IN THE SUPREME COURT FOR STATE OF NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a *Deja Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club,* OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, L.L.C. d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club,* D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*,

Appellants,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her Official Capacity Only,

Respondents.

Supreme Court Case No. 60037

District Court Case No. A538759

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, et al. Plaintiffs, vs. NEVADA DEPARTMENT OF TAXATION NEVADA TAX COMMISSION, et al., Defendants.	.	CASE NO. A-533273 DEPT. NO. 9 *Coordinated with:* A-554970 **Transcript of Proceedings**

BEFORE THE HONORABLE JENNIFER TOGLIATTI, DISTRICT COURT JUDGE

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION/SEPARATION OF POWERS ISSUE, DISCOVERY ISSUES; AND TRIAL SCHEDULING ISSUES

THURSDAY, DECEMBER 9, 2010

APPEARANCES:

FOR THE PLAINTIFFS:	WILLIAM H. BROWN, ESQ. 330 S. Third St., Ste. 860 Las Vegas, NV 89101 BRADLEY J. SHAFER, ESQ. 3800 Capitol City Blvd, Ste. 2 Lansing, MI 48906
FOR DEPT. OF TAXATION:	VIVIENNE RAKOWSKY, ESQ. BLAKE DOERR, ESQ. DAVID J. POPE, ESQ. Attorney General's Office 555 E. Washington Ave., #3900 Las Vegas, NV 89101

COURT RECORDER:	TRANSCRIPTION BY:
YVETTE SISON-BRITT District Court	VERBATIM DIGITAL REPORTING, LLC Englewood, CO 80110 (303) 798-0890

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

LAS VEGAS, NEVADA, THURSDAY, DECEMBER 9, 2010, 9:57 A.M.

THE COURT: Good morning.

MR. SHAFER: Morning, Your Honor. One second, I'm sorry.

(Pause in the proceedings)

THE COURT: Okay. First of all, I want to have you state your appearances on A-533273. Am I missing the -- well, if you would state your appearances on that case.

MR. BROWN: William Brown, local counsel for plaintiffs.

MR. SHAFER: Brad Shafer appearing on behalf of the plaintiffs, Your Honor, and we do have two cases here.

THE COURT: Yes. I'm looking for the other case number. I'm with you.

MS. RAKOWSKY: Vivienne Rakowsky from the Attorney General's Office representing the Department of Taxation.

MR. DOERR: Blake Doerr for the Department of Taxation.

MR. POPE: David Pope also with the Attorney General's Office, and we'll be representing the defendants. All representing the defendants.

MR. BROWN: Judge, I have the other case number here.

THE COURT: Well, the -- I believe -- hold on one second. I don't think any of the pleadings -- you know, when

you've -- when something's filed and it has one case, unless I -- sometimes the Clerk's Office, if all the case numbers related or consolidated or otherwise aren't on the caption, they won't put it on the calendar.

MS. RAKOWSKY: Your Honor, one is A-533273 and the other one is A-554970.

THE COURT: Okay. (To Clerk) So if you could reference that case number, you know, as part of -- include any minutes from this case -- I mean, the one that's on calender, in the other case. Okay.

My staff -- I don't know who my -- did I have you state your appearances yet? I'm --

MR. SHAFER: Yes.

THE COURT: I'm getting -- I'm still back at my last motion hearing.

MR. SHAFER: Stellar argument, might I say, as out-of-state counsel.

MR. DOERR: We're going to stop and squat now.

MR. POPE: Please refrain.

THE COURT: It just makes me wonder what family court is like.

MR. BROWN: Oh, it's like that.

THE COURT: Okay. Well, anyway, my staff called somebody in an effort to estimate, you know, setting aside a time period since I'm in trial, and so we set aside an hour,

and I'm right on schedule. I have my jury come being back at 11:00, based upon somebody's estimate.

And I apologize, she didn't call of you, but I just said pick one and go with -- go with it.

MR. SHAFER: Yes, we --

MR. DOERR: We all coordinated on that. We're all on page.

THE COURT: Okay.

MR. DOERR: We'll be finished in an hour.

THE COURT: Terrific. Okay, well, I have an hour. So let me just get my note pad for a moment. Okay, I'm ready when you are.

MR. SHAFER: Thank you, Your Honor. As I see it, at least I'm here to talk about three issues today. One is the discovery dispute that has been ongoing. The second is part of the Motion for Preliminary Injunction that we talked about, strictly the legal issue of the Separation of Powers of whether the portion of the live entertainment tax that prohibits the Court from -- prohibits any Court from entering injunctive relief or otherwise interfering with collection of tax is a violation of Separation of Powers.

And the third thing, Your Honor, this is now the fourth time I've come to Vegas to talk about this motion, and we've talked about this before. Our Scheduling Order has lapsed a long, long time ago, and I'm concerned that when this

case gets reassigned, as you explained to us the last time we were here it was going to be at the end of the year, I want to make sure that I don't have a problem with a new judge.

You've told me on numerous occasions as I've been here on this motion that I was going to have my opportunity to take my depositions, and I want to make sure that there's some type of order or Scheduling Order or something in place to -- and we've talked about this before the argument, Your Honor, and my opposition isn't going to have any problem with that.

But I just want to make sure some Judge, or the Discovery Commissioner, or whatever, doesn't say, "Oh, you know, I don't care what parties agreed to, you should have, you know, extended the prior order." And I just want to make sure that I have the opportunity to take discovery. So I'd like some type of Scheduling Order.

Your Honor, in regard to the discovery dispute, and I'm going to try to be really brief on all of this because we have argued it -- parts of this, the two critical arguments, we have argued them both already. So what I want to do is kind of zero in on the discovery disputes, and I want to point out to the Court why all of this evidence has come to the forefront.

Your Honor, as you will recall, we filed a Motion for Preliminary Injunction to enjoin the enforcement of the live entertainment tax. And we were here -- we argued that on

two different occasions over a two year period. And there was also a Motion to Dismiss and a Motion for Summary Judgment.

And then one of the times I was here on this motion you indicated that you were, basically you wanted to make sure all the facts were in front of the Court and therefore, you were basically denying, I'm going to say without prejudice, because I think you just wanted to say, I want to clear the docket, I want to get the discovery done and then we'll move forward.

There have been no order -- formal orders entered, but that is basically the -- the -- the posture that I see the case in as of right now.

Now, in response to the Motion for Summary Judgment -- I'm sorry, in response to the Motion for Preliminary Injunction, the Nevada Tax Commission attached two charts, three charts. There were Exhibits, I think, B and C, and the Court have seen these many a time.

And so what I did was, I asked for discovery in regard to the back-up documentation for what these charts are. Now, again, at least setting aside the Separation of Powers argument, the Court has denied, at least orally, the Motion for Preliminary Injunction. The only factual evidence that the State of Nevada put in front of this Court in regard to that motion were these charts in regard to who's paying the tax.

So I then filed my discovery, we had disputes in regard to the Discovery Commissioner. We got some additional documentation from the Nevada Tax Department. We've been in front of Your Honor. I came out here four times. We only were in front of you three times. One of the hearings was adjourned because of a scheduling problem once I got here. And we were given additional documents from the State.

Then I offered the last time I was here that I would submit a letter to Mr. Doerr, Mr. Doerr would respond, and then I would submit a letter to the Court saying what is the final discovery disputes, and we have done that, Your Honor.

And so I -- unless the Court really wants me to reargue all the stuff about why this stuff isn't privileged and all that, it's in the briefing, we've argued that before. And because they put this evidence before this Court, because I'm entitled to take discovery in regard to the evidence that they put in front of this Court, because this Court denied the Motion for Preliminary Injunction, at least in part, because that was the only factual evidence that they submitted, those documents, I'm entitled to take discovery in regard to how those charts were prepared.

And you'll -- Your Honor, you will also recall that in these various hearings Mr. Doerr gave you one chart, I think the first time we were here, that the numbers were different from these charts that were attached to the Motion

for Preliminary Injunction. Then we got the big chart where, you know, Mr. Doerr changed some numbers, fixed some things, and those numbers are different from the second chart. So I've got now three charts. One of -- you know, a series that was submitted in response to the Motion for Preliminary Injunction, the two supplements, they don't match, and what I have is a chart being prepared by Mr. Doerr.

So the question is, if I have discovery questions, which I do, in regard to these documents, how they were prepared, what -- what they consist of, who am I supposed to depose other than Mr. Doerr if I can't get the back-up documentation? And you know, I've been an attorney lots of years. I don't think I've ever deposed a lawyer. Most judges wouldn't let me depose a lawyer. I don't want to depose a lawyer. So that's where we stand.

And -- and again, Your Honor, I've submitted a letter that explains what the discovery -- the remaining discovery disputes are. I would point out there's one typographical error in that letter. When I was referring to page -- I probably ought to get it out. Your Honor, in paragraph number five, on page 2 of my letter, when I referred to Page DV00002, it's actually supposed to be Page 21 as opposed to Page 2. So, I'm sorry.

THE COURT: So plaintiffs have requested to be provided the, quote, notes, end quote, redacted on Page

DV00021. The State again asserted NRS 368(a).180 and claims the redactions name the entity in the information that would allow the identification of the entity and refuses to provide the redacted information?

MR. SHAFER: Yes, Your Honor. And I just tried to paraphrase what Mr. Blake was stating. We -- we've attached, and I believe you got it twice because I -- Mr. -- I'm sorry, Mr. Doerr submitted, I think on his own. But we've also attached, they have a chart that goes through the request and what the State's answer is and why they're not going to produce certain things. So in addition to all the tons of briefing that the Court has gotten before it.

Your Honor, and again, we've been here on a number of times, and so I don't want to belabor it. Unless you have any further questions on that, I'm just going to move onto the Separation of Powers because I know you're under time constraints.

Again, we've argued the Separation of Powers issue. I've pointed out the provisions of the Nevada Constitution that grants to the Court the power to grant injunctive relief. We have submitted to the Court -- the main case we relied upon was the Ohio Supreme Court or -- versus City of Norwood (phonetic).

The State said well, you know, that's an Ohio case. Then in one of our replies to their two supplements we gave

the Court about another, I don't know, six or seven cases around the country where other Courts have said exactly that, that the judiciary -- I'm sorry, that the Legislature cannot divest the judiciary of its powers of injunctive relief.

We've cited to the Court the cases in Nevada talking about the Separation of Powers. The last supplement, I guess, which is what I will deal with, is that they say that this matter is res judicata because this was decided by the Federal Court.

We filed our original constitutional claim against the live entertainment tax in Federal Court, and the State defendant -- and I use the State generically, but the Department of Taxation, defended on the basis that the Tax Injunction Act, a federal statute, does not permit jurisdiction because of issues of comity between the states and the federal government. Does not permit the Federal Courts to have jurisdiction to enjoin state tax statutes if there's a plain and efficient speedy remedy in Court. The Federal District Court granted that motion. The Ninth Circuit affirmed.

The issue before Your Honor is -- has nothing to do with -- oh, and the -- the District Court -- the Federal District Court didn't consider any of the merits of any of the claims that we had raised. And we did not raise, in fact, in that case, in the federal case, the Separation of Powers

argument that is before you today.

Here we are raising the Separation of Powers argument. And, Your Honor, we have cited in our reply to the second supplement that the -- that the defendants have submitted the clear Nevada law on this issue. It has to be the exact same issue. It has to have been fully litigated and decided by the Court, and that wasn't done. That issue wasn't even in front of the Federal District Court. This is a separate and distinct argument here being raised for the first time before Your Honor. Res judicata does not bar it. Unless you have any other questions, because I know you're pressed for time.

THE COURT: No, I mean, I have, you know, 50 minutes left.

MR. SHAFER: Okay, well --

THE COURT: You flew here. Take it.

MR. SHAFER: I don't know if you've had an opportunity to read our replies to their supplements because --

THE COURT: Well, here's what I --

MR. SHAFER: Yes, Your Honor.

THE COURT: I did read the substantive briefs. When it comes to -- and we'll go back to this, I guess, before we're done -- the letter with the 20 paragraphs of specifics, which I asked for, by the way, so I'm not criticizing it. I'm

just -- I'm just saying as far as the Court being able to do a line by line ruling today, I mean, what is it that the parties anticipated the Court was going to do about these very specific discovery today? You were looking for some rulings, correct?

MR. SHAFER: I would like some.

THE COURT: Okay.

MR. SHAFER: I think we would all like some.

THE COURT: I know. Well, I -- it's --

MR. SHAFER: We've also talked about the fact that next December we're coming up on the five years, so we've really got to finish this case out, so.

THE COURT: Yes. Where's my State letter? Hold on. Here's my next question.

MR. SHAFER: Yes, Your Honor.

THE COURT: I've denied without prejudice, in my view, and perhaps I wasn't -- I was remiss in not ordering someone to prepare an Order, but I've denied the Motion for Preliminary Injunction without prejudice, and obviously had you doing discovery. Granted, not to the extent that plaintiff would like, plaintiffs, but at the end of the day you've been doing discovery. Let's move on.

So there's no Written order regarding that. Perhaps that should be done. By, I think, operation of my comments, one of the three times that you were here and we did spend an

hour, at least, on this case, at least, there were the other preliminary motions that were brought that I think was pretty clear that I was denying everything with prejudice and letting discovery go forward.

MR. DOERR: And that -- and that's what we understood as well, Your Honor.

MR. SHAFER: Yes, Your Honor.

THE COURT: Okay, so do -- we do not have formal orders evidencing --

MR. DOERR: That's correct.

THE COURT: -- those rulings? Could someone undertake --

MR. DOERR: Did we bring those? I brought them last time, and I just --

THE COURT: Did I not sign them?

MR. DOERR: I inadvertently -- we were -- we got off on the discovery issue and then I inadvertently forgot to ask you to sign them.

THE COURT: Okay.

MR. DOERR: I know that we were preparing them. Did we end up with those today? We didn't prepare one on the Motion for Preliminary Injunction since that was their motion. We created very simple orders.

THE COURT: But if it gets denied, you -- you prepare it usually. So I'll need you to do that.

MR. DOERR: Okay.
THE COURT: Okay, do you mind doing that?
MR. DOERR: We have the motion -- an order denying Motion to Dismissal without prejudice and an order denying the Motion for Summary Judgment without prejudice ready for you today. I can ask counsel to look at them and --
THE COURT: Yes. Yes, I'd like to have those in the record. I know it was a long time ago, but -- and do -- does it have the date of my actual ruling in there? That was when you were here for the -- we went off on the discovery issues. What date?
MR. SHAFER: Your Honor, we -- you addressed all three of those the very first time we were here on the motion, and what you said is, there was another case you had that went up to the Nevada Supreme Court that you learned that you shouldn't rule precipitously on these matters. So you were going to deny everything that was pending, and you wanted all the facts in front of you is paraphrasing what you said.
THE COURT: Yes.
MR. DOERR: And we agreed.
THE COURT: Okay. So, but I don't recall what date that was. Is that --
MR. BROWN: This does have the date of July 31st, 2008.
THE COURT: Okay.

MS. RAKOWSKY: But that was when the hearing was, I believe, on the (indiscernible) motion.

THE COURT: Okay, then if I could -- if you're in agreement with the -- I mean --

MR. SHAFER: I have no problem.

THE COURT: -- they're not detailed, it says denied, right, without prejudice?

MR. DOERR: Denied without prejudice.

MR. SHAFER: Denied without prejudice.

THE COURT: Okay, that's great. Then I'm going to sign those, and when you -- would you file these for me?

(Pause in the proceedings)

MS. RAKOWSKY: 8/24. August 24, 2010, was the hearing where you denied the --

MR. DOERR: Wait a minute. No, I think that was the status check. Yeah.

THE COURT: Well, I don't think it matters. At the end of the day the -- it does detail when -- when it came on for hearing. I think we all understand that -- that the ruling denying this was certainly before I signed it, but I don't think it -- I mean, there was an understanding between the parties of what the Court intended because you've operated under that standing for -- understanding for quite some time. So here they are signed.

MS. RAKOWSKY: Thank you, Your Honor.

THE COURT: If you could prepare one for the preliminary injunction that doesn't address the Separation of Powers issue, which I'm obviously going to address with you today.

So -- I mean, you know, it's one thing to have a denial of the Motion for Preliminary Injunction. It's another thing to have a substantive ruling one way or the other. You know, cannot consider such thing by -- as a matter of law, versus, sorry, disagree with you, State of Nevada will consider it as a matter of law. It doesn't mean I'm granting the preliminary injunction. Simply saying it's allowed by law so that you can have some ruling on that.

MS. RAKOWSKY: Thank you, Your Honor.

THE COURT: Okay, so --

MS. RAKOWSKY: I'm first going to respond to the discovery. And I think we can clear this up very --

THE COURT: Let's -- I would go to the Separation of Powers because I have a feeling I'm going to have to go through this in detail until --

MS. RAKOWSKY: Can I just put one thing on the --

THE COURT: Sure.

MS. RAKOWSKY: -- record? I'm so sorry. But basically, Rule 26, if you just go back to the basic rules, number one, parties may obtain discovery regarding any matter, quote/unquote, not privileged, okay? It says it in black and

white.

And at NRS 368(a).180, which involves the confidentiality of files and records, except as otherwise provided in this section, and they give two other sections, the records and files of the Board and the Department concerning the administration of this chapter are confidential and privileged. They're privileged.

Secondly, Counsel keeps talking about a protective order. Section 1 of 368(a).180 goes onto say the Board -- the Department and any employer of the Board or the Department may not be required to produce the records, files or information for the inspection, which is -- which is a protective order -- for the inspection of any person for use in any action or proceeding. This is an action or proceeding. There's no protective order.

This -- this discovery dispute has been going on that I've been working on it for almost a year and a half. We've produced everything we can produce legally. He asked us a series of questions. We went back to my client. I asked him about certain documents that -- that were -- that the attorney for the plaintiff felt were incomplete. That's what the Department had. That's what they gave me. That's what we produced.

Your Honor, as far as the Excel document that was produced by Mr. Doerr, that was produced pursuant to the

Discovery Commissioner's order. She sat there and she said, you're not going to get in privileged information. However, the Department, Mr. Doerr, is to produce the amount paid by each group, which is what he did. He went and collected all the information from the Department. He produced it the way the Discovery Commissioner ordered him to do. We produced it to the plaintiff.

You asked us for a copy of it that you could see in camera of where he got the numbers from. We produced that to you. These -- that's really all we can do. There -- the plaintiff has not demonstrated a -- a reason why we should -- why he needs individual taxpayer information. He doesn't. He has the groups. He knows what they do.

As far as the margin for error. We produced a chart to him which showed that the margin for error between the receipts, the first one, which was a projection, some of them were based on receipts taken in, some of them were based on receipts after everything was organized. The latest one has the best numbers we have.

The margin for error is less than one percent. So if -- if the State of Nevada says to the plaintiff, take your one percent, add one more percent to the Gentlemen's Club, then all the numbers are fine and we're fine. Then there's no reason to continue this, and we can move on because that margin for error is less than one percent when everything's

extrapolated out. He's talking about a difference in numbers which is pennies compared to the amount of tax. So we'll give him that one percent. Let him add it on.

Moving to Separation of Powers.

THE COURT: Okay.

MS. RAKOWSKY: I've had my say on discovery. Okay? All right. Your Honor, 368(a).280, which is the -- Nevada's anti-injunction statute with respect to live entertainment tax does not take the power from the judiciary. If you read the chapter, and you're supposed to read chapter of laws as a whole, not as a one statute acting independent, you'll see that right above that in Chapter 368 you have the statutes which involve refund.

Now, the refund, when you look at the statutory scheme, if the -- if the plaintiffs have overpaid, they're entitled to a refund. They can -- they can ask for that refund. So when you read it, first the refund statutes, then the anti-injunction statute.

Now, the anti-injunction statute was basically, and case law in other states and federal case law says that's a preemptive strike. And the reason an anti-junction statute is contained in a taxing statute is because if everybody who is effected by a tax were to -- were to get an injunction, the governments couldn't exist. They -- they rely on this money. This money is budgeted.

It's -- it's money that the state needs to survive. Every time there's a tax, you can't have a group of taxpayers asking for an injunction to stop the collection of a tax. And the case law going way back to the late 1800s, which I believe I included in my brief, says that even if a tax is illegal, it's pay now, litigate later. You can get the money back.

Not only can you get the money back, but according to Nevada's refund statute, you get the money back plus interest. The interest right now is at six percent. You get less than one percent in the bank. So it's a better -- it's a better investment, shall we say, to pay the tax and try to get the refund because they'll get a refund plus interest.

Now, what -- when -- when these parties appeared before you in 2008 to argue it, they argued -- they argued about the Separation of Powers issue. And at that time I reviewed a transcript, and at that time you said that you were going to make a substantive ruling on the Motion for Preliminary Injunction.

In fact, you went as far to say that you didn't intend to rely on Chapter 368.280 because -- and you were going to make a substantive decision about the injunction, whether an injunction -- whether these parties were entitled to the injunction. And when we appeared here later you said that the -- they are not entitled to an injunction. Therefore, they do have a plain and speedy remedy at law.

At that point since we don't get to the Separation of Powers issue. But if we were to start talking about the Constitution, the Constitution -- and, in fact, in the case law that was provided by -- by counsel, one of the cases is a motor vehicle case, if I can find where I put it. But basically, it -- these cases that he provided, not one of them had to do with, first of all, the collection of tax.

One of them had to do with zoning. One of them had to do with traffic. They were all different -- for different purposes and none of them tax. In fact, Counsel has never provided any of his case law any place where an injunction was placed on the collection of a tax. It might have been a licensing fee where -- where they tried to raise it, but there was never one against a tax.

In addition, the Constitution, when it talks about Separation of Powers, it says that one part of -- one government of the three tri parte government should not take the function of another government, of another one of the how -- you know --

MR. DOERR: Branches.

MS. RAKOWSKY: Thank you. Another one of the branches. Okay, and so the legislature, when the legislature passed an injunction -- an anti-injunction act, they're not taking the power from the judge. They're not issuing injunctions. They're not using your functions. What they're

doing is -- is creating something for you to look at as the judge and determine whether it's applicable, if you get to that. But the way our statutes are Written, you don't get to that, because there is a plain and speedy remedy at law, which is the refund.

Now, this was our argued by counsel at the Federal Court level. In fact, in his brief, on Page 10 of his brief he says, there is no plain and speedy remedy available in State Court. That's the title. And then he goes onto say, the reason there's no plain and speedy efficient remedy in the course in Nevada is because the state legislature has specifically and statutorily precluded such a judicial remedy.

And it cites the thing where -- it cites the anti-injunction act. So he went into -- he went into Federal Court and said that, I can't get relief in State Court, because State Court can't give me an injunction.

When -- when this Federal District Court prepared the order, they said another argument by -- attempted by the plaintiff is that there is no remedy in the State Court. This argument is based on NRS 368(a).280, and it says first it should be noted that the foregoing statute does not preclude a taxpayer from pursuing the established procedure for assessing a tax or seeking a refund.

So -- so the -- the Court addressed the exact same issue. They didn't use the word Separation of Powers, but

they used, is State Court precluded from granting an injunction because there was a law prohibiting that from happening. And they're saying no, the language of the statute does not, as the plaintiff suggests, preclude judicial recourse in State Court. It merely prevents a preemptive strike, which is what I discussed earlier.

It stops people from going into Court, demanding an injunction so they don't have to pay a tax. The -- the Ninth Circuit affirmed, Ninth Circuit state -- went through the entire record and said Deja Vu has failed to establish that there is any defect in Nevada Court and administrative system which deprives it of a plain, speedy and efficient remedy to challenge Nevada's live entertainment tax. Therefore, the District Court -- and it said the District Court did not have jurisdiction, which ties back.

But this is all -- we -- as I said, we don't -- we don't get to the Separation of Powers when it comes to injunction because there is that plain and speedy remedy law. And if you have any questions, I'd be glad to answer them.

MR. POPE: Your Honor, may I just add one thing? I'm citing from a case -- I'm going to read from a case that we have not provided to opposing counsel at this point, but I have copies, and I can give him a copy. And it's a California case, Modern Barber Colleges v. California Employment Stabilization Commission. And the cite is 31 Cal.2d 720.

And it's just some reasoning for what Ms. Rakowsky has explained. And it states that the legislature has -- excuse me, it has been consistently held that the legislature has power to determine what are grounds for equitable relief and when and under what circumstances injunctions may be granted.

It says, Statutory changes are almost perpetual. The jurisdiction of Courts of Equity is not thereby enlarged. Neither is it diminished when the statutory changes -- in statutory changes some rights cease to exist in certain cases, which Courts of Equity once entertain can no longer arise.

In other words, the grant of power to Court of Equity -- Courts of Equity -- was not intended as a limitation upon the power to legislate upon the rights of persons. And then it finally says legislative enactment of reasonable procedural conditions precedent to invoking a particular remedy, or the substitution of one remedy, such as an action at law, for another, such as, in this case it's a proceeding in mandamus, but which is also an equitable remedy, so that would be similar to an injunction, cannot be considered an interference with the jurisdiction over such remedies vested in Courts by the Constitution.

So whereas, even though California has a constitutional -- a section in its Constitution that -- that states what our statute says, that no injunction will lie,

this case does not say that the constitutional provision is necessary. And the reasons that the Court cited are the reasons that I just stated would not require a constitutional provision.

And clearly state that these statutory changes can be made by the legislature. And it's not -- it does not affect the jurisdiction of the Courts. Thank you.

MR. SHAFER: What happens if you or your successor actually rules that the live entertainment tax is unconstitutional under the First Amendment? The State is telling you, you can't enjoin the Department of Taxation from trying to collect the tax in the future against anybody else other than the litigants of the case because you don't have the authority to enter an injunction.

And let's talk about the plain efficient speedy remedy that we have or don't have in regard to the state proceedings. Let's set aside the fact that, as we talked about before, the one case was filed four years ago, and we had to go through the Department of Taxation and run that gauntlet.

But the -- I want the Court to remember, and it's been a long time, but this is all in the files that you have in front of you. In the Department of Taxation, for the first time, the Department of -- I'm sorry, the defendants raised, when we had our administrative hearing, for the first time the

NAC that says, that you can't get the tax back unless you can get it back to the customer who paid it.

And we submitted, Your Honor, affidavits saying -- and we also -- we also submitted the case law that people have the ability to engage in First Amendment protected expression anonymously. Our customers don't have to give us addresses and telephone numbers and full legal names when they come in, and my clients don't collect that.

So according to them in the argument that they raise that in the Nevada Department of Taxation where we had the administrative proceeding, and I have put in front of Your Honor, we can never, ever get the tax back because we're not collecting that data. Now, at the end of the day I don't know whether you or your successor is going to buy that argument of theirs, but they have nevertheless invoked it.

So now I can't get the tax back because of an argument they raised. We never submitted that. You don't see that in any pleading in the Federal Court. We never raised that. They raised it for the first time in the administrative proceeding, saying we can never get the tax back.

If that's the case, and there's no dispute that my clients are engaged in first amendment presumptively protected expression, my clients are continuing to pay this tax, and you can take a look at whatever chart you're looking at, my clients are paying millions upon millions of dollars a year,

and we have no remedy to stop this from occurring, Your Honor.

Now, we've also cited to Your Honor the other Nevada precedent, I it was the Penrose (phonetic) case, there's Penrose I and II. I'm trying to recall back from all the briefing, about the fact that the -- the Nevada Supreme Court has noted that you can get an injunction against a tax statute setting aside this particular statute. Just the case law from Nevada Supreme Court, if it involves -- if it will result in a multiplicity of suits, or result in irreparable harm.

Well, here's the irreparable harm, Your Honor. They have the NAC that they're waving in front of the Nevada Tax Commission. And remember, Your Honor, one of the two cases you have in front of you is just an appeal from that. Now, it's not all of the clients, because Deja Vu and Little Darlings, they didn't start paying until 2005.

So the first case they're in, the second -- the -- the other case that they're not. I may have those two -- I may have those two mixed up, but I don't think so. I think the -- I think the constitutional case was the first case, and the -- the -- yeah, it must have been, the appeal was the second case. So there's no remedy they can ever get. Not because I say so, Your Honor, but because of what they say so.

Now, getting to NRS 368(a).180. Again -- and this is the statute dealing with the protections of the records here. You know, first of all, Your Honor, I'll just point out

there's some documents like in Exhibits 34 through 37 that -- and I'm deleting out all the zeros. I'm just giving you the actual bate stamp number, where what we're -- what we are asserting and would appear that -- appear to be the documents to us, is that people that may or may not fit within the statute, once they invoke -- once the legislature invokes the 2005 amendments, you may recall -- and this is the reason that Little Darlings and Deja Vu, the -- the clubs that are not in both cases, that the legislature determined in 2005 that some of the clubs, some of the strip clubs were not paying the tax and therefore they changed the -- the number of the patrons who, you know, could come into the facility. The phrase escapes me right now. But the seating capacity, they changed the seating capacity in order to make sure that the strip clubs were coming into the statute. That is what the change in 2005 did.

You also may remember that we gave you the legislative history where that is specifically discussed. And Your Honor, if you take a look at 675, which is also attached to the letter, because Mr. Doerr gives me a unredacted version of this, and you go down to the second to the last paragraph it says the DAG -- I'm not sure what that means. I'm sure it's probably the direct of gaming or something, I'm guessing.

MR. DOERR: I'm sorry.

MR. POPE: I'm sorry, we missed --

MR. SHAFER: DAG.

MS. RAKOWSKY: Deputy attorney general.

MR. SHAFER: Okay.

THE COURT: Deputy attorney general.

MR. POPE: Deputy attorney general, yeah.

MR. SHAFER: Okay. The DAG has concerns about your recommended language ambient entertainment number three. In summary, he feels the language may lead to the exemption of, quote, entertainers, unquote, at the gentlemen's clubs. Therefore, we did not incorporate it in our draft. We certainly welcome comments at the hearing.

From day one when I was here, you got what my argument, that -- and the word you used to me and you used to them is, Mr. Shafer contends this is an artifice. This is drafted as a general tax law, remember that -- remembering that there was already a casino entertainment tax in place. And that what they did was they exempted out 25 statutory exemptions, basically everybody else except the clubs.

Now, I didn't put evidence in front of Your Honor in regard to the motion for summary -- I'm sorry, the Motion for Preliminary Injunction with the exception of giving Your Honor the statute, the NAC, the -- and the legislative history.

The Department of Taxation was the one that submitted the charts to Your Honor. And if you take a look at NRS 368(a).180, subparen (a), this talks about what is not

subject to the confidentiality provisions. And it says, Testimony by a member or employee of the Board or Department and production of records, files, and information on behalf of the Board or the Department or a taxpayer in any action or proceeding, pursuant to the provisions of this chapter, if that testimony of the records, files or information or the facts shown thereby are directly involved in the action or proceeding.

