A Why would you say that?
10 Q Well, I'm talking about lost revenue as
11 compared to revenue from one year to the next. Wouldn't
12 revenue be actual dollars?
13 A We used theoretical value in this evaluation.
14 It's a more consistent measure and it's a conservative
15 approach, because over the long run of a player's life or
16 gaming behavior, the casino expects to win. There's a
17 house advantage on every type of game in the
18 establishment.
19 Q Wouldn't it be more accurate to say it's a
20 comparison of theoretical win from one year to the next,
21 not revenue?
22 A We can consider it theoretical revenue.
23 Q And theoretical revenue is reported to who?
24 A It's used for evaluations.
25 Q So for marketing and evaluation, but --

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1 A And player evaluation as well.
2 Q And player evaluation. But as far as revenue
3 that's reported to the Internal Revenue Service, it's not
4 used. Correct?
5 A I don't believe I have the answer to that
6 question. I've never submitted documents to the IRS on
7 the Atlantis's behalf.
8 Q Then the second is, "Days lost by the
9 Atlantis for its guests added to GSR database by Islam,"
10 and you estimate the damage there is \$334,455. Is that
11 correct?
12 A That's correct.
13 Q And that's based upon taking the addition or
14 reduction of days times the average daily theoretical.
15 Correct?
16 A Correct.
17 Q All right. And then there's a discussion
18 about the customer lifetime value, CLV, of approximately
19 22,696 per guest. Do you see that?
20 A Yes, I do.
21 Q Who came up with the idea of using customer
22 lifetime value to approximate damages?
23 A We've used this analysis before in the past.
24 It was my recommendation that we use it again for this
25 process, to get a better understanding of the overall

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1 value of our customer base.
 2 MR. DOTSON: Can we take a brief recess?
 3 MR. JOHNSON: Sure.
 4 (Recess taken.)
 5 BY MR. JOHNSON:
 6 Q Before we get into the customer lifetime
 7 value, let's go back to your opinion. You've indicated
 8 that this information is based upon your calculations,
 9 but there's also Exhibit C, which is the methodology. Is
 10 that correct?
 11 A I did supply the methodology.
 12 Q So then let me go back to 73, because based
 13 upon your narrative and this information, you're
 14 basically stating that when we compare the 2011 theo
 15 the 2012 theo, if there's a reduction, then you're
 16 claiming that as damages. Correct?
 17 A No, that is not correct. We are only
 18 pursuing damages for guests that were established in
 19 GSR's database after Sumona Islam was hired.
 20 Q But isn't that what 73 depicts?
 21 A Yes, that is correct.
 22 Q So one of the alternate methods of
 23 calculating the damage is the difference between the 2012
 24 theo and the 2011 theo. Correct?
 25 A We evaluated the entire -- we evaluated the

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1 total 202 individuals.
 2 Q Right. So let's go back to our favorite guy,
 3 Coy Sanders. In 2011, the theo was 141,519, and the theo
 4 in 2012 was 93,754, which if we look at the variance,
 5 that's \$47,765. Correct?
 6 A That's correct.
 7 Q So Atlantis is claiming that in regards to
 8 Coy Sanders, there was a reduction of \$47,765, which is
 9 an element of their damages. Correct?
 10 A That is correct. We originally started with
 11 a list of 485 players, and in a conservative approach, we
 12 only focused on -- we ended up with 202 names. We
 13 removed 19 names due to the Atlantis no longer marketing
 14 to those individuals or they stopped visiting the
 15 Atlantis, known as inactive. So we were left with 202
 16 players to evaluate, and these players were established
 17 in GSR's database after Sumona Islam started working
 18 there.
 19 Q Okay. I don't want to put words in your
 20 mouth, but what is the basis for your theory that the
 21 reduction in theo, which is an element of damage -- what
 22 is the cause of that reduction?
 23 A We believe the cause of the reduction is due
 24 to Sumona Islam increasing offers and enticing them to
 25 play more or visit the Grand Sierra, hoping to capture

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1 the same level of play they were gambling at the
 2 Atlantis. These guests were not known by the Grand
 3 Sierra before Sumona Islam started working there.
 4 Q Okay. So when these names were allegedly put
 5 into the database of Grand Sierra, that act by itself
 6 would not cause any damage to Atlantis. Is that correct?
 7 A I believe she was under contract.
 8 Q Well, I'm talking about the damages now.
 9 A Please repeat the question.
 10 Q What I'm getting at is, if these names are
 11 placed in the database of Grand Sierra, that act by
 12 itself, does that cause any damage to Atlantis?
 13 A It could very well, especially if you start
 14 marketing to these players.
 15 Q Well, we're taking this step by step. If I
 16 put them in the database, does that act by itself cause
 17 any change in their play?
 18 A It could result in a change in their play.
 19 Q By merely putting them in the database?
 20 A It's the actions that are taken after
 21 entering them into the database.
 22 Q My question is, by placing the names in the
 23 database, that act alone, would that cause any damage to
 24 the Atlantis by way of changing any of those players'
 25 play?

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1 A It's the follow-up action that would result
 2 in --
 3 MR. DOTSON: Listen carefully to his
 4 question.
 5 BY MR. JOHNSON:
 6 Q I'm not talking about the follow-up. We're
 7 going to get to that. What I'm asking is, by placing the
 8 names into the database, could that have influenced the
 9 play of any of these players to cause damage to Atlantis,
 10 just that act alone?
 11 A No, not necessarily.
 12 Q Well, no or yes? I need a yes or no answer.
 13 A No.
 14 Q So your theory is that following the names
 15 being placed in the database, there was some contact with
 16 these players. Is that correct?
 17 A From the Grand Sierra?
 18 Q From the Grand Sierra.
 19 A Yes.
 20 Q Or from Sumona herself.
 21 A Yes, and it has been reported that way as
 22 well.
 23 Q So there was some contact of some nature, and
 24 your theory is that those contacts caused a change in the
 25 play of these players. Is that correct?

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1 A We believe that Grand Sierra and Sumona Islam
2 followed up, after entering the names in their database,
3 with marketing offers or contacts with these individuals.

4 Q You know, this'll go a lot quicker if you
5 answer my question and not restate a different question.

6 A I want to make sure I understand you.

7 Q Then ask me to repeat the question, but my
8 question is exactly what I asked. Do you want me to
9 repeat it?

10 A Sure.

11 Q Your theory is that based on certain contacts
12 from Grand Sierra or Sumona Islam, that those contacts
13 changed the behavior or the play of these players.

14 A Yes.

15 Q Now, do you know which contacts were made to
16 these players?

17 A It's been my understanding there were phone
18 calls made and marketing offers sent to these
19 individuals.

20 Q Do you know how many?

21 A I don't recall.

22 Q Do you know if each player received the same
23 number of contacts?

24 A I don't have the answer to that.

25 Q So one player on this list could've received

1 one contact and another player could've received six
2 contacts. Is that --

3 A It's possible.

4 Q And besides these contacts, would there be
5 anything else that would cause these players to change
6 their play?

7 A I don't have an answer to that question. It
8 could be a lot of things.

9 Q Well, is there anything else you know of, as
10 you sit here today?

11 A No.

12 Q Now, if we look at some of these players --
13 if we look at the second to the last page, Player 198,
14 Tyler Partham -- now, he actually had a theoretical
15 increase between 2012 and 2011 of \$15,527. Is that
16 correct?

17 A That's correct.

18 Q So these contacts by GSR or Sumona caused him
19 to actually play more at the Atlantis. Is that correct?

20 A Please rephrase that.

21 Q If we look at number 198, his theoretical
22 play actually increased \$15,527. Do you see that?

23 A I see that.

24 Q So based upon these contacts made by Sumona
25 Islam or Grand Sierra, this actually caused his play at

1 the Atlantis to increase. Correct?

2 A I can't make the assumption that Sumona Islam
3 increased this individual's gaming activity because of
4 her contacts.

5 Q But if the Atlantis loses money, we can make
6 the assumption that those contacts caused the loss. Is
7 that correct?

8 A It's an assumption.

9 Q Well, is it your assumption?

10 A It's my assumption that these guests were
11 impacted through solicitation efforts from the Grand
12 Sierra, because these guests were not known to the Grand
13 Sierra prior to Sumona Islam working there.

14 Q But apparently, for certain players, contact
15 from Sumona Islam or Grand Sierra is beneficial to the
16 Atlantis, because the play increased. Correct?

17 A It depends on the effectiveness of Sumona
18 Islam's solicitations. She may or may not have targeted
19 this individual. She could've focused on other
20 individuals who had a negative play.

21 Q Do you know that?

22 A Which guests she targeted?

23 Q Yes.

24 A I'm not aware of all the guests that Sumona
25 Islam targeted, but it has been brought to our attention

1 that she was soliciting.

2 Q But apparently, based upon your damage
3 calculations, all of these players were contacted.
4 Correct?

5 A I've never implied that.

6 Q You're saying that's not accurate?

7 A I can't say with certainty that all of these
8 individuals were contacted by Sumona Islam. What I can
9 say with certainty is, Grand Sierra provided this list of
10 individuals who Sumona Islam entered into the database,
11 with an attempt to market or solicit to.

12 Q So, for example, Coy Sanders -- who you claim
13 you lost \$47,765 in revenue on -- you're saying to me you
14 don't know whether he was contacted by anyone?

15 A I can't say with certainty that this guest
16 was contacted, though I believe there has been
17 documentation produced for guests that have been
18 contacted by Grand Sierra. He may or may not be on the
19 list. I don't know personally if Coy Sanders was
20 contacted.

21 Q Okay.

22 MR. DOTSON: Counsel, just so it's clear,
23 those were designated by you as Attorneys' Eyes Only. So
24 he has not been allowed to see those documents, the list
25 of solicitations from GSR. You designated them as

1 Attorneys' Eyes Only. This witness is not an attorney
2 and he hasn't been allowed to see those, and I think that
3 may be the foundational part of your question that's
4 missing here.

5 MR. JOHNSON: All right.

6 Well, that's interesting. So this whole list
7 is used to calculate damages and we don't know whether
8 they were contacted or not contacted.

9 MR. DOTSON: Well, you and I know and the
10 Court will know, but this witness, because of your
11 designation on those lists, hasn't been given that
12 information.

13 MR. JOHNSON: Then how can he testify about
14 the damages suffered when he doesn't know?

15 MR. DOTSON: He has to base it upon your --
16 that's why he only has Exhibit 18, which you didn't
17 designate as Attorneys' Eyes Only.

18 MR. JOHNSON: All right.

19 BY MR. JOHNSON:

20 Q Well, then based on that, there could be a
21 number of reasons for either the increase in play or
22 decrease in play for any of these 202 players. Is that
23 correct?

24 A It depends on the effectiveness of the
25 solicitations.

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1 Q For example, if someone had a change in
2 occupation and their income went down, could that affect
3 the amount of play?

4 A Sure.

5 Q Or if they had a divorce, could that affect
6 the amount of play?

7 A Sure, it's possible.

8 Q Could that affect the amount of days they
9 played at the Atlantis?

10 A It's possible.

11 Q I mean, I could go through a list of probably
12 50 different things that could affect someone's play that
13 has nothing to do with Sumona Islam or Grand Sierra. And
14 I could do that if you want, but would you concede there
15 are numerous, numerous reasons why these players could've
16 played less in one year versus another year?

17 A There are a lot of reasons why these guests
18 could've played more or less, but I would say that she
19 targeted these individuals specifically.

20 Q Well, you don't know that, because you
21 haven't seen which guests were contacted and which guests
22 weren't. Correct?

23 A No, but this list is the list that Sumona
24 Islam -- which was provided by the Grand Sierra --
25 entered into their system.

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1 Q But we've established that entering these
2 into the system did nothing as far as creating any damage
3 to Atlantis. Correct?

4 A We would assume that she entered them into
5 the system with the intent to market to these
6 individuals.

7 Q Well, let's not rehash what we already did.
8 I mean, we spent five minutes going over that point and
9 you finally conceded that putting them into the database
10 would not create any damage to Atlantis. Correct?

11 A It's the actions that are taken following
12 that.

13 Q But am I correct?

14 A Just entering names in the system may or may
15 not result in damages, sure.

16 Q Do you know of any possible way that entering
17 a name in the database could cause damage, if that's all
18 that's done?

19 A Yes, if marketing offers are sent out.

20 Q Did you listen to my question? I said, if
21 the only thing that was done was that a name was put in
22 the database, is there any conceivable way that would
23 cause damage to the Atlantis?

24 A If they were just entered into the system,
25 no.

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1 Q So the calculations that you made based upon
2 Exhibit 73, where you've conceded you don't know whether
3 these people received contacts or what type of contacts
4 or how many contacts, we really don't know what caused
5 the reduction or increase in play. Is that accurate?

6 A Please repeat the question.

7 MR. JOHNSON: Can you read it back?

8 (Record read.)

9 THE WITNESS: We do not know the exact causes
10 for the decreases or the increases in play.

11 BY MR. JOHNSON:

12 Q Okay. Let's go to the first page of
13 Exhibit A, which is in Exhibit 72. Now, did you prepare
14 this summary or was this prepared by someone else?

15 A I prepared the summary.

16 Q So it says number of guests, 202. Then we
17 look down below and there's 103 who lost trips and
18 there's 99 who gained trips. Is that correct?

19 A That is correct.

20 Q So that means that there's 99 of these guests
21 that played more days than the prior year. Is that
22 correct?

23 A That's correct.

24 Q And there's 103 who played less days than the
25 prior year.

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1 A That's correct.

2 Q That's only a difference of four players.

3 Correct?

4 A Correct.

5 Q Do you consider four players out of 202

6 players a statistically significant deviation?

7 A I would say, on average, these players were

8 gaining trips prior to February 1st, 2012.

9 Q Well, if we look at the actual guests, they

10 go up and down. They go all over the place from year to

11 year.

12 A On average, these players were increasing in

13 trips.

14 Q Where do you get that information?

15 A Below, in the number of days played in

16 aggregate for these individuals. And as you can see, in

17 2008, the 3,349, it increased to 5200; in 2010, it

18 increased to 6800; in 2011, it increased to 7500; and in

19 2012, it decreased to 7200.

20 Q Well, isn't it true that if we look at these

21 schedules, Exhibit 73, that some of those players

22 included in these years didn't even play in those years.

23 There's some players that played in 2010, but not in 2009

24 at all. So wouldn't that impact the number of days

25 played?

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1 A It would impact the days played, but on

2 average, the segment was growing in trips.

3 Q To get an accurate measure of what was

4 growing, we'd have to have a constant number of players.

5 Correct? Each year, we would have to have a hundred

6 players or we'd have to have two hundred players, because

7 if the number of players changed from year to year, then,

8 of course, the trend would be up. Correct?

9 A My assumption is that Sumona Islam targeted

10 these individuals specifically.

11 Q That's not my question. I know you've got

12 your talking points, but that's not my question. My

13 question is, in order to get an accurate read, if the

14 days being played increases, we'd have to have a constant

15 number of players. Correct?

16 A Possibly, sure, and the information is here.

17 Q Well, if we look at 2008 and there's less

18 players than in 2011, then we know this information

19 really doesn't tell us anything. Right?

20 A If you wanted to get an idea of who was

21 consistent in 2012 versus 2011, we can do that. The

22 information is here.

23 Q Because when I look over here in 2008, days

24 played, I see a lot of zeros. So those players didn't

25 even exist or play in 2008, and then they started playing

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1 in 2009 and so on. And the same thing with 2009; there's

2 a lot of zeros in 2009, and there's less zeros in 2010.

3 So that tells me that you're adding players to the total,

4 not that the percentage of play is increasing or the

5 number of days is increasing, but you're adding players,

6 which obviously will increase the number of days.

7 A The right way to do it would be to take a

8 look at the number of 2012 players and 2011 players.

9 2008 is irrelevant.

10 Q Oh, okay. 2010, 2009 and 2008 is irrelevant?

11 A We're calculating damages from the lost play

12 in 2012. So we're not asking for damages prior to that.

13 Q But I got off on this because you were

14 telling me the trend was for increasing days, because in

15 2012 we only had a difference of four days. Out of all

16 of these players, we only had four.

17 A That's incorrect. You're looking at the

18 number of guests, not the number of days.

19 Q That's what I said, the number of guests.

20 The number of guests that decreased their number of days

21 was only four. Correct?

22 A That is correct.

23 Q Okay. Now, let's look at the lifetime value

24 calculation, customer lifetime value calculation. That's

25 on page 15. You've indicated that, per guest, there's a

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1 customer lifetime value of 22,696, per guest.

2 MR. DOTSON: I'm sorry, counsel. Are you

3 referencing the pleading or his report?

4 MR. JOHNSON: Exhibit 72, page 15.

5 BY MR. JOHNSON:

6 Q Okay. Customer lifetime value, approximately

7 \$22,696 per guest. How did you arrive at that number of

8 22,696?

9 A It is the average value per guest.

10 Q How did you arrive at that average number?

11 A There is a sheet I would like to reference.

12 It is the weighted average by player. So

13 there were 202 players in this analysis, with a total

14 lifetime value of \$4.5 million, and the weighted average

15 by player is 22,696. It's a weighted average.

16 Q So, for example, at the top of that chart, it

17 says A1. What does A1 stand for?

18 A A rating is the value assigned to an

19 individual.

20 Q What does A1 mean?

21 A It's our highest rated market guest.

22 Q And there's seven of those, and then you have

23 a number of 40,696. How was that number calculated?

24 A I'm going to reference my methodology

25 section. So customer lifetime value is a metric used to

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1 evaluate and understand the overall value of our customer
2 base. It's a formula supplied in the Harvard Business
3 Review Study that takes a look at a guest contribution
4 margin. It analyzes the retention rate, which is the
5 length of time a customer stays with the Atlantis, or
6 we'd expect them to stay with the Atlantis, and the
7 turnover rate. Customer lifetime value was used to get a
8 better understanding of the profitability of our guests.

9 Q But the numbers that you put into the
10 formula, where did those come from?

11 A They came from our gaming tracking system.
12 We used over one million records to get to that
13 information. It'll evaluate that a rating, an AI,
14 contributes so much on average. So using that formula,
15 it gave us a value of 40,000.

16 Q 40,000 what? What does it mean?

17 A It means that over the lifetime of an AI
18 level guest, that is the expected contribution for that
19 player.

20 Q So over the entire lifetime of that player,
21 you're going to benefit \$40,696?

22 A That is correct, on average.

23 Q Now, if you look down below, it says IA.

24 What does IA stand for?

25 A It's our highest rated local guest.

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1 Q And they have a higher contribution or value
2 of \$56,801. Correct?

3 A Correct.

4 Q So, again -- and I'm not trying to be
5 difficult; I just don't understand what this number
6 means. You're saying you're running it through this
7 formula, but does that mean that's the revenue that's
8 going to be generated by this guest?

9 A That is correct. And it uses a theoretical
10 value, which is the house advantage.

11 Q So these numbers are calculated using the
12 theoretical play numbers that are on Exhibit 73. Is that
13 correct?

14 A It's using the guests that are in Exhibit 73.

15 Q Well, what you said was that millions of
16 records were analyzed to come up with these numbers.

17 A The lifetime value by segment, that is
18 correct.

19 Q So you calculated, for millions of players,
20 their theoretical win or loss?

21 A Which is considered the contribution margin
22 in the study, that is correct.

23 Q So this is the theoretical -- I'm just trying
24 to understand, because I really don't. This \$40,000
25 number is the average theoretical win to the casino over

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1 their lifetime?

2 A That's what this number applies to.

3 Q Is that right, what I said?

4 A It's the theoretical value over the lifetime
5 of the customer, that is correct.

6 Q And the AI, there's seven of them. Do we
7 know how many years was used to calculate their lifetime
8 value?

9 A In a study, you use a retention rate and a
10 turn rate to come up with a survivability rate. So we
11 can say, for an average, most of the gaming contribution
12 is done within the first 10, 11 years.

13 Q And is that what is used in the formula?

14 A You can extend the formula as long as you
15 want.

16 Q But do you know what was used to calculate
17 these numbers?

18 A The exact percentage rates?

19 Q I assume that you're talking like 10 years,
20 15 years.

21 A It's based off a formula. We extended it to
22 25 years, but that doesn't mean the player will stay with
23 us for 25 years, because it's based on a formula and your
24 survivability.

25 Q And there's some that drop off.

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1 A And there's some that drop off. From what I
2 saw, the majority of your gaming is done around -- it can
3 range between 10, 11, 12 years. We expect to receive
4 this value.

5 Q So this is a value you would receive for this
6 guest over a period of 10 to 15 years.

7 A Throughout the lifetime value of a customer.

8 Q So this wouldn't have anything to do with the
9 losses that are shown on Exhibit 73, which is only about
10 a seven-month period. Correct?

11 A This analysis was used to determine the
12 lifetime value of a customer.

13 Q But these numbers do not relate to this time
14 period of seven months. These numbers relate to a time
15 period of 10 years, 15 years, maybe even longer. Is that
16 correct?

17 A It is a lifetime value of the customer.

18 Q And it's really all based on theoretical win.
19 So these are really estimates, right?

20 A Theoretical has been proven to be a very
21 reliable measurement. So we would expect this amount at
22 minimum. It's a conservative approach, and this analysis
23 was used to get an understanding of the type of players
24 that Sumona Islam grabbed.

25 Q So, for example, at the top there's seven of

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1 these guys or gals who gamble and this is a value to the
2 Atlantis over that lifetime play. So on a yearly basis,
3 the value might be \$2,000, \$3,000?

4 A This is just that, it's an average. You can
5 have an AI for one year who could gamble the 40,000.

6 Q But this is spread over the entire lifetime.

7 A Correct, and it's an average.

8 Q So for any one year, the actual value or
9 benefit to the Atlantis would be only a fraction of this
10 number. Correct?

11 A Correct.

12 Q And if we cut that down to seven months, then
13 this number would drop down significantly. Correct?

14 A That is correct.
15 (Exhibit 75 marked.)

16 BY MR. JOHNSON:

17 Q I've handed you what I've had marked as
18 Exhibit 75, which is entitled "Grand Sierra Resort's
19 Rebuttal Expert Disclosure," and attached to that is an
20 expert witness report. Have you ever seen that?

21 A Yes, I've seen this.

22 Q Have you had time to read the report?

23 A Not in its entirety.

24 Q Is there any part of the report that you
25 would disagree with?

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1 MR. DOTSON: With the caveat that he hasn't
2 read it in its entirety.

3 MR. JOHNSON: Well, he's your expert. So I
4 assume he should've read it.

5 THE WITNESS: I disagree with the assumption
6 that win is a better measurement tool than theoretical.
7 I disagree with the assumption that Las Vegas is similar
8 to Reno, Nevada, as far as visitation patterns and how
9 loyalty programs are utilized. But, as I said, I haven't
10 read the document in its entirety.

11 BY MR. JOHNSON:

12 Q You're in the marketing department, you do a
13 lot of things with marketing. Correct?

14 A Sure.

15 Q Do you see the marketing budget for Atlantis?

16 A I've been privileged to see it.

17 Q What types of marketing does the Atlantis do?
18 You mentioned there's mailers. What else do they do?

19 A Can you be a little more specific?

20 Q Well, do they do TV advertising?

21 A Sure.

22 Q Do they do print advertising?

23 A Sure.

24 Q Do they do internet advertising?

25 A Yes.

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1 Q Do they do radio advertising?

2 A Yes.

3 Q Anything I'm leaving out?

4 A Probably.

5 Q Can you think of what they are?

6 A There are a lot of different things that go
7 into marketing. I don't want to be incorrect and leave
8 something out. We do a lot of marketing, if that's what
9 you're trying to get at.

10 Q Well, I know you have direct mail marketing.
11 I don't know if you do TV advertising, that's why I'm
12 asking.

13 A We do.

14 Q Okay. TV, radio, print, like magazines,
15 newspapers, that kind of thing.

16 A Yes, casino marketing.

17 Q Internet marketing?

18 A Yes.

19 Q Banner ads, websites, everything that's
20 included in that.

21 A Billboards.

22 Q Do you do email with Snail Mail? Do you send
23 out emails?

24 A Yes, we do.

25 Q Do you do texting? Is there some sort of

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1 texting program where you text offers and things like
2 that?

3 A We've done it in the past.

4 Q Do you know if the marketing budget changed
5 from 2011 to 2012?

6 A I don't recall.

7 Q So you don't know whether there was an
8 increase or decrease from year to year?

9 A In what I deal with from a marketing
10 standpoint, nothing has changed structurally that would
11 affect our direct mail or casino marketing or email
12 marketing channels.

13 Q So you're still doing the same type of
14 marketing. Do you know if the dollars being spent are
15 the same?

16 A I can't tell you with certainty.

17 Q Now, if the marketing dollars being spent by
18 Atlantis went down in 2012, could that impact the number
19 of days that guests play at the Atlantis or the amount of
20 wagers they make?

21 A Not necessarily. It would depend on where
22 the cuts were made, and from my understanding, we haven't
23 made any cuts to our casino marketing, direct mail
24 channels that would be significant.

25 Q All right.

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1 Now, you're in marketing. Do you believe
2 that marketing is effective?
3 A Yes, I do.
4 Q So if another casino increased its marketing
5 budget significantly that's a competitor with the
6 Atlantis, would that impact the amount of play and the
7 number of players that the Atlantis might have?
8 A It depends on the type of marketing and the
9 profile of the casino.
10 Q But I'm just saying, in theory, if one of
11 your competitors increased their marketing budget, could
12 that account for the reduced days that certain players
13 visited or the reduced play?
14 A It depends on the type of marketing and what
15 appeals to each individual. For example, we tend to have
16 an older population. If Grand Sierra was going to
17 advertise women who dance on top of tables wearing next
18 to nothing, it may not appeal to our demographic, but if
19 they increase offers to individuals maybe more so than
20 what they're receiving at the Atlantis, that could affect
21 their behavior.
22 Q So other casinos could contact these players,
23 these 202 players that are listed on Exhibit 73 -- other
24 casinos could contact these players through radio,
25 television, print, internet marketing, those types of

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1 things, and there wouldn't be anything wrong with that,
2 would there?
3 A No.
4 Q And if there was more marketing by one casino
5 or an increase, that could affect these players.
6 Correct?
7 A It's possible.
8 Q I live in Las Vegas and one thing I've
9 noticed is that whenever there's a hotel that opens or
10 there's any remodeling or something changes in the
11 marketplace, it has a big impact on different properties.
12 Do you believe that's true?
13 A I believe it can have an effect. I believe
14 brand loyalty is probably stronger.
15 Q Have there been any new casinos opened in
16 Washoe County or any major remodeling that's taken place
17 in Washoe County?
18 A That I believe would affect these players?
19 Q Right.
20 A Not to my knowledge.
21 Q Now, these players don't all live in Washoe
22 County. Correct?
23 A Correct.
24 Q So if a new Indian casino opened up by some
25 of these players, they might decide they're just going to

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1 play there. Is that possible?
2 A It's possible.
3 Q Could higher travel costs affect the players,
4 whether they come to the Atlantis or not?
5 A It's possible.
6 Q So if gas went up in 2012, that could impact
7 the play of different players. Correct?
8 A It's possible.
9 Q If airline fares went up in 2012, that could
10 affect the amount of play. Correct?
11 A It's possible. The majority of these players
12 are high-worth individuals. So we would -- for example,
13 we run a program where we reimburse airfare to make it
14 easier for the customer to visit the property. So we try
15 to get rid of some of those circumstances that you
16 mentioned.
17 Q Okay. But the economy in general -- if the
18 economy in general is not really good, that could impact
19 the play of these players. Correct?
20 A Sure. We saw that with the financial
21 recession in 2008, and we've started to rebound.
22 Q Do you think your numbers are higher for 2013
23 than 2012?
24 A I can't say with certainty. They're higher
25 than they were in 2008.

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1 Q But you don't know whether they're higher
2 from 2012 to 2013?
3 A 2013 hasn't been completed yet.
4 Q I mean, so far. We're four and a half months
5 into the year. Do you know how the year's going?
6 MR. DOTSON: And I'm just going to caution
7 the witness. To the extent that the question requires
8 you to disclose non-public information, you should not do
9 so, so that you don't violate Regulation FD. However,
10 the Atlantis did just publicly report. So that
11 information that was within that reporting, you should be
12 able to respond to. And I, of course, would suggest that
13 counsel can look at that as well.
14 You understand what I'm saying? You just
15 don't want to give any inside information.
16 THE WITNESS: Absolutely, and I would
17 reference that.
18 BY MR. JOHNSON:
19 Q So have you looked at those numbers and do
20 you have an idea?
21 MR. DOTSON: And, again, to the extent that
22 that has been publicly disclosed, that is not in
23 violation of Reg FD, in my understanding. There you go,
24 I've done my lawyer bit.
25 //

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1 BY MR. JOHNSON:

2 Q And I'm not even looking for specific
3 numbers. I'm just saying, in general, in the marketing
4 department, can you say "Hey, we're ahead of last year,
5 we're behind last year," that type of information?

6 A Overall, property-wide, our stock price has
7 increased. So that's a sign of performance.

8 Q Well, I'm just talking about Atlantis now.

9 A Me too.

10 Q I think another casino was added.

11 MR. DOTSON: Monarch's price includes Black
12 Hawk.

13 THE WITNESS: Sure, and we had Black Hawk the
14 prior year as well.

15 MR. JOHNSON: Well, when did Black Hawk come
16 into play?

17 MS. ROBINSON: April of 2012.

18 BY MR. JOHNSON:

19 Q So just regarding Atlantis, do you know
20 anything about how the year's going for Atlantis, not
21 including Black Hawk?

22 A I'd rather not comment.

23 Q Because it involves what might be inside
24 information?

25 A Some of it's inside information and my

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1 uncertainty.

2 Q Well, it's fine if you don't know. It's no
3 big deal if you don't know. It's one thing if you say
4 "I don't know," or you say "I can't say, because it's
5 inside information."

6 A It's inside information.

7 Q That's fine.

8 Going back to Exhibit 75, you mentioned a
9 couple of things about this — and I was going to ask
10 you, because you talked about the Vegas market. Being in
11 marketing, do you know what kind of averages there are
12 for players in Washoe County, as far as the number of
13 casinos that the average player plays at?

14 A Do I have the exact figures? No, I do not.

15 Q No, just approximately. I know this report
16 references the fact that certain gaming information
17 collected by the Nevada Resorts Association says the
18 average player plays at — and I don't remember the exact
19 number, but they say three or four different casinos,
20 something of that nature. And is that what you're
21 disagreeing with, that that information is not accurate?

22 A I believe — from what we've seen at our
23 property, we seem to have more loyalty with our guests.

24 Q Is there a way of knowing that, though? I
25 mean, do you know whether these guests — I know you have

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1 regular guests and a lot of them play regularly, but does
2 that mean they don't play anywhere else?

3 A It is possible that they may play at other
4 properties and destinations. Through my experience, I've
5 seen that, through our loyalty programs, guests are
6 pretty loyal with the Atlantis.

7 Q But let's be specific. Out of these 202
8 players in Exhibit 73, do you know whether any of those
9 players played at other casinos?

10 A I do not. I cannot say with certainty that
11 these individuals played at other properties, although
12 our VIP department very well may know.

13 Q Your VIP department?

14 A Our hosts, because they interact with the
15 players.

16 Q And they might get an idea of where people
17 play, because those people might say something to them.

18 A I agree. And that's how we found out about
19 the solicitations from GSR to our individuals, because
20 they were getting better offers.

21 Q In fact, it's pretty common for a player to
22 go to a host and say "Hey, I got this offer. Can you
23 match it," or something of that nature. Correct?

24 A I can't say that it's pretty common. Does it
25 happen? Sure.

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1 Q So that would indicate that they're being
2 marketed to by other casinos and things of that nature.
3 Correct?

4 A That would indicate that they're being
5 marketed to by other casinos, if they have solicitations.

6 Q And do you know the statistics in Washoe
7 County as to how many loyalty programs the average player
8 belongs to?

9 A I don't recall the number off the top of my
10 head.

11 Q But the average would be more than one.
12 Correct?

13 A Yes, I would assume so. But Las Vegas is
14 more of a tourist destination than Reno, Nevada is. So
15 you would expect that number to lessen.

16 Q Okay. Just to finish up with this expert
17 report, is there anything else in here — I know you said
18 you didn't read all of it, but is there anything else in
19 here that you would disagree with as you sit here today?

20 A Those are my current objections, the
21 theoretical and the trip analysis.

22 MR. JOHNSON: I think I'm done with most of
23 my questions. Do you want to ask your questions, and
24 then if I have any more —

25 MR. WRAY: Yeah, I have an important topic.

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1 EXAMINATION

2 BY MR. WRAY:

3 Q Your position is what?

4 A Data integration manager.

5 Q So you're a manager.

6 A That's correct.

7 Q So you're in management over there at the

8 Atlantis.

9 A That's correct.

10 Q You're not just an employee, you're a

11 management level employee.

12 A I'm a manager at a company and I'm also an

13 employee.

14 Q So you're on the management level.

15 A Sure.

16 Q And you're also the designated expert for the

17 Atlantis to testify to what damages happen when a player

18 is taken from one casino and put on the database of

19 another casino, as in this case. You're the expert on

20 that.

21 A That is correct.

22 Q And the cash lifetime value is the

23 appropriate valuation, according to your testimony under

24 oath here today. Right?

25 A The customer lifetime value was used to get

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1 an overall understanding of the value of those customers.

2 We're not assuming that that total value is owed to us.

3 Q Except in this lawsuit, you're assuming that,

4 because you put it in your damage calculation. I think

5 \$4 million. Right?

6 A The numbers are in there to show that if

7 these guests were to stop gambling, this is the value of

8 that segment. This was a very valuable segment to the

9 Atlantis.

10 Q It's in your damages calculation. Right?

11 A Sure.

12 Q And you saw a Harvard School of Business

13 article that provided a formula to use for this cash

14 lifetime value. Right?

15 A Yes.

16 Q And as a management level employee and expert

17 on damages for the Atlantis, you're telling me the cash

18 lifetime value of these players is the way of determining

19 damages. Right?

20 A That was an approach we used. It was one of

21 the approaches we used.

22 Q In this case, right?

23 A That's applied with my other calculations as

24 well.

25 Q But you used the cash lifetime value in this

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1 case that we're talking about today. Right?

2 A Yes.

3 Q In 2008, when Sumona came to the Atlantis,

4 she had her own book of business. Right?

5 A It is my understanding, yes.

6 Q And she downloaded that book of business onto

7 your computer. Right?

8 A What do you mean by my computer?

9 Q I'm sorry. I didn't mean your house computer

10 at home, I meant the Atlantis computer.

11 A The Atlantis computer, yes.

12 No, that's not correct.

13 Q Patron Management, isn't that the name of it?

14 A That is the application.

15 Q She downloaded it into that, right?

16 MR. DOTSON: Objection. Foundation.

17 THE WITNESS: No, that's not correct.

18 Are you implying that she did it personally?

19 MR. WRAY: No, actually. That was a

20 shorthand way of saying that she gave the information to

21 people who downloaded it onto the computer at Atlantis.

22 BY MR. WRAY:

23 Q Is that correct?

24 A She provided information to the Atlantis.

25 When the information was entered into the system are two

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1 separate things.

2 Q Okay, two different times. You've got the

3 information; a separate time, it's uploaded, downloaded,

4 or whatever, it's put on the system. Right?

5 A I was not the manager at that time. So the

6 exact actions that were taken are unbeknownst to me.

7 Q So this list consists of a hundred-plus pages

8 of names, 20 or 30 names per page. We should take the

9 cash lifetime value of all those players, based on the

10 weighted average, whether they're an A or an IA, to

11 determine how much money the Atlantis owes Harrah's for

12 doing the same thing you're complaining about here in

13 this case against Grand Sierra, shouldn't we? Shouldn't

14 we take how many millions that is and have you pay that

15 to Harrah's?

16 A I don't believe we violated the contract.

17 Q You weren't a party to the contract; neither

18 was Grand Sierra.

19 A Then it's an assumption that you're making.

20 Q It has nothing to do with the contract,

21 because Grand Sierra didn't sign a contract with you and

22 you didn't sign a contract with Harrah's. I'm just

23 saying, if you want to play apples to apples, the cash

24 lifetime value applies to what you did in taking

25 information from Harrah's.

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1 MR. DOTSON: Objection. Argumentative.

2 BY MR. WRAY:

3 Q You owe Harrah's a few million dollars, don't

4 you?

5 A Not necessarily.

6 MR. DOTSON: Objection. Argumentative.

7 BY MR. WRAY:

8 Q Who else uses Patron Management software

9 besides the Atlantis?

10 A I can't say with certainty. IGT produces

11 Patron Management.

12 Q So since they produce it, it's sold to other

13 people besides you. Right?

14 A Sure.

15 Q Does GSR use Patron Management?

16 A I do not know.

17 Q Do you know of any casinos besides the

18 Atlantis that use Patron Management software?

19 A At this time, I do not recall.

20 Q Was Sumona Islam, during her employment at

21 the Atlantis as an executive casino host, a person with

22 authorized access to Patron Management software?

23 A Can you please repeat the question?

24 Q During the period of time that Sumona Islam

25 was employed as an executive casino host at the Atlantis,

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1 did she have authorized access to Patron Management

2 software?

3 A During her time at the Atlantis, at some

4 point in time when she became a host, she received access

5 to Patron Management.

6 Q Which was authorized.

7 A Which was authorized once she became a host,

8 to my understanding.

9 Q And that was authorized in writing. Right?

10 MR. DOTSON: Objection. Foundation.

11 THE WITNESS: I do not know.

12 BY MR. WRAY:

13 Q Did you know that there's a form used by the

14 IT department, of which you are a part --

15 A I'm not a part of IT.

16 Q You're a part of marketing.

17 Did you know that IT has a form for employees

18 as to what databases they can access while they're at

19 work, and they have to sign the form and their supervisor

20 has to sign it?

21 A Yes, I am aware of forms that --

22 Q Do you have one of those forms that you had

23 to sign, what databases you can access?

24 A Yes.

25 Q Anyway, this Patron Management software and

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1 the database that the software accesses was something to

2 which Sumona Islam had authorized access, in writing,

3 while she was an executive casino host at Atlantis.

4 Right?

5 A She had access to Patron Management.

6 Q Authorized access.

7 A Authorized access.

8 Q So if someone was to say that she made

9 unauthorized access to that database, that's incorrect.

10 As long as she was an employee, she had authorized

11 access. Right?

12 A No.

13 Q Okay, I got it wrong. She did not have

14 authorized access?

15 A Once she became a host.

16 Q Okay. As long as she was an executive casino

17 host, she had authorized access to that database. Right?

18 A To my understanding.

19 Q So if someone was to say that her access to

20 that database was unauthorized, that would be factually

21 incorrect, wouldn't it?

22 A It depends on the agreements and the

23 paperwork that she signed.

24 Q And she signed paperwork to have authorized

25 access. Right?

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1 A If she had authorized access, then she had

2 authorized access.

3 Q So it would be incorrect to say it was

4 unauthorized. They may not like what she put on it once

5 she had authorized access, but she had authorized access.

6 Right?

7 A At the termination of her employment, she had

8 authorized access.

9 Q Now, how did you know that the 87 alterations

10 made by Sumona Islam to your customers' accounts were

11 incorrect?

12 A Some of the addresses did not exist that she

13 modified.

14 Q Did you have another database at the Atlantis

15 to check that against?

16 A Yes.

17 Q What was that called?

18 A IMS.

19 Q And the IMS is the hotel side, isn't it?

20 A That is correct.

21 Q Now, do you have a list of the customers that

22 the Atlantis has lost as a result of Sumona Islam?

23 A Can you please clarify?

24 Q Do you have a list of players who gambled at

25 the Atlantis that Atlantis has lost as customers because

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1 of Sumona Islam?

2 A The information exists.

3 Q How many are there?

4 A I don't have that figure with me.

5 Q Give me a name.

6 A I don't have a name.

7 Q Who has the names?

8 A We have a lot of names in the database, over

9 1.5 million records of individuals.

10 Q Of these 1.5 million, which ones did the

11 Atlantis lose as players because of Sumona Islam?

12 A I don't have that information with me.

13 Q Is it true that you didn't lose any?

14 A I can't say that with certainty. We hope

15 that players that were impacted will return over time.

16 Q Well, do you have any personal knowledge --

17 did you communicate directly with somebody who said, "I

18 am no longer a player at the Atlantis because of Sumona

19 Islam"?

20 A I do not have that information.

21 Q I'm not asking if you have it in your head.

22 Have you contacted or communicated with any human being

23 who's ever said that, any words to that effect, "I'm no

24 longer playing at the Atlantis because I'm going with

25 Sumona at GSR"?

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1 A That specific phrase?

2 Q I'm sorry, forget the specific phrase.

3 Obviously, if you had a specific recollection like that,

4 you'd be a computer, and you're not. I'm trying to get

5 at this point, that you have this customer lifetime value

6 and it's calculated at 10 or 15 years of losing all these

7 people's business. That assumes they're not coming back,

8 and so I'm asking you to give me an example of one who's

9 not coming back, one person.

10 A I don't have any names of guests who may or

11 may not come back. I can only look at the damages

12 calculation that I did, that showed behavior dropped off

13 when GSR started soliciting these people, when they had

14 no knowledge of these individuals prior to Sumona Islam

15 working for them.

16 Q I think that goes to the \$313,000 number,

17 right, the one in Exhibit 73?

18 A Yes.

19 Q I'm talking about the customer lifetime value

20 people. That's what we're talking about now, right?

21 A No. The customer lifetime value looked at

22 the 202 names that were on this sheet.

23 Q And you said they're never coming back, and

24 this is what they were by weighted average. By the way,

25 what does "weighted" mean?

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1 A It's a percentage of the total.

2 Q You mean total dollars?

3 A Total customer lifetime value. In this case,

4 it was a theoretical. So the weighted average is a

5 theoretical average.

6 Q I'm not going down that rabbit hole. I'm not

7 even gonna try. I was just wondering what weighted

8 meant, because weighted usually means -- in economic

9 terms, it has something to do with, you take certain time

10 periods for data and you give that more of a weight than

11 others, because it's more recent or because of something

12 else. Do you see what I'm saying? The weighted average

13 might be you weight their more recent play higher than

14 their older play, because their more recent play is more

15 indicative, perhaps. So I was asking what the weighted

16 average meant. Is there a piece of paper that has how

17 the weighted averages were computed?

18 A Our theoretical is calculated on a weighted

19 average.

20 Q And weighted means --

21 A Recently could be weighted more heavily than

22 prior history.

23 Q So if the customer lifetime value is 22,000,

24 you might find that if you didn't weight it, the number

25 would be much lower, but if you weight it, it's higher.

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1 So because it's more recent, you get a higher number. Is

2 that true, or do you get a lower number?

3 What happened when you weighted it? Did the

4 numbers go up? Did the value of those numbers for each

5 category of player -- the IA, the A, the B, the C, the

6 D -- did they go up when you weighted them?

7 A I don't recall if the numbers went up or

8 down, but it was a conservative approach.

9 Q Okay. When did you use the cash lifetime

10 value before at the Atlantis?

11 A In 2011.

12 Q For what purpose?

13 A To evaluate the profitability of our customer

14 segments, the ratings.

15 Q Who was the person that used the customer

16 lifetime value at that time in 2011?

17 A I ran the methodology.

18 Q So it was you?

19 A I ran the methodology.

20 Q So you were doing it on your own?

21 A No, I was not doing it on my own.

22 Q Well, whose project was it?

23 A I worked with Aaron Robbins, our former

24 director of database marketing.

25 Q And you used it to evaluate what?

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1 A Our guest ratings.
2 Q You mean like whether someone is an A or a B?
3 A We wanted to evaluate our customer lifetime
4 value to get an understanding of our players.
5 Q You talk in a different language than I do,
6 but I'm trying to find out something a little more basic.
7 You said, "We got this article from the Harvard School of
8 Business. They have this formula we can use to value our
9 product or the thing that we sell, which is the service
10 to these people." So you're doing that in 2011 for what?
11 To generate a report?
12 A It was to get a better understanding of the
13 overall value of our players.
14 Q But this wasn't done in your spare time at
15 home, it was done at work. Right?
16 A That is correct.
17 Q And so you had a specific purpose. What was
18 the purpose?
19 A To get a better understanding of our players.
20 I work in marketing.
21 Q Did you do a report?
22 A Yes.
23 Q And who did you give the report to?
24 A Aaron Robbins.
25 Q And what do you call it?

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1 A "Player Lifetime Analysis."
2 Q And has that report been produced to your
3 attorneys in this case?
4 A No.
5 Q And all the math in that was done by you,
6 personally?
7 A Correct. And it was the same methodology
8 used here.
9 Q What's the name of the report?
10 A The specific title of the report? I don't
11 recall.
12 Q Is the 2011 Robbins report good enough for
13 you?
14 A If you want to call it that.
15 Q Well, what do you call it?
16 A Lifetime Analysis.
17 Q Finally, Exhibit 75. Are you telling me that
18 you did not read at least the first -- well, how many
19 pages of Mr. Aguero's Applied Analysis expert witness
20 report did you read?
21 A I read up to page six.
22 Q And you stopped.
23 A That is correct.
24 Q Tell us why you stopped.
25 A I ran out of time.

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1 Q Well, this report was produced in December,
2 and now it's May. It's been five months. You've had
3 time to read the next 24 pages. Right?
4 A I received this document approximately a week
5 and a half ago, two weeks ago. So I haven't had since
6 December to read this report.
7 Q Did you know this report and all of its pages
8 specifically addresses the work you did?
9 A Yes.
10 Q Weren't you a little curious as to what a
11 person who was critiquing all the work you did might've
12 said about your work? Didn't curiosity get the better of
13 you, just to see what they were saying?
14 A The report interests me and I'd like to
15 finish reading it. It wasn't for a lack of not wanting
16 to read the report.
17 Q Well, this man could be right. Mr. Aguero
18 could be right, couldn't he?
19 A It's his assumption. That doesn't
20 necessarily mean it's right.
21 Q I'm just asking you to concede or admit or
22 acknowledge to me that it could be right. You don't
23 know. It could be right. You haven't even read it all.
24 MR. DOTSON: And just to be clear -- I think
25 it's pretty obvious, though -- he is not providing

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1 rebuttal testimony to Aguero.
2 MR. WRAY: I understand that, and I didn't
3 ask him to rebut the report or its conclusions. We
4 haven't even talked about the substance of the report.
5 I'm just asking him if he looked at it.
6 BY MR. WRAY:
7 Q The man could be right, for all you know,
8 sitting here today. You haven't even read it.
9 A I've read the motion that was supplied by
10 Grand Sierra, which I believe agreed with the applied
11 analysis, and I read that in its entirety. So I do not
12 agree with his assumptions.
13 Q Did you actually read what he wrote or did
14 you only read what the attorneys for Grand Sierra wrote?
15 A I read the motion.
16 Q So you didn't read his report.
17 A Is this the report?
18 Q Indeed.
19 A Is the motion related to the report?
20 Q A lot of things are related to the report.
21 I'm asking you if you read this, Exhibit 75. Did you
22 read this? You said you read up to page six, and now I'm
23 wondering if you actually read up to page six.
24 A In this applied analysis, after the first
25 four pages and after the table of contents, I read from

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1 page one to page six.

