

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re: GR BURGR, LLC

GR US LICENSING, LP,

Petitioner,

ROWEN SEIBEL,

Respondent and Counterclaim
Plaintiff,

v.

GR US LICENSING, LP,

Petitioner and Counterclaim
Defendant,

and

GR BURGR, LLC,

Nominal Defendant.

C.A. No. 12825-VCS

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**REPORT AND PROPOSED
LIQUIDATION PLAN FOR GR BURGR, LLC**

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Dated: March 30, 2020

TABLE OF CONTENTS

AUTHORITY AND MANDATE.....	1
THE INVESTIGATION	2
SUMMARY OF RECOMMENDATION	3
THE REPORT.....	4
I. THE ASSETS OF GRB	5
A. GRB is Formed and Enters into the License Agreement and the Caesars Agreement.....	5
B. Caesars Terminates the Caesars Agreement and GRUS Terminates the License Agreement.	10
C. The Wind Down Period.	15
D. Ramsay and Caesars Open the New Restaurant and Enter into a New License Agreement.	20
E. The Delaware Action	21
F. The Nevada Actions.....	23
G. Summary of GRB’s Assets	26
II. THE RECEIVER’S RECOMMENDATION FOR THE LIQUIDATION OF GRB	28
A. The Claims Worth Pursuing.....	30
1. <i>The Accrued Licensing Fees for the Wind Down Period</i>	30
2. <i>The Continued Use of the GRB Marks and General GR Materials.</i>	31

B.	The Claims Not Worth Pursuing.	33
1.	<i>Seibel’s Claim for the Purported Wrongful Termination of the Caesars Agreement.</i>	33
2.	<i>Seibel’s Breach of Implied Covenant of Good Faith and Fair Dealing Claim and the Purported Scheme to Oust Him.....</i>	37
3.	<i>Seibel’s Claim for the Purported Breach of Section 14.21 of the Caesars Agreement</i>	38
4.	<i>Ramsay’s Purported Breach of Contract Claim Against GRB for the Rebranding Costs</i>	40
5.	<i>Ramsay’s Purported Breach of Fiduciary Duty Claim Against Seibel.</i>	41
C.	Transfer of GRB’s IP Rights and Company Rights to Ramsay.....	42

TABLE OF AUTHORITIES

CASES

<i>In re GR BURGR, LLC</i> , 2017 WL 3669511 (Del. Ch. Aug. 25, 2017)	4, 34
<i>Griffin v. Old Republic Ins. Co.</i> , 133 P.3d 251 (Nev. 2006)	38
<i>Kaldi v. Farmers Ins. Exch.</i> , 21 P.3d 16 (Nev. 2001)	37
<i>Kucharczyk v. Regents of University of California</i> , 946 F.Supp. 1419 (N.D.Cal.1996)	38
<i>Kuiava v. Kwasniewski</i> , 367 P.3d 791 (Nev. 2010)	38
<i>Ringle v. Bruton</i> , 86 P.3d 1032 (Nev. 2004)	34
<i>Stroud v. Grace</i> , 606 A.2d 75 (Del. 1992)	41
<i>In re TransPerfect Glob., Inc.</i> , 2018 WL 904160 (Del. Ch. Feb. 15, 2018)	44

STATUTES

6 <i>Del. C.</i> § 18-802	21
6 <i>Del. C.</i> § 18-803	1
8 <i>Del. C.</i> § 279	39

RULES

Court of Chancery Rule 54(b)	1, 2
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Kurt M. Heyman, Esquire, of Heyman Enerio Gattuso & Hirzel LLP, having been duly appointed as the Receiver of GR BURGR, LLC (“GRB”), pursuant to the Court’s December 13, 2017 appointment order (the “Appointment Order”), and consistent with his responsibilities and powers as expressed in the Court’s October 5, 2017 dissolution order (the “Dissolution Order”), as clarified by the January 5, 2018 denial of Respondent’s motion for entry of partial final judgment (the “Rule 54(b) Transcript”), hereby submits his report and proposed recommendation for the liquidation of GRB (the “Report” and the “Recommendation”).

AUTHORITY AND MANDATE

The Receiver accepted his appointment on December 11, 2017 (Trans. ID 61453087), and the Appointment Order was entered on December 13, 2017.

The Dissolution Order states that the Receiver “shall have all powers generally available to a ... receiver appointed pursuant to 6 *Del. C.* § 18-803, unless the exercise of any said power would be inconsistent with any specific provision of this Order or any other Order entered by the Court in this action.” (Dissolution Order ¶ 5). On January 5, 2018, the Court issued the following mandate for the Receiver, which clarified his powers and responsibilities as expressed in the Dissolution Order:¹

¹ See *id.* ¶ 6.

[The Receiver] can assess the company's assets and liabilities, including any litigation-related assets or liabilities, and then devise a plan that makes the most sense for winding down the company and fully exploiting the assets of the company to their highest value. He can receive input from the parties in this regard in the manner that he deems most appropriate. He can then submit a report to the Court, in part under seal, if he deems that to be appropriate, that sets forth his recommendations for the wind-down of this entity and for the liquidation of assets. The parties can then be heard with respect to that report. And at that point, I'll enter my final order. Nothing will be done to implement or execute on the winding down of the company until that order is entered.

(The "Mandate"; Rule 54(b) Tr. at 41:11-42:9).

THE INVESTIGATION

In preparing this Report, the Receiver has reviewed the public filings in this action (the "Delaware Action"), the consolidated proceedings in Nevada state court (the "Nevada Actions"), and the voluntarily dismissed action initiated in the United States District Court for the District of Nevada (the "Nevada Federal Action"); participated in status conferences with Judge Hardy in the Nevada Actions; discussed the relevant issues both privately and collectively with, and reviewed private submissions by, counsel to Respondent Rowen Seibel ("Seibel"), counsel to Petitioner GR US Licensing, LP ("GRUS") and non-party Gordon Ramsay ("Ramsay"), as well as counsel for non-party Caesars Entertainment Corporation ("Caesars"), including a discussion with Caesars' accounting department and in-

house counsel; and conducted his own independent legal research and analysis concerning the strengths and weakness of the derivative claims belonging to GRB (collectively, the “Investigation”).

As is common in “business divorce” actions like this one, the Investigation revealed that the parties’ positions—on nearly every issue—are deeply divided and equally entrenched, especially on the valuation of GRB’s claims. “Chasm” does not do it justice. Further complicating the mutual resolution of GRB’s claims are the existence of other disputes involving other ventures (and agreements) being litigated and negotiated among the parties and the necessity for Caesars to support any such resolution (whether legally, financially or both). Unfortunately, through numerous discussions over a period of over two years, and several close calls on an amicable resolution, it has become apparent to the Receiver that his usefulness has come to an end. The Receiver thus believes that the following Recommendation is fair to GRB (and both of its members), when balancing the benefits and risks attendant with further litigation and the equities involved.

SUMMARY OF RECOMMENDATION

The Receiver recommends that the Court assign (a) all of GRB’s claims against GRUS/Ramsay and/or Caesars to Seibel (to be pursued in Nevada at his own cost and limiting his award to 50% of any recovery); (b) all of GRB’s claims against Seibel to GRUS/Ramsay (to be pursued in Nevada at its own cost and limiting its

award to 50% of any recovery)—subject in both cases to the willingness of the parties to receive such assets (collectively, the “Assigned Claims”); (c) all of GRB’s intellectual property and other intangible assets to Ramsay, provided that such assignment shall have no effect on the Assigned Claims or any damages awarded therefrom;² and (d) all liability for any claims asserted now or in the future against GRB to Seibel and Ramsay equally. After such assignments, GRB should be canceled and this action should be dismissed with prejudice after Seibel re-files his Delaware claims in Nevada. Simply put, these two former business partners—and Caesars for that matter—all deserve each other.