They put this evidence at issue in this case. And Your Honor, I don't want to remind you, but on two different occasions when we were here, you told Mr. Doerr, Mr. Doerr, Mr. Shafer doesn't have to, you know, rely on what you say. They're the ones that put these charts in as evidence. You denied my motion. I'm entitled to discovery of the evidence that they put in front of this Court, and that they're probably going to put in front of this Court either on a later Motion for Summary Judgment or at trial.

Now, I know some of the evidence that they've already -- you know, that they're already going to rely on because we have the Motion for Preliminary Injunction. All I'm trying to do is figure out what this is all about. I'm trying to get to the bottom of this. And Your Honor, that's why I believe this stuff is not subject to the privilege.

Again, we will -- we will agree to whatever protective order you want, attorneys eyes only, nothing goes

into a public deposition, depositions under seal. There aren't going to be people on the outside that are going to be deposed on this. Probably not, although now I have -- do have some names of some people from like the Reno Entertainment Commission, or something that I just got. So -- but setting aside that I probably won't have to depose any of those people, the people who are going to be deposed are going to be representatives of the state.

We can hold the whole trial in chambers, you know, under seal. I don't care. I'm not going out and giving any information to anyone. But I have to be able to have the data to be able to find out what it is they're relying on, what has been submitted to this Court by way of the various charts so that I can determine whether it's relevant, whether there's problems.

Your Honor, you'll also remember that in the chart, the big chart and the little chart before that, I gave you my copy that had underlines. I didn't even say I wanted breakdowns or anything. I wanted things in certain categories where I could make certain determinations of things I thought were relevant. And it wasn't like I was asking for 85 percent of what was there.

I gave you the red-line version. There were probably six categories in each one of the two. You remember there was a category for five percent live entertainment tax,

and another category, or another segregation of the ten percent, and I said I want the back-up documentation for that. And that is, I believe, what they gave you under seal in chambers however.

And that's what I'm looking for, Your Honor. And, you know, the unredacted versions of some of these pages. You know, I -- we went through -- remember when we were talking about the plans of the stealth fighter and I was showing you this, which is -- you know, I've got a couple hundred pages of this, you know. I'm not asking for that. That's not in my -- that's not even in my letter. So, Your Honor --

THE COURT: The record should reflect he showed me a black box, a page -- an eight by eleven page of papers sideways that had a big black box on it and maybe one little tiny little sentence along the bottom.

MR. SHAFER: And the record will reflect that Mr. Shafer is fanning his exhibit book where there's page after page after page of that. Thank you, Your Honor.

MR. DOERR: As opposed to the alleged disclosure of the plans for the stealth bomber, Your Honor.

MR. SHAFER: Which China already has, but that's another story.

THE COURT: Through Wikileaks.

MS. RAKOWSKY: May I please respond?

THE COURT: Yes.

MS. RAKOWSKY: Thank you. First of all, the statute allows the records of people directly involved. The people directly involved, which is different than the federal statute, this is directly involved, are the people on the title -- on the title of the pleadings. They're directly involved. And if their clients want that information and they don't have the records, we'll give them that information.

The people who are not directly involved are the other strip clubs, are the other people who pay LET, and are other taxpayers in this state who rely on the confidentiality and the privilege that's only given to the taxpayers themselves for the Department and those affiliated with the Department to keep that information confidential.

If the State were to start giving out taxpayer confidential information, it would have a huge impact on the ability to collect tax. I mean, we can't give that out. We've given him the totals. We've given Your Honor the classifications so you can see what -- how the -- it was determined that certain people are LET payers are gentlemen's club and there are other categories. We've given you the list of the -- of the businesses involved in those categories. We can't give this information to him because we can't give it out.

Secondly, with regards to the issue of him not getting refunds, I believe Mr. Shafer's kind of misquoting the

statute as far as the ability for the Department to give refunds. The imposition of the tax is contained in NRS 368(a).200. And Sections 3 and 4, it says that a business entity that collects an amount taxable pursuant to Subsection 1 is liable for the tax imposed. But it's entitled to collect the reimbursement for any person.

So in other words, they have to pay that tax on the admission. They can collect it separately from their patrons, or they can include it in the ticket price and then make out the check. It says any ticket for live entertainment must stay with the tax imposed by this sections, including the price of the ticket. If the ticket does not include such a statement, the taxpayer shall pay the tax based on the face amount of the ticket.

He says his -- his people have not been collecting the tax, they've been paying it. So if he can verify the fact that that LET tax has come out of the pockets of his clients, he's entitled to -- he -- he will be entitled to refund if he wins this case, with interest.

THE COURT: Have you done discovery on that?

MR. SHAFER: She wasn't there at the proceeding.

MS. RAKOWSKY: I'm reading the statute. Your Honor, I was reading the statute.

MR. SHAFER: I -- you know, all -- all I can say is the first I ever heard of the NAC was when -- I don't remember

which one of you guys brought it up. One of them brought it up at the administrative proceeding. We had a -- for some reason, and I don't remember why it was, we had an adjournment of the administrative proceeding for a few weeks, maybe a month or something, and in that time, you know, I talked to my clients and we submitted affidavits in regard to what went on.

And I believe in one of the pleadings we point out that in the ruling of, if I'm using the word "commissioners" is correct, one of the commissioners said, and I would also note that -- and I'm paraphrasing -- because they didn't comply with the NAC they wouldn't be entitled to the refund anyway. And that's something that you or your successor is going to have to make a determination on.

Now, you know, I'm not saying that right or wrong. I'm saying what they argued as a way to preclude us from trying to get back our tax refund in the administrative proceeding that is directly in front of Your Honor by way of appeal.

THE COURT: So was that argued?

MR. POPE: Your Honor, I was part of the administrative proceeding along with another deputy, Dennis BelCourt, an so Mr. Doerr and Ms. Rakowsky were not there. And, you know, I think one of the things that plaintiffs are going to have to show is how they did handle that -- that issue. Did they include the tax and did they have a sign on

the wall or did they not?

And -- and, you know, we haven't gotten to that point yet.

THE COURT: And because if they did not, then the State's position would be what?

MR. POPE: Well, I'm not sure, and I don't know that we're here to say that today. But it depends upon what they did and what evidence they have to show what they did.

THE COURT: Well, let me ask you this. If you took a position before in an administrative proceeding, is it your -- is it your --

MR. POPE: I'm not sure if we took it in administrative proceeding or, I mean, took a position, or if what Mr. Shafer just said, a commissioner recited a regulation. I don't recall, Your Honor. I'm not -- I'm not sure.

MR. DOERR: And Your Honor, may -- may I speak? Remember that the issue that he's speaking about, the issue of the refund, that's been adjudicated at the hearing officer and at the tax commission. He included it in his Complaint before Your Honor. We actually believe that should really be -- that issue should be here on a Petition for Judicial Review, not a bring more facts to you about this, not a rehearing of that.

That should be a review of the process. And we have talked about, as this proceeds, considering filing a motion to

have that issue severed. We think this is about the Constitution -- constitutional question. And I would like to point out --

THE COURT: Well -- I have --

MR. DOERR: -- that when Mr. Shafer --

THE COURT: -- I have a note here that says before you ever said these words, my note is, did I forget a Petition for Judicial Review, question mark. Because I'm not clear --

MR. DOERR: Well --

THE COURT: Anyway.

MR. DOERR: -- I think they're --

THE COURT: But let me just --

MR. DOERR: Okay.

THE COURT: -- let me ask you a question. I mean, part of your argument today is we never get to the Separation of Powers, judge, and we don't have to go there, speedy adequate remedy at law, the five years runs in -- and they'll have an answer and their money in a month -- in a year. Excuse me, not a month, a year.

Okay, that's the argument. But it -- but, you know, what Counsel is saying is that if you, the State, took the position that they wouldn't be entitled to these funds based upon some requirements of the Code, then it's really affording --

MR. DOERR: The refund can go back to the person who

paid it. That may be -- and for sales and use tax purposes, that's the customer, that's not the retailer.

THE COURT: Is there anything that doesn't allow a company to pay it and just -- I mean, your -- is it going to be the State's position oh, it's included in the -- it's included in the price --

MR. DOERR: Well --

THE COURT: -- of the ticket --

MR. DOERR: Well, Your Honor --

THE COURT: -- and they didn't keep that information. You haven't taken a position on that one way or another you're saying to me?

MR. DOERR: I'm not saying that. I'm saying that, in fact, I believe in our first argument, I argued that I don't think it could ever be construed to have been not paid by their customer. It's the customer who bears the burden of the tax, the retailer under sales and use tax, the club in this case, is the collection agent. They're not the payer, they're the remitter. They remit the tax. They don't pay the tax, they get it from their client --

THE COURT: So hypothetically someone has a -- has an issue before the tax commissioner or commission, and is there a history of -- of commissioner decisions where there have been refunds when -- when there wasn't specific patron information or was it -- were they denied? I mean, that's

pretty simple. I'm thinking this isn't -- might be the first constitutional challenge, but it can't be the first challenge of a taxpayer for a refund.

MR. DOERR: I believe -- I'm not sure it's ever gotten there. If the taxpayer shows the Department that they have given the money back, and it's defined in the statute what they're supposed to do and how they're supposed to make that proof, we don't go to the commission. They've shown that they gave it back to the person who paid it. They need to have an affidavit from the person saying, I paid it and they gave me my tax money back.

So they have to pay the money out of their pocket back to their customer, then come to us for the refund. I'm not sure it's ever gone to the commission where they've shown that.

MR. SHAFER: And -- and --

MR. DOERR: The Department decides that. Now, it probably hasn't been done with respect to a live entertainment tax.

MR. SHAFER: I don't think so.

MR. DOERR: Because this is a new one. This is -- this is younger, but I can tell you with respect to sales and use tax, the law speaks to who can get the refund.

Now, again, Your Honor, I would suggest that the whole issue, that this really should not be here about facts.

This should -- that issue about the refund should be here on a Petition for Judicial Review. And we've considered filing a motion to sever that part off and letting the Constitution -- constitutional argument go forward here.

THE COURT: I understand, but to some degree they are intertwined because from the -- from, you know --

MR. DOERR: I understand.

THE COURT: -- here -- I mean, you know, in its incredibly basic layman terms, you know, your position is there's a speedy adequate remedy at law, money with interest, just like every other, you know, money with interest, judge.

MR. SHAFER: Just like every other state.

THE COURT: And if they choose not to keep track of who's paying it because, you know, it's -- it's -- it chills the strip club patronage, then that's their decision. That's basically what you're arguing to me.

MS. RAKOWSKY: On the other hand, if this is declared unconstitutional it's a whole different issue. That means that the statute doesn't exist. That means that the reg doesn't exist. So -- so we're not totally precluding this because if this is declared unconstitutional it's gone. It's gone for everybody. It's not just gone for 14 people.

THE COURT: Well, if it's declared unconstitutional, then it doesn't matter whether you wrote down the name of the person --

MS. RAKOWSKY: Right.
THE COURT: -- who paid or not.
MS. RAKOWSKY: Because -- because the statute -- and that's what --
THE COURT: Or maybe it does. Does it?
MR. SHAFER: Unless you can't enjoin it.
THE COURT: How many -- how many tax -- how many tax law -- how many -- how many states have collected tax on something that's been later declared unconstitutional and that the -- the state said, you know, we know it wasn't -- it wasn't supposed to be your money so we're not giving it back to you, we'll have an abandoned property fund or a -- you know, we'll -- I mean, how -- how -- has that ever happened --
MR. POPE: Your Honor --
THE COURT: -- in the history of ever and -- and how was it managed?
MR. POPE: I don't have statistics, but it goes to who has the right to request the refund. So in -- in the sales and used tax context, the incidents of the tax is ultimately on the consumer, but the retailer has the burden to collect and remit the tax. And so if -- if the retailer has collected the tax, then they have to show that they've given it back to the customer before they can request the refund.
In this case, you know, I don't know that it's been so clearly decided with the LET. I don't know that it's ever

gone there.

MR. DOERR: And I think the commission said, we don't think this is unconstitutional, you don't get a refund. So that issue -- you know, again, I think that that question should be here on judicial review.

MR. POPE: What the -- what the statute says, Your Honor, is a business entity that collects any amount that is taxable, pursuant to the LET, is liable for the tax imposed, but is entitled to collect reimbursement from any person paying that amount.

MS. RAKOWSKY: So they're paying -- it's a pay first. They're paying it. They're entitled to collect it if they want, but if they don't want it, they still have to pay it.

MR. SHAFER: Your Honor --

MR. DOERR: It comes from the customer.

MR. SHAFER: Your Honor --

MR. DOERR: The receipts, it comes from the customer.

MR. SHAFER: I can't even get the State of Nevada to have one consistent argument of whether we are the payer or the remitter. If we are the remitter, and we can't show that we can give it back to the customer, which I'm acknowledging we can't, because I've told you that in the record are affidavits to that effect, we don't get it back.

MR. POPE: Your Honor, if they collected it and remitted it, they have no harm, essentially have no standing. Why are we here?

MR. DOERR: In fact, they get a collection (indiscernible).

MR. SHAFER: Then nobody gets -- then nobody can ever get this back. Nobody can ever get this back. If that's their position, let them make that on the record, I'll change my whole case. I'll -- I'll say that, you know, we're here on behalf of the -- the customers, and the customers aren't going to do it so we have third-party standing to make a constitutional argument.

MR. POPE: But that's not why we're here today, Your Honor. We're here on a couple of things. We're on this -- this discovery issue. We're here on this preliminary injunction issue. And --

MS. RAKOWSKY: We're not here to argue the merits of this case.

MR. POPE: Or to change the claims or arguments.

MR. SHAFER: Your Honor, the question in regard to the Separation of Powers, as they stood up and argued to the Court, was that we had a just fine and dandy remedy, because we could make our request for refund. And I've just pointed out that of three attorneys, you get three different arguments from the State of Nevada in regard to what this tax is, who's

paying it, who's remitting it, who gets it back.

MR. POPE: That's his preliminary injunction argument, Your Honor. It's irrelevant, because they have the adequate remedy. And the -- the reasons the last time we were here, you said yeah, you're giving me reasons, but you're not telling me why. Well, the reasons and the why are they're combined. It's -- it's to protect the revenue collection for the State, and then those other reasons that I gave you today from that case.

You have to pay first, and sue later. It's not an irreparable harm. As long as you get your money back with interest you have not been harmed.

MR. DOERR: And remember, they're here about their -- the dancer's ability to do --

THE COURT: You know, there's the argument --

MR. DOERR: -- their first amendment activity.

THE COURT: One second. There's the argument that nothing prohibits your client from keeping track of all these people other than the incredible administrative costs that I can imagine that would take to pay back the --

MR. SHAFER: Yes.

THE COURT: -- non -- I mean, the --

MR. DOERR: Every other retailer has that opportunity and can --

MR. SHAFER: Yes.

MR. DOERR: -- or can't do that.

MR. SHAFER: Your Honor, yes, there is a reason. And we gave it to the Court previously. The U.S. Supreme Court and all the Federal Courts, they all acknowledge that people have the right to engage in First Amendment protected expression anonymously.

MR. DOERR: We agree.

MR. SHAFER: Your Honor, that is the sole basis of the Supreme Court lawsuit of last term that has all the democrats and all the unions up in arms where all these groups were able to funnel soft money into the Congressional campaigns of this year --

MR. DOERR: Is that relevant?

MR. SHAFER: -- that never have to report who that money came from. Those customers have the absolute right not to give that information.

MR. DOERR: So, Your Honor, then his client gets to keep all of their client's money. You see, if they get the refund, his client gets to keep all of his client's tax money that he got back.

MR. SHAFER: And our affidavits --

MR. DOERR: That's why the statute is set up the way it is.

MR. SHAFER: And the affidavits -- we actually have to constrain ourselves to the record at least in regard to the

administrative proceeding, the second case. And the affidavits say we never increased our door fees to account for the tax, we just paid it out of our regular revenues. That is what the affidavits say.

My clients paid that money. My clients are entitled to that money. They say through the NAC, they're not.

THE COURT: Okay. Are you --

MR. DOERR: We've said enough.

MR. POPE: Thank you, Your Honor.

THE COURT: Yes. I know you go a long time in between hearings in this matter, at least with me, so I appreciate the passion. I'm glad you come here ready to do battle and make my life miserable. Not because you don't do a good job because, quite frankly, I think you all do a great job. I just have so many decisions to make.

With regards to -- just so that I'm clear, the December 6th, 2010 letter that came to me that has 20 paragraphs you did or did not have a specific letter to the Court, just you have a general position that has been articulated very succinctly by counsel. You didn't put anything in a letter, correct?

MS. RAKOWSKY: Yes.

THE COURT: I'm not missing anything or am I?

MR. DOERR: I believe I provided that to you --

MS. RAKOWSKY: There was a chart --

MR. DOERR: -- in a Courtesy copy.
MR. SHAFER: It's the chart. It's Exhibit B.
MR. DOERR: He's reiterated what we've stated in that chart --
MR. SHAFER: Yes, but I -- I don't --
MR. DOERR: -- in his letter.
MR. SHAFER: -- I don't want in any way --
MR. DOERR: He paraphrased.
MR. SHAFER: -- minimize that they gave you a chart of their positions on each of the 23 --
THE COURT: All right, there's my -- hold on, hold on.
MR. SHAFER: -- pages.
THE COURT: Let me make sure I have my chart.
MR. SHAFER: Your Honor, and what you have to do is you have to go past the documents. They gave -- they gave me a set of unredacted documents, or documents with less redactions and then about halfway through Exhibit B they gave you this chart.
MS. RAKOWSKY: May I approach, Your Honor?
THE COURT: Yes. Give me one more copy of the chart.
MS. RAKOWSKY: (Indiscernible) every one of his (indiscernible).
THE COURT: Okay. Here's my next question. Was

this filed -- just, you know, anything that's sent to me is not actually part of the official Court record available for --

MR. BROWN: Did we file a letter?

THE COURT: -- Supreme Court review. Well, you know, when you're referencing for the purposes of appeal, or Writs, or anything else, if anybody's referencing some communication that the Court relied upon, I have a vision of making a ruling referencing this letter, issuing a minute order, and then depending on how it goes, if someone says I'm taking up a Writ on you, Judge, I'd have --

MR. SHAFER: Okay, we -- we will, Your Honor. Mr. Brown indicates they just made sure you had it for today.

MR. BROWN: I'll just attach a caption and with one exhibit.

THE COURT: Yeah, I would just call it -- and -- and I would also -- I would -- to make it easier -- okay, exactly where is this table that I have reviewed, by the way, but yet, because I didn't organize it well enough, or I've moved the pleadings, I don't know where it is right now, what is this attached to?

MR. DOERR: The letter that we sent to Mr. Shafer.

MS. RAKOWSKY: And with a -- with additional discovery with a --

MR. DOERR: With the additional pages that we

provided unredacted.

THE COURT: Okay.

MR. SHAFER: It is the last part of Exhibit B to my letter to you.

THE COURT: Okay. Here's what I'm going to ask, to make it simple, because at the end of the day if someone takes up a Writ on discovery I did or did not allow, someone's going to need a clear and concise pleading filed with the Court to reference to the Supreme Court.

So I'm going to ask that Deja Vu file this letter with all of its attachments with a cover sheet that says, Memorandum in Support of Request for Specific Discovery Rulings by the Court.

Then I'm going to ask the State to file this table prepared for my convenience, with a cover sheet that says, Response by, fill in the blank, the parties, Department of Taxation, State of Nevada, to Deja Vu Show Girls Memorandum in Support of Request for the Court to Order certain discovery so that both of these are filed and can be easily accessed for anyone's review, because this is its own animal as far as a dispute between the parties. Okay? All right. Then --

MS. RAKOWSKY: Well, except for -- I'm sorry, except for one thing. This letter was written after he got that table. So there's a earlier letter that, I guess, you would have to file also, because the letter that you're referring to

with these paragraphs is his letter in reference to the discovery that we provided.

MR. DOERR: He sent us a letter and asked for stuff. We sent him a detailed response --

THE COURT: Now you're talking about the 20 paragraph letter?

MS. RAKOWSKY: That's the third thing.

MR. DOERR: That's his response to --

THE COURT: Okay. If you would include the --

MR. DOERR: The original request.

MS. RAKOWSKY: It's October 25th, 2010 correspondence.

MR. SHAFER: Your Honor, the letter that came to you had my original letter to them, and their response with all the additional materials --

THE COURT: Right, the letter to me has --

MR. SHAFER: -- including the chart.

THE COURT: -- Exhibit A --

MR. BROWN: It's Exhibit A.

THE COURT: -- which is the original --

MR. SHAFER: Correct.

MS. RAKOWSKY: That's correct, Your Honor.

THE COURT: -- October 25th?

MR. SHAFER: Correct.

THE COURT: Okay. So -- so if he files -- what I'm

asking him to do is -- is take the letter that he sent to me, call it a Memorandum in Support of a Request for a Specific Order of Certain Discovery, or a Ruling regarding certain requests for certain discovery, however you want to caption it, but to highlight it for everyone's purposes that this is the document that the Court is going to rule upon as far as yes, you can have it or no, you cannot and here's why so that you can do with that ruling what you need to do, whoever.

MR. BROWN: So effectively this will be the universe which may be reviewed subsequently?

THE COURT: Right. I mean, of course, you have all these other things you're going to reference.

MR. BROWN: Right. Right.

THE COURT: But at the end of the day what's --

MR. BROWN: It boils down to that.

THE COURT: -- it boils down to this.

MR. BROWN: Right.

THE COURT: Because you don't have a formal objection really going on. It started with a formal objection --

MR. BROWN: Yeah.

THE COURT: -- and it's morphed into this.

MR. BROWN: Right.

THE COURT: But it was just too -- it was -- it was too much. I needed it broken down and --

MR. BROWN: Right.

MR. SHAFER: We -- we tried to boil it down.

THE COURT: Yeah, that was helpful. And so anything else you can think of? So the Court's plan is to -- I am -- I am not finding as a matter of law that my review of the Separation of Powers issue is barred by res judicata of the order of the Federal Court, for the record.

So you leave here with one ruling, albeit a little one. It is a ruling nonetheless.

So I need someone to prepare an Order just on that, because as big as this case is, all these little subissues slip through the cracks if I don't just get the Order out.

So the -- so -- so I do plan to issue a decision regarding the Separation of Powers subissue as it relates to the Motion for Preliminary Injunction, which I've already denied without prejudice, if that makes sense to you. That's how I see it. It's it is a -- it is a threshold issue which, quite frankly, I didn't make a specific ruling. You know, State's position is I don't have to. Plaintiff's position is I do. I'll issue a minute order on the Separation of Powers issue.

And then I'm going to issue a minute order on the discovery as your -- on the memorandum requesting specific discovery be ordered and it's -- it's probably a memorandum in supplement to Discovery Commissioner's objection. You might

want to call it that. Memorandum -- I know the title's getting longer, but, by the minute.

MR. SHAFER: And there was that --

THE COURT: Are you going to prepare the order --

MR. SHAFER: -- please, please --

THE COURT: -- regarding the --

MR. SHAFER: Yes, I will.

THE COURT: -- not barred by --

MR. BROWN: Separation of Powers.

THE COURT: -- res judicata?

MR. SHAFER: Yes, I will do that. And you know, just because, Your Honor, I really, really, really don't want to get sued for malpractice --

THE COURT: What?

MR. SHAFER: -- if we could do something about just a Scheduling Order?

THE COURT: Oh, no, no, no.

MR. SHAFER: Okay.

THE COURT: Here's -- here's what I'm going to do. I want to have you come into Court for scheduling purposes only after I've made these two decisions. So you don't have to come in from out of town necessarily, because what would happen -- here's what I anticipate.

I -- I just want to give, after hearing everything you have to say, some more thought to the -- the issues and

issue a minute order that you can go off and do whatever you need to do with. Then the idea is I have you come back to Court. If I have denied the discovery, I'm assume you're going up on a Writ and doing what you need to do. If I've granted the discovery, I assume you're going up on a Writ and doing what you need to do.

In the meantime, depending on whether it was denied or granted will define, I think, the parameters of a Scheduling Order.

So what I -- what I suggest is I -- I want nothing more than to decide this before December 31st. It is my life's goal.

MR. BROWN: It will be a New Year's resolution.

MR. SHAFER: And I appreciate that.

THE COURT: No, because then it has to be after New Year's, so it's -- it's -- it's -- it's -- and so what I'm going to do is I'm going to set a Status Check. But I'm not going to rule from the Bench. So -- so the desire that you might have to fly here for this should be significantly reduced, because all I'm going to do is, based upon my rulings, it's either going to be a shorter setting or a longer setting, and then I'm going to order the case reassigned and -- and have -- and set it for a discovery -- have it -- set it for a scheduling conference in that new department.

So the -- the first Status Check you have would just

be to put each other on notice of what you think, and then -- so that -- do you understand what I'm saying? You come in, I've denied the -- the discovery, or we could be ready in three months, okay? I've granted it, we need six months, we need seven months, whatever, I don't know.

But when you're going to do a contemporaneous Writs, you know, then you've taken those positions. I would reassign it, get it set right away in January in front of the new judge so that the -- but I will have that rulings for that judge in place. That would be the plan. That's my plan.

So in order to make sure that the plan is effected, I would like you to come in on December 28th at 9:00 o'clock to discuss a reassignment, and based upon the Court's rulings, what each side's time schedule would -- you would propose. This would require you to actually talk, to see if maybe you could agree, which I know you do.

MS. RAKOWSKY: We do.

MR. SHAFER: We've --

THE COURT: You work together very well.

MR. SHAFER: No, we actually did that before, and I think we all agree, you know --

THE COURT: It depends on the ruling on the 20 paragraphs.

MR. SHAFER: It does. But I think we know the window that we want for depositions, assuming that we don't --

THE COURT: Well, what's the window?
MR. BROWN: March.
MR. SHAFER: 90 days.
MR. BROWN: Middle of March.
MR. SHAFER: 90 days to wrap up the depositions.
THE COURT: Now, are any of the depositions --
MR. SHAFER: They all are.
THE COURT: They're all contingent on --
MR. SHAFER: On the documents, so like I say, Your Honor, we're -- we're not taking -- we haven't scheduled anything outside --
THE COURT: Well, then you don't really even need -- you probably don't even need to come in. What I could do is I'll set a status check reassignment so that I reassign the case in open Court. It's more of administerial, an administrative thing to make sure that my staff is notifying you of the new department and getting it set on calendar for -- unless you could stipulate to something right now, and then if my ruling makes it moot, it's moot. And if -- if you are allowed to go through, then -- then we have it in place. That's -- that's an option.
MR. SHAFER: I -- I think we really do, at least I, need to see what the ruling is, because, you know, there's three alternatives here. You grant everything, you grant

nothing, or you grant something in the middle. And something in the middle might not result in a Writ. So is there --

THE COURT: For you. (Indiscernible) result in a Writ for them.

MS. RAKOWSKY: You may not be speaking for us right now.

MR. SHAFER: You know, I don't know. I guess, what my question is, you know, and I have no problem in coming out here for that. It's just -- it's a problem on the 28th probably to get a plane.

THE COURT: No, I know.

MR. SHAFER: So I -- I guess, my question is do you have the capacity to patch me in telephonically?

THE COURT: Yeah, we have Court call.

MR. SHAFER: Why don't we just do that?

THE COURT: That's fine because if the plan is, you know, to get you on the same page so that when we send it to the new department, that judge just has to hear, you know, all -- I've made the rulings, hopefully the formal orders are pending, if not done, and -- and then all you've got to do is just -- you know, my plan is to work on it next week. I don't -- I don't have a trial going and I'm not taking one.

MR. SHAFER: Can I improperly ask the Court a legal question?

THE COURT: Sure.

MR. SHAFER: How does the five year -- seeing that I'm from out of state -- how does the five year rule work if you have a Writ going up?

THE COURT: There are certain -- my -- my expectation is there are certain matters that toll the five years and there are certain matters that don't. My view is a discovery Writ would not toll the five years, and you are -- I also think that, you know, the -- the -- the Deja Vu First Amendment issue is your five years. I think your other case has some procedural issues.

MR. SHAFER: Okay.

MS. RAKOWSKY: Your Honor, could I just --

THE COURT: I think you have -- I think -- I think that counsel's -- I've been wondering all along how come there's no Petition for Judicial Review on that because that's -- that's normally the mechanism for any administrative ruling or administrative findings based upon a hearing and a ruling. You know, whether you could cure that or not, off the top of my head, without a stipulation I do not know.

MS. RAKOWSKY: Your Honor, I'm sorry (indiscernible). I'd just like to bring up a minute order from this Court on August 18th, I believe, where when the plaintiffs had brought in the objection to the Discovery Commissioner's report. And I believe your minute order, you -- you ordered the plaintiffs' objection was granted in part

as follows: The defendant shall produce for an in camera review the names listed in Exhibit K, which we did produce, exemptions as well as any correspondent document and e-mail, which were prompted a letter being sent -- sent to them, and we -- we gave you all that.

And then you said their objection was denied in all other respects. And it says, and defendant's counter motion was denied, and it was set for a Status Check. But now they're reopening all the discovery issues that were denied by the Discovery Commissioner, subsequently denied by you. And now they're reopening and going back to -- this is going on since --

THE COURT: Okay, can I tell you something?

MS. RAKOWSKY: -- since 2000 and something.

THE COURT: Can I tell you something?

MS. RAKOWSKY: We got to get this done.

THE COURT: Unless you stand before me as an officer of the Court in good faith telling me that I said those specific words in that very last tagged line sentence, we might need a transcript, because this is incredibly complicated for some clerk who hasn't read anything and is just trying to follow along and assimilate what I say. And I would -- and I'm not -- I'm not impugning whoever wrote that minute order, but -- but I don't recall saying those words just like that.

I always leave it a little vague, and that's always something I pay for later, I guess. And so unless you're telling me that you recall specifically that, unfortunately in a case like this, the minutes are helpful as a tool to guide us, perhaps, in -- in what we need transcripts for and what we don't. Does that make sense to you?

MS. RAKOWSKY: Yeah, it does, absolutely, Your Honor. I just wanted to bring it to the Court's attention, because we were basing it on that, and now we feel like we're -- we just feel like we're back at square one. This has been going on since 2006. It's just --

MR. SHAFER: The reason it continued was because of the chart. That was their supplement that you ordered produced, and --

THE COURT: Now we're fighting about the chart --

MR. SHAFER: Because the chart didn't match --

THE COURT: -- and the details within the chart.

MR. SHAFER: -- the exhibits that they had in the motion for -- response for Motion for Preliminary Injunction.

MR. DOERR: Now we've explained that 30 times. I'm not sure why we're even talking about that anymore.

MS. RAKOWSKY: And we gave you your (indiscernible).

THE COURT: I understand.

MS. RAKOWSKY: And we're giving (indiscernible).

