

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF TENNESSEE**

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**GUEST HOUSE AT GRACELAND, LLC,** )  
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**Plaintiff and Counter-Defendant,** )  
 )  
 v. )  
 )  
**PYRAMID TENNESSEE MANAGEMENT,** )  
**LLC,** )  
 )  
**Defendant, Counter-Plaintiff, and** )  
**Third-Party Plaintiff,** )  
 )  
 v. )  
 )  
**ELVIS PRESLEY ENTERPRISES, INC.,** )  
 )  
**Third-Party Defendant.** )

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**No. 2:18-cv-02074-JTF-cgc**

**PYRAMID TENNESSEE MANAGEMENT, LLC’S (i) ANSWER TO THE COMPLAINT;  
(ii) COUNTERCLAIMS AGAINST GUEST HOUSE AT GRACELAND, LLC; AND  
(iii) THIRD-PARTY COMPLAINT AGAINST ELVIS PRESLEY ENTERPRISES, INC.**

**ANSWER**

Defendant Pyramid Tennessee Management LLC (“Pyramid”), through undersigned counsel, hereby answers Plaintiff Guest House at Graceland, LLC’s (“GHG”) Complaint as set forth below. Pyramid refers to the Guest House at Graceland Hotel Resort as the “Hotel.”

1. Admitted.
2. Admitted, except Pyramid states that it also offered to accept service of process through counsel.
3. Pyramid admits that this Court has personal jurisdiction over it.
4. Pyramid admits that venue is proper in this Court.

5. The first sentence of paragraph 5 is admitted except Pyramid denies that it has breached the August 15, 2015 Hotel Management Agreement (“Agreement”). Pyramid further admits that the Agreement governs the parties’ relationship. The second sentence of paragraph 5 is denied. As to the third sentence of paragraph 5, Pyramid denies that GHG is entitled to the relief requested.

6. Admitted.

7. Admitted.

8. Admitted that every year many thousands of tourists visit Graceland and that Pyramid’s management has made the Hotel a “perfect place to stay.”

9. Admitted that the Hotel is more than a place for tourists to stay. Admitted that Pyramid’s management has the “experience and aptitude necessary to appreciate the relationship” between Elvis and the Hotel, and that Pyramid provides all other aspects of management important to the operation of the Hotel, and Pyramid denies any GHG statement or implication to the contrary.

10. Pyramid states that the Agreement governs the relationship between the parties, including the delegation by GHG to Pyramid of Hotel management. Pyramid denies the remainder.

11. Pyramid has ably and properly managed the Hotel, including through the appointment of qualified management leadership, who understand the relationship between the Hotel and Graceland. Pyramid denies any GHG statement or implication to the contrary.

12. Pyramid states that the Agreement addresses the extent to which GHG has rights regarding appointment of management personnel, refers to the Agreement in that regard, and denies any GHG statement or implication that it has not followed the Agreement.

13. The Agreement speaks for itself. Pyramid therefore admits the allegations of paragraph 13 to the extent that they are consistent with, and denies them to the extent that they are inconsistent with, the terms of the Agreement.

14. Pyramid admits that in November 2017, it advised GHG that Mr. Keith Hess would be leaving his General Manager position at the Hotel for personal reasons, effective January 2018. Pyramid denies that GHG communicated in a timely and reasonable manner with Pyramid regarding the situation, and in significant part refused communications, as further set forth in Pyramid's Counterclaims stated below. Pyramid denies all other allegations of paragraph 14.

15. Pyramid admits that on or about November 5, 2017, Pyramid sent to GHG's agent at Elvis Presley Enterprises, Inc. ("EPE") the cordial email attached as Ex. B to the Complaint.

16. Pyramid admits that on or about November 5, 2017, Pyramid sent to GHG's agent at EPE the cordial email attached as Ex. C to the Complaint, with the attached resume of the highly qualified Morty Valldejuli, a Pyramid-employed general manager with deep experience at destination resorts in the Grand Cayman Island, New Orleans, and elsewhere.

17. Denied.

18. Pyramid admits that on or about November 5, 2017, Mr. Valldejuli sent to GHG's agent at Elvis Presley Enterprises, Inc. ("EPE") the cordial email attached as Ex. D to the Complaint. Pyramid denies, however, the remaining allegations of paragraph 18, including specifically GHG's characterization of that email, which speaks for itself.

19. Denied, including as to the false and misleading statements made regarding Mr. Valldejuli.

20. Denied, including as to the false and misleading statements made regarding Mr. Valldejuli.

21. Denied, including as to the false and misleading statements made regarding Mr. Valldejuli.

22. Pyramid admits that Mr. Valldejuli is now the interim Hotel General Manager. Pyramid denies all other allegations, including as to the false and misleading statements made regarding Mr. Valldejuli.

23. Pyramid admits that GHG has unreasonably withheld consent to Mr. Valldejuli serving as General Manager of the Hotel; Pyramid denies that GHG has a reasonable basis for doing so. Indeed, GHG's "non-consent" is wholly without merit, and Pyramid denies that any GHG statements about Mr. Valldejuli have been proper or reasonable. Pyramid further states that GHG's statements have been unreasonable, false, and misleading, and part of a pretextual scheme to deliberately breach the Agreement, as set forth below in Pyramid's Counterclaims.

24. Denied.

25. Denied.

26. Pyramid admits that GHG's objection to Mr. Valldejuli is wholly without merit and was made in bad faith as part of GHG's pretextual scheme to deliberately breach the Agreement, as set forth below in Pyramid's Counterclaims. Pyramid denies all other allegations of paragraph 26.

27. Denied, except Pyramid admits that GHG stated that it would refuse, out-of-hand, to consent to any Pyramid-offered General Manager candidate.

28. Denied, including as to the false and misleading statements made regarding Mr. Valldejuli.

29. Pyramid admits that Mr. Jensen replaced Mr. Pramshafer as Director of Sales and Marketing and that Mr. Jensen is qualified for his position. Pyramid denies all other allegations of paragraph 29, including the false and misleading statements made regarding Mr. Valldejuli.

30. Denied, including as to the false and misleading statements made regarding Mr. Valldejuli.

31. The first sentence of paragraph 31 is denied. As to the second sentence, the Agreement speaks for itself. Pyramid therefore admits the allegations of paragraph 31 to the extent that they are consistent with, and denies them to the extent that they are inconsistent with, the terms of the Agreement.

32. Denied.

33. Denied.

34. Denied, including in all subparts. Pyramid further states that there was no financial consequence to GHG as a result of the alleged incidents which are incorrectly described in paragraph 34(c) and 34(d).