2 MR. WRAY: I pass the witness.

3 EXAMINATION

4 BY MR. JOHNSON:

5 Q Let's go back to 73. Well, first, let me ask
6 what motion you're referring to. I was lost on that.

7 A Yes, this is the document I read.

8 Q Well, which motion is it?

9 MR. DOTSON: It's the motion to compel.

10 MR. JOHNSON: Oh, okay.

11 BY MR. JOHNSON:

12 Q All right. Let's go to 73 and I had some
13 questions, because -- for example, if we look at number
14 60 towards the bottom, Jayne Howe, she had an increase of
15 47 days play, but yet there's still a negative \$2,545 in
16 the theo variance. Is that correct?

17 A That is correct.

18 Q Now, when we look over at the ADT, it says
19 zero.

20 A The ADT is zero because we did not calculate
21 a projected theoretical for people with positive days of
22 play. It was a conservative approach on our end. We
23 weren't estimating damages for guests that we felt played
24 more days in 2012 versus 2011. We were focusing only on
25 guests who lost days.

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1 MR. WRAY: Wait a minute, excuse me. You
2 mean the 313 only has negative numbers in it? All the
3 positives aren't counterbalanced?

4 THE WITNESS: For the projected theoretical
5 value.

6 MR. JOHNSON: That's correct.

7 MR. WRAY: Are you kidding me? You only took
8 the negative side of it?

9 THE WITNESS: For the average daily
10 theoretical -- the average daily theoretical was used to
11 calculate the projected theoretical, which was used to --
12 let me reference why we used the projected theoretical.

13 MR. JOHNSON: Well, are you answering his
14 question?

15 MR. WRAY: No, I'm sorry. I'm asking you the
16 question, counsel. I'm not asking the witness. I was
17 asking you to explain it to me.

18 MR. JOHNSON: I'll explain it after the depo,
19 if it's not explained by my questioning.

20 BY MR. JOHNSON:

21 Q Let's go back to 60, which indicates a 47-day
22 increase, but the ADT is zero. Now, I understand why
23 mathematically it's zero, because all of your assumptions
24 are based on the fact that no one wins. So I understand
25 mathematically why it's zero, but to arrive at a true

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1 number for damages, shouldn't the ADT -- when there is
2 increased play, shouldn't there be a negative number in
3 there, to really show what the calculation should be?

4 A For one, it wasn't a mathematical reason why
5 these numbers are negative. It was a conservative
6 decision by us to only look at individuals who lost days
7 of play, to calculate a projected theoretical.

8 Q Why do you say it's conservative? Because,
9 frankly, if this was a negative number, it would reduce
10 your damages. If there was a negative number in the
11 projected theo, that would reduce your damages. So why
12 do you say that's conservative? I don't view that as
13 being conservative, I view that as being biased to
14 indicate as much damage as possible by not reflecting the
15 true number, because whenever there's an increase in
16 play, it's zero.

17 A It is a conservative approach because we
18 value -- one way of valuing loyalty is the number of days
19 somebody plays in your casino.

20 Q Well, this person was extra loyal. They came
21 in 47 days more than they did the prior year, but you're
22 saying -- despite the fact that they came in 47 more days
23 than the prior year, you're still saying that there's
24 damage to the Atlantis in the amount of \$2,545. That
25 doesn't seem conservative to me, that seems totally

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1 biased.

2 A One of the alternatives we decided to use in
3 this case was to calculate, had these guests not been
4 impacted by the Grand Sierra, what do we feel these
5 players would be worth to us, which is essentially what
6 the projected theoretical is. For guests who gained
7 trips, we felt we weren't harmed by those individuals.
8 Therefore, calculating the projected theoretical for
9 those individuals with positive trips, we decided to take
10 the conservative approach and leave them out of that
11 analysis.

12 Q Well, in fact, you benefited if there was
13 more trips. Correct?

14 A We benefited by more trips, but not
15 necessarily by more theoretical.

16 Q Well, only because you didn't plug a number
17 in there for the ADT. That should've been a negative
18 number to allow for people that played more. Therefore,
19 you would've benefited from that play and you totally
20 ignored that.

21 A For the projected theoretical calculation, we
22 did not ignore that.

23 Q Well, you did. You've got a zero there.

24 A We chose to pursue the projected theoretical,
25 as a conservative measure, not to include it.

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1 Q It's conservative not to include benefits to
2 the Atlantis Casino. That's what conservative means?
3 It's conservative to leave out anybody who wins any
4 money, which would reduce the damages? It's conservative
5 to leave out anybody who benefited by coming there more
6 days? That's conservative?

7 A This guest actually played less at the
8 Atlantis.

9 Q This person that came 47 more days than the
10 year before, she played less?

11 A As evidenced by the theoretical variance.

12 Q But those are phony numbers, those aren't
13 real revenue. Those are made-up, phony numbers. That's
14 not the real revenue. What's the real revenue for that
15 person? What's the real revenue for the person who
16 played 47 more days at the Atlantis Casino? What's the
17 real damage?

18 A The theoretical number is the house
19 advantage. It's what we expect to earn from this player,
20 stripping out the volatility or the lucky streak of him
21 winning or losing. It's a zero-sum game.

22 Q It's a zero-sum game, meaning that no one can
23 ever win, and in the seven-month period, we're supposed
24 to assume that no one won any money out of these 202
25 players at the Atlantis Casino. That's what we're

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1 supposed to assume. That's what your damage calculations
2 are based on. Do you think that's accurate? Do you
3 think that's fair?

4 A I believe theoretical is a good measure and a
5 consistent measure.

6 THE WITNESS: I need a break.

7 MR. DOTSON: Okay, let's take five.

8 (Recess taken.)

9 BY MR. JOHNSON:

10 Q The consumer lifetime value calculations, I
11 just want to follow up with something Mr. Wray asked you.
12 In order for that damage to occur, you would have to lose
13 that player. Is that correct?

14 A That is correct.

15 Q So on Exhibit 73, none of these players have
16 been lost, from what I can see, because they all played
17 and they all gambled in 2012.

18 A Not all of the guests.

19 Q Okay. Now, has anything been done to know if
20 these players have come back, if they've gambled any time
21 after September of 2012?

22 A We've noticed some of these players' behavior
23 changed since the injunction was put in place, that
24 they've started to play more at the Atlantis after
25 August 31st.

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1 Q Okay. Did you do any kind of a control
2 group? For example, take 202 players out of the database
3 with similar ratings and then run that group over the
4 same period of time to see what results you got from
5 that?

6 A Yes, we did, and I've supplied it here. We
7 looked at the total.

8 Q Where are you at?

9 A I'm on Exhibit 72.

10 Q In your write-up?

11 A That's correct, and it's the end of A. It
12 starts with "When looking."

13 Q Okay.

14 A "When looking at the total Atlantis player
15 population for the selected dates from 2009 to 2012, the
16 average theoretical generated per player is relatively
17 flat, using 2009 as a base case of a hundred percent.
18 The following three years, compared with an average
19 theoretical per player factor of a hundred percent in
20 2010, decreased to 99.1 percent in 2011 and 100.6 percent
21 in 2012, as compared to the 2009 base case. This shows a
22 consistent spending pattern by the general Atlantis
23 player population over the four-year period. The 202
24 guests observed do not follow this pattern. In the case
25 of the 202 players studied, we saw an increase in average

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1 theoretical from 2009 to 2011, with an abrupt change in
2 2012, using 2009 as a base case of a hundred percent.
3 The following years were compared with an average
4 theoretical per player factor of 99.9 percent in 2010;
5 107 percent in 2011, and 87 percent in 2012, as compared
6 to the 2009 base case. So overall, in 2012, we saw the
7 average theoretical per guest amongst these 202 guests
8 decrease."

9 Q And I understand what you're saying there.

10 What I'm asking, though -- because if I understand this
11 correctly, you're comparing the 202 guests to the entire
12 player database. Is that right?

13 A That is correct, to identify a trend.

14 Q But what I asked was, did you take another
15 group of 202 players with similar ratings and then run
16 that group during the same time period, to see what kind
17 of result you got for that group?

18 A We felt it would be a better measure to
19 evaluate the entire database, to understand if there is a
20 trend or a pattern going on with the entire database as
21 opposed to these individuals.

22 Q So the answer to my question is no.

23 A In order to do what you're implying, you
24 would have to find exact individuals, and we treat
25 individuals differently.

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1 Q Well, what I'm saying is, you could take 202
2 people and you could create the same ratings -- so you
3 have seven AIs and 20 whatever -- you could recreate the
4 group as far as ratings and then run that group of 202
5 people through the same analysis to see what the results
6 were. But you didn't do that, right?

7 A We felt using the entire Atlantis population
8 to identify a trend was a better route to go.

9 Q I understand.

10 How many players, if you can give me an
11 estimate -- let's say during those seven months -- how
12 many players would come through the doors of Atlantis or
13 play in the casino? Are we talking a million people or
14 are we talking 200,000 people? Do you have any idea?

15 A Over the course of seven months?

16 Q Well, this seven months that we're talking
17 about here.

18 A Individual player trips? Over a million.

19 Q So if we compared the other players that
20 played during the same time period, there'd be a million?

21 A If you evaluated the entire database. This
22 probably evaluated over a million records.

23 Q I'm not asking how many records. I'm just
24 saying, how many people came through the door and played?
25 We've got 202 people here that came through your doors

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1 and played, or most of them. There are a few that
2 didn't, but assuming 202 of these people came in and
3 played during that time period, what's the universe of
4 the other players that came through the door and played?

5 A I don't recall the exact number of unique
6 individuals that would play in that seven-month period.
7 We can get that information.

8 Q That information is available.

9 A That information is available, for track
10 carding members.

11 Q Did you run any kind of statistical analysis
12 on these numbers to see if they fell outside the standard
13 deviations?

14 A Not that specific analysis.

15 Q Do you have any background in statistical
16 training?

17 A I have a little.

18 Q But you didn't really apply any statistical
19 analysis to these numbers to see if they fell outside the
20 norm?

21 A This is a statistical analysis.

22 Q But you understand what I mean by "standard
23 deviation"?

24 A Did I take the approach you're referencing?
25 No.

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1 MR. JOHNSON: That's it.

2 EXAMINATION

3 BY MR. DOTSON:

4 Q Mr. McNeely, you know I'm Rob Dotson and I
5 represent the Atlantis. I have a few questions for you
6 that I want to make sure we provide clear testimony
7 today.

8 You received a number of questions about
9 theoretical play and theoretical win versus actual win.
10 Why is it that you chose to use theoretical rather than
11 the actual numbers for these years?

12 A We chose theoretical because, in our opinion,
13 it is a better measurement to evaluate players. Guests
14 can win and they can lose. The theoretical is a
15 consistent measure over time. It's a house advantage.
16 We expect to win a certain percentage of gaming for each
17 individual player who walks through the door. Your
18 theoretical value can never be negative, it can only be
19 positive. So for us and what we do as a property as far
20 as evaluating players, theoretical is more consistent and
21 it's a better measure for us.

22 Q What's the standard in the industry?

23 A Theoretical.

24 Q And why is that the standard in the industry?

25 A Because it's a consistent measure, because it

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1 takes into account the amount of money that a guest puts
2 into the machine, and it's the casino's percentage that
3 we expect to win from the player, regardless of whether
4 they win or lose.

5 Q Counsel asked you a number of questions about
6 house hold -- or "par" is what Abraham called it this
7 morning -- related to table games. When I first moved
8 here, I was a gambler then -- and I haven't gambled over
9 a decade -- but I read all the books and I knew exactly
10 when to split my 10s and all that. When you figure out
11 the house hold on blackjack, do you assume that the
12 player is behaving statistically perfect?

13 A No, we do not assume that every player plays
14 perfect strategy. Some guests lose.

15 Q In fact, I'd noticed that sometimes they were
16 serving alcohol, and coincidentally, sometimes my play
17 might become sloppy towards the end of the evening when
18 served alcohol. Is that something that, from your
19 experience, you've seen in certain players, that
20 sometimes their play is better than others and they're
21 not playing optimally?

22 A Yes, I have. The advantage for the casino is
23 time. Over time, we expect to win from the player, which
24 is why we use theoretical. It's more consistent. A
25 player could win or lose in one trip. We use theoretical

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1 to evaluate a player and their value to us, because it's
2 a consistent measure based off the actual money they put
3 in the machine and what we expect to win, which is
4 considered the house advantage.

5 Q I think you told counsel that you have seen
6 the actual win or loss for these players. Is it within
7 the database?

8 A That is correct.

9 Q But did you ever add it up for these 202
10 players?

11 A The actual win?

12 Q The actual win in 2011 compared to 2012.

13 A We have the information. I don't recall what
14 the information said.

15 Q And that's what I'm asking. Did you ever
16 actually go through that exercise?

17 A Yes.

18 Q And do you know if it was good, bad, or
19 indifferent? Why did you not include it?

20 A We didn't include it in the analysis because
21 there's a lot of volatility when looking at actual. We
22 felt that the theoretical value was a better indicator of
23 what the house expects to receive from the player. It's
24 a conservative approach. The win could be very volatile.
25 We could've won a lot more money, but the house advantage

1 is usually smaller, and that's what we expect to win from
2 the customer over the lifetime.

3 Q What percentage of the play at the Atlantis
4 is tracked?

5 A About 87 percent. We run a lot of programs
6 to help strengthen our card-in percentage for individual
7 players. So we are very good at tracking play.

8 Q Now, does the theoretical win -- and counsel
9 asked you some questions about jackpots, which obviously,
10 if you saw the actual win, some people would have
11 received some jackpots during this period of time.

12 A Yes, absolutely.

13 Q Now, does theoretical take into account
14 jackpots?

15 A No, it does not. It just takes into account
16 the house advantage.

17 Q Doesn't the house have to pay a jackpot?

18 A The house will have to pay a jackpot.

19 Q So the amount that is actually held by the
20 house would be less than the theoretical.

21 A That is correct, it could very well be.

22 Q I'm not asking you if it could be. I mean,
23 over time, infinity, is it the same as theoretical or is
24 it less?

25 A Theoretical is designed, over the lifetime of

1 the customer, to be very close to actual.

2 Q So these players, if you were looking at
3 their actual play versus their theoretical play over a
4 25-year period of time, what would you expect to see in
5 that comparison?

6 A I would expect the theoretical to mirror the
7 actual.

8 Q And how long a period of time do you
9 anticipate it would take before -- or does it take before
10 the theoretical mirrors the actual?

11 A It really varies depending on the individual
12 and how they're playing and the types of games they're
13 playing.

14 Q And that mirror would be including jackpots,
15 if they won any jackpots.

16 A That is correct.

17 Q Let's look at Exhibit 11. This goes back to
18 one of Mr. Wray's questions. He asked you about --
19 something about, how did you know which information had
20 been changed. Have you seen Exhibit 11?

21 A Yes, I have.

22 Q And can you see from that document the sorts
23 of things that were changed?

24 A Yes.

25 Q For example, there were questions about

1 addresses, physical addresses. There are sometimes where
2 the physical address is changed.

3 A Yes.

4 Q And are sometimes the email changed?

5 A Yes.

6 Q Counsel asked you about some address
7 verification program. Is there an email verification
8 program?

9 A We can validate email addresses, yes.

10 Q And did you run that as well?

11 A Yes, we identified some.

12 Q And how long a period of time was it before
13 the information had been corrected in the Atlantis
14 database? And implemented, I should say. Do you
15 understand my question?

16 A It was approximately a month and a half from
17 identifying the information to changing the information.
18 We put a stop order to our mail vendor, so they would no
19 longer mail out information to these guests until we
20 resolved the issue. We were losing money by sending
21 marketing offers to players' fake addresses.

22 Q What happens if somebody actually lives at
23 the address that the offer was being sent to?

24 A They could be very upset receiving
25 information from a gaming establishment without ever

1 visiting the property.

2 Q All right. I think that's -- well, actually,
3 no, I'm not done. Before we took the last break, counsel
4 was asking you questions about -- and I don't want you to
5 use Exhibit 73, I want you to use Exhibit 72, your
6 summary chart, because I want to understand how the
7 summary chart ties to the data. First of all, explain
8 the first analysis, the 313? How do you arrive at that
9 damage number?

10 A The 313,000 number essentially takes all the
11 positive theoretical these guests played, as well as the
12 negative theoretical these guests played in the
13 evaluation time period, looking at 2012 over 2011.

14 Q So that did in fact -- this goes back to
15 counsel's question. Did you subtract away those players
16 that actually gamed more during 2012?

17 A Yes, we did.

18 Q So you adjusted for the people whose gaming
19 behavior at the Atlantis actually improved or continued
20 to trend upward in 2012?

21 A Absolutely, we did adjust for that. And we
22 did account for guests who won and lost in that
23 theoretical difference calculation.

24 Q Now, you mentioned that there was a trend up
25 in this group. Did you utilize that trend line to figure

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1 out what these players would've produced but for the
2 interference?

3 A Yes, and that's the projected theoretical.
4 It assumes that for the guests who lost trips, that's the
5 amount of revenue we would've expected to gain had they
6 not been impacted. The theoretical value was always
7 positive, which is why we use theoretical as opposed to
8 actual.

9 Q So getting back to Mr. Johnson's question,
10 why is it, then, that you don't show any negatives on
11 these for the ADT?

12 A Because the theoretical is always a positive
13 value. You wouldn't have a negative theoretical for an
14 individual player. Theoretical is derived off of the
15 amount of money you put in the machine and the house
16 advantage. You can't have a negative theoretical. So as
17 a conservative approach, if we would've used guests who
18 lost trips, the projected theoretical value would be much
19 higher. So we decided to only focus on guests who lost
20 trips, as a conservative approach, to calculate the
21 projected theoretical.

22 Q Well, how would the number have been higher,
23 then?

24 A The number would've been higher because
25 theoretical value is always a positive number. Each

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1 guest generates theoretical. So if we would've looked at
2 guests who lost trips as well as guests who gained trips,
3 that theoretical value could be extremely high. So we
4 chose not to use it and only focus on the guests who lost
5 trips to calculate a projected theoretical.

6 Q So the projected theoretical of 334,455, it
7 only is focusing on those 103 guests.

8 A That is correct.

9 Q So what's going on where we see the 483 and
10 the 170? How are those two numbers utilized in your
11 analysis?

12 A Those numbers encompass the theoretical
13 difference of the growth over the time period. So the
14 theoretical difference does incorporate guests who
15 gambled more or less in those time periods.

16 Q Now, Mr. Wray asked you has the Atlantis lost
17 a single player as a consequence of -- or do you believe
18 the Atlantis lost a single player as a consequence of the
19 actions by GSR and Islam. If I look at your chart behind
20 the summary, where it says 2012, days, if there's a zero,
21 does that mean that player didn't play at all in 2012?

22 A Yes, it does.

23 Q At least as of this period of time.

24 A That is correct.

25 Q But the reason why you hesitated is, this

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1 chart doesn't show us through today, does it?

2 A That's correct.

3 Q And have you completed that analysis?

4 A We've looked at the analysis before and we
5 saw some of our guests rebounding and starting to play,
6 some of the guests.

7 Q But the particular question that Mr. Wray was
8 asking, which is, are there any of these guests that
9 simply have not returned since February of 2012, if you
10 know?

11 A Without certainty, I do not know if all these
12 guests have returned.

13 MR. DOTSON: That's it for me. I don't know
14 if that's raised any questions for either of you.

15 EXAMINATION

16 BY MR. WRAY:

17 Q As I understand your testimony, Mr. McNeely,
18 your actual numbers -- what was the word you used to
19 describe your actual numbers in comparison to theo?

20 A I don't recall.

21 Q What was the word you used to describe it?

22 A I believe I said over the lifetime, we would
23 expect the two to mirror each other.

24 Q "Mirror," that's what it is. So you have
25 something called goal theo, projected theo. Right?

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1 I was reading something Mr. Aguero wrote,
2 "The 2011 goal gaming win over-estimates potential gaming
3 win in the calculation of damages. As it was noted in
4 2010, the actual gaming win fell short of the 2010 goal
5 gaming win by 12.8 percent, or \$397,286." If theo is
6 accurate a hundred percent of the time, over time,
7 wouldn't theo be the same as actual in 2010?

8 A Actual is very volatile. I've never said it
9 was a hundred percent accurate over time.

10 Q Well, the \$397,286, which he references from
11 your exhibit, that's in one year. Right?

12 A Please rephrase your question, now that I've
13 had a chance to review this.

14 Q That's in one year, right?

15 A Yes. This is through 365 days in 2010 versus
16 2009.

17 Q So what he says is correct, what Aguero says.
18 He says that in 2010, actual gaming win fell short of the
19 2010 goal gaming win by 12.8 percent, or 397,286,
20 referencing that exhibit.

21 A You're misinterpreting this analysis. The
22 goal can be whatever the VIP director assigns for that
23 host.

24 Q It wouldn't be the actual, it would be theo
25 plus something.

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1 A It could be whatever — it could be whatever
2 measurements the VIP director, Frank DeCarlo, assigns his
3 host as a target to reach. And that number is based off
4 of theoretical, not actual.

5 Q Here's what he wrote: "Note that utilizing
6 the 2011 goal gaming win potentially overestimates
7 potential gaming win in the calculation of damages, as it
8 was noted that, in 2010, actual gaming win fell short of
9 the 2010 goal gaming win by 12.8 percent, or \$397,286
10 (ATL 0287)." Do you agree or disagree?

11 A For his analysis of this one specifically, he
12 is correct, because he's pointing out this article, but
13 there are other articles for other hosts that may be a
14 lot closer.

15 MR. WRAY: That's my point. I don't know if
16 I made the point or Mr. Aguero did, but that was my
17 point.

18 MR. DOTSON: Let me ask you something. Does
19 your analysis use goal theo at all?

20 THE WITNESS: No, it does not.

21 MR. DOTSON: Is ATL 287-A something that you
22 relied upon in your analysis?

23 THE WITNESS: I did not rely upon this in my
24 analysis. This is — the goal theoretical is derived by
25 Frank DeCarlo setting measurements and expectations for

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1 his hosts. We have no idea what his goal theoretical was
2 or why he applied the expectations that he did on Sumona
3 Islam.

4 MR. WRAY: I'm not here to argue with Mr.
5 Aguero or with you. I'm just referring you to the
6 paragraph he wrote in this report talking about this
7 subject and that exhibit, and he's talking about your
8 developing an estimate of potential damages incurred by
9 Atlantis related to the action of altering contact
10 information related to 87 records, and he says, because
11 no information was available as of the date of this
12 report, overall averages for her book of business were
13 utilized. Then he says, "Note that utilizing 2011 goal
14 gaming win ---" so as I understand it, the statement he
15 makes here is accurate. What it means may be a subject
16 for argument between me and Mr. Dotson later, but the
17 statement he makes in his report is accurate about the
18 2010 goal not being reached to the tune of almost 400
19 grand.

20 THE WITNESS: I question why he's using goal
21 theoretical in his analysis. The expectation level of
22 the VIP director is between the host and the director, as
23 far as what he sets out for that host. It's a level of
24 expectation he wants that host to reach. And as you can
25 evaluate here, looking at this document, the projected

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1 theoretical and the goal theoretical are not all that far
2 off.

3 MR. WRAY: Well, it's good for the Atlantis.
4 But one answer to your question is, as he said in this
5 paragraph, he doesn't have the information that's at your
6 disposal. As you said, you looked at a million other
7 records to compare trends in 2009, '10 and '11 to the
8 trends that you saw after Sumona Islam left, and you said
9 you looked at a million records and you ran them on your
10 computer. Now, that isn't something that this man has at
11 his disposal, does he? He only has the records you
12 produced. So when you say your question it, I question it
13 too. I've asked you for those records. You won't give
14 them to me. And then you question, "Well, why is he
15 using that?" He's using what you gave him, isn't he?

16 THE WITNESS: We believe theoretical and
17 using the base case of a hundred percent is sufficient
18 enough.

19 BY MR. WRAY:

20 Q By the way, how much time did it take you to
21 run that million-record comparison to derive the
22 percentages using 2009 as the base year? How long did it
23 take you to do that?

24 A I don't recall the exact time spent on the
25 evaluation.

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1 Q No, no. Not writing the report and all the
 2 other things you did, just getting those numbers for
 3 those years. You used an average, right?
 4 A Yes.
 5 Q Of all the people, right? How long did it
 6 take you to run the computer to get that information?
 7 A I believe I just answered this question. I
 8 don't recall the exact amount of time it took the system
 9 to process the information for me to write the query, to
 10 pull the information. That was done all at the same
 11 time.
 12 Q So it's writing a query, punching a button,
 13 and the computer processes it and gives you the results.
 14 Right?
 15 A Not entirely. It's more than just pushing a
 16 button.
 17 Q It's you and the computer, right? There's no
 18 one else involved.
 19 A That is correct.
 20 Q You're sitting at the computer, you put the
 21 query in, and the computer gives you the results by year.
 22 Right?
 23 A Essentially. It's how I write the query and
 24 how I pull out the information, and then I'll do the
 25 calculation and the analysis. And that takes time.

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1 MR. WRAY: I want to do the same thing. I
 2 want to look at what he looked at.
 3 I don't have any other questions.
 4 MR. JOHNSON: No questions.
 5 MR. DOTSON: One last question.
 6 BY MR. DOTSON:
 7 Q Going back to what Mr. Wray just said, is
 8 there anything that you utilized to draw your conclusions
 9 that is not reflected in the various reports you've
 10 produced here? In other words --
 11 A Everything I used in my analysis has been
 12 presented today.
 13 MR. WRAY: Excuse me, what'd you say? A
 14 million records? You gave us everything that you looked
 15 at for your analysis? You did not.
 16 THE WITNESS: To reach my conclusion of the
 17 gaming behavior of these individuals.
 18 MR. WRAY: You just told me you went through
 19 a million records. You did a search query for four
 20 years, over a million records, and you just said you gave
 21 us all that. Did you?
 22 THE WITNESS: I did not supply the individual
 23 records for a million people. That analysis was used to
 24 identify a trend of behavior.
 25 MR. DOTSON: Did you look at the records of a

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1 million people to do this report?
 2 THE WITNESS: I didn't look at the records
 3 individually. I just pulled out a summary.
 4 MR. DOTSON: All right. Nothing further.
 5 MR. JOHNSON: No more questions. Thank you.
 6 (Whereupon the deposition was concluded at
 7 the hour of 5:27 p.m.)
 8 --OO--
 9
 10 CERTIFICATE OF WITNESS
 11
 12 I hereby certify under penalty of perjury that
 13 I have read the foregoing deposition, made the changes
 14 and corrections that I deem necessary, and approve the
 15 same as now true and correct.
 16 Dated this ____ day of _____,
 17 2013.
 18 _____
 19 BRANDON McNEELY
 20
 21
 22
 23
 24
 25

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1 STATE OF NEVADA }
 2 COUNTY OF WASHOE } ss.
 3
 4 I, ROMONA MALNERICH, a Notary Public in and
 5 for the County of Washoe, State of Nevada, do hereby
 6 certify:
 7 That on Tuesday, the 14th day of May, 2013, at
 8 the hour of 1:42 p.m. of said day, at the Law Offices of
 9 Mark Wray, 608 Lander Street, Reno, Nevada, personally
 10 appeared BRANDON CHARLES McNEELY, who was duly sworn by
 11 me, and thereupon was deposed in the matter entitled
 12 herein;
 13 That said deposition was taken in verbatim
 14 stenotype notes by me, a Certified Court Reporter, and
 15 thereafter transcribed into typewriting as herein
 16 appears;
 17 That the foregoing transcript, consisting of
 18 pages 1 through 123, is a full, true and correct
 19 transcript of my stenotype notes of said deposition to
 20 the best of my knowledge, skill and ability.
 21 DATED: At Reno, Nevada, this 15th day of May,
 22 2013.
 23
 24 _____
 25 ROMONA MALNERICH, OCR #269

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1	PAGE	LINE	ATTORNEY'S NOTES/CORRECTIONS BY WITNESS
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EXHIBIT 3

Expert Witness Report

GOLDEN ROAD MOTOR INN, INC., a Nevada Corporation, d/b/a ATLANTIS CASINO RESORT SPA (Plaintiff)

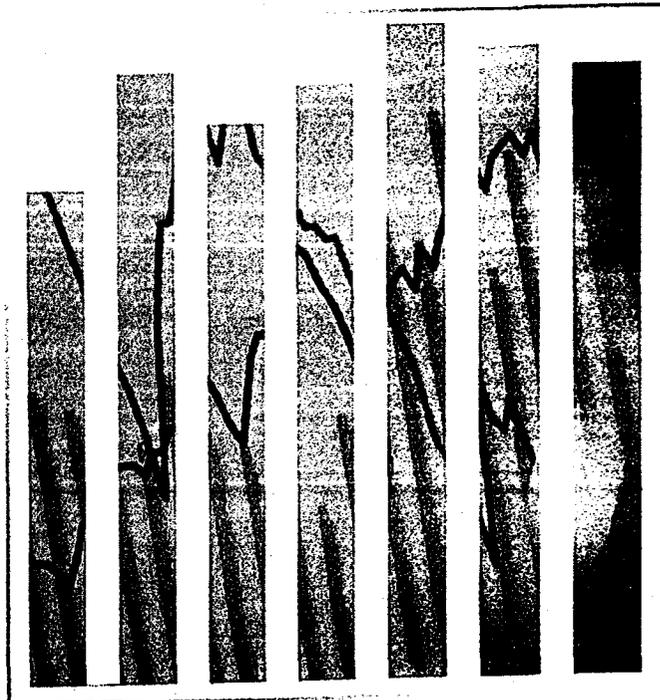
vs.

SUMONA ISLAM, an individual; NAV-RENO-GS, LLC, a Nevada limited liability company, d/b/a GRAND SIERRA RESORT; ABC CORPORATIONS; XYZ PARTNERSHIPS; AND JOHN DOES I through X, inclusive (Defendants)

Second Judicial District Court of the State of Nevada
Washoe County, Nevada

Case No. CV12-01171
Dept. No. B6

APPLIED
ANALYSIS



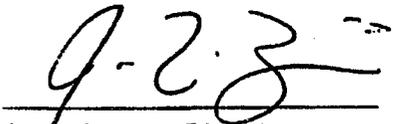
Prepared for: Cohen | Johnson

December 12, 2012

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Submitted by:



Jeremy A. Aguero, Principal
Applied Analysis

INTRODUCTION

Applied Analysis ("AA") was retained by Cohen | Johnson to review the complaints and related exhibits pertaining to case number CV12-01171 filed in the Second Judicial District Court, Washoe County, Nevada.¹ Additional documents pertaining to the case, including but not limited to documents produced by the Atlantis Casino Resort Spa ("Atlantis")² and the Grand Sierra Resort ("GSR")³ were also made available to AA.

Based on a review of the aforementioned documents, the subject of the complaint involves a claim by Atlantis that Sumona Islam ("Islam"), a former employee of Atlantis, improperly altered customer contact information in the Atlantis customer database during her last month of employment with Atlantis (January 2012), and violated several employment agreements, including a Non-Compete/Non-Solicitation Agreement ("Non-Compete Agreement") when she left the Atlantis and began work at GSR on January 31, 2012. Atlantis also alleges that Islam recorded the names of certain customers from the Atlantis customer database prior to terminating her employment with the casino-hotel. The details of these allegations are not recapitulated herein; rather, the purpose of this analysis is to evaluate the potential damages incurred by Atlantis due to Islam's alleged alteration of customer records in the Atlantis customer database, as well as her alleged action of recording customer names from the Atlantis customer database and entering these names into the database at her new place of employment (GSR). This analysis also serves as a preliminary rebuttal to Atlantis' use of the "Customer Lifetime Value" marketing metric as a means to estimate potential damages.

According to case documents, the number of unique customers whose records were altered by Islam is 87 customers (see, ATL 0041). The number of unique customers whose names were recorded out of the database is alleged to be 202 customers (see, Exhibit A to Plaintiff's Ninth Supplemental NRCP 16.1 Disclosure). Without rendering any opinion as to the accuracy of this information, AA finds it to be generally consistent with other case-related information reviewed (see references above), and as such, for purposes of the analysis contained herein, assumes *arguendo* that these figures are accurate. However, AA is unable to determine whether the two sets of customer populations overlap (i.e., whether the customers whose information was altered were also those whose names were recorded, which AA would believe to be a likely possibility) due to a redaction of customer information in documents produced by Atlantis (see, ATL 0044 through ATL 0048). As such, the calculations presented herein may need to be revisited to avoid double-counting of damages relative to a specific customer if additional information regarding the identity of the customers whose contact information was altered becomes available.

It is important to note that this analysis relies heavily on data provided by the Plaintiff, Atlantis. AA has not reviewed or audited such data, nor had an opportunity to examine any of the underlying data files. AA reserves the right to amend or supplement this analysis should additional information become available. Additionally, this analysis does not take into account any seasonality associated with customer visiting or spending habits. Generally, annual totals or averages are utilized, to which a factor of 25.8 percent is applied, which is the percentage of one year that Islam was actively employed at GSR. Islam began a period of employment at GSR on January 31, 2012⁴ and was placed on leave on May 3, 2012⁵, for a total employment period

¹ See documents filed on May 7, 2012 (Golden Road Motor Inn, Inc., d/b/a Atlantis Casino Resort Spa vs. Sumona Islam, NAV-RENO-GS, Grand Sierra Resort, et. al., Amended Verified Complaint for Damages), as well as related filings made in the matter of Case No. CV12-01171.

² Bates numbered documents ranging from ATL 0001 to ATL 0991

³ Bates numbered documents ranging from GSR00001 to GSR01029

⁴ GSR00026

⁵ GSR01028

of 94 days, which approximates 25.8 percent of one year. For purposes of this analysis, AA considers the time period of January 31, 2012 to May 3, 2012, the relevant time period upon which to calculate damages.

CONCLUSION

Nothing contained herein or in the analysis contained herein should be interpreted as an opinion, admission, or ratification of any party's liability (including GSR) for the actions taken by Islam. This report is intended to serve only as an objective analysis of allegations of damages asserted by the Plaintiff included in the case filings.

It is generally accepted in the hospitality industry that a casino does not "own" a guest simply because that person signed up for a player's club card and spent money at the casino at one point in time. It is also generally accepted in the hospitality industry that a gaming operator may offer complimentary meals, hotel rooms, services, or gambling credits to entice a customer to visit, as well as invest in casino "hosts" to develop relationships with customers as a way of providing customers a more personal level of service. Industry surveys indicate that casino guests tend to visit multiple casinos on a single trip and belong to multiple "players clubs", with anecdotal reports suggesting that at least half of all customers with players' cards belong to more than 6 players clubs in markets with the highest rate of market penetration. Notably, visitors belonging to the casino guest marketing segment visiting Las Vegas visit an average of 5.3 casinos on a single trip, and gamble at an average of 3.8 casinos, which is even higher than the number of casinos gambled at by the average visitor.⁶ Such survey responses indicate that casino customers are not loyal to a single casino. In fact, they often visit multiple casinos and those where they receive the best offers.

Industry research also points out that people often belong to multiple loyalty programs within the same industry, especially in the casino industry due to the low switching costs associated with casino loyalty programs, the increasing number of gaming opportunities available, and the increased marketing efforts of casinos aimed at attracting new players. Almost all casinos now offer some type of customer loyalty program.⁷

While not perfectly aligned to the Reno market,⁸ publicly-available data indicates that the Atlantis' view that players are a type of commodity whose contact information amounts to a "trade secret" that can be stolen is flawed. Particularly, the Atlantis' use of a marketing metric known as "Customer Lifetime Value" or "CLV" wherein it assumes the company has lost – for life – each of the customers whose name was entered into the GSR database by Islam, is a tenuous assertion that amounts to little more than mere speculation. Even if one were to assume that Islam had a 100 percent success rate in introducing each of these customers to the GSR property (and this assumes that none of these customers had ever thought to visit the casino on their own), there is no evidence provided by Atlantis that would suggest that the customer would be lost for life to GSR simply because he or she was introduced to the property. That is, unless the property was superior to Atlantis in the eyes of the customer, in which case it is likely that the customer would have discovered as much through alternative means sooner or later. More than likely, the customer would continue to respond positively to whichever casino, including any of the other 30

⁶ Source: GLS Research, Las Vegas Market Segment Report, 2011, <http://www.lvcva.com/stats-and-facts/visitor-statistics/>

⁷ Crofts, Cristina, "An Exploratory Study of Casino Loyalty Programs" (2011), *UNLV Theses/Dissertations/Professional Papers/Capstones*. Paper 1096.

⁸ Per review of research reports and visitor profile studies published on the Reno-Sparks Convention and Visitors Authority's website, information regarding the number of casinos visited, etc., is not available specifically for the Reno-Sparks market; see <http://www.visitrenolahoe.com/about-us/marketing/research-reports.html>.

competing casinos⁹ in Washoe County or anywhere else in the world, provides the best offers and the best experience. To suggest otherwise is simply unrealistic and an inaccurate characterization of human behavior requiring the conclusion that the identified customers would be retained by Atlantis into perpetuity without regard to competitive or other market forces.¹⁰

In this case, a calculation of damages is more realistically isolated to lost revenue, over a specific period of time, that Atlantis may have realized but for the action taken by Islam to alter customer records. Revenue is defined as possible gaming win that would have been attributed to these customers over the period of time that Islam was employed by GSR (about one-quarter of one year). Once Islam was no longer at GSR, guests who may have visited GSR due to their personal relationship with Islam would no longer have an incentive to choose GSR over Atlantis. Additionally, by the time Islam was put on leave (May 3, 2012) approximately three months following her hire date, Atlantis would have had adequate time to mitigate possible damages caused by the altering of the 87 customer records. The total estimated amount of damages related to the action of altering records, including the cost of correcting records and mitigating response as estimated by Atlantis, is approximately \$69,784. However, a number of factors are discussed in detail in the following section of this analysis, "Estimate of Damages Related to Altering of Customer Contact Information", that may serve to reduce this figure; notably, certain information that would be required is not available as of the date of this report.

As a potentially separate matter, if it is determined that Atlantis is entitled to damages related to the alleged 202 customers whose contact information was recorded by Islam and allegedly entered into GSR's database, the total estimated amount of damages related to the action of recording contact information ranges from a low of \$138,374 to a high of \$322,872, according to a methodology that utilizes theoretical gaming win as well as a number of potentially over-reaching assumptions.

Importantly, the calculations in the preceding two paragraphs assume that none of the 87 customers whose records were altered were included on the list of 202 customers whose names were recorded by Islam. If it is determined that there was overlap in the two groups, then these customers should be removed from one of the calculations to avoid double-counting. This would further reduce the amount of total potential damages.

Finally, Islam's actual impact at GSR should be taken into account when considering a potential damages calculation. From Islam's hire date (January 25, 2012, though it appears her actual start date was January 31, 2012), through the end of November 2012, GSR has reported only \$15,174 in gaming win from customers coded to Islam that were entered into the GSR database during Islam's employment (i.e., new customers to GSR).¹¹ Taking into account costs, GSR reported a profit of \$10,814 on this amount. This amount serves as a more reasonable alternative to the range of \$138,374 to \$322,872 estimated potential damages calculated by multiplying all customers whose contact information was recorded by their possible "annual contribution" and pro-rating this amount by the portion of one year that Islam was actively employed at GSR.

⁹ According to the Nevada Gaming Control Board's Annual Gaming Abstract, 2011, there are 30 nonrestricted gaming locations in Washoe County.

¹⁰ Acknowledging that Atlantis attempted to utilize a "churn rate" in its calculation of CLV, detailed information regarding the average tenure of a casino guest, attrition rates, and other player-related information was not available at the time of this analysis.

¹¹ Source: GSR Financial Planning and Analysis Group (December 11, 2012)

ESTIMATE OF DAMAGES RELATED TO ALTERING OF CUSTOMER CONTACT INFORMATION

This analysis estimates the approximate amount of revenue lost by Atlantis due to Islam's action of 1) altering customer records and 2) recording customer records. Due to the fact that the customer records were those found in a casino database intended to track and market casino guests, the potential damages are comprised of gaming win, or annual contribution if specified,¹² based primarily on information provided by Atlantis. Islam began a period of employment at GSR on January 31, 2012¹³ and was placed on leave on May 3, 2012,¹⁴ for a total employment period of 94 days, which approximates 25.8 percent of one year.

Utilizing the number of unique customers who were affected by the altering of customer records by Islam, as well as information regarding Islam's comprehensive book of business and the 2011 gaming win goal that her book of business was targeted to reach, AA has developed an estimate of potential damages incurred by Atlantis related to the action of altering the contact information related to 87 customer records. Because no information was available as of the date of this report regarding the player level category of these customers, overall averages for Islam's book of business were utilized. Note that utilizing the 2011 goal gaming win potentially overestimates potential gaming win in the calculation of damages, as it was noted that in 2010, actual gaming win fell short of the 2010 goal gaming win by 12.8 percent, or \$397,286 (ATL 0287).

Please refer to Exhibit I, which follows, for details.

¹² According to documents provided by Atlantis, "contribution margin" takes into account some consideration of the cost required to generate gaming win. It is unclear whether the costs included are comprehensive.

¹³ GSR00026

¹⁴ GSR01028

Exhibit I: Estimate of Damages Related to Altering of Customer Records

Description		Source/Notes
<u>Calculation of unique guests with information reported to be altered by Islam in January 2012:</u>		
	5-Jan	43 ATL 0041
	13-Jan	19 ATL 0041
	17-Jan	1 ATL 0041
	18-Jan	34 ATL 0041
	19-Jan	1 ATL 0041
	Subtotal count of unique guests	98
	Guests with contact information altered on multiple days	-11
	Unique guests with contact information reported to be altered	87 ATL 0041
<u>Calculation of share of Islam's Atlantis customer base that was altered:</u>		
Islam's book of business at Atlantis ("Prem/Mid Total")	1,245	ATL 0291
Percentage of Islam's guests with altered contact information	7.0%	A
Islam's gaming win goal for 2011	\$3,158,598	ATL 0287; B
"Percentage of Islam's guests with altered contact information" multiplied by "Islam's gaming win goal for 2011"	\$220,721	A*B = C
<u>Number of days worked by Islam at GSR:</u> (January 31, 2012 (GSR 00026) - May 3, 2012 (GSR 01028))		
	January	1
	February	29
	March	31
	April	30
	May	3
	Total Days	94
	Percentage of one year worked by Islam at GSR	25.8% D
<u>Estimate of potential damages related to altered records:</u>		
"Percentage of one year worked by Islam at GSR" multiplied by "Percentage of Islam's guests with altered contact information" multiplied by "Islam's gaming win goal for 2011"	\$56,843	C*D

A reasonable estimate of damages incurred due to the altering of customer contact information may also include the cost of correcting the records, which was estimated by Atlantis to be \$2,000¹⁵, as well as the cost to "mitigate" the damage, which was estimated by Atlantis to be \$10,941.¹⁶ Specifically, Atlantis mitigated the damage by reaching out to all customers whose information was altered (170 customers, in fact, so it is unclear exactly which customers were included), and provided them with complimentary offers of free play of up to \$400, meals with a casino host and three nights of free accommodations.

¹⁵ Page 9 of the Plaintiff's Ninth Supplemental NRCP 16.1 Disclosure

¹⁶ Exhibit C, Plaintiff's Ninth Supplemental NRCP 16.1 Disclosure

However, it is worth noting that the cost of mitigation may be overstated by Atlantis for three reasons: 1) Atlantis is attempting to claim expenses related to offers it made to 170 customers, the identities of whom are unclear, despite the fact that only 87 unique customer records were altered; 2) the cost of the complimentary offers would not be incurred unless a customer utilized the offer; and 3) the offer may have been made to the customer even if Islam had not altered that customer's record. If these customers were valuable to Atlantis, as Atlantis suggests, it is reasonable to believe such offers would have been extended with or without Islam's act of altering the record. Furthermore, if these customers did take Atlantis up on the offer, and did not "migrate" to GSR, then it is unclear why Atlantis should be entitled to any damages related to "lost" gaming revenue. All of these considerations may result in a reduction in potential damages to which Atlantis may be entitled.

The sum of potential lost gaming win as estimated above (\$56,843), which, notably, does not include any sort of cost that would be incurred by the casino to attract the customer, nor labor and overhead, and also assumes that gaming outcomes of the 87 unique customers would be similar to the prior year (i.e., none of them wins a jackpot, making the net gaming win for the group negative), the cost of correcting the records, and the cost to mitigate the damage, equals \$69,784. As stated in the preceding paragraph, a number of factors may result in a reduction to this estimate.

ESTIMATE OF DAMAGES RELATED TO RECORDING OF CUSTOMER CONTACT INFORMATION

Utilizing the number of customers whose contact information was recorded by Islam, as well as information provided by Atlantis regarding the projected annual contribution by guest rating for this group of customers, AA has developed an estimate of potential damages incurred by Atlantis related to the action of recording the alleged 202 customer records and entering the contact information in the GSR database.

Such a calculation requires a number of potentially over-reaching assumptions. First, it assumes that none of the 202 customers were already customers of GSR. As of the date of this report, this information is not available. Second, it assumes that it would not have occurred to any of the customers to visit GSR during their lifetimes but for the fact that they may have been contacted by Islam. Third, it assumes that all players actually were contacted by Islam in her capacity as casino host at GSR. Fourth, it assumes that all 202 players actually visited GSR due to having been contacted by Islam. Fifth, it assumes that these players exhibited the same gaming behavior at GSR that they otherwise would have at Atlantis. Sixth, it assumes that gaming outcomes (i.e., win or loss) would have been the same from year to year.

Exhibit II, which follows on the next page, first estimates the pro-rated annual contribution for each of the 202 guests based on each guest's rating category, utilizing data provided by Atlantis.¹⁷ Importantly, AA has no opinion regarding the accuracy of this data and has not undertaken any review or audit of such information, but has utilized the data due to it being the best available for purposes of the analysis herein as of the date of this report. The potential "annual contribution" is multiplied by 25.8 percent, which represents the percentage of one year that Islam was employed at GSR. The resulting figure is multiplied by a percentage ranging from 100 percent down to 0 percent (increments of 10 percentage points are shown). Based on the significant assumptions required to arrive at the conclusion that but for Islam's act of recording names and entering them in the GSR database, Atlantis would have realized gaming win approximating the calculated figure, it is AA's opinion that this figure should be reduced by a factor ranging from 70 percent to 30 percent.¹⁸

¹⁷ See, Exhibit B, Plaintiff's Ninth Supplemental NRCP 16.1 Disclosure and ATL 0989.