MR. POPE: Your Honor, I'll attest to the general

accuracy of that minute order because there -- it -- if there is another order that says that the Discovery Commissioner's order was vacated, there -- I believe that you also said that, you know, it was limited to the names and the categories, and everything else was granted -- not granted.

THE COURT: Denied.

MS. RAKOWSKY: Denied.

MR. POPE: Because it included sanctions. So it's something that we remember that -- that, you know, was not vacated. The whole order was not vacated. And in considering the universe of the discovery issue, it was at one time limited to that.

THE COURT: Now, did you list -- did you list that as part of your response in here, this is outside the original -- I mean, in this table chart?

MS. RAKOWSKY: I did not because I provided that they wrote us a letter, we provided it to him in response to his letter because we've been telling him for several years --

THE COURT: Is your letter in here?

MR. BROWN: Okay, so --

MS. RAKOWSKY: We've been telling (indiscernible).

MR. DOERR: No good deed goes unpunished.

MR. SHAFER: Why have we come back three times then?

MS. RAKOWSKY: May I talk?

MR. SHAFER: Three times.

MR. BROWN: Okay, if that's not properly before the Court, we can file a brand new Motion to Compel, they can file their opposition, and we'll end up right back here with exactly the issues in the letter.

MS. RAKOWSKY: We -- we -- we've been telling them for years that please just tell us what you're not happy with and we'll respond. On October 25th we finally got a letter from them telling us what they were not happy with. So it was our response to -- to plaintiff's counsel explaining why we couldn't give certain information.

That information, as far as I'm concerned, had already been ruled on, but we were just trying to be as accommodating as we can.

THE COURT: All right.

MR. POPE: Your Honor, if the transcript indicates what we said it indicates, can we submit it?

THE COURT: Sure.

MR. POPE: Okay.

MR. BROWN: There's a discovery dispute. That dispute is before the Court right now. The Court can rule on it now or we can file a brand new motion to bring it before our new judge. Those are the two options.

THE COURT: Oh, I don't want to do that to him.

MR. BROWN: I don't either. And it's not necessary.

THE COURT: Okay. Well, what I'm going to do is I'm

going to look at what you've provided me thus far. If -- if as I'm going through and articulating what I'm doing and why there's any reason for me to go back, I'll burn a CD and I'll look at it. I think I probably already have a CD on -- and the date of that was --

MS. RAKOWSKY: May I approach with this? I'll give --

THE COURT: Yeah, I just need the -- I actually have that. I printed all the minutes out for this case. Hold on, was it August 12th or --

MR. DOERR: Yes.

MS. RAKOWSKY: It was the August 12th, 2010 hearing.

THE COURT: I need the August 12th hearing on this. And we also discussed -- one other thing, not to complicate it. We also discussed, and I've given thought since the last time you were here as far as having a record and filing things under seal. At this point nobody -- nobody disputes that these names exist, and I don't think I need to make a record of those names under seal at this point. It's just a matter of turning them over. That's what we're fighting about, and I don't think any ruling that I make needs the names to be under seal. I mean, wouldn't you agree?

Usually you have the existence of information or the non-existence of information that you're fighting about and whether it's privileged or not or whether it's subject to

discovery or not, and then you document that if you don't -- don't order it produced so the Supreme Court could look at that existing or non-existing. Everybody agrees it exists and generally what it is. It's just names. It's names and -- and -- and perhaps designations that plaintiff doesn't accept.

MR. SHAFER: Well, there's data.

MR. DOERR: Names and amounts.

MS. RAKOWSKY: Those names --

MR. SHAFER: There's data.

MS. RAKOWSKY: -- and amounts can't -- cannot be part of the record.

THE COURT: Well, anyway, but do you understand what I'm saying?

MS. RAKOWSKY: It would have to be either under seal if you --

THE COURT: Right, that's what I just said.

MS. RAKOWSKY: But not --

MR. DOERR: Do they exist? We agree they exist.

THE COURT: Right.

MR. POPE: They exist.

THE COURT: I mean, so that's -- that's -- so I'm not going to even go there. I was thinking about that the last time you were in Court, and I just don't think it's necessary at this time. Although, I will go paragraph by paragraph and I will see you on December 28th. If you have

any -- you know about Court call. You can help him set up --

MR. BROWN: Sure. One last scheduling issue. I won't be back in town until the 29th.

THE COURT: Your appearance is waived.

MR. BROWN: Oh, problem solved. Good.

MR. POPE: Your Honor, I'll also be out of town on the 28th, but --

THE COURT: Your appearance is waived.

MR. POPE: -- (indiscernible). Why, thank you.

MS. RAKOWSKY: But Blake and I will be (indiscernible).

MR. DOERR: I'll be here, Your Honor.

MS. RAKOWSKY: Blake and I will be delighted to be here.

MR. SHAFER: I'll be on the phone --

THE COURT: All right, I'll see you then.

MR. SHAFER: -- if I'm not here.

THE COURT: Thank you.

MS. RAKOWSKY: Thank you for your time, Your Honor.

MR. SHAFER: Thank you, Your Honor.

MR. BROWN: Thank you, Your Honor.

(Proceeding concluded at 11:19 a.m.)

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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JULIE LORD, TRANSCRIBER DATE

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DISTRICT COURT
CLARK COUNTY, NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a *Deja Vu Showgirls*, et al.,

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION, et al.,

Defendants.

Case No.: A533273; ***Coordinated with***
Case No.: A554970
Dept. No.: IX

MEMORANDUM SUPPORTING REQUEST FOR SPECIFIC DISCOVERY RULINGS

COMES NOW, Plaintiffs by and through counsel, William H. Brown, Esq., and Bradley J. Shafer, Esq., and submit the following Memorandum Supporting Request for Specific Discovery Rulings (the Memorandum). This Memorandum is made and based on the

pleadings on file herein, the attached exhibits, and any oral argument entertained by the Court at the time of hearing on this matter.

DATED this 9th day of December, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December 2010, the foregoing **MEMORANDUM SUPPORTING REQUEST FOR SPECIFIC DISCOVERY RULINGS** was served on the party(ies) by email, faxing a copy, and mailing of same in the United States mail, postage prepaid thereon, addressed as follows:

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Exhibit 1

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December 6, 2010

VIA HAND DELIVERY
The Honorable Jennifer P. Togliatti
District Court Judge – Department 9
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

RE: ***Deja Vu Showgirls of Las Vegas, et al v. Nevada Dept of Taxation, et al***
9th Judicial District Court File No. A533273

Honorable Togliatti:

Pursuant to this Court's request, the purpose of this letter is to detail the discovery disputes that are currently outstanding in advance of the hearing scheduled for December 9, 2010.

I sent a letter to counsel for the Defendants, Blake Doerr, on October 25, 2010, detailing the information that still had not been provided to Plaintiffs (Exhibit A). On November 22, 2010, Mr. Doerr mailed a supplemental document production, which contained certain documents previously provided, but un-redacted to varying degrees. In addition, he provided a chart detailing the State's response to my letter (Exhibit B). It is from all of these documents I am compiling the following summary of outstanding discovery requests:

1. Plaintiffs are still seeking the backup documentation to the Department's latest chart under the categories (both 10% and 5%) of "Drinking Place (Alcoholic Beverages)," "Gift, Novelty and Souvenir Stores," "Independent Artists: Writers and Performers," "Musical Groups and Artists," "Promoters of Performing Arts, Sports, and Similar Events with Facilities," "Promoters of Performing Arts, Sports, and Similar Events Without Facilities," and "Unclassified." In light of these severe redactions of the exhibits to the Defendants' initial disclosure, Plaintiffs could not go through and provide the exact Bates stamped page numbers for this information.

2. Plaintiffs noted that in the Defendants' revised chart for the "Total LET (Gaming + Department)," the figures do not match the figures set forth in the exhibits that Defendants previously submitted (for example, Exhibit B to the Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, page 2, that was titled "Revenues from LET," and which gave the source as the Governor's Budget, 2007-2009). Plaintiffs requested that the State explain these discrepancies and provide

appropriate backup documentation so that Plaintiffs can determine the nature of such discrepancies.

Mr. Doerr's response was to rely on his explanation on this matter in open court (contending the numbers in the exhibit were based upon reconciled numbers, and the recently provided information was based upon gross receipts, and there were numbers transposed from 2004 to 2003) and to essentially state that the small discrepancy in the numbers does not change the facts of this case.

3. Plaintiffs noted that, for fiscal year 2006, the State's revised chart figures for both the Department Collection and the Department and GCB collections do not match the exhibit that it attached in its pleadings (for example, Exhibit B to the Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, page 1). Similarly, the revised chart figures do not match the "Live Entertainment Tax" entry as found in the correspondence from Dino DiCianno to Governor Gibbons in the correspondence of January 15, 2008, which the State attached as Exhibit B, page 3, to the Reply.

   The State provided the same reason for being non-responsive as given in item number 2 above, and also stated that no back-up information could be provided due to NRS 368A.180 and the cases cited.

4. Plaintiffs have requested the corresponding information for the other calendar years and months in question as contained in the Bates stamped page DV000005. Mr. Doerr contends that he was not provided any other similar documents like DV000005 for the other tax years in question.

5. Plaintiffs have requested to be provided the "Notes" redacted on page DV00002. The State again asserts NRS 368A.180, and claims that the redactions name the entity and information that would allow the identification of the entity and refuses to provide un-redacted information.

6. Plaintiffs have requested all of the "Name(s) of Business/Event" redacted from pages DV000034 – DV000037, as these are not taxpayers; they are businesses that the legislature considered *adding* to the LET. The State again asserts NRS 368A.180 and the cases cited in item number 1 above, stating that the businesses are taxpayers and have registered with the Department "under other chapters not limited to NRS 372.750 and NRS 363A.100.

7. Plaintiffs have requested the redactions be removed on pages DV000039 – DV000041, which appear to contain information on 10% LET paid by certain establishments and information regarding the seating capacity of certain "clubs." Mr. Doerr refused to produce the un-redacted information, asserting the same statutes and cases that he relies on in Exhibit B.

8. Plaintiffs have requested to view the "Notes" redacted on pages DV000042 – DV000047. Again, the State refuses to provide that information as it would allow identification of a specific type of business, and relies on NRS 368A.180.

9. Plaintiffs have requested the disclosure of the redactions on pages DV000050 – DV000058, which appear to be correspondence between the Department and certain businesses inquiring as to whether they are exempt from paying the LET. The State refuses to provide the redacted information, which has been provided to the Court, again relying on NRS 368A.180, that this information does not have to be provided for the "inspection or any person or for use in any action or proceeding."

10. Plaintiffs have requested the disclosure of the redactions on pages DV000122 – DV000126, which appear to include information on LET payments made to the Department. The State refuses to provide the information because some of it purportedly contains confidential bank and accounting information and the State claims it is not reasonably calculated to lead to the discovery of admissible evidence per NRCP 26(b)(1).

11. Plaintiffs have requested the disclosure of the redactions on pages DV000195 – DV000196, which contain information specifically relating to gentlemen's clubs, their various seating capacities, and the applicability of the LET to these establishments. Defendants refuse.

12. Plaintiffs have requested the disclosure of the redactions on pages DV000198 – DV000200, which also contain information specifically relating to the gentlemen's clubs, their various seating capacities, and the applicability of the LET to these establishments. The State refuses to provide these documents in un-redacted form.

13. Plaintiffs have requested the disclosure of the redactions on pages DV000203 – DV000205, which is a public government memorandum regarding the applicability and administration of the LET to certain establishments. The State refuses to provide those documents in un-redacted form.

14. Plaintiffs have requested to view the "whiteout" information for October – December, 2004, on page DV000207. The State contends that the Department's copy of the document contains the same whiteout, but does not explain why the Department cannot obtain the original, un-redacted document.

15. Plaintiffs' request for disclosure of the redactions on pages DV000670–DV000671, which appear to contain information regarding the granting of exemptions from paying the LET, was denied by the State.

16. Plaintiffs have requested the disclosure of the redactions on pages DV000675 – DV000680, the information on these pages having nothing to do with the identification of specific taxpayers, and only to the promulgation of LET regulations. The State produced some of the pages in their non-redacted form, but refused to produce DV000677, stating that it was not part of the regulation workshop process.

17. The Department's Responses to Interrogatories 1, 2, 3, and 15 refer to documents that are redacted to the point of non-responsiveness (Exhibit 3 to Motion to Compel and Objection). The State maintains its position that the statutes and cases prohibit the disclosure of the information requested in those Interrogatories.

18. The Department's Response to Interrogatory 19 is non-responsive because it refuses to identify any entities, persons, businesses, or classes that have requested to be exempt from the LET (Exhibit 3 to Motion to Compel and Objection). The State continues to refuse to produce those requested documents, asserting that it provided this information for an in camera review.

19. The Department's Response to Interrogatory 20, incorporates Response 19 (deficient as discussed immediately above); and also refuses to identify any entities, persons, businesses, or classes that have requested to be exempt from the LET (Exhibit 3 to Motion to Compel and Objection). The State continues to refuse to produce that information.

20. Finally, the Department is maintaining its revised position that the names of the taxpayers along with aggregate amounts of yearly LET paid by each will not be disclosed by the Department, even with a court-entered protective order. The State insists that no statute or regulation provides for disclosure of the information that Plaintiffs have requested under a protective order or any other method, and again cites to the statutes and cases in item 1 above in support of its refusal.

Despite the State's argument to the contrary, Plaintiffs contend that the specific Bates stamped page numbers listed above and the information sought by the Interrogatories, contain information that is relevant to their inquiry and should not be subject to any arguable privilege, particularly when it can be produced subject to an appropriate protective order.

Thank you for the Court's consideration in this matter.

Very truly yours,

SHAFER & ASSOCIATES, P.C.

By: _____
Bradley J. Shafer

BJS/aep

cc: David J. Pope, Esq.
Blake Doerr, Esq.
William Brown, Esq.

EXHIBIT A

BRADLEY J. SHAFER
ALSO MEMBER, AZ BAR
Brad@bradshaferlaw.com

LAW OFFICES
SHAFER & ASSOCIATES, P.C.
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3800 CAPITAL CITY BLVD., STE #2
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ANDREA E. PRITZLAFF
Andrea@bradshaferlaw.com
MATTHEW J. HOFFER
Matt@bradhsaferlaw.com

October 25, 2010

VIA EMAIL AND FACSIMILE
Blake Doerr
Senior Deputy Attorney General
Attorney for Defendants
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

RE: ***Outstanding Discovery for Cases Nos. A533273; and A554970***

Dear Blake:

I apologize for the delay in getting you this letter, but as soon as I returned from Las Vegas I became inundated in work in a class action lawsuit. When I had enough time to begin working on this, I noticed an email kickback indicating that you were on vacation for two weeks until today.

In any event, as I explained in open court on two different occasions, we would like the backup documentation to your latest chart under the categories (both 10% and 5%) of "Drinking Place (Alcoholic Beverages)," "Gift, Novelty and Souvenir Stores," "Independent Artists: Writers and Performers," "Musical Groups and Artists," "Promoters of Performing Arts, Sports, and Similar Events with Facilities," "Promoters of Performing Arts, Sports, and Similar Events Without Facilities," and "Unclassified." In light of these severe redactions of the exhibits, I cannot go through and provide to you the exact Bates stamped page numbers for this information, since I have no way of determining that.

I also note that in your revised chart for the "Total LET (Gaming + Department)," the figures there do not match the figures set forth in the exhibits that you previously submitted (for example, Exhibit B to the Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, page 2, that was titled "Revenues from LET," and which gave the source as the Governor's Budget, 2007-2009). Could you please explain these discrepancies and provide appropriate backup documentation so that we can determine the nature of such discrepancies?

Moreover, for fiscal year 2006, your revised chart figures for both the Department Collection and the Department and GCB collections do not match the exhibit that you attached in your pleadings (for example, Exhibit B to the Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, page 1). Similarly, the revised chart figures do not match the "Live Entertainment Tax" entry as found in the correspondence from Dino DiCianno to Governor Gibbons in the correspondence of January 15, 2008, which you attached as Exhibit B, page 3, to the Reply.

Again, could you explain those discrepancies and provide us with the appropriate documentation so that we can determine the nature of those discrepancies? And, again, I cannot give you exact Bates stamped page numbers because the severe redaction precludes me from determining which pages would provide that information, if unredacted.

In light of the above and in light of the previous arguments we have raised, we would specifically request the information redacted from page DV000003; all of the years and months in question regarding page DV000005; the "Notes" redacted on page DV000021; all of the "Name(s) of Business/Event" redacted from pages DV000034 – DV000037 (these are not taxpayers; they are businesses that the legislature considered *adding* to the LET); all the redactions on pages DV000039 – DV000041; the "Notes" redacted on pages DV000042 – DV000047; the redactions on pages DV000050 – DV000058; the redactions on pages DV000122 – DV000126; the redactions on pages DV000195 – DV000196; the redactions on pages DV000198 – DV000200; the redactions on pages DV000203 – DV000205; the "whiteout" of October – December, 2004, on page DV000207; the redactions on pages DV000551 – DV000552, DV000554, DV000556 – DV000558, DV000575 – DV000576, DV000581, DV000584 – DV000587, and DV000604 (this having nothing to do with the identification of specific taxpayers); and the redactions on pages DV000660 – DV000662, DV000667 – DV000671, DV000675 – DV000680 (same).

These are merely the specific Bates stamped page numbers that I know contain information that is relevant to our inquiry and should not be subject to any arguable privilege. In addition, as I have said, I simply cannot provide specific page numbers for the other matters discussed above because the severe redactions prohibit me from providing this information to you.

In addition, the following interrogatory answers are still deficient:

(1) the Department's Responses to Interrogatories 1, 2, 3, and 15 refer to documents that are redacted to the point of non-responsiveness (Exhibit 3 to Motion to Compel and Objection);

(2) The Department's Response to Interrogatory 19 is non-responsive because it refuses to identify any entities, persons, businesses, or classes that have requested to be exempt from the LET (Exhibit 3 to Motion to Compel and Objection); and

(3) The Department's Response to Interrogatory 20, references a non-existent Exhibit AAA, incorporates Response 19; and also refuses to identify any entities, persons, businesses, or classes that have requested to be exempt from the LET (Exhibit 3 to Motion to Compel and Objection).

Finally, I want to verify with you that the Department is maintaining its revised position that the names of the taxpayers along with aggregate amounts of yearly LET paid by each will not be disclosed by the Department, even with a court-entered protective order, as discussed with Mr. Hoffer from my office per Exhibits 1 and 1a to Plaintiffs' Reply regarding their Motion to Compel. Also, in the affidavit contained in the aforementioned Exhibit 1, Mr. Hoffer references a discussion between you and himself that indicated that the redacted name of the "Revenue Officer III" in documents DV000195 and DV000198 should not have been redacted. I would ask that you please provide us with that name.

Please note my new email address as brad@bradshaferlaw.com.

Very truly yours,

SHAFER & ASSOCIATES, P.C.

By: */s/ Bradley J. Shafer*
Bradley J. Shafer

BJS/

cc: William H. Brown, *via email*
David Pope, *via email*

EXHIBIT B

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Ave., Suite 3900
Las Vegas, Nevada 89101

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

JIM SPENCER
Chief of Staff

November 22, 2010

Mr. Bradley Shafer
Shafer & Associates, P.C.
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906-2110

Re: Déja Vu Showgirls of Las Vegas, et al. v. Nevada Department of Taxation, et al.

Dear Brad:

Please consider this correspondence as the response to your letter dated October 25, 2010 with regards to discovery requests. In addition to the enclosed table which individually addresses the discovery issues raised in your letter, I have included a Supplemental Disclosure which includes documents which are being provided in their un-redacted or partially redacted form along with a bates stamped copy of the document that had previously been provided to you in Court.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By: Blake Doerr
Blake A. Doerr
Deputy Attorney General
(702) 486-3095

RECEIVED
NOV 2 ? 2010
BY: AG

Telephone 702-486-3420 • Fax 702-486-3416 • www.ag.state.nv.us • E-mail agInfo@ag.nv.gov

SUPP
CATHERINE CORTEZ MASTO
Attorney General
Blake A. Doerr
Deputy Attorney General
Nevada Bar No. 009001
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bdoerr@ag.nv.gov
vrakowsky@ag.nv.gov
Attorneys for Nevada Department of Taxation

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings, K-KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, L.L.C., d/b/a Sapphire, THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club, D. WESTWOOD, INC., d/b/a Treasures, and D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores,

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

Case No. A533273
Dept No. IX

NEVADA DEPARTMENT OF TAXATION'S SUPPLEMENTAL PRODUCTION OF DOCUMENTS PURSUANT TO NRCP 26(e)

COMES NOW, Defendants NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only, by and through its attorney Catherine Cortez Masto, Attorney General, and Vivienne Rakowsky, Deputy Attorney General, hereby submits its Supplemental Disclosure of Documents pursuant to NRCP 26(e).

The following documents are included in their un-redacted form	DV00003 DV00551-552 DV00554 DV00556-558 DV00575-576 DV00581 DV00584-587 DV00604 DV00660–662 DV00667-669 DV00675-676 DV00678-680
The following documents are being produced with certain additional portions un-redacted.	DV00195 revenue officer's name DV 198 – 200 revenue officers name DV 00204- un-redact Kimberly Whitfield , Debra Tombs and Linda Fleischman DV 00204 un-redacted names of Department employees DV 195 – 198- Redacted name was "Debra Toombs"
DV001194- 1195	Spread sheet of LET collections by taxpayer group (the same document provided at hearing not bates stamped)

Respectfully submitted this 22nd day of November, 2010.

CATHERINE CORTEZ MASTO
Attorney General

By: _____
Blake A. Doerr
Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 22nd day of November, 2010, I served the foregoing **NEVADA DEPARTMENT OF TAXATION'S SUPPLEMENTAL PRODUCTION OF DOCUMENTS PURSUANT TO NRCP 26(e)** by causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
The William H. Brown Law Office, Ltd.
330 S. Third St., Ste. 860
Las Vegas, NV 89101

Bradley J. Shafer
Shafer & Associates, P.C.
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906-2110

And via Interdepartmental mail and email to:

State of Nevada
Department of Taxation
2550 Paseo Verde Pkwy., Ste. 180
Henderson, NV 89074

An employee of Office of Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

The following is a breakdown from calendar year 2004 of Live Entertainment Tax revenue which was received from all taxpayers:

- $8,295 from one time or annual events
- $80,598 from sporting events
- $1,151,788 from nightclubs
- $114,776 from promoters
- $950,560 from performing arts centers
- $1,403,761 from raceways
- $5,204,017 from gentlemen's clubs
- Total tax received $8,913,795

For the first seven months of fiscal year 2005, $4,306,370 has been collected to date. The economic forum projection for this fiscal year is $8,700,000.

DV000003

[redacted] DISTRICT

Cathy:

[redacted] and I have consulted on this question and we agree on the following Gentlemen's Clubs in our District.

[redacted] Originally (before LET) [redacted]. Definitely room to expand seating capacity.

[redacted] Originally (before LET) [redacted]. No reasonable room to expand.

[redacted] Originally (before LET) [redacted] Definitely room to expand seating capacity.

[redacted] Originally (before LET) [redacted]. No reasonable room to expand.

[redacted]

[redacted] DISTRICT

We only have two "Gentlemen's Clubs". They are [redacted] and [redacted]

[redacted] is on the exempt list, and I have verified that their seating capacity is well below the 300.

[redacted] opened after we put the LET database together. It has [redacted] I did a field visit when they first opened as they had indicated they were going to add dancers later. They do have more than [redacted] seating capacity, but the owner told me that he was [redacted]. The seating capacity of that area would be about 60. I will do a field visit after they open this afternoon to verify that they are using that area for the dancers.

Debra Toombs, Revenue Officer III
Nevada Department of Taxation
Compliance Division

DV000195

MEMORANDUM

Date: November 9, 2004

To: Chuck Chinnock

From: Cathy Chambers

CC: Dino Di Cianno

Subject: Live Entertainment Tax information for LCB on Gentleman's Clubs

---

The total number of Gentleman's Clubs statewide is approximately 33. There are 4 in the Reno District all with seating capacity of less than 300; 2 in the Elko District both of which are currently below 300 seating capacity; Las Vegas District has the majority with 27 clubs operating. Of the 27 clubs, 2 have been referred to Gaming Control Board for LET registration, 16 have seating capacity of less than 300, and 9 with seating capacity of 300 to 7,499. Carson district does not have any of these specific types of clubs, only brothels with capacity for less than 300 patrons. See attached worksheet for reporting information.

[redacted] DISTRICT

Cathy:

[redacted] have consulted on this question and we agree on the following Gentlemen's Clubs in our District.

[redacted] Originally (before LET) [redacted] Definitely room to expand seating capacity.

[redacted] Originally (before LET) [redacted] No reasonable room to expand.
[redacted] Originally (before LET) [redacted] Definitely room to expand seating capacity.
[redacted] Originally (before LET) [redacted] No reasonable room to expand.

[redacted] DISTRICT

We only have two "Gentlemen's Clubs". They [redacted] and [redacted]

[redacted], is on the exempt list, and I have verified that their seating capacity is [redacted]

[redacted] opened after we put the LET database together. It has [redacted]. I did a field visit when they first opened as they had indicated t[redacted] They do have more [redacted], but the owner told me that he wa[redacted]e. The seating capacity of that area would be about 60. I will do a field visit after they open this afternoon to verify that they are using that area for the dancers.

Debra Toombs, Revenue Officer III
Nevada Department of Taxation
Compliance Division

DV000198

[redacted]

3. Which businesses responded advising either they were not liable due to:
   a. Being non-profit. Of the 366 original potential licensees contacted, 137 responded as being non-profit organizations and not subject to the Live Entertainment Tax.

   b. Seating Capacity Below 300. Of the 366 original potential licensees contacted, 106 responded that the LET was not applicable to their business because the maximum seating capacity was below 300.

   c. A change in seating capacity since the inception of the tax (July 2003). At this time, the Department is aware of [redacted] who had their maximum seating capacity re-evaluated t[redacted]atrons by the [redacted] Department after the inception of the tax. This club uses only part of a larger building [redacted] hat was originally issued a maximum occupancy permit [redacted] building. See reports from individual districts explaining the process of changing maximum occupancy of a facility.

   d. Discontinuation of Live Entertainment. At this time, the Department is aware o[redacted] has live entertainment in the form of [redacted] but does not charge a cover or admission charge and requires no minimum drink purchase to enter the facility.

   e. Potential licensees contacted by the Department that were found to be licensed gaming establishments reporting LET to Gaming Control Board. Of the original 366 original potential licensees, 37 have been cancelled with the Department because they belong to GCB.

4. Timing of events; review of when events are offered during the year; i.e., timing of special events such as NASCAR, concerts, etc., that would have an impact on the payment of LET. See attached calendar of events.

E-mail attachments include northern and southern Nevada summary lists for LET as prepared by Kimberly Whitfield in Las Vegas Office, and a calendar of events for the large facilities statewide.

Requirements for changing maximum occupancy of a facility:

Elko: Debra Toombs checked with the area city/county building inspectors, they all use the Uniform Building Code specifications to determine the maximum seating/load capacity. They all use editions from various years but the seating capacity is determined completely by the square feet. For instance, the 1997 UBC uses 7 square feet per person for seating, but if they were calculating a casino for example, they would use 11 square feet. They said that casinos are calculated differently because it would not be assumed that they would be putting seats in the casino. The only way that a business or facility could get their capacity changed would be to move or build a wall which would change the square footage of the area.

Carson: Per Linda Fleischmann, she received the following information:

DV000204

5/20/04. She provided the following information. The fire department works with the building department in assessing the safe seating capacity allowances for facilities in Carson City for the purposes of holding activities. But the building department actually makes the final decision and issues the "maximum seating capacity" signs that are posted on these premises. They use a formula based on square footage and the type of activity multiplied by a preset number of people for a safe such as dancing versus a sit-down concert for the purpose of keeping a safe environment.

The promoter actually regulates the number of people walking through the door. But they are not bound by this seating capacity license for each activity. Neither the neither building department nor the fire department has any way to consistently regulate if the number of people at these events are exceeding the allowable limit for the facility. If the promoter/owner of the facility chooses to, for instance, remove stationary seats to reduce the number of occupants in the area, they are allowed to do so. Leeann cited an example at the [redacted] which they reduced a meeting area from 300 to 150 for insurance purposes. When the building department inspects these facilities, they base their findings on the type of activity on a case by case basis. If the facility promoter permanently alters the physical space, such as adding a room, they would be re-evaluated by the building and fire departments for maximum seating capacity. The city business licensing authority explained that they requires a layout sketch when the live entertainment involves blocking off city streets and thoroughfares.

Reno: Don Christensen found the following information from the local authorities in Reno/Sparks & Washoe County areas:

City of Reno- Fire Marshal- Taxpayer requests re-inspection by writing letter. Inspection is done within one week. New permit is issued (usually) within one month. No annual re-inspection. Any re-inspection is done as a response to a complaint or after an incident.

City of Sparks- Fire Marshal- Taxpayer requests re-inspection by writing letter. Inspection is done within one week. New permit is issued (usually) within one month. There IS an annual re-inspection for nightclubs, cabarets, mens' clubs, etc. in Sparks.

Washoe County- Now consolidated with City of Reno. Above (Reno) rules apply.

In all jurisdictions there is absolutely NO difficulty for a business to reduce the occupancy permit. A business owner merely requests the occupancy number (ie: from 450 currently permitted to, say 295, a convenient target number) and it will be granted upon inspection. In the words of the Sparks Fire Marshal, a lower number is better for us (Fire Dept.) for obvious safety reasons.

Las Vegas: Paulina already E-mailed to you requirements for Las Vegas, Henderson and Clark County.

DV000205

Las Vegas

LUKE PUSCHNIG
Legal Counsel

October 6, 2003

Mr. Dino DiCianno
Deputy Executive Director
Department of Taxation
1550 E. College Parkway
Suite 115
Carson City, NV 89706-7937

Re: Proposed Live Entertainment Tax Regulations

Dear Mr. DiCianno:

The purpose of this letter is provide to the Department of Taxation some input as to the draft regulations for discussion in regard to the Live Entertainment Tax as imposed under Senate Bill 8 of the 20th Special Session.

As you may know, the Las Vegas Convention and Visitors Authority ("LVCVA") not only runs the Las Vegas Convention Center but also runs Cashman Center here in Las Vegas. The LVCVA is concerned because certain draft regulations may be interpreted to tax conventions/tradeshows/public events that are truly not events attended by patrons "for a primary purpose of viewing, hearing, or participating in live entertainment". The following comments relate to the draft regulations for discussion on October 2, 2003.