35. Denied.

36. This paragraph requires no response.

37. Admitted.

38. Denied.

39. Denied, and Pyramid refers to the Agreement for the contents thereof.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. This paragraph requires no response. Pyramid further states that GHG has permanently withdrawn its Count Two in its entirety, as confirmed to and by the Court. *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

45. Denied, and Pyramid refers to the Agreement for the contents thereof.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. No response required (otherwise denied). *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

51. No response required (otherwise denied). *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

52. No response required (otherwise denied). *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

53. No response required (otherwise denied). *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

54. No response required (otherwise denied). *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

55. No response required (otherwise denied). *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

56. This paragraph requires no response as to the request for a preliminary injunction. Pyramid states that GHG has permanently withdrawn its Count Three as to a preliminary

injunction, as confirmed to and by the Court. *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

57. No response required as to the request for a preliminary injunction; otherwise denied. *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

58. No response required as to the request for a preliminary injunction; otherwise denied. *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

59. No response required as to the request for a preliminary injunction; otherwise denied. *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

60. No response required as to the request for a preliminary injunction; otherwise denied. *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

61. No response required as to the request for a preliminary injunction; otherwise denied. *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

62. No response required as to the request for a preliminary injunction; otherwise denied. *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

63. No response required as to the request for a preliminary injunction; otherwise denied. *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

64. No response required as to the request for a preliminary injunction; otherwise denied. *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

65. Denied. Pyramid further states that GHG misrepresented to the Chancery Court of Shelby County, Tennessee, that, at the time of its Complaint and appearance for an *ex parte* TRO, it had provided notice to Pyramid or legal counsel for Pyramid, when in fact GHG had given no such notice.

66. All allegations not herein admitted, denied, or otherwise answered are here and now denied.

67. Pyramid denies that GHG is entitled either to the relief requested in the Prayer of the Complaint or to any other relief.

**AFFIRMATIVE DEFENSES**

Pyramid states the following affirmative and other defenses:

**FIRST AFFIRMATIVE DEFENSE**

GHG fails to state any claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

GHG's claims fail and are barred because, at all times Pyramid complied with the Agreement, has not breached any provision thereof, and therefore is not liable to GHG in the amount sued for or any amount.

**THIRD AFFIRMATIVE DEFENSE**

GHG's claims fail and are barred because GHG has breached the Agreement in material respects. Any recovery for breach of contract committed by Pyramid, which is denied, is therefore barred, in whole or in part, by GHG's first uncured material breach of contract.

**FOURTH AFFIRMATIVE DEFENSE**

GHG's requests for a temporary restraining and preliminary injunction have been affirmatively and permanently withdrawn by GHG before the Court and therefore cannot be pursued by GHG, including as a matter of judicial estoppel. *See* Order Granting Mot. to Dissolve TRO (Doc. 17).

**FIFTH AFFIRMATIVE DEFENSE**

GHG's claims are barred because GHG has not stated, and lacks any evidence of, any actual damage.

**SIXTH AFFIRMATIVE DEFENSE**

GHG's claims are barred because GHG has been the sole or major cause of its own damage (if any).

**SEVENTH AFFIRMATIVE DEFENSE**

GHG's claims are barred or limited to the extent that it has failed to mitigate its damages (if any).

**EIGHTH AFFIRMATIVE DEFENSE**

GHG's claims are barred at equity, including under the equitable doctrine of unclean hands, and because GHG is attempting to engage in an intentional breach of contract by using this action as a frivolous means to achieve unjust financial gain.

**NINTH AFFIRMATIVE DEFENSE**

GHG's claims are barred, in whole or in part, because GHG failed to avail itself, and waived, an applicable mandatory arbitration process under the Agreement.

**TENTH AFFIRMATIVE DEFENSE**

GHG's claims are barred, in whole or in part, to the extent that GHG failed to act within specified time periods outlined by the Agreement.

**ELEVENTH AFFIRMATIVE DEFENSE**

GHG is estopped from asserting its claims, in whole or in part, because GHG acquiesced to, accepted, and/or ratified the acts of Pyramid, including the implementation of the 2018 budget and appointment of Mr. Valldejuli as the General Manager.

**TWELFTH AFFIRMATIVE DEFENSE**

GHG's claims are barred, in whole or in part, to the extent that Pyramid has already compensated GHG for its alleged damages under the legal doctrines of release, payment, and/or accord and satisfaction.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Pyramid reserves the right to amend its Affirmative Defenses, to plead additional facts, and/or to assert additional affirmative defenses in the future.

**WHEREFORE, PREMISES CONSIDERED,** Pyramid respectfully requests that this Court:

- (i) Deny GHG all of the relief sought in the Complaint;
- (ii) Award Pyramid all attorneys' fees, costs, and other expenses incurred in this action, including as provided under the Agreement; and
- (iii) Grant Pyramid such other and further legal and equitable relief as the Court may deem just and proper.

**COUNTERCLAIMS AGAINST GUEST HOUSE AT GRACELAND LLC**

Pursuant to Federal Rule of Civil Procedure 13, Defendant Pyramid Tennessee Management, LLC ("Pyramid"), by and through undersigned counsel, files these Counterclaims against Plaintiff Guest House at Graceland, LLC ("GHG").

**FACTUAL BACKGROUND**

**A. GHG's Development of the Hotel and Hiring of Pyramid as Manager**

1. In 2014-16, the Guest House at Graceland Resort (the "Hotel") was developed and constructed at 3600 Elvis Presley Boulevard, Memphis, Tennessee 38116. GHG was formed as the single-purpose ownership entity. GHG is affiliated with Elvis Presley Enterprises, Inc.

(“EPE”), which owns and licenses the intellectual property relating to Elvis Presley and the Graceland Mansion, and for all practical purposes, also acts for GHG.

2. GHG and EPE are commonly owned by a holding company, which in turn is ultimately majority-owned by an out-of-state individual, Mr. Joel Weinshanker. Mr. Weinshanker effectively controls all decisions and actions of GHG and its sister-company EPE.

3. GHG borrowed millions of dollars to develop and build the Hotel. One of the conditions of the loan was that GHG, which has no experience in managing hotels, hire a reputable, established, independent hotel management company.

4. GHG (which at all times described herein acted at the direction of Mr. Weinshanker) selected the Pyramid Hotel Group to manage the Hotel. The Pyramid Hotel Group is an experienced, established, independent hotel management company, managing (and in some cases developing and owning) dozens of hotels and resorts across the United States and abroad. The Pyramid Hotel Group employs a deep bench of highly experienced and competent hotel General Managers, other hotel executive team professionals, and thousands of skilled hotel staff assigned to properties throughout its portfolio of hotels.

