

ORIGINAL

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2016 FEB -9 PM 3:46

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Feb 16 2016 10:13 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 Code \$2515
2 **CHESTER H. ADAMS, #3009**
3 Sparks City Attorney
4 **DOUGLAS R. THORNLEY, #10455**
5 Senior Assistant City Attorney
6 P.O. Box 857
7 Sparks, Nevada 89431
8 (775) 353-2324
9 Attorneys for Respondent

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 **RENO NEWSPAPERS, INC.,** a Nevada
13 Corporation,

14 Petitioner,

15 vs.

Case No. CV15-01871

Dept. No. 9

16 **CITY OF SPARKS,** a Municipal Corporation,
17 Respondent.

18 **NOTICE OF APPEAL**

19 Notice is hereby given that Respondent City of Sparks, hereby appeals to the Supreme Court
20 of Nevada from the *Order Granting Petition for Writ of Mandamus* entered in this action on January
21 28, 2016.

22 This document does not contain the Social Security Number of any person.

23 Respectfully submitted this 8th day of February, 2016.

24 **CHESTER H. ADAMS**
25 Sparks City Attorney

26 By:

27 **DOUGLAS R. THORNLEY**
28 Senior Assistant City Attorney
Attorneys for Respondent

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(5)(c)(1), I hereby certify that I am an employee of the Sparks City
3 Attorney's Office, Sparks, Nevada, and that on this date, I am serving the foregoing document(s)
4 entitled **NOTICE OF APPEAL** on the person(s) set forth below by:

5 ☒ Placing an original or true copy thereof in a sealed envelope placed for collection and
6 mailing in the United States Mail, at Sparks, Nevada, postage prepaid, following
ordinary business practices.

7 ☐ Personal Delivery.

8 ☐ Facsimile (FAX).

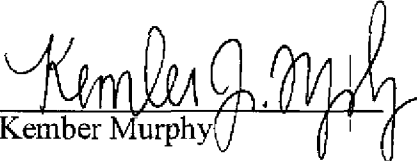
9 ☐ Federal Express or other overnight delivery.

10 ☐ Reno/Carson Messenger Service.

11 If physically delivered, each is addressed as follows:

12 Scott A. Glogovac, Esq.
13 **Glogovac & Pintar**
427 West Plumb Lane
14 Reno, Nevada 89509
Attorneys for Petitioner, Reno Newspapers, Inc.

15 DATED this 8th day of February, 2016.

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17 Kember Murphy
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ORIGINAL

FILED

2016 FEB -8 PM 3:46

CLERK OF DISTRICT COURT
SECOND JUDICIAL DISTRICT COURT

[Signature]

1 Code 1310
2 **CHESTER H. ADAMS, #3009**
3 Sparks City Attorney
4 **DOUGLAS R. THORNLEY, #10455**
5 Senior Assistant City Attorney
6 P.O. Box 857
7 Sparks, Nevada 89431
8 (775) 353-2324
9 **Attorneys for Respondent**

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 **RENO NEWSPAPERS, INC., a Nevada**
13 Corporation,

14 Petitioner,

15 vs.

16 **CITY OF SPARKS, a Municipal Corporation,**

17 Respondent.

Case No. CV15-01871

Dept. No. 9

18 **CASE APPEAL STATEMENT**

19 **1. Name of appellant filing this case appeal statement:**

20 The City of Sparks, Nevada.

21 **2. Identify the judge issuing the decision, judgment, or order appealed from:**

22 The Honorable Scott N. Freeman, Department 9, Second Judicial District Court of the State
23 of Nevada.

24 **3. Identify each appellant and the name and address of counsel for each appellant:**

25 Appellant: City of Sparks

26 Appellant's Counsel: Douglas R. Thornley, Esq.
27 Senior Assistant City Attorney
28 Sparks City Attorney's Office
431 Prater Way
Sparks, Nevada 89431

CV15-01871
RENO NEWSPAPERS, INC. V CITY OF SPARKS
District Court
Washoe County
02/08/2016 04:19 PM
1600
NMTU

1 **4. Identify each respondent and the name and address of appellate counsel, if known, for**
2 **each respondent:**

3 Respondent: Reno Newspapers, Inc.,

4 Respondent's Counsel: Scott Glogovac, Esq.
5 Glogovac & Pinter
427 W. Plumb Lane
Reno, Nevada 89509

6 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not**
7 **licensed to practice law in Nevada and, if so, whether the district court granted that**
8 **attorney permission to appear under SCR 42:**