The LVCVA's main concern relates to certain conventions and public events at Cashman Center. Specifically, the LVCVA leases Cashman Center to public events such as home shows, recreational shows and consumer shows that may have "incidental" live entertainment beyond the live entertainment limitations set forth in Section 9. For example, when the Harvest Festival leases Cashman Center, the primary purpose for this event is not live entertainment but is mostly a forum by which artisans and other craft makers can display their goods and sell the same to the general public. During the Harvest Festival show, the show would have magicians, mimes and other ambient music/entertainment (like the piano players at Paris). Under the October 2, 2003 draft regulations, the Harvest Festival would then arguably be taxed. I do not believe that it is the intent of the Nevada State Legislature to tax the Harvest Festival or any like convention or tradeshow.

The above referenced concern also relates to any "convention" as opposed to a tradeshow, which may use Cashman Center and/or the Las Vegas Convention Center.

DV000551

The LVCVA would suggest that you expand the scope of Section 9, which is the limitation of live entertainment, to include any "ambient entertainment" as well as ambient background music. This ambient entertainment could be defined to include mimes, magicians and other like live entertainment that is provided for the enjoyment of the patrons while they attend the event, so long as such entertainment is not the primary purpose of attending the event.

In relation to your definition of "tradeshow" set forth in Section 3, Subsection 5, I would respectfully request the language be changed to be read as follows:

> "Tradeshow" means an event of limited duration, ~~not open to members of the general public,~~ during which the merchandise and services of a particular trade or industry are exhibited and/or matters of interest to members of the trade or industry ~~or~~ are discussed".

Thank you for allowing the LVCVA the opportunity to provide this written comment on the proposed regulations. The foregoing is preliminary only, and the LVCVA respectfully reserves the right to provide additional comments and suggestions as the process moves forward as additional draft regulations are considered.

Sincerely,

Luke Puschnig, Esq.

gn

PIONEER
Center for the Performing Arts

October 17, 2003

Ms. Cathy Chambers
Auditor III
Nevada Department of Taxation
4600 Kietzke Lane
Building O, Room 263
Reno, Nevada 89502

Re: Proposed Regulations
Nonprofit Live Entertainment

Dear Ms. Chambers:

Thank you for speaking with us recently concerning the proposed regulations that your office is reviewing for purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session. We have reviewed Sections 5 and 6 of the draft regulations and have the following questions or comments:

1. We assume, for purposes of Section 5, that the word, "inure", is being used in a manner consistent with Section 501(c)3 of the Internal Revenue Code and all related Treasury Regulations and Revenue Rulings. Thus, for example, a compensation arrangement between the Pioneer Center and a production company that is (i) consistent with the exempt purposes of the Pioneer, (ii) the result of arm's length bargaining, and (iii) based on reasonable compensation, would not result in prohibited inurement. This is clearly stated in Revenue Ruling 69-383; and

2. The Pioneer Center is very aware that a basic principle of its status is that no part of its earnings inure to the benefit of any private shareholder or individual. We understand if any arrangement results in prohibited inurement, it could be grounds for revocation of the tax exempt status, as well as a basis for assessing employment tax liabilities for unreported income; and

3. Given the foregoing, it would appear, so long as a nonprofit's tax exempt status remains in effect, that a nonprofit would always be exempt from the live entertainment excise tax.

I trust this is in order. If you have any questions, please feel free to contact us. We look forward to working through any issues so that appropriate regulations can be adopted that are consistent with tax exempt organizations and their treatment under federal law.

Very truly yours,

Fred Boyd
President/Board Chairman

/ljt

October 27, 2003

(702) 383-8839

Dennis K. Neilander, Chairman
Nevada State Gaming Control Board
1919 E. College Parkway
P.O. Box 8003
Carson City, Nevada 89702

Re: 10/07/03 Draft of Proposed Amendments to Regulation 13 (LET)

Dear Mr. Chairman:

This will transmit comments and questions on behalf of MGM MIRAGE concerning the October 7, 2003, draft of "Proposed Amendments to Regulation 13." We were unable to offer testimony at your public hearing on October 8, 2003, because of insufficient time to make a thorough study of the new provisions.

The comments and questions and the sections to which they are directed are as follows:

13.010 (5) - Is it intended that Superbowl parties to which tickets are sold would fall within the definition of "live entertainment"?

13.010 (5)(b) - We support Alternative B as being in accord with the provisions of S. B. 8.

It may be that the language of Alternative B can be reshaped in some respects, but it captures the necessary essence. Types of facilities that are properly excluded from "live entertainment" by this language are casino lounges and bars where the attraction consists of the food or refreshments sold and the ambiance provided. A part of the ambience is the presentation

DV000556

of recorded music that is facilitated by a person. Such persons act merely as facilitators of the recorded music, determining - by the push of a button or the turn of a dial on electronic equipment - which music is most appropriate to maintain the desired ambience for the facility throughout the evening. These "music facilitators" have no substantial interaction with patrons, they do nothing that would constitute visual entertainment for patrons and their names are not advertised as an attraction for patrons.

13.010 (5)(d) - We support the exclusion for "instrumental ambient background music". We assume this exclusion is not affected by 13.010(5)(d)(1) if the facility in which the "instrumental ambient background music" takes place is a bar, lounge or restaurant located in or near gaming areas.

13.010(5)(e) - We recommend adding to this provision "or as part of the background ambience of the facility." An example of this would be an excerpt from an opera sung by a waiter in an Italian restaurant once or twice every hour.

13.020(5) - We support this language. This is an appropriate method to deal with sales in facilities with no admission charges that operate under a continual time schedule. If the food, refreshment or merchandise is ordered while the facility is in a live entertainment status, the charge is taxable, if it is ordered before or after the facility is in a live entertainment status, the charge is not taxable.

13.020(11) - For purposes of clarity and consistency, we recommend that "clearly" be inserted before "see and hear" in the last line.

13.025(6) - We recommend this provision be amended to read as follows:

"If the purpose of the event is not primarily for entertainment, live entertainment at:

"(a) Private meetings or dinners attended by members of a particular group or organization.

"(b) Casual assemblages.

"(c) An event that limits participation to persons who are participants in conventions, extended business meetings or tournaments and their guests."

We suggest that the addition of "group" to 13.025(6)(a) will provide for celebrations of such events as weddings, birthdays and anniversaries.

It appears to us that the language proposed as 13.025(6)(c) might read better as a subsection rather than a separate paragraph.

DV000557

13.050(6) - As the contracting parties are both gaming licensees, why is the approval of the Chairman necessary? Wouldn't it be sufficient for the Chairman to be notified who will pay the tax?

13.060(1) - We suggest the following be inserted in the fourth line following "prosecution":
"commenced prior to the end of the 5-year period".

Please let me know if there are any questions or if we need to supply clarification of any of our proposals.

Best wishes,

Robert D. Faiss

cc: Member Bobby Siller
Member Scott Scherer
Chairman Peter C. Bernhard
Chief Gregory Gale
Deputy Chief Lynda L. Hartzell
Deputy A. G. Antonia A. Cowan
Bruce A. Aguilera, Vice President & General Counsel, Bellagio Hotel Casino

DV000558

DINO DICIANNO

From: aalonso@lionelsawyer.com
Sent: Thursday, October 09, 2003 10:55 AM
To: DINO DICIANNO
Subject: LET INFO

LETMEMO.wpd
(17 KB)

Here is the information that I spoke to you about. I hope it is useful to you.

Hope all is well.

A

Alfredo T. Alonso
Government Affairs Manager
Lionel Sawyer & Collins

- -

- -

MEMORANDUM

To: Robert D. Falss
From: Louis V. Csoka
Subject: S.B. 8 -Construction of "Live Entertainment"
Date: October 9, 2003

As requested by Bruce A. Aguilera, Vice President and General Counsel of Bellagio Casino Hotel, I have researched certain issues involving the proper construction for "live entertainment" pursuant to Nevada Senate Bill 8 of the 20th Special Session. Below is the result of my research:

I. Questions Presented

A. Is the meaning of "live entertainment" identical under the amended Casino Entertainment Tax ("CET") and its successor, the Live Entertainment Tax ("LET")?

B. Once promulgated, will the Department of Taxation's (the "Department") definition of "live entertainment" be controlling under both the CET and the LET?

C. Will the Department's definition of "live entertainment" supercede any other administrative definitions of the same promulgated for purposes of the CET?

II. Short Answers

A. The meaning of "live entertainment" under the amended CET and LET is the same.

B. Once the Department determines the meaning of "live entertainment," that definition will control under both the CET and the LET, regardless of which agency collects the tax.

C. The Department's definition of "live entertainment" will supercede all prior or contemporaneous administrative definitions promulgated to explain that term.

DV000576

DINO DICIANNO

From: Nevada Taxpayers Association [info@nevadataxpayers.org]
Sent: Wednesday, October 08, 2003 10:31 AM
To: Dino DiClanno
Subject: Fw: Memo re LET

Gaylyn received a call this morning from GCB to confirm that they had received the attached which I sent via fax. She was told that they will probably not get to this reg until this afternoon.
I sent a copy to Bill Bible and told him about 2338. I couldn't write it in a way that satisfied me.
Carole

----- Original Message -----
From: Nevada Taxpayers Association
To: Barbara Campbell
Cc: Gaylyn Spriggs ; David Turner
Sent: Tuesday, October 07, 2003 8:30 PM
Subject: Memo re LET

FYI
Carole

NEVADA TAXPAYERS ASSOCIATION
Las Vegas Office
2303 E. Sahara Ave., Ste. 203
Las Vegas, NV 89104
Phone: (702) 457-8442
Fax: (702) 457-6361
E-Mail: info@nevadataxpayers.org
www:nevadataxpayers.org
Carson City Office
501 So. Carson St., Ste 301
Carson City, NV 89701
Phone: 775/882-2697
Fax: 775-8828938

DV000581

DINO DICIANNO

From: Nevada Taxpayers Association [info@nevadataxpayers.org]
Sent: Tuesday, October 21, 2003 2:02 PM
To: Dino DiCianno
Subject: Fw: 10/7/03 Draft of Proposed Amendments to Regulation 13 (LET)

Importance: High

mgm mirage - Reg. 13 comments ... mgm mirage - Reg. 13 comments ...

Hi Dino -

Sorry I forgot to send you transcript. When I went on email just now to find it I came across this which I thought you might find interesting.

Carole
----- Original Message -----
From: "ROBERT FAISS" <rfaiss@lionelsawyer.com>
To: <info@nevadataxpayers.org>
Sent: Friday, October 17, 2003 3:39 PM
Subject: 10/7/03 Draft of Proposed Amendments to Regulation 13 (LET)

Please see

This e-mail message is a confidential communication from the law firm of Lionel Sawyer & Collins and is intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at 702-383-8888 and delete this e-mail message and any attachments from your workstation or network mail system.

October 21, 2003

(702) 383-8839

Dennis K. Neilander, Chairman
Nevada State Gaming Control Board
1919 E. College Parkway
P.O. Box 8003
Carson City, Nevada 89702

Re: 10/07/03 Draft of Proposed Amendments to Regulation 13 (LET)

Dear Mr. Chairman:

This will transmit comments and questions on behalf of MGM MIRAGE concerning the October 7, 2003, draft of "Proposed Amendments to Regulation 13." We were unable to offer testimony at your public hearing on October 8, 2003, because of insufficient time to make a thorough study of the new provisions.

The comments and questions and the sections to which they are directed are as follows:

13.010 (5) - Is it intended that Superbowl parties to which tickets are sold would fall within the definition of "live entertainment"?

13.010 (5)(b) - We support Alternative B as being in accord with the provisions of S. B. 8.

It may be that the language of Alternative B can be reshaped in some respects, but it captures the necessary essence. Types of facilities that are properly excluded from "live entertainment" by this language are casino lounges and bars where the attraction consists of the food or refreshments sold and the ambiance provided. A part of the ambience is the presentation

DV000585

of recorded music that is facilitated by a person. Such persons act merely as facilitators of the recorded music, determining - by the push of a button or the turn of a dial on electronic equipment - which music is most appropriate to maintain the desired ambience for the facility throughout the evening. These "music facilitators" have no substantial interaction with patrons, they do nothing that would constitute visual entertainment for patrons and their names are not advertised as an attraction for patrons.

13.010 (5)(e) - We support the exclusion for "instrumental ambient background music". We assume this exclusion is not affected by 13.010(5)(d)(1) if the facility in which the "instrumental ambient background music" takes place is a bar, lounge or restaurant located in or near gaming areas.

13.010(5)(e) - We recommend adding to this provision "or as part of the background ambience of the facility." An example of this would be an excerpt from an opera sung by a waiter in an Italian restaurant once or twice every hour.

13.020(5) - We support this language. This is an appropriate method to deal with sales in facilities with no admission charges that operate under a continual time schedule. If the food, refreshment or merchandise is ordered while the facility is in a live entertainment status, the charge is taxable, if it is ordered before or after the facility is in a live entertainment status, the charge is not taxable.

13.020(11) - For purposes of clarity and consistency, we recommend that "clearly" be inserted before "see and hear" in the last line.

13.025(6) - We recommend this provision be amended to read as follows:

"If the purpose of the event is not primarily for entertainment, live entertainment at;

"(a) Private meetings or dinners attended by members of a particular group or organization.

"(b) Casual assemblages.

"(c) An event that limits participation to persons who are participants in conventions, extended business meetings or tournaments and their guests."

We suggest that the addition of "group" to 13.025(6)(a) will provide for celebrations of such events as weddings, birthdays and anniversaries.

It appears to us that the language proposed as 13.025(6)(c) might read better as a subsection rather than a separate paragraph.

DV000586

13.050(6) - As the contracting parties are both gaming licensees, why is the approval of the Chairman necessary? Wouldn't it be sufficient for the Chairman to be notified who will pay the tax?

13.060(1) - We suggest the following be inserted in the fourth line following "prosecution":
"commenced prior to the end of the 5-year period".

Please let me know if there are any questions or if we need to supply clarification of any of our proposals.

Best wishes,

Robert D. Faiss

cc: Member Bobby Siller
Member Scott Scherer
Chairman Peter C. Bernhard
Chief Gregory Gale
Deputy Chief Lynda L. Hartzell
Deputy A. G. Antonia A. Cowan
Bruce A. Aguilera, Vice President & General Counsel, Bellagio Hotel Casino

DV000587

DINO DICIANNO

From: Nevada Taxpayers Association [info@nevadataxpayers.org]
Sent: Tuesday, October 21, 2003 2:05 PM
To: Dino DiClanno
Subject: Fw: LET/Gaming
Importance: High

FYI
Carole
----- Original Message -----
From: Nevada Taxpayers Association
To: Barbara Campbell ; David Turner
Cc: Gaylyn Spriggs
Sent: Thursday, October 16, 2003 12:19 PM
Subject: LET/Gaming

Dear All -

I have attached a copy (both in Word Perfect and Word) of that portion of a transcript that Bob Faiss sent me re the Gaming Control Board meeting. I am not sending it to anyone else since I am not sure what the ground rules are concerning dissemination of transcripts. For this reason, I would appreciate it if you would use this just for your information and not share it with anyone else.

Carole

NEVADA TAXPAYERS ASSOCIATION
Las Vegas Office
2303 E. Sahara Ave., Ste. 203
Las Vegas, NV 89104
Phone: (702) 457-8442
Fax: (702) 457-6361
E-Mail: info@nevadataxpayers.org
www.nevadataxpayers.org
Carson City Office
501 So. Carson St., Ste 301
Carson City, NV 89701
Phone: 775/882-2697
Fax: 775-8828938

DV000604

NEVADA RESORT ASSOCIATION

FAX TRANSMISSION COVER SHEET

TO:	Sen. Randolph Townsend Bob Faiss Carole Vilardo Dino DiCianna	**FAX NO.:**	(775) 954-2023 (702) 383-8845 (702) 457-6361 (775) 687-5981
FROM:	Bill Bible	**FAX NO.:**	(702) 735-4620
DATE:	November 17, 2003	**TIME:**	3:40 p.m.
PAGES:	3 (including cover page)		

COMMENTS:

3773 Howard Hughes Parkway #320 North
Las Vegas, Nevada 89109

DV000660

NEVADA RESORT ASSOCIATION

November 17, 2003

MEMORANDUM

TO: Barbara Campbell, Chairwoman, Nevada Tax Commission
Peter Bernhard, Chairman, Nevada Gaming Commission
Dennis Neilander, Chairman, State Gaming Control Board

FROM: William A. Bible, President

SUBJECT: Proposed Regulation on Live Entertainment Tax

At the Joint Workshop on the Live Entertainment Tax that was held on October 30, 2003, I testified that it may be necessary to develop a definition of, and an exemption for, "ambient entertainment" which may take place anywhere in either a gaming or nongaming facility in order to create mood and atmosphere. This type of entertainment is not the primary attraction of the facility and is not the main basis for why patrons come to the facility.

The latest version of the Gaming Control Board's proposed Draft LET Regulations, dated 11/14/03, includes a definion of, and exemption for, "ambient entertainment." Using this definition as a starting point, the Nevada Tax Commission's proposed Draft Regulation, dated October 30, 2003, could be amended to substitute the following definition of "ambient entertainment", with appropriate language change in Section 2(7)(a), for the proposed definition of "ambient background music":

2. "Ambient entertainment" means entertainment that contributes to the general atmosphere of a facility but is not its primary attraction. The term includes:

1. Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant, lounge or similar area if such music does not routinely rise to a volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;

2. Instrumental or vocal music performed in restaurants by employees whose primary job function is that of preparing or serving food, refreshments or beverages to patrons, if such instrumental or vocal music is not advertised as entertainment to the public.

3773 Howard Hughes Parkway #520 North
Las Vegas, Nevada 89109

DV000661

3. Performers of any type who stroll throughout the facility; and

4. Performers situated within the gaming or nongaming areas of a licensed gaming establishment other than in nightclubs, lounges, restaurants or showrooms who enhance the theme of the establishment or attract patrons to the areas in which they perform, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables.

It is also important to define the term "casual assemblage", found in Section 78(5)(i) of SB 8, 20th Special session, in order to create regulatory certainty. Proposed language is set forth below:

"Casual assemblage" includes, but is not limited to:

(a) Participants in conventions, business meetings or tournaments and their guests; or

(b) Persons celebrating a friend's or family member's wedding, birthday, anniversary, graduation, religious ceremony or similar occasion that is generally recognized as customary for celebration.

I would also endorse the comments made by Carol Vilardo of the Nevada Taxpayers Association where she advocates the elimination of "cooking or product demonstrations" from the definition of live entertainment. There are a number of events such as a rib or chili cook off in Sparks or Laughlin that allows vendors to demonstrate their culinary skills and sell products associated with these skills that just do not seem like the type of entertainment envisioned in SB8.

WAB:kd

c: Sen. Randolph Townsend
Members, Regulatory Committee
Bob Faiss
Carol Vilardo
Dino DiCianno

DV000662

DINO DICIANNO

From: Judy Sellin [JSellin@quirkandtratos.com]
Sent: Wednesday, November 05, 2003 3:19 PM
To: 'Barbara Campbell'
Cc: 'Bob Faiss'; 'Terry Graves'; 'Ric Tuttle'

Ted Quirk
Quirk & Tratos
3773 Howard Hughes Parkway, Suite 500 North
Las Vegas, Nevada 89109
Phone - (702) 792-3773
FAX - (702) 792-9002

DV000667

[redacted] CONVENTION CENTER DRIVE
[redacted] VEGAS, NEVADA 89109
(702) 731-1925 • FAX (702) 731-3547

DATE: November 5, 2003

MEMO TO: Barbara Campbell, Chairwoman, Nevada Tax Commission

RE: Live Entertainment Tax

At the Tax Commission workshop last Thursday, you asked that I forward you the proposed text I read during the hearing. It was as follows:

> *Service personnel whose job responsibility is to serve food, refreshments or merchandise shall not be considered live entertainment if they engage in infrequent, non-featured activities such as singing or dancing while performing their service duties.*

We also support the concept proposed by Mr. Faiss that would exempt ambient entertainment that is not the primary motivating factor or purpose of patrons visiting an establishment. We understand that Mr. Faiss, and others, are working to set forth this concept into regulatory language. I would be happy to work with anyone to assist in drafting language that includes these concepts.

We are greatly appreciative of the work being done by the Commission, Gaming Control Board, and [redacted]ir staffs to work through this difficult issue. If we can be of any assistance in any manner, please feel free to contact us.

Ted Quirk

Barbara Campbell: dicianno@govmail.state.nv.us

cc: Bob Faiss rfaiss@lionelsawyer.com
Terry Graves gravestk@aol.com
Ric Tuttle rictuttle@beachlv.com

G:\JSellin\EJQ\BEACH\tax-11-5-03.doc

DV000668

TO NV Taxation Commission - ATTENTION ERIN

Dennis Neilander
Gaming Control Board
1919 E. College Parkway
P.O. 8003
Carson City, NV 89702

I'm Polynesian, and I know many Polynesian musicians and hula dancers. This entertainment tax is going to hurt some, and eliminate work for others. For instance, if a restaurant in a casino should decide to have a Hawaiian buffet one night a week, they will usually want to have a musician and a couple of hula dancers. The musicians will need to sing, and the girls will dance. Definitely causing patrons to look. However, this is not a show the patrons go to see, it simply adds atmosphere.

There are other restaurants that like to provide "fun" for their patrons, and would occasionally hire hula dancers. This law is guaranteed to hurt many Polynesian musicians and hula dancers. Jobs will not be created which would have been.

I understand the difficult position you are in, but when people hear that in the "entertainment capitol of the world," entertainment must "not be of a nature that would tend to cause people to watch as well as listen," people shake their heads and lose faith in the system. I don't envy your situation; you were tossed a hot potato, good luck in handling it! Hula girls and musicians should be allowed to add "atmosphere" to the dinning experience. Preventing them from working helps no one.

Thank you very much for your time and consideration!

Aloha,

Haunani Dew

Haunani Dew
4512 Eugene Ave
Las Vegas, NV 89108

cc: To others concerned.

DV000669

DINO DICIANNO

From: Campbell, Barbara Smith [bcampbell@mrgmail.com]
Sent: Tuesday, November 18, 2003 9:34 AM
To: 'Bill Bible'
Subject: RE: LET Comment Letter

Bill

We are going to incorporate the following into our proposed draft language.

(Under section 11 (4) (b))

1. Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant, lounge or similar area if such music does not routinely rise to a volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;

2. Instrumental or vocal music performed in restaurants by employees whose primary job function is that of preparing or serving food, refreshments or beverages to patron if such instrumental or vocal music is not advertised as entertainment to the public.

(Under Section 11 (7)

"Casual assemblage" includes, but is not limited to:

(a) Participants in conventions, business meetings or tournaments and their guests; or

(b) Persons celebrating a friend's or family member's wedding, birthday, anniversary, graduation, religious ceremony or similar occasion that is generally recognized as customary for celebration.

The DAG has concerns about your recommeded language in Ambient Entertainment #3. In summary, he feels the language may lead to the exemption of "entertainers" at the Gentlemen Clubs. Therefore, we did not incorporate it in our draft. We certainly welcome comments at the hearing.

Ambient Entertainment #4 appears to be appropriate under the GCB. I'm not sure that it is appropriate for Tax. Again, we welcome your comments.

Barbara Smith Campbell
3950 Las Vegas Blvd. South
Las Vegas, Nevada 89119
702-632-7770 LV office
702-597-2952 LV fax
775-328-9553 Reno Office
775-328-9505 Reno fax

DV000675

-----Original Message-----
From: Bill Bible [mailto:williambible@lv.rmci.net]
Sent: Monday, November 17, 2003 4:08 PM
To: Barbara Campbell
Subject: Fw: LET Comment Letter

Barbara:
Original message came back as undeliverable.
Hopefully, this comes through.
Bill
----- Original Message -----
From: Bill Bible
To: Ding Dicianno ; Barbara Campbell
Cc: ROBERT FAISS
Sent: Monday, November 17, 2003 3:39 PM
Subject: LET Comment Letter

Chairwoman Campbell and Deputy Executive Director DiCianno:
Attached are the NRA's comments on the latest draft of the LET Regulations.
As I indicated during our telephone conversations, both of you have done an outstanding job in developing this regulation in a manner that will help keep Nevada as the entertainment capital of the world!
We all appreciate your efforts.
Bill

DV000676

DINO DICIANNO

From: Bill Bible [williambible@lv.rmci.net]
Sent: Monday, November 17, 2003 3:40 PM
To: DINO DICIANNO; Barbara Campbell
Cc: ROBERT FAISS
Subject: LET Comment Letter

Chairwoman Campbell and Deputy Executive Director DiCianno:
Attached are the NRA's comments on the latest draft of the LET Regulations.
As I indicated during our telephone conversations, both of you have done an outstanding job in developing this regulation in a manner that will help keep Nevada as the entertainment capital of the world!
We all appreciate your efforts.
Bill

DV000678

November 17, 2003

MEMORANDUM

TO: Barbara Campbell, Chairwoman, Nevada Tax Commission
Peter Bernhard, Chairman, Nevada Gaming Commission
Dennis Neilander, Chairman, State Gaming Control Board

FROM: William A. Bible, President

SUBJECT: Proposed Regulation on Live Entertainment Tax

At the Joint Workshop on the Live Entertainment Tax that was held on October 30, 2003, I testified that it may be necessary to develop a definition of, and an exemption for, "ambient entertainment" which may take place anywhere in either a gaming or nongaming facility in order to create mood and atmosphere. This type of entertainment is not the primary attraction of the facility and is not the main basis for why patrons come to the facility.

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2. Instrumental or vocal music performed in restaurants by employees whose primary job function is that of preparing or serving food, refreshments or beverages to patrons, if such instrumental or vocal music is not advertised as entertainment to the public.

DV000679

3. Performers of any type who stroll throughout the facility; and

4. Performers situated within the gaming or nongaming areas of a licensed gaming establishment other than in nightclubs, lounges, restaurants or showrooms who enhance the theme of the establishment or attract patrons to the areas in which they perform, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables.

It is also important to define the term "casual assemblage", found in Section 78(5)(i) of SB 8, 20th Special session, in order to create regulatory certainty. Proposed language is set forth below:

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(b) Persons celebrating a friend's or family member's wedding, birthday, anniversary, graduation, religious ceremony or similar occasion that is generally recognized as customary for celebration.

I would also endorse the comments made by Carol Vilardo of the Nevada Taxpayers Association where she advocates the elimination of "cooking or product demonstrations" from the definition of live entertainment. There are a number of events such as a rib or chili cook off in Sparks or Laughlin that allows vendors to demonstrate their culinary skills and sell products associated with these skills that just do not seem like the type of entertainment envisioned in SB8.