5. Pyramid Hotel Group formed Pyramid, which has the sole function of managing the Hotel.

6. On August 11, 2015, GHG and Pyramid executed the Hotel Management Agreement (“Agreement”) governing their contractual relationship. In very broad terms, Pyramid manages and operates all aspects of the Hotel (for a fee), while GHG, with a certain degree of review and approval, owns the asset and receives net profits (after expenses and fees).

7. GHG is referred to as “Owner” in the Agreement, while Pyramid is referred to as “Manager.” The Agreement is a standard-form hotel management agreement that provides in relevant part:

- a. The “Manager shall, on behalf of Owner and at Owner’s expense, direct the operation of the Hotel pursuant to the terms of this Agreement, free from interference, interruption or disturbance by Owner (or anyone claiming by, through or under Owner) subject, however, to Owner’s express rights under this Agreement.” (Agreement § 3.1).<sup>1</sup>
- b. The Agreement is for a seven-year term, with the “Initial Term” starting at the Opening Date (October 2016) running through the end of 2016 plus “three (3) full calendar years,” *i.e.* to December 31, 2019, and at Manager’s sole option, to be extended “four (4) full calendar years,” *i.e.* to December 31, 2023. (*Id.* § 2.2).
- c. “Manager shall be the sole judge of the fitness and qualification of all personnel at the Hotel (‘Hotel Personnel’) and shall have the sole and absolute right to hire, supervise, order, instruct, discharge and (subject to the Operating Budget) determine the compensation, benefits and terms of employment of all Hotel Personnel.... All Hotel Personnel shall be employees or independent contractors of Manager....” (*Id.* § 3.8.A).
- d. “Manager shall not hire any general manager, controller, director of human resources, or director of sales and marketing for the Hotel without the prior written consent of Owner, *which consent shall not be unreasonably withheld, conditioned or delayed.*” (*Id.* § 3.8.B) (emphasis added).
- e. “Manager shall be responsible for establishing all policies and procedures relating to the management and operation of the Hotel....” (*Id.* § 3.9).
- f. The Hotel operates according to an Operating Budget to which the Manager adheres. (*Id.* § 3.4). For any given calendar year, the Manager submits to Owner a proposed budget 60 days prior to the start of the next year. (*Id.* § 3.11.A). “Owner’s approval of the Operating Budget shall not be unreasonably withheld or conditioned and shall be deemed given unless specific written objections thereto are delivered by Owner to Manager within thirty (30) days after submission.” (*Id.* § 3.11.B). “If Owner disapproves or raises objections to a proposed Operating Budget, the parties shall attempt to resolve in good faith any reasonable objections raised by Owner within twenty-five (25) days after Manager’s receipt of such objection. If Owner and Manager are unable to resolve the disputed or objectionable matter prior to the commencement of the applicable calendar year, then such disputed portions of the Operating Budget shall be submitted to the

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<sup>1</sup> The Agreement was filed under seal as Docket No. 6.

Accountants [a binding arbitration procedure] for resolution on an accelerated basis in accordance with Section 10.2.” (*Id.* § 3.11.C). The Budget is then used as a “reasonable estimate” without “guaranty” and may be revised as necessary.

- g. While Manager manages, the Owner has certain described rights of access to books and records, and to meet with Manager. (*Id.* §§ 3.18, 3.21).
  - h. The Agreement contains 33 pages of intensive detail governing the respective rights and obligations of the parties. For example, Owner must “procure and maintain” certain insurance coverages for the benefit of both Owner and Manager, such as hotel property and business interruption insurance. (*Id.* § 4.3 & Ex. C). Owner also indemnifies and holds Manager harmless from any third-party claims. (*Id.* § 6.1).
  - i. The Agreement also addresses alleged breaches. If either party believes there has been a breach of any obligation, it must provide written notice and 30 days to cure (10 for monetary default), and only then may the non-defaulting party purport to terminate the Agreement. (*Id.* § 9.2).
  - j. “Owner and its affiliates and subsidiaries and their successors hereby agree not to solicit the employment of any Senior Executive Personnel [the general manager, controller, director of human resources, or director of sales and marketing] at any time during the term of this Agreement without Manager’s prior written approval,” or within one year of any termination or expiration of the Agreement. (*Id.* § 9.6).
  - k. Tennessee law applies, any action (except where arbitration is required) must be brought in Tennessee, and both sides waive any jury trial. (*Id.* §§ 10.1-10.3). In any litigation, the prevailing party is contractually entitled to its “reasonable attorneys’ fees, court costs, and expenses arising therefrom.” (*Id.* § 11.28).
8. GHG waited longer than it should have to engage a Hotel manager sufficiently in advance of the October 2016 opening, leaving insufficient time to prepare adequately for an opening of a 450-room four-star resort; specifically, GHG did not leave sufficient time for a sales and marketing team to pre-sell rooms towards full occupancy in the first several months of Hotel operation. GHG’s mistake in this regard was confirmed by an independent hotel consultant. GHG also failed to follow the recommendations of the independent consultant, including as to a sales and marketing team.

### **B. Pyramid's Successful Management of the Hotel**

9. Despite GHG's shortcomings in the timing of its engagement of a hotel manager, as soon as GHG permitted, Pyramid quickly assembled a competent and effective Hotel management team and, at all times, properly and successfully managed the Hotel. Pyramid's efforts entailed attracting top hotel management talent to relocate to Memphis. Pyramid's focus has always been, and continues to be, on successful Hotel performance – for the benefit of GHG, the Hotel staff, and the Memphis community.

10. After it was engaged to manage the Hotel, Pyramid appointed Mr. Keith Hess as the Vice President, Managing Director, and General Manager (“GM”). Mr. Hess was a long-time Pyramid Hotel Group general manager with substantial experience at hotels like the Hyatt Chicago Schaumburg, Doubletree Chicago Oakbrook, Westin Lake Las Vegas, Chicago O’Hare Hilton, and others. GHG readily accepted Mr. Hess as qualified for the position, which he was.

11. Mr. Hess oversaw the successful opening of the Hotel and thereafter managed a well-performing operation and staff through the end of 2017. Mr. Hess is universally respected and admired by all in the industry, the Hotel, at Pyramid, and by GHG and EPE personnel.