¹⁸ Detailed information regarding the average tenure of a casino guest, attrition rates, and other player-related information was not available at the time of this analysis. Additional information that would be helpful in further refining this factor, includes, but is not limited to, trends in gaming revenue, actual

Exhibit II: Estimate of Damages Related to Altering of Customer Records

Guest Rating	A Guest Count in Rating Category (Exhibit B of Plaintiff's Ninth Supplemental Disclosure)	B Annual Contribution (Win-GGR) per Guest, Year 1 (ATL 0989)	A*B = C Annual Potential Lost Revenue: Guest Count x Annual Contribution	C * 25.8% = D Potential Lost Revenue: Guest Count x Annual Contribution x Portion of the Year Islam Employed at GSR
A1	7	\$18,269	\$127,883	\$32,934
A2	20	\$3,465	\$69,300	\$17,847
A3	24	\$2,142	\$51,408	\$13,239
A4	21	\$1,820	\$38,220	\$9,843
A5	23	\$886	\$20,378	\$5,248
A6	19	\$371	\$7,049	\$1,815
A7	1	\$187	\$187	\$48
A8	2	\$44	\$88	\$23
LA	60	\$22,729	\$1,363,740	\$351,210
LB	10	\$7,735	\$77,350	\$19,920
LC	10	\$3,330	\$33,300	\$8,576
LD	4	\$519	\$2,076	\$535
LE	1	\$29	\$29	\$7
Total	202		\$1,791,008	\$461,246
Potential Lost Revenue x 100%			\$1,791,008	\$461,246
Potential Lost Revenue x 90%			\$1,611,907	\$415,121
Potential Lost Revenue x 80%			\$1,432,806	\$368,997
Potential Lost Revenue x 70%			\$1,253,706	\$322,872
Potential Lost Revenue x 60%			\$1,074,605	\$276,748
Potential Lost Revenue x 50%			\$895,504	\$230,623
Potential Lost Revenue x 40%			\$716,403	\$184,498
Potential Lost Revenue x 30%			\$537,302	\$138,374
Potential Lost Revenue x 20%			\$358,202	\$92,249
Potential Lost Revenue x 10%			\$179,101	\$46,125
Potential Lost Revenue x 0%			\$0	\$0

Importantly, the calculation presented in Exhibit II also assumes that none of the 87 customers whose records were altered were included on the list of 202 customers whose names were recorded by Islam. If it is determined that there was overlap in the two groups, then these customers should be removed from column "A" above, or alternatively, from the calculation of damages related to the altering of names. Due to the use of overall averages in the calculation of damages related to the

losses for rated players over the past five years, and whether any of the customers were recurring guests of other casinos; including, without limitation, the GSR

altering of names, the average potential damage amount per customer is \$653, versus \$2,283 utilizing the customer group and annual contribution values shown above. Regardless of which group the overlapping customer is removed from, the amount of total damages resulting from the altering or recording of customer contact information by Islam would be further reduced.

In addition, it is unclear whether the "mitigation" expense reported by Atlantis was related to the group of customers whose information was recorded by Islam. As previously stated, Atlantis reported a cost to "mitigate" the damage related to Islam, which was estimated by Atlantis to be \$10,941 and involved 170 customers.¹⁹ It is unclear whether these 170 customers include any that appear on the list of 202 customers whose contact information was recorded.

Furthermore, this analysis does not take into account any legal considerations connected to the possibility that certain of these customers originated from Islam's preceding employer (to Atlantis), Harrah's, and have simply migrated with the casino host again, this time to GSR. Information was not available at the time of this analysis regarding which customers originated from Harrah's, though this concept warrants additional consideration. In the same way that Atlantis has argued that a customer would not have visited GSR but for Islam, it could be argued that but for Islam's employment at Atlantis, none of the customers she allegedly brought from Harrah's would have been customers of Atlantis. As such, it seems counter-intuitive to assume that Atlantis would be entitled to damages from guests that it gained as a result of the same type of act (i.e., the migration of customers by a casino host from one property to another due to that host's existing relationships).

ACTUAL IMPACT OF ISLAM AT GSR

Ultimately, the damages calculated in Exhibit II are theoretically limited to the actual amount of gaming win generated for GSR by Islam.

AA requested and obtained from GSR the total amount of gaming win attributed to casino guests coded to Islam for both the period of her employment, and the period to date (subsequent to her being placed on leave). GSR indicated that a number of players coded to Islam had been customers of GSR prior to Islam's employment at GSR. As such, GSR provided detail for two groups of customers: 1) all customers coded to Islam, and 2) customers coded to Islam who were existing customers of GSR. Note that while AA considers the data to be accurate, particularly in light of the fact that full detail was provided (by player, by month), AA has not conducted any review or audit procedures on the data and as such, is not rendering an opinion regarding its accuracy.

The total amount of gaming win reported for all customers coded to Islam during her employment at GSR was \$37,729.²⁰ Following Islam's placement on leave, the total amount of gaming win reported for all customers coded to Islam, to date (through November 2012) was \$86,892, for a total gaming win to-date of \$124,621.

Including only players who have an account origination date at GSR of any day between January 25, 2012 (the day that Islam signed employment papers, though case documents indicate her first day of work was January 31, 2012) and May 3, 2012

¹⁹ Exhibit C, Plaintiff's Ninth Supplemental NRCP 16.1 Disclosure

²⁰ The source of this and all data in this section ("Actual Impact of Islam at GSR") is the GSR Financial Planning and Analysis Group (December 11, 2012)

(the date Islam was placed on leave), the total amount of gaming win during Islam's employment was \$8,602. Following Islam's placement on leave, the total amount of gaming win for these new customers to date (through November 2012) was \$6,572, for a total gaming win-to-date of \$15,174.

When including the costs of play, GSR reported a profit on the \$124,621 total gaming win to-date for all players coded to Islam (new and existing) of \$74,608. GSR reported a profit on the \$15,174 total gaming win to-date for all new players coded to Islam (entered into the GSR database between January 25, 2012 and May 3, 2012) of \$10,814.

AA would argue that known profits reported by GSR that would not have been realized but for Islam's act of entering new players into the GSR database (\$10,814) would represent a reasonable damages figure. Exhibit III below summarizes the impact of Islam at GSR.

Exhibit III: Actual Impact of Islam at GSR, During and After Employment²¹

	During Islam's Employment (1/25/12 - 5/3/12)	After Islam's Employment (5/4/12 - 11/30/12)	Total	Reported Profit
<u>All rated guests coded to Islam in GSR database:</u>				
Guest count	144	110	N/A	
Gaming win	\$37,729	\$86,892	\$124,621	\$76,848
<u>Rated guests coded to Islam AND entered in GSR database during Islam's employment (i.e., new guests to GSR):</u>				
Guest count	40	30	N/A	
Gaming win	\$8,602	\$6,572	\$15,174	\$10,814

REBUTTAL OF ATLANTIS' CALCULATION OF DAMAGES UTILIZING THE CUSTOMER LIFETIME VALUE MARKETING METRIC

It is important to note that casino guests have a choice of where to spend their money. It is generally accepted in the hospitality industry that a casino does not "own" a guest simply because that person signed up for a player's club card and spent money at the casino at one point in time. It is also generally accepted in the hospitality industry that a gaming operator may offer complimentary meals, hotel rooms, services, or gambling credits to entice a customer to visit, as well as invest in casino "hosts" to develop relationships with customers as a way of providing that customer a more personal level of service and make them feel valued. That said, according to the latest Las Vegas visitor profile survey, the average visitor to Las Vegas visits, during a single trip, no fewer than 6.4 casinos, and gambles in 3.1 casinos.²² Even more specifically, when segmenting responses by type of guest (i.e., Convention, Package, Tourist, or Casino guests), the Casino guests visited an average of 5.3 casinos on a single trip, and gambled at an average of 3.8 casinos, which is higher than the number of casinos

²¹ Source: GSR Financial Planning and Analysis Group (December 11, 2012)

²² Source: GLS Research, Las Vegas Visitor Profile Study, 2011, <http://www.lvcva.com/stats-and-facts/visitor-statistics/>.

gambled at by the average visitor.²³ Such survey responses indicate that casino customers are not loyal to a single casino where competitive forces exist. It is more likely that they visit the casinos where they receive the best offers, the best service and the best overall experience.

In a research paper published by the University of Nevada, Las Vegas, entitled "An Exploratory Study of Casino Customer Loyalty Programs",²⁴ the author notes:

"Additionally, Palmer and Mahoney (2005) argue people often belong to multiple loyalty programs within the same industry, especially in the casino industry due to the low switching costs associated with casino loyalty programs, the increasing number of gaming opportunities available, and the increased marketing efforts of casinos aimed at attracting new players. Almost all casinos now offer some type of customer loyalty program. Dowling and Uncles (1997) discuss the notion of polygamous loyalty, being a member of more than one loyalty scheme, and the effect it has on true loyalty to a brand or company."²⁵

While not perfectly aligned to the Reno market,²⁶ publicly-available data indicates that the Atlantis' view that players are a type of commodity that amounts to a "trade secret" that can be stolen is flawed. Particularly, the Atlantis' use of a marketing metric known as "Customer Lifetime Value" or "CLV" wherein it assumes it has lost – for life – each of the customers whose name was entered into the GSR database by Islam, is a tenuous assertion that amounts to little more than mere speculation. Even if one were to assume that Islam had a 100-percent success rate in introducing each of these customers to the GSR property (and this assumes that none of these customers had ever thought to visit the casino on their own), there is no evidence provided by Atlantis that would suggest that the customer would be lost for life to GSR simply because he or she was introduced to the property. More than likely, the customer would continue to respond positively to whichever casino, including any other of the 30 competing casinos²⁷ in Washoe County or anywhere else in the world, provided the best offers and the best experience. To suggest otherwise is simply unrealistic and an inaccurate characterization of human behavior requiring the conclusion that the identified customers would be retained by Atlantis into perpetuity without regard to competitive or other market forces.²⁸

Assuming, *arguendo*, that the CLV marketing metric is accepted as a valuation method in litigation (which AA could not find evidence of), the "lifetime" time horizon is inappropriate in this case. Customers' spending habits change; customers move; customers are exposed to new casino products and services both within and outside the region; new casino products open and close frequently, including Indian gaming facilities; new and existing casinos develop new products and services; new and existing casinos develop new advertising materials and means of advertising; the Atlantis may change its products and services; the Atlantis may change the type or quality of its offers; and casino hosts at the Atlantis and at new and existing casinos within and outside the region come and go; among a number of other variables. While the CLV marketing metric

²³ Source: GLS Research, Las Vegas Market Segment Report, 2011, <http://www.lvcva.com/stats-and-facts/visitor-statistics/>

²⁴ Crofts, Cristina, "An Exploratory Study of Casino Loyalty Programs" (2011), *UNLV Theses/Dissertations/Professional Papers/Capstones*. Paper 1096.

²⁵ *Id.*, page 11.

²⁶ Per review of research reports and visitor profile studies published on the Reno-Sparks Convention and Visitors Authority's website, information regarding the number of casinos visited, etc., is not available specifically for the Reno-Sparks market; see <http://www.visitrenotahoe.com/about-us/marketing/research-reports.html>.

²⁷ According to the Nevada Gaming Control Board's Annual Gaming Abstract, 2011, there are 30 nonrestricted gaming locations in Washoe County.

²⁸ Acknowledging that Atlantis attempted to utilize a "churn rate" in its calculation of CLV, detailed information regarding the average tenure of a casino guest, attrition rates, and other player-related information was not available at the time of this analysis.

attempts to take some of these variables into account through the application of a churn rate (i.e., loss of a percentage of customers each year), the CLV marketing metric has known weaknesses in taking into account external variables and would tend to overestimate any potential loss to Atlantis. An additional consideration that may have a significant impact on the Atlantis is the average age of their customers. It was noted that Atlantis used a 25 year time horizon in calculating CLV (see ATL 0983 through ATL 0988).

According to Sunil Gupta of Harvard University, et al., in a research paper published in November 2006 entitled "Modeling Customer Lifetime Value",²⁹ states, "(As noted in the introduction), one of the drivers of the growing interest in the CLV concept has been the increased amount of customer transaction data that firms are now able to collect... We must, however, recognize the inherent limitations of transaction databases." He continues, "(A second limitation of transaction data) is that although they provide very detailed information about what customers do with the company, they provide virtually no information on what these customers do with competitors." He moves on to outline ten other inherent difficulties associated with the utilization of CLV when developing marketing strategy, including moving from a customer to a portfolio of customers, reconciling top-down versus bottom-up measurements, incomplete cost allocations when determining "contribution margin" of a customer, developing incentive schemes that encourage globally optimal behavior, understanding the limits of CLV, understanding the scope of application, appreciating the limits of theory-based models, understanding how to model rare events, recognizing the dangers of endogeneity (when the independent variable in a model is correlated with the error term), and finally, accounting for network effects.

The aforementioned limitations notwithstanding, even if CLV was determined to be a useful measure for approximating the lifetime spending of a casino guest, there is no evidence to suggest that Islam's actions caused any guest to be lost for life. As appropriate in the situation, Atlantis admitted it took action to mitigate the potential damages caused by Islam's actions. Specifically, it reached out to all customers whose information was altered (170 customers, in fact, so it is unclear exactly which customers were included), and provided them with complimentary offers of free play of up to \$400, meals with a casino host and three nights of free accommodations, at a cost of \$10,941.³⁰ No evidence has been made available to estimate the share of Atlantis customers that accepted these offers.

Based on the above, the estimated "lifetime" value of the 202 customers whose contact information was recorded by Islam, as calculated by Atlantis utilizing the CLV marketing metric, cannot be considered a reasonable estimate of damages incurred; or, otherwise stated, a realistic calculation of revenue that would have been realized but for Islam's actions.

²⁹ See, Gupta, Sunil, et al., "Modeling Customer Lifetime Value", *Journal of Service Research*, November 2006.

³⁰ Exhibit C, Plaintiff's Ninth Supplemental NRCP 16.1 Disclosure

EXPERT WITNESS CREDENTIALS — JEREMY A. AGUERO

PROFESSIONAL AND BUSINESS HISTORY

Principal Analyst

Applied Analysis, June 1997-Present
Las Vegas, Nevada

Market Analyst/Intern

Coopers & Lybrand L.L.P., January 1996–June 1997, Financial Advisory Services Group
Las Vegas, Nevada

EDUCATION

Juris Doctorate, 2004

William S. Boyd School of Law

Cum Laude, Dean's Graduation Award

- ◆ CALI Awards: (4)
- ◆ Lead a team of students who introduced and passed legislation in 2003, which clarified a conflict in a provision of the Nevada Revised Statutes as it relates to lottery payouts.
- ◆ Commerce Clause Limitations & Nevada's Tax Debate of 2003, A Review and Analysis (Recommended for submission to the Tannenwald Competition), 2003
- ◆ Keeping Pace with Technology: The Issue of State and Local Taxation of Internet Sales, 2003
- ◆ State and Local Taxation of Securitizations, 2003

Bachelor's Degree, Hotel Administration, 1997

University of Nevada, Las Vegas

Cum Laude, Wm. M. Weinberger Graduate Award

- ◆ Undertook a special course of study under the direction of Dr. Shannon Bybee focusing on economics, finance, impact analysis and market analysis
- ◆ Elected Student Senate Representative, 1995 & 1996
- ◆ Student Association, Executive Board, 1995 & 1996
- ◆ Organized and led a team of students that drafted and adopted organizational constitution and bylaws

SELECTED PROJECT EXPERIENCE

- Retained by Holland & Hart, LLP as an expert witness for the defendant in a case involving a transfer fee associated with real property located in a master planned community. AA was asked to analyze the economic purpose associated with the related anti-speculation covenant and whether it remained relevant under changing economic conditions.



- Retained by Pisanelli Bice as an expert witness for the defendant in a case involving the temporary suspension of construction and evolving economic conditions in a dispute between a development company and national home builder. AA was asked to review and comment on changing economic conditions.
- Retained by the State Bar of Nevada to develop and evaluate financial strategies related to the disposition and potential acquisition of real property. In connection with this analysis, AA was also asked to evaluate the southern Nevada economy and commercial real estate sector relative to project feasibility.
- Retained by Boies, Schiller & Flexner as an expert witness for the defendant in a case involving a loan agreement between Plainfield Specialty Holdings II and VV Ventures Operations. AA was asked to determine whether a material adverse effect had occurred in the context of whether funding of the loan should continue and to review aspects related to the viability of the project.
- Retained by the Regional Transportation Commission of Southern Nevada to review the reasonableness of the best and final offers submitted by Veolia Transportation and First Transit for fixed route services in southern Nevada. Analysis was used in the Regional Transportation Commission's determination in awarding the service contract valued at more than \$600 million. Notably, AA was originally contacted by both Veolia Transportation and First Transit to analyze the reasonableness of the offers on their behalf. Both parties agreed to allow us to review the contract for the Regional Transportation Commission as an independent and objective third party.
- Retained by the City of Las Vegas to review and analyze foreclosure trends throughout southern Nevada. The comprehensive analysis considers foreclosure volumes, pre-foreclosure activities and the disposition of foreclosed properties.
- Retained by Zuffa, Inc., the parent company of the Ultimate Fighting Championship (UFC), to undertake a series of pre-and post-event economic and fiscal impact studies. These studies have been completed not only for the UFC's Las Vegas-based events but also for events throughout the United States, in Canada, Mexico, Brazil, Australia, Germany, and other host jurisdictions around the world.
- Retained by Station Casinos to review and monitor economic activities in southern Nevada on a monthly basis. AA has also prepared a number of presentations and analyses for Station Casinos relative to the projection of key demand variables, geographic concentrations of foreclosure activity, various forms of measuring inflation, the impact of rising gasoline prices, and economic trends in other markets throughout the United States.
- Retained by Coyote Springs Renewable Ventures to explore labor supply-demand considerations under existing market dynamics (at the time, southern Nevada had a 15-percent unemployment rate) as well as to develop a cost-benefit analysis for development of a Revenued turbine manufacturing plant at the Coyote Springs site.
- AA was retained by Steer Davies Gleave to develop a range of projection scenarios for southern Nevada's tourism industry to assist the company in evaluating the market potential of a high-speed rail service between Las Vegas and southern California.

- Retained by the City of Henderson to review and analyze the economic and fiscal impacts of the legislation during the 2011 Regular Session of the Nevada State Legislature. The focus of AA's effort was specific to legislation with the potential to impact local governments.
- Retained by BrightSource Energy to review and analyze the economic and fiscal impacts associated with the development of a utility-scale solar energy generation facility located in both Nevada and California.
- Retained by Starwood Capital Group to research and analyze macro and micro economic conditions potentially impacting a select set of gaming properties in the southern Nevada market.
- Retained by Odyssey Real Estate Capital and Lone Star Investments to provide a general overview of Las Vegas market conditions, as well as how southern Nevada is positioned relative to a post-recessionary recovery and longer-term growth.
- Retained to identify and review the most favorable locations to site a number of Steak 'n Shake restaurants in the southern Nevada region.
- Retained by the Nevada Insurance Council to review and analyze the potential impacts of proposed legislation that would have disallowed consideration of credit scores in pricing insurance coverage. Our analysis reviewed the impact of similar initiatives in other areas of the United States and compiled impact data from state insurers covering more than 70 percent of the insured population.
- Retained by Boyd Gaming Corporation to review and analyze economic conditions in the southern Nevada market and to prepare a series of projections relative to population, employment, income and local gross gaming Revenue. Projections were presented to the company's top management and its board of directors.
- Retained by Big Traffic Mass Media to review, analyze, compare and contrast the reach of mobile billboard advertising as compared to other forms of outdoor advertising.
- Retained by Pisanelli Bice as an expert witness for the defendant in a case involving changes to Mandalay Bay that a tenant claimed adversely affected their restaurant and nightclub operations. AA was asked to review economic conditions, the classification of key property elements, and to overview the history of nightclub openings and closings within the southern Nevada tourism market.
- Worked jointly with the Nevada Secretary of State's office to analyze business filing data as a leading indicator of Nevada's economic activity. Our analysis ultimately led to the development of the *Quarterly Economic & Business Activity Report* released by Secretary Miller.
- Retained by Harrah's Entertainment Inc. (now Caesar's Entertainment, Inc.) to prepare a fiscal and economic impact statement for the development of an arena along the Las Vegas Strip. The analysis included a survey of consumer

sentiment relative to various alternative funding strategies as well as an estimate of incremental retail sales and use tax yields within the resort corridor.

- Retained by the Regional Transportation Commission of Southern Nevada to evaluate the potential economic and fiscal impact of indexing Clark County's fuel tax to the Consumer Price Index. The analysis included an analysis of the impacts on the RTC's operations as well as the impacts on various consumer groups.
- AA was retained by Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP as an expert witness for the plaintiffs in a case brought against Platinum Hotel. AA was asked to review various claims and representations made to investors by the developer.
- Retained by Southern California Edison and Lewis & Roca to estimate the economic and fiscal impacts associated with the development of approximately 35 miles of electricity transmission lines and related facilities in the southern portions of California and Nevada; the project is known as the Eldorado-Ivanpah Transmission Project.
- Retained by Kemp Jones as an expert witness for the defense in a case brought against Scott Financial Services regarding a non-performing investment in the now defunct Manhattan West project. AA was asked to review market conditions underlying the credit display.
- Retained by Pinnacle Homes to evaluate the potential costs and benefits of implementation of a sprinkler requirement for one and two family homes in Clark County, Nevada.
- Retained by the Las Vegas Convention and Visitors Authority to review and analyze the economic impacts associated with its various operations and southern Nevada's tourism industry generally. Reports have included the impact of LVCVA operations on the community, visitors' tax contribution, major tax payments by hotel casino operations, advertising and marketing program return on investment analyses, fiscal contribution to school and road construction programs, the relative dependence of the economy on tourism activities, trends in international visitation and other similar topics. AA also prepares a quarterly national economic briefing and tracks sector trends on behalf of the LVCVA.
- Retained by the Nevada Housing Division to evaluate the market potential for two proposed mixed-use, multi-family projects in the southern Nevada area. Other elements of the projects analyzed included limited retail, daycare facilities or other ancillary uses in support of the primary residential element.
- Retained by Herbst Gaming, Inc. (now Affinity Gaming, Inc.) to conduct primary market research on consumer activities for its Primm Valley Casinos. The analysis included a number of surveys of existing clients, lost clients and those traveling over Interstate 15.
- Retained by a company seeking to provide taxi services in Reno and Sparks Nevada to evaluate competitive concentrations relative to the requirements of Nevada Revised Statutes 706.8827; and where possible, to gauge the depth of the market and to identify potentially underserved segments. AA was also asked to review the operator's

financial pro formas and other budget documents to develop conclusions relative to the market growth necessary to make the operator profitable.

- Retained by Cox Communications to review and analyze market conditions in southern Nevada and to prepare a presentation to be delivered to the company's key staff and management on key trends with the potential to impact service demand.
- Retained by Chapman Law Firm as an advisor and potential expert witness in land condemnation and eminent domain actions in Clark County, Nevada.
- Retained by Presidential Suites to evaluate alternative strategies for the company's Las Vegas real property holdings in light of current realities and expected market conditions. Essentially a highest and best use analysis, AA reviewed the potential marketability and financial productivity of multiple alternative uses for two parcels.
- Retained by the Associated General Contractors to review, analyze and monitor economic conditions impacting the construction and development industries. AA produces a quarterly economic briefing for the AGC that is routinely distributed to the AGC's members, the media and state and local elected officials.
- Retained by the City of Las Vegas Office of Business Development, Redevelopment Division to review and analyze the economic and fiscal impact associated with the development of the Las Vegas Museum of Organized Crime and Law Enforcement.
- Retained by the Regional Transportation Commission of Southern Nevada to evaluate the impacts of traffic congestion into and out of Boulder City, resulting from changes in traffic patterns after the opening of the Mike O'Callaghan - Pat Tillman Memorial Bridge. The analysis included a survey of local businesses and included a calculation of the value of drive-in visitor traffic primarily originating from feeder markets in Phoenix, Arizona.
- AA was retained by Holland & Hart, LLP as an expert witness for the plaintiff in a case involving Wells Fargo Bank's financing of a commercial retail development located at the southwest corner of Blue Diamond Road and Buffalo Drive at the Mountain's Edge master-planned community in the southwest portion of the Las Vegas valley; the project has been known as "The Edge." AA was asked to review and analyze the reasonableness of the project's development plan, given present economic realities.
- Retained by the Las Vegas Valley Water District to review and analyze changes in economic conditions and to project connection charges sourced to new development activity.
- Retained by Coyote Springs Investment to review the economic and fiscal impacts associated with the development of a 21,142 acre master planned community, located in Clark and Lincoln County, Nevada. This analysis was updated several times and used for multiple reasons, including, without limitation, a hearing on water resource allocation before the Nevada State Engineer.

- Retained by the Nevada Resort Association to summarize the economic and fiscal impacts of Nevada's tourism industry. AA routinely updates the Association's website and its materials.
- Retained by the Las Vegas Chamber of Commerce to review, analyze and report on Nevada's education system, including a comparative analysis of student performance, the identification of statistically significant factors in predicting student academic success, operating and capital funding levels, and alternative legislative strategies. The analyses were used by the Chamber, as well as the Nevada State Legislature, in developing education reform strategies during the 2011 Legislative Session.
- Retained by King Midas World Entertainment to review and analyze the potential market for a US play-for-fun and Italian-based casino gaming website based on the theme and characters of the book *The Seven Sins: The Tyrant Ascending*.
- Retained by the Clark County School District to review economic, fiscal and policy issues' potential impact on the state's schools.
- Retained by the Clark County Flood Control District to review, analyze and quantify the potential economic impacts associated with the District's long-term construction master plan.
- Retained by the Capitol Company to review and analyze the potential impact of legislation and initiatives in the state of Nevada.
- Prepared a series of presentations, reports and analyses for a Nevada-based community bank on national, regional, state and local economic conditions. Presentations were prepared and delivered monthly to bank staff with ad hoc analyses on specific economic and real estate related issues.
- Retained by the Las Vegas Chamber of Commerce to review financial disclosures required of local governments by Nevada Revised Statute 288 after creating or modifying collectively bargained labor agreements.
- Retained by General Moly, Inc. and Gallatin Public Affairs to obtain primary research data on residents' perceptions of General Moly and its proposed Mt. Hope Mine. The Mt. Hope Mine is located in Eureka County, Nevada.
- Retained jointly with Hobbs, Ong and Association by the Nevada System of Higher Education to review cost-savings initiatives sourced to internal service departments.
- Retained by the Piceme Group to review, analyze and monitor supply and demand trends for multi-family residential products in both southern Nevada and the Phoenix metropolitan area.
- Worked cooperatively with Opportunity Village, a local non-profit organization that provides care and work opportunities for those with mental disabilities, to develop an economic and fiscal impact statement for the organization's operations. The analysis, which is used routinely by the organization, demonstrates that the

organization not only provides hundreds of jobs for people who would not otherwise have them, but also saves the state more than \$10 million annually in reduced public service costs.

- Retained by the Building Jobs Coalition to identify and analyze potential economic development strategies. AA ultimately produced a report entitled *Creating 100,000 Nevada Jobs* as well as a website that summarized the key findings of our review and analysis. The report was used by the Coalition in revising the Nevada's economic development policies.
- Retained as part of a consultant team asked to review and provide recommendations to restructure Washoe County internal service department functions.
- Retained by the City of Henderson to prepare an economic and fiscal impact analysis pursuant to Nevada's Community Redevelopment Law (NRS 279.573 et seq). The update was required due to changes in the local economy that necessitated a reevaluation all of its land planning efforts, including those such as the Cornerstone Redevelopment Area.
- Retained by the Silverton Hotel and Casino to review and analyze the local market relative to the potential acquisition of the neighborhood casino hotel in southern Nevada.
- Retained by the Retail Association of Nevada to review, analyze and monitor retail trends throughout the state of Nevada. This analysis has produced a number of reports on key consumer spending and retail business trends. AA also prepared a number of comparative analyses on economic trends for the Association as well as a report on the potential impacts of legislation seeking to change Nevada's affiliate nexus laws relative to required collection of sales tax by some internet based retailers.
- Retained by Rational Services Limited, a subsidiary of PokerStars, to review and analyze the economic and fiscal impacts of legalizing Internet Poker in the State of Nevada. Our analysis was delivered to the Nevada State Legislature during its 2011 Session.
- Retained by American Medical Response and MedicWest ambulance to review and analyze the economic impacts associated with emergency medical services in the southern Nevada region.
- Retained by Gordon Silver and the Tavern Owners Association to review and analyze the economic and fiscal impacts of the Nevada Clean Indoor Air Act.
- Retained by the Nevada Development Authority to review, analyze and monitor the economic and fiscal impacts of Nevada's economic development policies and the initiatives undertaken by the Authority. The results of our analyses include a quarterly economic development tracking brief as well as in-depth presentations prepared for the Nevada State Legislature in both 2009 and 2011.
- Retained by Wynn Las Vegas to review and analyze the economic and fiscal impact of various legislative initiatives.

- Managed a team of analysts in support of Clark County's Community Growth Task Force. The Task Force met for one-year and was charged with the review of growth-related issues in Southern Nevada and to develop a series of recommendations on how growth might be most efficiently managed into the foreseeable future. AA was tasked with a review of underlying economic issues as well as a series of benefit-cost analyses for high-priority strategies. In addition, a Community Indicators Program was also created by AA in support of the Task Force efforts (available at www.monitoringprogram.com).
- Expert witness for the defense in a dispute involving the Conrad-Majestic hotel/condominium project in Las Vegas, Nevada. Specifically, AA was retained to review and analyze historical and current market conditions relating to the absorption and pricing of luxury condominiums in the Las Vegas market.
- Developed and analyzed alternative property tax modifications on behalf of the Nevada State Legislature and Office of the Nevada Governor. Project included the compilation of parcel-level data (i.e., just over one million parcels) for Nevada's 17 counties and the development of an econometric model that allowed for real-time "what-if" scenario analysis. AA's model was used to compare and contrast the fiscal and economic impact of several hundred alternative proposals.
- Selected to chair the Governor's Task Force on Tax Policy Technical Working Group. In doing so, served as the principal analyst for the Task Force and co-authored its 1,200-page report. The Task Force reviewed Nevada's economy and its fiscal system as well as developed a series of recommendations aimed at addressing the state's long-run revenue-expenditure imbalance. The Task Force's report has been called the most comprehensive study of Nevada's fiscal system in the State's history.
- Prepared a review of the economic, fiscal, and social impacts that the hospitality industry has on the State of Nevada. This review included consideration of direct and indirect employment, wage, and output impacts. The project also required an in-depth analysis of Nevada's municipal revenue and expense structure. State, county, and local taxes were analyzed, and the hospitality industry's contribution estimated. Social impact factors reviewed included population growth, employment and unemployment, public service costs, social assistance programs, crime rate, and underage and problem gambling. In addition, the evolution of the gaming and hospitality industry, Nevada's regulatory structure, and current market indicators were also reviewed.
- Expert witness for the defense in a dispute involving the sale of the property upon which the Krystle Towers project was to be built. Specifically, AA was retained to review and analyze historical and current market conditions relating to the absorption and pricing of luxury condominium units in the Las Vegas market.
- Retained by the Las Vegas Chamber of Commerce to review, analyze and report on fiscal issues affecting the state of Nevada. Analyses included a detailed review of public employee wages and salaries, Nevada's Public Employee Retirement System, post-retirement health care, and various budgeting policies. The analyses were used by the Chamber as well as the Nevada State Legislature in making significant reforms to public employee benefits in 2009 and 2011.

- Retained by MedicWest Ambulance to compare and contrast public sector and private sector ambulance service costs. The analysis was ultimately used by MedicWest to put down an initiative by the North Las Vegas Fire Department that would have diverted a number of emergency medical transports from MedicWest to the fire department as a revenue generating measure.
- Retained by the Large-scale Solar Association to provide a comparative analysis of potential tax burdens for a prototypical 100-megawatt, utility scale solar facility in Nevada, Arizona and California. Analysis presented to the 2009 Session of the Nevada State Legislature and used in developing the state's abatement strategy.
- Retained as part of a team of business and community leaders opposed to the passage of the Tax and Spending Control for Nevada initiative ("TASC"). Analysis included a review of the potential implications of the initiative as well as a comparative analysis of alternative versions that were circulated. This analysis was introduced in the state court hearings on the matter and was utilized by the Nevada Supreme Court in finding that TASC should be removed from the November 2006 ballot.
- Retained by Bailey Kennedy and Aspen Financial as an expert witness for the defendant in a case involving the performance of various real estate investments within the southern Nevada market. AA was asked to review and comment on changing market conditions.
- Retained by Ballard Spahr, LLP as an expert witness for the defendant in a case involving a loan agreement between Lehman Brothers and Trimont Real Estate Advisor. AA was asked to review and comment on tourism sector conditions and the viability of a project that proposed to acquire and renovate the Atrium Suites Las Vegas Hotel.
- Retained by the City of Las Vegas to evaluate the economic and fiscal impacts of its redevelopment area activities. Analysis was used by the City and the Nevada State Legislature in revising Nevada's redevelopment laws as they relate to the distribution of tax revenue during the 2009 Session of the Nevada Legislature.
- Expert witness for St. Mary's Hospital in its dispute against Renown Medical relating to unfair business practices in the northern Nevada hospital market. Analysis considered historical contract requirements, definition of the relevant competitive market and mathematical analyses of market concentration.
- Retained by the Association General Contractors to review and analyze the economic and fiscal impacts of construction programs in the state of Nevada. The analysis has been used by the Association and Legislature to help preserve construction and even accelerate some capital construction programs for roads (see, Senate Bill 5, 26th Special Session of the Nevada State Legislature).
- Retained as an expert witness by Coyote Springs Investment, LLC in its petition to move water between major basins in Nevada. Analysis required a review and comparative analysis of the economic benefits of water use.
- Obtained, analyzed and reported market-based data in support of filings required in the acquisition of the Mandalay Bay Reports by MGM MIRAGE. This included a review and analysis of supply and demand characteristics, an

extensive inventory of existing and future development locally, regionally and nationally, and a comparative analysis of performance-based statistics.

- Retained by the City of North Las Vegas to evaluate gaming market concentration issues. Specifically, the analysis considered current and projected development of restricted and non-restricted gaming licensees relative to demand growth in the region.
- Acted as the lead economic and fiscal analyst in support of the Las Vegas Convention and Visitors Authority's \$737-million facility enhancement program. This included a comprehensive market analysis, internal and external return on investment calculations and the development of a performance measurement model. In January 2006, the Convention Center Board unanimously approved the enhancement program.
- Retained by Credit Suisse First Boston to prepare a review and analysis of market conditions in Clark County, Nevada. Analysis included a review of supply and demand conditions in the single family and multi-family residential markets as well as the office, industrial, retail, and vacant land markets. Also included economic modeling of anticipated future performance and identification of areas of opportunity.
- Managed preparation of a regional demographic snapshot on behalf of the Clark County Department of Child and Family Services. The analysis included a detailed review and analysis of economic factors impacting demand for government programs as well as a review and analysis of the department's service array.
- Retained by Snell & Wilmer to analyze competitive market issues relating to taxi cabs in the Las Vegas market. Specifically, an equilibrium model was constructed, projecting supply and demand based on a projection of underlying land use development. The objective of the analysis was to determine if the expansion of one company would adversely impact either existing operators or the level of service in that company's primary trade area.
- Managed the review and analysis of several market feasibility analyses for developments ranging from high-rise condominiums to retail centers. Analysis included a review and analysis of supply and demand trends and well as competitive profiling and site-related analyses.
- Prepared a review and analysis of housing affordability issues on behalf of the Southern Nevada Homebuilders Association. Analysis included a review of housing affordability issues as well as price stability and market sustainability. Report was ultimately delivered to the Nevada State Legislature's interim committee on housing affordability.
- Retained by Clark County, Nevada to provide expert testimony relating to economic conditions and cost of living escalation factors in the County's arbitration with the Police Protective Association.
- Prepared a review and analysis of residential and commercial development indicators for a private equity/investment firm seeking to acquire a construction materials company in southern Nevada. This analysis included a review of

historical trends as well as a 10-year projection of development activity. It also included a review and analysis of major project activity.

- Retained by the California Ambulance Association to review and analyze market conditions, economic and fiscal, impacting the state's emergency medical transport service providers. This analysis included a survey of selected providers and a report detailing challenges facing the industry.
- Prepared an economic, fiscal and community impact statement on behalf of the Nevada Cancer Institute. The analysis considered the economic, fiscal and social benefits to the community of providing comprehensive cancer care in Nevada. It also considered the impacts of medical service provider co-location and industry clustering.
- Prepared a portion of the economic impact statement for Southern Nevada Regional Transportation Commission, relative to the local government portion of the Las Vegas Monorail Project. This study included a detailed review of existing and future land use conditions for ½ and ¼-mile rings around each proposed monorail station. Existing and future land uses were then translated into jobs, wages and business output. The before and after conditions were compared to identify the project's economic impact.
- Selected as part of a consultant team asked to analyze the potential fiscal, economic and social impacts of a growth interruption in Southern Nevada. This analysis required a documentation of the state and regional economy and projections at various levels of potential impact. It also required the coordination of regional and national panels of economic experts as well as a local working group of government administrators. The results of our analysis were delivered to various public bodies including Clark County's Regional Planning Commission and the State Engineer.
- Prepared a comprehensive market analyses for a number of development/ redevelopment alternatives for a resident-oriented gaming operator in Nevada. Project considered the demographics of the primary trade area, likely capture rates, site characteristics, and a potential service array.
- Selected as part of a consultant team asked to estimate the economic and fiscal impacts of a high-tech manufacturing firm's expansion into one of seven U.S. states. This analysis required an assessment of a \$1 billion development schedule over a 13-year build-out period. The analysis included a review of how states would be impacted, fiscally and economically, in terms of employment, wages, and output and tax collections. State and local taxes and proposed incentive packages were also reviewed as were labor markets, infrastructure availability and delivery cost constraints.
- Managed a team of analysts asked to review the current and potential impacts of construction defect litigation. This analysis considered how construction defect laws affect home prices, housing supply, competition and several other market variables. It also considered how more limited supplies of affordable housing might adversely affect Southern Nevada's labor market, specifically as it relates to services industries.
- Retained by the Bureau of Land Management to review and analyze the impacts of the release of 380 acres of property for development in Carson City and Douglas County, Nevada. This analysis considered economic, fiscal and

social impacts on an interconnected regional economic unit. It also considered a number of alternative uses at the site, from hotel-gaming to residential.

- Managed a team of analysts asked to develop an information tracking system for the Clark County Air Quality Division. This effort required the migration of over 70 legacy databases into one integrated information system. In performing this analysis, our team identified nearly \$1 million in billings that had been missed or wrongly characterized by the legacy system.
- Selected as a component of a consultant team to review and analyze the operations of a riverboat casino hotel in Rock Island, Illinois. This project included a report that was ultimately presented to the state's legislature discussing the economic impact factors created by dockside gaming versus mandatory cruising for competitive facilities within the Quad Cities.
- Provided litigation support services in a matter involving fees charged by a contractor to dispose of medical waste. This analysis required a reconstruction and review of accounting records as well as comparative analysis of services provided in Western States.
- Selected as part of a consultant team asked to estimate the fiscal and economic impacts of a 1,900-acre master planned community development in North Las Vegas, Nevada. This analysis required the development of a 20-year development absorption build-out schedule as well as estimates of public revenues and public service costs.
- Retained by the Clark County Department of Aviation to review and analyze the value of land trades in the 5,300-acre Clark County Cooperative Management Area. This study required a comprehensive review of long-run value created by controlled development within areas impacted by McCarran International Airport's noise environs.
- Retained by the Clark County Department of Finance to project revenue streams at the county and township level over a ten-year projection period. This analysis considered revenues generated directly by the county as well as distributions from state and federal sources.
- Managed a comprehensive economic, demographic and market analysis of Central City and Black Hawk, Colorado for a national gaming operator. This analysis included a review of historical supply and demand conditions; an examination of current and projected market performance; an analysis of existing, planned, proposed, and under-construction competitive gaming facilities; a survey of infrastructure developments; and an analysis of historical, existing and potential regulatory conditions.
- Selected as part of the consulting team asked to prepare a 3,000-acre redevelopment plan for the City of North Las Vegas. This project required estimates of financial feasibility, economic vitality, development trends, and revenues likely to be generated via tax increment financing alternatives.
- Managed comprehensive economic, demographic, and site analysis for a proposed Native American gaming facility in Southern California under the covenants and restrictions of the Pala Band of Mission Indians Compact. This

project included the generation of performance estimates for twelve competitive facilities, a review and analysis of existing demand and urban economic factors, an analysis of transportation and location restrictions, and an analysis of the potential contribution of an innovative video lottery terminal required under compacted operations.

- Provided litigation support in a class action lawsuit where members of a residential community claimed the value of their property was decreased when a public golf course was made private. This analysis required a longitudinal study of home sales and pricing trends over a five-year period.
- Selected as part of the team asked to develop a parcel-level revenue maximization plan for a local master plan community developer. Specifically, this analysis reviewed general pricing trends for the Valley's major master-planned communities versus those of the subject developer. The project also considered the relative value of amenities and infrastructure improvements offered by a number of developers.
- Retained by the Clark County Regional Flood Control District in 1999 and again in 2002 to develop a cost-benefit analysis for the District's flood master plan. This project required consideration of inundation reduction, economic output and productivity, emergency management and several qualitative elements. Our 1999 analysis was called a model of government accountability by the Clark County Board of Commissioners.
- Prepared and managed a market analysis for a convention and banquet facility in the Las Vegas Valley for a local developer. The project included a review of existing, planned, proposed, and under-construction meeting facilities, as well as five-year market projections.
- Selected as part of the team asked to review the potential costs and benefits of creating a new local air quality control agency on behalf of Southern Nevada Regional Planning Coalition. This analysis included a review of existing operations, staffing, space requirements, funding alternatives, and potential single-agency costs (i.e., the creation of a fund balance).
- Developed the absorption timeline for the Clark County Southwest Study Area in support of a public facilities needs assessment in 1999 and again in 2003. This analysis included the projection of land uses, property values, population and employment densities, occupancy rates, and school enrollment.
- Worked as a member of the team selected to prepare detailed site analysis of Las Vegas' suburban casino market as part of strategic plan for a Nevada gaming corporation. The work involved the segmentation of the market into competitive submarkets in order to identify those areas with greatest growth potential.
- Prepared an absorption study for a 7,500-acre tract of land located in North Las Vegas, Nevada as part of a team review the land on behalf of the United State Bureau of Land Management. The study included annual absorption estimates, by land use, through the project's development as well as a review of potential changes to the development's land use mix.

- Designed, developed and employed a set of monitoring indices specific to the Las Vegas gaming market, including the Applied Analysis Gaming Index. The publications have a national distribution base, and our gaming index is a recurring feature in the State's largest daily paper.
- Selected as a member of the consultant team hired to perform a fiscal impact analysis for the City of Las Vegas. This analysis included the creation of an absorption model to identify probable build-out patterns by land use type. These land uses were then translated into own-source revenues and public service costs (using a service standard method) for the City through build out. The revenues and costs were analyzed under alternative economic conditions (i.e., population growth rates) to determine whether existing revenue sources were sufficient to fund the public services demanded.
- Generated a fiscal impact model that was used to estimate the impact of a waste management contract extension with a governmental service provider. This model balanced the net present value of the cost to comply with the projected value of the expected contract extension, ultimately determining the "break-even" point.
- Selected as part of the consulting team that prepared a market study, site analysis, and a fiscal forecast for a mixed-use rural entertainment facility in Nevada on behalf of an international development company. The facility included a hotel, Class III casino, RV park, convenience store and gas station.
- Worked as a part of a team charged with evaluating the potential impacts of a business tax initiative proposed to be levied in the State of Nevada. A significant portion of this study included a detailed review of economic diversification throughout the Western United States and in Nevada. Diversity's effects on the State's revenue-generating powers were also considered.
- In 1999 and 2000, selected as part of the team engaged to estimate the absorption timeline for a series of "villages" within a major master-planned community. This included a detailed review of economic and demographic conditions and an econometric projection of both supply and demand. The project was performed as part of the special improvement district process.
- Designed a database application for Palm Pilot handheld computers, which allows users to identify, search, sort and update an extensive series of data on Las Vegas office, industrial and retail markets.
- From 1996 to the present, performed and/or managed an ongoing quarterly report reviewing existing and projected trends in the office, industrial and retail market for Southern Nevada's commercial real estate community. In 2005, vacant land, apartments and luxury condominium reports were added to AA's publication list. These analyses include a review of urban economic conditions, competitive facility profiles, and a three-year performance projection of both supply and demand for the company's existing and proposed projects. During 2004 and 2005, AA was the sole provider of economic information for Propertyline, Nevada's largest on-line commercial real estate listing service.
- Worked as part of the team charged with generating socioeconomic estimates and projections for the Clark County (Las Vegas) Regional Transportation Commission's Planning Variable Update, 1998 and 2000. Specifically, our role

involved establishing baseline estimates and generating trend information on population, employment, housing units, and household income for 1,140 traffic analysis zones through the year 2020. Our role further involved the coordination of geographic information systems, the integration of the planning data from several independent jurisdictions and public agencies, relational database management, and econometric modeling.

- Performed numerous highest and best use studies for developments throughout the Las Vegas Valley. These studies have been for properties as diversified as hotel-gaming establishments to condominiums to retail strip centers. Generally speaking, these studies include a comprehensive review of locational factors, area economics and demographics, existing and potential competitive supply, existing and projected demand, project development costs and a maximal use analysis.
- Prepared an economic model designed to run "what if" scenarios for a solid waste disposal firm. The model was used to assist the company in its negotiations with a local government regarding the potential value of a proposed contract extension and the potential cost of complying with the United States Environmental Protection Agency administrative order dealing with waste storage at the Sunrise Mountain Landfill Facility.
- Worked in conjunction with a prominent financial advisory services firm to prepare a review of cash handling procedures for White Pine County, Nevada. The review included a diagnostic of existing policies, a revised set of cash handling procedures, and a series of internal audit checkpoints.
- Reviewed and analyzed the Clark County (Las Vegas) School District's school-siting methodology on behalf of a major Nevada development corporation.
- Managed a review of operations at the departmental level for a gaming corporation in Biloxi, Mississippi. This project focused on cost control procedures implemented with the goal of increased revenues at the EBITDA line.
- Conducted an industrial site selection analysis for a manufacturing and distribution firm. The project included the analysis of available parcels relative to zoning, visual perception, location, accessibility to rail service, local roadways and freeways, topography, easements, flood zones and other site-related issues.