WAB:kd

cc: Sen. Randolph Townsend
Members, Regulatory Committee
Bob Faiss
Carol Vilardo
Dino DiClanno

DV000680

Deja Vu, et al. v. Nevada Department of Taxation

Spreadsheet of LET Collections by Taxpayer Group

Taxpayer Groups 10% LET payers	FY04	FY05	FY06	FY07	FY08	FY09	
Gentlemen's Club							
Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures	$ 3,001,494.94	$ 5,036,598.82	$ 5,441,714.56	$ 6,890,235.73	$ 7,193,496.60	$ 8,812,760.62	
All Other Miscellaneous Store Retailers (except Tobacco Stores)	$ 1,945.17	$ -	$ -	$ -	$ -	$ -	
Caterers		$ 20,720.90	$ 19,277.17		$ -	$ -	
Civic and Social Organizations	$ -	$ -	$ 2,812.14	$ -	$ 150.00	$ -	
Corporate, Subsidiary, and Regional Managing Offices						$ 15.00	
Cosmetics, Beauty Supplies, and Perfume Stores	$ 11,528.35	$ 13,444.70	$ 77,185.89	$ -	$ -	$ -	
Drinking Places (Alcoholic Beverages)		$ 1,665.37					
Electronic Shopping	$ 48,020.54	$ 966,956.07	$ 1,118,434.14	$ 1,220,534.24	$ 1,096,782.03	$ 1,145,336.40	
Fine Arts Schools	$ -	$ 619.60	$ -	$ -	$ 38.50	$ -	
Fitness and Recreational Sports Centers	$ 1,300.20	$ 1,237.05	$ 1,169.20	$ 909.17	$ 774.60	$ 764.00	
Food Service Contractors			$ 2,683.50	$ 982.20	$ 1,123.30	$ -	
Full-Service Restaurants			$ 5,271.44	$ 18,017.16			
Gift, Novelty, and Souvenir Stores	$ 6,777.17	$ 58,516.30	$ 21,812.05	$ -	$ 173.50	$ 4,312.89	
Hotels (except Casino Hotels) and Motels	$ -	$ -	$ -	$ 293.80	$ 125.11	$ 3,338.09	
Independent Artists, Writers, and Performers				$ 1,405.46	$ 7,088.44	$ -	
Lessors of Nonresidential Buildings (except Miniwarehouses)	$ -	$ -	$ -	$ -	$ 100.00	$ -	
Motion Picture and Video Production						$ 73,418.34	
Musical Groups and Artists			$ 2,400.78				
Other Direct Selling Establishments	$ 21,011.68	$ 47,941.83	$ 74,762.08	$ 61,020.46	$ 26,655.95	$ 1,921.00	
Other Spectator Sports	$ 302.58						
Promoters of Performing Arts, Sports, and Similar Events without Facilities					$ -		
Recreational Goods Rental	$ 39,176.58	$ 77,738.74	$ 113,704.49	$ 202,196.66	$ 46,142.18	$ 60,816.68	
Sound Recording Studios	$ 12,872.10	$ 7,625.10	$ 9,666.50	$ 8,793.10	$ 3,905.69	$ -	
Sporting and Athletic Goods Manufacturing		$ 6,875.00	$ 3,726.30	$ 3,570.00	$ -		
Sporting Goods Stores					$ -		
Sports and Recreation Instruction					$ -		
Sports Teams and Clubs					$ -	$ -	
Theater Companies and Dinner Theaters					$ 6,802.27	$ 4,002.73	
Unclassified	$ -	$ 1,875.22	$ 2,389.63	$ 141,593.95	$ -		
Subtotal of All 10% LET payers collected by the Department	$ 142,348.10	$ 397,063.17	$ 8,267.96	$ -	$ 339,214.97	$ 159,338.03	

Deja Vu, et al. v. Nevada Department of Taxation

Spreadsheet of LET Collections by Taxpayer Group

5% LET payers

	FY04	FY05	FY06	FY07	FY08	FY09	TOTAL
Administration of General Economic Programs		$ 99,757.47	$ 211,194.41	$ 279,560.21			
Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures			$ 30,287.05	$ 24,708.62	$ 20,738.94		
All Other Miscellaneous Store Retailers (except Tobacco Stores)					$ 10,660.65	$ 6,422.76	
Cosmetics, Beauty Supplies, and Perfume Stores	$ 654,447.46	$ 1,141,170.90	$ 1,405,014.46	$ 1,544,953.37	$ 309,355.09	$ 255,347.93	
Drinking Places (Alcoholic Beverages)	$ 49,363.85	$ -	$ -	$ -	$ -	$ -	
Gift, Novelty, and Souvenir Stores	$ 29,945.81	$ 101,543.05	$ 91,936.57	$ 81,820.89			
Jewelry, Watch, Precious Stone, and Precious Metals			$ 19,806.90				
Lessors of Nonresidential Buildings (except Miniwarehouses)					$ 2,080.00	$ 1,426.57	
Musical Groups and Artists	$ -	$ 335.00	$ 34,133.17	$ 38,092.17	$ 41,312.53	$ 20,945.87	
Other Spectator Sports					$ 48,278.09	$ 13,963.05	
Promoters of Performing Arts, Sports, and Similar Events with Facilities	$ 390,840.80	$ 680,924.43	$ 495,628.24	$ 743,093.21	$ 460,512.11	$ 400,102.70	
Promoters of Performing Arts, Sports, and Similar Events without Facilities			$ 99,852.91		$ 17,049.32	$ -	
Racetracks	$ 2,806.82	$ 4,655.45	$ 4,546.09	$ 5,495.81	$ 3,468.95	$ 743.75	
Sound Recording Studios					$ 3,277.50	$ 3,086.25	
Sporting and Athletic Goods Manufacturing					$ 10,045.65	$ 12,318.00	
Sports Teams and Clubs	$ 4,557.60	$ 5,982.25	$ 6,209.00	$ 6,568.00	$ 7,422.75	$ 5,748.50	
Unclassified	$ 19,610.93	$ 23,327.71	$ 39,734.78	$ 39,055.68			
Subtotal of All 5% LET payers collected by the Department							
Department Total LET Collected							
Total Gaming LET Collections							
Total LET (Gaming + Department)							
Gentlemen's Clubs as % of Total Collected per FY	3%	5%	5%	5%	5%	6%	5%

REQUEST	BATES NUMBER	ISSUE	RESPONSE
Back up information for 10% and 5% LET a. Gift, Novelty, souvenir b. Independent artists, writers, performers c. Musical Groups and Artists d. Promoters of Performing Arts, Sports & similar with facilities e. Promoters of Performing Arts, Sports & similar without facilities f. Unclassified	Not designated in the letter	Would like the "backup documentation"	To do this would reveal taxpayer information which is confidential pursuant to **NRS 368A.180.** (the statute states that this information is both confidential and privileged, and gives only five instances where the information may be revealed 1) testimony regarding taxpayers directly involved; 2) delivery to the taxpayer that taxpayer's records; 3) publication of statistics which prevent the identification of a particular person or a particular document; 4) the IRS; and 5) disclosure to the governor, or AG or a legal representative of the state—none of which apply here.). Additionally, the statute states that this information may not be produced for inspection by any person for use in any action or proceeding. Pursuant to **NRS 49.025**- Reports are privileged by statute and the taxpayer owns the privilege. *See also* US. v. Nixon 419 U.S. 683, 709 (1974) (There is no right to any evidence from "persons protected by a constitutional, common-law or statutory privilege.") and Tidvall v. Eighth Judicial Court, 91 Nev. 520, 525, 539 P.2d 456, 459 (1975) ("[R]evelation of the information asserted to be privileged may not be compelled in order to determine whether or not it is privileged because the legislature has granted the privilege under the statutes relied

			upon by the petitioners."). In addition, the un-redacted information has been provided to the Judge per court order, and she will let you know if any gentlemen's clubs are included. Therefore the Defendants cannot provide any additional information with respect to this request.
Total LET, (gaming + department) Please explain discrepancy between the numbers and provide backup documentation to they can determine the nature of the discrepancy.		The figures do not match exhibits previously submitted-eg. Exhibit B to Reply to Plaintiffs Opposition to Defendant's MSJ, pg 2 "Revenues from LET-Governors budget 2007 – 2009	The discrepancy in your request was discussed and explained in open court -- the numbers in the Exhibit in the reply were based on were reconciled numbers and the numbers in the information recently provided was based on gross receipts. You have asked for the collections, not the reconciled amount. As also explained there was a mistake made when numbers were transposed from 2004 to 2003. As stated to you, there are slight differences which are probably due to misposting. However, as evident in a spread sheet that we have already provided to you, the error rate is very small, less than 1%, and when extended over the entire time period, yields a 0% error rate. Therefore, the small discrepancy does not change the facts of this case.
Physical year 2006 a. the revised chart figures for both the department's collection and the department and gaming control board do not match Exhibit B to Reply to Plaintiffs Opposition to Def MSJ, pg 1 "Revenues		Is requesting additional back up documentation so that they can analyze the discrepancies	As stated above, this issue was explained in open court that the numbers in the Exhibit in the reply were based on were reconciled numbers and the numbers in the information recently provided was based on gross receipts. You have asked for the collections, not the

from LET- Governors budget 2007 – 2009 b. Revised chart figures do not match the Live Entertainment Tax entry found on the correspondence from Dino DiCianno to the Governor dated January 15, 2007 which was attached as Exhibit B, pg 3 to the reply.			reconciled amount. As also explained there was a mistake made when numbers were transposed from 2004 to 2003. As stated to you, there are slight differences which are probably due to misposting. However, as evident in the spread sheet that we provided, the error rate is very small, less than 1%, and when extended over the entire time period, is a 0% error rate. No additional back up information can be provided without giving information that would lead to the discovery of information which would lead to the identity of individual taxpayers which is in violation of NRS 368A.180. Likewise the Department cannot provide report information which is privileged pursuant to NRS 49.025. *See also* US. v. Nixon, and Tidvall.
	DV00003	Redacted information	We will provide the unredacted document.
	DV000005	Information related to all of the years and months	This document only refers to 2004, and we were not provided any other similar documents like this for the other years.
	DV000021	Redacted "notes"	Pursuant to NRS 368A.180 this information is both confidential and privileged. There are four redactions on that page. Two specifically name the entity; the other two provide information will allow the identification of the entities in question. Therefore, none of the redacted information can be unredacted.
	DV000034 – DV000037	Names of the business/events that were redacted- claims that	These businesses are taxpayers, and even if not subject to LET, they have registered with the

		they are not taxpayers, they are business that the legislature considered adding to the LET	Department under other chapters not limited to NRS372.750 and NRS 363A.100 . In addition, many of these names on the list do pay LET and their identity and information is confidential and privileged pursuant to NRS 368A.180. Therefore, pursuant to statute, none of the redacted information can be provided to you. *See also* US. v. Nixon, and Tidvall.
	DV000039 – DV000041	All redactions	To do this would reveal specific taxpayer names and tax collection and return information which is confidential and privileged pursuant to **NRS 368A.180.** The statute provides that this information is both confidential and privileged, and gives only five instances where the information may be revealed 1) testimony regarding taxpayers directly involved; 2) delivery to the taxpayer that taxpayer's records; 3) publication of statistics which prevent the identification of a particular person or a particular document; 4) the IRS; and 5) disclosure to the governor, or AG or a legal representative of the state—none of which apply here. In addition, the seating information would lead to the identity of specific taxpayers which is confidential and privileged. Moreover, **NRS 49.025** prevents the disclosure of reports which are privileged, and in this case, the taxpayer owns the privilege. *See also* US. v. Nixon, and Tidvall. Therefore, none of the redacted information can

			be produced to you in an unredacted form.
	DV000042-DV000047	"Notes" that were redacted	The notes reference specific names of taxpayer's and the business contacts, and/or a specific type of business which, if disclosed would allow identification of a specific business, all of which is both confidential and privileged. NRS 368A.180 (1) & (2)(c). Therefore, none of the redacted information can be unredacted.
	DV000050-DV000058	All redactions	These letters were provided to the Court but cannot be provided to you in unredacted form. The redacted information contains information which would lead to the identity of the persons who wrote the inquiries, and that is confidential and privileged. Pursuant to NRS 368A.180(1) this information does not have to be provided for the "inspection or any person or for use in any action or proceeding." Therefore, none of the redacted information can be unredacted.
	DV000122 – DV000126	All redactions	The redacted information that you have requested contains confidential bank and accounting information. Moreover, the information redacted is not reasonably calculated to lead to the discovery of admissible evidence. NRCP 26(b)(1). Therefore, none of the redacted information can be unredacted. However, the Department has left unredacted the total of the deposits.
	DV000195 – DV000196	All redactions	The redacted information contains the names of and information related to specific taxpayers which is confidential and privileged. NRS

			368A.180. Other redacted information contains the seating capacity of individual taxpayers. You already know the seating capacity of your clients, and the seating capacity of the taxpayers who are not your clients is both confidential and privileged because this information could lead to the determination of the identity of specific taxpayers pursuant to NRS 368A.180. Therefore, none of the redacted information can be unredacted. However, DV00196 provides a total number of businesses with seating fewer than 300 and over 300. *See also* US. v. Nixon, and Tidvall.
	DV000198 – DV000200	All redactions	DV000198 provides the total number of clubs with the seating above and below 300 statewide. The redacted information is the same as on DV000195 and 196. DV000200 contains the names of specific taxpayers and the tax for the reporting periods for these specific taxpayers. This information is confidential and privileged pursuant to NRS 368A.180 and privileged pursuant to NRS 49.025 as a required report. *See also* US. v. Nixon, and Tidvall. Therefore, with the exception of the name of the revenue officer whose name appears at the bottom of the document, none the redacted information can be disclosed. **Debra Toombs** is the revenue officer III whose name was redacted.
	DV000203 –	All redactions	The redacted information contains the names of

	DV000205		taxpayers which is confidential and privileged. NRS 368A.180. It also contains information related to the seating capacity of certain taxpayers which is also confidential, since the release of the information would identify certain taxpayers. NRS 368A.180(2)(c). . *See also* US. v. Nixon, and Tidvall. Therefore, with the exception of the names of the Department employees, none the other redacted information can be disclosed.
	DV000207	The whiteout of October - December, 2004	The document that you have is exactly the same as the Department's copy.
	DV000551 – DV000552	All redactions	This is a letter from the LVCVA to the Department with input into the proposed legislation- since it was part of the workshop process we have produced it to you in its unredacted form.
	DV000554	All redactions	This document was part of the regulation workshop process. Accordingly, we have produced it to you in its unredacted form.
	DV000556 – DV000558	All redactions	This document was part of the regulation workshop process. Accordingly, we have produced it to you in its unredacted form.
	DV000575 – DV000576	All redactions	This document was part of the regulation workshop process. Accordingly, we have produced it to you in its unredacted form.
	DV000581	All redactions	This document was part of the regulation workshop process. Accordingly, we have produced it to you in its unredacted form.
	DV000584 –	All redactions	This document was part of the regulation

	DV000587		workshop process. Accordingly, we have produced it to you in its unredacted form.
	DV000604	All redactions (claims does not have to do with the identification of specific taxpayers)	This document was part of the regulation workshop process. Accordingly, we have produced it to you in its unredacted form.
	DV000660 – DV000662	All redactions	This document was part of the regulation workshop process. Accordingly, we have produced it to you in its unredacted form.
	DV000667 – DV000669	All redactions	This document was part of the regulation workshop process. Accordingly, we have produced it to you in its unredacted form.
	DV000670 – DV000671	All redactions	This document is confidential pursuant to NRS368A.180.
	DV000675 – DV000680	All redactions	Portions of these documents were part of the regulation workshop process. Accordingly, we have produced those portions to you in their unredacted form.
Interrogatory 1, 2, 3, 15		Refer to documents which are redacted to the point of non responsiveness (Exhibit 3 to Motion to Compel)	**Interrogatory 1**- You have asked for taxpayer information regarding "each and every person or business entity that has paid LET from 2003 to the present. You have also requested the amounts paid by the entities for each year. Both NRS 368A.180 as well as NRS 49.025 prohibit this disclosure. *See also* US. v. Nixon, and Tidvall. However, pursuant to the Court Order, the Defendants have prepared a spread sheet and provided it to Plaintiffs which shows all categories of LET taxpayers providing live entertainment, the amounts of LET paid by each of the collective categories in each fiscal year from 2003 to the present for

			both 5% and 10% taxpayers. *See*(DV001194-DV001195) **Interrogatory 2-** You have asked for taxpayer information regarding "each and every person or business entity that has paid LET from 2003 to the present and who no longer is required to pay in a subsequent year due to the changes to the statute. Taxpayer information is both confidential and privileged pursuant to NRS 368A.180 as well as NRS 49.025. *See also* US. v. Nixon, and Tidvall. **Interrogatory 3-** You have requested the identity of specific taxpayers who were not subject to the original version of the LET who in subsequent years became responsible for LET. This information is confidential and privileged taxpayer information which cannot be disclosed pursuant to NRS 368A.180 as well as NRS 49.025. *See also* US. v. Nixon, and Tidvall. **Interrogatory 15-** You have requested the identity of each and every person or business who has become subject to LET as a result of the amendments to NRS 368A.200 which changed the seating requirements from 300 to 200. This information is confidential and privileged taxpayer information which cannot be disclosed pursuant to NRS 368A.180 as well as NRS 49.025. *See also* US. v. Nixon, and Tidvall.

Interrogatory 19		Department is non responsive because it refuses to identify any entities, persons businesses or classes that have requested to be exempt from LET	This information has been provided for an in camera review pursuant to Court Order. This information is both confidential and privileged taxpayer information which cannot be disclosed pursuant to NRS 368A.180 as well as NRS 49.025. *See also* US. v. Nixon, and Tidvall.
Interrogatory 20		References a non existent exhibit AAA, incorporates response 19 and refuses to identify any entities, persons businesses or classes that have requested to be exempt from LET	As stated on several occasions, because of a typographical error, the exhibit referenced in response 20 should have been "AA" not "AAA". In addition, the Defendant cannot disclose any taxpayer information by law pursuant to NRS 368A.180 as well as NRS 49.025. *See also* US. v. Nixon, and Tidvall.
Verify that the department is maintaining its position that it will not disclose the names of taxpayers along with the aggregate amounts of yearly LET paid by each, even under protective order.		References affidavit of Mr. Hoffer per Exhibits 1 and 1a to Plaintiffs reply.	No statute or regulation provides for disclosure of the information that you have requested under a protective order or any other method. Mr. Hoffer's affidavit does not change the statutory requirements- The information that you have requested does not come under any of the five statutory exceptions to NRS 368A.180. In addition, the "Department may not be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding." NRS 368A.180(1). Accordingly, the information that you have requested is both confidential and privileged by law pursuant to NRS 368A.180 and NRS 49.025. *See also* US. v. Nixon, and Tidvall.

Redacted name of Revenue Officer III should not have been redacted	DV000195-DV000198		The redacted name is Debra Toombs.

TRANSMISSION VERIFICATION REPORT

TIME : 12/06/2010 10:22
NAME :
FAX :
TEL :
SER.# : 000G9N975636

DATE,TIME	12/06 10:16
FAX NO./NAME	4863416
DURATION	00:05:26
PAGE(S)	21
RESULT	OK
MODE	STANDARD ECM

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December 6, 2010

VIA HAND DELIVERY
The Honorable Jennifer P. Togliatti
District Court Judge – Department 9
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

RE: ***Deja Vu Showgirls of Las Vegas, et al v. Nevada Dept of Taxation, et al***
9th Judicial District Court File No. A533273

Honorable Togliatti:

Pursuant to this Court's request, the purpose of this letter is to detail the discovery disputes that are currently outstanding in advance of the hearing scheduled for December 9, 2010.

I sent a letter to counsel for the Defendants, Blake Doerr, on October 25, 2010, detailing the information that still had not been provided to Plaintiffs (Exhibit A). On November 22, 2010, Mr. Doerr mailed a supplemental document production, which contained certain documents previously provided, but un-redacted to varying degrees. In addition, he provided a

TRANSMISSION VERIFICATION REPORT

TIME : 12/06/2010 10:29
NAME :
FAX :
TEL :
SER.# : 000G9N975636

DATE,TIME	12/06 10:25
FAX NO./NAME	4863416
DURATION	00:03:33
PAGE(S)	17
RESULT	OK
MODE	STANDARD ECM

October 27, 2003

(702) 383-8839

Dennis K. Neilander, Chairman
Nevada State Gaming Control Board
1919 E. College Parkway
P.O. Box 8003
Carson City, Nevada 89702

Re: 10/07/03 Draft of Proposed Amendments to Regulation 13 (LET)

Dear Mr. Chairman:

This will transmit comments and questions on behalf of MGM MIRAGE concerning the October 7, 2003, draft of "Proposed Amendments to Regulation 13." We were unable to offer testimony at your public hearing on October 8, 2003, because of insufficient time to make a thorough study of the new provisions.

TRANSMISSION VERIFICATION REPORT

TIME : 12/06/2010 10:37
NAME :
FAX :
TEL :
SER.# : 000G9N975636

DATE,TIME	12/06 10:32
FAX NO./NAME	4863416
DURATION	00:04:33
PAGE(S)	18
RESULT	OK
MODE	STANDARD ECM

DINO DICIANNO

From: Campbell, Barbara Smith [bcampbell@mrgmail.com]
Sent: Tuesday, November 18, 2003 9:34 AM
To: 'Bill Bible'
Subject: RE: LET Comment Letter

Bill

We are going to incorporate the following into our proposed draft language.

(Under section 11 (4) (b))

1. Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant, lounge or similar area if such music does not routinely rise to a volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;

2. Instrumental or vocal music performed in restaurants by employees whose primary job function is that of preparing or serving food, refreshments or beverages to patron if such instrumental or vocal music is not advertised as entertainment to the public.

(Under Section 11 (7)

"Casual assemblage" includes, but is not limited to:

(a) Participants in conventions, business meetings or tournaments and their guests; or

(b) Persons celebrating a friend's or family member's wedding, birthday, anniversary, graduation, religious ceremony or similar occasion that is generally recognized as customary for celebration.

The DAG has concerns about your recommended language in Ambient Entertainment #3. In summary, he feels the language may lead to the exemption of "entertainers" at the Gentlemen Clubs. Therefore, we did not incorporate it in our draft. We certainly welcome comments at the hearing.

Ambient Entertainment #4 appears to be appropriate under the GCB. We not sure that it is appropriate for

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CLERK OF THE COURT

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Attorneys for the Nevada Defendants

DISTRICT COURT

CLARK COUNTY NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a *Déjà Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, LLC d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, LLC, d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*,

Plaintiff(s),

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

Case No. A533273
Dept. No. IX

ORDER DENYING MOTION FOR SUMMARY JUDGMENT WITHOUT PREJUDICE

Date of Hearing: November 13, 2008
Time of Hearing: 9:00 a.m.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT came on for hearing on November 13, 2008;

David J. Pope, Senior Deputy Attorney General, and Blake A. Doerr, Deputy Attorney General, appeared on behalf of the Defendants; William J. Brown, Esq. and Bradley J. Shafer, Esq. appeared on behalf of the Plaintiffs;

. . .

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

The Court having considered the papers and pleadings as well as the oral argument and finding that material issues of fact exist, hereby orders:

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT is DENIED without prejudice.

IT IS SO ORDERED.

DATED this 9th day of December, 2010.

Jennifer Togliatti
DISTRICT COURT JUDGE

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
Blake A. Doerr
Senior Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a *Déjà Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, LLC d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, LLC, d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*,

Plaintiff(s),

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

Case No. A533273
Dept. No. IX

ORDER DENYING MOTION TO DISMISS WITHOUT PREJUDICE

Date of Hearing: July 31, 2008
Time of Hearing: 9:00 a.m.

DEFENDANTS' MOTION TO DISMISS came on for hearing on July 31, 2008;

David J. Pope, Senior Deputy Attorney General, and Blake A. Doerr, Deputy Attorney General, appeared on behalf of the Defendants;

Diana Sullivan, Esq. and Bradley J. Shafer, Esq. appeared on behalf of the *Plaintiffs*;

. . .

The Court having considered the papers and pleadings as well as the oral argument hereby orders:

DEFENDANTS' MOTION TO DISMISS is DENIED without prejudice.

IT IS SO ORDERED.

DATED this 1st day of December, 2010.

Jennifer Togliatti
DISTRICT COURT JUDGE

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
Blake A. Doerr
Senior Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

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CLERK OF THE COURT

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VIVIENNE RAKOWSKY
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vrakowsky@ag.nv.gov
Attorneys for Nevada Department of Taxation

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C. d/b/a Déjà vu Showgirls, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings, K-KEL INC. d/b/a Spearmint Rhino Gentlemen's Club OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, L.L.C., d/b/a Sapphire, THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club, D. WESTWOOD, INC. d/b/a Treasures, and D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores, Plaintiffs, vs. NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only, Defendants.	Case No. A533273 Dept No. IX **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that a Order Denying Motion for Summary Judgment Without Prejudice was entered on 9th day of December, 2010, and e-filed on the 10th day of

. . .

. . .

. . .

December, 2010, a copy of which is attached hereto.

DATED this 15th day of December, 2010.

CATHERINE CORTEZ MASTO
Attorney General

By: /s/ BLAKE A. DOERR
BLAKE A. DOERR
Senior Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CERTIFICATE OF MAILING

I, hereby certify that on the 15th day of December, 2010, I served the foregoing **NOTICE OF ENTRY OF ORDER**, by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
The William H. Brown Law Office, Ltd.
330 S. Third St., Ste. 860
Las Vegas, NV 89101

Bradley J. Shafer
Shafer & Associates, P.C.
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906-2110

/s/ TRACI PLOTNICK
An employee of Office of Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

ORDR
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Attorney General
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Attorneys for the Nevada Defendants

DISTRICT COURT

CLARK COUNTY NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a *Déjà Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, LLC d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, LLC, d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*, Plaintiff(s), vs. NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only, Defendants.	Case No. A533273 Dept. No. IX **ORDER DENYING MOTION FOR SUMMARY JUDGMENT WITHOUT PREJUDICE** Date of Hearing: November 13, 2008 Time of Hearing: 9:00 a.m.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT came on for hearing on November 13, 2008;

David J. Pope, Senior Deputy Attorney General, and Blake A. Doerr, Deputy Attorney General, appeared on behalf of the Defendants; William J. Brown, Esq. and Bradley J. Shafer, Esq. appeared on behalf of the Plaintiffs;

. . .

The Court having considered the papers and pleadings as well as the oral argument and finding that material issues of fact exist, hereby orders:

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT is DENIED without prejudice.

IT IS SO ORDERED.

DATED this 9th day of December, 2010.

Jennifer Togliatti
DISTRICT COURT JUDGE

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
Blake A. Doerr
Senior Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

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CLERK OF THE COURT

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Attorneys for Nevada Department of Taxation

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C.) d/b/a Déjà vu Showgirls, LITTLE DARLINGS OI) LAS VEGAS, L.L.C., d/b/a Little Darlings, K-KEL) INC. d/b/a Spearmint Rhino Gentlemen's Club) OLYMPUS GARDEN, INC., d/b/a Olympi) Garden, SHAC, L.L.C., d/b/a Sapphire, THI) POWER COMPANY, INC., d/b/a Crazy Hors) Too Gentlemen's Club, D. WESTWOOD, INC.) d/b/a Treasures, and D.I. FOOD & BEVERAGI) OF LAS VEGAS, L.L.C., d/b/a Scores,

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

Case No. A533273
Dept No. IX

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that a Order Denying Motion to Dismiss Without Prejudice was entered on 9th day of December, 2010, and e-filed on the 10th day of December, 2010, a

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. . .

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

copy of which is attached hereto.

DATED this 15th day of December, 2010.

CATHERINE CORTEZ MASTO
Attorney General

By: /s/ BLAKE A. DOERR
BLAKE A. DOERR
Senior Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CERTIFICATE OF MAILING

I, hereby certify that on the 15th day of December, 2010, I served the foregoing **NOTICE OF ENTRY OF ORDER**, by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
The William H. Brown Law Office, Ltd.
330 S. Third St., Ste. 860
Las Vegas, NV 89101

Bradley J. Shafer
Shafer & Associates, P.C.
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906-2110

/s/ TRACI PLOTNICK
An employee of Office of Attorney General

Attorney General's Office
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DISTRICT COURT
CLARK COUNTY NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a *Déjà Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, LLC d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, LLC, d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*, Plaintiff(s), vs. NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only, Defendants.	Case No. A533273 Dept. No. IX **ORDER DENYING MOTION TO DISMISS WITHOUT PREJUDICE** Date of Hearing: July 31, 2008 Time of Hearing: 9:00 a.m.

DEFENDANTS' MOTION TO DISMISS came on for hearing on July 31, 2008;

David J. Pope, Senior Deputy Attorney General, and Blake A. Doerr, Deputy Attorney General, appeared on behalf of the Defendants;

Diana Sullivan, Esq. and Bradley J. Shafer, Esq. appeared on behalf of the *Plaintiffs*;

. . .

The Court having considered the papers and pleadings as well as the oral argument hereby orders:

DEFENDANTS' MOTION TO DISMISS is DENIED without prejudice.

IT IS SO ORDERED.

DATED this 1st day of December, 2010.

Jennifer Togliatti
DISTRICT COURT JUDGE

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
Blake A. Doerr
Senior Deputy Attorney General

Attorney General's Office
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DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	December 28, 2010

06A533273 Little Darlings Of Las Vegas LLC, K-Kel Inc, et al
vs
Nevada Dept Of Taxation, Olympus Garden Inc, et al

December 28, 2010	9:00 AM	Status Check	Status Check: Reassignment / Time Schedule

HEARD BY: Togliatti, Jennifer COURTROOM: RJC Courtroom 14A

COURT CLERK: Alan Castle

RECORDER: Yvette G. Sison-Britt

PARTIES PRESENT:

Deja Vu Showgirls Of Las Vegas LLC	Plaintiff
Shafer, Bradley J.	Attorney
Nevada Dept Of Taxation	Defendant
Nevada State Board Of Examiners	Defendant
Nevada Tax Commission	Defendant
Doerr, Blake A.	Attorney
Rakowsky, Vivienne	Attorney

JOURNAL ENTRIES

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Order denying motion for preliminary injunction without prejudice prepared by Plaintiff SIGNED IN OPEN COURT and order denying res judicata claim SIGNED IN OPEN COURT and returned to Mr. Doerr. Colloquy regarding order regarding motion for summary judgment and motion to

Matter recalled. Bradley Shafer, Esq. present via phone conference. Colloquy regarding separation of powers argument. Order returned to counsel for correction to add language regarding pending determination as to the separation of powers language and denial was based upon fact and law.

Colloquy regarding pending ruling on separation of powers issue, Discovery issues and scheduling order once a determination has been made on the pending issues. Court advised counsel regarding

the Court's new assignment and anticipated reassignment of case during the first week of January 2011. COURT ORDERED, status check on Chief Judge's calendar to determine where case is going to be assigned. Colloquy regarding Discovery, stipulation regarding cut-offs. Counsel inquired regarding having case transferred to Judge Gonzalez for the purpose of Judicial Economy. Court noted she already planned on speaking with the Presiding Civil Judge regarding transfer of case and would bring counsel's request to transfer to Judge Gonzalez since she has some familiarity with the case and that would limit additional delays following a ruling by this Court on the separation of powers issue. Further, Court will advise parties next date of any developments in the transfer of case.

01/13/2011 9:00 a.m. Status Check: Pending Ruling In Re - Separation of Powers Issue ... Discovery Issues ... Trial Scheduling Order (Transfer of Case)

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01/05/2011 04:03:47 PM

CLERK OF THE COURT

ORDR

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DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a *Déjà Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, LLC, *et al.*, Plaintiffs, vs. NEVADA DEPARTMENT OF TAXATION NEVADA TAX COMMISSION, *et al,* Defendants.	Case No.: A533273; ***Coordinated with*** Case No.: A554970 **ORDER DENYING DEFENDANTS' *RES JUDICATA* CLAIM** Hearing Date: December 9, 2010 Hearing Time: 9:00 a.m.

Before this Court is that portion of the Plaintiffs' Motion for Preliminary Injunction asserting that N.R.S. §368A.280(1) violates the separation of powers provision of the Nevada Constitution and is,

therefore, invalid and unenforceable (the "Motion"). The Defendants have asserted in a second supplement to their opposition to the Motion that the issues/claims raised in the Motion regarding the claimed unconstitutionality of N.R.S. §368A.280(1) are barred by *res judicata* in light of rulings by the United States District Court for the District of Nevada and the Ninth Circuit United States Court of Appeals in the case generally captioned as Deja Vu Showgirls of Las Vegas, L.L.C. v. The Nevada Department of Taxation, District Court No. 2:06-cv-0480-RLH-RJJ, and appellate court docket number 06-16634.

The Motion having come on for hearing before this Honorable Court on December 9, 2010, at the hour of 9:00 a.m., and the Court having read and considered the papers and pleadings on file herein and the arguments of counsel, the Court hereby orders as follows:

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants' claim that Plaintiffs' Motion for Preliminary Injunction in regard to the alleged unconstitutionality of N.R.S. §3684.280(1) is barred by *res judicata* is hereby DENIED.

IT IS FURTHER ORDERED that this Court will rule on Plaintiffs' separation of powers argument contained in the Motion by separate order.

Dated this 28th day of December, 2010.

IT IS SO ORDERED.

Jennifer P. Togliatti

JENNIFER P. TOGLIATTI
DISTRICT COURT JUDGE

Respectfully Submitted:

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WILLIAM H. BROWN, LTD.

By: 

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DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	January 13, 2011

06A533273 Little Darlings Of Las Vegas LLC, K-Kel Inc, et al
vs
Nevada Dept Of Taxation, Olympus Garden Inc, et al

January 13, 2011 **9:00 AM** **Request of Court** **Assignment D.C. XI**

HEARD BY: Togliatti, Jennifer COURTROOM: RJC Courtroom 14A

COURT CLERK: Alan Castle

RECORDER: Yvette G. Sison-Britt

PARTIES PRESENT:

Deja Vu Showgirls Of Las Vegas LLC	Plaintiff
Shafer, Bradley J.	Attorney
Brown, William H.	Attorney
Nevada Dept Of Taxation	Defendant
Nevada State Board Of Examiners	Defendant
Nevada Tax Commission	Defendant
Rakowsky, Vivienne	Attorney
Doerr, Blake A.	Attorney
Pope, David J.	Attorney

JOURNAL ENTRIES

- Status Check: Pending Ruling In Re - Separation of Powers Issue ... Discovery Issues ... Trial Scheduling Order (Transfer of Case)

Colloquy regarding assignment of the case. Based upon consideration of the suggestion of parties last date. The Court has discussed with the Presiding Civil Judge the case and the facts at issue in this case, as well as the law at issue in this case and the fact that Judge Gonzalez has some familiarity with this case as well as the fact that she is the Presiding Civil Judge, to ensure the orderly administration of justice in this matter, Pursuant to EDCR Rule 1.30(b)(15), by Authority of Chief Judge, COURT ORDERS, case ASSIGNED to Department XI. FURTHER, Court has discussed that there are two outstanding legal issues that remain undecided before this Court; inherent authority issue and

This Court declines to rule on the inherent authority issue and Discovery matters which are still pending and should be heard before the Trial Court. This Court has advised it need her immediate attention and as a result of this determination, Court asks parties to Provide Judge Gonzalez a copy of the IN-CAMERA production for her to review everything that has been provided to this Court. At the request of Ms. Rakowsky, this Court will return the IN-CAMERA production already produced back to counsel. Court directed counsel to contact Court in chambers for return of production. Mr. Shafer expressed concern regarding this Court's prior ruling. Court noted there has been no definitive ruling to date on Plaintiff's Discovery request. Court find counsel is entitled and directed counsel make Discovery request and have it ruled upon by Judge Gonzalez. Mr. Shafer indicated he provided Court with a chart listing the Plaintiff's unresolved Discovery requests.