### **C. Mr. Weinshanker Plans for GHG to Intentionally Breach the Agreement**

12. Unbeknownst to Pyramid, while Pyramid was successfully running the Hotel pursuant to the Agreement, Mr. Weinshanker was scheming on ways to force out Pyramid and install one of Mr. Weinshanker's companies as manager, either GHG or EPE.

13. On or about November 1, 2017, 60 days prior to the end of the year, Pyramid sent GHG a proposed budget for 2018.

14. Also, on or about November 1, 2017, Mr. Hess made known to Pyramid his desire to leave the Hotel, which Pyramid then made known to GHG.

15. On or about November 5, 2017, Pyramid's Paige Koerbel proposed to EPE's CEO Jack Soden (acting for GHG) a new GM and asked to "arrange for an interview this week in Memphis, perhaps Thursday so he could be a part of the budget session, but I need to understand your protocol and if Joel [Weinshanker] will be involved." Compl. (Doc. 1-2) Ex. B.

16. Mr. Koerbel also forwarded the résumé of Mr. Morty Valdejuli, who is a premier, highly experienced resort general manager, with long-time experience at the high-end destination resorts of Westin Grand Cayman, the Maison Dupuy Hotel (French Quarter) and Marriott Hotel Lakeway in New Orleans, and other substantial hotel management experience dating back to 1997. Mr. Valdejuli is highly respected and well known in the industry, with a long record of success and integrity, while employed by Pyramid and elsewhere.

17. Mr. Koerbel reiterated the request to introduce Mr. Valdejuli to GHG and EPE personnel, and Mr. Valdejuli further graciously confirmed his willingness to meet by email. *See* Compl. Exs. C & D.

18. Joel Weinshanker, however, refused even to meet with Mr. Valdejuli and, further, instructed his staff at GHG and EPE to likewise refuse. He stated that under no circumstances would he or GHG consider any GM candidate offered by Pyramid.

19. At no point prior to this, had Weinshanker expressed a concern about Pyramid's staffing of upper level management positions, and Pyramid was surprised by Mr. Weinshanker's outright refusal to consider a qualified candidate, especially when it was clear that Mr. Hess would be leaving soon.

20. Pyramid soon learned the motivation behind this irrational reaction. Mr. Weinshanker had refinanced GHG's debt on the Hotel, and among other things, the new

financing arrangement no longer carried a lender requirement for the Hotel to be managed by a reputable, independent hotel manager.

21. Upon information and belief, Mr. Weinshanker formed the belief that he could save money (*i.e.* fees) by managing the Hotel himself. In short, he would dislodge Pyramid as the hotel manager and install in that role EPE or another GHG affiliate (despite neither having any hotel management experience).

22. Mr. Jim Dina and Mr. Warren Fields, two executives with the Pyramid Hotel Group from Boston, immediately flew to New York City to meet with Mr. Weinshanker. Mr. Weinshanker (who refused even to shake hands) stated that he intended to break the Agreement, switch managers, and he further explained his motive for doing so, specifically relating to his refinancing of the hotel. He stated that he would use litigation to achieve his ends, and then he tried to bully Pyramid out of the Hotel by stating that he would pay management fees through June 2018 (well short of the contractual period that runs until December 2023). Pyramid declined and pointed out the seven-year Agreement.

23. EPE's Jack Soden separately confirmed to Keith Hess that Mr. Weinshanker had instructed Mr. Soden and his team (both EPE and GHG) to reject any Pyramid-suggested GM out of hand, including Mr. Valdejuli, and instead have EPE undertake its own search for a replacement GM, despite having no contractual right to do so under the Agreement.

24. At this time, GHG, EPE, Mr. Weinshanker, and Mr. Soden commenced a series of statements deliberately defaming Mr. Valdejuli, without any basis whatsoever, as a means to achieve their ulterior motives.

25. On or about November 16, 2017, Mr. Weinshanker spoke directly with Keith Hess (with Jack Soden present) and confirmed his intention to reject any GM offered by

Pyramid. Mr. Weinshanker told Mr. Hess that he would cause GHG as Owner to break the Agreement with Pyramid. When Mr. Hess asked Mr. Weinshanker about the long-term nature of the Agreement with Pyramid, Mr. Weinshanker said: “Don’t worry, contracts are meant to be broken, don’t lose any sleep over it, I’m not going to, that’s why we pay litigation attorneys, they will figure it out.”

26. In other conversations, Mr. Hess heard Mr. Weinshanker express this plan to replace Pyramid with EPE.

27. Mr. Weinshanker also solicited Mr. Hess to stay on at the Hotel as his GM under the employ of EPE. Mr. Hess declined.

28. On November 21, 2017, Mr. Weinshanker again suggested to Mr. Hess that he continue as GM under the employ of EPE, stating: “I will keep paying you 30% over the market. I am ok with it we can keep it that way, that is fine.” Mr. Hess declined. Later that day, EPE’s CEO Jack Soden called Mr. Hess and raised the same topic, but Mr. Hess cut off the conversation.

29. Mr. Weinshanker attempted to poach Mr. Hess, despite being aware of the non-solicitation provision in the Agreement that protected Pyramid’s employees from being hired away.

30. Alarmed by these events, on November 21-22, 2017, Pyramid sent GHG three letters:

- a. Pyramid sent a letter reiterating Morty Valldejuli’s qualifications, reminding GHG of its duty to reasonably consider him as GM, and stating that “time is now of the essence” given Mr. Hess’s need to depart in January 2018. For good measure, Pyramid invited “any written, reasoned merits-based explanation [GHG] may have for withholding consent to hiring Mr. Valldejuli.” GHG never sent any written, reasoned explanation as to why it was unreasonably withholding consent to Mr. Valldejuli’s appointment. (*See* Doc. 11 Ex. A.)

- b. Pyramid sent a separate letter about the budget that had been proposed for 2018. On November 8, 2017, EPE's CFO Paul Volpe had sent an email with generic concerns about the "achievability" of the budget and the overall amount of expenses, asking Pyramid to "retool" it. In its letter, Pyramid asked for any "specific written objections" as required by Agreement § 3.11(B). Pyramid also made itself fully available to discuss any specific objections (which never materialized), and noted the expedited arbitration process available for any disputes after good-faith discussions (which GHG never initiated). (*See* Doc. 11, Ex. B.)
- c. Pyramid also sent a "Notice of Material Breach of Contract with Opportunity to Cure." Pyramid recited the facts set forth above and stated that Mr. Weinshanker could not intentionally breach the contract in the manner or for the reasons that he stated to Pyramid. Pyramid further pointed out other breaches of the Agreement: Mr. Weinshanker's improper solicitation of Mr. Hess to join EPE, Mr. Weinshanker's wrongful refusal even to consider Mr. Valldejuli as GM and prohibition of allowing others at GHG or EPE meet with him to reach their own determination, GHG's failures to maintain certain insurance, and other matters. (*See* Doc. 11 Ex. C.)