SELECTED PUBLICATIONS & PRESENTATIONS

Presenter, "The 2012 Las Vegas Perspective," *Las Vegas Perspective Annual Meeting*, March 2012

Presenter, "Reset, Rethink, Rebuild," *Preview Las Vegas*, February 2012

Presenter, "Reinventing the Las Vegas Economy," *Las Vegas Perspective Annual Meeting*, April 2011

Presenter, "The Rise and Fall of the Next Great Economy," *Preview Las Vegas*, February 2011

Presenter, "The Impacts of the Financial Crisis on the State of Nevada," *Federal Financial Crisis Inquiry Commission*, September 2010

Presenter, "Dealing with the New Normal", *Western Legislators Conference*, September 2010

Presenter, "Signs of Life", *Preview Las Vegas*, February 2010

Presenter, "The Glass is Half Empty – The Glass is Half Full", *Las Vegas Perspective Annual Meeting*, April 2009

Presenter, "Top 10 Indicators to Watch", *Preview Las Vegas*, February 2009

Presenter, "Charting the Course", *Las Vegas Perspective Annual Meeting*, April 2008

Presenter, "Top 10 Indicators to Watch" *Preview Las Vegas*, February 2008

Presenter, "The Implications of Current Market Trends", *Las Vegas Perspective Annual Meeting*, April 2007

Presenter, "Economic Trends Impact Southern Nevada Multi-Housing Market", *SNMA Annual Trends Conference*, February 2007

Presenter, "10 Trends to Watch", *Preview Las Vegas*, January 2007

Co-author, Intelligence-Led Governance: Establishing Meaningful Community Indicators. Presented at an international conference on community monitoring in Leuven, Belgium, June 2006.

Presenter, "Luxury Condominium Market - The State of the Industry" Las Vegas High rise Conference, February 2006.

Co-author and principal analyst, Analysis of Tax Policy in Nevada, Governor's Task Force on Tax Policy, November 2002

Co-author, Clark County Organization & Resource Review Committee Compilation of Comments & Recommendations, November 2001

Co-author, "The Impact of Economic Diversification on Nevada, Nevada Taxpayer Association," TaxFacts, 2000.

Co-author, The Hospitality Industry's Impact on the State of Nevada. University of Nevada, Las Vegas, International Gaming Institute, November 1998.

Presenter, 2003 Lionel Sawyer and Collins Legislative Roundup, "The Fiscal Outcome of the 71st Legislative Session."

Presenter, 2000 Nevada Development Authority Meeting, "The Impact of Growth and Question of Land Supply."

Presenter, 1999 National Gaming Regulators Conference, "Gaming Impact Analysis: Contents and Procedures."

Presenter, 1998 Business Marketing Association Conference, "Development Trends: 2000 – 2020."

Presenter, 1997 National Casino Controllers Conference, "Using Statistics To Be A Successful Manager."

SELECTED COMMUNITY INVOLVEMENT & AWARDS

Alumni of the Year, William Boyd School of Law, 2011

Board of Directors, Nevada State Bank, 2011

Hispanic of the Year, Southern Nevada Latin Chamber of Commerce, 2010

Member, President Elect and President, Nevada Child Seekers, 2009-Present

Adjunct Professor, HMD 401, Hotel Law. William F. Harrah College of Hotel Administration, 2006 to Present

Board Member, R&R Charitable Foundation, 2009-Present

Member of the Board of Directors and Executive Secretary (2010-2011), Opportunity Village, 2009 to Present

Gubernatorial Appointee, Nevada Housing Stabilization Task Force, 2008 to Present

Chairman, Technical Working Group, Governor's Task Force on Tax Policy, December 2001 – November 2002

Member, Clark County Organization & Resource Review Committee, June 2002

Nevada Taxpayers Association, Good Government Special Recognition Award, February 2003

Member, Board of Directors, Hispanics in Politics, 1999

Member and President (2010), Board of Directors, Nevada Child Seekers, 2009 to Present

Board of Advisors, Nevada Council on Problem Gambling, 1999 to Present

Insider Club Inductee, *The Ralston Report*, May 2003

Top 40 Under 40 in Business, *InBusiness Magazine*, 2001

Who's Who in Nevada, 2002 to Present

Coach, Juniors Basketball, 2003 to Present

Coach, Paseo Verde Little League, Board of Advisors, 2004 to Present

WITNESS TESTIMONY OR DEPOSITIONS IN THE LAST FIVE YEARS

Impacts of the Financial Crisis on the State of Nevada

(Testified before the Financial Crisis Inquiry Commission, which was created as part of the Fraud Enforcement and Recovery Act (Public Law 111-21) passed by the U.S. Congress and signed by the President in May 2009)

Southern Nevada Employment and Workforce Trends

(Testified before the U.S. Subcommittee on Education and the Workforce)

In re Club Vista Financial Services, LLC, et al. vs. Scott Financial Corporation, et al.

Case No. A579963

District Court, Clark County, Nevada

(Deposition)

Service Employees Union International (SEIU) Labor Relations Matter

(Testified at hearing before arbitrator as an expert witness on economic and employment issues in a labor dispute between the Las Vegas Convention and Visitors Authority and its labor union)

Water Resource Matter, Nevada Groundwater Basins 180, 181, 182, 194

State of Nevada Water Engineer

(Testified at Hearing before the State of Nevada Water Engineer as an expert witness for the Southern Nevada Water Authority)

In re Las Vegas Development Associates v. KB Home Nevada, Inc.

Case No. A566442

District Court, Clark County, Nevada

(Deposition)

Testified between 2008 and 2012 before the Nevada State Legislature, county commissions and local government boards on multiple occasions

RIGHT TO AMEND OR SUPPLEMENT ANALYSIS

The analysis and conclusions contained in this report are subject to further revisions, amendments and adjustments as additional information may become available. Additionally, I may generate updated or supplemental graphs, charts, exhibits and/or analyses to assist in explaining conclusions at trial.

STATEMENT OF COMPENSATION FOR THE STUDY AND TESTIMONY

Applied Analysis will be compensated on an hourly rate basis based on the actual time required to complete this study and any testimony, if deemed necessary. Compensation for Jeremy Aguero is based on an hourly rate of \$350. Supporting researchers and analysts under the direction of Jeremy Aguero will be compensated at an average hourly rate of approximately \$150.

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12 Attorneys for Grand Sierra Resort

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,

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

18 Plaintiff,

19 vs.

20 SUMONA ISLAM, an individual; NAV-RENO
21 GS, LLC a Nevada limited liability Company
22 d/b/a GRAND SIERRA RESORT; ABC
23 CORPORATIONS; XYZ PARTNERSHIPS; and
24 JOHN DOES I through X, inclusive,

25 Defendants.

26 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

27 Defendant, GRAND SIERRA RESORT ("GSR" or "Defendant"), by and through its
28 counsel of record, Cohen-Johnson, LLC, hereby files its Supplemental Opposition to Motion for
Partial Summary Judgment in the above-entitled matter. This Supplemental Opposition is made
and based upon the following Memorandum of Points and Authorities and the pleadings and
papers on file herein.

29 **MEMORANDUM OF POINTS AND AUTHORITIES**

30 **I. INTRODUCTION**

31 Defendant Golden Sierra Resort's (GSR) moves this honorable court to grant it Summary
32 Judgment as to liability on the Plaintiff's Claims for Tortious Interference with Contractual
33 Relations and Prospective Economic Advantage against GSR; and Violations of Uniform Trade

1 Secret Act, NRS 600A.010 et. seq. as to GSR.

2 **II. BRIEF STATEMENT OF UNCONTESTED FACTS**

3 In January 2012 Co-Defendant Sumona Islam left her employment as an executive Casino
4 Host with the Atlantis Casino Resort Spa and took a position as an Executive Casino Host with
5 GSR. Prior to her employment she informed GSR that she had signed a non-competition
6 agreement and provided a copy of it to GSR. (See deposition of Sumona Isla P. 122 ll 7 - 13.
7 Attached hereto as Exhibit 1) Although she had signed other agreements with the Atlantis she
8 did not provide these documents to GSR including those referencing trade secrets, proprietary
9 information or confidentiality. (See Exhibit 1 p. 122 ll 20 through P. 123 ll 12). Nor did Ms.
10 Islam ever have any discussions concerning proprietary information, client lists with anyone at
11 GSR (See Exhibit 1 P. 145 ll 1- through P. 146 ll 5). Nor did anyone from GSR ask Ms. Islam to
12 bring a lists of the guests she had a relationship with at the Atlantis. (See Exhibit 1 P. 152 ll 2 -25,
13 P. 157 ll 18-25; Exhibit 2 deposition of Shelley Hadley P. 19 ll 19 through P. 20 ll 1, P. 28 ll 25
14 through P. 29 ll 11 P. 35 ll 21 through P. 36 ll 10, P. 50 ll 5 through p 52 ll 2).

15 Furthermore Debra Robinson, Esq. general counsel for Atlantis testified that it is not the
16 casino's problem or responsibility to verify that the names provided by an executive host were not
17 governed by a confidentiality agreement. It was her testimony that the responsibility for
18 complying with the agreement is solely that of the employee. (see deposition of Debra Robinson,
19 Esq. P. 94 ll 4-25 attached hereto as Exhibit 3). She also testified that she did not know what
20 contractual relationship existed between the Atlantis and the players Atlantis alleges were
21 misappropriated by Sumona (See Exhibit 3 p.62 ll 2 through P.63 ll 3). It must also be noted
22 that although an extensive listing of player names was included as part of the Plaintiff' non-
23 retained, in-house "experts" report, not a single one of these players has been identified as a
24 witness who will testify at trial. This means that Plaintiff's evidence in these matters is based
25 solely on speculation and hearsay.

26 As to the changes made to the Atlantis data base, Ms. Islam testified that she did not
27 inform anyone at GSR about what she had done until she was served with a TRO. (See Exhibit 1
28 P. 190 ll 17 through P. 191 ll 16 also see Exhibit 2 p 60 ll 23 through p. 61 ll 9) Plaintiff has

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1 not identified any witness or documentary evidence which factually disputes the foregoing.

2 **III. LAW AND ARGUMENT**

3 Summary Judgment should be granted in favor of Grand Sierra Resort and against Golden
4 Road on its claims of Tortious Interference with Contractual Relations and Prospective Economic
5 Advantage against GSR; and Violations of Uniform Trade Secret Act, NRS 600A.010 et. seq. as
6 to GSR.

7 **A. STANDARD FOR MOTION FOR SUMMARY JUDGMENT**

8 Summary Judgment is authorized under NRCP 56 which provides:

9 **RULE 56. SUMMARY JUDGMENT**

10 * * *

11 (c) Motion and Proceedings Thereon. The motion shall be served at least
12 10 days before the time fixed for the hearing. Motions for summary judgment and
13 responses thereto shall include a concise statement setting forth each fact material
14 to the disposition of the motion which the party claims is or is not genuinely in
15 issue, citing the particular portions of any pleading, affidavit, deposition,
16 interrogatory, answer, admission, or other evidence upon which the party relies.
17 The judgment sought shall be rendered forthwith if the pleadings, depositions,
18 answers to interrogatories, and admissions on file, together with the affidavits, if
19 any, show that there is no genuine issue as to any material fact and that the moving
20 party is entitled to a judgment as a matter of law. A summary judgment,
21 interlocutory in character, may be rendered on the issue of liability alone although
22 there is a genuine issue as to the amount of damages. An order granting summary
23 judgment shall set forth the undisputed material facts and legal determinations on
24 which the court granted summary judgment.

25 In the case of *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026. (NV 2005), the
26 Nevada Supreme Court stated the standard that should be applied in ruling on motions for
27 summary judgment under NRCP 56. The Court specifically rejected the "slightest doubt"
28 standard. The Court pointed out that its opinions had suggested that that standard was not being
followed:

A number of this court's summary judgment cases employ language that
seemingly rejects the slightest doubt standard. This court has often stated that the
nonmoving party may not defeat a motion for summary judgment by relying 'on
the gossamer threads of whimsy, speculation and conjecture.' [11] As this court
has made abundantly clear, "[w]hen a motion for summary judgment is made and
supported as required by NRCP 56, the non-moving party may not rest upon
general allegations and conclusions, but must, by affidavit or otherwise, set forth
specific facts demonstrating the existence of a genuine factual issue." [12] *Id* p.
1030

1 Although prior opinions had not previously rejected with specificity the earlier “slightest
2 doubt” standard. In *Wood*, the court did just that:

3 We take this opportunity to put to rest any questions regarding the
4 continued viability of the “slightest doubt” standard. We now adopt the standard
5 employed in *Liberty Lobby*,^[14] *Celotex*,^[15] and *Matsushita*.^[16] Summary
6 judgment is appropriate under NRCP 56 when the pleadings, depositions, answers
7 to interrogatories, admissions, and affidavits, if any, that are properly before the
8 court demonstrate that no genuine issue of material fact exists, and the moving
9 party is entitled to judgment as a matter of law.^[17] The substantive law controls
10 which factual disputes are material and will preclude summary judgment; other
11 factual disputes are irrelevant.^[18] A factual dispute is genuine when the evidence
12 is such that a rational trier of fact could return a verdict for the nonmoving
13 party.^[19]

14 While the pleadings and other proof must be construed in a light most
15 favorable to the nonmoving party, that party bears the burden to “do more than
16 simply show that there is some metaphysical doubt” as to the operative facts in
17 order to avoid summary judgment being entered in the moving party’s favor.^[20]
18 The nonmoving party “must, by affidavit or otherwise, set forth specific facts
19 demonstrating the existence of a genuine issue for trial or have summary judgment
20 entered against him.”^[21] The nonmoving party ‘is not entitled to build a case on
21 the gossamer threads of whimsy, speculation, and conjecture.’^[22]
22 *Id* p. 1031

23 This is the standard that must be applied in this case as to the Plaintiff’s various claims.

24 **B PLAINTIFF CANNOT ESTABLISH PROOF OF ITS CLAIMS**

25 **1. Tortious Interference With Contractual Relations**

26 To prevail on this claim the Plaintiff must prove:

- 27 (1) a prospective contractual relationship between the plaintiff and a third party;
- 28 (2) the defendant's knowledge of this prospective relationship;
- (3) the intent to harm the plaintiff by preventing the relationship;
- (4) the absence of privilege or justification by the defendant; and,
- (5) actual harm to the plaintiff as a result of the defendant's conduct. *Las Vegas-Tonopah-*

Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada, 106 Nev 283, 792 P. 2d 386 (1990)

29 However to prevail on summary judgment “the Defendant need only negate one element of
30 Plaintiff’s case” *Harrington v. Syfy Enterprises* 113 Nev246, 931 P 2d 1378, 1308, (Nev 1997)
31 as to this claim each element of the claim may be negated:

- 32 (1) *a prospective contractual relationship between the plaintiff and a third party;*

33 Atlantis’s own general counsel is unable to articulate any general basis establish an ongoing

1 contractual relationship with any of the names on its purported customer list. In fact Mr.
2 Robinson testified that any such relationships must be determined on a personal basis with each
3 "customer" (See Exhibit 2 P. 62 ll 18 thorough P. 63 ll 3). Plaintiffs have not identified any
4 witness or produced any evidence which demonstrates a single ongoing contractual relationship
5 with any of the 202 individual players who they claim make up the customer list.

6 *(2) the defendant's knowledge of this prospective relationship;*

7 Since Plaintiff cannot define or establish the contractual relationship required, Defendant
8 cannot be presumed to have knowledge of this relationship.

9 *(3) the intent to harm the plaintiff by preventing the relationship;*

10 Again, absent a clearly defined contractual relationship, no intent to harm by preventing
11 that relationship can be presumed.

12 *(4) the absence of privilege or justification by the defendant; and,*

13 Again the absence of a defined ongoing relationship itself justifies the defendant's
14 conduct in this matter.

15 *(5) actual harm to the plaintiff as a result of the defendant's conduct*

16 Lastly, Plaintiff has not produced any testimony or documentary evidence demonstrating
17 actual harm to any purported ongoing contractual relationship due to conduct by GSR but instead
18 seeks to rely on hypothetical theoretical loss of revenues.

19

20

2. WRONGFUL INTERFERENCE WITH PROSPECTIVE

21

ECONOMIC ADVANTAGE

22

Similarly to the claim for interference with contractual relations:

23

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25

26

Liability for the tort of intentional interference with ~~prospective economic~~
~~advantage~~ requires proof of the following [109 Nev. 88] elements: (1) a prospective
contractual relationship between the plaintiff and a third party; (2) knowledge by the
defendant of the prospective relationship; (3) intent to harm the plaintiff by preventing
the relationship; (4) the absence of privilege or justification by the defendant; and (5)
actual harm to the plaintiff as a result of the defendant's conduct *Wichinsky v. Mosa* 109
Nev.84, 84 P 2d .727, 729-730 (Nev. 1993)

27

Again there is no evidence in support of this claim, other than speculation by its non-

28

retained in-house "experts". As set forth in detail in GSR's Motion to Exclude this

1 inadmissible testimony and report, the Plaintiff has produced no evidence other than speculation
2 based on the marketing concept of theoretical revenue. Not a single one of the 202 persons who
3 appear on the purported customer list, has been identified as a witness who will testify that he
4 stopped playing at the Atlantis Hotel and Casino based on conduct by GSR. The same
5 arguments apply to this claim as to that of Interference with Contractual Relations, and therefore
6 Plaintiff cannot establish material issues of fact which would preclude summary judgment.

7 **3. Violation Of The Nevada Trade Secret Act NRS 600.010-100.**

8 The elements of a claim under the Nevada Trade Secret Act require that Plaintiff
9 establish that:

- 10 1. Plaintiff owned a valuable "trade secret";
- 11 2. The Defendant misappropriated the trade secret through use, disclosure or
12 nondisclosure of use;
- 13 3. The misappropriation was wrongful because it was made in breach of an express
14 or implied contract or by a party with a duty not to disclose. *Frantz v. Johnson*, 116 Nev. 455,
15 466, 999 P.2d 351 (NV 2000)

16 While whether or not a customer list constitutes a trade secret is a question of fact, the
17 other elements are not. GSR owed no duty to Atlantis nor has Atlantis produced any evidence
18 that GSR obtained the information by improper means. NRS 600A.030(2) defines
19 misappropriation as:

- 20 (a) Acquisition of the trade secret of another by a person by improper means;
- 21 (b) Acquisition of a trade secret of another by a person who knows or has reason
22 to know that the trade secret was acquired by improper means; or
- 23 (c) Disclosure or use of a trade secret of another without express or implied
24 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
27 knowledge of the trade secret was:
 - 28 (I) Derived from or through a person who had used improper means to acquire it;
 - (II) Acquired under circumstances giving rise to a duty to maintain its secrecy or
limit its use; or

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(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

Assuming arguendo, that the names placed into the GSR data base by Ms. Islam constitute a "trade secret"; the undisputed facts show that GSR had no knowledge concerning any confidentiality agreement between Ms. Islam and the Atlantis, and had no knowledge of any names provided by Ms. Islam may or may not have constituted a "trade secret". Nor can any duty to investigate the source of said information be imputed to GSR. As Ms. Robinson, general counsel for Plaintiff Golden Road testified when asked about the names provided to the Atlantis by Ms. Islam during her employment:

A. To my knowledge, Atlantis believed that to be information that was hers to give to the Atlantis and, therefore, no, it wouldn't be a problem.

Q. O.K.

A. It's not a problem for the Atlantis. It might be a problem for Sumona, depending on whether or not she was breaching her agreement with Harrah's. But to Atlantis' knowledge, she was not. (see Exhibit 2 P. 94 ll 18-25)

In other words a casino has the right to assume that any information provided by an employee was not misappropriated. Atlantis has not produced a single iota of evidence that GSR asked Sumona Islam to provide any confidential information, or even knew that Sumona Islam had a confidentiality agreement, let alone asked her to violate it. The only evidence shows that Sumona Islam was not asked to bring any information from the Atlantis with her to GSR, or that GSR committed any act which would constitute a violation of the Nevada Trade Secret Act.

Since GSR has successfully negated an element of proof for liability under the Act, it is entitled to summary judgment on the claim as a matter of law.

IV. CONCLUSION

The foregoing establishes that Atlantis cannot demonstrate by admissible evidence any contested issues of material fact that would preclude a finding in favor of GSR as a matter of law. GSR has also successfully negated at least one necessary element for each cause of action claimed against GSR. Plaintiff has also failed to produce any admissible evidence of actual harm resulting

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- 1 from any of the claims in this matter. on the issue of liability as a matter of law. Therefore, GSR
2 requests that this Court enter an order:
- 3 1. Finding that there are no contested issues of material fact which preclude a finding
4 of Summary Judgment in this matter.
 - 5 2. Granting summary judgment in favor of GSR on the Claim for Interference with
6 Contractual Relationships;
 - 7 3. Granting summary judgment in favor of GSR on the Claim for Wrongful
8 Interference with Prospective Economic Advantage;
 - 9 4. Granting summary judgment in favor of GSR on the claim of Violation of the
10 Nevada Trade Secret Act.
 - 11 5. Dissolving the Preliminary Injunction in this matter;
 - 12 6. For such other and further relief as this Court deems equitable and Just.

13 **Affirmation Pursuant to NRS 239B.030**

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

16 Dated this 30th day May, 2013.

17 COHEN-JOHNSON, LLC

18
19 By: /s/ H. Stan Johnson
20 H. Stan Johnson, Esq.
21 Nevada Bar No. 00265
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INDEX OF EXHIBITS

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

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

16 Plaintiff,

Case No. CV12-01171

17 vs.

Dept. B7

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

25 Defendants.

26
27 **ISLAM'S OPPOSITION TO ATLANTIS MOTION IN LIMINE**

28 The Atlantis seeks to prevent two Grand Sierra employees from offering expert
opinions, or, apparently, that is the stated purpose of the Atlantis motion in limine.

It is incongruous, therefore, that the Atlantis begins its motion in limine with an
alleged "factual background" making representations about what the evidence is against

1 Islam. The gratuitous attacks on Islam are completely out of place in a motion in limine
2 that supposedly seeks to exclude opinions of two Grand Sierra employees.

3 In her opposition to the Atlantis motion for partial summary judgment, Islam
4 demonstrated that the Atlantis version of events, as represented by the "factual
5 background" in this motion in limine, is genuinely factually disputed. Islam presented
6 evidence in her summary judgment opposition as to how:

- 7 ■ the Atlantis committed the first material breach of contract with Islam, in that
8 the Atlantis hired her away from Harrahs with promises to her that the Atlantis
9 failed to keep, and while failing to keep its promises to her, the Atlantis
10 obtained and enforced a non-compete against her;
- 11 ■ the Atlantis does not honor non-competes of other casinos, in that the Atlantis
12 hired Islam and others away from Harrahs to be casino hosts at the Atlantis but
13 gave them fake job titles as a subterfuge against the Harrahs' non-compete
14 agreements;
- 15 ■ the Atlantis sees nothing wrong with downloading player information from
16 other casinos onto the Atlantis computer, and the Atlantis downloaded Islam's
17 player list from Harrahs onto the Atlantis computer, but now the Atlantis
18 inconsistently claims it is wrong for the Grand Sierra to do the same thing that
19 the Atlantis does;
- 20 ■ Islam did not misappropriate any trade secret, the information that the Atlantis
21 calls "trade secret" is not a trade secret, and the Harrahs player information did
22 not become a trade secret of the Atlantis merely because the Atlantis
23 downloaded the Harrahs players' information onto the Atlantis computer;
- 24 ■ The economic value of a player does not derive from being a name on a list but
25 from the work done by hosts to market the casino to the player and to develop
26 relationships with the players; and
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■ information that Islam provided to Grand Sierra did not damage the Atlantis in that the players are not owned by one casino and they play at various casinos anyway.

Accordingly, Islam genuinely disputes the “factual background” that the Atlantis has presented in its motion in limine.

The “factual background” is immaterial to the stated purpose of the motion in limine, so the “factual background” is included for some other reason, probably to improperly prejudice the Court regarding the merits of the motion in limine itself. The “factual background” should be disregarded for purposes of the motion in limine. To the extent the motion is based on that “factual background,” it is incorrect, and Islam therefore respectfully requests that the motion in limine be denied.

DATED: June 7, 2013 LAW OFFICES OF MARK WRAY

By Mark Wray
MARK WRAY
Attorney for Defendant SUMONA ISLAM

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DECLARATION OF COUNSEL IN SUPPORT OF MOTION IN LIMINE

I, Mark Wray, declare:

1. My name is Mark Wray. I have represented Sumona Islam in this action since May 2012. I have personal knowledge of the facts stated in the foregoing motion based on my personal participation in pleadings, motions, discovery and hearings in this action.

2. The facts stated in the foregoing opposition are true of my own knowledge, except as to matters based on my information and belief, and as to those facts, I believe them to be true.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct and that this declaration was executed on June 7, 2013 at Reno, Nevada.


MARK WRAY

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CERTIFICATE OF SERVICE

The undersigned employee of the Law Offices of Mark Wray certifies that a true copy of the foregoing document was sealed in an envelope with first class postage prepaid thereon and deposited in the U.S. Mail at Reno, Nevada on June 7, 2013 addressed as follows:

Robert A. Dotson
Angela M. Bader
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9600 Gateway Drive
Reno, Nevada 89521

Stan Johnson
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AFFIRMATION

The undersigned certifies that this document does not contain the Social Security number of any person.

DATED: June 7, 2013


MARK WRAY

1 **2645**
2 ROBERT A. DOTSON, ESQ.
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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

13 Plaintiff,

14 vs.

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

20 Defendants.

20 **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTIONS IN LIMINE**

21 Plaintiff, GOLDEN ROAD MOTOR INN, INC. d/b/a ATLANTIS CASINO RESORT
22 SPA (hereinafter "Plaintiff" or "ATLANTIS"), by and through undersigned counsel, Laxalt &
23 Nomura, hereby files this Opposition to the Motions in Limine filed by Defendant SUMONA
24 ISLAM's (hereinafter "ISLAM") on May 28, 2013 and Defendant NAV-RENO-GS, LLC d/b/a
25 GRAND SIERRA RESORT's (hereinafter "GSR") on May 29, 2013. This Opposition is made
26 and based upon the pleadings and papers on file herein, the Memorandum of Points and
27 Authorities, the Affidavit of Counsel and Exhibits thereto and any additional argument the Court
28 should elect to consider.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 The facts of this case and claims brought by the ATLANTIS are well known to this Court
5 and will not be reiterated here. However, to the extent that such a description is of utility to the
6 Court in considering these Motions and this Opposition, Plaintiff would refer to the Court to its
7 Motion For Partial Summary Judgment filed on August 23, 2012, which Statement of Facts is
8 incorporated by this reference.
9

10 In gross summary, this claim primarily is one wherein the ATLANTIS is seeking to
11 enforce its agreements with the individual Defendant, ISLAM, which included a 1 year non-
12 compete and confidentiality provisions. It is the contention of the ATLANTIS that the GSR,
13 despite knowledge of these agreements, elected to employ ISLAM in a position which it
14 recognized would directly violate those contracts and then directed her activities in employment
15 in such a fashion so as to encourage, support and facilitate her misappropriation of trade secrets
16 to the GSR in tortious interference with the contractual obligations of ISLAM and in violation of
17 the legal standards applicable in Nevada under the Uniform Trade Secret Act NRS Chapter
18 600A, (hereinafter "UTSA").
19

20 This Opposition is filed in response to Motions in Limine from each Defendant, however,
21 in order to simplify the Opposition they are merged into one pleading. GSR has filed a Motion
22 To Exclude the Testimony of Brandon McNeeley [sic] Either in Support of Plaintiff's Case or in
23 Rebuttal to the Testimony of Defendant's Expert Jeremy Aguararo [sic] and All Evidence of
24 Damages Based on Theoretical Revenue, Lost Gamblin [sic] Days and Life Time Value of
25 Players. Defendant ISLAM's Motion is more general, but has been interpreted by Plaintiff as a
26 Motion in Limine seeking to restrict the use of damage evidence identified and advanced by
27 Plaintiff.
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II.

APPLICABLE LEGAL STANDARD

As set forth in Plaintiff's Motion in Limine filed May 28, 2013, Motions in Limine, under certain circumstances, are clearly appropriate, and the obligation of the Court to control which evidence is presented to the jury is not hereby questioned. However, as set forth bellow, in this case the evidence apparently sought to be excluded is relevant, admissible and appropriately presented by the Plaintiff in general and this witness in particular.¹ Therefore, the Defendants' Motions should be denied.

III.

MR. MCNEELY'S TESTIMONY SHOULD BE ALLOWED IN TOTAL AND THE GSR'S MOTION IN LIMINE SHOULD BE DENIED

A. Introduction

The GSR has filed a Motion in Limine focusing upon the testimony of Brandon McNeely and the damage analysis which he, with assistance of others from the ATLANTIS, has developed and intends to present in this case. At the outset it should be noted that Brandon McNeely is, and at all relevant times has been, an employee of Plaintiff who currently is the Data Integration Manager within the marketing department. He has worked in that position or in various supportive roles of that position since 2004.² He implements the ATLANTIS' marketing campaign towards the players which are the subject of this suit and therefore is the human working at the ATLANTIS who, on a daily basis, works with and analyses the data which the ATLANTIS contends best and most fairly demonstrates the injury visited upon it as a consequence of the actions of the Defendants. He is also an architect of a methodology employed by the ATLANTIS long before this case was brought to value its customers generally.

¹ See NRS 48.015 and 48.025.
² See Exhibit 1 to Affidavit of Counsel (Resume of Brandon McNeely).

1 This study, referred to as the Customer Lifetime Value or "CLV" study, is used by ATLANTIS
2 to determine the value to the ATLANTIS of each of its known guests, including the guests in
3 question. This study was prepared for internal purposes, outside of the context of litigation, and
4 therefore is perhaps the best evidence of the value of the information misappropriated.³ Thus, he
5 is primarily a percipient witness. However, to the extent that his testimony can be argued to at
6 times stand at the crossroads of percipient and expert testimony he has been designated as a non-
7 retained expert as a conservative precaution in order to avoid any claim that his testimony is
8 improper as it falls within the purview of NRS 50.275, 50.285 or 50.295.

10 **B. Facts**

11 Plaintiff will not complete a comprehensive rebuttal of the facts set forth by GSR here,
12 however, it is appropriate to note that those facts are, in the view of Plaintiff, misleading insofar
13 as they imply that the claim involves only the "names" of 202 individuals. In fact, it is the claim
14 of the ATLANTIS that the actions of GSR and ISLAM are improper as they represent the
15 misappropriation of at least the identities of 202 guests known to the ATLANTIS and unknown
16 to the GSR, but, perhaps more importantly the misappropriation of their contact information,
17 their preferences, histories and personal and/or business information, as well as the type of
18 marketing and advertising schemes and strategies to which they would best respond. Indeed, the
19 GSR employee who appears to be the counter part to McNeely has confirmed that he, on behalf
20 of the GSR, utilized information from ISLAM to develop and deploy "special" precedent setting,
21 marketing offers to guests at the direction and request of ISLAM and GSR management.⁴

24 Therefore, contrary to the primary factual assertion in GSR's Motion in Limine, not only
25 is McNeely qualified to testify as to damages, he is one of the most qualified persons employed
26

27 ³ This study may be of particular utility to the Court in determining the damages in this matter either generally, or
28 specifically based upon a royalty as provided for in NRS 600A.050.

⁴ See Exhibit 2 to Affidavit of Counsel (Deposition of Christian Ambrose 74:16 - 79:21) and Exhibit 3 to
Affidavit of Counsel (GSR-Ambrose 0152-0153).

1 by the ATLANTIS to place a dollar figure to the value of the misappropriated trade secret. In
2 this regard GSR's Motion is nonsensical as it, in essence, suggests that a Plaintiff should not be
3 able to, on its own accord, testify to its damages. That simply is not the status of the law, nor
4 should it be.

5
6 **C. McNeely Is Qualified To Testify As An Expert In Damages**

7 Even to the extent that the Court might determine that McNeely's testimony stands at the
8 crossroads of evidence from a percipient witness and an expert witness, he is qualified to provide
9 that testimony. Even if McNeely had only been retained as an expert and his testimony was that
10 of a retained expert, an inaccurate position which the Defendants apparently seek to adopt, his
11 testimony would be appropriate. Nevada law allows expert testimony "if scientific, technical or
12 other specialized knowledge will assist the trier of fact to understand the evidence or to
13 determine a fact in issue, a witness qualified as an expert with special knowledge, skill,
14 experience, training or education may testify to matters within the scope of such knowledge."⁵
15 As previously stated, as out of an abundance of caution, Plaintiff has designated McNeely, as
16 well as others, as non-retained experts.⁶ That designation specifically stated that Mr. McNeely...
17 may be called to testify and provide non-retained expert opinions on the following grounds:
18

- 19
- 20 a) The damages incurred by the Plaintiff Atlantis as a consequence of the
 - 21 b) Changes in theoretical play (resulting in losses of revenue) by guests
 - 22 c) The discovery, methods and results of Atlantis's investigation of data
 - 23 d) The expense and marketing efforts related to mitigation of the solicitation
- 24 efforts engaged in by defendants.
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28 ⁵ See NRS 50.275, Testimony by Experts.

⁶ See Exhibit 4 to Affidavit of Counsel (Plaintiff's Expert Witness Disclosure).

1 It appears from the Motion in Limine that Defendant disagrees with the contention of
2 Plaintiff that theoretical play is the appropriate measurement of damages in this instance and
3 while the Defendant may advance that argument or claim to hold that opinion, a disagreement,
4 even a genuine one, is not a basis to strike the testimony of any expert. Were that the case, in
5 each instance where there was a disagreement in the best methodology to be utilized to
6 extrapolate damages, each party would file a motion in limine and one party's testimony would
7 be stricken. Such is not the practice in this or any other Court. The Defendants are, of course,
8 welcome to cross examine McNeely regarding his experience in finance, however, as he stated in
9 his deposition and as is clear from his narrative describing his methodology, his method to
10 measure damages does not rely on accounting or finance, rather, it draws on his very significant
11 experience in gaming and gaming revenues attributable to individual players. Indeed, and in
12 sharp contrast, Defendant's rebuttal expert, Jeremy Aguero, lacks any significant experience in
13 the area of casino and gaming marketing to individual players, high net worth players, or the
14 value or calculation of revenue to be derived from such players. Nevertheless his testimony is
15 not the subject of a similar Motion in Limine. Mr. McNeely works, on a daily basis, with the
16 manipulation of the data attached to the players whose information is the very trade secret in
17 question. In other words, his daily job is to assess the value of players in question to the
18 ATLANTIS and he directs the department that measures that value and participates in decisions
19 regarding the marketing techniques and offers of reinvestment (comps and free play) to be made
20 to those players.⁷ In other words, when it comes to measuring the primary element of damages
21 in this case, the value of the trade secret misappropriated, it is difficult to imagine a more
22 appropriately qualified witness to assist the Court in determining the value of the trade secret
23 than the guy whose job it was to value it before it was misappropriated. This will be generally
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⁷ See Exhibit 5 to Affidavit of Counsel (Deposition of Brandon McNeely 6:12-19).

1 the same measure of damages under the tortious interference with contract claim against the GSR
2 as well as the basis for the damages under the UTSA violation.

3 **D. Calculations Based Upon Theoretic Damages Are Not Speculative**

4 Defendant's argument that the calculations based upon theoretic damages are speculative
5 is just that, argument, and is not a basis to strike McNeely's testimony.⁸ After attacking
6 McNeely's lack of finance education or experience, an area of study not implied in his analysis,
7 GSR next attacks McNeely's conclusions, arguing that damage calculations based upon theoretic
8 revenue are not the appropriate measure and are speculative. However, as Mr. McNeely
9 explained, the use of theoretical values are the standard of the industry as they are more reliable
10 than using the actual win, which is variable over a short period of time, such as the span of time
11 involved here. In other words, it would be unfair to the ATLANTIS or GSR to utilize the actual
12 win numbers rather than theoretic, as such a calculation will fluctuate greatly based upon the
13 luck of the individual players in question during the period of time measured. This position is
14 consistent with academic journals in the field and consistent with the view of GSR's own expert,
15 Jeremy Aguero.⁹

16 In this case where the study is based on only 202 discreet players and where a short span
17 of time is being utilized, the results could be severely skewed if even one player had won a
18 jackpot during one year and not another. To illustrate, we will use a hypothetical group of 10
19 very consistent players. In 2011, each of the players has actual and theoretic loses of \$100,000
20 to the ATLANTIS. Thus, the revenue to the Atlantis is \$1,000,000. In 2012, all 10 of the
21 players have the exact gaming behavior as the prior year, and 9 each have the same actual and
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26 ⁸ See *Houston Exploration v. Meredith*, 102 Nev. 510 (Nev. 1986).

27 ⁹ See Exhibit 6 to Affidavit of Counsel (treatises entitled, *Creating the Right Player Reinvestment Strategy* by
28 Andrew Klebanow at p. 1, *UNLV Center for Gaming Research – Casino Mathematics* by Robert Hannum at p. 1-4,
and *UNLV Center for Gaming Research – Pyramids to Players Club: The Battle for Competitive Advantage in Las Vegas* by Oliver Lovat at p. 2-3 and 5-6) and Exhibit 7 to Affidavit of Counsel (Deposition of Jeremy Aguero 109:9-22 and 134:2-135:17).

1 theoretic loses of \$100,000 to the ATLANTIS. The resulting revenue is \$900,000 for those nine
2 players. However, 1 of the 10 original players wins a \$1 Million jackpot, beating the house for
3 \$1 Million in actual win despite the fact that he has a \$100,000 theoretic loss. If we were to use
4 these actual win figures rather than theoretic, the result for this player group would be \$1 Million
5 in revenue to the Atlantis in 2011 and a \$100,000 loss in 2012. Thus, under the analysis
6 advocated by the GSR, this hypothetical would have the GSR paying damages to the
7 ATLANTIS of \$1.1 Million. However, in reality, because the theoretic play was identical,
8 stripping out the jackpot, the damages should honestly be \$0. Obviously, if the jackpot was in
9 2011 the result would be reversed and in favor of the GSR.
10

11 Hopefully this simple hypothetical clearly illustrates why theoretical win is the
12 appropriate measure to determine damages in a case such as this, and is indeed why theoretic win
13 is what is utilized by the industry to determine important and analogous decisions, such as
14 marketing. This illustration should also demonstrate why such a damage analysis is far from
15 speculative and why the actual gaming results for these players are irrelevant. The trial Court
16 has broad discretion in admitting and rejecting offered evidence and the admissibility both of this
17 evidence, and any evidence regarding actual revenue should be and is left to the broad discretion
18 of the Court.¹⁰
19

20 Interestingly, GSR's argument is not whether this information should be relied upon by
21 the Court, rather, they argue for prohibition against even its consideration. The request of GSR
22 runs directly contrary to the holding of *Houston Exploration v. Meredith*, 102 Nev. 510, 728 P.2d
23 437 (Nev. 1986), wherein the Court reversed a determination that evidence of lost profits for a
24 startup company should be excluded as speculative. Here the Atlantis is far from a startup and
25 the basis for the analysis of lost profits based upon sound, industry accepted analysis.
26
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¹⁰ *University and cmty. coll. sys. v. Sutton*, 120 Nev. 972, 985, 103 P.3d 8, 16-17 (2004).

1 As theoretical win is, for the reasons exhibited, the standard of the industry; the suggestion that
2 it should not even be considered is preposterous. The motion should be denied.

3 **E. All of McNeely's Methods For Estimating Damages Are Scientifically**
4 **Based Upon The Gold Standard For The Gaming Industry And**
5 **Should Be Considered**

6 The GSR attacks each of the three methods advanced by McNeely as evidence to
7 estimate the injury to the ATLANTIS. The first attack is based upon the general proposition of
8 utilizing theoretical win, which is scientifically averaged and based upon the house advantage for
9 the play of each player. The second builds on that concept, examining damages based upon the
10 reduction in the number of visits by certain players. Again, this is a factually derived estimation
11 of damage by the ATLANTIS that utilizes undisputed facts, the number of days the players in
12 question visited the ATLANTIS during the period of claimed interference versus the same period
13 the year prior, and an extrapolation of damages based upon those reduced visits. Although it is
14 undisputable that this is an estimate, all damages in cases of interference between a business and
15 a customer must always be based upon extrapolation. The true damages cannot be known and
16 although the nomenclature sometimes refers to the win as "actual win", versus "theoretic win",
17 that nomenclature should not mislead the Court into an inaccurate belief that such a figure is
18 more reliable, or a fairer value of damages. ATLANTIS' damage estimation based upon days
19 played is simply that, a calculation of the reduced number of days played, times the theoretical
20 daily average calculated independently for those players. Again, it is not truly expert testimony
21 by McNeely, but rather simply percipient witness testimony as it is McNeely and his staff who
22 track the play of these players and the theoretic value of their daily play. Thus, he is simply
23 reporting the statistics he and his staff are charged with tracking. Thus, this testimony should be
24 allowed.

25
26
27 GSR also criticizes the damage information based upon the lifetime value of this group of
28 players as determined by the ATLANTIS approximately a year before the interference even

1 occurred (the Customer Lifetime Value or "CLV" study). Amazingly, GSR seems critical of this
2 evidence, implying that the data is somehow less relevant or reliable because it was not
3 specifically calculated for this litigation. To the contrary, the ATLANTIS would and will argue,
4 and logic would dictate, that such a study is more relevant and reliable than one prepared in the
5 face of litigation. This is a study and information upon which the ATLANTIS made business
6 and marketing decisions before this case, and upon which it will continue to make marketing
7 decisions after. In other words, it is the value the ATLANTIS had placed on these players before
8 it ever knew there was going to be a lawsuit. What better evidence could there be of the total
9 value of the intellectual property misappropriated? Again, this is not truly expert testimony, but
10 rather percipient testimony of what value the ATLANTIS placed upon these players before the
11 interference had even occurred and before there was a thought of litigation.
12

13
14 **F. GSR's Criticism of McNeely's Failure To Review Its Rebuttal
Expert's Report is Unfounded.**

15 GSR is critical of Mr. McNeely for having not reviewed the rebuttal expert report to his
16 conclusions prepared by Mr. Aguero, a professional expert retained by Defendants. First,
17 contrary to the implication of the heading of its Motion, Mr. Aguero was designated as a rebuttal
18 expert, not as an originally designated expert. McNeely was not directed to review Aguero's
19 rebuttal report and prepare a sur-rebuttal report. Similarly, he has not been asked to provide sur-
20 rebuttal testimony related to Aguero's findings and opinions. Indeed, at the time of his
21 deposition, Aguero's deposition had not yet occurred. Nor would one have expected it to, as he
22 is after all the rebuttal expert.
23

24 Although not the subject of this Motion, it is interesting that Aguero utilized the pre-
25 litigation life time value developed by McNeely and professional judgment to reach his
26 conclusion that an appropriate range for damages would be \$138,000 to \$322,000. He also
27 adopted the claimed net revenue that the GSR contends it earned off the guests whose
28

1 information was misappropriated, \$15,000. However, he testified that he does not know how
2 the GSR arrived at that numbers. Indeed, he has not been privy to any of the information upon
3 which it is based. This will be a subject of cross examination of Mr. Aguero, but it is clearly not
4 a basis alone to exclude his testimony.

5
6 IV.

7 **ISLAM'S MOTION IN LIMINE SHOULD ALSO BE DENIED**

8 **A. Introduction**

9 Like the Motion brought by GSR, ISLAM has filed a Motion in Limine which also
10 appears to have as its intention a restriction of the proffer of damages based upon theoretic
11 calculations. For the same reasons listed in opposition to the GSR Motion, the Motion brought
12 by ISLAM should be denied. Apparently, like GSR, ISLAM would prefer to have her fate
13 determined based upon the luck of the individual players whose gaming win would make up the
14 damages. However, as described and illustrated above, that would be an unfair method of
15 determining damages as it could have significant variation based upon the win or loss of the
16 players during the short time period in question.

17
18 **B. Theoretic Win Is The Appropriate Measure Of Damage To Be**
19 **Utilized Regardless Of Whether The Court Awards Damages Based**
20 **Upon A Royalty Or For The Period Of Misappropriation.**

21 Regardless of whether the Court elects to award damages based upon the period where
22 the misappropriated information was utilized by the GSR or a royalty based upon the value of the
23 information misappropriated, the theoretic win and theoretic value of the customers whose
24 information was misappropriated is the appropriate measure of damages. This is not speculative,
25 rather this is the most scientific approach as it averages the result over time, stripping out the
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1 short term variability caused by a hot streak or a jackpot.¹¹ Interestingly, the legal authority cited
2 by ISLAM is supportive of the methodology employed by the ATLANTIS, as the information
3 and evidence advanced by the ATLANTIS is the most reasonable methodology to ascertain the
4 value of the intellectual property misappropriated.

5
6 **B. The Atlantis' Production Has Been Appropriate**

7 ISLAM also is critical of Plaintiff for refusing to disclose more comprehensive
8 information regarding each of the players whose identity and information has, undisputedly, been
9 misappropriated to the GSR by her. In ATLANTIS' view this as nothing more than an attempt
10 to further mine this litigation for trade secrets and personal information regarding the guests in
11 question. Of what relevance possibly is the tax reporting information for these guests or even the
12 actual win.¹² As demonstrated above, the actual win could and indeed would be expected to
13 vary wildly from the theoretic and that is why McNeely testified that he had not studied or
14 included it within his analysis. Following ISLAM's analysis, if a guest had actually beaten the
15 house, the result being ATLANTIS lost money on that guest, then pursuant to ISLAM's and
16 indeed GSR's currently advanced theory, the ATLANTIS should thank GSR for having stolen
17 that guest away. Clearly, such an argument is illogical as the player who has won will
18 eventually, over time, fail to the beat the odds and become profitable.¹³

19
20 The ATLANTIS has another very practical reason for not disclosing this irrelevant
21 information. The Defendants in this matter have already thrice failed to assert appropriate
22 protections on the information, filing not under seal or confidentiality information that pursuant
23

24
25 ¹¹ See Exhibit 5 to Affidavit of Counsel (McNeely Deposition 27:10-28:14, 101:18-21 and 109:20-111:1) and
26 Exhibit 7 to Affidavit of Counsel (Aguero Deposition 109:9-22 and 134:2-135:17). See also, *Houston Exploration*
27 *v. Meredith*, 102 Nev. 510 (Nev. 1986).

28 ¹² See NRS 48.015.

¹³ See Exhibit 6 to Affidavit of Counsel (treatises entitled, *Creating the Right Player Reinvestment Strategy* by
Andrew Klebanow at p. 1, *UNLV Center for Gaming Research – Casino Mathematics* by Robert Hannum at p. 1-4,
and *UNLV Center for Gaming Research – Pyramids to Players Club: The Battle for Competitive Advantage in Las*
Vegas by Oliver Lovat at p. 2-3 and 5-6) and Exhibit 7 to Affidavit of Counsel (Deposition of Jeremy Aguero 134:2-
135:17).

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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 7 day of June, 2013.

LAXALT & NOMURA, LTD.