01/26/11 10:00 a.m. Status Check: Progress of Case//Pending Issue In Re - Separation of Powers Issue//Discovery Issues (D.C. XI - 1 HOUR)

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Plaintiff(s),

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

Case No. A533273
Dept. No. IX

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION WITHOUT PREJUDICE

Date of Hearing: July 31, 2008
Time of Hearing: 9:00 a.m.

DISTRICT COURT
CLARK COUNTY NEVADA

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION came on for hearing on July 31, 2008;

David J. Pope, Senior Deputy Attorney General, and Blake A. Doerr, Deputy Attorney General, appeared on behalf of the Defendants;

Diana Sullivan, Esq. and Bradley J. Shafer, Esq. appeared on behalf of the Plaintiffs;

The Court, having considered the papers and pleadings as well as the oral argument finds:

That the Plaintiffs cannot meet the element of showing they have suffered irreparable harm;

That this decision is not a statutory denial based on NRS 372.670 but is based upon the facts and law presented; and hereby orders:

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION is DENIED without prejudice. Further, this Court notes the separation of powers issue has not been ruled upon herein.

DATED this 5th day of January, 2011.

IT IS SO ORDERED.

Jennifer Togliatti
DISTRICT COURT JUDGE

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By:
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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, et al. Plaintiffs, vs. NEVADA DEPARTMENT OF TAXATION NEVADA TAX COMMISSION, et al., Defendants.	.	CASE NO. A-533273 DEPT. NO. 9 *Coordinated with:* A-554970 **Transcript of Proceedings**

BEFORE THE HONORABLE JENNIFER TOGLIATTI, DISTRICT COURT JUDGE

REQUEST OF COURT

THURSDAY, JANUARY 13, 2011

APPEARANCES:

FOR THE PLAINTIFFS:	WILLIAM H. BROWN, ESQ. 330 S. Third St., Ste. 860 Las Vegas, NV 89101 BRADLEY J. SHAFER, ESQ. 3800 Capitol City Blvd, Ste. 2 Lansing, MI 48906
FOR DEPT. OF TAXATION:	VIVIENNE RAKOWSKY, ESQ. BLAKE DOERR, ESQ. DAVID J. POPE, ESQ. Attorney General's Office 555 E. Washington Ave., #3900 Las Vegas, NV 89101

COURT RECORDER:	TRANSCRIPTION BY:
YVETTE SISON-BRITT District Court	VERBATIM DIGITAL REPORTING, LLC Englewood, CO 80110 (303) 798-0890

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

LAS VEGAS, NEVADA, THURSDAY, JANUARY 13, 2011, 8:59 A.M.

THE COURT: Okay, I'm going to call the Deja Vu case. Counsel, will you state your appearances for the record.

MR. SHAFER: Bradley Shafer appearing on behalf of the plaintiffs pro hoc vice, Your Honor.

MR. BROWN: William Brown, local counsel for the plaintiffs.

MS. RAKOWSKY: Vivienne Rakowsky from the Attorney General's Office on behalf of the Department of Taxation.

MR. DOERR: Blake Doerr from the Attorney General's Office on behalf of the Department of Taxation.

MR. POPE: And David Pope also with the Attorney General's Office on behalf of the defendants.

THE COURT: The first thing I wanted to address was the assignment of the cases. I have given careful consideration to your suggestion at the last court date. And I have also discussed the issue of the assignment of the case with our presiding civil judge, Judge Gonzalez.

Based upon my understanding of the facts at issue in this case, and the law at issue in this case, and the fact that she has some familiarity with the case because she's had you appear before her in my stead previously, and the fact that she is the presiding civil judge, I have decided to, pursuant to EDCR 1.30, to ensure the orderly administration of

justice in this matter, ordered the case transferred to Judge Gonzalez.

Now, I've also discussed with Judge Gonzalez that there are two outstanding legal issues that, of legal discovery issues that the parties have been waiting for me to decide. One of the issues that comes to mind when considering all of this is that because there are issues of constitutionality, and other significant issues associated with statutory interpretation, I am a little -- I was a little concerned about making some specific rulings that then the whole case goes to her and then she gets reversed from my rulings, or she disagrees with my rulings. That's a problem.

So you've done a lot of work in front me regarding the two issues that are pending. My concern is I -- I think I'm going to decline to rule on the inherent authority issue, because I think if it's not moot, quite frankly, by a denial of preliminary injunction, then she should rule upon it, because it's her case, and at the end of the day she's going to decide your issues, and she's been given a case reduction, based upon her presiding judge situation and her business court matters, so she has more time than, perhaps, she used to.

And I have advised her that this case needs her immediate attention so she's going to take it and, because it's getting -- getting to that point.

So then the only other issues were the discovery issues. Again, you all are going to think that you've been through all of this and I'm punting the matter to her, which to -- that is the practical effect, is I am punting this to Judge Gonzalez because at the end of the day she's the one that's either going to make the summary judgment ruling, try the case, decide your procedural issues regarding the Petition for Judicial Review that you believe should have been filed versus what has been filed and all those issues.

So what I -- what I propose to you is, you know, the bad news is you're not leaving here with a ruling and you didn't get one before. The good news is you made a specific request that seemed reasonable to me, based upon all the hard work that you've done in this case and my familiarity with the issues that I'm going to grant. And you are going to Judge Gonzalez.

So the question becomes, my plan was to go down the hall and advise her of the Status Check date that I set in her department for her, and advise her of the issues that are pending. The only thing I need you to do is give you the -- have her give -- have you give her a copy of your in camera production -- I know you have a copy of it -- so that she can review it, because otherwise, we're having a hybrid of decision-making.

So normally I think this would result in a delay.

But based upon my conversations with her, I don't think it will be much of a delay. I told her if she takes this case, if she's willing to take this case, she has to prioritize it because of its age and pending issues. And so she agreed to do that. And she's -- I'm assuming one of the reasons you all agreed to her assignment or -- or requested it, is because of your familiarity with her.

So she'll get it done. And I apologize for the inconvenience, but at some point I've got to make -- I'm going to make a proclamation about the inherent authority of the courts and order discovery either she might not have, or she would have and I wouldn't have. I'm not comfortable handing her my, here's all my rulings, good luck with that.

So I know that's an inconvenience and it will result in a delay, but it won't be a significant delay because I've made those arrangements with her. Do you have any questions?

MR. SHAFER: Your Honor, the only issue that I foresee on the hand-off and regarding the discovery issue is what the defense raised last time in regard to the language of that minute order and whether there was a full definitive ruling in regard to discovery.

Now, you know, since the date of that minute order we've -- I've now been back here to Vegas four times, and I've been here on a telephone conference as well as we were discussing what additional discovery, if any, the plaintiffs

are entitled to. And so my only concern is if you're just giving this case over to her, the defense -- the defendants are going to say, here's Judge Togliatti's minute order, all the discovery has already been ruled on, there's nothing more there. And --

THE COURT: Well, that -- that's not true because I did -- I ordered an in camera production and went through line by line and asked to be able to review those to make a determination as to whether anything else was required.

So to the extent that I didn't -- I mean, I thought that's what we were doing here. And perhaps I'm not articulating myself very well.

MR. SHAFER: I agree with you a hundred percent, but a Court speaks through its written orders and --

THE COURT: Okay, well give me a written Order and I'll speak through it --

MR. SHAFER: Okay.

THE COURT: -- saying that the Court has continued to consider discover issues, and quite frankly --

MR. SHAFER: And it's just made no definitive --

THE COURT: It made no -- well, I haven't ruled upon the -- you know, the Department of Taxation's position that under no circumstances can the Court order what you're asking for has not been ruled upon.

I mean, they did produce what I earlier ordered. I

mean, they have complied with what I've ordered thus far. I don't -- and in an appropriate fashion. And to that -- to the extent that they met that argument, they're correct.

But by no means did the Court intend the language of that previous minute order to conclude the discovery issues. And so to the extent that I need a written Order to satisfy you that you are still free to have your discovery requests considered by Judge Gonzalez, if that's -- I mean, I thought that's what we've been doing, then I don't know what, if any, objection you have to that.

You have argued that -- that I made a ruling and you complied with it, and -- and that should be it, and I'm not -- I'm not authorized or would be in violation of Nevada law to order anything else. But, I mean, I don't think that we have been in the posture that we're done considering the request for discovery, correct?

MS. RAKOWSKY: Yeah, I believe that the -- the basic order that we're going back to is the one where you were supposed to check to make sure that the -- we were going to do it by categories, which we did.

And I believe that you were going to check to make sure that the entities listed on each category were, in fact, entities that belonged in that category and that those categories did not contain gentlemen's clubs. And I believe that's where we were on the discovery.

I thought that, you know, pursuant to the Discovery Commissioner order and your subsequent order that that's -- that's the point that we were at discovery. I didn't think that we were going to reopen the whole issue to start producing all the -- all of the original documents that the plaintiffs has asked for.

MR. SHAFER: Your Honor, about three or four hearings ago I gave you their chart and I had underlined in red, I gave you my copy, and you're saying, Mr. Shafer, you want everything? I said no, Your Honor, I've actually limited it down, and here's what I had, you know, underlining my own in regards to certain categories where I wanted the underlying documentation so that I could see what those figures comprised of.

And I think that's what we've been arguing about, of whether I get any of that.

THE COURT: I think you're entitled to make that request to Judge Gonzalez. I don't think I've ruled upon that request. I'm clear on what you've been asking for. I'm just saying that I -- I -- if I wasn't clear, that I was still considering it, then -- then that's my (indiscernible).

MR. SHAFER: I think as long as I can get a transcript of this hearing, in case the issue comes up in front of Judge Gonzalez, we'll be fine.

THE COURT: Okay. Well, here's my question. How

long would it take you to get -- because I -- I'm not comfortable just handing her what I have. And there's a reason for that. Because if -- if you all are -- you have to give her what you want her to have so that you know that she has everything. And then I'm not part of some inquiry later that hey, you didn't give her my list with the red underlines. I'm not comfortable with that.

I mean, I have it, but I'm not comfortable with that because then I'm somehow part of it. So I know it's an inconvenience, I do, and I apologize for that inconvenience. But to ensure that you are satisfied that she got everything you wanted her to have that's previously been given to me, and the record can be made by each side that that's been done, as opposed to relying on it being done behind the scenes, which I'm not comfortable with, then I need you to do that. How long do you think that would take?

Basically, giving her what you've given me for your in camera review and -- because here's the other thing. I know I'm -- I brought up at some point filing that under seal. I never did it, because we never really got to that point. I mean, the reason you file something under seal is because you're going to make a ruling, and then for appellate purposes, or Writ purposes, that is under seal for review by the Supreme Court.

Okay, I haven't made that ruling. And so I haven't

actually -- you know, if I disallowed it and didn't allow them to have it, then -- then presumably it would be under seal for him to argue to the Supreme Court, go look at that document, look, it's got all these things, there's no way for me to know, I need it, I need it, I need it.

If I denied it -- I mean, if I granted it, you're saying look at all this private tax information, she's not entitled to give this under NRS whatever. It needs to be filed at some point. But I would assume that because we have to do a written order with that, that she would want to make her own finding. I think it's kind of a no-brainer, but that's for her to decide. But it will be fairly -- that's the least complicated issue in this case.

But it still has not been filed under seal. I mean, we've talked about it, but I just want to make a record I didn't file it because there's no Order and no decision has been made. So when that happens, somebody's got to remember to file that.

MS. RAKOWSKY: Your Honor, then can we request the documents that we provided to come back to us so they're not languishing in an office somewhere that become a public record at some point.

THE COURT: (Indiscernible) there's always something (indiscernible) anyway. I will -- I'm in about ten boxes still.

MS. RAKOWSKY: Okay.
THE COURT: So it's there somewhere. And if you call my office in about a week, I will look for it between now and then and -- and return it to you. But I'm not -- like I said, I would rather return it to you, but still have you give her what you want her to have instead of me doing that.
MS. RAKOWSKY: That's fine, Your Honor.
THE COURT: Okay.
MS. RAKOWSKY: Thank you very much.
THE COURT: So how long do you need to do that?
MR. SHAFER: All I have, I guess -- I mean, the pleadings are the pleadings, right? You're not asking --
THE COURT: You have your red -- red -- you have your hot -- you have your hot button punch list? Do you have --
MR. DOERR: I think that's this, Brad, isn't it?
MR. SHAFER: Right. The chart -- the chart, I could just --
THE COURT: But that's just the pleading. I can't remember if you had filed it or you just hand it to me.
MR. SHAFER: No, I just handed it to you. And then what you did was in regard to the discovery disputes, you asked us -- you asked me to send a letter -- well, we sent letters back and forth, and then you asked the last time we were here, or maybe two times ago for us to file the document,

actually file the document and just call it something, I don't remember what it was called. It was -- you know, we sent a series of letters and --

THE COURT: Right.

MR. SHAFER: -- supplemental stuff.

THE COURT: That way she can pull that. While it needs to be in the record, because I was specifically referencing it and -- I mean, she's going to be able to read this and understand what the issues are.

MS. RAKOWSKY: And this is fine. This is part of the court record. It's -- it's the other documents that -- that the Department is concerned about.

MR. SHAFER: I can probably just figure out --

THE COURT: The list of --

MR. SHAFER: -- from my chart --

THE COURT: Okay, besides the list of the entities, there was a list of entities that --

MR. DOERR: From the large --

THE COURT: Right. What else?

MS. RAKOWSKY: We give it to -- we give you -- everything was stamped "confidential", and those items that are stamped actually confidential would be (indiscernible).

THE COURT: Okay.

MS. RAKOWSKY: Thank you.

THE COURT: But I'm just saying, just in the event

that I don't miss anything that was stamped "confidential", the paperwork, the lists, and what else?

MR. DOERR: I believe that was all. And -- and I think it came in one parcel to you in a manila envelope, and I --

THE COURT: Okay.

MR. DOERR: -- seem to recall you opening it here.

THE COURT: Do you have any problem giving me about ten minutes to -- to handle one case and walk down the hall and ask the assistant? Can we get together and give me a couple dates in the reasonably near future that I could ask her to have this matter heard?

MR. SHAFER: Sure.

THE COURT: So, I don't know. She does court call, but I think you'll want to make that first appearance.

MR. SHAFER: I agree.

THE COURT: But --

(Pause in the proceedings)

THE COURT: Okay, we're going to talk to them, you talk amongst yourselves, and then we're going to try to get you on soon. I mean, I don't know what your schedule is for trial, but soon.

MS. RAKOWSKY: Thank you, Your Honor.

MR. SHAFER: I have a trial in Anchorage starting this yeah, February 7th, so.

THE COURT: Anchorage in February?

MR. SHAFER: Yes. It could be worse. I had a trial in Fairbanks in February, so it could be worse.

THE COURT: You know, they bring their jurors in for like four or five months at a time, and they just do more than one trial.

MR. SHAFER: Oh, wow. Luckily this is a bench trial.

THE COURT: And in rural Alaska they do circle sentencings in criminal matters. The whole community stands around the defendant and they talk about what's the appropriate sentence. It's not happening here, but pretty interesting jurisdiction. You should enjoy it.

MR. SHAFER: So if we could get on that last week of January, that would be --

(Pause in the proceedings)

THE COURT: I haven't discussed with her anything substantive. What I've said is there are discovery disputes, based upon Department of Taxation's citation of some tax relevant statutes. And I've -- I've advised her there's some inherent authority issues that I don't know how she'll feel about. And then obviously, the constitutionality of live entertainment tax. That's all she knows.

And appearing in here and handling this previously, she has an understanding of it as well.

MR. DOERR: I brought an Order last time, and I brought a revised one back.
THE COURT: Okay. Did I sign it?
MR. DOERR: How about can we do that when we come back in?
THE COURT: Yes.
MR. DOERR: That way I can just have them --
THE COURT: Yes.
MR. DOERR: -- look at it. Although, I think it comports with exactly what you said, so.
THE COURT: Okay. Okay, we're checking it out.
MR. SHAFER: Thank you.
MS. RAKOWSKY: Thank you.
MR. DOERR: Thank you, Your Honor.
(Court recessed at 9:17 a.m., until 9:35 a.m.)
THE COURT: Okay, counsel for Little Darlings versus Nevada Department of Taxation. How is January 26th at 10:00 a.m.? That's a Wednesday in the last week of January. I mean, it's like, you know, this is not easy.
MR. SHAFER: Works for me.
THE COURT: Does it?
MR. SHAFER: Yes.
THE COURT: Really?
MR. SHAFER: Yes. It was one of our dates.
THE COURT: Really?

MR. SHAFER: It was one of the dates we chose.
THE COURT: Okay, nothing -- okay.
MR. DOERR: What time?
THE COURT: I -- well, I -- she has a Status Check an City Center which is stayed, and that's at 9:00 o'clock. In an abundance of caution her law clerk said 10:00. I said they're going to need an hour or more. I just thought you could maybe give her a little presentation calling it a Status Check -- on -- Status Check, on progress of case, discovery issues and pending -- you know, pending requests for any decisions you want her to make.
But I would like you to give her -- because I -- I think once this -- once these issues get resolved, then you're going to know, you know, summary judgment or not, some discovery, or not, what's left, and then you're going to -- I mean, this is going to be decided possibly, possibly -- I don't mean to speak for her, but I'm just saying by motion work. Don't you think?
MR. SHAFER: That's what we talked about last time.
THE COURT: Once she knows all the facts. I mean, I felt very strongly that you were entitled to do some -- something. Again, I'm not going to say anything that would confuse the record, but I think it's just going to be a matter of briefing it, so.
MR. SHAFER: I think that's the most likely scenario

as well.

THE COURT: Okay. So January 26th, 10:00 a.m. I told her law clerk at least an hour. So, I would ask that you make -- you start that Status Check with a presentation of where this started and the rulings I've made in general terms to today -- or from each person's -- each party's perspective, each side, so that she -- I mean, and she's familiar with it, but not out of fairness to her, I just don't want her to (indiscernible). And I'm -- I might -- I'm dying to know what happens. Will someone tell me?

MR. DOERR: Sure.

THE COURT: Seriously, I'm not kidding.

MR. DOERR: Sure, yeah.

MS. RAKOWSKY: That's fine, of course.

THE COURT: When the -- when the decision is made, will you send me a letter, somebody?

MR. SHAFER: Sure.

MR. DOERR: Yes.

MS. RAKOWSKY: Absolutely.

THE COURT: And then when the appeal is -- when the appeal is decided, then I'll -- I'm sure I'll read it by myself, because it probably will be published, I would think. There again, I'm not tying anyone's hands. Okay.

MS. RAKOWSKY: Thank you very much, your Honor.

MR. DOERR: Your Honor, we have the Order.

THE COURT: Yes. Can you approach?
MR. DOERR: Yes, yes.
THE COURT: Do you agree with it?
MR. SHAFER: No.
MR. DOERR: Well, he wanted an additional -- and we're going to ask you to write it in.
THE COURT: Sure.
MR. DOERR: Just that the issue regarding the Separation of Powers question is reserved.
THE COURT: Oh, okay.
MR. DOERR: In fact, did you want to give her the wording?
MR. SHAFER: I'm sure she can --
MR. DOERR: Okay.
MR. SHAFER: -- put in wording. But this is what I raised the last time we were on the phone. You're denying the Motion for Preliminary Injunction. But part of that motion was the Separation of Powers argument, which we're still in the middle of discussing, so.
THE COURT: So do you have a problem with, "Plaintiff's Motion for Preliminary Injunction is denied without prejudice. Further, the Court notes that the Separation of Powers has not been ruled upon herein."
MR. SHAFER: That's fine.
THE COURT: Separation of Powers issue has not been

ruled upon.

MR. SHAFER: That's fine, Your Honor. That's perfect.

(Pause in the proceedings)

THE COURT: All right. (Indiscernible) sign it before you filed it?

MR. DOERR: Yes. Yes. Thank you.

THE COURT: Okay. Well, good luck. And she promised me that you were going to be on the fast track.

MR. SHAFER: Thank you.

MR. DOERR: Thank you.

THE COURT: Anybody can put you on the fast track (indiscernible).

MR. POPE: Thank you, your Honor.

THE COURT: Thank you.

MR. DOERR: Thank you.

(Court recessed at 9:49 a.m.)

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings, K-KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, L.L.C., d/b/a Sapphire, THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club, D. WESTWOOD, INC., d/b/a Treasures, and D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores, Plaintiffs, vs. NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only, Defendants.	Case No. 06A533273 Dept. No. IX *Coordinated with:* Case No. 08A554970 Dept. No. IX **NOTICE OF ENTRY OF ORDER**

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Attorney General's Office
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K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*; OLYMPUS GARDEN, INC., d/b/a *Olymic Garden*; SHAC, LLC, d/b/a *Sapphire*; THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*; D. WESTWOOD, INC., d/b/a *Treasures*; and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*; Plaintiffs, v. NEVADA DEPARTMENT OF TAXATION; NEVADA TAX COMMISSION; and NEVADA STATE BOARD OF EXAMINERS, Defendants.	Case No. 08A554970 Dept. No. IX **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Denying Motion for Preliminary Injunction Without Prejudice was entered on 13th day of January, 2011, and e-filed on the 3rd day of January, 2011, a copy of which is attached hereto.

DATED this 14th day of January, 2011.

CATHERINE CORTEZ MASTO
Attorney General

By: /s/ BLAKE A. DOERR
BLAKE A. DOERR
Senior Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
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CERTIFICATE OF MAILING

I, hereby certify that on the 14th day of January, 2011, I served the foregoing **NOTICE OF ENTRY OF ORDER**, by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

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The William H. Brown Law Office, Ltd.
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Plaintiff(s),

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

Case No. A533273
Dept. No. IX

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION WITHOUT PREJUDICE

Date of Hearing: July 31, 2008
Time of Hearing: 9:00 a.m.

DISTRICT COURT
CLARK COUNTY NEVADA

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION came on for hearing on July 31, 2008;

David J. Pope, Senior Deputy Attorney General, and Blake A. Doerr, Deputy Attorney General, appeared on behalf of the Defendants;

Diana Sullivan, Esq. and Bradley J. Shafer, Esq. appeared on behalf of the Plaintiffs;

The Court, having considered the papers and pleadings as well as the oral argument finds:

That the Plaintiffs cannot meet the element of showing they have suffered irreparable harm;

That this decision is not a statutory denial based on NRS 372.670 but is based upon the facts and law presented; and hereby orders:

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION is DENIED without prejudice. B.A.D. Further, this Court notes the separation of powers issue has not been ruled upon herein.

DATED this 3rd day of January, 2011.

IT IS SO ORDERED.

Jennifer P. Togliatti
Jennifer Togliatti
DISTRICT COURT JUDGE

Respectfully submitted:

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a *Deja Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, L.L.C. d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*,

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her Official Capacity Only,

Defendants.

Case No.: A533273
Dept. No.: IX

PLAINTIFFS' SUPPLEMENTAL BRIEF SUMMARIZING SEPARATION OF POWERS ISSUE AND OUTSTANDING DISCOVERY ISSUES

Date of Hearing: January 26, 2011
Time of Hearing: 10:00 a.m.

PLAINTIFFS' SUPPLEMENTAL BRIEF SUMMARIZING SEPARATION OF POWERS ISSUE AND OUTSTANDING DISCOVERY ISSUES

I. SUMMARY OF THE SEPARATION OF POWERS ISSUE

Plaintiffs seek a declaratory ruling that the anti-injunction provision of the Live Entertainment Tax ("LET"), being N.R.S. § 368A.280(1), violates the separation of powers set forth in the Constitution of the State of Nevada. This argument was originally argued in Plaintiffs' Opposition to Defendant's Motion to Dismiss and was again asserted in Plaintiffs' Motion for Preliminary Injunction (DV MPI 000001-000166). The summary below in intended to provide a short overview of Plaintiffs' position and is not a substitute for the more detailed briefing submitted to date.

The issue is straightforward. The plain language of the Nevada Constitution imbues the District Courts with the power to issue injunctions. Article 6, § 6 of the Nevada Constitution states that "The District Courts and the Judges thereof have the power to issue Writs of. . . Injunction. . ., and all other Writs proper and necessary to the complete exercise of the jurisdiction."

The Defendants Nevada Department of Taxation, Nevada Tax Commission, State Board of Examiners, and Michelle Jacobs (collectively the "Department") seeks to deprive Nevada courts of this constitutionally-given power and rely upon N.R.S. § 368A.280(1), which states:

> No Injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this state or against any officer of the State to prevent or enjoin the collection under this chapter of the tax imposed by this chapter or any amount of tax, penalty or interest required to be collected.

According to the Department, the powers of the courts enumerated in NEV. CONST. Art. 6, § 6, may be muted or extinguished by legislative act and that is what N.R.S. § 368A.280(1) accomplishes. However, that position is a categorical violation of the separation of powers articulated in the Nevada Constitution:

> The powers of the government of the State of Nevada shall be divided into three separate departments,–the legislative,–the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution.

Nev. Const. Art. 3, § 1. *See also* **City of North Las Vegas v. Daines**, 92 Nev. 292, 294, 550 P.2d 399 (1976) ("It is fundamental to our system of government that the separate powers granted the executive, legislative and judicial departments be exercised without intrusion") (citing **Galloway v. Truesdell**, 83 Nev. 13, 422 P.2d 237 (1967) (This is the single most important principle "declaring and guaranteeing the liberties of the people")). **Goldberg v. The Eighth Judicial Court for the State of Nevada**, 93 Nev. 614, 616-17, 572 P.2d 521 (1977) (statutes which attempt to limit or destroy the powers of the courts must fail).

The forgoing adequately establishes that N.R.S. § 368A.280(1) violates the separation of powers doctrine and is invalid. The supreme courts of other states have reached this same result -- that legislative enactments cannot extinguish the judiciary's injunctive powers -- in the context of other statutes that attempted to preclude the issuance of an injunction. *See, e.g.*, **City of Norwood v. Horney**, 853 N.E.2d 1115 (Ohio 2006) and **Smothers v. Lewis**, 672 S.W.2d 62 (Ky. 1984).

Still, in further support, Plaintiffs have pointed out that historically Nevada Courts have enjoined the collection of taxes in three situations, being where enforcement of the tax would (1) lead to multiplicity of suits; (2) cause irreparable injury; or (3) throw cloud upon title to the property. **Penrose v. Whitacre**, 62 Nev. 239, 245, 147 P.2d 887 (1944). Here, the first and second justifications are present.

As to the first, each Plaintiff in this action has been filing and continues to file claims for refund each month for amounts paid under the LET. The Department, in turn, issues denial letters for each refund claim. This procedure must continue until the LET is appropriately enjoined. Thus, there can be no doubt that collection of the LET is leading to the multiplicity of suits.

More importantly, the LET is causing Plaintiffs to suffer irreparable injury. As briefed in Plaintiffs' Motion for Preliminary Injunction, Plaintiffs seek to invalidate the LET as a continuing violation of their rights under the First and Fourteenth Amendments to the United States Constitution, as well as under Article 1, §§ 9 and 10 of the Nevada Constitution. It is well settled that a violation of First Amendment freedoms constitutes irreparable injury sufficient to support injunctive relief. *See, e.g.*, **Elrod v. Burns**, 427 U.S. 437, 373 (1976) ("the loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury").

Defendants' response to the motion for preliminary injunction (DV MPI 000167-000192) did not address the separation of powers issue, but only argued that the plain language of N.R.S. § 368A.280(1) precluded issuance of an injunction.

Defendants' then filed a supplemental response contending that legislative abrogation of judicial powers had been recognized in other contexts. However, Plaintiffs noted[1] that the cases cited by the Department only involved legislation defining the scope of the waiver of sovereign immunity relative to Nev. Const. Art. 4, § 22. *See, e.g.*, **Hill v. Thomas**, 70 Nev. 389, 398, 270 P.2d 179, 183 (1954) and **Hardgrove v. State ex rel. State Highway Dept.**, 80 Nev. 74, 76-77, 389 P.2d 249, 250 (1964). Other cases cited by the Department were also irrelevant and only dealt with judicial interference in administrative process. *See, e.g.*, **Eagle Thrifty Drugs & Markets, inc. v. Hunter Lake P.T.A.**, 85 Nev. 162, 451 P.2d 713 (1969) and **Office of the State Engineer ex. Rel. Division of Water Resources v. Curtis Park Manor Water Users Association**, 101 Nev. 30, 692 P.2d 495 (1985). None of these cases involved the separation of powers issue presently before the Court.

Defendants' second supplement (DV MPI 000283-000324) argued that res judicata precluded consideration separation of powers issue due to certain proceedings before the United States District Court for the District of Nevada and the Ninth Circuit Court of Appeals in the federal suit preceding the present suit. That suit was dismissed for lack of subject matter

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[1] Plaintiffs' Reply to Defendants Supplemental Opposition to Plaintiffs' Motion for Preliminary Injunction on Issue of Separation of Powers (DV MPI 000259-000272).

jurisdiction pursuant to the federal Tax Injunction Act ("TIA"), 28 U.S.C. § 1341. In essence, the Department argues that because the District Court held, and the Ninth Circuit upheld, that there was a "plain, speedy, and efficient remedy" for purposes of the TIA, no irreparable injury exists and an injunction should not issue.

In response,[2] Plaintiffs have asserted that the proper test for issue preclusion requires that "the issue decided in the prior litigation must be identical to the issue present in the current action." **Executive Management, Ltd. v. Ticor Title Ins. Co.**, 114 Nev. 823, 834, 963 P.2d 465, 473 (1998). Whether or not there exists a "plain, speedy, and efficient" state remedy for refund of the LET is not an issue identical to either whether Plaintiffs are suffering an irreparable deprivation of their First Amendment freedoms, or whether the LET's anti-injunction provision violates the separation of powers doctrine.