9 Counsel for both parties are licensed to practice law in the State of Nevada.

10 **6. Indicate whether appellant was represented by appointed or retained counsel in the**
11 **district court:**

12 The City of Sparks was represented by retained counsel in the District Court.

13 **7. Indicate whether appellant is represented by appointed or retained counsel on appeal:**

14 The City of Sparks is represented by retained counsel in this appeal.

15 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date**
16 **of entry of the district court order granting such leave:**

17 The City of Sparks has not requested leave to proceed *in forma pauperis*.

18 **9. Indicate the date the proceedings commenced in the district court:**

19 Reno Newspapers, Inc. filed its Petition for Writ of Mandamus on September 18, 2015.

20 **10. Provide a brief description of the nature of the action and result in the district court,**
21 **including the type of judgment or order being appealed and the relief granted by the**
22 **district court.**

23 Subject to a list of exceptions or "unless otherwise declared by law to be confidential," the
24 Nevada Public Records Law requires that the records of a governmental entity be made available for
25 inspection and reproduction by the public. Nev.Rev.Stat. § 239.010(1). On August 20, 2015, the Reno
26 Gazette Journal requested that the City provide it with copies of the business licenses of medical
27 marijuana establishments in Sparks, including the names of the applicant/licensees. Citing NAC
28 453A.714(1), the City produced the business licenses sought by the Newspaper but redacted the
personal names and identifying information of the licensees from the documents. The corporate
names, locations, and contact information of the businesses at issue remained unaltered on the

1 produced documents. The Newspaper renewed its demand for the personal names of the licensees
2 operating medical marijuana establishments in Sparks and the request was denied once more. As a
3 result, the Newspaper filed its Petition for Writ of Mandamus. The District Court granted the Petition
4 and directed the City of Sparks to provide the Newspaper with unredacted copies of the requested
5 business licenses.

6 **11. Indicate whether the case has previously been the subject of an appeal to or original writ**
7 **proceeding in the Supreme Court:**

8 This case is not the subject of a previous appeal in the Supreme Court of Nevada.

9 **12. Indicate whether this appeal involved child custody or visitation:**

10 This case does not involve child custody or visitation.

11 **13. If this is a civil case, indicate whether this appeal involved the possibility of settlement:**


12 Because this matter involves questions of jurisdiction and statutory interpretation as opposed
13 to relative culpability, settlement is unlikely.

14 This document does not contain the Social Security Number of any person.

15 Respectfully submitted this 8th day of February, 2016.

16 **CHESTER H. ADAMS**
17 Sparks City Attorney

18 By:

19 
20 **DOUGLAS R. THORNLEY**
21 Senior Assistant City Attorney
22 *Attorneys for Respondents*
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(5)(c)(1), I hereby certify that I am an employee of the Sparks City
3 Attorney's Office, Sparks, Nevada, and that on this date, I am serving the foregoing document(s)
4 entitled **CASE APPEAL STATEMENT** on the person(s) set forth below by:

5 ☒ Placing an original or true copy thereof in a sealed envelope placed for collection and
6 mailing in the United States Mail, at Sparks, Nevada, postage prepaid, following
ordinary business practices.

7 ☐ Personal Delivery.

8 ☐ Facsimile (FAX).

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11 If physically delivered, each is addressed as follows:

12 Scott A. Glogovac, Esq.
13 **Glogovac & Pinter**
14 427 West Plumb Lane
Reno, Nevada 89509
Attorneys for Petitioner, Reno Newspapers, Inc.

15 DATED this 8th day of February, 2016.

16 
17 Kember Murphy
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SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV15-01871****Case Description: RENO NEWSPAPERS, INC V CITY OF SPARKS (D9)****Case Number: CV15-01871 Case Type: WRIT OF MANDAMUS - CIVIL - Initially Filed On: 9/18/2015****Parties**

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - SCOTT N. FREEMAN - D9	Active
PLTF - RENO NEWSPAPER, INC. - @557713	Active
DEFT - CITY OF SPARKS - @1015513	Active
ATTY - Scott Allen Glogovac, Esq. - 226	Active
CA - Douglas R. Thornley, Esq. - 10455	Active
CA - Chester H. Adams, Esq. - 3009	Active