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Attorneys for Plaintiff

1 CERTIFICATE OF SERVICE

2 Pursuant to NRC 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.

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

17 Reno/Carson Messenger Service.

18 By email to the email addresses below.

19 addressed as follows:

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

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sjohnson@cohenjohnson.com

25 DATED this 7 day of June, 2013.

26 
27 L. MORGAN BOGUMIL

1 **1030**
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; 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 **AFFIDAVIT OF COUNSEL IN SUPPORT OF**
23 **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTIONS IN LIMINE**

24 STATE OF NEVADA)
25) ss.
26 COUNTY OF WASHOE)

27 ROBERT A. DOTSON hereby affirms, under penalty of perjury, that the assertions
28 contained herein are true;

29 1. I am an attorney licensed to practice law in the State of Nevada and represent the
30 Plaintiff, Golden Road Motor Inn, Inc., a Nevada corporation d/b/a Atlantis Casino Resort Spa
31 ("Plaintiff"), in this action.

1 2. Attached hereto as Exhibit 1 is a true and correct copy of the Resume of Brandon
2 C. McNeely.

3 3. Attached hereto as Exhibit 2 is a true and correct certified copy of a partial
4 excerpt from the Deposition of Christian Ambrose dated January 18, 2013.

5 4. Attached hereto as Exhibit 3 is a true and correct copy of an email chain between
6 Shelly Hadley and Christian Ambrose, dated March 28 – March 30, 2012. This Exhibit is filed
7 under seal as it is marked “Confidential”.

8 5. Attached hereto as Exhibit 4 is a true and correct copy of Plaintiff’s Expert
9 Witness Disclosure dated November 13, 2012.

10 6. Attached hereto as Exhibit 5 is a true and correct certified copy of a partial
11 excerpt from the Brandon Charles McNeely dated May 14, 2013.

12 7. Attached hereto as Exhibit 6 are true and correct copies of three treatises entitled,
13 Creating the Right Player Reinvestment Strategy by Andrew Klebanow, UNLV Center for
14 Gaming Research – Casino Mathematics by Robert Hannum and UNLV Center for Gaming
15 Research – Pyramids to Players Club: The Battle for Competitive Advantage in Las Vegas by
16 Oliver Lovat.

17 8. Attached hereto as Exhibit 7 is a true and correct certified copy of a partial
18 excerpt from the Deposition of Jeremy Aguero dated May 22, 2013.

19 9. Attached hereto as Exhibit 8 is a true and correct copy of an email from Shelly
20 Hadley addressed to Christian Ambrose dated August 17, 2012.

21 10. Attached hereto as Exhibit 9 is a true and correct copy of an email chain between
22 Shelly Hadley and Christian Ambrose dated August 20, 2012.

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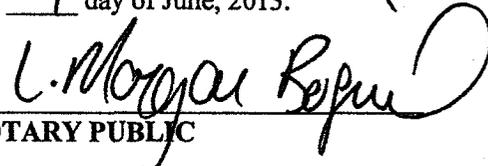
Affirmation Pursuant to NRS 239B.030

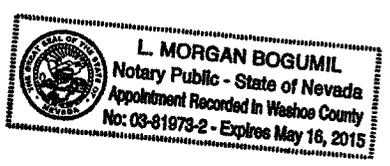
The undersigned does hereby affirm that the preceding document does not contain the social security number of any person

FURTHER YOUR AFFIANT SAYETH NAUGHT.


ROBERT A. DOTSON

SUBSCRIBED and SWORN to before me
this 7 day of June, 2013.


NOTARY PUBLIC



1 CERTIFICATE OF SERVICE

2 Pursuant to NRC P 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 individuals.

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

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

13 Reno/Carson Messenger Service.

14 By email to the email addresses below.

15 addressed as follows:

16 Steven B. Cohen, Esq.
17 Stan Johnson, Esq.
18 Cohen-Johnson, LLC
19 255 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

20 scohen@cohenjohnson.com
21 sjohnson@cohenjohnson.com

22 DATED this 7 day of June, 2013.

23 
24 L. MORGAN BOGUMIL

INDEX OF EXHIBITS

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EXHIBIT	DESCRIPTION	PAGES
1	Resume of Brandon C. McNeely	4
2	Deposition of Christian Ambrose dated January 18, 2013 (partial)	11
3	Email chain between Shelly Hadley and Christian Ambrose, dated March 28 – March 30, 2012. This Exhibit is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012	3
4	Plaintiff's Expert Witness Disclosure dated November 13, 2012	5
5	Deposition of Brandon Charles McNeely dated May 14, 2013 (partial)	11
6	Treatises: <ul style="list-style-type: none"> • Creating the Right Player Reinvestment Strategy by Andrew Klebanow; • UNLV Center for Gaming Research – Casino Mathematics by Robert Hannum; and • UNLV Center for Gaming Research – Pyramids to Players Club: The Battle for Competitive Advantage in Las Vegas by Oliver Lovat 	34
7	Deposition of Jeremy Aguero dated May 22, 2013 (partial)	7
8	Email from Shelly Hadley addressed to Christian Ambrose dated August 17, 2012	2
9	Email chain between Shelly Hadley and Christian Ambrose dated August 20, 2012	3

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Transaction # 3775417

EXHIBIT 1

EXHIBIT 1

BRANDON C. MCNEELY

7481 Celeste Dr. Reno, NV 89511. Cell (775) 450-7175

QUALIFICATION HIGHLIGHTS

Highly organized, motivated, and detail-oriented self-starter with a complete sense of commitment and the willingness to master new concepts, ideas, and practices. High learning curve. Superior written and verbal communication skills. The ability to handle simultaneous tasks in a fast-paced environment. Works well independently or within a group. Experience with Database Marketing. Experience with system architecture and system implementation. Good analytical skills and computer knowledge; major software applications, including Microsoft, Internet, SQL, Cognos, Crystal Reports, AS400, Strong Mail, Biz^2, Aerial, Delphi.

PROFESSIONAL HISTORY

Atlantis Casino Resort Spa, Reno, NV **2004 - Present**
*Direct Marketing Database Coordinator (3yrs) / Marketing Analyst (4yrs)/
Data Integration Manager (Current)*

- Collaborate with various departments and manage internal focus groups for new product launch and enhancements.
- Review and organize all current data within various databases for marketing purposes, including 3rd party data integration.
- Help create products (as the product manager) for various departments to use to help enhance guest services.
- Work directly with upper-management to help build customer relations by initiating marketing campaigns designed to appeal to the current marketing environment
- Generate reports on a weekly, monthly and as needed basis for various divisions via SQL Query Analyzer, IBM COGNOS and Crystal Reports; Analyze reports in the context of data mining/CRM initiative and incorporate into the CRM infrastructure.
- Prepare budget development and revenue forecasting.
- Email Marketing Analyst, responsible for executing email marketing campaigns and providing feedback to upper-management.
- More than 6 years of managing multiple direct marketing programs.
- Assist with developing effective marketing segmentation strategies.
- Analyze a series of Executive summary reports measuring trends and growth patterns in the current business environment.

ATL 0992

- Execute marketing initiatives while meeting company deadlines, including mail file extraction, processing, and approvals, reporting.
- Coordinate with outside vendors and suppliers.
- Provide feedback and competitive marketing analysis to maximize future return on investment.
- Discuss goals & initiatives with business owners to facilitate requirements gathering and develop appropriate campaigns.

Affinitas, Lawrence, KS
Sales Representative

2000-2004

- Generated cold call phone sales, significantly increasing subscribers to nationwide phone service.
- Promoted enhanced business cellular products and consolidation of services to management professionals and corporate officials.
- Consistently met or exceeded sales goals established by company.

International Game Technology, Reno, NV
Administrative Intern

1998-1999

- Key liaison between warehouse and assembly line, resolving discrepancies in parts lot sizing.
- Inventoried and traced parts identified problem areas.
- Generated comprehensive reports to upper management to meet specific purchasing needs.
- Awarded special certificate for performance.

Atlantis Casino Resort Spa, Reno, NV
Marketing Intern

1997-1998

- Assisted in organization of special events, concerts, tournaments, and other special promotions.
- Compiled and input data, and generated reports from information supplied by participants.
- Hands-on setup, decoration, and teardown of stands, booths, and entertainment areas.

EDUCATION

University of Nevada, Reno, NV
Currently pursuing (2010 -)... MBA specializing in Business Management

University of Kansas, Lawrence, KS
BGS in Communications, 2003
Concentration in Psychology, 2003

ATL 0993

REFERENCES

Available upon request.

ATL 0994

App. 0803

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Transaction # 3775417

EXHIBIT 2

EXHIBIT 2

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

-o0o-

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

Plaintiff,

Case No. CV12-01171

vs.

Dept. No. B7

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,

CERTIFIED COPY

Defendants.

Pages 1 to 172, inclusive.

DEPOSITION OF CHRISTIAN AMBROSE

Friday, January 18, 2013
Reno, Nevada

REPORTED BY: CHRISTINA AMUNDSON
CCR #641 (Nevada)
CSR #11883 (California)

1 A No.

2 Q Can you tell from the database at all?

3 A Well, when you say "the database," you mean the
4 CMS database?

5 Q Yes.

6 A It would keep a record of -- there's like a log
7 of who creates accounts.

8 Q And who makes changes to accounts as well?

9 A Yes, it's part of the log, yes. It's not every
10 single field in the entire database. It's fields of
11 designated importance.

12 Q Okay. So if the guest has a nice dinner at the
13 steakhouse, at Charlie Palmer, they just make a notation,
14 "Liked Charlie Palmer," something like that?

15 A It would be great if that happened, yes.

16 Q I might be expecting too much?

17 A Yes.

18 Q Okay. The role that you have, then, in
19 developing the offer that would go to any of these
20 individuals, did it come to pass during the spring of last
21 year that Ms. Islam would request that a particular guest
22 who was coded to her received an offer that was better
23 than what that person's play as it existed prior to her
24 presentation at the GSR would normally allow?

25 A Yes, it did.

1 Q And how did those requests occur? In other
2 words, were they emails, verbal requests?

3 A I like to do stuff in writing, so it was
4 probably by email.

5 Q And to your recollection, knowing that your
6 emails are out of the room right now, did this just come
7 in a list of these are my guests and I'd like them -- how
8 did that happen?

9 A I should expand on this by saying I spend many
10 hours a week not at my desk but in meetings, so, actually,
11 my assistant first communicated me this and they went
12 through her.

13 Q Okay. So understanding that your assistant,
14 whose name is --

15 A Marie.

16 Q -- Marie, may have been involved in this, how
17 generally did this occur?

18 A She gave her a list of customer numbers and then
19 the versions of the mailers she would like them to
20 receive.

21 Q Okay. And putting names to the pronouns there,
22 the "she's" and the "hers" --

23 A Sorry. Sumona.

24 Q She, Ms. Islam, would provide a list of guests
25 and then a level of promotional material that she would

1 Like those guests to receive?
2 A To Marie.
3 Q And then Marie would comply or Marie would ask
4 your approval before compliance?
5 A This is somewhat a complex request and it was
6 harder than Marie's skill set, so she forwarded it to me.
7 Q And then would you always comply with the
8 request or would you make a determination, or what
9 happened next?
10 A I had sort of a blanket statement from Shelly
11 that whatever requests Sumona made as the versions to
12 implement that.
13 Q And how did that request from Shelly Hadley take
14 its form?
15 A To the best of my recollection -- I can't
16 remember.
17 Q It was probably verbal?
18 A Probably. I should expand and say the hosts ask
19 me for a lot of things. I don't take direction from the
20 hosts. They have wishes that may or may not be in the
21 best interest of the property.
22 Q And there's an email here where I think there's
23 actually the word "special" used. This was an unusual
24 instruction from Ms. Hadley?
25 A I have not done that before.

1 Q Okay. And I think that's the definition of
2 "unique." True? This is the first time it's happened?

3 A Yes.

4 Q And do you know how many guests were offered
5 promotional marketing -- I hate to use the word "offer"
6 twice, I hate that -- but in excess of what they would be
7 normally set to receive?

8 A Those would be in the reports.

9 Q Oh. Well, let's not speculate and try to
10 remember to ask that later.

11 I'm going to ask you a question now that I want
12 to admonish you first of all to tell you that as I ask you
13 these series of questions, I'm not seeking to learn
14 conversations you had with counsel. And so to the extent
15 it may be easier to say, well, this is what Mr. Johnson or
16 Mr. Cohen told me, I would like you not to answer that
17 way. I want to know what you did. Okay?

18 A Okay.

19 Q All right. Prior to May 1st, 2012, did you
20 receive any instruction and did you modify the marketing
21 offers to guests coded to Sumona Islam?

22 A Could you rephrase that?

23 Q Yes. Let me put it this way: Up until
24 April 1st, were the guests that were coded to Ms. Islam,
25 did all of those guests receive marketing materials from

1 Grand Sierra Resort?

2 A Possibly. The only reason you get marketing
3 material is if you meet a certain value to the property in
4 combination with a date range. So, for example, to give
5 you -- if the first gentleman, Larry Brinkley, had died in
6 1987, he's coded to Sumona. I would not have messaged him
7 because I would have known he was dead.

8 Q And you wouldn't have sent him a mailer either?

9 A Right.

10 Q But is there -- maybe it's on the documents that
11 are out of the room right now. Is there a list of guests
12 who had received solicitations from the Grand Sierra
13 Resort?

14 A There's a list, yes.

15 Q Okay. At some point in time did you receive
16 instruction from management to cease sending solicitations
17 to the persons who had been coded to Ms. Islam?

18 A Yes. Not every host -- not every guest is coded
19 to Ms. Islam.

20 Q Right. What did you do?

21 A You mean at the time?

22 Q Yes.

23 A I was told to stop messaging them out of our
24 normal course of business.

25 Q Okay. In other words, what did you actually do?

1 That's why I asked you what did you do, not what were you
2 told to do.

3 A I was running my normal reports. And then when
4 this request to move people to tiers that they may not
5 have otherwise belonged in, that's additional work for me.
6 And then when this request came to stop doing that, I
7 stopped doing it. I went back to the normal course of
8 business.

9 Q Okay. So at that point in time they would
10 receive the offer that they were naturally set to receive,
11 rather than a special offer?

12 A Yes. Normal business practices, yes.

13 Q Okay. And prior to that the offer that they
14 were receiving was based on what Ms. Islam had requested?

15 A Well, in some cases they qualified for something
16 maybe more than she requested.

17 Q And then what did they get?

18 A They would get that offer because that would be
19 best business practices.

20 Q All right. But barring that caveat, did any of
21 the -- as you call it -- you say the standard business
22 practice is what it reverted to.

23 A Yes.

24 Q Did you ever cease soliciting anyone that had
25 been coded to Ms. Islam?

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review the transcript?

MR. JOHNSON: Yes.

THE WITNESS: Yes.

MR. DOTSON: And would you like us to send it to counsel and have him provide it to you?

THE WITNESS: Yes.

MR. DOTSON: Counsel, do you have any questions?

MR. JOHNSON: No.

(Whereupon, deposition was concluded at 7:13 p.m.)

-o0o-

CHRISTIAN AMBROSE

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CERTIFICATE OF WITNESS

I hereby certify under penalty of perjury that I have read the foregoing deposition, made the changes and corrections that I deem necessary, and approve the same as now true and correct.

Dated this _____ day of _____, 2013.

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STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

I, CHRISTINA MARIE AMUNDSON, a Certified Court Reporter in and for the States of Nevada and California do hereby certify:

That I was personally present for the purpose of acting as Certified Court Reporter in the matter entitled herein; that the witness was by me duly sworn;

That said transcript which appears hereinbefore was taken in verbatim stenotype notes by me and thereafter transcribed into typewriting as herein appears to the best of my knowledge, skill, and ability and is a true record thereof.

Christina M. Amundson

Christina Marie Amundson, CCR #641 (NV), CSR #11883, (CA)

-o0o-

EXHIBIT 4

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Clerk of the Court
Transaction # 3775417

EXHIBIT 4

1 1700
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; 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 **PLAINTIFF'S EXPERT WITNESS DISCLOSURE**

23 Plaintiff GOLDEN ROAD MOTOR INN, INC. d/b/a ATLANTIS CASINO RESORT
24 SPA ("Atlantis"), by and through its counsel, LAXALT & NOMURA, LTD., hereby discloses
25 its experts as follows pursuant to NRCP 16.1(a)(2):

26 **NON-RETAINED EXPERTS:**

27 1. Brandon McNeely.

28 Mr. McNeely is a non-retained expert and the Database Coordinator – Sales & Marketing
for the Atlantis Casino Resort Spa.

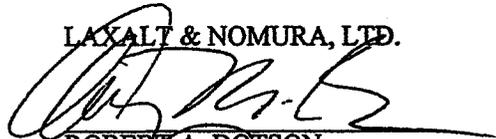
LAXALT & NOMURA, LTD.
ATTORNEYS AT LAW
9600 GATEWAY DRIVE
RENO, NEVADA 89521

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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 November, 2012.

LAXALT & NOMURA, LTD.

ROBERT A. DOTSON
Nevada State Bar No. 5285
ANGELA M. BADER, ESQ.
Nevada State Bar No. 5574
9600 Gateway Drive
Reno, Nevada 89521
(775) 322-1170
Fax: (75) 322-1865
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCPC 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.

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18 By email to the email addresses below.

19 addressed as follows:

20 Steven B. Cohen, Esq.
21 Stan Johnson, Esq.
22 Cohen/Johnson
23 6293 Dean Martin Drive, Ste G
24 Las Vegas, NV 89118

25 Mark Wray, Esq.
26 Law Office of Mark Wray
27 608 Lander Street
28 Reno, NV 89509

mwray@markwraylaw.com

scohen@cohenjohnson.com
sjohnson@cohenjohnson.com

DATED this 13th day of November, 2012.

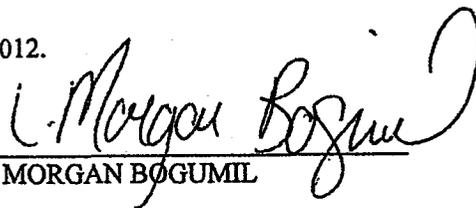

L. MORGAN BOGUMIL

EXHIBIT 5

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EXHIBIT 5

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

--oOo--

GOLDEN ROAD MOTOR INN, INC.,
a Nevada corporation, d/b/a
ATLANTIS CASINO RESORT SPA,

Plaintiff,

vs.

SUMONA ISLAM, an individual;
GSR ENTERPRISES, LLC, a Nevada
limited liability company,
d/b/a GRAND SIERRA RESORT;
et al.,

Defendants.

CERTIFIED COPY

Case No. CV12-01171

Dept. No. 7

Pages 1 to 125, inclusive.

DEPOSITION OF BRANDON CHARLES MCNEELY

Tuesday, May 14, 2013

Reno, Nevada

REPORTED BY:

Romona Malnerich
Nevada CCR #269
California CSR #7526

1 A No.

2 Q Why don't we start with your current
3 position. What's your current position at Atlantis?

4 A Data integration manager.

5 Q Can you explain to me what your duties are?

6 A Sure. I oversee database marketing, which is
7 the gathering of information analytics for the marketing
8 department, as well as oversee system integration from a
9 marketing perspective to frontline team members.

10 Q So tell me what you do on a daily basis, what
11 your job functions are.

12 A Market analysis, gathering information and
13 interpreting it for business decisions. I oversee our
14 direct mail channel for marketing, pushing out offers to
15 individual players based off of gaming information,
16 gaming behavior, reporting of our different promotions
17 and offers that we send to different players, as well as
18 system integration and developing -- assisting in
19 development of products.

20 Q When you say "system integration," is that
21 integrating your marketing programs with the database?
22 Or what do you mean by that?

23 A For example -- we have a player tracking
24 system we use called Patron. If we develop an internal
25 application that uses some of that information, we have

1 Q Are the financial statements of the Atlantis
2 based on theoretical numbers or real numbers?

3 MR. DOTSON: Objection. Foundation.

4 Go ahead and answer, if you can.

5 THE WITNESS: There are a lot of things that
6 go into the financial numbers.

7 BY MR. JOHNSON:

8 Q Isn't it based on cash?

9 A I believe so.

10 Q And these theoretical numbers are not based
11 on cash, they're based on a theoretical calculation.

12 Correct?

13 A Theoretical is based on the house advantage.

14 Q But they're not based on cash. Correct?

15 A They are based on cash.

16 Q These theoretical numbers are based on the
17 actual cash that is either won or lost by the casino?

18 A It's based off of the coin-in in the machine
19 or on the table.

20 Q For example, so we're clear, let's take Coy
21 Sanders. In 2011, the theoretical was 141,519. Correct?

22 A That is correct.

23 Q Did you look at the actual numbers, the
24 actual revenue, the actual cash for Coy Sanders?

25 A As I stated in the beginning, we didn't use

1 it for this analysis, because theoretical is a measure of
2 cash in the machine.

3 Q It's a partial measure of the cash that goes
4 through the machine.

5 A That is correct.

6 Q And it's the cash going through the machine,
7 times the hold or the -- there's various names for it,
8 but what the machine should theoretically hold. Is that
9 correct?

10 A That is correct.

11 Q So this number, 141,519, does not reflect any
12 type of jackpots or winnings by Coy Sanders. Correct?

13 A The theoretical value strips off the
14 volatility of actual. So it strips off the lucky streak.

15 Q But you didn't answer my question. My
16 question was, does this number, 141,519, show any
17 winnings or any jackpots that, in reality, Coy Sanders
18 experienced in 2011?

19 A The theoretical values do not take into
20 account -- jackpots are not included in the theoretical
21 values.

22 Q Okay. So if Coy Sanders had a \$50,000
23 jackpot in 2011, then, in reality, the cash received by
24 the Atlantis would've been reduced by that jackpot. Is
25 that correct?

1 Q It's conservative not to include benefits to
2 the Atlantis Casino. That's what conservative means?
3 It's conservative to leave out anybody who wins any
4 money, which would reduce the damages? It's conservative
5 to leave out anybody who benefited by coming there more
6 days? That's conservative?

7 A This guest actually played less at the
8 Atlantis.

9 Q This person that came 47 more days than the
10 year before, she played less?

11 A As evidenced by the theoretical variance.

12 Q But those are phony numbers, those aren't
13 real revenue. Those are made-up, phony numbers. That's
14 not the real revenue. What's the real revenue for that
15 person? What's the real revenue for the person who
16 played 47 more days at the Atlantis Casino? What's the
17 real damage?

18 A The theoretical number is the house
19 advantage. It's what we expect to earn from this player,
20 stripping out the volatility or the lucky streak of him
21 winning or losing. It's a zero-sum game.

22 Q It's a zero-sum game, meaning that no one can
23 ever win, and in the seven-month period, we're supposed
24 to assume that no one won any money out of these 202
25 players at the Atlantis Casino. That's what we're

1 to evaluate a player and their value to us, because it's
2 a consistent measure based off the actual money they put
3 in the machine and what we expect to win, which is
4 considered the house advantage.

5 Q I think you told counsel that you have seen
6 the actual win or loss for these players. Is it within
7 the database?

8 A That is correct.

9 Q But did you ever add it up for these 202
10 players?

11 A The actual win?

12 Q The actual win in 2011 compared to 2012.

13 A We have the information. I don't recall what
14 the information said.

15 Q And that's what I'm asking. Did you ever
16 actually go through that exercise?

17 A Yes.

18 Q And do you know if it was good, bad, or
19 indifferent? Why did you not include it?

20 A We didn't include it in the analysis because
21 there's a lot of volatility when looking at actual. We
22 felt that the theoretical value was a better indicator of
23 what the house expects to receive from the player. It's
24 a conservative approach. The win could be very volatile.
25 We could've won a lot more money, but the house advantage

1 is usually smaller, and that's what we expect to win from
2 the customer over the lifetime.

3 Q What percentage of the play at the Atlantis
4 is tracked?

5 A About 87 percent. We run a lot of programs
6 to help strengthen our card-in percentage for individual
7 players. So we are very good at tracking play.

8 Q Now, does the theoretical win -- and counsel
9 asked you some questions about jackpots, which obviously,
10 if you saw the actual win, some people would have
11 received some jackpots during this period of time.

12 A Yes, absolutely.

13 Q Now, does theoretical take into account
14 jackpots?

15 A No, it does not. It just takes into account
16 the house advantage.

17 Q Doesn't the house have to pay a jackpot?

18 A The house will have to pay a jackpot.

19 Q So the amount that is actually held by the
20 house would be less than the theoretical.

21 A That is correct, it could very well be.

22 Q I'm not asking you if it could be. I mean,
23 over time, infinity, is it the same as theoretical or is
24 it less?

25 A Theoretical is designed, over the lifetime of

1 the customer, to be very close to actual.

2 Q So these players, if you were looking at
3 their actual play versus their theoretical play over a
4 25-year period of time, what would you expect to see in
5 that comparison?

6 A I would expect the theoretical to mirror the
7 actual.

8 Q And how long a period of time do you
9 anticipate it would take before -- or does it take before
10 the theoretical mirrors the actual?

11 A It really varies depending on the individual
12 and how they're playing and the types of games they're
13 playing.

14 Q And that mirror would be including jackpots,
15 if they won any jackpots.

16 A That is correct.

17 Q Let's look at Exhibit 11. This goes back to
18 one of Mr. Wray's questions. He asked you about --
19 something about, how did you know which information had
20 been changed. Have you seen Exhibit 11?

21 A Yes, I have.

22 Q And can you see from that document the sorts
23 of things that were changed?

24 A Yes.

25 Q For example, there were questions about

1 million people to do this report?

2 THE WITNESS: I didn't look at the records
3 individually. I just pulled out a summary.

4 MR. DOTSON: All right. Nothing further.

5 MR. JOHNSON: No more questions. Thank you.

6 (Whereupon the deposition was concluded at
7 the hour of 5:27 p.m.)

8 --oOo--

9

10 CERTIFICATE OF WITNESS

11

12 I hereby certify under penalty of perjury that
13 I have read the foregoing deposition, made the changes
14 and corrections that I deem necessary, and approve the
15 same as now true and correct.

16 Dated this _____ day of _____,
17 2013.

18

19

BRANDON McNEELY

20

21

22

23

24

25

1 STATE OF NEVADA)
2 COUNTY OF WASHOE) SS.

3

4 I, ROMONA MALNERICH, a Notary Public in and
5 for the County of Washoe, State of Nevada, do hereby
6 certify:

7 That on Tuesday, the 14th day of May, 2013, at
8 the hour of 1:42 p.m. of said day, at the Law Offices of
9 Mark Wray, 608 Lander Street, Reno, Nevada, personally
10 appeared BRANDON CHARLES McNEELY, who was duly sworn by
11 me, and thereupon was deposed in the matter entitled
12 herein;

13 That said deposition was taken in verbatim
14 stenotype notes by me, a Certified Court Reporter, and
15 thereafter transcribed into typewriting as herein
16 appears;

17 That the foregoing transcript, consisting of
18 pages 1 through 123, is a full, true and correct
19 transcript of my stenotype notes of said deposition to
20 the best of my knowledge, skill and ability.

21 DATED: At Reno, Nevada, this 15th day of May,
22 2013.

23

24

25

Romona Malnerich
ROMONA MALNERICH, CCR #269

EXHIBIT 6

FILED
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EXHIBIT 6



ANDREW KLEBANOW

Creating the Right Player Reinvestment Strategy

As gaming markets mature and revenue growth slows, casinos struggle to find ways to remain competitive, grow market share and gaming revenue. Inevitably, casino operators are forced to increase the amount of marketing dollars that they spend in various forms of player reinvestment. As spending increases, marketing leadership is faced with answering such questions as: "what is the casino's player reinvestment rate?" and "how much is the casino spending to reward and retain gaming customers?"

Unfortunately, these are not easy questions to answer. First, player reinvestment is an ill-defined term. Not all casinos define player reinvestment in the same way. Some use it as a catchall phrase to describe all marketing expenditures while others use the term only to describe comps issued through the property's casino management system, bonus points redeemed for cash and redeemed mail offers. Others attempt to better define the term to describe all of those expenses that are expended to foster loyalty and encourage repeat visitation.

In this article player reinvestment is defined as all market-

ing expenses that are used to foster loyalty and encourage repeat visitation among rated/carded casino patrons. It includes points redeemed for cash back, system generated comps (hotel, food, entertainment and other services), bonus points redeemed for cash back or free slot play, special events including premium player parties, prizes, awards and promotional merchandise that are given to slot club members and all mail offers that are redeemed, including cash coupons, free room offers and show tickets. It does not include other marketing expenses like fees paid to bus operators, cash to bus patrons, prospect mailers, postage expense, labor or advertising.

What is Player Reinvestment Rate?

The player reinvestment rate is a simple fraction with total player reinvestment expenses as the numerator and some form of revenue as the denominator. The resulting ratio is the player reinvestment rate. The problem once again is that there is no industry standard that defines what the denominator is comprised of. Some casinos use total gaming revenue; others use carded (tracked) win. Still others look at the theoretical win that various segments of the database can generate and use that as the denominator and measure it against the amount of money they spend on each player segment.

Once the numerator and denominator are defined, casinos can then calculate their player reinvestment rate. The problem that then arises is to define what the optimal rate of player reinvestment is. Because there is no industry standard that defines what is in the numerator, what is in the denominator, and what the optimal rate should be, every casino's player reinvestment rate can be different. So, the question remains, how much is enough?

Player Reinvestment Strategy

Just as a casino comes to grip with trying to figure out its player reinvestment rate, someone in senior leadership will pose the question, "what is our property's player reinvestment strategy?" In reality, most casinos do not have such a strategy. What they have is an evolutionary process that ultimately leads to a de facto strategy. The process starts with the design of the casino's player rewards program. Casino managers start by defining how slot club points will accrue and what the value of those points will be. In most cases, they look at their competition and see what they are giving back to customers in cash back and comps as a percentage of handle. Or they may just replicate the slot club math that existed at a property that they worked at in the past.

Once the casino player rewards program is established, managers start to examine the contributions that various segments of the database contribute to slot win. Invariably, casino managers discover one of the hidden truths of all casinos: 80% of gaming revenue comes from 20% of the database.

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Armed with this knowledge, casino managers begin to increase the benefits that these premium tiers receive, most often to the detriment of less profitable (but still valuable) player segments. Eventually, the de facto player reinvestment strategy becomes apparent: the casino's player reinvestment strategy is to maintain loyalty among its most valuable gaming customers while neglecting new or emerging player segments.

Player Reinvestment Versus Player Development

Player development is the process of identifying new players and developing them into loyal and profitable customers. To do this, casinos often develop host programs to take care of their best customers. Casinos also often hire hosts from competitors' properties with the expectation that those hosts will bring along a database of premium customers. While there are legal and ethical issues that go along with this kind of behavior, the fact remains that these tactics rarely work in developing loyal and profitable players. Invariably, the players who are attracted to new properties by their hosts move to a new property because their benefits are greater. The end results are marginally profitable customers.

Hosts are most often used to take care of existing premium players. They write discretionary comps, invite customers to special events and tend to their players' needs. However, hosts are rarely used to actually walk the floor, identify new premium players and develop them into loyal customers. Most new customers simply walk in the door, enroll in the slot club and play at exorbitantly high levels until the property's rewards program categorizes them and starts to send them additional offers. However, if the de facto player reinvestment strategy is to focus only on the top 20% of existing players, these new players remain neglected for months until their continued gaming activity moves them into the premium segment.

Tracked Win as a Measure of Player Reinvestment

So how does a casino determine if the amount of money it is spending on player development and player reinvestment is the right amount? The first step is to look at overall participation in the casino's player rewards program. The easiest measure is to examine the percentage of casino revenue that is derived from customers who use their slot club cards and allow their play to be tracked. This is often referred to as carded or tracked win. Tracked win is the percent of gaming win that is derived from customers who use their slot club cards.

Tracked win varies from casino to casino and can range from a low of 20% to a high of 85%. Several factors influence the rate of participation in a casino's player rewards program. The most important factor is the suite of benefits that players receive if they allow the casino to track their play. Casinos that offer players more benefits tend to have higher participation rates. Again, while each casino must establish its own goals, there is a growing body of evidence that indicates a direct correlation between track win and sound player reinvestment rates and supports the following guidelines:

- If 55%-75% of gaming revenue can be attributed to

tracked win, the casino is probably spending the right amount on player reinvestment.

- If over 80% of gaming revenue can be attributed to tracked win, the casino is spending too much on player reinvestment.
- If 40% of gaming revenue can be attributed to tracked win, the casino does not have a player reinvestment strategy; it has a slot club.
- If less than 25% of gaming revenue can be attributed to tracked win, the casino not only does not have a player reinvestment strategy, it has a dysfunctional slot club.

So before a casino can take on the heady task of calculating its player reinvestment rate or defining its player reinvestment strategy, it must first get its player rewards program right. Once a casino has a healthy and active player rewards program that is constantly recruiting new players, developing them and fostering loyalty, it can then focus on developing a sound and profitable player reinvestment strategy and achieve the right player reinvestment rate. ♣

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Casino Mathematics

This guide, written by casino math professor [Robert Hannum](#), contains a brief, non-technical discussion of the basic mathematics governing casino games and shows how casinos make money from these games. The article addresses a variety of topics, including house advantage, confusion about win rates, game volatility, player value and comp policies, casino pricing mistakes, and regulatory issues. Statistical advantages associated with the major games are also provided.

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Introduction

At its core the business of casino gaming is pretty simple. Casinos make money on their games because of the mathematics behind the games. As Nico Zographos, dealer-extraordinaire for the 'Greek Syndicate' in Deauville, Cannes, and Monte Carlo in the 1920s observed about casino gaming: "There is no such thing as luck. It is all mathematics."

With a few notable exceptions, the house always wins - in the long run - because of the mathematical advantage the casino enjoys over the player. That is what Mario Puzo was referring to in his famous novel *Fools Die* when his fictional casino boss character, Gronavelt, commented: "Percentages never lie. We built all these hotels on percentages. We stay rich on the percentage. You can lose faith in everything, religion and God, women and love, good and evil, war and peace. You name it. But the percentage will always stand fast."

Puzo is, of course, right on the money about casino gaming. Without the "edge," casinos would not exist. With this edge, and because of a famous mathematical result called the law of large numbers, a casino is guaranteed to win in the long run.

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Why Is Mathematics Important?

Critics of the gaming industry have long accused it of creating the name "gaming" and using this as more politically correct than calling itself the "gambling industry." The term "gaming," however, has been around for centuries and more accurately describes the operators' view of the industry because most often casino operators are not gambling. Instead, they rely on mathematical principles to assure that their establishment generates positive gross gaming revenues. The operator, however, must assure the gaming revenues are sufficient to cover deductions like bad debts, expenses, employees, taxes and interest.

Despite the obvious, many casino professionals limit their advancements by failing to understand the basic mathematics of the games and their relationships to casino profitability. One casino owner would often test his pit bosses by asking how a casino could make money on blackjack if the outcome is determined simply by whether the player or the dealer came closest to 21. The answer, typically, was because the casino maintained "a house advantage." This was fair enough, but many could not identify the amount of that advantage or what aspect of the game created the advantage. Given that products offered by casinos are games, managers must understand why the games provide the expected revenues. In the gaming industry, nothing plays a more important role than mathematics.

Mathematics should also overcome the dangers of superstitions. An owner of a major Las Vegas strip casino once experienced a streak of losing substantial amounts of money to a few "high rollers." He did not attribute this losing streak to normal volatility in the games, but to bad luck. His solution was simple. He spent the evening spreading salt throughout the casino to ward off the bad spirits. Before attributing this example to the idiosyncrasies of one owner, his are atypical only in their extreme. Superstition has long been a part of gambling - from both sides of the table. Superstitions can lead to irrational decisions that may hurt casino profits. For example, believing that a particular dealer is unlucky against a particular (winning) player may lead to a decision to change dealers. As many, if not most, players are superstitious. At best, he may resent that the casino is trying to change his luck. At worst, the player may feel the new dealer is skilled in methods to "cool" the game. Perhaps he is even familiar with stories of old where casinos employed dealers to cheat "lucky" players.

Understanding the mathematics of a game also is important for the casino operator to ensure that the reasonable expectations of the players are met. For most persons, gambling is entertainment. It provides an outlet for adult play. As such, persons have the opportunity for a pleasant diversion from ordinary life and from societal and personal pressures. As an entertainment alternative, however, players may consider the value of the gambling experience. For example, some people may have the option of either spending a hundred dollars during an evening by going to a professional basketball game or at a licensed casino. If the house advantage is too strong and the person loses his money too quickly, he may not value that casino entertainment experience. On the other hand, if a casino can entertain him for an evening, and he enjoys a "complimentary" meal or drinks, he may want to repeat the experience, even over a professional basketball game. Likewise, new casino games themselves may succeed or fail based on player expectations. In recent years, casinos have debuted a variety of new games that attempt to garner player interest and keep their attention. Regardless of whether a game is fun or interesting to play, most often a player will not want to play games where his money is lost too quickly or where he has an exceptionally remote chance of returning home with winnings.

Mathematics also plays an important part in meeting players' expectations as to the possible consequences of his gambling activities. If gambling involves rational decision-making, it would appear irrational to wager money where your opponent has a better chance of winning than you do. Adam Smith suggested that all gambling, where the operator has an advantage, is irrational. He wrote "There is not, however, a more certain proposition in mathematics than that the more tickets [in a lottery] you advertise upon, the more likely you are a loser. Adventure upon all the tickets in the lottery, and you lose for certain; and the greater the number of your tickets, the nearer you approach to this certainty."

Even where the house has an advantage, however, a gambler may be justified if the amount lost means little to him, but the potential gain would elevate him to a higher standing of living. For example, a person with an annual income of \$30,000 may have \$5 in disposable weekly income. He could save or gamble this money. By saving it, at the end of a year, he would have \$260. Even if he did this for years, the savings would not elevate his economic status to another level. As an alternative, he could use the \$5 to gamble for the chance to win \$1 million. While the odds of winning are remote, it may provide the only opportunity to move to a higher economic class.

Since the casino industry is heavily regulated and some of the standards set forth by regulatory bodies involve mathematically related issues, casino managers also should understand the mathematical aspects relating to gaming regulation. Gaming regulation is principally dedicated to assuring that the games offered in the casino are fair, honest, and that players get paid if they win. Fairness is often expressed in the regulations as either requiring a minimum payback to the player or, in more extreme cases, as dictating the actual rules of the games offered. Casino executives should understand the impact that rules changes have on the payback to players to assure they meet regulatory standards. Equally important, casino executives should understand how government mandated rules would impact their gaming revenues.

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The House Edge

The player's chances of winning in a casino game and the rate at which he wins or loses money depends on the game, the rules in effect for that game, and for some games his level of skill. The amount of money the player can expect to win or lose in the long run - if the bet is made over and over again - is called the player's wager expected value (EV), or expectation. When the player's wager expectation is negative, he will lose money in the long run. For a \$5 bet on the color red in roulette, for example, the expectation is -\$0.263. On the average the player will lose just over a quarter for each \$5 bet on red.

When the wager expectation is viewed from the casino's perspective (i.e., the negative of the player's expectation) and expressed as a percentage, you have the house advantage. For the roulette example, the house advantage is 5.26% (\$0.263 divided by \$5). The formal calculation is as follows:

$$EV = (+5)(18/38) + (-5)(20/38) = -0.263$$

(House Advantage = $0.263/5 = 5.26\%$)

When this EV calculation is performed for a 1-unit amount, the negative of the resulting value is the house edge. Here are the calculations for bets on a single-number in double-zero and single-zero roulette.

Double-zero roulette (single number bet):

$$EV = (+35)(1/38) + (-1)(37/38) = -0.053$$

(House Advantage = 5.3%)

Single-zero roulette (single number bet):

$$EV = (+35)(1/37) + (-1)(36/37) = -0.027$$

(House Advantage = 2.7%)

The house advantage represents the long run percentage of the wagered money that will be retained by the casino. It is also called the house edge, the "odds" (i.e., avoid games with bad odds), or just the "percentage" (as in Mario Puzo's *Fools Die*). Although the house edge can be computed easily for some games - for example, roulette and craps - for others it requires more sophisticated mathematical analysis and/or computer simulations. Regardless of the method used to compute it, the house advantage represents the price to the player of playing the game.

Because this positive house edge exists for virtually all bets in a casino (ignoring the poker room and sports book where a few professionals can make a living), gamblers are faced with an uphill and, in the long run, losing battle. There are some exceptions. The odds bet in craps has zero house edge (although this bet cannot be made without making another negative expectation wager) and there are a few video poker machines that return greater than 100% if played with perfect strategy. Occasionally the casino will even offer a promotion that gives the astute player a positive expectation. These promotions are usually mistakes - sometimes casinos don't check the math - and are terminated once the casino realizes the player has the edge. But by and large the player will lose money in the long run, and the house edge is a measure of how fast the money will be lost. A player betting in a game with a 4% house advantage will tend to lose his money twice as fast as a player making bets with a 2% house edge. The trick to intelligent casino gambling - at least from the mathematical expectation point of view - is to avoid the games and bets with the large house advantages.

Some casino games are pure chance - no amount of skill or strategy can alter the odds. These games include roulette, craps, baccarat, keno, the big-six wheel of fortune, and slot machines. Of these, baccarat and craps offer the best odds, with house advantages of 1.2% and less than 1% (assuming only pass/come with full odds), respectively. Roulette and slots cost the player more - house advantages of 5.3% for double-zero roulette and 5% to 10% for slots - while the wheel of fortune feeds the casino near 20% of the wagers, and keno is a veritable casino cash cow with average house advantage close to 30%.

Games where an element of skill can affect the house advantage include blackjack, video poker, and the four popular poker-based table games: Caribbean Stud poker, Let It Ride, Three Card poker, and Pai Gow poker. For the poker games, optimal strategy results in a house edge in the 3% to 5% range (CSP has the largest house edge, PGP the lowest, with LIR and TCP in between). For video poker the statistical advantage varies depending on the particular machine, but generally this game can be very player friendly - house edge less than 3% is not uncommon and some are less than 1% - if played with expert strategy.

Blackjack, the most popular of all table games, offers the skilled player some of the best odds in the casino. The house advantage varies slightly depending on the rules and number of decks, but a player using basic strategy faces little or no disadvantage in a single-deck game and only a 0.5% house edge in the common six-deck game. Despite these numbers, the average player ends up giving the casino a 2% edge due to mistakes and deviations from basic strategy. Complete basic strategy tables can be found in many books and many casino-hotel gift shops sell color-coded credit card size versions. Rule variations favorable to the player include fewer decks, dealer stands on soft seventeen (worth 0.2%), doubling after splitting (0.14%), late surrender (worth 0.06%), and early surrender (uncommon, but worth 0.24%). If the dealer hits soft seventeen it will cost you, as will any restrictions on when you can double down.

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Probability versus Odds

Probability represents the long run ratio of (# of times an outcome occurs) to (# of times experiment is conducted). Odds represent the long run ratio of (# of times an outcome does not occur) to (# of times an outcome occurs). If a card is randomly selected from a standard deck of 52 playing cards, the probability it is a spade is 1/4; the odds (against spade) are 3 to 1. The true odds of an event represent the payoff that would make the bet on that event fair. For example, a bet on a single number in double-zero roulette has probability of 1/38, so to break even in the long run a player would have to be paid 37 to 1 (the actual payoff is 35 to 1).

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Confusion about Win Rate

There are all kinds of percentages in the world of gaming. Win percentage, theoretical win percentage, hold percentage, and house advantage come to mind. Sometimes casino bosses use these percentages interchangeably, as if they are just different names for the same thing. Admittedly, in some cases this is correct. House advantage is just another name for theoretical win percentage, and for slot machines, hold percentage is (in principle) equivalent to win percentage. But there are fundamental differences among these win rate measurements.

The house advantage - the all-important percentage that explains how casinos make money - is also called the house edge, the theoretical win percentage, and expected win percentage. In double-zero roulette, this figure is 5.3%. In the long run the house will retain 5.3% of the money wagered. In the short term, of course, the actual win percentage will differ from the theoretical win percentage (the magnitude of this deviation can be predicted from statistical theory). The actual win percentage is just the (actual) win divided by the handle. Because of the law of large numbers - or as some prefer to call it, the law of averages - as the number of trials gets larger, the actual win percentage should get closer to the theoretical win percentage.

Because handle can be difficult to measure for table games, performance is often measured by hold percentage (and sometimes erroneously called win percentage). Hold percentage is equal to win divided by drop. In Nevada, this figure is about 24% for roulette. The drop and hold percentage are affected by many factors; we won't delve into these nor the associated management issues. Suffice it to say that the casino will not in the long term keep 24% of the money bet on the spins of roulette wheel - well, an honest casino won't.

To summarize: House advantage and theoretical win percentage are the same thing, hold percentage is win over drop, win percentage is win over handle, win percentage approaches the house advantage as the number of plays increases, and hold percentage is equivalent to win percentage for slots but not table games.

- Hold % = Win/Drop
- Win % (actual) = Win/Handle
- H.A. = Theoretical Win % = Limit(Actual Win %) = Limit(Win/Handle)
- Hold Percentage = House Edge

Furthermore, the house advantage is itself subject to varying interpretations. In Let it Ride, for example, the casino advantage is either 3.51% or 2.86% depending on whether you express the advantage with respect to the base bet or the average bet. Those familiar with the game know that the player begins with three equal base bets, but may withdraw one or two of these initial units. The final amount put at risk, then, can be one (84.6% of the time assuming proper strategy), two (8.5%), or three units (6.9%), making the average bet size 1.224 units. In the long run, the casino will win 3.51% of the hands, which equates to 2.86% of the money wagered. So what's the house edge for Let it Ride? Some prefer to say 3.51% per hand, others 2.86% per unit wagered. No matter. Either way, the bottom line is the same either way: assuming three \$1 base bets, the casino can expect to earn 3.5¢ per hand (note that $1.224 \times 0.0286 = 0.035$).

The question of whether to use the base bet or average bet size also arises in Caribbean Stud Poker (5.22% vs. 2.56%), Three Card Poker (3.37% vs. 2.01%), Casino War (2.86% vs. 2.68%), and Red Dog (2.80% vs. 2.37%).

For still other games, the house edge can be stated including or excluding ties. The prime examples here are the player (1.24% vs. 1.37%) and banker (1.06% vs. 1.17%) bets in baccarat, and the don't pass bet (1.36% vs. 1.40%) in craps. Again, these are different views on the casino edge, but the expected revenue will not change.

That the house advantage can appear in different disguises might be unsettling. When properly computed and interpreted, however, regardless of which representation is chosen, the same truth (read: money) emerges: expected win is the same.

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Volatility and Risk

Statistical theory can be used to predict the magnitude of the difference between the actual win percentage and the theoretical win percentage for a given number of wagers. When observing the actual win percentage a player (or casino) may experience, how much variation from theoretical win can be expected? What is a normal fluctuation? The basis for the analysis of such volatility questions is a statistical measure called the standard deviation (essentially the average deviation of all possible outcomes from the expected). Together with the central limit theorem (a form of the law of large numbers), the standard deviation (SD) can be used to determine confidence limits with the following volatility guidelines:

Volatility Analysis Guidelines

- Only 5% of the time will outcomes will be more than 2 SD's from expected outcome
- Almost never (0.3%) will outcomes be more than 3 SD's from expected outcome

Obviously a key to using these guidelines is the value of the SD. Computing the SD value is beyond the scope of this article, but to get an idea behind confidence limits, consider a series of 1,000 pass line wagers in craps. Since each wager has a 1.4% house advantage, on average the player will be behind by 14 units. It can be shown (calculations omitted) that the wager standard deviation is for a single pass line bet is 1.0, and for 1,000 wagers the SD is 31.6. Applying the volatility guidelines, we can say that there is a 95% chance the player's actual win will be between 49 units ahead and 77 units behind, and almost certainly between 81 units ahead and 109 units behind.