It is also important to note that the Department's position before this court is not the same position it took before the federal courts. Defendants originally took the position before the federal courts that Nevada state court proceedings allowed for a full recovery of amounts paid under the LET. Then, while the matter was pending before the Ninth Circuit, Plaintiffs administrative claim for refunds came before the Nevada Tax Commission. The Department then took the position that the tax was not on Plaintiffs, but their customers. It contended that pursuant the N.R.S. 368A.170, Plaintiffs could not therefore obtain a refund unless they could specifically identify the customers to whom the refund would subsequently be remitted. Plaintiffs moved the Ninth Circuit to supplement the record to reflect this development.

Attached as Exhibit 8 to Plaintiffs' Opposition to Defendant's Motion to Dismiss (in the present case) is the Department's "Answering Brief" filed before the Ninth Circuit relating to Plaintiffs' request to supplement the record, in which it contends that so long as Plaintiffs have not passed the tax along to their customers (which plaintiffs have verified they have not), Plaintiffs would be entitled to a full refund of the LET tax paid.

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[2] Plaintiffs' Reply to Nevada Department of Taxation's Second Supplement to its Opposition to Plaintiffs' Motion for Preliminary Injunction on the Issue of Separation of Powers (DV MPI 00325-000333).

Subsequently, at the December 9, 2010 hearing before Judge Togliatti, the court requested the Defendants' clarify their position. At this time, three different attorneys for the defendant articulated three different positions. If indeed the Defendants maintain the position taken before the Tax Commission (and abandon the position taken before ninth circuit, assuming judicial estoppels would permit the same), that Plaintiffs cannot obtain a refund without identifying and passing the refund along to the specific patrons who Defendants contend to have paid the tax, irreparable injury exists apart from the injury to Plaintiffs' First Amendment freedoms. In such a situation, amounts paid under the LET would not be refundable to plaintiffs, meaning there exists no remedy at law.

In summary, N.R.S. § 368A.280(1) violates the separation of powers set forth in Article 3, § 1 of the Nevada Constitution, by attempting to deprive the judiciary of the powers conferred by NEV. CONST. Art. 6, § 6 by legislative act. Thus, the anti-injunction provision contained in N.R.S. § 368A.280(1) is and should be declared invalid. This case presents situations under which Nevada Courts have recognized to merit collection of a tax being enjoin. The LET causes irreparable injury to Plaintiffs First Amendment freedoms and further causes multiplicity of suits. No issue determinative of the separation of powers issues was decided in the previous case litigated before the federal courts and dismissed for lack of subject matter jurisdiction according to the federal Tax Injunction Act.

For these reasons, Plaintiffs respectfully request this Honorable Court enter and order declaring the anti-injunction provision of N.R.S. § 368A.280(1) to be invalid and unenforceable.

II. SUMMARY OF OUTSTANDING DISCOVERY ISSUES

The following is a summary of outstanding discovery requests:

1. Plaintiffs are still seeking the backup documentation to the Department's latest chart under the categories (both 10% and 5%) of "Drinking Place (Alcoholic Beverages)," "Gift, Novelty and Souvenir Stores," "Independent Artists: Writers and Performers," "Musical Groups and Artists," "Promoters of Performing Arts, Sports, and Similar Events with

Facilities," "Promoters of Performing Arts, Sports, and Similar Events Without Facilities," and "Unclassified." In light of these severe redactions of the exhibits to the Defendants' initial disclosure, Plaintiffs could not go through and provide the exact Bates stamped page numbers for this information.

2. Plaintiffs noted that in the Defendants' revised chart for the "Total LET (Gaming + Department)," the figures do not match the figures set forth in the exhibits that Defendants previously submitted (for example, Exhibit B to the Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, page 2, that was titled "Revenues from LET," and which gave the source as the Governor's Budget, 2007-2009). Plaintiffs requested that the State explain these discrepancies and provide appropriate backup documentation so that Plaintiffs can determine the nature of such discrepancies.

Mr. Doerr's response was to rely on his explanation on this matter in open court (contending the numbers in the exhibit were based upon reconciled numbers, and the recently provided information was based upon gross receipts, and there were numbers transposed from 2004 to 2003) and to essentially state that the small discrepancy in the numbers does not change the facts of this case.

3. Plaintiffs noted that, for fiscal year 2006, the State's revised chart figures for both the Department Collection and the Department and GCB collections do not match the exhibit that it attached in its pleadings (for example, Exhibit B to the Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, page 1). Similarly, the revised chart figures do not match the "Live Entertainment Tax" entry as found in the correspondence from Dino DiCianno to Governor Gibbons in the correspondence of January 15, 2008, which the State attached as Exhibit B, page 3, to the Reply.

The State provided the same reason for being non-responsive as given in item number 2 above, and also stated that no back-up information could be provided due to NRS 368A.180 and the cases cited.

4. Plaintiffs have requested the corresponding information for the other calendar years and months in question as contained in the Bates stamped page DV000005. Mr. Doerr contends that he was not provided any other similar documents like DV000005 for the other tax years in question.

5. Plaintiffs have requested to be provided the "Notes" redacted on page DV00002. The State again asserts NRS 368A.180, and claims that the redactions name the entity and information that would allow the identification of the entity and refuses to provide un-redacted information.

6. Plaintiffs have requested all of the "Name(s) of Business/Event" redacted from pages DV000034 – DV000037, as these are not taxpayers; they are businesses that the legislature considered *adding* to the LET. The State again asserts NRS 368A.180 and the cases cited in item number 1 above, stating that the businesses are taxpayers and have registered with the Department "under other chapters not limited to NRS 372.750 and NRS 363A.100.

7. Plaintiffs have requested the redactions be removed on pages DV000039 – DV000041, which appear to contain information on 10% LET paid by certain establishments and information regarding the seating capacity of certain "clubs." Mr. Doerr refused to produce the un-redacted information, asserting the same statutes and cases that he relies on in Exhibit B.

8. Plaintiffs have requested to view the "Notes" redacted on pages DV000042 – DV000047. Again, the State refuses to provide that information as it would allow identification of a specific type of business, and relies on NRS 368A.180.

9. Plaintiffs have requested the disclosure of the redactions on pages DV000050 – DV000058, which appear to be correspondence between the Department and certain businesses inquiring as to whether they are exempt from paying the LET. The State refuses to provide the redacted information, which has been provided to the Court, again relying on NRS 368A.180, that this information does not have to be provided for the "inspection or any person or for use in any action or proceeding."

10. Plaintiffs have requested the disclosure of the redactions on pages DV000122 – DV000126, which appear to include information on LET payments made to the Department. The State refuses to provide the information because some of it purportedly contains confidential bank and accounting information and the State claims it is not reasonably calculated to lead to the discovery of admissible evidence per NRCP 26(b)(1).

11. Plaintiffs have requested the disclosure of the redactions on pages DV000195 – DV000196, which contain information specifically relating to gentlemen's clubs, their various seating capacities, and the applicability of the LET to these establishments. Defendants refuse.

12. Plaintiffs have requested the disclosure of the redactions on pages DV000198 – DV000200, which also contain information specifically relating to the gentlemen's clubs, their various seating capacities, and the applicability of the LET to these establishments. The State refuses to provide these documents in un-redacted form.

13. Plaintiffs have requested the disclosure of the redactions on pages DV000203 – DV000205, which is a public government memorandum regarding the applicability and

administration of the LET to certain establishments. The State refuses to provide those documents in un-redacted form.

14. Plaintiffs have requested to view the "whiteout" information for October – December, 2004, on page DV000207. The State contends that the Department's copy of the document contains the same whiteout, but does not explain why the Department cannot obtain the original, un-redacted document.

15. Plaintiffs' request for disclosure of the redactions on pages DV000670–DV000671, which appear to contain information regarding the granting of exemptions from paying the LET, was denied by the State.

16. Plaintiffs have requested the disclosure of the redactions on pages DV000675 – DV000680, the information on these pages having nothing to do with the identification of specific taxpayers, and only to the promulgation of LET regulations. The State produced some of the pages in their non-redacted form, but refused to produce DV000677, stating that it was not part of the regulation workshop process.

17. The Department's Responses to Interrogatories 1, 2, 3, and 15 refer to documents that are redacted to the point of non-responsiveness (Exhibit 3 to Motion to Compel and Objection). The State maintains its position that the statutes and cases prohibit the disclosure of the information requested in those Interrogatories.

18. The Department's Response to Interrogatory 19 is non-responsive because it refuses to identify any entities, persons, businesses, or classes that have requested to be exempt from the LET (Exhibit 3 to Motion to Compel and Objection). The State continues to refuse to produce those requested documents, asserting that it provided this information for an in camera review.

19. The Department's Response to Interrogatory 20, incorporates Response 19 (deficient as discussed immediately above); and also refuses to identify any entities, persons, businesses, or classes that have requested to be exempt from the LET (Exhibit 3 to Motion to Compel and Objection). The State continues to refuse to produce that information.

20. Finally, the Department is maintaining its revised position that the names of the taxpayers along with aggregate amounts of yearly LET paid by each will not be disclosed by the Department, even with a court-entered protective order. The State insists that no statute or regulation provides for disclosure of the information that Plaintiffs have requested under a protective order or any other method, and again cites to the statutes and cases in item 1 above in support of its refusal.

Despite the State's argument to the contrary, Plaintiffs contend that the specific Bates stamped page numbers listed above and the information sought by the Interrogatories, contain information that is relevant to their inquiry and should not be subject to any arguable privilege, particularly when it can be produced subject to an appropriate protective order.

DATED this 25th day of January, 2011

Respectfully submitted,

BY: */s/ William Brown*
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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January 2011, the foregoing **PLAINTIFFS' SUPPLEMENTAL BRIEF SUMMARIZING SEPARATION OF POWERS ISSUE AND OUTSTANDING DISCOVERY ISSUES** was served on the party(ies) by email, faxing a copy, and mailing of same in the United States mail, postage prepaid thereon, addressed as follows:

Catherine Cortez Masto
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David J. Pope
Sr. Deputy Attorney General
Blake A. Doerr
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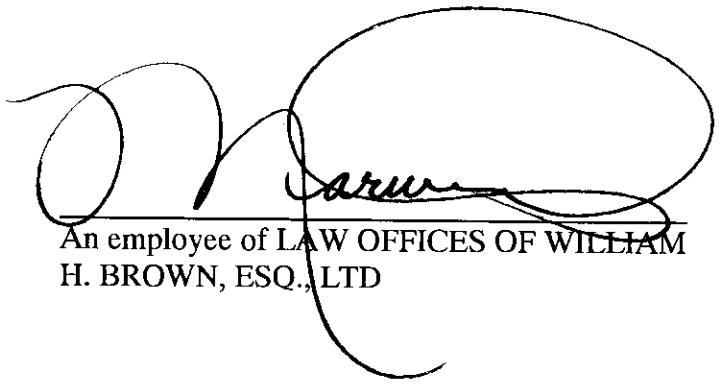

An employee of LAW OFFICES OF WILLIAM H. BROWN, ESQ., LTD

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	January 26, 2011

06A533273 Little Darlings Of Las Vegas LLC, K-Kel Inc, et al
vs
Nevada Dept Of Taxation, Olympus Garden Inc, et al

January 26, 2011 10:00 AM **Status Check: Status of Case**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dameda Scott

RECORDER: Jill Hawkins

REPORTER:

PARTIES PRESENT:

Doerr, Blake A.	Attorney
Pope, David J.	Attorney
RAKOWSKY, VIVIENNE, ESQ	Attorney
Shafer, Bradley J., ESQ	Attorney

JOURNAL ENTRIES

- As Mr. Brown, Plaintiff's counsel, is in trial and unavailable today, COURT ORDERED, matter CONTINUED.

2/3/11 10:30 AM STATUS CHECK

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	February 10, 2011

08A554970 K-Kel Inc
vs
Nevada Dept Of Taxation, Olympus Garden Inc, et al

February 10, 2011 10:30 AM **Status Check**

HEARD BY: Gonzalez, Elizabeth COURTROOM: RJC Courtroom 14C

COURT CLERK: Dameda Scott

RECORDER: Jill Hawkins

REPORTER:

PARTIES PRESENT:

Brown, William H.	Attorney
	Attorney
Doerr, Blake A.	Attorney
Pope, David J.	Attorney
RAKOWSKY, VIVIENNE, ESQ	Attorney
Shafer, Bradley J., ESQ	Attorney

JOURNAL ENTRIES

- Colloquy regarding status of the case and issues. Documents presented to the Court which COURT ORDERED SEALED (see Vault Exhibit Form). COURT ALSO ORDERED, case DEEMED COMPLEX. COURT FURTHER ORDERED, SET Status Check.

3/15/11 9:00 STATUS CHECK

CLERKS NOTE: Minutes placed in A554970 and A533273 (DS 2/11/11)

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	February 10, 2011

06A533273 Little Darlings Of Las Vegas LLC, K-Kel Inc, et al
vs
Nevada Dept Of Taxation, Olympus Garden Inc, et al

February 10, 2011 10:30 AM **Status Check**

HEARD BY: Gonzalez, Elizabeth COURTROOM: RJC Courtroom 14C

COURT CLERK: Dameda Scott

RECORDER: Jill Hawkins

REPORTER:

PARTIES PRESENT:

Brown, William H.	Attorney
	Attorney
Doerr, Blake A.	Attorney
Pope, David J.	Attorney
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JOURNAL ENTRIES

- Colloquy regarding status of the case and issues. Documents presented to the Court which COURT ORDERED SEALED (see Vault Exhibit Form). COURT ALSO ORDERED, case DEEMED COMPLEX. COURT FURTHER ORDERED, SET Status Check.

3/15/11 9:00 STATUS CHECK

CLERKS NOTE: Minutes placed in A554970 and A533273 (DS 2/11/11)

Electronically Filed
02/22/2011 12:38:59 PM

ORIGINAL

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

LITTLE DARLINGS OF LAS VEGAS, INC., et al. Plaintiffs vs. NEVADA DEPARTMENT OF TAXATION. et al. Defendants	CASE NO. A-533273 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

STATUS CHECK

THURSDAY, FEBRUARY 10, 2011

APPEARANCES:

FOR THE PLAINTIFFS:	WILLIAM H. BROWN, ESQ. BRADLEY J. SHAFER, ESQ.
FOR THE DEFENDANTS:	BLAKE A. DOERR, ESQ. DAVID J. POPE, ESQ. VIVIENNE RAKOWSKY, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 10, 2011, 10:40 A.M.

(Court was called to order)

THE COURT: Is there anybody here on anything except the live entertainment tax and my trial? Then let's talk about live entertainment tax issues.

(Pause in the proceedings)

THE COURT: Mr. Brown, thank you for being here. I'm sorry for the confusion last week, but in my court I try and always have local counsel here because I've had issues historically, not with anybody related to this particular case, totally unrelated case, but it was a big deal, and it caused some issues, and I'm trying to be really cautious now.

MR. SHAFER: I explained that to him, Your Honor.

THE COURT: And since he has other cases here, I think he's heard me say that before, but he was in a Federal Court trial, and, you know, they're important.

MR. SHAFER: Which I didn't know when I -- I thought from his staff that he was on another motion --

THE COURT: I thought he was in the building here, too.

MR. SHAFER: I did, too.

THE COURT: Which was why I made you guys wait while we tried to find him.

All right. I now have two status reports. Did everybody get both of them? I got yours and yours. Did

everybody get both?

MR. POPE: Yes, Your Honor.

THE COURT: And I have notes all over them. What do you want to tell me before I start trying to parse through the issues you guys think I have?

MR. POPE: First of all, Vivienne Rakowsky, Blake Doerr, and David Pope with the AG's Office on behalf of the defendants, Your Honor. Good morning.

MR. SHAFER: Brad Shafer and William Brown appearing on behalf of the plaintiffs, Your Honor.

THE COURT: Okay. So what do you want to do first?

MR. POPE: Well, if Your Honor's ready to --

THE COURT: I'm ready to tell you stuff.

MR. SHAFER: We're ready to listen.

THE COURT: If you want to argue about anything first, I'd be happy to do that. But I've got stuff written down. Okay. I think the --

MR. SHAFER: I didn't take this that this was argument on any motions. I took this --

THE COURT: Well, I'm trying to clarify where you are and get you on the right track so I can get you an ultimate decision. I think that's what you want me to do.

MR. SHAFER: Correct.

MR. POPE: That's correct.

MS. RAKOWSKY: That's correct, Your Honor.

THE COURT: Is that what you want me to do? That's why you gave me information, so that I could try and go through some of the history. And I appreciate the two boxes of documents at the AG's Office, especially with a DVD that assisted me in going through it in a quick fashion.

MR. SHAFER: Your Honor, the one other thing I wanted to add in light of what you just told the counsel in the last case is, as I'm sure, hopefully, that Judge Togliatti explained to you, we've got a five-year deadline in --

THE COURT: I know.

MR. SHAFER: Okay.

THE COURT: You're going to be done before then.

MR. SHAFER: Okay.

THE COURT: Your case isn't going to take that long.

MR. SHAFER: Okay.

THE COURT: How many depositions are you going to do, four?

MR. SHAFER: I've got -- yeah. Probably three, maybe four.

THE COURT: You guys aren't going to be that long.

MR. SHAFER: Right. And as we --

THE COURT: Once you get the documents, you're going to be good to go regardless of what documents they are.

MR. SHAFER: Correct. And, Your Honor, as I think we have indicated, I don't remember if to you, but certainly

to Judge Togliatti, I don't think anybody believes that a trial is going to be necessary. We -- I think everybody believes that this will be cross-motions for summary judgment.

THE COURT: I believe it is going to be what I call an evidentiary hearing that does not necessarily include the presentation of witnesses --

MR. SHAFER: Okay.

THE COURT: -- but does include the presentation of evidence and does include a lot of argument and connecting the evidence to the argument. That's what I perceive this to be. But Judge Togliatti may have had a slightly different idea, but that's what I look at it. Cross-motions for summary judgment maybe. I think it's going to take a little bit more of an evidentiary issue to get through some of the issues.

MR. SHAFER: Okay.

THE COURT: Okay. Let me go first to the separation of powers issue, because I think that is an easier thing for me to handle. That issue is currently moot because Judge Togliatti made the factual and legal determination that it was not appropriate to issue injunctive relief at this time, so she didn't have to get to the issue of whether there's a separation of powers. And so I'm not going there, either. If there comes a time where you want to renew your preliminary injunction request and have new information or new evidence or arguments that you want to raise, I will certainly address all

of the issues that are relevant in a ruling that I make.

MR. SHAFER: Thank you, Your Honor.

THE COURT: Did I say that in a way that you got my hint?

MR. SHAFER: Absolutely, Your Honor.

THE COURT: Okay. Let's go to the discovery issue. First, do you believe that Judge Togliatti gave you back everything that you had submitted to her in camera? Because she asked me on Tuesday -- she thought she might still have some stuff. Do you think she has more than what I handed you when you were here at my last hearing?

MS. RAKOWSKY: We actually turned the envelope back over to you without reopening it, Your Honor.

THE COURT: Is that this one right here?

MS. RAKOWSKY: Yes.

THE COURT: Okay. I've opened it now. But, I mean, do you think Judge Togliatti has anything else that you submitted in camera to her that wasn't in the materials I handed back to you that you've now handed back to me?

MS. RAKOWSKY: May I take a look, Your Honor?

THE COURT: You may. I added something. Hold on. Let me take out what I added.

(Off-record colloquy - Court and Marshal)

THE COURT: I added something for my ease of transportation last night.

(Pause in the proceedings)

THE COURT: Do you think Judge Togliatti has anything else?

MR. DOERR: We do not.

THE COURT: Okay. Good. Then I will assure her that she has completed her responsibilities on this case and may go back to just being the Chief Judge.

MR. POPE: Thank you, Your Honor.

THE COURT: All right. I have a concern, and this is a concern I will express, and yours is not the first case where I've expressed this. I have a concern when a party in litigation takes a position in one court and takes another position in a different court. And I will tell you what my concern relates do, and I'm not going to say you don't have a chance to explain or try to convince me you didn't do this.

It appears that there is a position that may have been taken at least at one point in time before the Ninth Circuit that refunds could not be provided unless identification of customers could be provided by the plaintiff entities. That seems to me to be inconsistent with the positions that you're taking in this litigation, and so I'm just telling you that's a concern for me and it's going to be a concern for me that we're going to have to address at some point in time. I am not saying at this time that there's any estoppel or waiver issues that have impacted, because I

haven't had enough briefing on that particular issue to deal with it. But it is an issue that I anticipate will be one that we will talk about at some later point. I'm giving you the warning now so nobody blindsides you later, okay.

MR. POPE: Thank you, Your Honor.

THE COURT: And we go to what seems to be my next issue. There is a definition of "taxpayer" in the statute, and this is why I'm saying what I just said. And the definition of "taxpayer" appears to me to be an entity that is actually the person collecting the tax and distributing or remitting the tax to the State. Whether that means it's really the taxpayer or not is a whole different group of issues, but that's how the legislature has defined "taxpayer," which in my mind is the entity who is actually the remitter of the tax. That may also raise some issues for us as we go through this process.

In examining the spreadsheet that the Discovery Commissioner had previously ordered be produced in its redacted format I believe the production of that document at a minimum in a legible form, which means that gray column has to be converted to something that's not so gray so it can actually be read, is critical, and that needs to be done on an immediate basis. The reason I say that is my calculation that we did was that there was above 80 percent in that first category of remitters of where the tax funds were coming from,

and that I think is an important consideration as part of the discovery that must be done in this case.

With respect to the confidentiality that is included in NRS 368A.180 there is an exception to that provided in the second subsection where there is testimony or production of records that need to be made by the Board as part of a proceeding. This clearly is a proceeding, and it relates to this particular taxpayer. So any -- or, I'm sorry. I'm going to try and use the term "remitter." So those records that relate to these remitters must immediately be provided, including the Department's internal records related to this remitter.

With respect to other remitters I do think there is a different argument that applies, and there will need to be redactions of the identity of those remitters. But there is a method that you're going to have to propose on behalf of the State which you think adequately protects the interests of the State and those remitters, but provides the financial data that is included in those reports so that we can address that. Because I went through and looked at the chart, and I was trying to figure out how the Summerlin Community Association could be what it was designated as in the spreadsheet, and I couldn't figure out how that could possibly be. So I have a number of concerns about the assignment of categories by the Department. But that example was not a significant enough

amount of money to deal with some of the other issues we were looking at, so I just use that as anecdotal, because I don't think Summerlin Community Master Association would be offended that they paid a small live entertainment tax on behalf of somebody else.

But my concern is we have to provide a method for the plaintiffs to be able to identify other than the calculation I did that it's about 80 percent to what you attributed as the first category on that spreadsheet. We have to give them the backup data. And I am open to redactions of identifying information for those remitters, but it's got to -- we've got to produce it and able to get to the end of what I have to do here. Because they're going to argue that given the amount that is being attributed to the first category on your spreadsheet that it's clearly -- it's clearly improper and that I need to make a separate determination as to whether there is -- it is constitutional as applied. Whether it's constitutional as written is a different issue.

Do you understand what I'm saying?

MR. DOERR: I do. I think maybe a clarification of the spreadsheet is in order here.

THE COURT: That'd be good. I also have a concern -- wait. Let me hit the other concern. I have a significant concern, and the lawyers who are here all the time in Business Court will tell you this is one of the things that gets me

going, when we start with a spreadsheet and then we decide there's a problem with it because we have either a math error or a transposition of numbers or the data was incorrectly entered or whatever, it really throws me for a loop, and I generally at that time order every piece of backup information you ever had produced. So that is also of concern to me. And I certainly understand the explanation that there are audited issues and that there are certain transpositions that may have occurred, but that is a significant concern to me when we have different versions appearing.

Okay. Now for your clarification.

MR. DOERR: Well, and --

THE COURT: Because I've finished my notes.

MR. DOERR: Okay. I really want to address both of your concerns. The first concern -- and you said you've done a calculation of 81 [sic] percent. I mean, I think it's kind of -- I'm not sure what you're looking at, because there are --

THE COURT: That totals in the last column and the total at the bottom.

MR. DOERR: Well, I think that percent -- that percentage you're looking at is confusing because that's only -- well, number one, that's only the group of 10 percent taxpayers who remit to the Department. The second page is the 5 percent of taxpayers that remit to the Department, and the

total on the second page, there's a component of this tax that is not remitted to the Department. In fact, the majority part of this is remitted to the Gaming Control Board, the Gaming Commission.

THE COURT: For those people who have the gaming entities.

MR. DOERR: That's correct. So I'm not sure what numbers you took to get the 80 percent, but --

THE COURT: I used the one on the bottom of the first page to get to my 80 percent number.

MR. DOERR: So that would be only the 10 percent taxpayers who remit to the Department.

THE COURT: I understood that.

MR. DOERR: There's another -- the 5 percent who remit to the Department are also people who came under the live entertainment tax when it was enacted and changed from a casino entertainment tax to the live --

THE COURT: But even if I'm using that number and adding it to the number on the first page, I'm still at a very high percentage for that first category you have on the spreadsheet.

MR. DOERR: Well, "high" is a relative term.

THE COURT: I understand. Which is why I used it as a relative term. Because it's certainly no determinative at this point of anything. It's just a discovery issue for me.

MR. DOERR: Understood.

THE COURT: And that's all I'm dealing with today is a discovery issue.

MR. DOERR: Right. Now, let me address the sort of -- the taxpayers in that group, in the first group.

THE COURT: Are they taxpayers, or is it the people who actually -- the customers? See, that's where the Ninth Circuit issue is really going to be an interesting discussion.

MR. DOERR: You know, we filed a motion regarding the claims for refund and whether they're even appropriate to discuss at this time. And so this issue may be moot, depending upon how that comes out.

THE COURT: It may.

MR. DOERR: Regarding those taxpayers, some of them are plaintiffs in this case, and some of them are not. We've always been willing to produce -- in fact, they said that they didn't want their own records, that they had them, and the Discovery Commissioner --

THE COURT: That's why I included the internal records that you've done related to their submission. It's because you don't need to give them their reports if they say, you know, I've got my report, I don't need you to give it to me.

MR. DOERR: And in fact the Discovery Commissioner said, well, look, these -- even though they're plaintiffs'

they don't necessarily want you to give the other plaintiff your information. And they eventually said, well, we don't really need our own information, we want to see what -- you know, what the groups have paid. And there were some on there where they just wanted to -- they were asking the judge to verify that what was on the larger list weren't actually in fact gentlemen's clubs under --

THE COURT: The larger list being the --

MR. DOERR: Yes.

THE COURT: -- DV15 through 18.

MR. DOERR: That's correct, uh-huh.

THE COURT: Because the master -- Sun City Summerlin Community Association is clearly not a gentlemen's club; right? We'd all agree it's not a gentlemen's club?

MR. DOERR: It's not listed in -- under a gentlemen's club.

THE COURT: Yeah, I know. I can't understand how it's listed in the group it's in, but --

MR. DOERR: Well, I'll -- let me explain to you that those are done by what's called the NAICS code, North American Industrial something code. That is when they come in -- when a proposed business owner comes into the Department to tell them what they do, the Department assigns it a code based on this list.

THE COURT: And it's the what I'm calling the

remitter who makes that selection of what category they'll be in, and somebody screwed up when they decided that Sun City Summerlin Community Association was a drinking place, alcoholic beverage.

MR. DOERR: Well --

THE COURT: And it probably wasn't you guys, but somebody made a mistake, because that's not what they do.

MR. DOERR: Well, if they -- if the Association owns a bar or restaurant that has live entertainment, that could be the explanation for that.

THE COURT: That could be why they chose that code.

MR. DOERR: It could be.

THE COURT: It could be, but that's probably not an accurate code for them to have chosen to tell you was their main business.

MR. DOERR: We don't -- you know, we don't --

THE COURT: And you don't question when they tell you.

MR. POPE: That would be their classification for the Department's purposes

MR. DOERR: And that's the way that the list was put together.

THE COURT: But the whole -- the whole Taxation Department isn't going to calculate -- to determine that Sun City Summerlin Community Association is a drinking place,

alcoholic beverage place. I mean, they're not really. That's not their business. And you -- don't you collect other taxes from them as a business?

MS. RAKOWSKY: At the time that they opened they did own a bar and restaurant up there.

THE COURT: I'm not saying they didn't own a bar and restaurant.

MS. RAKOWSKY: And that's probably why they were classified --

THE COURT: They may well have owned a bar and restaurant.

MS. RAKOWSKY: And that's probably why they were classified in that, because they did have a restaurant going up there.

THE COURT: Okay.

MR. POPE: I'm not sure, Your Honor, what taxes are collected from them. It could be [inaudible] sales and use tax.

THE COURT: And I'm not concerned with all the taxes. I'm just saying when I looked at this I went, hmm, and it was one of those things that I go, yeah, that just doesn't sound right. There were some others that I had to ask my male staff members about, and they were able to explain most of them for me, because some of them I didn't understand. But they did. They understood.

MR. DOERR: We didn't, either, Your Honor. In fact, when we were given the list from our client we -- you know, I went through the list and I thought, well, this sounds like it could be, what is this business. I would call the client, and they'd say, well, this is what we have in our records, here's their location. And I determined that that could not be a gentlemen's club given the location. So I did that.

THE COURT: Because of certain zoning and licensing restrictions.

MR. DOERR: I also wanted to explain sort of the error in the spreadsheet.

THE COURT: Yeah.

MR. DOERR: The plaintiffs here asked for tax records for fiscal year beginning in '03, and I got the information from the Gaming Commission and from the Department, and I gave them that request. Well, there was no live entertainment tax in fiscal year '03, so Gaming -- but there was a casino entertainment tax --

THE COURT: Right.

MR. DOERR: -- so Gaming had records.

THE COURT: The old cabaret tax.

MR. DOERR: So when I got the information from the Gaming folks, the first year that they gave me I put under the first year that the Department gave me. So I really just transposed those numbers.

With respect to what has been reported as the Department's numbers there was no -- in other words, I got no backup information from Gaming because that's not how they -- well, that really wasn't what was asked for.

THE COURT: No, it's not.

MR. DOERR: And so it was really just a shifting of the column that included a fiscal year that really isn't part of this claim. And the plaintiffs have brought up, and this bears explaining, too, that there was a document produced by the Department, it's a published document, where the numbers on the sheet that I've prepared aren't the same as the numbers on the Department's record. And that's why I created the percent error sheet. And what we did is we said, well, we don't think -- he's going to depose people from the Department who can tell him why there would be changes from what the Department receives as gross receipts from the taxpayers to get to the number that's netted out in the report that's prepared.

We looked at that over the six or seven years, and it's a very small percent. And we said, look, add 1 percent to the figures for those taxpayers, take that, assume it's yours, we don't think it came from there, but those are -- those come out, and, you know, if your argument is targeting or it's a small group, I don't think 1 percent -- he's going to be able to depose the witnesses who can explain why there's

reductions from the numbers we produced to the numbers that are produced at the end of the year. And part of that is in the way they asked for it.

THE COURT: I understand what you're saying.