31. On November 27, 2017, Joel Weinshanker called Pyramid's Warren Fields, wherein Mr. Weinshanker again threatened litigation to achieve his ends and "offered" to cut off Pyramid as of July 2018 instead of the term through 2023.

32. On November 29, 2017, Pyramid held an open conference call with GHG/EPE to address any and all budget concerns. Pyramid made over 14 people available on the call to answer specific questions line-by-line. Although all questions appeared to be addressed on the call, Pyramid expressly asked for, and GHG/EPE agreed to, follow up in writing if needed.

33. EPE's Paul Volpe followed with a November 30, 2017 letter, which did not contain specific objections (although EPE/GHG feigned disagreement and contended that they had made specific objections). Assuming *arguendo* that GHG submitted proper objections (which it did not), GHG would have been permitted under the Agreement to invoke the budget objection dispute process, entailing mandatory arbitration. GHG never did so.

34. On December 5, 2017, having received no objection or notice of the arbitration process, Pyramid sent notice that the 2018 budget would be finalized (*see* Doc. 11 Ex. D), which is important from a financial management viewpoint before the new year starts.

35. Pyramid has been operating under the 2018 budget as finalized and deemed-approved by GHG.

**D. GHG, EPE, and Mr. Weinshanker Escalate Tensions with Pyramid**

36. Mr. Hess remained at the Hotel into mid-January 2018.

37. On January 9, 2018, Pyramid sent a final offer to bring Mr. Valldejuli to the Hotel on an “interim basis,” to “allow time for (a) Pyramid to better understand what GHG” wants; “(b) GHG to interact with Mr. Valldejuli and more fairly consider him for the permanent GM; or (c) for the parties to otherwise work together cooperatively to identify a permanent GM who would replace Mr. Valldejuli as interim GM as soon as the new permanent GM can be identified and agreed upon. With Mr. Hess departing the property, we of course cannot leave the position vacant, and with our highest common goal being [Hotel] performance, the interim GM solution allows the parties to move forward.” (*See* Doc. 11 Ex. E.)

38. GHG did not respond to the offered compromise on how to move forward on an interim basis, purposefully trying to impair Pyramid’s ability to manage the Hotel effectively.

39. Because the Hotel could not operate without a GM and Mr. Valldejuli is eminently qualified, on January 15, 2018, Mr. Valldejuli arrived at the Hotel. Mr. Hess graciously introduced him to all Hotel staff, and he was well received. Mr. Hess believes that Mr. Valldejuli is highly qualified and well positioned to lead the Hotel to success.

40. Mr. Weinshanker refused even to meet with Mr. Valldejuli, shake his hand, or otherwise discuss his qualifications to manage the Hotel.

41. Further, Mr. Weinshanker instructed all GHG and EPE staff to refuse even to meet Mr. Valldejuli, and to cover themselves by saying words to the effect of: “We are unavailable due to prior engagements.” For weeks, GHG and EPE’s personnel used this phrase with Keith Hess as he tried to make introductions.

42. On January 16, 2018, EPE’s Jack Soden confirmed with Keith Hess that he and his staff had been instructed by Joel Weinshanker to refuse to even meet Mr. Valldejuli. Mr. Soden also stated that Mr. Weinshanker had ordered the matter to litigation. Mr. Soden apologized for Mr. Weinshanker.

43. Keith Hess repeatedly offered to introduce Mr. Valldejuli, either by coming over to GHG and EPE’s offices or having Mr. Weinshanker, Mr. Soden, or anyone else come over to the Hotel. On January 19, 2018, for example, this offer was reiterated by Mr. Hess to Mr. Soden.

44. For two weeks, Mr. Hess worked side-by-side with Mr. Valldejuli to accomplish a smooth transition, with the focus being the best interests of the Hotel. Mr. Hess also introduced Mr. Valldejuli to various business leaders in the Memphis community.

45. On January 23, 2018, Keith Hess had a brief opportunity to introduce Morty Valldejuli to EPE’s Paul Volpe, and also to EPE’s Jack Soden. They each met Mr. Valldejuli, but did not interview him or ask about his qualifications. The next day, January 24, 2017, Jack Soden called Keith Hess and relayed Joel Weinshanker’s strict instruction that no GHG/EPE staff shall meet Morty Valldejuli. Jack Soden asked Keith Hess to “please not tell Joel” that he and Paul Volpe had briefly met Morty Valldejuli. Jack Soden again apologized for Joel Weinshanker’s “silliness.”

46. On January 24, 2017, Jack Soden relayed to Keith Hess that Joel Weinshanker was angry that he (Mr. Soden) had told Mr. Hess that they were forbidden to meet with Mr.

Valldejuli. Mr. Soden explained that Mr. Weinshanker had instructed them to say they were “not available.” Mr. Soden again apologized for Mr. Weinshanker’s behavior.

47. Morty Valldejuli and his team have made themselves available to GHG/EPE for information and discussion. As Mr. Valldejuli graciously wrote to EPE’s CEO Jack Soden on January 29, 2018, after noting his availability to meet: “You can count on me and my team at this resort to continue to be great stewards of this asset for ownership, our associates, our guests and community, that will never waiver.”

48. By the end of January 2018, Mr. Valldejuli was fully up to speed and running the Hotel successfully. Keith Hess departed, with fond farewells from the staff.

49. Despite GHG’s refusal to consent to Mr. Valldejuli’s appointment, no reasonable basis for such refusal has ever been articulated. Specifically, GHG has not explained what skill or qualification an approvable GM has that Mr. Valldejuli lacks or how his experience will not translate to the Hotel. Pyramid, Mr. Hess, and others in the industry agree that Mr. Valldejuli is eminently qualified to manage the Hotel.

50. Indeed, Mr. Valldejuli’s experience and skills are already helping the Hotel continue to succeed. With new group contracts in place, Pyramid is poised to continue to successfully grow the Hotel’s business and reputation.

**E. GHG Forces Pyramid to Incur Legal Fees in furtherance of Its Agenda to Breach the Agreement or Make Conditions so Unbearable that Pyramid Will Walk Away from the Hotel**

51. Despite Pyramid’s attempts to resolve GHG’s dispute without needing court intervention, GHG initiated litigation on January 31, 2018.