THE REPORT

This Report, consistent with the Mandate, will discuss (I) the Assets of GRB and (II) the Receiver’s Recommendation for the Liquidation of GRB. It will begin by outlining the rights and obligations of the parties under the key agreements, as

² Specifically, the Receiver recommends that an IP transfer agreement be executed between GRB and Ramsay upon approval of the Receiver’s Recommendation, and that such agreement preclude Ramsay from using this assignment as a defense to any of the Assigned Claims or as a limitation on GRB’s damages. This assignment nevertheless recognizes Ramsay’s legitimate business interests in “sell[ing] one of the most popular and beloved food preparations in all of history,” and in IP based on his name/likeness that allows him to “capitalize on the celebrity and status Ramsay has spent his career building.” *In re GR BURGR, LLC*, 2017 WL 3669511, at *11 (Del. Ch. Aug. 25, 2017). It also recognizes that, for the same reasons, the IP has little or no value to Seibel other than as a possible means of extracting further consideration from Ramsay.

well as set forth the material events and litigation tactics which inform the Receiver's valuation of GRB's assets and the decision to assign all of its claims to Seibel and GRUS/Ramsay. The discussion herein involves primarily undisputed facts; however, where there is a material dispute, the Receiver will set forth his observations on the matter, and where necessary give his opinion. The Receiver, of course, is not a judge and his opinion is only that—an opinion, informed by the Investigation and the desire to obtain a fair result for GRB (and both of its members).

I. THE ASSETS OF GRB

A. GRB is Formed and Enters into the License Agreement and the Caesars Agreement.

GRB is a Delaware limited liability company, which was formed in 2012 for the purpose of owning, developing, operating, and licensing the development of first-class, burger-themed restaurants. (See Limited Liability Company Agreement of GR BURGR, LLC (the "LLC Agreement") at Fifth Recital).³ It is essentially a pass-through entity whereby Ramsay, through his entity, GRUS, and Seibel each own a 50% membership and economic interest (the "Members"). (*Id.* § 7.2). Authority to manage GRB is split evenly as well, with each Member having the right to appoint one manager of GRB (collectively, the "Managers"). (*Id.* § 8.2). The

³ The LLC Agreement is attached as Exhibit A. All exhibits are attached to the Transmittal Affidavit of Kurt M. Heyman submitted contemporaneously herewith.

LLC Agreement provides that the Members can only assign their respective membership interests to a controlled entity with the consent of the Managers—meaning neither Member could effectuate any other type of assignment without the consent of the other Member. (*Id.* § 10.1(a)).

GRUS owns the trademark “BURGR Gordon Ramsay” (the “Mark”), and contemporaneously with the execution of the LLC Agreement, GRUS agreed to license the Mark to GRB, for a term of twenty (20) years (the “License Agreement”).⁴ (License Agreement at Recital A, § 9).

GRB was given the right to sub-license the Mark for “the development and operation of first class [*sic*] restaurants solely under the name BURGR Gordon Ramsay,” defined as the “Restaurant Operation.” (*Id.* § 1.1). BURGR Gordon Ramsay was the name of the restaurant (the “Restaurant”).

GRB developed and is the sole owner of the trademarks “BURGR” and “GR BURGR.” (*Id.* at Recital C, Schedule B). It also developed “a burger-centric/burger-themed restaurant concept” (the “Concept”), as well as the recipes and menus for the Restaurant (the “Recipes and Menus”),⁵ which along with the trademarks, are defined as “Company Rights.” Specifically,

⁴ The License Agreement is attached as Exhibit B.

⁵ Caesars and Ramsay dispute whether GRB developed any Concept or Recipes and Menus, [REDACTED]

[GRB] owns (a) the trademark “BURGR” and any variation thereof, but notwithstanding anything to the contrary herein contained specifically excluding any mark that includes the name “Gordon Ramsay” (the “Company Trademarks”), (b) the rights relating to the burger-centric/burger-themed restaurant [C]oncept utilizing the [Restaurant Operation] and/or the Company Trademark ..., and (c) the [R]ecipes and [M]enus relating to the Concept (but specifically excluding the [Mark] or the name “Gordon Ramsay” appearing therein or thereon. [sic]

(LLC Agreement at Fourth Recital).⁶

On December 13, 2012, GRB, Ramsay, and Caesars executed the Development, Operation and License Agreement (the “Caesars Agreement”).⁷ The Caesars Agreement had an initial term of ten (10) years, unless terminated earlier (defined as the “Term”), with a mutual option for an additional five (5) years. (Caesars Agreement § 4.1). Pursuant to the Caesars Agreement, GRB provided to Caesars a sublicense to use the Mark, and a license to use the Recipes and Menus, the Concept, and other trade property developed by GRB to “identify the Restaurant” (defined as the “GRB Marks”), and used in the Restaurant located in a “prime

██████████ Regardless of that disputed fact, the License Agreement provides that any such Concept and Recipes and Menus are the property of GRB.

⁶ The Recitals are incorporated by reference into the LLC Agreement. (*Id.* § 1; *see also* License Agreement § 1.5 (GRUS’s acknowledgement of GRB’s ownership interests)).

⁷ The Caesars Agreement is attached as Exhibit C.

location”⁸ within the hotel Planet Hollywood.⁹ (*See id.* at Ex. B). GRB owns the GRB Marks. (LLC Agreement at Fourth Recital; Caesars Agreement at 3 (defining “GRB Marks” as “any trademark owned by GRB”) (emphasis added); License Agreement at Schedule B).¹⁰

It also owns the “General GR Materials,” which includes:

the concept, system, menus and recipes designed for use in connection with the Restaurant that are (a) created by or for Gordon Ramsay or GRB or contain trade secrets of Gordon Ramsay or GRB as of the Effective Date and (b) as are provided from time to time by Gordon Ramsay or GRB to [Caesars] for purposes of this Agreement.

(Caesars Agreement at p.3) (defining “General GR Materials”). “GRB has the exclusive rights to use and exploit the GRB Marks and General GR Materials. ...” (*Id.* at Recital B). Caesars acknowledged and agreed that “GRB is the owner of the GRB Marks and the General GR Materials and any modification, adaptation, improvement or derivative of or to the foregoing ...[,] and that all use of the GRB

⁸ “[T]he marquis location was reflective of [Caesars]’s intention to promote the restaurant as a key element of the hotel’s amenities and a central attraction for its customers.” Caesars’s Opposition to Motion for Preliminary Injunction in Nevada Actions at 2-3. (Exhibit D).

⁹ Caesars owns “all right, title and interest in and to the Restaurant Premises.” (Caesars Agreement § 3.1; *see also id.* at Ex. A (depicting the Restaurant Premises)).

¹⁰ GRUS/Ramsay’s position that GRUS owns the GRB Marks is contrary to the plain language of the LLC Agreement and the Caesars Agreement, both of which Ramsay signed.

Marks and General GR Materials (including any goodwill generated by such use) shall inure to the benefit of GRB. ...” (*Id.* § 6.2.1).¹¹ As did GRUS/Ramsay.¹²

Caesars also agreed to pay royalty fees to GRB based on a percentage of gross restaurant sales and gross retail sales. (*See* Caesars Agreement § 8.1). Payment was made quarterly. (*Id.* § 8.2).

The Restaurant was “aggressively branded” by Caesars,¹³ and it was profitable. From 2013 through 2015, Caesars paid royalty fees to GRB in the amounts of \$742,272.73, \$900,248.90, and \$1,086,851.65, respectively.¹⁴ The Caesars Agreement and the Restaurant were GRB’s only means of generating revenue.