A similar analysis for 1,000 single-number wagers on double-zero roulette (on average the player will be behind 53 units, wager SD = 5.8, 1,000 wager SD = 182.2) will yield 95% confidence limits on the player win of 311 units ahead and 417 units behind, with win almost certainly between 494 units ahead and 600 units behind.

Note that if the volatility analysis is done in terms of the percentage win (rather than the number of units or amount won), the confidence limits will converge to the house advantage as the number of wagers increases. This is the result of the law of large numbers - as the number of trials gets larger, the actual win percentage should get closer to the theoretical win percentage. Risk in the gaming business depends on the house advantage, standard deviation, bet size, and length of play.

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Player Value and Complimentaries

Using the house advantage, bet size, duration of play, and pace of the game, a casino can determine how much it expects to win from a certain player. This player earning potential (also called player value, player worth, or theoretical win) can be calculated by the formula:

Earning Potential = Average Bet * Hours Played * Decisions per Hour * House Advantage

For example, suppose a baccarat player bets \$500 per hand for 12 hours at 60 hands per hour. Using a house advantage of 1.2%, this player's worth to the casino is $\$4,320 (500 * 12 * 60 * .012)$. A player who bets \$500 per spin for 12 hours in double-zero roulette at 60 spins per hour would be worth about $\$19,000 (500 * 12 * 60 * .053)$.

Many casinos set comp (complimentary) policies by giving the player back a set percentage of their earning potential. Although comp and rebate policies based on theoretical loss are the most popular, rebates on actual losses and dead chip programs are also used in some casinos. Some programs involve a mix of systems. The mathematics associated with these programs will not be addressed in this article.

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Casino Pricing Mistakes

In an effort to entice players and increase business, casinos occasionally offer novel wagers, side bets, increased payoffs, or rule variations. These promotions have the effect of lowering the house advantage and the effective price of the game for the player. This is sound reasoning from a marketing standpoint, but can be disastrous for the casino if care is not taken to ensure the math behind the promotion is sound. One casino offered a baccarat commission on winning banker bets of only 2% instead of the usual 5%, resulting in a 0.32% player advantage. This is easy to see (using the well-known probabilities of winning and losing the banker bet):

$$EV = (+0.98)(.4462) + (-1)(.4586) = 0.0032$$

(House Advantage = -0.32%)

A casino in Biloxi, Mississippi gave players a 12.5% edge on Sic Bo bets of 4 and 17 when they offered 80 to 1 payoffs instead of the usual 60 to 1. Again, this is an easy calculation. Using the fact that the probability of rolling a total of 4 (same calculation applies for a total of 17) with three dice is $1/72 (1/6 \times 1/6 \times 1/6 \times 3)$, here are the expected values for both the usual and the promotional payoffs:

$$\text{Usual 60 to 1 payoff: } EV = (+60)(1/72) + (-1)(71/72) = -0.153$$

(House Advantage = 15.3%)

$$\text{Promotional 80 to 1 payoff: } EV = (+80)(1/72) + (-1)(71/72) = +0.125$$

(House Advantage = -12.5%)

In other promotional gaffes, an Illinois riverboat casino lost a reported \$200,000 in one day with their "2 to 1 Tuesdays" that paid players 2 to 1 (the usual payoff is 3 to 2) on blackjack naturals, a scheme that gave players a 2% advantage. Not to be outdone, an Indian casino in California paid 3 to 1 on naturals during their "Happy hour," offered three times a day, two days a week for ever two weeks. This promotion gave the player a whopping 6% edge. A small Las Vegas casino offered a

blackjack rule variation called the "Free Ride" in which players were given a free right-to-surrender token every time they received a natural. Proper use of the token led to a player edge of 1.3%, and the casino lost an estimated \$17,000 in eight hours. Another major Las Vegas casino offered a "50/50 Split" blackjack side bet that allowed the player to stand on an initial holding of 12-16, and begin a new hand for equal stakes against the same dealer up card. Although the game marketers claimed the variation was to the advantage of the casino, it turned out that players who exercised the 50/50 Split only against dealer 2-6 had a 2% advantage. According to one pit boss, the casino suffered a \$230,000 loss in three and a half days.

In the gaming business, it's all about "bad math" or "good math." Honest games based on good math with positive house advantage minimize the short-term risk and ensure the casino will make money in the long run. Players will get "lucky" in the short term, but that is all part of the grand design. Fluctuations in both directions will occur. We call these fluctuations good luck or bad luck depending on the direction of the fluctuation. There is no such thing as luck. It is all mathematics.

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Gaming Regulation and Mathematics

Casino gaming is one of the most regulated industries in the world. Most gaming regulatory systems share common objectives: keep the games fair and honest and assure that players are paid if they win. Fairness and honesty are different concepts. A casino can be honest but not fair. Honesty refers to whether the casino offers games whose chance elements are random. Fairness refers to the game advantage - how much of each dollar wagered should the casino be able to keep? A slot machine that holds, on average, 90% of every dollar bet is certainly not fair, but could very well be honest (if the outcomes of each play are not predetermined in the casino's favor). Two major regulatory issues relating to fairness and honesty - ensuring random outcomes and controlling the house advantage - are inextricably tied to mathematics and most regulatory bodies require some type of mathematical analysis to demonstrate game advantage and/or confirm that games outcomes are random. Such evidence can range from straightforward probability analyses to computer simulations and complex statistical studies. Requirements vary across jurisdictions, but it is not uncommon to see technical language in gaming regulations concerning specific statistical tests that must be performed, confidence limits that must be met, and other mathematical specifications and standards relating to game outcomes.

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Summary Tables for House Advantage

The two tables below show the house advantages for many of the popular casino games. The first table is a summary of the popular games and the second gives a more detailed breakdown.

House Advantages for Popular Casino Games	
Game	House Advantage
Roulette (double-zero)	5.3%
Craps (pass/come)	1.4%
Craps (pass/come with double odds)	0.6%
Blackjack - average player	2.0%
Blackjack - 6 decks, basic strategy*	0.5%
Blackjack - single deck, basic strategy*	0.0%
Baccarat (no tie bets)	1.2%
Caribbean Stud*	5.2%
Let It Ride*	3.5%
Three Card Poker*	3.4%
Pal Gow Poker (ante/play)*	2.5%
Slots	5% - 10%
Video Poker*	0.5% - 3%
Keno (average)	27.0%
*optimal strategy	

House Advantages for Major Casino Wagers		
Game	Bet	HA*
Baccarat	Banker (5% commission)	1.06%
Baccarat	Player	1.24%
Big Six Wheel	Average	19.84%
Blackjack	Card-Counting	-1.00%
Blackjack	Basic Strategy	0.50%
Blackjack	Average player	2.00%
Blackjack	Poor Player	4.00%
Caribbean Stud	Ante	5.22%
Casino War	Basic Bet	2.88%
Craps	Any Craps	11.11%
Craps	Any Seven	16.67%

Craps	Big 6, Big 8	9.09%
Craps	Buy (any)	4.76%
Craps	C&E	11.11%
Craps	don't pass/Don't Come	1.36%
Craps	don't pass/Don't Come w/1X Odds	0.68%
Craps	don't pass/Don't Come w/2X Odds	0.45%
Craps	don't pass/Don't Come w/3X Odds	0.34%
Craps	don't pass/Don't Come w/5X Odds	0.23%
Craps	don't pass/Don't Come w/10X Odds	0.12%
Craps	Don't Place 4 or 10	3.03%
Craps	Don't Place 5 or 9	2.50%
Craps	Don't Place 6 or 8	1.82%
Craps	Field (2 and 12 pay double)	5.56%
Craps	Field (2 or 12 pays triple)	2.78%
Craps	Hard 4, Hard 10	11.11%
Craps	Hard 6, Hard 8	9.09%
Craps	Hop Bet - easy (14-1)	16.67%
Craps	Hop Bet - easy (15-1)	11.11%
Craps	Hop Bet - hard (29-1)	16.67%
Craps	Hop Bet - hard (30-1)	13.89%
Craps	Horn Bet (30-1 & 15-1)	12.50%
Craps	Horn High - any (29-1 & 14-1)	16.67%
Craps	Horn High 2, Horn High 12 (30-1 & 15-1)	12.78%
Craps	Horn High 3, Horn High 11 (30-1 & 15-1)	12.22%
Craps	Lay 4 or 10	2.44%
Craps	Lay 5 or 9	3.23%
Craps	Lay 6 or 8	4.00%
Craps	Pass/Come	1.41%
Craps	Pass/Come w/1X Odds	0.85%
Craps	Pass/Come w/2X Odds	0.61%
Craps	Pass/Come w/3X Odds	0.47%
Craps	Pass/Come w/5X Odds	0.33%
Craps	Pass/Come w/10X Odds	0.18%
Craps	Place 4 or 10	6.67%
Craps	Place 5 or 9	4.00%
Craps	Place 6 or 8	1.52%
Craps	Thrae, Eleven (14-1)	16.67%
Craps	Three, Eleven (15-1)	11.11%
Craps	Two, Twelve (29-1)	16.67%
Craps	Two, Twelve (30-1)	13.89%
Keno	Typical	27.00%
Let It Ride	Base bet	3.61%
Pai Gow	Poker Skilled player (non-banker)	2.54%
Pai Gow Poker	Average player (non-banker)	2.84%
Red Oog	Basic bet (six decks)	2.80%
Roulette	Single-zero	2.70%
Roulette	Double-zero (except five-number)	5.26%

Roulette	Double-zero, five-number bet	7.89%
Sic Bo	Big/Small	2.78%
Sic Bo	One of a Kind	7.87%
Sic Bo	7, 14	9.72%
Sic Bo	8, 13	12.50%
Sic Bo	10, 11	12.50%
Sic Bo	Any three of a kind	13.89%
Sic Bo	5, 16	13.89%
Sic Bo	4, 17	15.28%
Sic Bo	Three of a kind	16.20%
Sic Bo	Two-dice combination	16.67%
Sic Bo	6, 15	16.67%
Sic Bo	Two of a kind	18.52%
Sic Bo	9, 12	18.98%
Slots	Dollar Slots (good)	4.00%
Slots	Quarter Slots (good)	5.00%
Slots	Dollar Slots (average)	6.00%
Slots	Quarter Slots (average)	8.00%
Sports Betting	Bet \$11 to Win \$10	4.55%
Three Card Poker	Pair Plus	2.32%
Three Card Poker	Ante	3.37%
Video Poker	Selected Machines	-0.50%
*House Advantages under typical conditions, expressed "per hand" and including ties, where appropriate. Optimal strategy assumed unless otherwise noted.		

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About the Author

Bob Hannum is a Professor of Risk Analysis & Gaming at the University of Denver where he teaches courses in probability, statistics, risk, and the theory of gambling. His publications include *Practical Casino Math* (co-authored with Anthony N. Cabot) and numerous articles in scholarly and gaming industry journals. Hannum regularly speaks on casino mathematics to audiences around the globe. (Some of this guide has been excerpted from *Practical Casino Math*.)

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Pyramids to Players Clubs: The Battle for Competitive Advantage in Las Vegas

Oliver Lovat

ABSTRACT: The evolution of the Las Vegas casinos from owner operator to the institutionally financed and corporately managed casino-resort has been the predominant feature of the evolution of the US Gaming market in the past 30 years. This paper examines the strategic frameworks used by Las Vegas casino resorts and identifies the drivers for competitive advantage moving forward.

Keywords: strategy, marketing, casinos, gaming, competitive advantage

Lessons of the Past

As a gaming center, Las Vegas was established by a collection of entrepreneurs each developing various strategies to define and promote their resorts, and over time these have been emulated and refined and are evident to this day.

The time of the early owners is defined by Bernhard, Green and Lucas as the "Maverick Period," and this captures the essence of the dynamism and creativity of the unorthodox business leaders who pioneered many of the early innovations.

Amongst those was Moe Dalitz, whose interest in Las Vegas began in the 1940s with the financing of the Desert Inn, an upscale resort conceptually built on the strategy of the Flamingo but with the notable incorporation of a golf course on site in order to attract the affluent guests who, like Dalitz, were keen golfers.

Benny Binion influenced development of his resorts from the perspective of a gambler. By placing his name above the door he sought to create a resort in his image, much like Bill Harrah in Reno and Steve Wynn today.

"(Binion) ran the place on the theory that every customer in there was somebody we were trying to get to come back." He offered lower odds than his competitors and he created the nicest environment to gamble, including novelties such as carpeted floors and air-conditioning.

Jay Sarno was an innovator in aspects of theme and casino design. He moved away from the motel model and was the first developer to center all aspects of the resort design in a wheel with the casino as a hub and he looked at bringing in additional revenues from alternative sources than gaming such as those in the convention trade and non-gamers who came to Las Vegas to see this modern Greco-Roman incarnation.

As the manager of the Mint and Sahara, Sam Boyd targeted traditional Vegas customers. However, when operating his own casino, The California (the Cal) he notably segmented offering Hawaiian food, a more laid back atmosphere and a packaged holiday service from that island, building Boyd Gaming's success on Hawaiian customers. Sam's Town

UNLV

catered specifically for local custom in Las Vegas.

Meanwhile, outside of Las Vegas, Bill Harrah was operating casino resorts in Reno and Lake Tahoe, with "a solid understanding of the gambling business and opportunism....But Bill Harrah was able to account for every quarter that passed through his gambling halls and his operations were successful."

The Corporate Gaming Acts of 1967 and 1969 were instrumental in regulating the industry with result being the development of the modern casino resort, as initiated between 1967 and 1975 by MGM's Kirk Kerkorian. The International, as designed by Martin Stern Jr, was the first of the "Y-Shaped" resorts, (which formed the basis of many of the 1990s resorts) with multiple showrooms, nightclubs and over 1,000 rooms.

Resorts of this era were, "a glimpse into the future of the casino resort: a large casino surrounded by thousands of hotel rooms geared towards the convention trade and international patronage".

"The conventional wisdom holds that the Mirage hotel changed everything on the Strip... when it opened on November 22, 1989.... (but) Wynn simply took the best of what he learned from others in the Casino business and put it all together in one cohesive place."

The opening of the Mirage is widely seen as the marker when the naïve approaches of resort operators met the world of corporate finance, which led to the emergence of structured operating frameworks, allowing for institutional investment into the industry.

However, focusing on the Mirage alone overlooks the contribution of a new generation of managers who transformed Las Vegas operations.

Armed with the work of modern management tools, these new executives, including Wynn, were able to reshape the city as an entertainment capital with focus and frameworks that have led to the city that stands today.

Throughout the evolution of the city and the historic positioning of Las Vegas' resorts,

the operators succeeded in identifying their customers and developed the offering accordingly. This was innate to these early developers who operated in a smaller, simpler and more segmented market, with the entire concepts for these resorts created in the imaginations of their owners.

Adopting Frameworks

"An industry begins with the customer and his or her needs, not with a patent, a raw material, or a selling skill. Given the customer's needs, the industry develops backwards, first concerning itself with the delivery of customer satisfactions."

Within Las Vegas there are many resorts in a small amount of space. The market is competitive and customer satisfaction levels are high. The market offering has grown from the bottom up rather than top down, leading to the development of strategies formed on the concept of the lifetime value of the customer.

Customer Equity

"The lifetime value of a loyal customer can be astronomical, especially when referrals are added to the economics of customer retention and repeat purchases of related products. For example, the lifetime revenue stream from a loyal pizza eater can be \$8,000, a Cadillac owner \$332,000, and a corporate purchaser of commercial aircraft literally billions of dollars."

This lifetime value of the customer is defined as Customer Equity, within which are three primary components- Value Equity, Brand Equity and Retention Equity.

Value Equity is the relationship between expectation and experience. In order to enhance this area the company must give the customer more of what they want or reduce costs. This is particularly relevant in an area of high exposure to competing products, where the decision-making processes are complex and where there are high levels of innovation evident, such as within the luxury sector of Las Vegas resorts. Quality, service delivery, price and convenience are key.

Brand Equity is "the portion of the Customer Equity attributable to the brand" and is important where there are low involvement decisions with highly visible products, where there is longevity in the consumption and difficulty in evaluating the product before use. With reference to the research question, this is of lesser importance, however the development of brands, such as Caesars Palace, The Bellagio, Hard Rock and Planet Hollywood can imply an aspirational or self-segmenting aspect of decision-making.

The third component is Retention Equity. Once a customer has engaged with a company or product the relationship must be developed for retention; "Building retention impact can take many forms. A firm can provide additional benefits that make it more costly for the customer to switch to a competitor....a firm can reward behaviors that enhance retention (such as) rewarding purchase transactions...monetary value of transactions...or even length of consumption experience (and) strengthening the emotional relationship with the customer through emotional ties may be the most effective in building Retention Equity."

Within Las Vegas the drivers of Retention Equity are loyalty programs, special recognition and treatment programs, affinity programs and community programs.

Managing The Customer As An Asset

"Managing the customer as an asset is more critical to a firm's success than ever before for three reasons. First, marketers who take an asset based view of the customer make better decisions than those who limit themselves to product brand or transaction views. Second, today's computing technology makes precise customer asset management possible.... Finally, changes in market conditions, driven by advances in information systems, communications and production, will help companies that understand and manage the values of each international customer to overtake, and then displace, mass marketers."

Blattberg's thesis features the several stage customer lifecycle where customers are:

Prospects, First Time Buyers, Early Repeat Buyers, Core Customers and Core Defectors.

Based on the 2011 LVCVA figures, only 16% were first time visitors to Las Vegas and in the past 5 years over 80% of visitors were repeat visitors. This indicates that the majority of visitors have a realizable long-term value if they could be retained by the operators.

Blattberg focuses on key customer retention over generic loyalty, justifying the nuance on the value of some customers compared to others with a lower value. This is particularly valid in the gaming industry and several of the resort operators have developed positions based on the nature of the customer's decision making.

He further notes that customer retention strategies should be created during the initial customer acquisition. He identifies three types of customer - the committed loyal customer, the customer who continues purchasing a product, but is vulnerable to alternative offers and the defector.

Generic Competitive Strategies

In his seminal text, *Competitive Strategy*, Porter identifies the generic strategies of Overall Cost Leadership and Differentiation, however there are problems in applying these holistically to Las Vegas as various segments are targeted, where operators seek differentiation as well as cost leadership in room rates. Within the core product - gambling, a low cost leadership approach is difficult as there can be little variance in the price of a bet (although through discounts and offers, the benefits offered may offer effective discounts on the price of a bet, or the odds may differ slightly). The secondary product - the room, may be a price leader, but if room rates are reduced too low, the value proposition disappears. Facing the intense competition seen in the current economic downturn, many resorts have not operated rooms profitably.

As noted previously, a key aspect of Las Vegas development has been in differentiation and where the product is generic a producer or operator must seek to

create differentiation around the core product, whether by creating a theme, brand or other aspect, but some aspects have greater value to different customers.

Strategy Implementation: Inside-Out vs. Outside-In

In implementing differentiation strategies, Treacy and Wiersema take the view that a company determines what segment they wish to target, then develops a business strategy to suit accordingly.

"No company today can succeed by being all things to all people, it must instead find that unique value that it alone can deliver to a chosen market...The first value discipline we call operational excellence... the second value we call product leadership...the third we have named customer intimacy."

Much of these strategies are dictated by business capabilities and evidence of this approach is seen throughout Las Vegas. Contrary to this Inside-Out view is the Outside-In approach as advocated by Day and Moorman;

"Inside-Out companies narrowly frame their strategic thinking by asking "What can the market do for us?" rather than, "What can we do for the market?". The consequences of Inside-Out versus Outside-In thinking can be seen in the way many business-to-business firms approach customer solutions. The Inside-Out view is that solutions "are bundles of product and services that help us sell more. "The outside-In view is that "the purpose of a solution is to help our customers find value and make money- to our mutual benefit" (See [Figure 1](#)).

In order to pursue an Outside-In strategy, a company must have real insights into the market by being aware of both customer behavior and competitor movement. Thanks to technologies such as the internet, loyalty cards and customer tracking, this is now achievable.

In implementation, a company must look at how they offer value to customers - the customer is viewed as a business asset with value. Harrah's/Caesars collected customer

data to determine their customer base and sought to develop relationships in order to understand the motivations of non-core clients and increase their customer value by rewarding customer behavior. The outcomes of this successful Outside-In strategy allowed Caesars to expand efficiently and increase profits from \$102m in 1998 to \$398m in 2005.

Day and Moorman further develop their platform to include value leadership, which includes product innovation, developing the brand in order to seize focus and initiative in the sector.

Understanding Loyalty

Ayling (2006) notes four types of loyalty.

Contractual Loyalty is based on a formal agreement, which is not applicable in this type of relationship.

Transactional Loyalty is identified as loyalty based on price, value and convenience. This is easily to stimulate using rewards and benefits and is prevalent throughout Las Vegas particular by Caesars and MGM.

Functional Loyalty is based where the product differentiates or is perceived to be superior, offers a particular benefit or where the customer associates with that particular product. This is evident in the case of some of the MGM resorts where the resorts are targeted for segments, or the Wynn and Venetian, which are aspirational resorts, thus Functional Loyalty and resort positions are set to align.

Finally, **Emotional Loyalty** is based on an appeal to values. Whilst this may apply within retail, this is an unlikely source of loyalty within the gaming environment, unless the source is of an intangible nature, like a "lucky" casino or where a uniquely positive experience occurred, such as a wedding or engagement proposal.

Unlike conventional loyalty, where investment is made to attract initial customers, the challenge to the operators is on customer retention and it is this area (transactional loyalty) where the operators focus most of their effort, once customer value has been identified.

Strategic Loyalty

The gaming sector realized the benefits of transactional loyalty and on-going customer value early and since delivered ways to harness this.

The concept of player clubs and customer tracking grew from this sector. Harrah's/Caesars growth is seen as the market benchmarks in this field. Today all operators operate player clubs, but not all use the Harrah's/Caesars analytical approach using customer behavior to develop their strategies from an Outside-In perspective, or use the data to try and engender some form of incentive to focus spending on a particular resort or generate reward.

Behind the Curtains

There is a misconception that operating a casino is a license to print money, however the evidence shows a more nuanced picture, particularly when one looks at Las Vegas in entirety (See Figures 2, 3)

After a sustained period of growth, gaming revenues on the Las Vegas Strip fell sharply in 2007. This coincided with an expansion of supply in the market, with City Center (5,800 rooms), Cosmopolitan (3,000 rooms), Encore (2,000 rooms) and Palazzo (3,000 rooms) opening between 2007 and 2011 and over 9,000 rooms withdrawn aborted developments Fontainebleau (3,889 rooms) and Echelon (5,300 rooms).

This shift has led to a refocusing on the market in an attempt for the operators to not just capture new customers but also to develop an emphasis on loyalty in order to preserve market share.

From 1984 to 1999 gaming returns were the dominant source of revenue for casino resorts but in 1999 combined non-gaming revenues exceeded those of gaming revenues.

Much of this change comes from the development of the Strip resorts. 1999 marked the opening on the Venetian and the first anniversary of the Bellagio, which were the first mega resorts catering for a high end clientele.

Gaming

Although declining, at 38.2% (c. \$5bn) of total revenue, gaming is still the largest single source of income and the catalyst that has enabled the development of the modern Las Vegas casino resort.

Casino games fall into several categories. There are table games of chance, (roulette, baccarat and craps) games where skill reduces the odds, (poker and blackjack) and fixed odds games, where the distribution is predefined at a percentage of receipts (slots)

Based on probability, the house advantage ensures that casinos will win over time. This advantage to the house is known as the hold, the theoretical win or the expected value (EV) and the greater the EV the higher the house margin.

Rooms

Little research is available on the evolution of the casino resort room, however whilst high roller rooms were always notable for their opulence, the focus of resort developers was not on the emphasis of the rooms until the development of the Rio and latterly Venetian which sought to use rooms to differentiate from other Strip operators in the convention market and offered all-suite resorts with the smallest room at 650sqft.

Since this period and the subsequent development of strip resorts between 2005-2011, standard strip resort rooms have become larger and better equipped. Whereas rooms were "comped" or sold at discount in the past, today as noted above in Chart 3, rooms provide the second largest component of strip resort revenues today.

Food, Beverage and Nightclubs

Las Vegas has become a key culinary destination in recent years with 21 Michelin Stars found in 16 restaurants on the Strip alone. These may be appealing to a high-end segment seeking a unique experience, but one can stay and play at one resort and dine at another and it is rare that a restaurant is a source of competitive advantage.

In terms of total returns, nightclub revenues are small, but there are reputational

benefits and the opportunity to attract certain customer segments with a successful operation.

Entertainment

Las Vegas is a destination brand identified with entertainment.

Across the city, showrooms feature Broadway musicals, international entertainers and production shows. Analysis of the performers is based on ticket sales and also per capita casino "drop" their performances produce.

Today, resorts use entertainment not just as a differentiator and profit center, but also as a brand enhancer to align fans of the artist and resort. This is notable across demographics, with rockers such as Motley Crue taking a mini-residency at Hard Rock and Caesars' headliners appeal to an older market segment with Celine Dion, Elton John, Rod Stewart and Shania Twain presently on rotation, artists with their own customer base, cachet and brand value cross leverage their value with the resort.

Players Clubs

"(Gary) Loveman noted that Harrah's gamblers spent only thirty-six cents of every wagering dollar at Harrah's...If he could get them to spend just one penny (more) of every wagered dollar at Harrah's, Harrah's annual earnings would jump by more than a dollar a share."

Harrah's/Caesars adopted several of the frameworks as previously discussed around the topics of customer lifetime value and created a tiered player's club, Total Rewards, which would monitor customer behavior including regularity of play, average spend and in the case of slots, the velocity of play (how fast the customer pushed the button!). This also allowed the company to tailor promotions for the customer and monitor performance versus probability.

Today all leading resorts operate player clubs. Wynn operates Red, LVS have Grazie,

MGM operate M life, Cosmopolitan has Identity and Boyd Gaming uses B Connected.

Leading players clubs can be used across retail platforms, e.g. Total Rewards can be used with retailers as diverse as Apple and Avon.

"Comps"

Early casinos gave away drinks to playing customers and by the end of the 1950s, RFB comps were usual for most playing customers. What was intended to be a privilege became commonplace and "casinos use comps as a marketing device to generate business and management can evaluate this marketing tool by determining the effect of the comp policy on the drop."

In recent years, with the advent of loyalty schemes and the ability to track play, operators can accurately garner a player's theoretical value and reward play-time accordingly, based on the mathematics, but customers now expect comps and demand them; in 2011, \$1.2bn (25.9%) of casino resort expenses were allocated as comps, slightly under payroll expenditure.

Service

From the mid-90s onwards and originating from the celebrated article, "Putting The Service-Profit Chain To Work" the prevailing wisdom was that with top tier service, not only can loyalty be achieved, but also the customer will be an advocate or "apostle" for the service provider.

Whilst this can be true in some industries and although universal good service may have been possible in Las Vegas of yesteryear, in resorts with 3,000-8,000 rooms and 5,000-16,000 guests per night, customers have high levels of expectation to be managed.

The use of databases and identifying customer equity allowed operators to identify different values and needs of their guests, therefore they could efficiently deploy the levels of service needed to achieve retention, loyalty or to avoid defection, and develop a proposition appropriate to value of the customer.

A consequence was the raising of standards for mass market gaming consumers, high levels of service are a basic expectation in all resorts. Thus the customer service inflation evident prompts the question of whether competitive advantage is really to be gained by offering such high levels of service. Rather, having raised expectations, there may be a cost to not meeting the customer's expectation, particularly in the highest end of the market.

Who Are the Customers?

During the course of this research we undertook primary research, which holds a confidence level of 95% and a confidence interval of 4.25%

Our dataset shared much of the profile of the LVCVA sample; c.90% of respondents were repeat visitors. 50% had visited over 5 times in the past 5 years.

We developed a detailed profile of various customers and their requirements.

26% of visitors are fairly, but not totally loyal (where loyalty is being measured as repeat patronage) and 65% actively stay in different resorts, therefore suggesting within the Las Vegas market, the majority of customers do not currently display loyalty in terms of repeat patronage. Indeed, even the "fairly loyal customers" like to try somewhere new.

Of those that always stay in the same resort, we note that the most frequently visited resorts were The Wynn and Flamingo (17%) and Caesars Palace, Mirage, Encore, MGM Grand and the Mandalay Bay (14%).

Of the visitors who have stayed over 5 times, 22.6% say that they always stay in the same resort and 66% mainly stay the same resort but occasionally try somewhere. This is more than just repeat patronage and is indicative of loyalty, but also indicates a desire to seek different experiences. Therefore we can assume that the more frequent and experienced the guest is, the greater the chance they have of finding a resort that they prefer, but will still continue to seek different experiences

In order to understand why there were such high satisfaction ratings and repeat custom to Las Vegas we asked a series of questions relating to services facilities and expectations:

The majority of visitors who come to Las Vegas have high expectations; irrespective of price, first class service is expected and the facilities must be market leading.

Moreover, only a small minority have not had their expectations met.

We asked respondents which of these influenced the resort that they stayed in and if they were Key, Important, Taken Into Consideration or Not Relevant.

(See Figure 4)

Thus we identify the main drivers in influencing customers' decision-making.

For 91% of respondents price is important, for 43.3% it is key and only 7.3% of customers who claim price is not important. On the theme of price we asked if level of "comp" affects where the customer stays, to which 59.8% said it was relevant and 40.2% said it was of no relevance.

Therefore, despite all the differentiation strategies, customers are generally price sensitive and a slight majority are highly sensitive to their "comp".

17.4% of the respondents had hosts, which is a small but significant minority at it identifies those customers with an existing relationship.

A small majority of customers with hosts either always stay in the same resort (27.6%) or mainly, stay in the same resort (26.2%), thus we note that those customers with a host are significantly more loyal than those without, however there was little loyalty to the particular host, with only 10.7% of respondents claiming to move resorts if their host moved.

The Total Rewards players club is the largest (70% of visitors hold the card), but MGM's M life has gained significant traction since its launch with 67.8%. Wynn Red and Grazier are held by 43.3% and 40.3% of customers, respectively.

The data further suggests that Total Experiences card-holders hold cards from

other resorts; of Total Rewards card holders 83% hold Mlife cards, 53% hold Grazie, 54% have Red and 27% are members of another players club.

Total Rewards cardholders are also more likely to be regular visitors to Las Vegas - 67% have visited over 5 times compared to the average of 55% of general visitors.

Of those who were not members of any players club, most were infrequent visitors with 38.5% only having been once and the same amount having visited twice or three times in the past 5 years.

Of those who were not members of players clubs, 50.1% were under 35, compared to the sample total of 34.4% within that age range.

Segmentation Analysis- Customers' Gambling Habits

Unsurprisingly, a disproportionate amount of those regularly visiting casinos at home have been to Las Vegas over 5 times in the past 5 years (65%). In terms of their influences, player clubs (44%) and resort location (50%) have the highest significance for this segment and the Flamingo is the most popular resort (which may be because of comps or offers through player clubs).

Those who never visit local casinos, cite bedroom quality (50%) and resort appearance (53%) as key in influencing their decision-making.

Almost 90% of frequent gamers are Total Rewards cardholders and only 75% M life holders. Within this segment, 75% are influenced where they stay by the size of their "comp", which proves that the value of the comps to the gaming segment as players are evidently lured by incentives.

When we cross-reference this data with the LVCVA findings, we note that there is a marked decline in average gaming spend per customer. This leads us to ask whether the "traditional" gaming customers are gambling less or if the overall increase in visitor numbers, including non-gamers, is skewing the figures. The answers will be held by the operators' datasets, but will have real value in determining the extent of the shift in value between gaming and non-gaming customers.

Segmentation Analysis - Duration

We examined if there were significant differences based on duration of trip in Las Vegas, but there was nothing notable in the majority of the findings. With those staying over 5 days on an average trip, there were no dominating factors influencing decision-making, with bedroom quality only slightly above the average.

For those staying longer, price sensitivity is a greater issue and the level of "comps" is significantly less important.

27.9% of visitors staying for over 5 days were from Europe and 16.0% from Canada, compared to 13.6% and 9.42% from the respective countries within the sample.

Segmentation Analysis - Budgets

We filtered the findings based on the level of spend to identify any noticeable trends.

The key finding is that for those with a smaller budget, resort price is of real importance as 72.1% state that price is the key determinant of decision making, versus the average of 43.3%.

Those on a small budget are less likely to be a member of a players club (and therefore not tracked) and are more likely to be influenced by a deal on social media. This segment is slightly younger than the rest of the sample.

Those who spent £5,000-10,000 were more likely than average to be loyal to an individual resort and are typically more demanding of the facilities on offer.

73.6% of this segment hold membership of the MGM Players Club, M life, compared to the sample average of 67.8% and are one of few segments more likely to be members of Mlife than Total Rewards. They are less likely to be influenced by offers on social media (58%) and 23.6% say that price is unimportant, compared to the average of 7.34%. This tells us that in the medium range and largest segment, MGM Resorts are a preferred operator with a price premium associated.

Of those with a budget of \$10,000 and upward there are some interesting trends. This segment are three times more likely to have stayed in Caesars Palace (63.6%) than

the average (27.2%) proving that Caesars Palace still has the power to attract (or target) larger gamers. For this segment 72.7% say that bedroom quality is the key influence in choosing the resort (sample average is 41.8%) and friendliness of staff is significantly above the average (36.4% to 28.5%) in the key influences. They place significant importance to star rating of the resort (81.9% say it is either key or important, compared to the sample average of 50.3%) as they only want a premium experience and the star rating gives external validation of this.

Whilst none say room price is key in making the decision 54.5% say it is important, so price remains a determinant even in this segment.

Of spenders of more than £10,000, 72.4% have a host, (compared to the average of 17.4%) but there is a lower than average membership of players clubs, with the exception of the Wynn Players Club - Red, at 54.5% compared to 43.3% on average. This may be because of the integrated room key/players club card that the Wynn operates, compared to a separate card so there is no requirement to physically join the players club.

81.2% of this segment is influenced by the levels of their "comp".

54.5% say that nightclubs are key or important, compared to the sample average of 8.64%. 36.4% of this high expenditure bracket is aged 29-34 and 54.5% are from outside the USA. 36.4% of these players state they never visit a casino in their home jurisdiction, which is above the sample average of 23.1%.

Thus, for the segment spending over \$10,000 the overall experience is substantially more important than just gambling.

Segmentation Analysis- Age

Within the youngest age group, (21 - 28) it is unsurprising to note that this group have visited less frequently than the overall sample, but a similar amount state that they plan to return within the next 12 months. Within this sector the MGM Grand is the most frequented

resort. This group has higher than average expectations in the facilities (74.1%).

In understanding what influences this segment we note that the range of bars is a higher priority (47.7% key or important) than average (28.3%), the bedroom quality is slightly more key or important than average (90.6% to 85.0%), just outside the margin of error.

Significantly, nightclubs are disproportionately attractive to this segment (45.3% to 1.4%) and both the swimming pool and themes are slightly more important than average, however the odds on the tables are of less relevance.

This segment is significantly less likely to be a member of a player club with over 25% not being a member of any, compared to a sample average of 15.6%

Otherwise, the spending patterns of this group do not alter significantly from the sample average.

Ages 29-35 are also slightly less inclined to be members of a players club and do not differ from the sample average in any significant way, other than a slightly higher importance placed on the range of restaurants in a resort.

The 35-45 profile are slightly more likely to try different resorts (65.3% to (62.6%) and therefore more keen on experimenting than average, however they are slightly more likely than average to be members of players clubs, but notably 73.9% are members of Mlife and 71.8% are members of Total Rewards.

The decision-making influences do not differ from average in many ways; however this segment is more aware of the odds and limits of bets than the average and is probably less keen to play in lower odd environments seeking preferable odds and bets which are aligned with their budgets.

The segment aged 46-59 visits Las Vegas more frequently than others, with 66.9% having visited over 5 times in the past 5 years, compared to 55.7% in the sample. This segment is more pragmatic, expecting less than average in terms of service and facilities,

but still has over 90% satisfaction ratings. For this segment, price is less of a key influencer (37.3%) than average (43.3%), but a higher percentage are members of players clubs.

Within this segment most key influences in decision-making were slightly below the average indicating a less polarized decision making process. However, 61.0% of respondents believed that the Players Club element was either a key or important influencer in decision-making, compared to the average of 55.7%.

96.3% of 46-59 year olds plan to return to Las Vegas within 12 months.

64% of the over 60s have visited Las Vegas over 5 times in the past 5 years and all are multiple visitors. This segment is more loyal (12%) always stay in the same resort, but 32% are willing to try something new.

With this segment key influences are not so pronounced with bedroom quality the key influence, less a factor than the average. However, poker was important for 28% of the respondents as were the odds on the table games.

For this segment gambling is still significantly important, including players clubs, which are a key influencer for 44% of this segment, compared to 27% of the sample.

This segment tends to stay in Las Vegas for longer than average; 40% stay over 5 days compared to a sample average of 27%. 100% of all respondents within this segment plan to return to Las Vegas within the next 12 months.

The most valuable customers are those who have been to Las Vegas on multiple visits and either always or mainly stay in the same resort and we define these as frequent loyal customers (FLCs)

Only looking at key factors in their decision-making, the friendliness of staff is more important in this segment than the average (35.8% to 28.5%) as are player clubs (35.2% to 27.0%), whilst 12% cite luck as key when choosing a resort. Resort location was slightly less important for FLCs at 49.1% to 53.8% average.

For FLCs, price was less a key concern than the average (36.5% to 43.3%).

Curiously, FLCs are less likely than average to be members of a players club, but 27.8% have a host compared to 17.4% on average. Total Rewards was the most widely held card.

67% of FLCs were from the USA (excl. Nevada and California) and 10.2% from Canada.

FLCs are likely to spend more on the visits, with 22.5% of respondents having a budget of over \$5,000 compared to 15.8% of those respondents. 94.6% plan to return to Las Vegas within 12 months.

In concluding our customer analysis, we note that 26% of visitors are fairly, but not totally loyal, and that 65% are active in choosing different resorts each visit.

Strategy in Action

So how do the operators, with a similar range of limited marketing options affect strategic advantage?

They all have players clubs, hosts, offer a wide range of facilities and advertise in key markets. They offer a similar broad range of facilities, dining and entertainment options, some of which are used as key marketing attributes. All the major resorts profess to be customer service market leaders.

Where the resorts differ is in how they approach the customer value proposition; are these operators offering an Inside-Out or an Outside-In strategy and moreover, are these effective in achieving loyalty?

Resorts Adopting the Outside-In Approach

To develop a successful Outside-In approach, resorts must have the ability to capture customer data and be able to make decisions based on their market, and be able to develop customer value and profitability through loyalty. We note two prime examples of this approach in Las Vegas operators.

The foremost example of Outside-In adoption in Las Vegas is Caesars, who built their success on the ability to capture customer data from Total Rewards users and develop an offering for their customers with an aim of increasing visitation.

For a sustained period it looked that this strategy was successful, but in the extreme

competitive environment of recent years, when faced by competitors creating additional high-end (and superior) room inventory, developing new leisure facilities, replicating Total Rewards by developing their own players clubs (albeit with less functionality, but this is of no concern to the customer) and price reductions across the city, this strategy alone needs revisiting.

Similarly, Wynn Resorts have taken a similar view. Whilst it is unlikely Mr. Wynn himself visits and experiences the competition within Las Vegas, it is clear that his team do. With the benefit of an integrated room card and players club, the customer can be (and is) tracked in the Wynn properties with a comprehensive dataset obtained.

Wynn's value proposition is to be the leading luxury provider, so within a limited pre-defined market, they can harness customer expectation and develop capabilities to meet this.

Resorts Adopting the Inside-Out Approach

Within MGM's portfolio, we can see all strategies evident, from the Bellagio advocating Product Leadership, Aria focusing on Customer Intimacy (within an identified segment) and several resorts showing Operational Excellence, which is reflected in price and position, based on the management strategically developing strategies for each resort.

The other resorts that do not operate on a portfolio basis adopt a particular strategy.

Newer resorts, such as The Venetian/Palazzo and The Cosmopolitan have sought to develop the best product for their markets and have attracted both praise and a strong position in their market segment.

The legacy resorts have had a challenge to successfully rebrand and find a segment to attract. Frequently there is a default position of developing a cost-leadership strategy, where price rather than attributes play a dominant role. However, this has become a zero-sum-gain as when rooms sell below cost, both the proposition and the bottom line are diminished.

Those resorts that have had the ability to rebrand and successfully identify market segments have performed well. An example is the Hard Rock Hotel which developed a customer intimacy strategy, where although there are "better" or cheaper alternatives, there is alignment from customer to brand offering the customer values and service customization.

Las Vegas Operators' Strategies for Competitive Advantage

Las Vegas has expectation inflation, with 64% of respondents believing service should be first class irrespective of budget and a similar number deeming that facilities in Las Vegas should be market leading. We also note that only 39% of those respondents have had experiences that matched their expectations.

Caesars Entertainment

Total Rewards allowed Caesars to gain a competitive advantage on its rival operators for many years, but this is rapidly eroding due to availability of other CRM software and the emergence of other players clubs, such as M life. Caesars calculate the customer's Average Daily Worth (ADW) and based on this initial criteria, to determine if the customer is a low, high or ultra-high value player. Analysis is done on age, location and on inclining or declining spending patterns, with a focused investment based on these patterns to increase ADW by adding incremental spend. 80% of play is tracked.

In recent years, Caesars has sought to maximize the information within the database, with such a focus on adding additional revenues, there was evidence that service proposition to the high-rolling gaming demographic suffered, with much of this custom migrating. Moves to expand Total Rewards outside of gaming and into retail partnerships may be an interesting corporate strategy, but may offer limited value, in particular to younger demographics who are not incentivized by incremental discounting.

Acknowledging the rise of non-gaming visitors to Las Vegas, Caesars has focused on attracting this segment. Total Experiences, a

group planning service was established and significant resources have been directed to Project Linq, an open-air pedestrian area in the center of the Strip. As location is important to many visitors, this should not just drive revenue, but re-orientate footfall from competing attractions on the Strip.

With capex cycles typically longer than other resorts and the development boom increasing quality inventory in the city this may pose a structural problem for the operator.

Caesars has sought to take advantage of portfolio commonalities as a way of gaining competing advantage and increase cross selling. This form of loyalty is transactional, where benefits can be obtained by aggregating operational elements, such as the Buffet of Buffets (a 24 hour buffet pass for \$45), All Stage Pass (tickets to 20+ shows for \$99) and All Night Pass (7 nightclubs for \$45).

Caesars focus on their branded offering, seeking to align particular brands with market segments, including The Pussycat Dolls, Planet Hollywood and celebrity chefs, including Gordon Ramsey and Guy Savoy. As owners of the WSOP brand, Caesars has access to an important market segment and when online gaming is legalized, there will be an ideal opportunity to align Total Rewards points with online play as well as the traditional land based gaming.

Caesars also believe that loyalty can be achieved through the individually focused benefits and status that can be earned from the Total Rewards program. Caesars use their size, scope and scale to offer a broad, yet focused, strategy based on aspiration and accessibility with benefits and experience based rewards.

MGM Resorts

The MGM portfolio of resorts is run independently with some resorts clearly operating in segments and others more generic.

M life has sought to improve customer transactional loyalty by integrating customer spend and cross-promotion. For a short period, a focus was to divert customers to

Aria, but evidence was that whilst they liked elements of the City Center offering, existing customers reverted to their previous preferences, which (notably the Mirage and MGM) have functional loyalty.

A feature of MGM's Las Vegas offering is that the resorts are competing against other properties within the group; the target demographic is similar for Aria, MGM and Mandalay Bay and The Luxor, Mirage and MGM are in a similar space, as are Circus Circus and Excalibur.

As an operator, there is no holistic bid for competitive advantage in a single segment, rather through a diverse offering MGM can target every element of the market, whilst maintaining a room offering that retails above cost.

Las Vegas Sands

LVS has achieved competitive advantage in two ways. Firstly, by seeking a non-conventional business model in conception, where gaming was not the intended primary driver and the lodging offering was superior in terms of size and amenity than the pre-existing market which was ideal for corporate and convention travelers. It was brand and theme focused, with a strategy encouraging older leisure visitors for a recreational, retail and leisure experience. In this sense, The Venetian was the first fully integrated purpose built Las Vegas resort.

Secondly, the pioneering drive into Asia has served the LVS' Las Vegas resorts well, as this has provided it with access to the highly lucrative Asian market, similar to Boyd's Hawaiian strategy. The Asian hosts have been integrated into their overall gaming service and LVS brings customers from Singapore and Macau to the USA, where there is a preferable tax environment for gaming. 60% of all LVS' gaming revenue is from table games and is dominated by baccarat revenues, the game of preference for many Asian players.

While LVS dominates this Asian market, they will have a discernible competitive advantage over their Las Vegas rivals as they have emotional loyalty (a perception of luck)

with the industry's most profitable customers, which is difficult to achieve.

Wynn Resorts

Wynn Resorts are committed to excellence as their key metric and they believe that understanding their customers allows them to provide the highest standards of service and facilities.

The quality of room product continues to be a competitive advantage and their room renovation program is more frequent than any other Las Vegas operator, which is why Wynn commands a price premium on room rates.

It is unlikely that the levels of service are indeed a differentiator (as all the similar focused operators have similarly high standards) but the personification of brand Wynn is unique and non-replicable. Whereas Wynn previously used art to create a unique perception, The Wynn is an embodiment of global excellence in a hotel resort. It has aligned with super luxury brands such as Ferrari, who have a showroom in the resort, but also seeking to target the older US gaming demographic who align with the nostalgia of the Sinatra era.

Wynn studies customer data to determine trends and continually uses this data to improve their offering. They use the business information to target their marketing, if not in the form of free rooms as seen in Caesars but by issuing invitations and offering unique experiences to customers.

In terms of capturing loyalty, the view was that loyalty was transactional, bought by segment and in value through comps. However, research suggests that Wynn actually has functional loyalty from its customers, but even then, The Wynn has to be as competitive as even loyal satisfied customers migrate.

The Independent Resorts

The independent resorts have limited methods to obtain sustainable competitive advantage for the entire market, but within segments and sub-segments, effective campaigns can be seen.

In early 2011, the large resorts were fearful of the effect that the Cosmopolitan was going to have on their business. It was smart, different, had a strong management team and fresh ideas. By 2012 the fears had been unrealized.

The Cosmopolitan's differentiation strategy was to be a non-casino casino, which was aspirational, sleek and alternative, resonating with customers on an emotional level. The set out to create new luxury, compared to the likes of the Venetian and Wynn, with cool art and fresh retail offerings.

