

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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PARAMETRIC SOUND  
CORPORATION, VTB HOLDINGS, INC.,  
KENNETH POTASHNER; ELWOOD  
NORRIS; SETH PUTTERMAN; ROBERT  
KAPLAN; ANDREW WOLFE; and  
JAMES HONORE

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT, in and for the County of Clark,  
State of Nevada, and ELIZABETH  
GONZALEZ, District Judge

Respondents,

and

VITIE RAKAUSKAS, individually and on  
behalf of all others similarly situated, and  
Intervening Plaintiffs RAYMOND  
BOYTHIM and GRANT OAKES,

Real parties in interest.

Electronically Filed  
Oct 16 2015 04:05 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Supreme Court No.: 66689

District Court Case No.:  
A-13-686890-B  
Dept. No. XI

**MOTION TO EXTEND TIME  
TO FILE AND SERVE  
AMICUS BRIEF PURSUANT  
TO NRAP 31**

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

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## **NRAP 26.1 DISCLOSURE STATEMENT**

Pursuant to Nevada Rule of Appellate Procedure 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

1. There are no corporations or entities subject to disclosure; and
2. The only law firm that has appeared for Amicus Curiae State Bar of Nevada, Business Law Section in this matter is the law firm of Brownstein Hyatt Farber Schreck, LLP.

DATED this 16th day of October, 2015.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Jeffrey S. Rugg  
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*Attorneys for Amicus Curiae State Bar of Nevada,  
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Pursuant to N.R.A.P. 26(b), N.R.A.P. 27, N.R.A.P. 29, and N.R.A.P. 31(b)(3), Amicus Curiae State Bar of Nevada, Business Law Section (“BLS”), by and through its attorneys of record, Brownstein Hyatt Farber Schreck, LLP, hereby respectfully moves for an extension of time to file and serve its amicus brief, presently due on or before October 19, 2015.

This petition for writ of mandamus arises out of the district court’s order denying motions to dismiss. Following the opening round of briefing and oral argument held before an *en banc* session of the Court, the Court entered an Order for Supplemental Briefing and Inviting Participation by Amicus Curiae (the “Order”). Specifically, the Court directed the parties to address the following two issues with supplemental briefs:

1. Comparing the test articulated in *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 62 P.3d 720 (2003) to the three primary tests—direct harm, special injury, and duty owed—other jurisdictions use to distinguish direct suits from derivative suits, including (i) a critique of the tests, (ii) the effect, if any, the tests have on opening litigation floodgates against directors, and (iii) fairness considerations regarding whether shareholders or surviving entities are entitled to monetary judgments. And also recommend the best test for Nevada to use and articulate what facts must be alleged to sustain a direct shareholder lawsuit at the pleading stage.

2. Addressing whether share dilution claims can be brought directly or derivatively. If direct suits are sometimes permissible, the analysis should consider what conditions are necessary to allow a direct suit based on dilution.

The Court ordered that Petitioners file their supplemental brief 15 days from the entry of the Order (or file the brief on or before September 18, 2015), and ordered that Respondents file their supplemental brief 15 days after service of Petitioners' supplemental brief.<sup>1</sup>

In addition to the parties providing supplemental briefs, the Court invited BLS to submit an amicus brief on the issues outlined above. The Court ordered that BLS file its amicus brief 45 days from the entry of the Order (or file the brief on or before October 19, 2015).

Once it became aware of the Order, the BLS executive committee analyzed the Order and the Court's invitation to address the above issues. This analysis and the time necessary to comply with procedures of the Nevada Bar took a significant period of time. Following their analysis, the committee voted to accept the Court's invitation to submit an amicus brief.

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<sup>1</sup> On September 18, 2015, Petitioners timely filed their Supplemental Brief in Support of Petition for Writ of Mandamus or, in the Alternative, Writ of Prohibition, and on October 13, 2015, Real Parties in Interest filed their Supplemental Brief.

In light of the timing of the supplemental filings and the importance of the answers to the issues that will shape the law in this State, BLS respectfully requests that the Court grant it an extension of time to file and serve its amicus brief, such that the brief would be due forty-five (45) days from the date of its current deadline, or due on or before December 3, 2015. An extension of time is warranted for the following reasons: (i) the issues and questions the Court raised require detailed analysis of both the law in this State and the law outside this State in order to arrive at the correct legal conclusion; (ii) the input BLS will provide in its forthcoming amicus brief will assist the Court in determining the law on future derivative or direct lawsuits brought in this State; (iii) the questions and issues the Court invited BLS to address are important to Nevada's continued development as a state where businesses look to incorporate and therefore requires a balanced and thorough analysis; (iv) the last supplemental brief was just filed on October 13, 2015, and based on the Order, the Court ordered for BLS to have all the parties' supplemental briefing before submitting its amicus brief; (v) there are several briefs with related appendices for BLS to review in order to understand the legal context in which the Order was issued; and (vi) with the matter stayed at the district court level, no party will suffer unfair prejudice while the Court gathers all the requested input of BLS so it may decide these important issues.

Counsel for BLS reached out to and spoke with Petitioners' counsel regarding the forty-five (45) day extension, and Petitioners did not object to the request. Counsel for BLS also reached out to the Real Parties in Interest's lead Nevada counsel regarding the forty-five (45) day extension. However, at the time of filing this Motion, counsel for BLS had not heard back from the Real Parties in Interest's lead Nevada counsel regarding the instant request.

This Motion is made in good faith and without the intent to cause any delay in this appeal, and BLS submits that good cause exists to extend the time for BLS to file its amicus brief forty-five (45) days from the date of its current deadline, or file its amicus brief on or before December 3, 2015.

DATED this 16th day of October, 2015.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Jeffrey R. Rugg  
JEFFREY S. RUGG, ESQ.  
MAXIMILIEN D. FETAZ, ESQ.

*Attorneys for Amicus Curiae State Bar of Nevada,  
Business Law Section*

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing MOTION TO EXTEND TIME TO FILE AND SERVE AMICUS BRIEF PURSUANT TO NRAP 31 with the Clerk of the Court of the Supreme Court of Nevada by using the Court's Electronic Filing System on October 16, 2015.

I certify that all participants in the case listed below and are registered electronic filing users and that service will be accomplished by the Court's Electronic Filing system or by U.S. Mail as listed below:

Kelly H. Dove (Snell & Wilmer, LLP/Las Vegas)  
Richard C. Gordon (Snell & Wilmer, LLP/Las Vegas)  
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*Attorneys for Real Parties in Interest VITIE RAKAUSKAS, individually and on behalf of all others similarly situated, and Intervening Plaintiffs RAYMOND BOYTHIM and GRANT OAKES*

☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

Honorable Elizabeth Gonzalez  
Eighth Judicial District Court Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

/s/ Paula Kay  
an employee of Brownstein Hyatt Farber Schreck, LLP