Seibel, GRUS/Ramsay and Caesars also contemplated the opportunity for expansion in Section 14.21 of the Caesars Agreement, which states:

¹¹ *See also id.* § 10.3.2 (“GRB will be the sole and exclusive owner ... of the GRB Marks and the General GR Materials.”).

¹² License Agreement § 1.5 (GRUS “hereby acknowledges that [GRB] has developed and owns the Concept ... including ... the Restaurant Operation using the Concept, which system includes, without limitation, unique menus and menu items, ingredients, recipes ... other than the Mark or name “Gordon Ramsay””); LLC Agreement at Fourth Recital (setting forth GRB’s ownership of Company Rights).

¹³ Ex. D at 7.

¹⁴ Through September 2016, prior to the termination of the Caesars Agreement (as discussed below), Caesars paid \$736,048.84 in royalties. Half of this amount was paid to GRB and half was paid to GRUS—at the direction of GRUS.

If [Caesars] elects to pursue any venture similar to the Restaurant (i.e., any venture generally in the nature of a burger centric or burger themed restaurant), GRB shall, or shall cause an Affiliate to, execute a development, operation and license agreement generally on the same terms and conditions as this Agreement, subject only to revisions agreed to by the parties, including revisions as are necessary to reflect the differences in such things as location, Project Costs, Initial Capital Investment, Operating Expenses and the potential for Gross Restaurant Sales between the Restaurant and such other venture and any resulting Section 8.1 threshold adjustments.

(Caesars Agreement § 14.21). Only one Restaurant was opened prior to the termination of the Caesars Agreement.

B. Caesars Terminates the Caesars Agreement and GRUS Terminates the License Agreement.

The Caesars Agreement is a “privileged license,” and subject to the Nevada Gaming Commission.¹⁵ (Caesars Agreement § 11.2). Caesars operates in the gaming space, and thus conditioned the rights and obligations of each party under the Caesars Agreement upon Caesars’ satisfaction that GRB and its Affiliates,¹⁶

¹⁵ See Nevada Gaming Commission Regulation 3.080 (“The commission may deny, revoke, suspend, limit, condition, or restrict any registration or finding of suitability or application therefor upon the same grounds as it may take such action with respect to licenses, licensees and licensing; without exclusion of any other ground. The commission may take such action on the grounds that the registrant or person found suitable is associated with, or controls, or is controlled by, or is under common control with, an unsuitable person.”).

¹⁶ Ramsay and Seibel are not affiliates of each other for purposes of the Caesars Agreement. (*Id.* at p.2) (defining “Affiliate”).

directors, officers, employees, agents, representatives, and other associates (defined as “GR Associates”) are not “Unsuitable Person[s]” in Caesars’ “sole discretion.” (*Id.* § 2.2). An “Unsuitable Person” is any person “whose affiliation with [Caesars] or its [a]ffiliates could be anticipated to result in a disciplinary action relating to, or the loss of, inability to reinstate or failure to obtain” the gaming and alcohol licenses held by Caesars or “who is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation of [Caesars] or its [a]ffiliates.” (*Id.* at p.6) (defining “Unsuitable Person”). The Caesars Agreement further provides that Caesars may make the determination that any person associated with GRB is an “Unsuitable Person” in its “sole and exclusive judgment.” (*Id.* § 11.2). Upon a determination of unsuitability by Caesars,

(a) Gordon Ramsay and/or GRB shall terminate any relationship with the [p]erson who is the source of such issue, (b) Gordon Ramsay and/or GRB shall cease the activity or relationship creating the issue to [Caesars’s] satisfaction, in [Caesars’s] sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by [Caesars] in its sole discretion, [Caesars] shall, without prejudice to any other rights or remedies of [Caesars] including at law or in equity, have the right to terminate [the Caesars Agreement] and its relationship with Gordon Ramsay and GRB.

(*Id.*). GRB agreed that any termination of the Caesars Agreement pursuant to Section 11.2 “shall not be subject to dispute by ... GRB[.]” (*Id.*).

On April 18, 2016, Seibel pled guilty to a one-count felony criminal information charging him with impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212) after employing an undeclared Swiss bank account and Panamanian shell company to hide taxable income. He was sentenced on August 19, 2016 to one month of imprisonment, six months of home detention and 300 hours of community service in addition to restitution.

One week prior to his guilty plea, Seibel attempted to assign his membership interest in GRB to The Seibel Family 2016 Trust (the “Trust”) and to appoint a replacement manager for GRB, apparently without advising GRUS/Ramsay that the reason he was seeking to assign his interest in GRB was due to his plan to plead guilty to a felony. GRUS and Ramsay did not provide their consent to the assignment or the replacement manager.¹⁷

Neither Ramsay, GRUS, nor Caesars knew of Seibel’s felony conviction before it became public knowledge in late-August 2016.¹⁸ Indeed, on September 2,

¹⁷ GRUS stated it would “consider” an assignment if Seibel would provide it with “details regarding the ownership structure of The Seibel Family Trust” and “details of, and your relationship/affiliation with, the trustee(s) and beneficiary(ies) and the ultimate beneficial owner of the Trust,” among other things. (See Ltr. from Gillies to Seibel, dated April 13, 2016; Exhibit E).

¹⁸ Seibel contends that Caesars was aware of his “tax problem” in 2014, and points to a deposition transcript on the matter. The Receiver has not seen anything indicating that Caesars was aware of Seibel’s felony conviction, however, before the public learned of it in late August 2016. In fact, Seibel alleged in federal court that

2016, GRUS and Ramsay’s counsel sent a letter to Seibel’s counsel describing their frustration with learning of the felony conviction via the press and their outrage for Seibel’s failure to disclose his intent behind his desire to assign his membership interest to the Trust in April 2016. Importantly, that letter also foretells the determination by Caesars that Seibel is an Unsuitable Person and the possible termination of the Caesars Agreement by Caesars. (Exhibit F)

Later that day, Caesars did exactly as GRUS/Ramsay predicted and sent a letter to GRB, Seibel and Ramsay stating that Seibel’s felony conviction rendered him an “Unsuitable Person,” and demanded that “GRB, [] within 10 business days of the receipt of this letter, terminate any relationship with Mr. Seibel and provide Caesars with written evidence of such terminated relationship.” (Exhibit G). The letter also stated that “[i]f GRB fails to terminate the relationship with Mr. Seibel, Caesars will be required to terminate the [Caesars] Agreement pursuant to Section 4.2.5 of the [Caesars] Agreement.” Caesars’ letter thus appears to invoke Section 11.2(a) of the Caesars Agreement, which allows an opportunity to cure Seibel’s unsuitability.¹⁹ GRUS/Ramsay then sent a letter to Seibel’s attorney on September

“[n]either Ramsay nor [Caesars] was aware in April 2016 of the tax investigation that resulted in the judgment against Seibel ... when they conspired to reject Seibel’s proposed transfer.” (Nevada Federal Action Complaint ¶ 34) (emphasis added).

¹⁹ Section 11.2(a) provides that “GRB shall terminate any relationship with the Person who is the source of such issue,” *arguably* not implicating the Trust.

6, 2016 requesting that Seibel “terminate *any* relationship” with GRB “and sign all necessary documents to confirm such termination.” (Exhibit H) (emphasis in original).