Whilst Cosmopolitan has been successful in branding and positioning, it has done so in a space where the customers are not traditional gamblers and are therefore not profitable. It is in direct competition with the MGM portfolio, who have the advantage of an established database and players club and to a limited extent Wynn Encore.

TI is one of the older properties and its main differentiator today is price, as compared to its neighbors on the North Strip it is significantly cheaper. For a time it was family friendly with a traditional pirate theme, then a raunchy pirate theme as it skewed towards the nightclub crowd but this was not successful for a sustainable period.

Hard Rock Hotel has successfully exploited a brand to create an alternative offering. The Rehab pool party has developed notoriety even in the somewhat permissive environment of Las Vegas and HRH continues to develop this unorthodox and wild narrative. This is to be further developed with a tequila shot on arrival and Bloody Mary on departure, which will attract a particular segment that other resorts probably do not seek to attract. The culture and paradigm created by the fusion of brand and operation may prove this strategy effective and whilst those partaking in the experience consent and contribute, this may prove a competitive strategy that is both sustainable and achievable.

The Tropicana has undergone a substantial makeover to a bright, creatively styled resort with a country club atmosphere. However, the target market segment of mid-priced

traveler and smaller conventions has substantial competition and even with a comparatively priced product, there may not enough to differentiate the offering from the rest of the market.

The Downtown resorts have the slight advantage that they are operating in a smaller sub-market, with The Plaza and Golden Nugget in competition as the premier resorts Downtown. In terms of location, they are at a disadvantage to strip resorts for the high rollers, but there is plenty of alternative business.

The Palms is dual segmented, offering looser slots than the strip resorts (which is a competitive advantage for the local players) and aligned branding with MTV. For a period the Palms Resort was the 'hip' place, however that has been superseded by the Cosmopolitan and Hard Rock, who have targeted and captured the Palms' clients with a newer offering.

Las Vegas is a uniquely competitive market place, with operators using many tools to try and capture market share and repeat custom.

Developing Competitive Advantage

Las Vegas is a unique destination. It is highly competitive and can be a highly profitable business environment with successful operators sharing the revenue increases from \$2bn in 1984 to over \$14bn today.

In our research we analyzed customer decision-making and it is evident that the four key influences in decision making affecting a weighting of over 70% in the key and important factors were, resort location, bedroom quality, resort appearance and friendliness of staff.

Based on our research we reach four conclusions for operators:

Focus

A multi-segment focus is no longer sustainable and a clear plan for holistic differentiation based on market segmentation must be adopted.

The importance of understanding the history and evolution of Las Vegas cannot be

understated as the experience has moved full circle. We note the early operators developed resorts from an Inside-Out perspective catering for different defined segments, such as Dalitz's Desert Inn, Binion's Horseshoe and Sarno's Circus Circus spectacle.

These resorts were successful because the operators developed for customers that they knew (we recognize it was Bennett, rather than Sarno who successfully repositioned Circus Circus, few would accept that Bennett could have conceived the concept). Ultimately when this was lost (such as when Howard Hughes was the main acquirer) the resorts' quickly lost alignment with customers and declined.

When The Mirage opened and the modern integrated Las Vegas Strip resort was dominant, for the first time international gamblers and families shared amenities under the same roof. Operators used external design (Pyramids and Eiffel Towers) and themes to differentiate their product.

Three key events took place between 1998 and 1999 that changed the way that Las Vegas operated. These were the opening of the Bellagio - a "mega-resort" targeted exclusively for high-end gamers, The Venetian opened, where gaming was only one of several key revenue drivers and Gary Loveman joined Harrah's bringing a "structured" approach to marketing the product by using data to segment and focus on customer equity.

The outcome of the 2000s was rapid development, but many of the successful resorts during this period focused on identifying their customer and developing a specialized segmented offering (such as the Palms) and those that reverted to differentiation by theme alone, such as the Aladdin, failed.

With the information obtained throughout this research we identify five strategies that Las Vegas operators must recognize and understand:

- Dalitz-Wynn
- Sarno-Boyd
- Binion-Rust
- Outside-In/Blattberg

•Bennett-Kerkorian(Inside-Out)
(See Figure 5)

Based on the intense competition and nature of the product, a standalone price leadership approach is not viable in Las Vegas as it is in other products. Resorts that have taken this approach require reorientation or they will face closure.

Delivery

Resorts do not exist in a vacuum; if a resort's value proposition diminishes, customers will migrate.

Some loyalty exists with frequent customers as they have experienced different resorts and made a decision based on alignment, which could be based on a number of factors from price to bars.

Customers in Las Vegas have a perception of their own value, sometimes overinflating their worth, sometimes not. This manifests itself in expectation of a particular level of service or "comp", which if it falls short, will leave the customer disenchanted.

The Caesars and MGM model of transparent "comps" based on spend has its advantages, but as some operators believe that all players can be "bought", the actual delivery of the product and customer experience must not disappoint and by judging on the findings (56% had only had their expectations met sometimes) there is certainly scope for improvement.

Hashimoto is incorrect that service is the only differentiator, but of the four key influences, it is the easiest and least expensive to improve.

Innovate

The prizes for innovation are great. Whether innovation is a loyalty scheme, a dancing fountain or a presence in Macau, to be the first at something gives the operator a period of competitive advantage.

Whilst counterintuitive to those schooled on probability and careful decision-making, the successes of Loveman, Wynn and Adelson were based on taking a gamble and innovating.

Currently the smaller niche resorts have focused on innovation in developing their segmented strategies to compete against the larger groups, seen in the Cosmopolitan, Tropicana and Hard Rock. This is currently offering them a series of short-term competitive advantages within particular segments.

Being the first has allowed LVS to take the initiative and dominate the Asian market.

Across operators there needs to be a refocus on creating and trialing innovative projects and strategies, particularly within the larger corporate gaming companies as the prizes for innovation are worth the risk.

Export:

Conceptual Las Vegas is bigger than actual Las Vegas.

PwC reports global gaming revenues are expected to increase by 25% in the next 5 years. Based on one operator's assessment that, "gamers practice online and play for real in Vegas" Las Vegas' casino operators are in a unique position to export and exploit their intellectual property and proven strategies.

As we note from the Harrah's/Caesars growth, when there is a relationship between customer and a local presence, the customer is more likely to spend in a particular resort. Las Vegas operators need to develop online hosts to develop alignment with international customers who play the free and real online platforms. The online platform can be accessed 365 days per year and allow customer-operator interaction not just when directly interfacing in Las Vegas.

3D software can render entire resorts to a virtual platform, enabling an online gambler to be able to walk down a virtual strip, accessing the operators' intellectual property, but moreover allowing them to play an operator's tables or slots, see the Bellagio fountains or watch a live-stream of Celine Dion, creating a true 24 hours a day, 7 days a week gaming and social media platform available on PC, tablet or phone.

The failure to embrace and exploit global markets accessible through the internet, even outside of the US jurisdictions, is a clear

omission by the key operators who are Las Vegas casino centric.

Conclusions

We set out to understand how Las Vegas operators achieve competitive advantage, with loyalty as the key metric. We sought to identify why customers make their decisions in selecting Las Vegas resorts and how Las Vegas operators target those customers, with the hypothesis that the operators cannot achieve loyalty in this competitive space.

We conclude that emotional loyalty is unachievable, but forms of conditional transactional and functional loyalty can be gained within particular segments. The challenge for operators is to understand their customers enough to align the correct strategy and achieve loyalty.

About the Author

Oliver Lovat is a Partner of The Denstone Group. He completed his MBA at Cass Business School, holds an MSc (Dist.) in Real Estate Investment from the University of Reading and a BA (Hons) in Social Science. Lovat is a member of the Royal Institution of Chartered Surveyors (Finance and Investment Faculty), a tutor at the College of Estate Management and is a past recipient of the RICS student award. He developed and leads an annual MBA elective at Cass Business School titled, Las Vegas: Strategic Marketing In Action.

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Figures

Figure 1: Outside-In vs. Inside-Out Strategies (Day & Moorman)

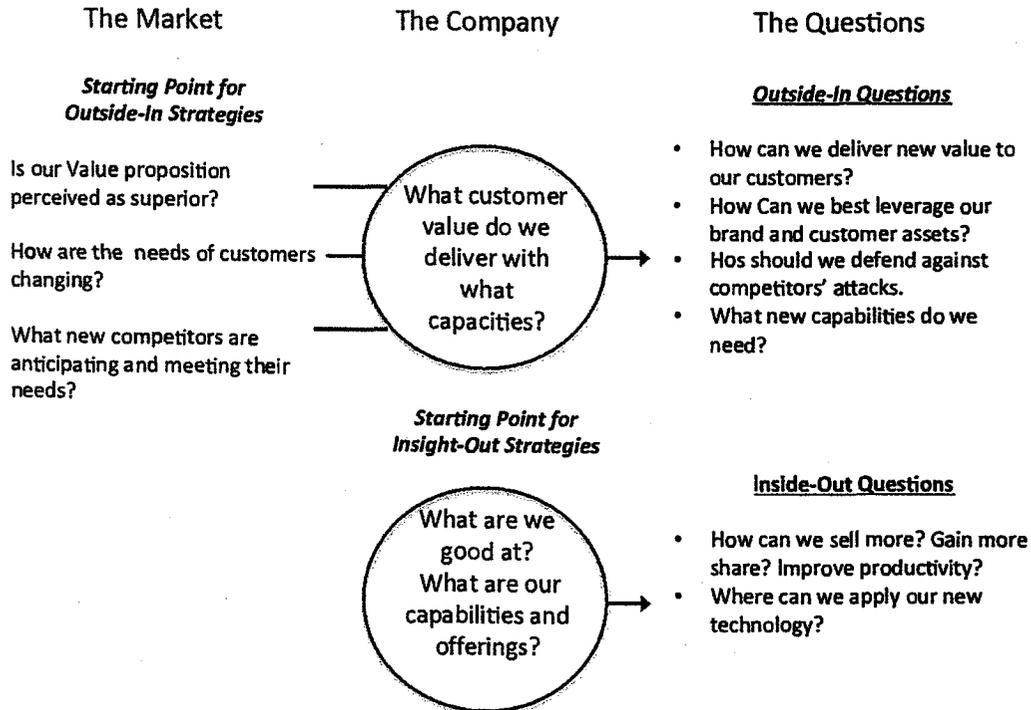
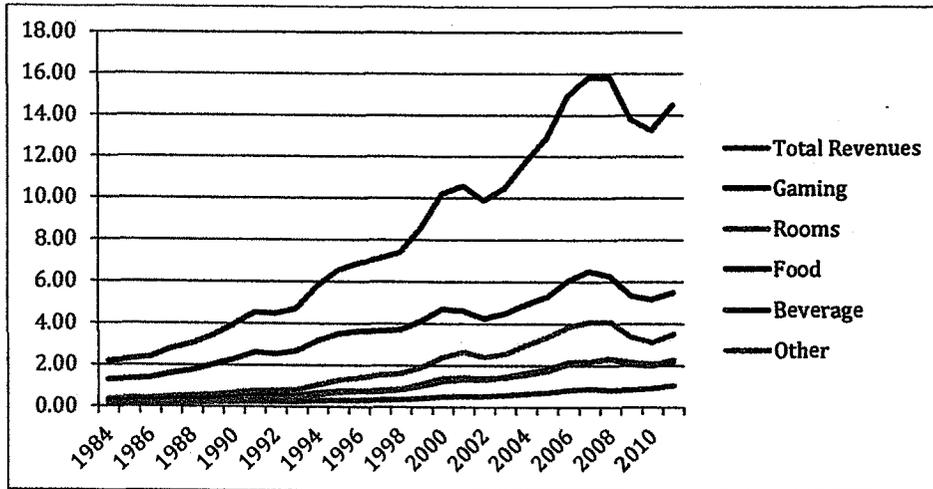
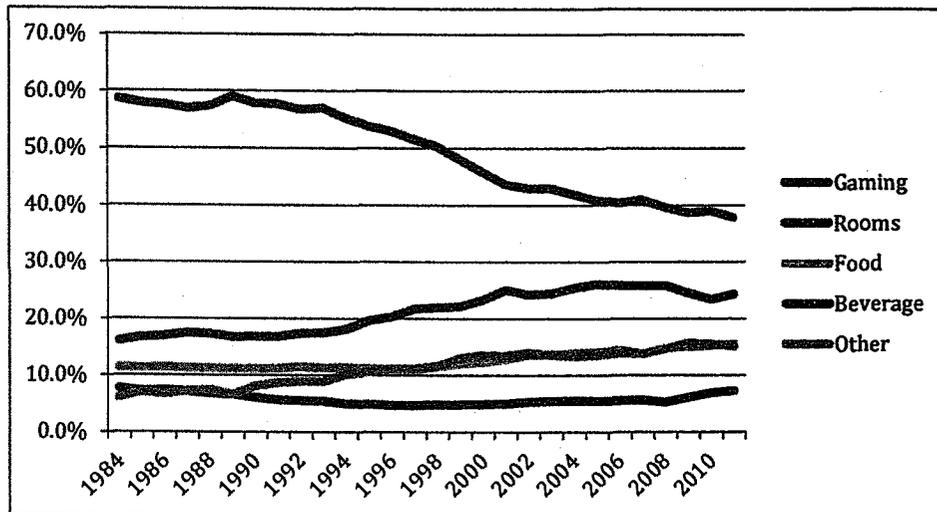


Figure 2: Las Vegas Strip Revenues 1984-2011 (\$bn)



Source: Nevada Gaming Commission and State Gaming Control Board

Figure 3: Distribution of Revenues 1984-2011 on the Las Vegas Strip (%)



Source: Nevada Gaming Commission and State Gaming Control Board

Figure 4: The Drivers of Customer Decision Making

	Key aspect	Important	Taken into consideration	Not relevant
A particular restaurant	2.10%	8.59%	37.98%	51.34%
Attractiveness of dealers/cocktail waitresses	1.72%	10.34%	25.48%	62.45%
Bars	5.39%	22.93%	36.80%	34.87%
Bedroom quality	41.83%	43.16%	13.69%	1.33%
Brand of hotel	14.31%	27.86%	35.88%	21.95%
Choice of games	18.32%	32.25%	26.15%	23.28%
Convention Facilities	1.35%	2.32%	5.98%	90.35%
Friendliness of staff	28.49%	42.07%	21.41%	8.03%
Golf or sporting amenities	0.57%	3.26%	12.07%	84.10%
Linkage with other group resorts	8.83%	18.43%	27.06%	45.68%
Loyalty/Players Club Points	27.01%	28.74%	22.22%	22.03%
Luck	6.87%	18.89%	20.80%	53.44%
Nightclubs	6.72%	8.64%	17.47%	67.18%
Odds on table games	12.43%	23.71%	27.34%	36.52%
Poker Room	7.15%	13.68%	18.69%	60.50%
Range of dining options	11.88%	43.30%	29.50%	15.33%
Resort Appearance	34.67%	44.25%	17.43%	3.64%
Resort Location	53.82%	35.50%	8.97%	1.72%
Retail Options	2.30%	10.75%	33.59%	53.36%
Shows	4.05%	15.25%	35.33%	45.37%
Size of permissible bet (Maximum and minimum)	5.95%	14.01%	21.69%	58.35%
Star Rating	17.05%	33.33%	33.91%	15.71%
Swimming Pool	19.62%	27.69%	25.38%	27.31%
Theme	5.19%	19.81%	37.12%	37.88%

Figure 5: Summary Outline of Strategies

Strategy	Features Of Strategy	Market Segment	Key Customer Decision Making Influences (Survey Defined)
Dalitz-Wynn	Market leading product for high-end customer base. The operator must know the customer and deliver on highest standards.	High-End Gaming Customer	<ol style="list-style-type: none"> 1. Bedroom Quality 2. Resort Appearance 3. Star Rating 4. Location 5. Player Club
Sarno-Boyd	Be different. Seek to develop what is not in the market already and bringing in non-traditional customers.	Non-Traditional Customers	<ol style="list-style-type: none"> 1. Location 2. Bedroom Quality 3. Resort Appearance 4. Friendliness of staff 5. Swimming pool
Binion-Rust	Looking at customer lifetime value (customer equity) seeking loyalty through retention	Frequent Gaming Customers	<ol style="list-style-type: none"> 1. Players Club 2. Bedroom Quality 3. Resort Appearance 4. Friendliness of Staff 5. Choice of Games
Outside-In/Blattberg	Understanding and satisfying customer needs. Delivering new value, leverage brands and assets, reinventing for competitive advantage.	Existing Las Vegas Customers	<ol style="list-style-type: none"> 1. Location 2. Players Club 3. Bedroom Quality 4. Resort Appearance 5. Friendliness of Staff.
Bennett-Kerkorian (Inside-Out+)	Focusing on internal expertise and identifying segments.	All Customers, Self-Segmenting	N/A

Note: Bill Bennett was the owner/manager of Circus Circus and Mandalay Resort Groups between 1974-1995. He developed resorts for specified segments, in particular grind players and families.

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About the Center for Gaming Research

Located within Special Collections at UNLV's state-of-the-art Lied Library, the Center for Gaming Research is committed to providing support for scholarly inquiry into all aspects of gaming. Through its website, <http://gaming.unlv.edu>, the Center offers several unique research tools and information sources.

About the University of Nevada, Las Vegas

UNLV is a doctoral-degree-granting institution of 28,000 students and 3,300 faculty and staff. Founded in 1957, the university offers more than 220 undergraduate, masters and doctoral degree programs. UNLV is located on a 332-acre campus in dynamic Southern Nevada and is classified in the category of Research Universities (high research activity) by the Carnegie Foundation for the Advancement of Teaching.

UNLV

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EXHIBIT 7

EXHIBIT 7

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

-oOo-

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

CERTIFIED COPY

Plaintiff,

Case No. CV12-01171

vs.

Dept. No. B7

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,

Defendants.

Pages 1 to 145, inclusive.

DEPOSITION OF JEREMY AGUERO

Wednesday, May 22, 2013
Reno, Nevada

REPORTED BY: CHRISTINA AMUNDSON
CCR #641 (Nevada)
CSR #11883 (California)

1 Q Why do you rely upon net win/loss versus net
2 theo?

3 A Because theo is a theoretical calculation and
4 the net win/loss is what actually occurred.

5 Q Okay. And in your work generally for
6 properties, do you ever utilize the gaming win, whether
7 it's net win or theo win, in past experience?

8 A Sure.

9 Q And have you utilized in those studies the
10 theoretical number or the net win number?

11 A Both.

12 Q When do you tend to rely more on the theoretical
13 number?

14 A When you're looking at a marketing analysis.

15 Q Okay. And why is that?

16 A Because it provides a long-term stabilized
17 number that, essentially, takes out the variability that
18 comes from the impacts of probability in a gaming
19 environment.

20 Q All right. And so if somebody happens to hit a
21 jackpot or has a good night at the table. Right?

22 A Correct.

23 Q So how do you ever get a negative theo? You see
24 that in April 2012.

25 A It's net theo. This is the difference between a

1 essentially, house advantage on the game.

2 Q Now, the question that got us on this line is,
3 Are you aware of other methods that properties use to
4 value the relationship with known guests. That was the
5 question I was supposed to be asking you.

6 A Okay. I'm sorry.

7 Q So try to answer that.

8 A Sure. I think if you look at the Harvard report
9 that they cite and the Harvard report that we cite, those
10 include a number of methods, the econometric method, the
11 database method. Folks are using all kinds of very artful
12 economics to try and value a consumer's worth and to
13 measure what'll make them come back, all of those types of
14 things.

15 I think what the Harvard studies demonstrate
16 more than any other is that there are many methods that
17 are out there to, essentially, achieve the concept of what
18 the value of a consumer is. I want to draw a sharp line
19 distinction between that and the concept of theo. Theo
20 feeds into that but it is -- there's a lot more to it that
21 comes to that lifetime value.

22 Q All right. In determining that lifetime value,
23 though, would you prefer to utilize -- would you think it
24 more appropriate to utilize the theoretic gaming value for
25 players of this rating or the actual win for the year,

1 which they did both?

2 A Look, I think you don't have any choice but to
3 use the theoretical. Over the long-haul I think that's an
4 appropriate requirement. But what is paramount in that
5 analysis is that the assumptions that go into that are
6 accurate. Are you accurately calculating the theo, and
7 that discount factor that we talked about earlier seems to
8 me to be, arguably, one of the most important factors.

9 I would argue that the third factor that is
10 important is the amount of time that you have in there.
11 Again, I think Mr. McNealy was absolutely right in his
12 deposition when he stated that you can look at it over
13 five years, ten years, fifteen, twenty-five. You know,
14 that becomes very important. Again, you lose things
15 toward the end. It becomes less important at that very
16 last year, but extending it by ten years is pretty
17 material.

18 Q Now, the Harvard study itself used 25 years,
19 actually, didn't it?

20 A It did.

21 Q Are you critical of the choice of the Atlantis
22 to utilize the 25 years, although it does apply -- what?
23 Is that, like, a 16 percent discount?

24 A Yes. I mean, they're down to less than
25 1 percent of value at the 25th year, which makes it pretty

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CERTIFICATE OF WITNESS

I hereby certify under penalty of perjury that I have read the foregoing deposition, made the changes and corrections that I deem necessary, and approve the same as now true and correct.

Dated this _____ day of _____, 2013.

JEREMY AGUERO

-o0o-

1 STATE OF NEVADA)

2) ss.

3 COUNTY OF WASHOE)

4

5 I, CHRISTINA MARIE AMUNDSON, a Certified Court
6 Reporter in and for the States of Nevada and California do
7 hereby certify:

8 That I was personally present for the purpose of
9 acting as Certified Court Reporter in the matter entitled
10 herein; that the witness was by me duly sworn;

11 That said transcript which appears hereinbefore was
12 taken in verbatim stenotype notes by me and thereafter
13 transcribed into typewriting as herein appears to the best
14 of my knowledge, skill, and ability and is a true record
15 thereof.

16 Christina M. Amundson
17

18 Christina Marie Amundson, CCR #641 (NV), CSR #11883, (CA)

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EXHIBIT 8

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EXHIBIT 8

Shelly Hadley

From: Shelly Hadley
Sent: Friday, August 17, 2012 2:38 PM
To: Christian Ambrose
Cc: Dan Uonites
Subject: Sumona's players

Christian, just want to follow up from my deposition on Monday that we comply with the stipulations of the restraining order. We must pull out anyone coded to Sumona that are new accounts that she set up so that they get no mail. Only accounts created after Jan. 25th. Thanks,

Shelly Hadley
Exec. Director Casino Marketing
Grand Sierra Resort and Casino
2500 East Second St.
Reno, Nv. 89595
Ph: 775-789-1148
fax: 775-789-2221
shelly.hadley@grandsierraresort.com
www.grandsierraresort.com



EXHIBIT 9

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Transaction # 3775417

EXHIBIT 9

Jennifer Russell

From: Shelly Hadley [Shelly.Hadley@GrandSierraResort.com]
Sent: Monday, August 20, 2012 2:35 PM
To: Christian Ambrose
Cc: Dan Uonites
Subject: RE: DENISE: PLEASE DO NOT RELEASE GSR's SEPTEMBER REGIONAL MAILER INTO THE US MAILSTREAM

The coding is complete.

Shelly Hadley

From: Christian Ambrose
Sent: Monday, August 20, 2012 11:49 AM
To: Shelly Hadley
Cc: Dan Uonites
Subject: FW: DENISE: PLEASE DO NOT RELEASE GSR's SEPTEMBER REGIONAL MAILER INTO THE US MAILSTREAM

Shelly,

Can you tell me when and with what Sumona's patrons have been coded in the system as non-marketable since I am waiting on this in my desired timeline for extracting October's NonLocals etc?

We already had that extract which I use as the basis for September Locals (since patrons are either a Local, or not, each month) and the September Local patrons in Sumona's list which were removed are also listed below. September's Locals file should already be at the printers but we are waiting on creative...

I will get with Kathy and adjust the kiosk lists to reflect all these changes to the September Loyalty Giveaway.

All the following accounts (in red) have been delicately hand-picked out of their respective individual offers:

25 primary (P)Sumona-coded & secondary NonLocal September accounts below will now not receive offers – gray means they are below the Tier 7 minimum to receive their own offer:

2nd ADW	2nd Acct	comboADW	netADW	RewardsNo	Firstname	Lastname
0.00	no	2,700.00	2700.00	101637740	ROBERT	TEXLEY
0.00	no	156.63	156.63	101637878	LISA	KERR
0.00	no	87.98	87.98	101637964	ROBERT	HUNT
0.00	no	802.48	802.48	101638347	TIMOTHY	CARR
0.00	no	589.87	589.87	101638968	JINA	PATTON
0.00	no	475.45	475.45	101639167	JAMILUNISHA	HANIF
0.00	no	220.85	220.85	101639168	ZEBUNISHA	MOHAMMED
92.50	101647974	348.69	256.19	101639175	WILLIAM	ARSENAULT
56.58	101663288	175.97	119.39	101639185	JOANNE	CUELLAR
0.00	no	189.46	189.46	101639199	DEWAYNE	BOONE
0.00	no	56.74	56.74	101640503	CHRISTINE	DAVIS
0.00	no	383.31	383.31	101643053	TERESA	GRAVELLE
38.10	101646498	113.38	75.28	101643136	LOREEN	KORELL

0.00	no	675.03	675.03	101643152	URSULA	LARSEN
0.00	no	384.86	384.86	101643350	CHARLES	RAWLINSON
0.00	no	167.84	167.84	101643353	MICHAEL	OPALENIK
0.00	no	192.87	192.87	101643360	LIDA	OPALENIK
0.00	no	52.50	52.50	101643368	CHRISTOPHER	FALLON
0.00	no	873.14	873.14	101643373	ANITA	SANCHEZ
0.00	no	909.65	909.65	101643482	CONNIE	IVARSON
0.00	no	141.96	141.96	101648322	KAM	NG
0.00	no	240.00	240.00	101648323	HENRY	CHANG
0.00	no	277.67	277.67	101650503	DANA	KOSTEVICH
0.00	no	239.29	239.29	101652159	RAYMOND	WALKER

The 3 accounts below are secondary (P)SUMONA accounts contributing to the primary patron not in the (P)SUMONA list receiving offers, so only their contributing secondary value has been removed and the primary patron will receive their September NonLocals offer using their own casino activity only:

2nd ADW	2nd Acct	comboADW	netADW	RewardsNo	Firstname	Lastname
383.13	101639172	1,003.24	620.12	101656026	LINDA	DEUTSCH
-87.39	101639184	92.74	180.12	101663268	CAROL	FELLION
36.39	101640497	89.81	53.41	101648085	BRADLEY	LOCKHART

The 11 accounts below are those being removed from September Locals offers:

Patron	2nd Acct	ADW	comboADW	netADW	Firstname	Lastname
7 A	32.50	101637525	ALLEN	WILSON		
8 A	22.61	101639332	FRAN	TURNER		
7 A	37.02	101639375	JAYNE	HOWE		
2 A	438.91	101640313	CORY	LAWRENCE		
1 B	1086.99	101640484	BRENDA	SLAUGHTER		
8 A	11.25	101640644	DENNIS	PRUTCH		
7 A	38.13	101641974	LARRY	STRAUS		
3 B	225.44	101641983	MEI	CHOI		
7 A	40.81	101641995	WILLIAM	GRUPE		
2 B	307.97	101649067	DANIEL	STEELE		
1 B	529.12	101649068	ELIZABETH	STEELE		

Regards,

Christian Ambrose
 Executive Director of Marketing
 Grand Sierra Resort
 2500 East Second Street
 Reno, Nevada 89595-0002

p: 775-789-5327
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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 Corporation, d/b/a ATLANTIS CASINO RESORT SPA Case No.: CV12-01171
12 Dept No.: B7

13 Plaintiff,

14 vs.

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

19 Defendants.

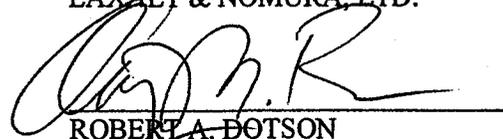
20 **ALTERNATIVE OPPOSITION TO GSR'S**
21 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

22 Plaintiff GOLDEN ROAD MOTOR INN, INC., a Nevada corporation d/b/a ATLANTIS
23 CASINO RESORT SPA ("ATLANTIS"), by and through its attorneys, Laxalt & Nomura, Ltd.,
24 hereby files its Alternative Opposition to Defendant NAV-RENO-GS, LLC d/b/a GRAND
25 SIERRA RESORT's ("GSR") Motion for Partial Summary Judgment. ATLANTIS filed a
26 Motion to Strike GSR's Motion for Partial Summary Judgment as untimely on June 10, 2013.
27 This Opposition is filed in the alternative to the Motion to Strike as a precautionary measure
28

1 should the Court not elect to strike the untimely motion. This Opposition is made and based on
2 NRCP 56, NRS 600A.030, the pleadings on file and incorporated herein, the attached
3 Memorandum of Points and Authorities, Affidavit and Exhibits thereto as well as the arguments
4 and evidence to be made at any hearing convened to consider this motion.
5

6 Dated this 14th day of June, 2013.

7 LAXALT & NOMURA, LTD.

8 

9 ROBERT A. DOTSON
10 Nevada State Bar No. 5285
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12 Nevada State Bar No. 5574
13 9600 Gateway Drive
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15 (775) 322-1170
16 Attorneys for Plaintiff

17 **MEMORANDUM POINTS AND AUTHORITIES**

18 **I.**

19 **INTRODUCTION**

20 GSR's belated Motion for Partial Summary Judgment is in reality a cross-motion that
21 should have been filed simultaneously with its Supplemental Opposition to Plaintiff's Motion for
22 Partial Summary Judgment. The only evidence offered in support of this motion are the
23 depositions of Sumona Islam, Shelly Hadley and Debra Robinson, all of which were available
24 and cited in GSR's Opposition and Supplemental Opposition. Indeed, the purpose of the stayed
25 briefing schedule related to Plaintiff's Motion for Partial Summary Judgment was so that
26 Defendants could take the deposition of Frank DeCarlo and Debra Robinson.¹

27
28 ¹ See Islam Opposition filed on September 10, 2012 at 3:12-13.

1 In any event, all of the issues raised by GSR in this motion were covered and addressed
2 in the original motion, Defendants' Oppositions and in Plaintiff's Replies, all of which are
3 incorporated herein; the Court denied Plaintiff's Motion for Partial Summary Judgment finding
4 that genuine material issues of fact existed on each of the liability claims against GSR.

5 GSR's motion is not properly supported and, on that basis alone, should be denied.
6
7 Further, genuine issues of material facts exist which preclude summary judgment in GSR's
8 favor.

9 **II.**

10 **FACTS**

11 ATLANTIS adopts and incorporates as if fully set forth herein the statement of facts
12 contained in its Motion for Partial Summary Judgment filed on August 23, 2012. The following
13 additional facts, some of which were unknown to ATLANTIS at that time, may also be of utility
14 to the Court in considering this motion:
15

- 16 • All of the 202 players listed on Exhibit A to Plaintiff's Computation of Damages are
17 ATLANTIS club members that have a player tracking card. *See Exhibit 1 to Affidavit of*
18 *Counsel, Deposition of Brandon McNeely at p. 37-38.*
- 19 • May 3, 2012 Recorded Statement of Interview – This transcript, not produced until June
20 13, 2013, demonstrates that the GSR was purposeful in its intention to interfere with the
21 agreements between ATLANTIS and ISLAM and with the relationship between
22 ATLANTIS and its known guests. *See Exhibit 2 to Affidavit of Counsel.*

23 **III.**

24 **ARGUMENT**

25 **A. NRCP 56 standard**

26 If a party moving for summary judgment fails to meet its initial burden of production, the
27
28

1 opposing party is under no obligation to produce anything. *Maine v. Stewart*, 109 Nev. 721, 727,
2 857 P.2d 755, 759 (1993)(when the moving party fails to meet its burden, “the opposing party
3 has no duty to respond on the merits and summary judgment may not be entered against him”).
4 If a party opposing summary judgment would be entitled to prevail under any reasonable
5 construction of the evidence, and any accepted theory of law, summary judgment against that
6 nonmoving party cannot be sustained. *Harris v. Itzhaki*, 183 F.3d 1043 (9th Cir. 1999).
7

8 **B. Summary Judgment is not appropriate on Plaintiff’s claim against GSR for**
9 **Tortious Interference with Contractual Relations and Prospective Economic**
10 **Advantage**

11 ATLANTIS alleges that GSR tortiously interfered with the contractual relations of
12 ATLANTIS by hiring ISLAM in violation of her Non-Compete Agreement and that GSR
13 tortiously interfered with ATLANTIS’ prospective economic advantage by utilizing player
14 information and data it obtained from ISLAM which belonged to ATLANTIS, that it knew or
15 should have known ISLAM had wrongfully obtained from ATLANTIS, to solicit players of
16 ATLANTIS that were not already in its database and to modify solicitations to players that were
17 in the GSR database.

18 1. **Tortious Interference with Contractual Relations**

19 GSR contends that ATLANTIS has not proven a prospective contractual relationship
20 between it and a third party. It argues that ATLANTIS has not provided evidence of a
21 prospective contractual relationship between it and the 202 individuals for which it is claiming
22 damages. GSR misunderstands the nature of Plaintiff’s claim against it for tortious interference
23 with *contractual relations* and confuses it with Plaintiff’s claim against it for tortious
24 interference with *prospective economic advantage*.
25

26 This claim for interference with contractual relations against GSR is made on the basis of
27 the Non-Compete Agreement between ATLANTIS and ISLAM that GSR was aware of and even
28 reviewed before it hired ISLAM. This specific relationship and the tortious interference of the

1 same was addressed in great detail in Plaintiff's Motion for Partial Summary Judgment and the
2 related briefs which are incorporated herein.

3 GSR's summary judgment on this claim therefore fails as unsupported. First, GSR
4 misrepresents the elements necessary for this claim. It cites that a prospective contractual
5 relationship between the plaintiff and a third party are necessary.² This cited case, however,
6 discusses the elements for tortious interference with prospective economic advantage.³ The case
7 of *Sutherland v. Gross*, 105 Nev. 192, 772 P.2d 1287, 1290 (1989), discussed in Plaintiff's
8 Motion for Partial Summary Judgment, appropriately sets forth the elements for this claim which
9 center around a valid and existing contract.⁴ Second, GSR erroneously argues that for this claim
10 for interference with contractual relations, ATLANTIS must prove a contractual relationship
11 with the 202 individuals for which ATLANTIS seeks damages. GSR is wrong again. While
12 ATLANTIS seeks damages for these 202 individuals, these damages flow from GSR's
13 interference with the Non-Compete Agreement between ATLANTIS and ISLAM. It is this
14 tortious interference, caused by GSR's election to employ ISLAM, which gave GSR access to
15 the confidential and trade secret information/data that ISLAM had access to by virtue of her
16 employment with the ATLANTIS. GSR then added these 202 guests to its database and began
17 to solicit them. It is this interference which ATLANTIS claims caused it damages related to at
18 least these 202 individuals and it is undisputed that but for the intentional interference with the
19 agreement between ATLANTIS and ISLAM, those damages would not have occurred.

22
23 2. Tortious Interference with Prospective Economic Advantage

24 GSR alleges that it is entitled to summary judgment on Plaintiff's claim for tortious
25 interference with prospective economic advantage because Plaintiff has not produced any
26

27
28 ² See motion at 4:17-22.

³ See *LTR Stage Lines v. Gray Line Tours*, 106 Nev. 283, 287, 792 P.2d 386 (1990).

⁴ See Plaintiff's Motion for Partial Summary Judgment 13:17-21.

1 witness or evidence which demonstrates a single ongoing contractual relationship with any of the
2 202 individual players for which Plaintiff seeks damages.

3 This issue was also addressed in Plaintiff's Reply to Islam's Oppositions to the Motion
4 for Partial Summary Judgment (which was also incorporated into the Reply to GSR's
5 Oppositions) which is incorporated herein. First, a *prospective* contractual relationship exists
6 between ATLANTIS and its established guests who are included in the ATLANTIS players club
7 and its database. The Affidavit of Steve Ringkob, as well as his anticipated trial testimony,
8 support the contention that "[k]nown gaming guests of the Atlantis, such as those tracked in its
9 club or player database, are responsible for a large majority of Atlantis' overall revenue."⁵
10 Indeed, each of the 202 players listed on Exhibit A to Plaintiff's Computation of Damages are in
11 the ATLANTIS Player Tracking System as indicated by the 202 "Atlantis Add dates" which
12 indicate when they were added to the tracking system and the 202 "Ratings" which indicate the
13 tier level of player that they are. Contrary to the argument of GSR, this fact is also supported by
14 the testimony of Brandon McNeely.⁶ Moreover, if the 202 individuals were not in the tracking
15 system, ATLANTIS could not track their play and calculate the damages that it alleges were
16 caused by the conduct of GSR and ISLAM.
17

18 This contention is or should be undisputed by GSR as it forms the premise underlying the
19 purpose of a host position as well as the marketing plan for all casinos. It is also demonstrated
20 by the fact that most casinos, including GSR, have their own tracked player clubs in order to
21 incentivize their players to play and perhaps play more.⁷ As ISLAM explained in her deposition,
22 basically, a player agrees to sign up for ATLANTIS' right to track their play and earn free offers
23
24
25

26 ⁵ See Exhibit 10 to Plaintiff's Motion for Partial Summary Judgment (MPSJ).

27 ⁶ See Exhibit 1 to Affidavit of Counsel, Deposition of McNeely at p. 37-38.

28 ⁷ See Exhibit 9 to Plaintiff's MPSJ (Flaherty Deposition 38:24-40:25), Exhibit 2 to Plaintiff's Reply to GSR
Oppositions (Hadley Deposition 36:14-40:16), Exhibit 10 to Plaintiff's MPSJ (Ringkob Affidavit), Exhibit 1 to
Plaintiff's Reply to GSR Oppositions (Ambrose Deposition 15:1-25:21, 28:15-29:2, 30:10-31:19, 50:9-52:13) and
Exhibit 1 to Plaintiff's MPSJ (Islam Deposition 17:14-18:12, 44:3-52:14, 56:12-58:2.)

1 based on that play.⁸ This is a contract which is prospective as to each new offer and each time
2 the person accepts the offer and stays or plays there has been a contract, an offer and acceptance
3 and mutual performance. Additionally, ISLAM admitted that it was her job as an ATLANTIS
4 Executive Casino Host to produce for ATLANTIS by bringing in guests and to keep them happy
5 while they are there so they will gamble.⁹ Casino hosts are supposed to bring in new players as
6 well as take care of the existing players, maintaining them and developing them to become better
7 players.¹⁰

9 Second, GSR is obviously aware of this prospective contractual relationship because it
10 has that same prospective contractual relationship with established guests in its database. This is
11 also why it hired Islam, to capitalize on her experience of being a casino host for approximately
12 seven years and from being employed in the gaming industry for 16 years.¹¹ To make such an
13 argument in this motion flies in the face of GSR's own witness testimony. For example,
14 Christian Ambrose, the Director of Marketing for GSR, testified that one of the incentives
15 offered by GSR is free play for tracked players that GSR believes will game significantly if they
16 come on property.¹²

18 Third, GSR intended to harm ATLANTIS by preventing the relationship. Here, it is clear
19 from the deposition testimony of Tom Flaherty that GSR's motive in hiring ISLAM away from
20 ATLANTIS in violation of her Non-Compete Agreement was to divert ATLANTIS players to it,
21 thereby benefitting GSR while naturally injuring ATLANTIS:

23 Q: What information, if anything, did the Grand Sierra Resort ask Miss Islam to
bring with her?

24 A: Just bring herself and her knowledge, and her knowledge of gaming and her
relationships.

26 ⁸ See Exhibit 1 to Plaintiff's MPSJ (Islam Deposition 44:3-57:23.)

27 ⁹ See Exhibit 1 to Plaintiff's MPSJ (Islam Deposition 17:14-18:12 and 53:11-57:23.)

¹⁰ See Exhibit 1 to Plaintiff's MPSJ (Islam Deposition 38:10-14.)

28 ¹¹ See Exhibit 1 to Plaintiff's MPSJ (Islam Deposition 29:24-25, 31:3-12, 38:3-5.)

¹² See Exhibit 3 to Affidavit of Counsel, Deposition of Christian Ambrose at p. 20.

1 Q: Now, you mentioned previous relationships. Did you discuss with her her
2 clientele at the Atlantis?
3 A: No, not specifically.
4 Q: Not in any of the interviews?
5 A: We discussed her relationship with players that she had knowledge of.
6 Q: What was the extent of that discussion?
7 A: Well, it was pretty much to see what – what her capabilities are and abilities to
8 produce revenue.
9 Q: Did you ask her, for example, how much revenue or play was engaged in by
10 the persons she hosted during the last 12 months?
11 A: We asked her what her estimate of the potential revenue that she could
12 produce.
13 Q: What was her response?
14 A: I believe it was around a million.
15 Q: And on your salary of – do you have a salary formula, or how did you
16 determine the 80,000 dollars?
17 A: It was a number of factors. Based on her previous salary, what we thought it
18 would take to her to make a move, and what we – what we wanted to spend.
19 Q: And did that million dollars of revenue have a role in the decision to offer her
20 80,000 dollars?
21 A: Of course.
22 Q: But it's not a sheer objective formula that you'd add or multiply 80,000 –
23 A: No.

* * *

24 Q: Was it understood that she believed that a number of players would follow her
25 to the property?
26 A: Yes.¹³

27 Flaherty also testified that he expected Islam to peruse GSR's database looking for stronger
28 players at other properties to which she had knowledge and then send them a letter to try to get
29 them to come to GSR in order to "convert them or try to get them to be – to share business or get
30 their business."¹⁴ Moreover, per an email dated March 30, 2012, GSR was doing everything it
31 could to empower Islam to "win over locals from Atlantis."¹⁵

32 Fourth, GSR has no privilege or justification for its interference. As to the privilege of
33 competition, as also set forth above and in its Reply to GSR Oppositions, ATLANTIS has shown
34 that the means used by GSR to divert the prospective economic advantage was improper or was

13 See Exhibit 9 to Plaintiff's MPSJ (Flaherty deposition 28:13-30:7.)
14 See Exhibit 9 to Plaintiff's MPSJ (Flaherty deposition 39:23-40:25.)
15 See Exhibit 4 to Affidavit of Counsel.

1 not fair and reasonable. It purposefully hired ISLAM in violation of her contract with
2 ATLANTIS so that it could acquire and utilize her knowledge to solicit ATLANTIS players.
3 Not only is this tortious, but it is unlawful under the Uniform Trade Secret Act as discussed
4 below. It is undisputable that ISLAM's breach of her agreement with the ATLANTIS, and
5 GSR's inducement to her to breach that agreement, allowed GSR to gain access to the identity of
6 guest and players that were in the ATLANTIS database.
7

8 Finally, as to actual harm caused to ATLANTIS from the tortious interference,
9 ATLANTIS has defeated GSR's Motion in Limine to Exclude the Report and testimony of its
10 non-retained damage experts. As such, ATLANTIS' claimed damages, some of which are based
11 on theoretical loss of revenue, will be heard by the Court. Moreover, GSR's argument that
12 causation is lacking because not a single one of the 202 persons for which ATLANTIS is
13 claiming damages will testify that they stopped playing at the ATLANTIS due to ISLAM/GSR's
14 conduct has already been dismissed by the Nevada Supreme Court in a trade secret case. In
15 *Frantz v. Johnson*, 116 Nev. 455, 467, 999 P.2d 351 (2000), the Court held that direct evidence
16 of causation was unnecessary and that causation may be inferred from the circumstantial
17 evidence presented at trial.
18

19 **C. Summary Judgment is not appropriate on Plaintiff's claim for Violation of Uniform**
20 **Trade Secret Act, NRS 600A.010 et. seq., against GSR**

21 GSR claims it had no knowledge concerning any confidentiality agreement between
22 ISLAM and ATLANTIS and no knowledge that any names provided by ISLAM to it constituted
23 trade secrets of ATLANTIS and further, that it had no duty to investigate the source of
24 information imputed to it. The plain language of NRS 600.030 *et al* provides otherwise
25 (constructive versus actual knowledge) and ATLANTIS has provided evidence that GSR
26 misappropriated the trade secrets of ATLANTIS as it *knew or should have known* that ISLAM,
27 on its behalf, was wrongfully utilizing this information and data belonging to the ATLANTIS
28

1 while performing her position as a Casino Host for GSR. Indeed, the testimony and evidence
2 outlined in the argument above demonstrates that the GSR's actions were premeditated, willful,
3 and malicious.

4 Specifically, GSR misappropriated the trade secrets of ATLANTIS by:

5 (a) acquiring the trade secrets of the ATLANTIS by *improper means* (hiring ISLAM in violation
6 of the Non-Compete Agreement in order to access and use the trade secrets of ATLANTIS that
7 ISLAM acquired through her employment by ATLANTIS),

8 (b) acquiring the trade secrets of the ATLANTIS from ISLAM who knew or had reason to know
9 that the trade secrets were acquired by *improper means* and/or

10 (c) use of the trade secrets of the ATLANTIS (without express or implied consent of
11 ATLANTIS) from ISLAM who:

12 (1) used *improper means* to acquire knowledge of the trade secret,

13 (2) at the time of disclosure or use, knew or had reason to know that her knowledge of the
14 trade secret was:

15 (i) derived from her use of *improper means* to acquire it;

16 (ii) acquired under circumstances giving rise to a duty to maintain its secrecy or
17 limit its use; and/or

18 (iii) derived in violation of the duty she owed to the ATLANTIS to maintain its
19 secrecy or limit its use.

20 See NRS 600.030 *et al.*

21 NRS 600.030(1) defines *improper means* as, without limitation, (a) theft; (b) bribery; (c)
22 misrepresentation; (d) willful breach or willful inducement of breach of a duty to maintain
23 secrecy; (e) willful breach or willful inducement of a breach of duty imposed by common law,
24 statute, contract, license, protective order or other court or administrative order; and (f)
25 espionage through electronic or other means.