Disposed Hearings

- 1 Department: D9 -- Event: Request for Submission -- Scheduled Date & Time: 10/21/2015 at 11:42:00
Extra Event Text: PETITIONER'S PETITION FOR WRIT OF MANDAMUS (NO PAPER ORDER PROVIDED)
Event Disposition: S200 - 11/12/2015
- 2 Department: D9 -- Event: Request for Submission -- Scheduled Date & Time: 1/14/2016 at 17:00:00
Extra Event Text: PETITION FOR WRIT OF MANDAMUS - TAKEN UNDER ADVISEMENT
Event Disposition: S200 - 1/28/2016
- 3 Department: D9 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 1/14/2016 at 10:00:00

Event Disposition: D840 - 1/14/2016

Actions

- | | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|---|--------------------|----------|---|
| 1 | 9/18/2015 | - | \$1425 - \$Complaint - Civil
Additional Text: WRIT OF MANDAMUS - Transaction 5148893 - Approved By: CSULEZIC : 09-18-2015:16:18:26 |
| 2 | 9/18/2015 | - | PAYRC - **Payment Receipted
Additional Text: A Payment of \$260.00 was made on receipt DCDC514878. |
| 3 | 9/21/2015 | - | 4090 - ** Summons Issued
<i>No additional text exists for this entry.</i> |
| 4 | 9/21/2015 | - | 1005 - Acceptance of Service
Additional Text: ACCEPTANCE OF SERVICE OF PROCESS - Transaction 5151142 - Approved By: YVILORIA : 09-21-2015:16:51:57 |
| 5 | 9/21/2015 | - | NEF - Proof of Electronic Service
Additional Text: Transaction 5151488 - Approved By: NOREVIEW : 09-21-2015:16:52:59 |
| 6 | 9/22/2015 | - | 1356 - Certificate of Mailing
Additional Text: SERVICE OF ACCEPTANCE OF SERVICE OF PROCESS - Transaction 5151970 - Approved By: CSULEZIC : 09-22-2015:10:46:55 |

- 7 9/22/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5152341 - Approved By: NOREVIEW : 09-22-2015:10:47:52
- 8 10/8/2015 - 3880 - Response...
Additional Text: RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS - Transaction 5179475 - Approved By: MCHOLICO : 10-08-2015:15:47:10
- 9 10/8/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5179686 - Approved By: NOREVIEW : 10-08-2015:15:48:44
- 10 10/20/2015 - 3795 - Reply...
Additional Text: REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS - Transaction 5198283 - Approved By: YVILORIA : 10-20-2015:16:54:30
- 11 10/20/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5198296 - Approved By: NOREVIEW : 10-20-2015:16:55:25
- 12 10/21/2015 - 3870 - Request
Additional Text: REQUEST FOR ORAL ARGUMENT - Transaction 5199027 - Approved By: MCHOLICO : 10-21-2015:11:34:58
- 13 10/21/2015 - 3860 - Request for Submission
Additional Text: PETITIONER'S PETITION FOR WRIT OF MANDAMUS (NO PAPER ORDER PROVIDED) - Transaction 5199034 - Approved By: MCHOLICO : 10-21-2015:11:36:10
PARTY SUBMITTING: SCOTT GLOGOVAC, ESQ.
DATE SUBMITTED: 10/21/15
SUBMITTED BY: MCHOLICO
DATE RECEIVED JUDGE OFFICE:
- 14 10/21/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5199106 - Approved By: NOREVIEW : 10-21-2015:11:35:51
- 15 10/21/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5199111 - Approved By: NOREVIEW : 10-21-2015:11:37:01
- 16 11/12/2015 - 3347 - Ord to Set
Additional Text: Transaction 5232385 - Approved By: NOREVIEW : 11-12-2015:14:45:14
- 17 11/12/2015 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 18 11/12/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5232394 - Approved By: NOREVIEW : 11-12-2015:14:46:12
- 19 1/22/2016 - MIN - ***Minutes
Additional Text: 1/14/16 - ORAL ARGUMENTS - Transaction 5332254 - Approved By: NOREVIEW : 01-22-2016:11:15:46
- 20 1/22/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5332257 - Approved By: NOREVIEW : 01-22-2016:11:16:35
- 21 1/28/2016 - 3105 - Ord Granting ...
Additional Text: ORDER GRANTING PETITION FOR WRIT OF MANDAMUS - Transaction 5343273 - Approved By: NOREVIEW : 01-28-2016:16:38:38
- 22 1/28/2016 - S200 - Request for Submission Complet
No additional text exists for this entry.