On September 8, 2016, Seibel again proposed to transfer his interest in GRB to the Trust or, at least, to discuss other possible transfers. (Exhibit I). Seibel also spotlighted that GRUS/Ramsay’s September 6 letter suggested that Caesars and GRUS/Ramsay were privately discussing Seibel’s Unsuitable Person status and the termination of the Caesars Agreement—points not denied by either.²⁰

On September 12, 2016, both GRUS/Ramsay and Caesars rejected Seibel’s proposal to transfer his interest to the Trust. GRUS/Ramsay asserted that it had no contractual obligation to agree to any transfer of Seibel’s interest. (*Id.*). Caesars determined that because “the proposed assignee and its Associates have direct or indirect relationships with Mr. Seibel, ... the proposed assignee and its Associates are Unsuitable Persons,” under the Caesars Agreement. (Exhibit K; *see also* Caesars Agreement § 2.2 (defining GR Associate to include “representatives” and “agents”)).

However, due to the shared authority of GRB, GRUS/Ramsay could not unilaterally terminate Seibel’s interest in GRB, either. GRUS/Ramsay thus advised

²⁰ See Letter from Gaut to Ziegler, dated 9/12/16 (“[A]ny communications with Caesars have been on behalf of Mr. Ramsay and GRUS, not [GRB].”). (Exhibit J).

Caesars on September 15, 2016 that the only way to dissociate from Seibel, absent his assent, would be to petition for the dissolution of GRB. (Exhibit L).

By letter dated September 21, 2016, Caesars terminated the Caesars Agreement on the grounds that “[a]s of 11:59 p.m. on September 20, 2016, Caesars had not received any evidence that GRB had disassociated with Rowen Seibel, an individual who is an Unsuitable Person, pursuant to the [Caesars] Agreement.” (Exhibit M).

By letter dated September 22, 2016, GRUS terminated the License Agreement on the grounds that (1) Caesars terminated the Caesars Agreement; (2) the termination of the Caesars Agreement defeated the purpose of the License Agreement; and, (3) Seibel never disclosed and affirmatively misrepresented the facts and events surrounding Seibel’s felonious conduct.²¹ (Exhibit N).

C. The Wind Down Period.

Caesars’ decision to terminate the Caesars Agreement has consequences under the Caesars Agreement. (*See* Caesars Agreement § 4.3). First, Caesars was entitled to “operate the Restaurant and use the License for one hundred twenty (120) days from such termination,” in order to wind down operations and “reconcept” [*sic*]

²¹ GRUS also purported to terminate the LLC Agreement on September 27, 2016, for the same reasons.

the Restaurant (the “Wind Down Period”). (*Id.* § 4.3.2(a)). During the Wind Down Period, however, “[Caesars] shall continue to be obligated to pay GRB all amounts due GRB [under the Caesars Agreement] that accrue [post-termination] in accordance with the terms of this [Caesars] Agreement as if this [Caesars] Agreement had not been terminated.” (*Id.*).

The Wind Down Period took longer than the allotted 120 days and was completed on March 31, 2017.²² The Investigation revealed that Caesars owes GRB \$600,638.48 for unpaid royalty fees accrued during the Wind Down Period. Caesars has made no payments to GRB, GRUS, Ramsay, or Seibel for accrued royalties during the Wind Down Period.²³ As discussed further below, the Receiver does not believe there is any legitimate defense to this claim against Caesars.

²² Caesars requested an extension of the Wind Down Period from GRUS only, taking the position that it could not even communicate with Seibel after he was designated an Unsuitable Person. (Bowen Declaration in Support of Caesars’ Opposition to Seibel’s Motion for Preliminary Injunction in Nevada Actions ¶ 5). GRUS granted the extension. (*Id.*).

²³ An inadvertent payment was made from Caesars to GRUS on January 30, 2017, and returned to Caesars on February 6, 2017. (*See* Petkov Declaration in Support of Caesars’ Opposition to Seibel’s Motion for Preliminary Injunction in Nevada Actions ¶ 7). Moreover, a payment was made to GRUS pursuant to the terms of the new licensing arrangement between Ramsay and Caesars for the New Restaurant (defined below) in April 2017, because Ramsay’s entity, RB Restaurant Ventures, LLC (“RBR”), was not yet operational. All payments after April 2017 were made to RBR, not GRUS.

Second, any liability GRB may have under the Caesars Agreement is extinguished as of the date of termination. (Caesars Agreement § 4.3.1 (“Upon ... termination of this Agreement, there shall be no liability or obligation on the part of any party with respect to this Agreement. ...”)). During the Wind Down Period, Caesars sought to rebrand the Restaurant by replacing “everything ... from logo plates to beverage coasters, cocktail napkins, dinner napkins, to go bags, to go cups, burger picks, cocktail picks, fry cones, pens, beer glasses, retail sale hats, shirts, menus, all employee uniforms, and restaurant and identity signage both inside and outside of the restaurant and casino.” (Bowen Declaration ¶ 3). The costs associated with the rebranding efforts totaled [REDACTED] (the “Rebranding Costs”):

China	[REDACTED]	Existing /New
Signage and Messaging	[REDACTED]	
Uniforms / Uniform Inventory	[REDACTED]	Existing /New
Physical Plant	[REDACTED]	
Table Top	[REDACTED]	
Logo Goods / Paper & Disposables	[REDACTED]	
Retail Goods	[REDACTED]	
TOTAL	[REDACTED]	

Caesars, GRUS, and Ramsay took the position with the Receiver that GRB must reimburse them for the Rebranding Costs, despite Caesars electing to terminate the Caesars Agreement, the lack of any express provision providing for such reimbursement, and the extinguishment of liability pursuant to Section 4.3.1. The Receiver believes there is no merit to this claim.

Third, although GRB's liability is extinguished upon termination, certain rights belonging to GRB survive termination under Section 4.3.1 of the Caesars Agreement, including Section 6.2 (pertaining to GRB's ownership of the GRB Marks and General GR Materials), and Section 14.21 (discussing Caesars' right to elect to pursue other "burger centric or burger themed restaurant[s]"). The survival of these rights, among others, forms the basis for many of GRB's claims in the Nevada Actions and the Delaware Action and are worth being pursued as discussed further below.

Fourth, upon termination, Caesars had the "right, but not the obligation, immediately or at any time after such ... termination, to operate a restaurant in the Restaurant Premises; provided, however, such restaurant shall not use the Restaurant's food and beverage menus or recipes developed by GRB and/or Gordon Ramsay or use any of the GRB Marks or General GR Materials." (*Id.* § 4.3.2(e) (emphasis in original)). Caesars did not elect to open just any restaurant in the Restaurant Premises, but decided to open another burger restaurant with Ramsay.

The parties hotly dispute the effect of the rebranding efforts, including the level of similarity of the menu items for the Restaurant and the new restaurant at the Restaurant Premises (the “New Restaurant”). Nevertheless, [REDACTED]

[REDACTED]

[REDACTED]

Indeed, during the Wind Down Period, Ramsay submitted applications to the United States Patent and Trademark Office (“USPTO”) in October and November 2016 to trademark “GORDON RAMSAY BURGER”—the name of the New Restaurant. This application was rejected several times by the USPTO because the proposed mark was too similar to the Mark (“BURGR Gordon Ramsay”) and would likely lead to consumer confusion. The USPTO stated:

In this case, the name GORDON RAMSAY is a dominant feature of both marks and both marks also include the word BURGER, albeit intentionally misspelled in the registration. Consumers seeing the same name, both in connection with foods related services, are likely to believe that the services emanate from a common source.

...

Because the marks are substantially similar and the services are in part identical and in part very closely related, registration of the applicant’s mark is refused.

(Exhibit O).