52. Prior to GHG hauling Pyramid into Court, GHG’s counsel promised to provide notice and service of any court papers. However, on January 31, 2018, GHG commenced

litigation in the Chancery Court of Shelby County, for the 30th Judicial District at Memphis, without notice to counsel.

53. Despite GHG's representation to the Chancery Court in Paragraph 65 of its Complaint—"Notice of this Application was provided to legal counsel for Pyramid before [GHG] appeared before this Court with its first request for a restraining order and/or injunction against Defendant Pyramid."—no such notice was ever provided.

54. Based on its misrepresentation, GHG obtained an *ex parte* temporary restraining order ("TRO") without actual or attempted notice to Pyramid or its counsel. Pyramid removed the action to this Court and filed a motion to dissolve the TRO. Pyramid incurred significant costs in connection with its motion to dissolve the TRO, including attorneys' fees and Mr. Dina and Mr. Hess's flight and other travel expenses for the February 6, 2018 evidentiary hearing held in Memphis. However, at approximately 9 p.m. CT the night before the hearing, GHG surrendered and agreed that the TRO should be dissolved.

55. At the February 6, 2018 hearing, GHG further confirmed to the Court that it was withdrawing, and would not thereafter seek, any form of preliminary injunctive relief as sought in its Complaint (which includes a demand for the removal of Pyramid and Mr. Valldejuli from the Hotel premises).

56. However, within days of the February 6, 2018 hearing, GHG was again insisting that Pyramid immediately remove Mr. Valldejuli from his appointment at the Hotel. Mr. Dina emailed Mr. Soden to discuss moving forward with ordinary Hotel business; however, Mr. Soden responded with a lawyer-crafted missive insisting that: "the litigation is just beginning and likely will be extremely contentious unless Pyramid does the right thing and removes Mr. Valldejuli." A day after GHG's counsel represented to the Court that it was not pursuing injunctive relief –

namely the removal of Mr. Valldejuli – and that it was not trying to fire anyone – Mr. Soden insisted that Pyramid “remove Mr. Valldejuli immediately and replace him with an interim GM[.]”

57. This doublespeak is further evidence of GHG’s unreasonable withholding of consent to Mr. Valldejuli’s appointment and evidence of GHG and EPE’s ultimate objective to breach the Agreement or induce Pyramid, through these tactics, to walk away from the Agreement.

**FIRST CAUSE OF ACTION – Breach of Contract**

58. Pyramid realleges each and every allegation in the above paragraphs as if fully set forth herein.

59. Pyramid and GHG have a valid and enforceable contract, the Agreement.

60. As the legal and beneficial owner of rights under the Agreement, Pyramid has the right to bring this action.

61. Pyramid has performed, and continues to perform, all of its obligations under the Agreement.

62. GHG has failed to comply with the terms of the Agreement and failed to fulfill its obligations under the Agreement. GHG’s failures include, but are not limited to: (i) unreasonably and arbitrarily withholding consent to Pyramid’s hiring of a highly qualified and well-regarded GM (Mr. Valldejuli), and defaming Mr. Valldejuli in the process; (ii) attempting to hire Pyramid employees in violation of the Agreement’s non-solicitation provision; and (iii) trying to usurp control of the day-to-day operations at the Hotel through creating a hostile working relationship, including initiating unfounded, frivolous litigation against Pyramid and

seeking – and then abandoning – an *ex parte* TRO in an attempt to induce Pyramid to terminate the Agreement.

63. These breaches are not GHG's only wrongful acts since the inception of the Agreement. GHG regularly refuses to follow standard procedures established and agreed to by the parties in the Agreement. For instance, even though GHG did not file "specific objections" to the budget nor initiate any of the review and mediation/arbitration procedures addressing the 2018 budget, GHG now wrongfully asserts in its Complaint that it has "objected" to the budget.

64. These breaches and wrongful acts are expensive and damaging to Pyramid, the Hotel, and the Memphis community at large. Pyramid's focus is on providing a unique, quality experience to its guests and visitors and a special place for the Memphis community. GHG's focus appears to be singularly on lining Mr. Weinshanker's pockets.

65. By reason of the foregoing, GHG has knowingly, intentionally, and materially breached its contractual obligations to Pyramid under the Agreement. Furthermore, GHG's intentional breach of contract is coupled with malice or recklessness by virtue of GHG's defamatory statements and extra-contractual demands, among other things.

66. GHG's material breach of the Agreement is the legal cause of substantial damage to Pyramid for which Pyramid seeks monetary damages in an amount to be determined at the time of trial, but which exceeds the minimum jurisdictional requirements of the Court.

67. Per Section 11.28 of the Agreement, GHG is also responsible for Pyramid's attorneys' fees incurred in connection with this dispute.

68. Despite GHG's breach of the Agreement, the Agreement remains intact and continues to govern Pyramid's ongoing management of the Hotel (with Mr. Valdejuli as the interim General Manager). In the event that the Court determines at trial that the Agreement was

or has been terminated by GHG, GHG's premature and baseless termination of the Agreement also would constitute a material breach of contract for which GHG would be responsible for compensating Pyramid for the resulting damages.

**SECOND CAUSE OF ACTION - Breach of Duty of Good Faith and Fair Dealing**

69. Pyramid realleges each and every above allegation as if fully set forth herein.

70. Pyramid and GHG have a valid and enforceable contract, the Agreement.

71. As the legal and beneficial owner of rights under the Agreement, Pyramid has the right to bring this action.

72. Pyramid has performed, and continues to perform, all of its obligations under the Agreement.

73. GHG has a duty to act in good faith and deal fairly with Pyramid.

74. GHG, by and through its conduct and actions described in the Counterclaims, and by other acts not presently known by Pyramid, unfairly interfered with Pyramid's right to receive the benefits of the Agreement.

75. GHG's interference with Pyramid's right to receive the benefits of the Agreement is the legal cause of substantial damage to Pyramid for which Pyramid seeks monetary damages in an amount to be determined at the time of trial.

**THIRD CAUSE OF ACTION – Defamation**

76. Pyramid realleges each and every above allegation as if fully set forth herein.

77. GHG has made or published statements (outside court filings) that defamed Pyramid and its executive employees. GHG's false, baseless, and defamatory statements include, but are not limited to: (a) GHG's statements that Pyramid has mismanaged, or failed to manage effectively, the Hotel; (b) GHG's statements that Pyramid has not followed a sound

budget or financial management plan; and (c) GHG's statements about the skill and qualifications of Pyramid Vice President Morty Valdejuli or other Pyramid employees.