MR. DOERR: He asked for what the Department receives.

THE COURT: And I'm not saying there's any fault in it.

MR. DOERR: I understand that.

THE COURT: I'm just saying it's one of those things that typically bells go off in my head that says there's an issue.

MR. DOERR: I completely understand that. And we have -- you know that the discovery in this has sort of had a history, and, you know --

THE COURT: Okay. What else do I do?

MR. DOERR: Well, Judge Togliatti -- we sort of -- she followed this because she -- she was the judge in its evolution.

THE COURT: Yes.

MR. DOERR: And so I just wanted to -- I think that actually the plaintiffs kind of understand what we just told you, and so --

MR. SHAFER: Your Honor, could I make a comment?

THE COURT: Yes.

MR. SHAFER: Thank you.

THE COURT: Since I made you fly here from Michigan.

MR. SHAFER: Glad to do it.

THE COURT: There's no snow here.

MR. SHAFER: Sixth time on this motion, but --

Your Honor, the way that this all started, as Mr. Doerr explained to you, in their response -- in their reply to my response to their motion for summary judgment, which Judge Togliatti dismissed without prejudice, they attached two charts, okay. And so I asked discovery in regard to what is the backup documentation for this so that I can challenge the numbers and I can look at the numbers.

The chart you're looking at was not the first chart.

THE COURT: The chart the Discovery Commissioner ordered produced?

MR. SHAFER: Correct.

THE COURT: Yes.

MR. SHAFER: But you have to understand --

THE COURT: And for the record, that's DV1194 and 1195, I believe.

MR. SHAFER: I don't know which one you have, because they produced the first chart, then they were here at a hearing, I pointed out to Judge Togliatti that there were mistakes in the chart. Then they went back, then they did another chart, which is probably the one that you're looking

at.

But, Your Honor, what you have to understand is Mr. Doerr acknowledged to you two times that chart was not prepared by the Department.

THE COURT: No. He said he did it.

MR. SHAFER: That's right.

THE COURT: I know.

MR. SHAFER: And if I don't know what the backup documentation is, I have to depose him to figure this out.

THE COURT: We're going to avoid that.

MR. SHAFER: I want to.

THE COURT: We're going to try and avoid that. But I also have to find a way to try and honor at least the purpose of --

MR. SHAFER: Understand.

THE COURT: -- NRS 368A's confidentiality even though it appears to me that the records are directly involved in this action or proceeding. So I have to come up with a way to be able to carry out the procedures or at least some ability to have confidentiality for the remitters that are not parties to this case.

MR. SHAFER: Yes. And, Your Honor, I will explain to you what I explained to Judge Togliatti probably four times. I'm an officer of the court. You can give me documents that I am precluding from --

THE COURT: Only if I give you an attorney eyes only agreement. And I haven't decided to do that yet.

MR. SHAFER: Okay. But all I'm saying, Your Honor, is that I have offered to Judge Togliatti, and I'll offer the same thing to you, I will file every pleading under seal, we can have the hearing under seal, I don't care. I mean, you know, I'm not trying to put --

THE COURT: I'm not going to seal the hearing.

MR. SHAFER: Okay. All I'm saying is --

THE COURT: We will find a way --

MR. SHAFER: Okay.

THE COURT: We're going to find a way --

MR. SHAFER: Thank you.

THE COURT: -- to carry out the purpose of 368A, which the legislature said they wanted this information to be confidential as much as possible, and yet to also provide you the records and files related to 368A.180(2)(a) which I believe are directly involved in this action or proceeding.

MR. SHAFER: Thank you, Your Honor.

MS. RAKOWSKY: Your Honor --

THE COURT: Yes.

MS. RAKOWSKY: -- 368A.180 specifically says the Board, Department, and any employee of the Board or the Department may not be required to produce any of the files -- any of the records, files, and information for the inspection

of any person for use in any action or proceeding.

THE COURT: And then you go to subsection (2).

MS. RAKOWSKY: Right. And it gives five places where you can --

THE COURT: And I have found that the records are directly involved the action or proceeding. But I also want to try and carry out the purpose of the statute even though I think that these records are directly involved in the purpose of this action or proceeding to try and insure the confidentiality of what I am calling remitters of the tax so that we can try and protect that. Because I understand that was the purpose that was expressed by the legislature, but I believe that the records are directly involved in the issue that I have to ultimately decide.

MS. RAKOWSKY: And you're -- but when you say "directly involved," that refers to taxpayers who are directly involved, because it's different than the federal statute.

THE COURT: I know that's your interpretation. I don't think that is what it says.

MS. RAKOWSKY: But other gentlemen's clubs have chosen not to become directly involved --

THE COURT: I know that.

MS. RAKOWSKY: -- so why should their information be dragged in here?

THE COURT: Some of them are waiting, because I know

from other cases I've had in Business Court they're holding the LETs and fund as part of certain transactions that haven't gone to either the buyer or seller because they're in a special fund that they're waiting to see what the resolution is. And I've got no idea why they're doing that. I just know that from other cases I've handled and in particular the Olympic Garden-Sapphire separation, I think.

MR. SHAFER: Your Honor, just to let --

THE COURT: Wait, wait, wait.

MR. SHAFER: Oh. I'm sorry.

THE COURT: I'm on Mr. Doerr.

MR. SHAFER: I'm sorry.

THE COURT: I'm trying to go --

MR. DOERR: Your Honor, part of the reason that the larger multi-page spreadsheet was produced --

THE COURT: Which is DV sealed 15 through 18; right?

MR. DOERR: Correct.

THE COURT: I just want to make sure that --

MR. DOERR: That's correct.

THE COURT: Okay.

MR. DOERR: Mr. Shafer was concerned that in some specific groups -- and I'll let him tell you, because they're on a sheet that he asked to be included where he marked four groups where he could be assured that a gentlemen's club had not been included in that group or excluded from the group in

the consolidated spreadsheet. And so I -- if we could ask you to have that review either now or --

THE COURT: Which, this one?

MR. DOERR: -- at some other time where you just look at the rest of the people listed on the thing and say, I don't believe any of these are gentlemen's clubs --

THE COURT: Well, that was what I -- are you saying just the first category?

MR. DOERR: Yes.

THE COURT: As opposed to the Sun City Summerlin Community Master Association which we talked about?

MR. DOERR: Well, in fact, I believe it was the category that's perfume shops, it's the category that's gift and novelty shops. And what was the third?

MR. SHAFER: Your Honor, the request goes a little bit beyond that. It's just not whether there's a gentlemen's club in there, there's a provision under the statute that allows people to petition for an exemption. And the history of this is that -- without arguing everything all over again, it's like this was a general tax and then they exempted everything out except the adult gentlemen's clubs. But it turned out --

MR. DOERR: The State can exempt what it believes --

MR. SHAFER: -- it turned out that some of the exemptions weren't broad enough, so in 2005 they had to add

some additional exemptions to make sure they were getting people out, like, for example, NASCAR, and I believe 2005 was also when they put in the Minor League Baseball exemption.

So what the Court will see is that there are some times when there are business categories that are paying during some years, but not paying in others. And I'm trying to find out why that is, because I believe -- you know, they petitioned for exemptions --

THE COURT: I'm not making that decision. That's not my job. That's a discovery issue. You're going to find out about categories and whether certain -- for instance, we can probably agree that the Western Folk Life Center, if arguably they were on this list, is not a gentlemen's club.

MR. SHAFER: You can. I have no idea what that is, but I'll agree with you, Your Honor. I don't know what it is.

THE COURT: It's in Northern Nevada, and it's my recollection that it's one of those performing arts kind of things. But, you know --

MR. SHAFER: I just wanted to clarify what --

THE COURT: I'm not going to go through and tell you which of the guys on this list are or not gentlemen clubs. I had to ask my male staff about some of them that were in the first category.

MR. DOERR: Well, I think one of the questions Mr. Shafer has is is there any gentlemen's club on the longer list

that wasn't included in the short list. I -- you know --

THE COURT: Oh. Is that what he's asking me?

MR. DOERR: Yes.

THE COURT: Is that what you're really asking me?

MR. SHAFER: Well, no --

MR. DOERR: I'll represent that the answer is no, that I went through the list. That was the purpose of producing the larger spreadsheet.

THE COURT: I can tell you from looking at the totals that the total on DV1194, if it is accurate, is the same total for the category that is the first category on DV sealed 15 through 18, which is characterized, not by me, but by other people, as gentlemen's clubs. And I will tell you it does not under the NAICS description say a gentlemen's club anywhere in there.

MR. SHAFER: Your Honor, and that's why I stood up a couple minutes --

MR. DOERR: Well, in fact --

MR. SHAFER: That's why I stood up a couple minutes ago, because I gave Judge Togliatti a copy of the chart that has a number of the categories underlined. I was trying to limit it down as much as possible what I was asking for, you know, so that she would have to do less work on this. But what I want the Court to understand is my only concern was not just whether it's a gentlemen's club or not. I have two other

concerns, one of which, are they throwing other type of adult businesses in there that are subject to the tax, adult bookstores could be subject to the tax because they could have live entertainment inside and they're not a strip club.

In addition, I want to know why some of these categories -- why people were paying a tax then all of a sudden they're not. And there are three potential explanations for that, Your Honor. One is that there were regulations enacted after the 2003 statute that created some exemptions, that in 2005 there were additional statutory exemptions and some of the regulatory exemptions were then codified in the statute, and, third, it might have been somebody that just petitioned to be exempted out. And if they're exempting out everybody under the sun that asks to be exempted as long as they're not a strip club, that kind of goes towards my argument.

THE COURT: Or they could have gone out of business.

MR. POPE: Your Honor --

MR. SHAFER: Could have.

MR. POPE: -- exemptions are statutory.

MR. SHAFER: Don't know.

MR. POPE: And in 2003 there was a rush to create some revenue, so the statute was enacted.

THE COURT: Sort of like this session, huh?

MR. POPE: Then there were regulations -- then there

were regulations that were enacted, and then a lot of those regulations became part of the statute in 2005. All that's public record.

THE COURT: And I'm not worried about that. I understand it's going to be a subject of discussion during depositions and you're going to try and establish there's been an arbitrary and capricious application, and we'll deal with that if you get some information that you think supports that. But if what you're asking me is are those entities that are listed in the first category of DV sealed 15 through 18, the total matches on what has been called gentlemen's club on DV1194, although the description "gentlemen's club" does not appear anywhere on DV sealed 15 through 18, because you came up with the term "gentlemen's club."

MR. DOERR: Well, in fact, gentlemen's clubs isn't codified under the NAICS. So the gentlemen's clubs had different NAICS numbers. I got all the information from the Department and sorted it out to determine which of the NAICS numbers were gentlemen's clubs, and I separated that out. And I know that that's what he wants verified, and that was the purpose preparing that second sheet, the larger sheet.

THE COURT: If you want, I can ask my assistant, Dan, to go through this list and tell me if there's any other gentlemen's clubs on here, because he would be the one who knows.

MR. DOERR: I think that is what he's wanted. I think -- that's what I understood his question to be.

THE COURT: I mean, because I don't know that, and I'm not going to know. But Dan would be able to figure it out, and he'd love to have that assignment.

MR. SHAFER: I understand, Your Honor. But I would really like to articulate my own argument, as opposed to having the State of Nevada do it.

MR. DOERR: Well, I think his argument is changing now in front of you than it was before.

THE COURT: His argument is changing, absolutely.

MR. DOERR: And that's why I'm trying to clarify what I understood when we came in here.

THE COURT: Well, and I did what I thought was the appropriate thing. And if there is something else that needs to be done as you go through the process of discovery, I have decided that your case is complex, and I will be handling all of your discovery disputes without the necessity of your going to see the Discovery Commissioner.

If you could do whatever flag in the system says that, Dimita.

THE CLERK: Yes, Your Honor.

THE COURT: So I think the initial thing that you wanted me to say was how are you going to get the backup information you need to show that this is unfairly aimed at

the strip clubs.

MR. SHAFER: Correct.

THE COURT: I think we've come up with a way, although it is not final, because I want the State to make a proposal as to the methodology for the redactions to protect the confidentiality to the extent possible of those who are remitters in the first category.

MR. DOERR: Okay. We can come up with --

THE COURT: And I'm looking for suggestions from you, because there are ways to do it, a number of them, and I don't know if you guys have a good solution to that.

MR. POPE: I just still had a question, Your Honor. What documents is it that you have found that are directly related and what do you consider backup?

THE COURT: The directly related is the source information that is provided to the State of Nevada that supports the tax calculations for the remitters of the amount of tax they're remitting for those entities who are in the first category on DV sealed 15 through 18.

I am not ordering DV sealed 15 through 18 to be produced in its entirety. My request is that we figure out if there is a way to redact the category you have called LET taxpayer so that those names of those entities do not appear. That will require us to assign an identifier for each of the redacted remitters so that you can refer to them as remitter

identification. And I'll tell you we do this in healthcare cases where I have doctors who are fighting over their practice and I have to deal with patient issues. We assign patients a number or a letter, and then when we refer to patients as part of the discovery they all know who they're talking about, because they're talking about Patient 727, and they can talk about the treatment or billings related to Patient 727 intelligently. I know that Patient 727 is an individual I've ordered some confidentiality protection to. I have a backup if I ever have to get to there as to that person's actual identity. But when we talk about it in front of the jury or in a public setting, we have found a way to protect that identification. Typically I order that on an attorneys' eyes only basis. I have not gotten to that point yet. I'm looking to you to make suggestions as to ways you think the remitters' identification can be protected, but the backup information, the reporting from those remitters that is supplied to the State of Nevada and any documentation the State does, spreadsheets or charts or whatever you do to calculate whether those are appropriate -- because you have auditors look at it to make sure it's right --

MS. RAKOWSKY: Your Honor --

THE COURT: Yes.

MS. RAKOWSKY: -- I'm sorry. How about 49.025, which does not permit a report to be -- to be given in this

discovery for as far as tax goes?

THE COURT: Hold on. Let me go to NRS 49.025 with you.

MR. POPE: To go along with that, Your Honor --

MS. RAKOWSKY: And that privilege belongs to that taxpayer, so we have to write to every one of those taxpayers and get their permission to divulge their stuff on this case.

THE COURT: Which is why I have made a determination that protecting the confidentiality of those remitters, as I'm calling them, because I think you have used the term "taxpayer" incongruously in other pleadings, that in order to carry out the purpose of NRS 368A.180, I certainly understand your position, but it's my intention to protect the confidentiality of the identity of those remitters but to provide the factual information that is needed for me to make a determination as to the constitutional of the live entertainment tax.

MS. RAKOWSKY: And, Your Honor, can I get -- not one time has Counsel actually said why he needs individual taxpayer information of a category of gentlemen's clubs who are saying that the live entertainment tax is unconstitutional, because it singles out live entertainment tax. So what difference does it make what Deja Vu pays or what -- or what Little Darlings pays?

THE COURT: He's not going to find out what each of

them pay. He's going to find out what Remitter A pays, what Remitter D pays, what remitter F pays, but he's not going to find --

MS. RAKOWSKY: Why individually, Your Honor?

THE COURT: Why individually? Because I think it is important given some of the concerns related to the math error or other error that we had on the chart that we have that backup documentation so an appropriate calculation can be made to insure that the information that is being provided is accurate so that when I make a determination, regardless of what that determination is, all of you can go to Carson City with the right record for them to then make a decision as to the appropriateness.

MS. RAKOWSKY: Thank you, Your Honor.

THE COURT: You understand what I'm saying?

MS. RAKOWSKY: I get it.

THE COURT: I'm trying to carry out the confidentiality, and I certainly understand there's an issue. And the other option, and I hate this option because I've had to do it before, is we've got to write to every one of them and ask their permission and let them all come visit with us. And while they all come on the taxicab case, and I'm sure that Mr. Brown will be on the other side of the room when we're here on the Taxicab Authority case, I don't think you could get them all to agree to anything, because they don't all

agree, and they're all on the same side of that room all the time.

MR. POPE: Your Honor, if I can jump in here just for a second. I think --

THE COURT: Yes.

MR. POPE: -- part of the reason for the categories was because if you have fewer taxpayers, a description of that taxpayer and what they do identifies the taxpayer, and then if you have their numbers, you can match them.

THE COURT: What numbers?

MR. POPE: Their reporting numbers.

THE COURT: Their revenue numbers?

MR. POPE: Yeah. The tax return information is one of the more confidential items, and you can back into whose that is by knowing --

MR. DOERR: Who it isn't, because there are eight of them, eight of that group --

THE COURT: Not on this list there's not eight.

MR. DOERR: Well, there's eight plaintiffs. There's more than that on the list. So if they take their eight numbers out, they're left with a handful of numbers that in their industry we believe conceivably they could determine whose those numbers were.

THE COURT: So part of your proposal of how we produce that information may include a restriction on who that

information is disseminated to, what I typically call an attorney eyes only, which I sometimes call a highly confidential, and then it depends on how you want to structure that disclosure. And my goal, and I don't know how you want to achieve this, because I'm leaving it in your hands because you know the documents and the reporting better than I do, is to find a way that the confidentiality of the remitter is protected --

MR. DOERR: Okay.

THE COURT: -- but the backup documentation is provided so that I can then make a determination with the aid of that information which appears to be directly involved in this action or proceeding in my opinion is available, you're able to do whatever discovery has to be done, you can then file whatever briefing you think is appropriate. If I decide that I need to hear some evidence and argument or you guys stand up there and show me the evidence as we're going, I can then make an appropriate determination so you all have the adequate record you need to go to Carson City to have them decide whether I was right or wrong. But I want you to all have an adequate ability to get to that point, because this case has been around for a long time, and we need to get rid of it.

MR. DOERR: I understand. And I think we -- I think we can come up with something. And if there's a way --

THE COURT: And I'm giving you --

MR. DOERR: -- we determine we cannot do that, we will come back to you.

THE COURT: Then we're going to talk. Let me give you a status check before you leave.

MR. DOERR: I wanted to -- I wanted to go back to the error again. I want -- I want to be clear that the numbers that we're coming up with, the error had nothing to do with those numbers, because it was really a transposing of the Gaming's number, which is at the bottom of the list, so the total line moved over.

THE COURT: And nothing I'm saying today has anything to do with gaming, just so we're clear.

MR. DOERR: Well, that -- that was the cause of the error --

THE COURT: That's a huge other issue.

MR. DOERR: -- so the numbers -- the gaming numbers actually didn't change at all, they were simply transposed across the row. And the change was to really just transpose the row back. So --

THE COURT: And those are errors that happen all the time in practice. Not that you make them all the time, but they happen in practice all the time.

MR. DOERR: I said it was my mistake. When I realized it, I produced a new sheet immediately.

I want to just go back for a minute to you actually offered to have your law clerk look at the --

THE COURT: No, not my law clerk --

MR. DOERR: I'm sorry.

THE COURT: -- my assistant. My law clerk wouldn't know them.

Could you go get Dan.

Have you guys met Dan?

MR. DOERR: We've spoken on the phone.

THE COURT: You want to meet Dan.

MR. SHAFER: Is Dan being inundated with this?

THE COURT: Oh, Dan's going to love this assignment. He's going to ask if he can go make site visits. Just watch. Just watch. That's what he's going to do.

MR. SHAFER: Am I going to have to give him a free VIP card, Your Honor, on behalf of my clients?

THE COURT: You cannot give VIP cards to him. That would give him a bias issue, and we can't do that.

MR. DOERR: I just -- I --

THE COURT: I know what you're asking. You want --

MR. DOERR: I'm really -- I just want --

THE COURT: It's okay. I won't -- I'm not going to be able to determine, okay, just trust me. You don't want me trying to figure it out. I have enough trouble when it's -- when I figure out that a Business Court case is really about a

brothel, I blush, okay. It's -- you don't want me doing this.

MR. DOERR: Your Honor, also, if he -- some of those taxpayers, some of the names listed he's not going to be able to find where they are. They're gone.

THE COURT: Believe me, he's going to know what they are.

Hey, Dan, have you met the warriors in the live entertainment tax case?

MR. KUTINAC: Not yet.

MR. SHAFER: Hi, Dan.

THE COURT: Dan, they wanted to meet you. Dan, come here. I have an assignment for you, and the only reason I'm giving it to you is you are uniquely qualified to do this.

MR. KUTINAC: Okay.

THE COURT: I want you as part of your duties as my assistant, without making site visits --

MR. KUTINAC: Okay.

THE COURT: -- to go through the sheets that are DV sealed 16 through 18, I want you to make a copy, and I want you to identify for me any entity that you are able to to determine whether it is an adult entertainment establishment, a concert promoter, a fight promoter, or somebody else who provides live entertainment services in the state of Nevada, and then if there are some that you are unable to identify, to please put a question mark next to that. And I don't want you

to write on that one, I want you to make a copy before you do this. You don't have to do it today. You are not to make site inspections, you are not to take any VIP passes that anyone offers you, you can't go do anything over there; but because you have a familiarity because of some of the past history --

MR. KUTINAC: Right.

THE COURT: -- the some of these institutions, you are in a better position than I to be able to do that. And the parties have said that's okay with them.

MR. KUTINAC: Okay.

THE COURT: Good luck, Dan.

MR. KUTINAC: Easy one.

THE COURT: See, he said it was easy.

Okay. I'm going to get that, and then I am going to tell you if it appears from Dan's investigation if there is any significant deviation from the grouping that appears to be adult entertainment related that in the first group or category, okay. I call it adult entertainment. Gentlemen's clubs, whatever.

MR. SHAFER: Okay. But, you know, Your Honor, I don't even know what that document is.

THE COURT: I know you don't.

MR. SHAFER: And I've never seen that document.

THE COURT: I'm not going to let you see it yet.

MR. SHAFER: Well, I understand.

THE COURT: I may let you see it at some point in time when we insert other identifiers for the remitters so that I can carry out the confidentiality purposes of NRS 368A.180, which I may not agree with the State's interpretation, but I do agree with the purpose, which is to protect the confidentiality of the remitters.

MR. SHAFER: As do the plaintiffs. And we've said that from day one of this case, Your Honor -- or from day one when we started arguing about discovery.

THE COURT: Okay. All right. Anything else I can do to help you?

MR. POPE: A final question, Your Honor, please. We came up with the category totals as our way of working with the statute, and --

MR. DOERR: Well, that's the way we were ordered to by the Discovery Commissioner, but --

THE COURT: It's okay.

MR. POPE: Yeah, that's true. That was even beyond. So --

THE COURT: But, see, what Dan's going to do, he's going to go on that list and he's going to figure out if Great White Entertainment is really a concert promoter, which I know from listening to advertisements on the radio, or if Great White Entertainment is something else. And he's going to

provide it back to us, and I'm going to be able to tell you if there appears to be a deviation from the categorizations that you have provided on DVD1194 and 1195 from the actual names and remitters that are on DV sealed 15 through 18. And if it does not appear after Dan's investigation and his providing that information to me, which I will also place in a sealed exhibit, that there's not a deviation from the categories that you created -- because I know counsel created DV1194 through 5 -- if they appear to track, then I'm not going to worry about it. If there appears to be a deviation, we'll talk about it. I'm not ordering anything else to be done. But since I'm not in a position to do this, to identify those, we'll let somebody who probably is better suited to do it than me.

MR. POPE: And I take it that you're looking for something more than what we've come up with so far --

THE COURT: Yes.

MR. POPE: -- providing totals for categories.

THE COURT: Yes.

MR. POPE: Okay. So if we come back to you with the same approach and say, this is all we think we can do --

THE COURT: But I think what you really want to do is start with something that looks like DV sealed 15 through 18 and figure out a way to make the people who are in what you've called LET taxpayer, that column, to be confidential. I think that's a starting point.

MR. DOERR: Now --

THE COURT: And then we've got to figure out how to protect the backup information, and my anticipation is you're going to come up with either a system for redaction or you're going to decide that is too burdensome and you want to have an attorney eyes only provision with a clawback provision. And I don't know if that's what you want to do because of the balance between the burden and the potential cost of doing that or if you want to do something else. I'm leaving that for you to give me your best solution to arrive at what I want, which is to protect the confidentiality to the extent possible of the remitter, but to provide the backup information that we need to finish the discovery so that you can do an argument so I make a decision.

MR. DOERR: Now, this new thing we're creating, does this only relate to the first group, the gentlemen's clubs, or are you --

THE COURT: Yes.

MR. DOERR: Okay.

THE COURT: The others -- if in the investigation that is conducted by Dan turns out that there's -- you know, appears to be a deviation -- because from my --

MR. DOERR: I've done a subtotal on the larger list, and that should track exactly with the lines on the shorter list.

THE COURT: Yeah. That's what I -- I was confirming for counsel what it does.

MR. DOERR: And, Your Honor --

THE COURT: If I see there's deviations, when Dan looks at it and he says no, the next-to-the-last entry is really an adult entertainment entry, which I wouldn't think from reading the name of it, then we'll have a discussion about whether I've got to do something else about it. But I am at this point accepting that it is in fact a fine arts school. Do you understand what I'm saying?

MR. DOERR: I do. I do.

THE COURT: Okay.

MR. DOERR: I do.

THE COURT: All right. I am going to give to the clerk and ask her to seal as part of the record that I have reviewed those items that are numbered DV sealed 1 through 18 so that there is a record of what I reviewed, and since I've tried to refer to them as Bates numbers, I think it's not going to be a large concern.

With respect to the sheets that are DV1194 and DV1195, those have been previously produced; correct?

MR. DOERR: Correct.

THE COURT: So is there any reason that anyone feels I need to mark that as a Court's exhibit for today? It's not a sealed document. You want to come up and look at it and see

if you've seen it before?

MR. SHAFER: Yeah. I don't know what it is.

MR. DOERR: Brad, I believe it's the sheet you're looking at right there.

MR. SHAFER: This one, the first one or --

THE COURT: Both of them.

MR. SHAFER: Okay. Well, these are two different versions.

THE COURT: Well, I need the one that's the one I'm referring to, which is why I'm referring by Bates numbers, because I'm really anal and paranoid, so my record typically will actually refer to the document I'm looking at. If you want to approach and look at the one that I'm referring to.

MR. SHAFER: Thank you, Your Honor.

THE COURT: And that was why I said we need to do something to make that last column not as gray if there's a way to figure it out.

MR. DOERR: And as you see, we've given him a large version of that. And --

THE COURT: And was easier to look at on the DVD, too.

MR. DOERR: And we produced a larger one to Judge Togliatti, and --

THE COURT: I have a magnifying glass to read building plans that somebody decided to shrink to an 8-1/2 by

11 sheet of paper.

MR. SHAFER: Okay. I think this is the second one, Your Honor.

THE COURT: It doesn't matter to me. It's the one with the Bates number I referred to.

MR. SHAFER: Your Honor, could you give me that Bates number just so I have this marked, then.

THE COURT: DV1194 through 1195. And it has another number, so it looks like it had a prior production, DVDISC001475 through 1476.

MR. SHAFER: Thank you, Your Honor.

THE COURT: So do you want me to mark it as Court's Exhibit 1 since there seems to be confusion about what it is, or is it okay if I've just referenced it by the Bates numbers that are on it?

MR. SHAFER: I'm good with the Bates numbers, Your Honor.

THE COURT: Okay. I'm glad you guys are all good with that. I am going to ask John to shred the copies of the sealed documents that I reviewed separately so that I could make notes on them so that they're now shredded. John, the shredder's in the back room.

Dan, why are you back?

MR. KUTINAC: I didn't know if there was anything else.

THE COURT: Oh, no. But no site visits.

Anything else?

MR. DOERR: How about -- I'm not sure how much time we're going to need to do this.

THE COURT: I was going to give you about three weeks to figure out, because a protocol to figure it out is a little -- that's going to be -- and then somebody's got to put it into effect and do the elbow grease of either using a Sharpie or redacting tape or making some other determination as to a way to produce them. Three weeks?

MR. DOERR: Three weeks.

THE COURT: You don't have to come. You can be on the phone, if you'd like.

MR. DOERR: You know --

THE COURT: And that's not for you to say what you've decided, that's for you to give me your proposal.

MR. DOERR: Okay.

THE COURT: And if you want to do your proposal in writing and send it to Counsel the day before so he will have a basis to have an intelligent discussion with us, that would be lovely. Okay.

MR. DOERR: Okay. I have some thoughts on it already, but we'll -- let's discuss it.

THE COURT: I'm going to let you guys caucus it. I'm not going to try and pin you down, because it's a

complicated process, it's a big thing.

Yes, some --

MR. SHAFER: I was just going to say I'm already going to be here twice in March anyway because I have a convention one week.

And then what was the date that we set for the -- your motion?

MR. DOERR: The 15th.

MR. SHAFER: Yeah. So I'll be out here two weeks in March anyway.

THE COURT: So when are you going to be here in March?

MR. SHAFER: Well, I'll be here the week of the 7th, but they I think were not available.

MR. DOERR: We're not all available the week of the 7th.

THE COURT: So do you want to come the week before, the week of the 3rd -- or, I'm sorry, the week of -- what is it --

MR. DOERR: How about -- can we suggest we do it the 15th, when our current motion is --

THE COURT: Yes, you can suggest that.

MR. DOERR: -- set.

THE COURT: Yep. And I guess we'll talk about those other issues on that day.

Has the Ninth Circuit made a decision on that pending issue?

MR. POPE: That case was dismissed.

THE COURT: It was dismissed?

MR. DOERR: Yeah.

THE COURT: Okay. You may have told me that and I forgot.

MR. SHAFER: Yes. It was a [inaudible], Your Honor, one-sentence type of thing.

THE COURT: Okay.

MR. SHAFER: Right?

MR. DOERR: Well --

THE COURT: I don't care. It doesn't matter today. It may matter on March 15th, but it doesn't matter today. So instead of March 3rd, we're going to come for a status check on March 15th, on the same day, and we're going to talk about whether you've come up with a -- I'm going to call it a protocol. You can call it whatever you want. But that will remind me of what I'm trying to get out of you.

MR. POPE: Your Honor, we had attached the decision from the Ninth Circuit to one of our motions.

THE COURT: And that may be -- I may have seen it and forgotten, because you may have noticed I was dealing with some other issues with whether spurious allegations which are inflammatory and newsworthy were made in a proposed amended

complaint that I'd already let be sealed for purposes for the motion.

MR. POPE: -- reality and belief.

THE COURT: Things like that, yeah.

MR. DOERR: Truthfulness and --

THE COURT: Despicable. Despicable. Whether any of those are true or not is a whole different issue, but they have to allege certain things in a fraud claim to be good.

MR. DOERR: Okay.

MR. BROWN: Like dishonor. Oh, is that not particularity pleading?

THE COURT: Argumentative, Mr. Brown.

Anything else that I can do to help you?

Okay. 'Bye, guys.

THE PROCEEDINGS CONCLUDED AT 11:36 A.M.

* * * * *

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE HOYT, TRANSCRIBER

2/19/11

DATE