D. Ramsay and Caesars Open the New Restaurant and Enter into a New License Agreement.

On February 10, 2017, Ramsay, Caesars, and RBR entered into a new licensing relationship (the “New License”).²⁴ The New License is very similar to the Caesars Agreement, except:

- [REDACTED]
[REDACTED] (New License § 3.1);
- [REDACTED]
[REDACTED]²⁵ (*id.* § 7.1);
- [REDACTED] (*see* First Amendment to New License § 1);
- [REDACTED]
[REDACTED]
[REDACTED] (New License § 7.1);
- [REDACTED]
[REDACTED] (*id.* §§ 5.6, 13.15); and
- [REDACTED]
[REDACTED]

²⁴ The New License is attached as Exhibit P.

²⁵ [REDACTED]
[REDACTED]
[REDACTED]

Like the Restaurant, the New Restaurant has been profitable and generated royalties of [REDACTED] from April 1, 2017 through December 31, 2017.²⁶

Since the Appointment, some articles have been published describing either Caesars or GRUS/Ramsay's plans to expand on their burger-themed venture.²⁷ Nevertheless, both Caesars and Ramsay's counsel have stated on multiple occasions to the Receiver that they are not aware of any plans for expanding Gordon Ramsay Burger beyond the New Restaurant.

E. The Delaware Action

GRUS filed its petition for judicial dissolution pursuant to Section 13.1 of the LLC Agreement and 6 *Del. C.* § 18-802 on October 13, 2016. On November 23, 2016, Seibel answered the petition and asserted the following counterclaims: (1) breach of the License Agreement, brought derivatively on behalf of GRB against GRUS ("Count I"); (2) misappropriation and unjust enrichment, brought derivatively on behalf of GRB against GRUS ("Count II"); (3) breach of fiduciary duty, brought directly by Seibel against GRUS ("Count III"); and (4) breach of

²⁶ Caesars only paid RBR [REDACTED] in royalty fees in 2017, because it deducted RBR's half of the Rebranding Costs ([REDACTED]). It claims the remainder from Seibel.

²⁷ (See Exhibits Q and R). These articles surfaced in the midst of ongoing settlement negotiations and understandably created complications for all involved.

fiduciary duty, brought derivatively on behalf of GRB against GRUS (“Count IV” and collectively, the “Counterclaims”).

On December 13, 2016, GRUS moved for judgment on the pleadings on its petition for judicial dissolution. GRUS simultaneously moved to dismiss, or in the alternative, stay or sever the Counterclaims. On January 3, 2017, the Court ruled that it would decide the motion for judgment on the pleadings before addressing the motion to dismiss or sever the Counterclaims. The Court also stayed discovery.

On January 17, 2017, GRUS moved to expedite the proceeding with respect to the motion for judgment on the pleadings because Seibel filed the Nevada Actions (as discussed below). The Court denied the motion to expedite.

On August 25, 2017, the Court granted GRUS’s motion for judgment on the pleadings concerning its petition for judicial dissolution. As stated above, the Dissolution Order, dissolving GRB, was entered on October 5, 2017; the Receiver accepted his Appointment on December 11, 2017; and the Appointment Order was entered on December 13, 2017.

On December 19, 2017, Seibel moved for entry of partial final judgment. The Court denied that motion on January 5, 2018, and ordered the Receiver to issue this Report and Recommendation.

F. The Nevada Actions²⁸

On January 11, 2017, Seibel filed a derivative action in the United States District Court for the District of Nevada on behalf of GRB, seeking, among other things, a declaration that the Caesars Agreement was not validly terminated, a determination that Caesars and Ramsay breached the Caesars Agreement and the implied covenant of good faith and fair dealing, as well as claims for unjust enrichment, injunctive relief, and civil conspiracy. Contemporaneous with the filing of the complaint, Seibel moved for a preliminary injunction seeking to enjoin (1) the termination of the Caesars Agreement; (2) the use of GRB’s intellectual property; and (3) the operation of a “BURGR restaurant or a similar restaurant at the [R]estaurant [P]remises.”

On February 13, 2017, the U.S. District Court for the District of Nevada held a hearing and requested additional briefing on whether it had subject matter jurisdiction. On February 21, 2017, the parties stipulated to a voluntary dismissal of the action, without prejudice.

On February 28, 2017, Seibel refiled his derivative claims on behalf of GRB in Nevada state court. Seibel again moved to enjoin Caesars from taking any action

²⁸ GRB has not entered its appearance in the Nevada Actions and the Receiver does not claim to know every nuance and procedural skirmish of the parties there. His knowledge exclusively derives from the Investigation and the information the parties have chosen to provide to him.

in furtherance of its decision to terminate the Caesars Agreement. That motion was denied without prejudice on March 22, 2017. At that hearing, the court found against Seibel on each element of his preliminary injunction, including that he had failed to demonstrate that he is likely to succeed on the merits on his claim that the Caesars Agreement was improperly terminated.

On April 7, 2017, Caesars moved to dismiss all of Seibel's claims and Ramsay joined in that motion. On May 17, 2017, the Nevada court granted a partial dismissal of Seibel's claims, without prejudice. As to the claims against Caesars, the court dismissed the following breach of contract claims based on the "plain language" of the Caesars Agreement:

- Continuing to do business with Ramsay after the termination of the Caesars Agreement;
- Failing or refusing to allow GRB the opportunity to cure Seibel's unsuitability status; and
- Attempting and planning to operate the New Restaurant without entering into a separate agreement with GRB.

The court allowed the other breach of contract claims to survive against Caesars, including:

- The continued use of the GRB Marks and General GR Materials at the New Restaurant; and

- The non-payment of accrued but unpaid royalty fees during the Wind Down Period.²⁹

The court denied the motion to dismiss as to the implied covenant of good faith and fair dealing, unjust enrichment, civil conspiracy, and declaratory judgment claims. Ramsay's joinder was denied in its entirety. (*Id.* at 25).

On June 28, 2017, Seibel filed an amended complaint. Caesars and Ramsay answered the amended complaint on July 21, 2017. On September 18, 2017, Seibel moved for partial summary judgment on his claims for unpaid royalty fees accrued during the Wind Down Period and for failure to enter into a new agreement with GRB pursuant to Section 14.21 of the Caesars Agreement. On March 7, 2018, the Nevada court vacated Seibel's motion for summary judgment because of the Receiver's Appointment, holding that "to pursue the [m]otion, the [m]otion must be re-filed rather than re-notice." (Exhibit T).

On August 25, 2017, Caesars filed a declaratory judgment action in Nevada state court, seeking a declaratory judgment that the Caesars Agreement, among several other agreements it entered into with Seibel, was properly terminated. The action was consolidated with Seibel's Nevada state court action on February 9, 2018, becoming the Nevada Actions.

²⁹ This transcript is attached as Exhibit S.

On March 11, 2020, Caesars filed an amended complaint. The amended complaint adds several personal claims against Seibel relating to alleged commercial bribery. Caesars also asserted a breach of the implied covenant of good faith and fair dealing purportedly against GRB and each of the other entity defendants. The Receiver and Caesars are currently discussing potential modifications to the schedule in the Nevada Actions in light of the new claims asserted in the amended complaint and the submission of this Report.

G. Summary of GRB's Assets

In summary, GRB's assets include the following:

- The GRB Marks and General GR Materials, including “any modification, adaptation, improvement or derivative of or to the foregoing” and any “goodwill generated by such use” (together, the “IP Rights”);³⁰
- The Company Rights, including the Company Trademarks, the Concept, and the Recipes and Menus;
- All other rights which survived the termination of the Caesars Agreement, including Section 14.21 concerning any expansion plans for a “burger-themed” restaurant;
- The Counterclaims in the Delaware Action, except for Count III which is a direct claim asserted by Seibel against GRUS; and
- Seibel's derivative claims in the Nevada Actions.