26 Thus by clear statutory definition, GSR's willful inducement of breach of ISLAM's Non-
27 Compete Agreement is a duty imposed by contract that subjects GSR to liability under the
28 UTSA. Additionally, ISLAM essentially thieved the information and data from ATLANTIS
which is also a willful breach imposed by the contracts she signed as well as by statute (UTSA).
In fact, her admission to copying the information of hundreds of ATLANTIS' guests by hand
from her computer would also appear to qualify under the espionage definition. Regardless, the
issue of impropriety does not appear to be reasonably in question. Moreover, GSR's and

1 ISLAM's conduct is willful in that GSR and ISLAM's actions were intentional and deliberate
2 and both were both aware of the consequences of their actions.¹⁶ After all, they executed an
3 employment agreement as to what would take place in the event litigation was filed.¹⁷
4 Moreover, the recently produced transcript of the May 3, 2012 interview provides evidence of
5 GSR's intent to misappropriate trade secrets from the ATLANTIS.¹⁸ GSR's claims that it felt
6 the Non-Compete Agreement was invalid and unenforceable and that it did not tell ISLAM to
7 bring any information with her are belied by the balance of evidence that demonstrates the
8 opposite as well as its actions in this suit, including stipulating to a Preliminary Injunction.
9 Thus, the hollow claim does not immunize GSR--it runs the risk of the consequences if it is
10 wrong. In the May 3, 2012 recorded interview of Islam, Tom Flaherty admitted that ATLANTIS
11 has a right to players once they are put into ATLANTIS' system and that GSR was aware and
12 even expected ATLANTIS to challenge ISLAM's taking of hosts names [players assigned to
13 ATLANTIS Casino Hosts].¹⁹
14
15

16 Furthermore, for GSR to sit idly by and accept information when it knew or had reason to
17 know that the information was wrongfully in its hands is unacceptable under the UTSA. GSR
18 took no affirmative action and engaged in no conduct to ensure that the information ISLAM
19 brought to it was not trade secret.²⁰ The Non-Compete Agreement provided to GSR by ISLAM
20 even stated that ATLANTIS "has a legitimate interest in effectively competing in the
21
22
23

24 ¹⁶ Although willful is not defined in NRS 600A.010 *et. seq.*, willful is generally known to mean "[p]roceed from a
25 conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass;
designed; intentional; purposeful; not accidental or involuntary." Black's Law Dictionary (6th Ed. 1990).

26 ¹⁷ See, Exhibit 1 to Plaintiff's MPSJ (Islam Deposition 147:17 to 151:20 and 153:9 to 156:1), Exhibit 6 to Reply to
Islam Oppositions (January 10, 2012 offer letter from GSR) and Exhibit 7 to Reply to Islam Oppositions (January 19
offer letter from GSR.)

27 ¹⁸ See Exhibit 2 to Affidavit of Counsel.

28 ¹⁹ See Exhibit 2 to Affidavit of Counsel, GSR Investigatory Interview Recording with Sumona Islam at page 2 and
4.

²⁰ See Exhibit 9 to Plaintiff's MPSJ (Flaherty Deposition 21:42-23:1, 24:5-25:11, 38:1-15, 41:20-25) and Exhibit 2
to Reply to GSR's Oppositions (Hadley Deposition 17:10-24, 21:11-19, 50:21-51:21, 73:9-75:10.)

1 marketplace and protecting its investment in employee capital and confidential information.”²¹
2 GSR was also on notice that ISLAM would be subject to confidential information as it also has a
3 confidentiality agreement that it requires all its hosts to sign, including ISLAM²² and most
4 importantly, GSR regards as confidential and proprietary the very information/data that this
5 lawsuit is about when in its hands.²³
6

7 Finally at a minimum, GSR was put on notice on April 6, 2012 that the information
8 ISLAM brought to them was wrongfully obtained.²⁴ Rather than take precautionary measures,
9 GSR denied all wrongdoing²⁵ and continued to use the information. Recently compelled
10 discovery responses make it clear that GSR utilized the information even after the TRO was
11 entered against it on July 5, 2012.
12

13 **IV.**

14 **CONCLUSION**

15 Based on the foregoing, ATLANTIS respectfully requests that this Court deny partial
16 summary judgment to GSR.

17 **Affirmation Pursuant to NRS 239B.030**

18 The undersigned does hereby affirm that the preceding document does not contain the
19 //
20 //
21 //
22 //
23

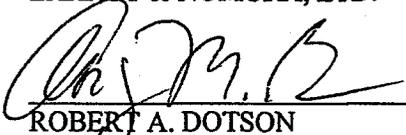
24
25 ²¹ See Exhibit 7 to Plaintiff’s MPSJ.
26 ²² See Exhibit 8 to Plaintiff’s MPSJ (GSR 4—GSR confidentiality agreement) and Exhibit 9 to Plaintiff’s MPSJ
(Flaherty Deposition 22:14-23:1, 51:21-52:11.)
27 ²³ See Exhibit 9 to Plaintiff’s MPSJ (Flaherty Deposition at p. 52:8-11, 22:14-24:4), Exhibit 22 to Plaintiff’s MPSJ
(Lundgren Deposition at p. 46:12-15), Exhibit 2 to Reply to GSR Oppositions (Hadley Deposition 12:9-14, 17:21-
19:9), Exhibit 1 to Reply to GSR Oppositions (Ambrose Deposition 34:14-20) and Exhibit 3 to Reply to GSR
28 Oppositions (Singh Deposition 20:21-21:15.)
²⁴ See Exhibit 18 to Plaintiff’s MPSJ.
²⁵ See Exhibit 19 to Plaintiff’s MPSJ.

1 social security number of any person.

2 Dated this 14th day of June, 2013.

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LAXALT & NOMURA, LTD.



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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
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 individuals.

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

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

13 Reno/Carson Messenger Service.

14 By email to the email addresses below.

15 addressed as follows:

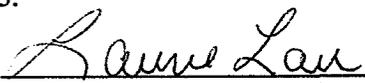
16 Steven B. Cohen, Esq.
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18 Terry Kinnally, Esq.
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22
23 DATED this 14th day of June, 2013.

24 
25 An Employee of Laxalt & Nomura, Ltd.
26
27
28

1 **1030**
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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; 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 **AFFIDAVIT OF COUNSEL IN SUPPORT**
23 **OF ALTERNATIVE OPPOSITION TO GSR'S**
24 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

25 STATE OF NEVADA)
26) ss.
27 COUNTY OF WASHOE)

28 ANGELA M. BADER hereby affirms, under penalty of perjury, that the assertions
contained herein are true;

1. I am an attorney licensed to practice law in the State of Nevada and represent the
Plaintiff, Golden Road Motor Inn, Inc., a Nevada corporation d/b/a Atlantis Casino Resort Spa
("Plaintiff"), in this action.

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.
- 15 (BY FACSIMILE) on the parties in said action by causing a true copy thereof to
16 be telecopied to the number indicated after the address(es) noted below.
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- 18 By email to the email addresses below.

19 addressed as follows:

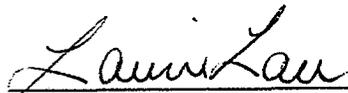
20 Steven B. Cohen, Esq.
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26 DATED this 14th day of June, 2013.

27 
28 An Employee of Laxalt & Nomura, Ltd.

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INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGES
1	Excerpts of the deposition of Brandon Charles McNeely taken on May 14, 2013	5
2	Transcript of May 3, 2012 GSR Investigatory Interview Recording with Sumona Islam	5
3	Excerpts of the deposition of Christian Ambrose taken on January 18, 2013	4
4	Email chain between Shelly Hadley and Christian Ambrose, dated March 28 – March 30, 2012. This Exhibit is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012	3

FILED

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Joey Orduna Hastings
Clerk of the Court
Transaction # 3790082

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7

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
Corporation, d/b/a ATLANTIS CASINO
11 RESORT SPA,

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

12 Plaintiff,

13 vs.

14 SUMONA ISLAM, an individual; NAV-RENO
GS, LLC a Nevada limited liability Company
15 d/b/a GRAND SIERRA RESORT; ABC
CORPORATIONS; XYZ PARTNERSHIPS; and
JOHN DOES I through X, inclusive,

**DEFENDANT GSR'S OBJECTION TO
PLAINTIFF GOLDEN ROAD'S PRE-
TRIAL DISCLOSURE OF WITNESSES
AND EXHIBITS**

16 Defendants.
17

18 Defendant NAV-RENO GS, LLC a Nevada Limited Liability Company, d/b/a GRAND
19 SIERRA RESORT by and through its counsel of H. Stan Johnson, Esq of the law firm of Cohen
20 Johnson LLC; pursuant to the provisions set forth in N.R.C.P. 16.1 (a) (3), hereby sets forth its
21 objections to the witnesses and exhibits provided by Golden Road in its pre-trial disclosure of
22 witnesses and exhibits
23

24 **WITNESSES**

25 Special Agent Jennifer Sitts
Enforcement Division
26 State of Nevada Gaming Control Board
9790 Gateway Dr., Suite 100
27 Reno, NV 89521
(775) 823-7250
28

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

1 Defendant objects to any testimony by this witness based on the fact that she is not a
2 percipient witness and has no personal knowledge of the facts underlying the claims and
3 defenses in this matter. Any testimony she would offer would be based on third party statement
4 and conclusions she had drawn based on those statements. Such testimony is inadmissible
5 pursuant to Frias v. Valle 101 Nev. 219, 698 P. 2d 875 (Nev. 1985).

6 Brandon McNeely
7 Database Coordinator — Sales & Marketing
8 Atlantis Casino Resort Spa
9 c/o Robert A. Dotson, Esq.
10 Laxalt & Nomura
11 9600 Gateway Drive
12 Reno, NV 89521
13 (775) 322-1170

11 Defendant renews its objection to this witness based on NRS 50.275 and as set forth in its
12 Motion in Limine to exclude his testimony.

13
14 **EXHIBITS**

15 **53. Correspondence from Angela Bader and Mark Wray dated October 15, 2012**

16 Neither Ms. Bader nor Mr. Wray have been identified as witnesses in this matter,
17 therefore a proper foundation cannot be laid. More importantly the introduction of this
18 correspondence would be testimonial in nature and violate NRPC 3.7 addressing a lawyer as
19 witness. It should also be noted that the correspondence does not bear a bates stamp and was
20 apparently never produced during discovery, therefore making said letter inadmissible at trial for
21 any purpose.

22 **57. Notices of taking depositions of Tony Santo, Terry Vavra and Deborah Kite**

23 These notices have no evidentiary value and were not produced by Atlantis in its pre-trial
24 disclosures of documents, as evidence by the lack of Bates Stamps on these documents.

25 **59. Letter from Terry Kinnally, Esq addressed to Angela Bader, Esq. dated April**
26 **12, 2013.**

27 Neither Ms. Bader nor Ms. Kinnally have been identified as witnesses in this matter,
28 therefore a proper foundation cannot be laid. More importantly the introduction of this

1 correspondence would be testimonial in nature and violate NRPC 3.7 addressing a lawyer as
2 witness. It should also be noted that the correspondence does not bear a bates stamp and was
3 never produced during discovery, therefore making said letter inadmissible at trial for any
4 purpose.

5 **60. Email from Morgan Bogumil to RobDotson and Angie Bader regarding**
6 **service of Tony Santo dated April 18, 2013.**

7 Ms. Bader, Ms. Borgumill, and Mr. Dotson have not been identified as witnesses in this
8 matter, therefore a proper foundation cannot be laid. More importantly the introduction of this
9 correspondence would be testimonial in nature and violate NRPC 3.7 addressing a lawyer as
10 witness. It should also be noted that the correspondence does not bear a bates stamp and was
11 never produced during discovery, therefore making said letter inadmissible at trial for any
12 purpose. Nor was this e-mail ever produced in this matter, and it therefore Defendant has never
13 had the chance to examine said document to determine any additional bases for it's exclusion
14 and its use at trial would constitute unfair surprise.

15 **83. Atlantis Customer Lifetime Value Calculations and Harvard Business Review**
16 **CaseStudy.**

17 Defendant renews its objections to the damages calculations based on Customer Lifetime
18 Value as set forth in its motion in limine and further objects to the admissibility of the Harvard
19 Business Review Case Study. This case study is pure hearsay and there has been no foundation
20 that this casestudy constitutes a learned treatise or would be admissible under any exception to
21 the hearsay rule.

22 **85. Criminal Complaint filed by the State of Nevada against Sumona Islam on**
23 **December 31, 2012 Bates Stamped numbers ATL 1009-1011.**

24 Defendant objects to the use of a criminal complaint at the trial of this matter for any
25 purpose including impeachment. A criminal complaint is not a conviction under NRS 50.095
26 and is not admissible either to prove fault or liability or for purposes of impeachment. Moreover
27 the inclusion of this highly prejudicial in the list of evidence to the Court when the matter is
28 being heard as a bench trial is an improper attempt to prejudice the Court against Defendants

1 and should result in sanctions against Plaintiff including a dismissal of the case with prejudice or
2 a mistrial.

3 **90. Email from Debra Robinson to Agent Sitts dated 5/30/12, with Sumona Islam's**
4 **Change Log attached, bates numbered ATL 1622 — 1626;**

5 **91. Email from Debra Robinson to Agent Sitts dated 5/31/12, with Sumona Islam's**
6 **Coded Player list attached, bates numbered ATL 1627 — 1655;**

7 **92. Email string from 7/6/12 through 8/6/12 with list of information requested by**
8 **Agent Sitts attached, bates numbered ATL 1656 —1661;**

9 The foregoing emails and documents are all inadmissible as part of an on going
10 investigation by the Gaming Control Board is not a conviction and do not constitute
11 impeachable material under under NRS 50.09. These documents are inadmissible as proof of
12 fault or liability or for purposes of impeachment. Moreover the inclusion of this highly
13 prejudicial in the list of evidence to the Court when the matter is being heard as a bench trial is
14 an improper attempt to prejudice the Court against the Defendants and should result in sanctions
15 against Plaintiff including a dismissal of the case with prejudice or a mistrial.

16 **99. Deposition of Jeremy Aguero;**

17 **100. Deposition of Christian Ambrose;**

18 **101. Deposition of Sterling Lungren;**

19 **102. Deposition of Frank DeCarlo;**

20 **103. Deposition of Tom Flaherty;**

21 **104. Deposition of Shelly Hadley;**

22 **105. Deposition of Sumona Islam;**

23 **106. Deposition of Deborah Kite;**

24 **107. Deposition of Custodian of Records of Grand Sierra Resort;**

25 **108. Deposition of Brandon McNeely;**

26 **109. Deposition of Abraham Pearson;**

27 **110. Deposition of Debra Robinson;**

28 **111. Deposition of Bill Singh;**

1 **112. Deposition of Terry Vavra;**

2 **13. Deposition of Bob Woods;**

3 Defendant objects to the use of any of the above depositions for purposes other than
4 impeachment of the deponent during trial testimony absent a showing that the witness is
5 unavailable under NRCP 32 (a) 3.

6
7 **EXHIBITS WHICH MAY BE USED AT TRIAL**

8 Defendants repeats all the objections set forth above in regards to the duplicate
9 listing of exhibits previously identified and incorporates those objection herein.

10 **7. Affidavit of Steve Rinkob, bates stamped ATL 0035 — 0036;**

11 **8. Affidavit of Susan Moreno, bates stamped ATL 0037 — 0038;**

12 **9. Declaration of Teresa Finn, bates stamped An 0039 — 0040;**

13 Defendant objects to the use of affidavits of non-testifying witnesses for any purpose and
14 objects to the use of the affidavits in the examination of any testifying witness for purposes other
15 than impeachment.

16 **49. Criminal Complaint filed by the State of Nevada against Sumona Islam on**
17 **December 31, 2012, bates numbered ATL 1009 —1011;**

18 **50. Request excerpt from the Washoe County District Attorney's office, bates**
19 **numbered ATL 1012 —1013;**

20 **51. Letter from Robert A. Dotson, Esq. addressed to Jennifer Sitts at the Gaming**
21 **Control Board, dated November 15, 2012, with enclosures, bates numbered ATL 1014 —**
22 **1349;**

23 **52. Letter from Robert A. Dotson, Esq. addressed to Jennifer Sitts at the Gaming**
24 **Control Board, dated December 7, 2012, with enclosures, bates numbered ATL 1350 —**
25 **1411. (Note: Due to a filing error, Plaintiff's counsel believes the attached documents were**
26 **the enclosures to this letter.);**

27 **53. Letter from Robert A. Dotson, Esq. addressed to Jennifer Sitts at the Gaming**
28 **Control Board, dated December 21, 2012, with enclosure, bates numbered ATL 1412 —**

1 1441;

2 Defendant objects to the use of the foregoing exhibits based on the fact that these
3 documents concern ongoing criminal and gaming investigations, and are self serving and highly
4 biased statements of Counsel for Plaintiff. None of these documents are admissible for any
5 purpose at the trial of this matter including proof of fault or liability or for purposes
6 impeachment. Moreover the inclusion of this highly prejudicial information in the list of
7 evidence to the Court when the matter is being heard as a bench trial is an improper attempt to
8 prejudice the Court against Defendants and should result in sanctions against Plaintiff
9 including a dismissal of the case with prejudice or a mistrial. Further objection is made to all
10 correspondence by Counsel in this matter as it is an improper attempt to introduce counsel's
11 theory of the case before the Court without compliance with the rules of evidence.

12 **67. Email from Debra Robinson to Agent Sitts dated 8/8/12 with list of data base**
13 **repair costs attached, bates numbered An 1662 — 1663. See Privilege Log for redactions to**
14 **12/6/12 email;**

15 **68. Email string between Debra Robinson and Agent Sitts dated 11/7/12 through**
16 **11/8/12, bates numbered ATL 1664 — 1666. See Privilege Log for redactions to 2/14/13**
17 **email;**

18 The foregoing emails and documents are all inadmissible as part of an ongoing
19 investigation by the Gaming Control Board is not a conviction and do not constitute impeachable
20 material under under NRS 50.09. These documents are inadmissible as proof of fault or liability
21 or for purposes of impeachment. Moreover the inclusion of this highly prejudicial in the list of
22 evidence to the Court when the matter is being heard as a bench trial is an improper attempt to
23 prejudice the Court against the Defendants and should result in sanctions against Plaintiff
24 including a dismissal of the case with prejudice or a mistrial.

25 Defendant reserves the right to object to any other proposed exhibit not previously
26 objected to at trial at the matter based on lack of foundation, relevance and materiality of the
27 exhibit and purpose for which the exhibit may be offered.

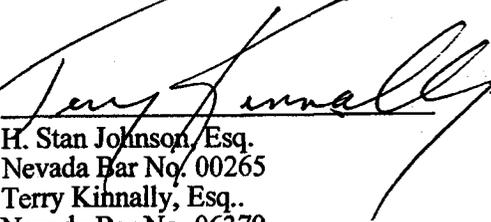
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Affirmation Pursuant to NRS 239B.030 The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 14th day of June, 2013.

COHEN-JOHNSON, LLC.

By: 

H. Stan Johnson, Esq.
Nevada Bar No. 00265
Terry Kinnally, Esq..
Nevada Bar No. 06379
Brian A. Morris, Esq.
Nevada Bar No. 11217
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Attorneys for Grand Sierra Resorts

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

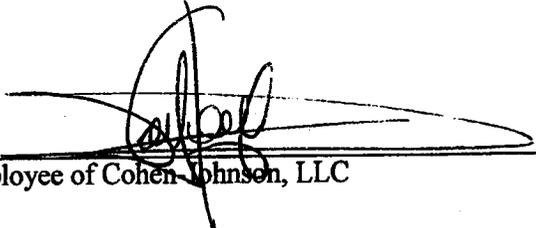
1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 14th day of June, 2013, I served a copy of the foregoing **LIST**
3 **OF WITNESSES AND EXHIBITS ANTICIPATED TO BE USED AT TRIAL** upon each of
4 the parties via email and by depositing a copy of the same in a sealed envelope in the United
5 States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid, and addressed to:

6
7 Robert A. Dotson, Esq.
8 rdotson@laxalt-nomura.com
9 Angela M. Bader, Esq.
10 Laxalt & Nomura, Ltd.
11 9600 Gateway Drive
12 Reno, Nevada 89521
13 Attorney for Plaintiff

Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, Nevada 89509
Facsimile (775) 348-8351
Attorney for Sumona Islam

14 and that there is a regular communication by mail between the place of mailing and the places so
15 addressed.

16
17 
18 _____
19 An employee of Cohen-Johnson, LLC
20
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COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
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1830
MARK WRAY, #4425
LAW OFFICES OF MARK WRAY
608 Lander Street
Reno, Nevada 89509
(775) 348-8877
(775) 348-8351 fax
Attorneys for Defendant SUMONA ISLAM

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, d/b/a ATLANTIS
CASINO RESORT SPA,

Plaintiff,

Case No. CV12-01171

vs.

Dept. B7

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

Defendants.

DEFENDANT SUMONA ISLAM'S JOINDER IN GRAND SIERRA'S
OBJECTIONS TO THE ATLANTIS' PRE-TRIAL DISCLOSURES

Defendant Sumona Islam joins in the objections filed and served today by the

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Grand Sierra Resort to the Atlantis' 16.1(a)(3) pre-trial disclosures.

DATED: June 14, 2013

Respectfully submitted,

LAW OFFICES OF MARK WRAY

By *Mark Wray*
MARK WRAY

Attorney for Defendant SUMONA ISLAM

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) the undersigned employee of the Law Offices of Mark Wray certifies that a true copy of the foregoing document was sealed in an envelope with prepaid postage affixed and deposited in the U.S. Mail in Reno, Nevada on June 14, 2013 addressed to the following:

Robert A. Dotson
Angela M. Bader
Laxalt & Nomura, Ltd.
9600 Gateway Drive
Reno, Nevada 89521

Stan Johnson
Cohen/Johnson
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119



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AFFIRMATION

The undersigned certifies that this document does not contain the Social Security number of any person.

DATED: June 14, 2013 *Mark Wray*
MARK WRAY

1 **4210**
2 **MARK WRAY, #4425**
3 **LAW OFFICES OF MARK WRAY**
4 **608 Lander Street**
5 **Reno, Nevada 89509**
6 **(775) 348-8877**
7 **(775) 348-8351 fax**
8 **Attorneys for Defendant SUMONA ISLAM**

9
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11
12 **IN AND FOR THE COUNTY OF WASHOE**

13 **GOLDEN ROAD MOTOR INN, INC.,**
14 **a Nevada Corporation, d/b/a ATLANTIS**
15 **CASINO RESORT SPA,**

16 **Plaintiff,**

Case No. CV12-01171

17 **vs.**

Dept. B7

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

25 **Defendants.**

26 **TRIAL STATEMENT OF DEFENDANT SUMONA ISLAM**

27 Pursuant to WDCR 5 and the Court's Pretrial Order of July 2, 2012, Sumona
28 Islam respectfully submits the following trial statement.

I

PARTIES' CLAIMS AND SUPPORTING FACTS

A. Introduction

The Atlantis is seeking to use this Court's power to obtain a judgment for damages that is not supported by the evidence and to which the Atlantis is not entitled. The Atlantis seeks to have this Court declare that the Grand Sierra cannot hire a casino host away from the Atlantis to obtain her relationship with players and yet the Atlantis does exactly the same thing by hiring casino hosts away from other casinos. The Atlantis is bootstrapping this case by claiming that information it obtained from other casinos by hiring away their casino hosts became confidential, proprietary or a "trade secret" of the Atlantis merely because the Atlantis downloaded the information onto its database. It would violate public policy for the Atlantis, or any casino, to be allowed to monopolize players and prevent other casinos from competing. Specifically concerning Islam, the Atlantis should not be allowed to renege on promises it made to entice her to leave another casino and bring her players with her to the Atlantis, and while breaching those promises to her, enforce a non-compete that she was required to sign to keep her job. The Atlantis has acted in bad faith and it has unclean hands. The claims and positions taken by the Atlantis constitute an unreasonable restraint on trade in violation of public policy. In addition to having no right to the relief sought, the Atlantis has no damages actually or proximately caused by any act of the defendants.

B. Expected Evidence as to Each Claim

The Atlantis alleges claims for relief against Islam for breach of contract, conversion, interference with contractual relations and prospective economic advantage, violation of the Uniform Trade Secret Act and declaratory and injunctive relief.

(1) Breach of contract

A claim for breach of contract requires a showing of (1) the existence of a valid contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach and (4) damage to plaintiff. *Regan Roofing Co. v. Superior Court*, 29 Cal. Rptr.2d

1 413 (1994); *Henderson-Smith & Assocs. v. Nahamani Family Serv. Ctr.*, 752 N.E.2d 33,
2 43 (Ill. App. 2001); *Kreiss v. McCown DeLeeuw & Co.*, 37 F. Supp. 2d 294, 298
3 (S.D.N.Y. 1999).

4 Non-compete and other similar restraint-of-trade agreements are against public
5 policy unless the terms are reasonable. *Jones v. Deeter*, 112, Nev. 291, 294, 913 P.2d
6 1272, 1274 (1996).

7 Non-compete covenants are restraints of trade and subject to careful scrutiny
8 when made in an employment context. *Camco, Inc. v. Baker*, 113 Nev. 512, 519, 936
9 P.2d 829 (1997).

10 In actions to enforce post-employment, anti-competitive covenants, a restraint on
11 employment will be upheld only if it is reasonably necessary to protect the business and
12 goodwill of the employer. *Hansen v. Edwards*, 83 Nev. 189, 191, 426 P.2d 792, 793
13 (1967).

14 "Because the loss of a person's livelihood is a very serious matter, post
15 employment anti-competitive covenants are scrutinized with greater care than are similar
16 covenants incident to the sale of a business." *Traffic Control Servs. v. United Rentals*
17 *Northwest, Inc.*, 120 Nev. 168, 172, 87 P.3d 1054, 1057 (2004).

18 The evidence will show that the non-compete Islam was required to sign is
19 invalid, as indeed, this Court already has found it to be, at least in part, in that it
20 purported to restrict Islam from working in any capacity at any casino for a year. The
21 evidence also will show that the agreements the Atlantis had her sign are invalid to the
22 extent they purport to define all information in the hands of the Atlantis as confidential,
23 proprietary or trade secret.

24 Contract law does not allow a party who has breached a contract first to sue for its
25 enforcement against the other party. As the court stated in *Bradley v. Nevada C.O.R. Ry.*,
26 42 Nev. 411, 421, 178 P. 906, 908 (1919): "If there is anything well settled, it is that the
27 party who commits the first breach of the contract cannot maintain an action against the
28 other for a subsequent failure to perform." The evidence will show that the Atlantis

1 breached its promises made to induce Islam to leave Harrah's and come to the Atlantis.

2 Finally, there will be zero evidence of any damages caused by any alleged breach
3 of any agreement, because the Atlantis is relying only upon theories and hypothesis that
4 it could have been damaged.

5 **(2) Conversion**

6 Conversion is a distinct act of dominion wrongfully exerted over another's
7 personal property in defiance of its rights. *M.C. Multi-Family Development, L.L.C. v.*
8 *Crestdale Associates, Ltd.*, 124 Nev. 901, 910, 196 P.3d 536 (2008). "[C]onversion
9 generally is limited to those severe, major, and important interferences with the right to
10 control personal property that justify requiring the actor to pay the property's full value.
11 *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 328, 130 P.3d 1280, 1287 (2006).
12 The theory of conversion offered by the Atlantis is that Islam made false entries on its
13 database. Whatever remedy may be available for making entries into a database that are
14 incorrect, the remedy is not the tort of conversion. To be conversion, Islam would have
15 had to steal or destroy the computer or the program so as to have to pay its full value.
16 Here, the evidence will show the program and the computer were not interfered with in a
17 severe, major or important way that justifies paying the full value of the computer
18 system or program. This evidence simply does not support the tort of conversion.

19 **(3) Interference with Contractual Relations and Prospective
20 Economic Advantage**

21 Interference with prospective economic advantage requires the Atlantis to
22 prove(1) a prospective contractual relationship between the plaintiff and a third party; (2)
23 the defendant's knowledge of this prospective relationship; (3) the intent to harm the
24 plaintiff by preventing the relationship; (4) the absence of a privilege or justification by
25 the defendant; and (5) actual harm to the plaintiff as a result of the defendant's conduct.
26 *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987); *Las Vegas-*
27 *Tonopah-Reno Stage v. Gray Line*, 106 Nev. 283, 792 P.2d 386, 388 (1990).

28

1 The evidence will show that there was no prospective contractual relationship
2 between the Atlantis and any players, because the Atlantis does not own the players, it
3 has no exclusive rights to players and there are no contracts with players. The evidence
4 also will show that the defendants are not aware of any prospective contractual
5 relationship with players and had no intent to harm any such relationship. In addition,
6 there is going to be no evidence presented of any "actual harm" to the Atlantis as a result
7 of the defendants' conduct because again, the Atlantis is basing its case on harm that
8 could have happened, in theory, in a hypothetical world, if certain assumptions are made
9 that are not supported by any evidence.

10 **(4) Violation of the Uniform Trade Secret Act**

11 The elements of a misappropriation of trade secrets claim include: (1) a valuable
12 trade secret; (2) misappropriation of the trade secret through use, disclosure, or
13 nondisclosure of use of the trade secret; and (3) the requirement that the
14 misappropriation be wrongful because it was made in breach of an express or implied
15 contract or by a party with a duty not to disclose. *Frantz v. Johnson*, 116 Nev. 455, 466,
16 999 P.2d 351, 358 (2000).

17 The Atlantis contends that information on its computer system is a trade secret
18 because the Atlantis placed the information on its computer after it obtained the
19 information from hiring casino hosts from other casinos, and the Atlantis has an
20 agreement that it drafted, signed by Islam, calling the information a trade secret. The
21 Atlantis position is untenable. By themselves, the agreements signed by Islam do not
22 establish the existence of a trade secret or confidential information. "An agreement
23 between the employer and the employee that something is a trade secret or confidential
24 is not controlling if in fact it is not." *Cambridge Filter Corp. v. Int'l Filter Co., Inc.*, 548
25 F.Supp. 1301, 1306 (D.Nev. 1982). "The most important consideration is whether the
26 information is readily accessible to a reasonably diligent competitor. Where the
27 plaintiff's customers are known to competitors as potential customers, the plaintiff's
28

1 customer list is not a trade secret.” *Id.* The evidence will show the information not only
2 is known to competitors, the Atlantis obtained the information from competitors.

3 The information also fails to satisfy the definition of a trade secret. The Uniform
4 Trade Secrets Act defines a trade secret as “information, including, without limitation, a
5 formula, pattern, compilation, program, device, method, technique, product, system,
6 process, design, prototype, procedure, computer programming instruction or code that:

- 7 (a) Derives independent economic value, actual or potential, from not
8 being generally known to, and not being readily ascertainable by
9 proper means by the public or any other persons who can obtain
10 commercial or economic value from its disclosure or use; and
11 (b) Is the subject of efforts that are reasonable under the circumstances
12 to maintain its secrecy.

13 The factors to consider as to whether Islam’s list of players is a trade secret of the
14 Atlantis include:

- 15 (1) the extent to which the information is known outside of the business and the
16 ease or difficulty with which the acquired information could be properly acquired
17 by others; (2) whether the information was confidential or secret; (3) the extent
18 and manner in which the employer guarded the secrecy of the information; and
19 (4) the former employee’s knowledge of customer’s buying habits and other
20 customer data and whether this information is known by the employer’s
21 competitors

22 *Finkel v. Cashman Prof’l, Inc.*, 270 P.3d 1259, 1264 (Nev. 2012) citing *Frantz, supra*, at
23 466, 999 P.2d at 358. The evidence will show that the independent economic value of a
24 player comes from the cultivation of a relationship with the player, and not from the
25 player’s name and contact information. Thus, the experience of the casino host and the
26 player is what provides the value, which is why the Atlantis employs casino hosts and
27 hires them from other casinos in the first place. The evidence also will show that the
28 information on players is known outside the Atlantis, and that Atlantis acquired it from
other casinos. The information was neither confidential nor secret when the Atlantis
acquired it from other casinos. The buying habits and other customer data about players
are known to other casinos and in fact the Atlantis acquired this information by hiring
Islam and other executive casino hosts to obtain this information from them.

1 NRS 600A.030(2) defines misappropriation to mean:

- 2 (a) Acquisition of the trade secret of another by a person by improper
3 means;
- 4 (b) Acquisition of a trade secret of another by a person who knows or
5 has reason to know that the trade secret was acquired by improper
6 means; or
- 7 (c) Disclosure or use of a trade secret of another without express or
8 implied consent by a person who:
- 9 (1) Used improper means to acquire knowledge of the trade secret;
- 10 (2) At the time of disclosure or use, knew or had reason to know that
11 his or her knowledge of the trade secret was:
- 12 (I) Derived from or through a person who had used improper
13 means to acquire it;
- 14 (II) Acquired under circumstances giving rise to a duty to
15 maintain its secrecy or limit its use; or
- 16 (III) Derived from or through a person who owed a duty to the
17 person seeking relief to maintain its secrecy or limit its use;
18 or
- 19 (3) Before a material change of his or her position, knew or had reason
20 to know that it was a trade secret and that knowledge of it had been
21 acquired by accident or mistake.

22 Islam and other executive casino hosts brought to the Atlantis the information that
23 is now claimed to be a "trade secret." If there was any appropriation or misappropriation
24 of a claimed "trade secret," it was by the Atlantis, not by Islam. Islam always had
25 authorized access to the information that she brought with her and that she shared while
26 working at the Atlantis. The evidence does not support a finding of a misappropriation
27 under NRS 600A.030.

28 (5) **Declaratory and Injunctive Relief**

Oftentimes, declaratory relief is a throwaway claim, but in this case, the Atlantis
declaratory relief claim offers the Court the avenue to throw out the other claims of the

1 Atlantis. The Atlantis wants a declaratory judgment as to the parties' rights under the
2 various agreements. The opportunity is knocking to declare the agreements invalid and
3 unenforceable as unreasonable restraints of trade, violations of public policy, and lacking
4 in the promised consideration to Islam.

5 Permanent injunctive relief may only be granted if there is no adequate remedy at
6 law, *a balancing of equities favors the moving party*, and success on the merits is
7 demonstrated." *Chateau Vegas Wine, Inc. v. Southern Wine & Spirits of Am., Inc.*, 265
8 P.3d 680, 684 (Nev. 2011) (emphasis added). Islam already lost a year's worth of work,
9 and she is entitled to be back at work. *Finkel, supra*. To the extent that the Atlantis
10 seeks to use the injunctive powers of this Court to prevent Islam or the Grand Sierra
11 from ever contacting players who the Atlantis claims as its own, the Atlantis is
12 overreaching. The Atlantis was not entitled to a monopoly on players before this lawsuit
13 and it is not entitled to a monopoly today.

14 Furthermore, "he who seeks equity must do equity." *Mosso v. Lee*, 53 Nev. 176,
15 295 P. 776 (1931). The Atlantis has unclean hands and is not entitled to injunctive relief
16 in its favor.

17 An injunction entered under Nevada's Uniform Trade Secrets Act "must be
18 terminated when the trade secret has ceased to exist, but the injunction may be continued
19 for an additional reasonable period of time to eliminate commercial or other advantage
20 that otherwise would be derived from the misappropriation." NRS 600A.040(1). Here,
21 there are no trade secrets in existence that have been obtained by Grand Sierra or Islam
22 and therefore no basis for a permanent injunction. In addition, even if there were any
23 trade secrets, which there are not, the Atlantis cannot demand an injunction that goes
24 beyond a reasonable period of time needed to reflect any competitive disadvantage.
25 There is no competitive advantage for the Grand Sierra. The evidence is not going to
26 show that any player has stopped patronizing the Atlantis in favor of the Grand Sierra
27 because of any acts of the defendants. A permanent or extended injunction cannot be
28 issued because there is no basis for it. *See, Finkel, supra*, at 1265.

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II

ADMITTED OR UNDISPUTED FACTS

The parties have not stipulated to any facts but Islam has stipulated to the trial exhibits except proposed exhibits 59, 60 and 61 which deal with the theoretical damages.

III

ISSUES OF LAW

Islam filed a motion in limine that the Court denied, in which Islam objected to the theoretical damages that the Atlantis seeks to win in this case. Islam's position is that if the Atlantis wants theoretical damages, then the Atlantis should be satisfied with a theoretical judgment.

The Court is going to allow the Atlantis to offer evidence of theoretical and hypothetical damages while denying the Grand Sierra's motion to compel the Atlantis to produce records of any actual damages. Thus, there will be testimony and argument about the theoretical possibility that the Atlantis sustained damages while the defendants will be precluded from showing from actual records that there were no damages.

Notably, the torts of interference with contractual relations/prospective economic advantage require as a necessary element of the claims that the plaintiff prove "actual harm," so it would appear that the Atlantis cannot get away with theoretical harm, at least for purposes of those two claims for relief. *See Leavitt, supra*. In that it is undisputed that the Atlantis will not offer any evidence of actual damages, the interference claims should be off the table.

The burden of proof in a civil action is preponderance of the evidence. *Holliday v. McMullen*, 104 Nev. 294, 296, 756 P.2d 1179, 1180 (1988). The Atlantis therefore has the evidentiary burden to prove damages by a preponderance of the evidence. The Atlantis will not, and cannot, carry its burden.

In *Frantz v. Johnson*, 116 Nev. 455, 469, 999 P.2d 351, 360 (2000), the court stated:

With respect to proof of damages, we have held that a party seeking damages has the burden of providing the court with an evidentiary basis upon which it may

1 properly determine the amount of damages. See *Mort Wallin v. Commercial*
2 *Cabinet*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989). Further, we have noted
3 that damages need not be proven with mathematical exactitude, and that the mere
4 fact that some uncertainty exists as to the actual amount of damages sustained
5 will not preclude recovery. See *Mort Wallin*, 105 Nev. at 857, 784 P.2d at 955.
6 Finally, this court has held that to meet this burden of proof, a party seeking
7 damages may utilize an expert economist to assist in the calculation of the total
8 damages sustained, provided this expert testimony is not speculative but is instead
9 based on facts known to the expert at the time. See *Freeman v. Davidson*, 105
10 Nev. 13, 16, 768 P.2d 885, 887 (1989); see also *Gramanz v. T-Shirts and*
11 *Souvenirs, Inc.*, 111 Nev. 478, 485, 894 P.2d 342, 347 (1995) (holding that it is
12 an abuse of discretion for an expert to give an opinion on facts beyond his
13 knowledge).

14 In *Clark County Sch. Dist. v. Richardson Constr., Inc.*, 123 Nev. 382, 397, 168
15 P.3d 87, 97 (2007), the Supreme Court reiterated these principles, stating as follows:

16 The plaintiff has the burden to prove the amount of damages it is seeking.
17 Although the amount of damages need not be proven with mathematical certainty,
18 testimony on the amount may not be speculative. Courts placing this burden on
19 the plaintiff generally maintain that an allegation that the plaintiff's damages are
20 speculative or not supported by proof need not be pleaded as an affirmative
21 defense because the plaintiff's burden of proving damages necessarily puts at
22 issue whether the damages are speculative.

23 See also, *Alper v. Stillings*, 80 Nev. 84, 87, 389 P.2d 239, 241 (1964) (damages for
24 alleged lost profits properly denied where the very existence of lost profits is uncertain);
25 *Central Bit Supply v. Waldrop Drilling & Pump*, 102 Nev. 139, 142, 717 P.2d 35,
26 37(1986) (a party seeking damages need not prove its damages with mathematical
27 precision, but it must establish a reasonable basis for ascertaining those damages).

28 Damages should not be awarded to the Atlantis merely because it has made a
claim. Damages are appropriate where an award of damages is necessary to make the
alleged aggrieved party whole. *Hanneman v. Downer*, 110 Nev. 163, 172, 871 P.2d 279,
283 (1994). There is no evidence that the Atlantis suffered any loss. The Atlantis does
not need to be made whole.

Many of the claims against Islam arise out of alleged breaches of agreements, and
the rule in such actions is the same: "[t]he purpose of money damages is to put the

1 injured party in as good a position as that in which full performance would have put
2 him." *Fuller v. United Electric Co.*, 70 Nev. 448, 452, 273 P.2d 136, 137 (1954).

3 There will be no causation evidence presented at this trial to the effect that any
4 player stopped playing at the Atlantis due to any conduct by the defendants. Actual and
5 proximate causation is part of the Atlantis' burden of proof. The Supreme Court has
6 stated: "We conclude that Nev. J. I. 4.04 is appropriate in these cases. It provides: [The]
7 proximate cause of injury, damages, loss, or harm is a cause which, in natural and
8 continuous sequence, produces the injury, damage, loss, or harm, and without which the
9 injury, damages, loss, or harm, would not have occurred. *Allum v. Valley Bank*, 114
10 Nev. 1313, 1320, 970 P.2d 1062, 1066 (1998). Similarly, the court stated in *Goodrich v.*
11 *Pennington Mortg. Fund, Inc. v J.R. Woolard, Inc.*, 120 Nev. 777, 784 (2004):

12 Proximate causation, as determined by the district court, is a subset of "cause in
13 fact" or "actual causation." As we stated in *Dow Chemical Co. v. Mahlum*:
14 Causation consists of two components: actual cause and proximate cause. To
15 demonstrate actual cause . . . , the [plaintiff must] prove that, but for the [product]
16 the [plaintiff's damages] would not have occurred. The second component,
17 proximate cause, is essentially a policy consideration that limits a defendant's
18 liability to foreseeable consequences that have a reasonably close connection with
19 both the defendant's conduct and the harm which that conduct created.

18 The concepts of actual and proximate cause are not mere legal niceties. They are
19 essential prerequisites to a valid claim for relief. The Atlantis is forcing the Court to
20 consider evidence of hypothetical damages because the Atlantis refuses to reveal to the
21 Court or the defendants whether there was in fact any actual damage to the Atlantis as to
22 any player. While it is in the power of the Atlantis to produce the evidence requested by
23 the defendants, the Atlantis will not do so, and the Atlantis also will not present any
24 testimony or exhibit at this trial to show that any player at the Atlantis played less in
25 2012 than in 2011 due to any acts of the defendants as opposed to for any other reason.
26 In short, the Court will have no evidence presented to show that the Atlantis has been
27 damaged, only theoretical and hypothetical assumptions used by an Atlantis marketing
28

1 executive to send out flyers to prospective players. This is incompetent and inadmissible
2 speculation based on false assumptions made by an unqualified witness.

3 In *Mainor v. Nault*, 120 Nev. 750, 774, 101 P.3d 308 (2004), the court held that
4 evidence regarding damages was too speculative to constitute substantial evidence to
5 support the jury's verdict, and the court agreed. By motion in limine, the defendants had
6 objected to testimony by an alleged expert that a plaintiff should have recovered 80
7 percent of a settlement, as speculative and lacking foundation. The defendants also
8 objected at trial. The district court admitted the testimony over objections. The Supreme
9 Court treated the admitting of this evidence as plain error that it would raise sua sponte
10 on appeal. The court held the alleged expert's testimony was misleading, highly
11 speculative and lacked foundation. In the instant case, the proposed testimony of alleged
12 expert Brandon McNeely is at least as misleading, speculative and lacking in foundation
13 as the alleged expert in *Mainor*. See also: *Chen v. Nevada State Gaming Control Bd.*,
14 116 Nev. 282, 284, 994 P.2d 1151, 1152 (2000) (reversing decision of Gaming Control
15 Board because the casino failed to show that the alleged misrepresentation by the
16 defendant caused any damage).

17 Islam renews her objection to the theoretical and hypothetical damages testimony
18 by Atlantis witnesses on grounds that it is inadmissible as a matter of law and that the
19 Atlantis refused to produce records which the Atlantis has in its possession showing the
20 actual play of the affected players in the relevant time periods. The Court should find
21 against the Atlantis on all its claims seeking damages because the Atlantis has refused to
22 produce evidence of actual damages and there is no causation shown between any acts of
23 Islam and any loss to the Atlantis.

24 IV

25 WITNESSES

26 The witnesses that Islam anticipates calling are Islam, Frank DeCarlo, Debra
27 Robinson, Bob Woods, Maria Maldonado and Maura Navarro.

28

UNUSUAL EVIDENTIARY ISSUES

1. References to misdemeanor case

In its reply in support of summary judgment, the Atlantis trumpeted the filing of a misdemeanor case against Islam and even included a copy of the criminal complaint. *See, Reply, etc., filed March 22, 2013, pp. 5 and 6.* The reply does not reveal the circumstances behind the filing of that case, but neither the filing of the case or the circumstances behind it should have been mentioned by the Atlantis because it is inadmissible character evidence. NRS 48.035, NRS 48.045. Unfortunately, the use of this information occurred in a reply brief, and not in the motion, to which Islam could have responded and objected. Islam respectfully requests that the Court disregard the attempt to use inadmissible character evidence against her and also respectfully requests that no adverse inference of any kind be drawn against Islam.

2. References to players coded to Islam

Islam will object to any testimony by any Atlantis witness as to players who were allegedly coded to Sumona, or, players who allegedly were not coded to Sumona, while she was at the Atlantis. This objection is based on the refusal of the Atlantis, in response to specific requests for production of documents, to identify and produce any documents as to which players were coded to Sumona while she worked at the Atlantis. *See Trial Exhibit 81, Oct. 15, 2012 letter from Bader to Wray.* The evidence will show that the identity of players coded to Islam is readily available to the Atlantis on its database by entering a search query and printing out a report. The evidence will show that Atlantis refused to enter the search query and produce the requested document, on grounds that the information would be too confidential. Having made that choice, the Atlantis should be precluded from offering any testimony as to whether any particular player was coded to her or not coded to her. The testimony would be inadmissible hearsay. NRS 51.065. The testimony would violate the Best Evidence Rule. NRS 52.235. It would violate the

1 fundamental principle that evidence that is to be used at trial must be disclosed to the
2 other parties under Rule 16.1, both at the initial stages of the case and also before trial.

3 **3. Actual Damages**

4 At the exhibit marking June 25, 2013, Islam objected to proposed trial exhibits
5 59, 60 and 61, on grounds that these are the exhibits the Atlantis intends to use in
6 support of theoretical damages. At trial, Islam will object again. The Atlantis has
7 documents to show what amount each player gambled in 2012 versus any period before
8 that, but the Atlantis refused to turn them over on grounds they are allegedly too
9 confidential. The Atlantis obtained a very strict protective order from the defendants, so
10 the excuse that the information is too confidential does not hold water. It is reasonable
11 for this Court to infer that the documents on actual play by the affected players would
12 show there has been no damage, because if the documents showed any damage, the
13 Atlantis would have produced them.

14 **VI**

15 **CERTIFICATION**

16 The undersigned counsel certifies that discovery has been completed, unless late
17 discovery has been allowed by order of the court.

18 The undersigned counsel certifies that prior to the filing of the trial statement, he
19 personally met and conferred in good faith to resolve the case by settlement.

20
21 DATED: June 26, 2013

LAW OFFICES OF MARK WRAY

22
23 By Mark Wray
24 MARK WRAY
25 Attorney for Defendant SUMONA ISLAM
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27
28

1 CERTIFICATE OF SERVICE

2 Pursuant to NRC 5(b) the undersigned employee of the Law Office of Mark
3 Wray certifies that a true copy of the foregoing document was served via email and
4 sealed in an envelope with prepaid postage affixed and deposited in the U.S. Mail in
5 Reno, Nevada on June 26, 2013, addressed to the following:
6

7 Robert A. Dotson
8 Angela M. Bader
9 Laxalt & Nomura, Ltd.
10 9600 Gateway Drive
11 Reno, Nevada 89521

12 Stan Johnson
13 Cohen/Johnson
14 255 E. Warm Springs Road, Suite 100
15 Las Vegas, Nevada 89119

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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: June 26, 2013

LAW OFFICES OF MARK WRAY

By Mark Wray
MARK WRAY