78. Upon information and belief, GHG published these defamatory statements to third-parties, including EPE. For instance, GHG instructed EPE employees to not consider any GM candidates put forward by Pyramid on the grounds that the candidates were supposedly unqualified. Upon information and belief, GHG also published these defamatory statements to other third-parties.

79. GHG published, or caused to be published, these false statements knowing that the statements were false and defaming to Pyramid and Pyramid's employees and executives.

80. GHG published these statements with reckless disregard of the truth of the statement, or with negligence in failing to ascertain the truth of the statements.

81. Pyramid and Pyramid's employees have been damaged by the defamatory statements. The damage includes, but is not limited to, actual or potential damage to Pyramid's reputation and business and to the business of the Hotel itself, which directly affects Pyramid's management fees.

82. GHG has made these statements with actual malice toward Pyramid and in particular Pyramid's employee and executive, Mr. Valdejuli, and therefore punitive damages are appropriate.

**FOURTH CAUSE OF ACTION – Violation of the Tennessee Consumer Protection Act**  
**(Tenn. Code Ann. § 47-18-109)**

83. Pyramid realleges each and every above allegation as if fully set forth herein.

84. As more particularly described herein, GHG has disparaged Pyramid's business and the services that Pyramid provides through false and misleading representations of fact.

85. This conduct on the part of GHG constituted an unfair or deceptive act or practice under Tenn. Code Ann. § 47-18-104(b)(8).

86. As a direct and proximate result of GHG's conduct, Pyramid sustained an ascertainable loss of money, in an amount to be proven at trial, as identified in the prayer for relief.

87. As more particularly described herein, GHG's conduct was willful and knowing under the law, and Pyramid is thus entitled to recover treble damages and attorneys' fees under Tenn. Code Ann. § 47-18-109.

**FIFTH CAUSE OF ACTION – Declaratory Judgment**

88. Pyramid realleges each and every above allegation as if fully set forth herein.

89. Pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201, this Court may declare the rights and other legal relations of any interested party seeking such declaration whether or not further relief is, or could be, sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

90. Pyramid seeks a declaration that pursuant to the Agreement, GHG is precluded from unreasonably withholding consent to management hires. GHG also is precluded from trying to hire Pyramid employees under the non-solicitation provision of the Agreement and who are otherwise subject to non-compete provisions in their respective contracts.

91. GHG continues to refuse to consent to Mr. Valdejuli acting as GM, whether in an interim or permanent capacity, even after dropping its request for injunctive relief to remove Mr. Valdejuli from his position. GHG also continues to seek for Mr. Valdejuli to be removed from the role of GM even though GHG represented to the Court that it was not trying to "fire" anyone.

92. Additionally, GHG refuses to drop its frivolous litigation, which risks damaging both Pyramid and the Hotel's reputation (and thus also the Hotel's business).

93. By reason of the foregoing, there is a present controversy between Pyramid and GHG for which a declaratory judgment should be entered.

**SIXTH CAUSE OF ACTION– Punitive Damages**

94. Pyramid realleges each and every above allegation as if fully set forth herein.

95. By engaging in the acts, omissions and conduct alleged herein, GHG acted intentionally, fraudulently, maliciously and/or recklessly.

96. As a result of GHG's intentional, fraudulent, malicious and/or reckless acts, omissions and conduct, Pyramid is entitled to an award of punitive damages as permitted under applicable law.

**WHEREFORE, PREMISES CONSIDERED**, Pyramid prays that judgment be entered in its favor and against GHG:

- (i) For monetary damages in an amount to be determined by the trier of fact, including compensatory damages to which Pyramid is entitled and punitive damages as permitted under applicable law;
- (ii) Declaring that GHG breached the Agreement by unreasonably withholding consent to the appointment of Mr. Valldejuli and violating the non-solicitation provision of the Agreement, among other breaches;
- (iii) For attorneys' fees, costs, and other expenses incurred in this action, including as provided under the Agreement;
- (iv) For treble damages, attorneys' fees and costs as permitted under Tenn. Code Ann. § 47-18-109;

- (v) For pre-judgment and post-judgment interest as permitted by law; and
- (vi) For such other and further legal and equitable relief as the Court may deem just and proper.

**THIRD-PARTY COMPLAINT AGAINST ELVIS PRESLEY ENTERPRISES, INC.**

Pursuant to Federal Rule of Civil Procedure 14, Third-Party Plaintiff Pyramid Tennessee Management, LLC (“Pyramid”), by and through undersigned counsel, hereby states the following for its Third-Party Complaint against Third-Party Defendant Elvis Presley Enterprises, Inc. (“EPE”) as follows.

**PARTIES**

1. Pyramid is a Massachusetts limited liability company with its principal place of business located at One Post Office Square, Suite 1900, Boston, Massachusetts 02109.
2. Upon information and belief, Pyramid’s members and sub-members are citizens of Massachusetts and New York.
3. EPE is a Tennessee corporation with its principal place of business in Memphis, Tennessee.

**JURISDICTION AND VENUE**

4. This Court has original jurisdiction over this civil action under 28 U.S.C. § 1332 as it is an action between citizens of different states, with complete diversity of citizenship between the parties, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.
5. Venue is proper in the District pursuant to 28 U.S.C. §§ 1391 and 1400(a). The events relevant hereto took place largely in Memphis, Tennessee.

**FACTUAL ALLEGATIONS**

6. Pyramid realleges and incorporates each and every above allegation in the Counterclaims as if fully set forth herein. Capitalized terms used but not otherwise defined in this Third-Party Complaint will have the respective meanings ascribed by the Counterclaims.

**FIRST CAUSE OF ACTION – Tortious Interference with Contract**

7. Pyramid realleges each and every allegation in the above paragraphs as if fully set forth herein.

8. A contract exists between Pyramid and GHG.

9. EPE had knowledge that the contract exists between Pyramid and GHG, including knowledge of the respective roles of Pyramid, as Hotel Manager, and GHG, as Owner, as well as the specific terms of the Agreement.

10. EPE knew that the actions it took to interfere with or otherwise induce a breach of contract were in contradiction to the terms of the Agreement. This includes but is not limited to Mr. Weinshanker's instruction to EPE's Jack Soden, Paul Volpe, and other GHG employees or agents or representatives of GHG, to not interact with Mr. Valldejuli, which was then carried out by EPE's employees. This also includes but is not limited to Mr. Weinshanker's attempt to poach Mr. Hess from Pyramid and employ him at the Hotel through GHG, EPE, or another GHG affiliate in contravention of GHG's non-solicitation obligations in the Agreement.