³⁰ As stated above, GRB does not own the Mark; that is the property of GRUS.

Being that the derivative claims asserted encompass the contractual rights and intellectual property belonging to GRB, it is fair say that GRB's only assets are the derivative claims asserted by Seibel against GRUS/Ramsay and Caesars in the Delaware and Nevada Actions.³¹

³¹ As set forth below, GRUS/Ramsay, in correspondence with the Receiver, have also claimed that there are valid derivative claims against Seibel. These claims have not been asserted as of the date of this Report.

II. THE RECEIVER'S RECOMMENDATION FOR THE LIQUIDATION OF GRB

The task of evaluating the derivative claims belonging to GRB is somewhat of a fiction: GRB is essentially a pass-through entity equally owned and managed by Seibel and GRUS/Ramsay, and any benefit the Receiver obtains for GRB would inure to the benefit of each Member, equally. However, because the derivative claims asserted to date are exclusively levied against Ramsay or his business partner, Caesars, Seibel stands as the principal beneficiary of any “derivative” recovery from the Receiver’s efforts. GRB’s claims are thus essentially damages claims against Ramsay and Caesars. The temptation, therefore, from the date of the Appointment was simply to allow Seibel to prosecute GRB’s claims on his own dime and allow him to keep 50% of the money he recovers on behalf of GRB. But the Receiver’s duties are owed to GRB, and by extension to both of its Members. Accordingly, a fair result to both Seibel and Ramsay has been the Receiver’s aim for over two years.

Indeed, the mutual resolution of the derivative claims would appear to benefit everyone, as the equities involved leave a lot to be desired on both sides of the “v.”³²

³² At times, the Receiver pursued an amicable resolution among Ramsay, Caesars and Seibel, whereas at other times the discussions were principally with Ramsay and Caesars. If the Receiver had reached a resolution with Ramsay and Caesars alone on behalf of GRB that he thought was fair to all involved, he would have presented it to the Court for approval over Seibel’s objection. That did not happen, however.

Seibel, a convicted felon, is far from a sympathetic plaintiff. It also appears that he did not tell his business partner, Ramsay, he was convicted of a felony; and, it appears he failed to disclose the reason that he desired to transfer his membership interest in GRB into the Trust was his (forthcoming) felony conviction, which certainly calls into doubt his legal argument regarding his unsuitability status. And, of course, many of the events of which Seibel complains—and that have harmed GRB—flow from his choices and illegal conduct.

But no one forced Ramsay and Caesars to open a new, burger-themed restaurant in the Restaurant Premises. That was a business decision, which carried with it the known risk of infringing GRB's intellectual property and wrongfully taking its good will. Ramsay and Caesars are sophisticated business parties; they certainly knew that the Concept was profitable and that the New Restaurant would almost certainly be a success—a fact already proven, as the pro-rated royalties of 2017 amounted to GRB's highest grossing year. The difference, however, is Ramsay is now receiving 100% of the royalties from Caesars—a reality which frames much of the parties' rhetoric.

Finally, despite significant progress between Ramsay and Seibel to resolve their differences as to GRB, Caesars has remained obstinate, refusing to respond to reasonable and limited proposals for weeks or months at a time. Caesars' glacial

pace reeks of gamesmanship and has thwarted an economically-rational and amicable end to GRB.

Within this equitable backdrop, the Receiver will discuss how he valued GRB's claims for purposes of making this Report and crafting his Recommendation.³³

A. The Claims Worth Pursuing³⁴

1. The Accrued Licensing Fees for the Wind Down Period

As stated above, Caesars' decision to terminate the Caesars Agreement has consequences under the Caesars Agreement. (Caesars Agreement § 4.3). First, the Caesars Agreement provides that upon termination "[Caesars] shall continue to be obligated to pay GRB all amounts due GRB hereunder that accrue [post-termination] in accordance with the terms of this Agreement as if this Agreement had not been terminated." (*Id.* § 4.3.2(a)). The amount of licensing fees accrued for the Wind Down Period is \$600,638.48. The Receiver believes this amount is indisputably owed to GRB, [REDACTED]

³³ This analysis formed the basis for the ultimately unsuccessful efforts to resolve this matter amicably.

³⁴ Whether a claim is "worth pursuing," in the Receiver's opinion, means it is likely to survive dispositive motion practice, *i.e.*, summary judgment. The Receiver is not, however, distinguishing between claims that are "worth pursuing" and claims that are "not worth pursuing" in the proposed assignments of claims discussed herein.

2. *The Continued Use of the GRB Marks and General GR Materials*

Second, Section 6.2 (pertaining to GRB's ownership of the GRB Marks and General GR Materials) survived the termination of the Caesars Agreement. Caesars also had the "right, but not the obligation, immediately or at any time after such ... termination, to operate a restaurant in the Restaurant Premises; provided, however, such restaurant shall not use the Restaurant's food and beverage menus or recipes developed by GRB and/or Gordon Ramsay or use any of the GRB Marks or General GR Materials." (*Id.* § 4.3.2(e) (emphasis added)). Accordingly, Caesars and Ramsay agreed that GRB retained the right to protect its intellectual property post-termination.

Caesars and Ramsay have put forth several defenses to this claim, including the significant Rebranding Costs incurred by them in an effort not to infringe GRB's intellectual property. In short, the Receiver believes that the claim that the GRB Marks and General GR Materials are continuing to be used at the New Restaurant, and Caesars and Ramsay's defenses thereto, is not likely to be resolved prior to trial. However, to the extent such a breach is occurring at the New Restaurant, Caesars is, in effect, already paying Ramsay (or RBR) for the use of the GRB Marks and General GR Materials. Accordingly, any amount owed to GRB for the unauthorized use of its intellectual property should be, as a theoretical matter, recovered from

Ramsay or RBR, not Caesars. Stated differently, Caesars should not have to pay for the use of GRB's IP Rights and Company Rights twice.

The Receiver valued this claim, as follows:³⁵

- a. **2017 Royalty Fees:** Total = [REDACTED] ([REDACTED] in Royalty Fees + [REDACTED] in Rebranding Costs deducted by Caesars).
- b. **2018-21 Projected Royalty Fees** (*i.e.*, the remaining 4 years of the New License): Average royalties paid to GRB under the Old License (pro-rating for the shortened 2016) to come up with average annual royalties of [REDACTED] for GRB.
 - [REDACTED] x 4 (years) = [REDACTED]
- c. **Expected Total Revenue for New License:** A + B ([REDACTED] + [REDACTED]) = [REDACTED] in expected total royalties over the duration of the Term of the New License.
- d. **Discounted Present Value of Claim:** The discounted present value of [REDACTED] (assuming standard 3% inflation over 4 years) = [REDACTED]
- e. **Seibel's Share of Royalty Claim:** D/2 = [REDACTED]³⁶

³⁵ The Receiver is not aware of the actual royalties paid to RBR in 2018 and 2019. Nevertheless, the Receiver has seen nothing from the parties calling into question this valuation/projection.

³⁶ By providing this analysis, the Receiver does not intend to limit Seibel's ability to value this claim differently should the Receiver's Recommendation be accepted. It is included solely to satisfy the Mandate and to demonstrate to the Court that this claim is worth pursuing. It is worth noting that this analysis reflects a conservative approach. First, the Receiver used the average royalties paid under the License Agreement rather than the slightly more lucrative New License. Second, the Receiver did not assume that the Term of the New License will be renewed.

Accordingly, the Receiver conservatively values GRB's claims at [REDACTED], and Seibel, who has the economic incentive to pursue them, should be permitted to do so.³⁷ This assignment of claims would allow Seibel, consistent with the Mandate, to fully exploit the assets of GRB to their highest value. Moreover, the Receiver recognizes that these "claims" are asserted in many different forms in the Nevada and Delaware Actions, including misappropriation, unjust enrichment and breach of fiduciary duty. In an effort to avoid duplication, it suffices to say that Seibel should be permitted to re-file his Delaware Counterclaims in the Nevada Actions.

B. The Claims Not Worth Pursuing

1. Seibel's Claim for the Purported Wrongful Termination of the Caesars Agreement

The critical determination for the Receiver in placing a value on GRB's claims is whether Caesars had the right to terminate the Caesars Agreement. At the outset, the Receiver observes that Seibel's arguments for why the Caesars Agreement was wrongfully terminated are essentially a rehash of his positions asserted against dissolution itself: that dissolution would be inequitable due to the alleged "collusive

³⁷ Ramsay has reserved the right to be repaid his initial funding loan of \$100,000. To the extent that the Receiver's invoices ultimately exceed that amount, the Receiver may apply to the Court for payment from the parties.

plot” hatched by Caesars and GRUS/Ramsay to terminate the Caesars Agreement.³⁸ This argument was rejected by the Court and the Receiver believes it is outside the scope of the Mandate to revisit the issue. However, for the sake of completeness, the Receiver agrees that Caesars likely had the right to terminate the Caesar Agreement because, in the Court’s words, the situation is one of Seibel’s “own making.”³⁹

The Caesars Agreement is governed by Nevada law (Caesars Agreement § 14.10.1), which enforces the plain meaning of unambiguous terms of a contract.⁴⁰ *See Ringle v. Bruton*, 86 P.3d 1032, 1039 (Nev. 2004) (stating that “when a contract is clear, unambiguous, and complete, its terms must be given their plain meaning”).

Based on the Investigation, the Receiver believes that Caesars likely had the right to terminate the Caesars Agreement based on the plain language of Sections 4.2.5 and 11.2. As stated above, Caesars bargained for the right to determine “in [its] sole and exclusive judgment, that [Seibel] is an Unsuitable Person,” as well as the right to terminate the Caesars Agreement pursuant to Section 11.2 “in its sole discretion.” The Receiver believes that Caesars validly exercised its bargained-for

³⁸ *GR BURGR, LLC*, 2017 WL 3669511, at *4.

³⁹ *Id.* at *6.

⁴⁰ The Receiver does not purport to be a Nevada lawyer or an expert in Nevada law.

discretion and Seibel's claim for the improper termination of the Caesars Agreement is not likely to survive summary judgment.⁴¹

Seibel makes several arguments to the contrary which the Receiver finds unpersuasive. First, Seibel argues that he does not fit within the definition of an "Unsuitable Person" under the Caesars Agreement. An "Unsuitable Person" is any person "whose affiliation with [Caesars] or its [a]ffiliates could be anticipated to result in a disciplinary action relating to, or the loss of, inability to reinstate or failure to obtain" the gaming and alcohol licenses held by Caesars or "who is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation of [Caesars] or its [a]ffiliates." (Caesars Agreement at p.6). The Receiver believes that Seibel's felony conviction not only "could" negatively impact Caesars, but already has, as evidenced by the rampant press reports in late August 2016. Moreover, Seibel's argument appears, at best, to be disingenuous, considering Seibel's failure to disclose that his plan to plead guilty to a felony was the reason he desired to transfer his interest in GRB to the Trust. And, of course, he

⁴¹ The Nevada Gaming Control Board appears to agree with this determination, when it wrote the following to Caesars' counsel: "You have outlined the process taken by Caesars once it became aware of the issues and concerns with Mr. Seibel, including a review by the Company's Compliance Committee, and a termination of the relationships with Mr. Seibel by invoking the suitability provisions included in the various agreements. Based on a review of the information you have presented, I am comfortable that Caesars has appropriately addressed the matter and followed the process we would expect of a Nevada gaming license." (Exhibit U).

failed to disclose his conviction to his business partners until it was exposed to the public. These facts suggest that Seibel was well aware that pleading to a felony could result in him being an Unsuitable Person, particularly as a matter of Caesars' discretion.

Second, Seibel argues that he cannot be an Unsuitable Person because Caesars continues to do business with other individuals who have done far worse things than Seibel and they have not been deemed unsuitable by Caesars. That, however, is the essence of discretion. Caesars bargained for the right "in its sole discretion" to determine whether Seibel is an Unsuitable Person. Being that Seibel fits within the definition of an Unsuitable Person in the Caesars Agreement, the Receiver believes Seibel's comparators are largely irrelevant to this determination.

Third, Seibel makes the highly technical argument that Caesars did not immediately terminate the Caesars Agreement, but instead invoked the provision which provided for the opportunity to cure Seibel's unsuitability status within 10 days. (*See Exhibit G*). And, because Caesars rejected the assignment to the Trust or to consider any other alternative transactions, it failed to give Seibel the opportunity to cure. As a threshold matter, GRUS/Ramsay had to approve any assignment of Seibel's interest in GRB to the Trust—and they had no obligation to do so. (LLC Agreement § 10.1(a)). Caesars also was permitted to determine "in its

sole discretion” whether the proposed assignment to the Trust would in fact cure Seibel’s unsuitability status. Caesars determined that it did not.

2. *Seibel’s Breach of Implied Covenant of Good Faith and Fair Dealing Claim and the Purported Scheme to Oust Him*

Seibel’s real gripe is that Caesars did not exercise its discretion in good faith, because it actually desired to oust Seibel from GRB well before his felony conviction. Stated differently, Seibel alleges that Caesars and Ramsay violated the implied covenant of good faith and fair dealing by concocted a scheme to pocket the profitability of GRB to Seibel’s detriment. Seibel principally relies on the deteriorating business relationship with Ramsay prior to his felony conviction and the letter exchanges from Caesars and GRUS/Ramsay in September 2016 as support for these claims.

This argument largely appears to be a recast of Seibel’s contention that the Caesars Agreement was improperly terminated. As stated above, Nevada will enforce the terms of an unambiguous agreement. *Kaldi v. Farmers Ins. Exch.*, 21 P.3d 16, 21 (Nev. 2001) (“We are not free to modify or vary the terms of an unambiguous agreement.”). For the reasons stated above, the Receiver believes Caesars had the discretion to terminate the Caesars Agreement.

Moreover, under Nevada law, a party is not permitted to use the implied covenant of good faith and fair dealing to contradict the express terms of the contract.

See, e.g., Kuiava v. Kwasniewski, 367 P.3d 791, 791 (Nev. 2010) (“[G]iven the provisions of the partnership agreement confirming that no other understandings between the parties existed, there was no genuine issue of material fact as to whether respondents breached the implied covenant of good faith and fair dealing.”) (citing *Kucharczyk v. Regents of University of California*, 946 F.Supp. 1419, 1432 (N.D.Cal.1996) (noting that the implied covenant of good faith and fair dealing may not be used to imply a term that is contradicted by an express term of the contract)); *Griffin v. Old Republic Ins. Co.*, 133 P.3d 251, 254 (Nev. 2006) (“[W]e [will not] attempt to increase the legal obligations of the parties where the parties intentionally limited such obligations.”). Perhaps Seibel’s felony conviction provided an easier or more profitable path to terminating the Caesars Agreement for Caesars and GRUS/Ramsay, but the Receiver does not view the exercise of a contractual right as evidence of bad faith. To say otherwise is to change the legal rights and obligations of the parties.