11. EPE intended to induce the breach of the Agreement. This is evidenced by, but is not limited to, Mr. Weinshanker's comments to Pyramid that he intended to break the Agreement, switch managers, and his improper motive in doing so, was to avoid paying management fees to Pyramid. Mr. Weinshanker further evinced his malicious and reckless intent by stating that he would use litigation to achieve his ends, trying to bully Pyramid out of the

Hotel, and ultimately following through on his threat to impose frivolous litigation on Pyramid by filing the instant complaint, verified by EPE's Jack Soden.

12. These acts by EPE led to GHG's material breach of the Agreement.

13. EPE was not acting on behalf of and/or alternatively, was not acting in the best business interests of GHG, when it interfered with the Agreement. Instead, it was acting on behalf of its, and its member, Joel Weinshanker's, own interests, to both Pyramid and GHG's detriment.

14. EPE's tortious interference has resulted in damages to Pyramid.

15. EPE's conduct was malicious and reckless and merits punitive damages as well.

**SECOND CAUSE OF ACTION – Procurement of Breach of Contract under  
Tenn. Code Ann. § 47-50-109**

16. Pyramid realleges each and every above allegation as if fully set forth herein.

17. A contract exists between Pyramid and GHG.

18. EPE had knowledge that the contract exists between Pyramid and GHG, including knowledge of the respective roles of Pyramid, as Hotel Manager, and GHG, as Owner, as well as the specific terms of the Agreement.

19. EPE knew that the actions it took to interfere with or otherwise induce a breach of contract were in contradiction to the terms of the Agreement. This includes but is not limited to Mr. Weinshanker's instruction to EPE's Jack Soden, Paul Volpe, and other GHG employees or agents or representatives of GHG, to not interact with Mr. Valldejuli, which was then carried out by EPE's employees. This also includes but is not limited to Mr. Weinshanker's attempt to poach Mr. Hess from Pyramid and employ him at the Hotel through GHG, EPE, or another GHG affiliate in contravention of GHG's non-solicitation obligations in the Agreement.

20. EPE intended to induce the breach of the Agreement. This is evidenced by, but is not limited to, Mr. Weinshanker's comments to Pyramid that he intended to break the Agreement, switch managers, and his improper motive in doing so, was to avoid paying management fees to Pyramid. Mr. Weinshanker further evinced his malicious and reckless intent by stating that he would use litigation to achieve his ends, trying to bully Pyramid out of the Hotel, and ultimately following through on his threat to impose frivolous litigation on Pyramid by filing the instant complaint, verified by EPE's Jack Soden.

21. These acts by EPE led to GHG's material breach of the Agreement.

22. EPE was not acting on behalf of and/or alternatively, was not acting in the best business interests of GHG, when it interfered with the Agreement. Instead, it was acting on behalf of its, and its member, Joel Weinshanker's, own interests, to both Pyramid and GHG's detriment.

23. EPE's tortious interference has resulted in damages to Pyramid.

24. EPE's conduct was malicious and reckless and merits treble damages under Tenn. Code Ann. § 47-50-109.

### **THIRD CAUSE OF ACTION – Defamation**

25. Pyramid realleges each and every above allegation as if fully set forth herein.

26. EPE has made or published statements that defamed Pyramid and its executive employees. EPE's false, baseless, and defamatory statements include, but are not limited to:

- (a) statements that Pyramid has mismanaged, or failed to manage effectively, the Hotel;
- (b) statements that Pyramid has not followed a sound budget or financial management plan; and
- (c) statements about the skill and qualifications of Pyramid Vice President Morty Valldejuli or other Pyramid employees.

27. Upon information and belief, EPE published these defamatory statements to third-parties.

28. EPE published, or caused to be published, these false statements knowing that the statements were false and defaming to Pyramid and Pyramid's employees and executives.

29. EPE published these statements with reckless disregard of the truth of the statement, or with negligence in failing to ascertain the truth of the statements.

30. Pyramid and Pyramid's employees have been damaged by the defamatory statements. The damage includes, but is not limited to, actual or potential damage to Pyramid's reputation and business and damage to the business of the Hotel itself, which directly affects Pyramid's management fees as well. EPE made these statements with actual malice toward Pyramid and in particular Pyramid's employee and executive, Mr. Valdejuli, and therefore punitive damages are appropriate.

**FOURTH CAUSE OF ACTION – Violation of the Tennessee Consumer Protection Act**  
**(Tenn. Code Ann. § 47-18-109)**

31. Pyramid realleges each and every above allegation as if fully set forth herein.

32. As more particularly described herein, EPE has disparaged Pyramid's business and the services that Pyramid provides through false and misleading representations of fact.

33. This conduct on the part of EPE constituted an unfair or deceptive act or practice under Tenn. Code Ann. § 47-18-104(b)(8).

34. As a direct and proximate result of EPE's conduct, Pyramid sustained an ascertainable loss of money, in an amount to be proven at trial, as identified in the prayer for relief.

35. As more particularly described herein, EPE's conduct was willful and knowing under the law, and Pyramid is thus entitled to recover treble damages and attorneys' fees under Tenn. Code Ann. § 47-18-109.

**FIFTH CAUSE OF ACTION– Punitive Damages**

36. Pyramid realleges each and every above allegation as if fully set forth herein.

37. By engaging in the acts, omissions and conduct alleged herein, EPE acted intentionally, fraudulently, maliciously and/or recklessly.

38. As a result of EPE's intentional, fraudulent, malicious and/or reckless acts, omissions and conduct, Pyramid is entitled to an award of punitive damages as permitted under applicable law.

**WHEREFORE, PREMISES CONSIDERED,** Pyramid prays that judgment be entered in its favor and against EPE for:

- (i) Monetary damages in an amount to be determined by the trier of fact, including compensatory damages to which Pyramid is entitled and punitive damages as permitted under applicable law;
- (ii) Treble damages, attorneys' fees and costs as permitted under Tenn. Code Ann. §§ 47-18-109 and 47-50-109;
- (iii) Pre-judgment and post-judgment interest as permitted by law; and
- (iv) Such other and further legal and equitable relief as the Court may deem just and proper.

DATED this 14<sup>th</sup> day of February 2018.

Respectfully submitted,

s/ Jonathan E. Nelson

John S. Golwen (B.P.R. #14324)

Jonathan E. Nelson (B.P.R. #28029)

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*Attorneys for Pyramid Tennessee Management  
Company, LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 14th day of February, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system. I also certify that a true and exact copy of the foregoing has been served via email on the following:

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*Attorneys for Guest House at Graceland, LLC*

s/ Jonathan E. Nelson

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