3. Seibel’s Claim for the Purported Breach of Section 14.21 of the Caesars Agreement

The seismic difference between the parties’ valuation of the derivative claims is most reflective of how the parties valued the survival of Section 14.21 of the Caesars Agreement, which seems to contemplate expansion beyond the one Restaurant. Seibel alleges that, prior to termination, he desired to expand, but was

rebuffed by Caesars and GRUS/Ramsay. Accordingly, it is undisputed that there was only one Restaurant “in being” at the time GRB was dissolved. *See 8 Del. C. § 279.* GRB, as a legal matter, cannot expand beyond the Restaurant, since it is dissolved and its license has been terminated. Nor is one party’s unilateral desire to expand sufficiently concrete to place any value on the purported future restaurants for purposes of a liquidation plan. The Receiver will not engage in such a speculative exercise.

Therefore, Seibel creatively argues that the New Restaurant is a “burger-themed, burger-centric” restaurant, and thus Caesars was required to enter into a new licensing relationship with GRB for the New Restaurant. The Nevada state court dismissed this claim without prejudice. The Receiver is similarly unconvinced that Caesars, which operates in the gaming space, was required to enter into a new license with the same Unsuitable Person who caused the termination of the Caesars Agreement. Because this claim appears equal parts impossible and, frankly, inequitable, the Receiver has placed no value on Seibel’s claim that he should receive the proceeds of any expansion beyond the New Restaurant. Regardless, despite some reports to the contrary, both Caesars and GRUS/Ramsay’s counsel have repeatedly denied any such expansion plans, and to the Receiver’s knowledge, no such expansion has occurred to date. Accordingly, any valuation of this claim would be entirely speculative.

4. Ramsay's Purported Breach of Contract Claim Against GRB for the Rebranding Costs

In correspondence with the Receiver, Ramsay and Caesars claim that Seibel's felonious conduct caused GRB to breach the Caesars Agreement, which resulted in the Rebranding Costs. To the Receiver's knowledge, Caesars and Ramsay have not asserted this claim in the Nevada Actions. Nor have they cited any authority supporting the proposition that a party, having validly terminated a contract, may collect consequential damages resulting from its own termination. As set forth above, the Receiver is of the view that Caesars had the right to terminate the Caesars Agreement. But that was Caesars' decision, and no provision of the Caesars Agreement permits it to charge GRB for the Rebranding Costs resulting from the termination. Moreover, it was Caesars and Ramsay's business decision to open a new burger restaurant in the Restaurant Premises post-termination that resulted in the Rebranding Costs. Thus, the Receiver views Section 4.3.1—extinguishing post-termination liabilities—as foreclosing any collection of the Rebranding Costs from GRB. The Receiver also notes that Caesars and Ramsay—the two entities benefiting from the operation of the New Restaurant—appear to have come to their own accord and satisfaction with respect to how the Rebranding Costs should be split between them in the New License. The Receiver places no value on this purported derivative claim.

**5. *Ramsay’s Purported Breach of Fiduciary Duty Claim
Against Seibel.***

In correspondence with the Receiver, Ramsay claims that Seibel breached his fiduciary duty of candor to Ramsay causing the complete loss of GRB as an enterprise. As set forth above, the Receiver is of the view that Seibel’s guilty plea gave Caesars the right to terminate the Caesars Agreement. The premise for Ramsay’s claim appears to be that Seibel had some duty, prior to being convicted of or pleading guilty to a crime, to disclose that he had committed or was involved in committing a crime. The Receiver finds no basis for such a position in the law. Such a position would have required Seibel to engage in self-flagellation and disclose the most negative possible characterizations of his conduct, regardless of whether he agreed with such characterizations. *Cf. Stroud v. Grace*, 606 A.2d 75, 84 n.1 (Del. 1992) (“We recognize the long-standing principle that ... a board is not required to engage in ‘self-flagellation’ and draw legal conclusions implicating itself in a breach of fiduciary duty from surrounding facts and circumstances prior to a formal adjudication of the matter.”). It would also appear to run afoul of the most central tenets of our criminal justice system, including that persons cannot be required to testify against themselves and that they are innocent until proven guilty.

Even though the Receiver sees little value in the foregoing claims, he is of the view that both Seibel and GRUS/Ramsay should be free to pursue them on their own dimes.

C. Transfer of GRB's IP Rights and Company Rights to Ramsay.

Due to the two-member structure of GRB, the Assigned Claims are essentially damages claims against the other Member (and Caesars). The claims “worth pursuing” are principally based on the use (or misuse) of GRB’s IP Rights and Company Rights. GRB is dissolved (primarily due to Seibel’s felony conviction) and cannot currently exploit these valuable assets as a result. With these considerations in mind, the Receiver is of the view that GRB’s IP Rights and Company Rights should be transferred to Ramsay or an entity designated by Ramsay, on the condition that Ramsay cannot use this assignment as a defense to any of the Assigned Claims or otherwise argue that such transfer affects the damages available to Seibel in any way.

This transfer achieves three key goals. First, it preserves Seibel’s ability to recover any damages relating to the Assigned Claims to which he is ultimately entitled, thereby allowing GRB’s assets to be pursued to their highest value. Second, it allows Ramsay to pursue his legitimate business interests in a burger-themed restaurant and exploit his celebrity without the cloud of potentially infringing on

GRB's IP Rights or Company Rights. Third, it allows GRB's existence to come to an end. Indeed, upon execution of an appropriate transfer agreement with Ramsay, the Receiver requests that the Court direct the filing of a Certificate of Cancellation with the Delaware Secretary of State. (*See* Dissolution Order ¶ 11). These objectives fulfill the Mandate, provide a fair result to GRB, and seeks to balance the interests of each of GRB's Members.

* * *

For the foregoing reasons, the Receiver respectfully requests that the Court assign (a) all of GRB's claims against GRUS/Ramsay and Caesars to Seibel (to be pursued in Nevada at his own cost and limiting his award to 50% of any recovery); (b) all of GRB's claims against Seibel to GRUS/Ramsay (to be pursued in Nevada at its own cost and limiting its award to 50% of any recovery)—subject in both cases to the willingness of the parties to receive such assets;⁴² (c) all of GRB's IP Rights and Company Rights should be transferred to Ramsay, provided that such

⁴² The reason for requiring the claims to be pursued at Seibel and GRUS/Ramsay's own respective costs is to encourage economic rationality in the pursuit of these claims, which do not appear to have huge value, as opposed to permitting the claims to be used as leverage to achieve other ends. The reason for limiting the awards to 50% of any recoveries is to reflect the parties' respective interests in the claims. It also reflects the economic reality that the parties are pursuing these claims for their individual benefits. Assigning these claims in this way should permit GRB to be canceled after the IP assignment but ensure that GRB's assets can be exploited to their highest value.

assignment shall have no effect on the Assigned Claims or any damages awarded therefrom; and (d) any liability for any claims asserted now or in the future against GRB to Seibel and Ramsay. After such assignments, GRB should be cancelled and the Delaware Action should be dismissed with prejudice after Seibel re-files his Counterclaims in the Nevada Actions.⁴³ See *In re TransPerfect Glob., Inc.*, 2018 WL 904160, at *16 (Del. Ch. Feb. 15, 2018) (applying abuse of discretion standard to receiver's recommendation).

The Receiver will file an appropriate form of order upon the Court's approval or modification of this Recommendation.

HEYMAN ENERIO
GATTUSO & HIRZEL LLP

/s/ Kurt M. Heyman
Kurt M. Heyman (# 3054)
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Receiver for GR BURGR, LLC

Dated: March 30, 2020

⁴³ In the unlikely event both parties decline the assignments, GRB should still be cancelled after the Receiver explores a possible sale of GRB's IP Rights and Company Rights, as GRB would have no assets with which to pursue its claims.