- 23 1/28/2016 - F230 - Other Manner of Disposition
No additional text exists for this entry.
- 24 1/28/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5343282 - Approved By: NOREVIEW : 01-28-2016:16:39:28
- 25 2/2/2016 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 5348624 - Approved By: NOREVIEW : 02-02-2016:12:01:07
- 26 2/2/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5348630 - Approved By: NOREVIEW : 02-02-2016:12:02:05
- 27 2/3/2016 - 2010 - Mtn for Attorney's Fee
Additional Text: PETITIONER'S MOTION FOR ATTORNEY'S FEES - Transaction 5352143 - Approved By: CSULEZIC : 02-03-2016:16:59:49
- 28 2/3/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5352370 - Approved By: NOREVIEW : 02-03-2016:17:00:42
- 29 2/8/2016 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO MOTION FOR ATTORNEY'S FEES
- 30 2/8/2016 - 2190 - Mtn for Stay Pending Appeal
No additional text exists for this entry.
- 31 2/8/2016 - \$2515 - \$Notice/Appeal Supreme Court
No additional text exists for this entry.
- 32 2/8/2016 - PAYRC - **Payment Receipted
Additional Text: A Payment of -\$34.00 was made on receipt DCDC529711.
- 33 2/8/2016 - SAB - **Supreme Court Appeal Bond
No additional text exists for this entry.
- 34 2/8/2016 - 2547 - Notice of Filing Costs/Appeal
No additional text exists for this entry.
- 35 2/8/2016 - 1310 - Case Appeal Statement
No additional text exists for this entry.
- 36 2/9/2016 - 1310E - Case Appeal Statement
Additional Text: Transaction 5360768 - Approved By: NOREVIEW : 02-09-2016:13:49:34
- 37 2/9/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5360770 - Approved By: NOREVIEW : 02-09-2016:13:50:24

CASE NO. CV15-01871

RENO NEWSPAPERS, INC. VS. CITY OF SPARKS

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

1/14/16
HON. SCOTT N.
FREEMAN
DEPT. NO. 9
L. Sabo
(Clerk)
S. Kiger
(Reporter)
P. Sewell
(Bailiff)

ORAL ARGUMENTS - PETITION FOR WRIT OF MANDAMUS

Petitioner Reno Newspaper, Inc. was being represented by counsel, Scott Glogovac.

Assistant City Attorney, Douglas Thornley, was representing the City of Sparks. Counsel Glogovac addressed the Court regarding the factual context of this case that being a public records dispute regarding business license holders and discussed the applicable statutes and related case law.

Counsel Glogovac presented argument in support of the Petition and responded to the Court's questions and comments.

Assistant C.A. Thornley addressed the Court regarding the position of the City of Sparks and argued in opposition to said Petition for Writ of Mandamus.

Counsel Thornley further responded to the Court's questions and comments.

Counsel Glogovac presented a final argument in support of the Petition for Writ of Mandamus.

COURT ORDERED: Matter taken under advisement.

1 CODE: 3370
2
3

4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF WASHOE
6

7 RENO NEWSPAPERS, INC.,
8 a Nevada Corporation,

Case No. CV15-01871
Dept. No. 9

9 Petitioner,

10 v.

11 CITY OF SPARKS, a Municipal Corporation,

12 Respondent.
13 _____/

14 **ORDER GRANTING PETITION FOR WRIT OF MANDAMUS**

15 This case came on for hearing on January 14, 2016. At the time of the hearing, the Court
16 was in receipt of Petitioner RENO NEWSPAPERS, INC. d/b/a RENO GAZETTE
17 NEWSPAPER's ("RGJ") *Request for Oral Argument* filed on October 21, 2015. The Court was
18 also in receipt of Petitioner's *Petition for Writ of Mandamus* filed on September 18, 2015. On
19 October 8, 2015, Respondent, CITY OF SPARKS ("City of Sparks") filed a *Response in*
20 *Opposition to Petition for Writ of Mandamus*. Petitioner filed a *Reply in Support of Petition for*
21 *Writ of Mandamus* on October 20, 2015.

22 Upon review of the oral arguments, moving papers and exhibits, the Court GRANTS
23 Petitioner RENO NEWSPAPERS' *Petition for Writ of Mandamus* and directs Respondent
24 CITY OF SPARKS to provide Petitioner with copies of the public records at issue in the above
25 entitled matter.

26 **BACKGROUND**

27 On August 20, 2015, Reno Gazette Journal reporter Chanelle Bessette sent an email to
28 the City of Sparks requesting copies of business licenses of medical marijuana establishments in

1 Sparks, Nevada, including the names of the applicants/licensees. The City of Sparks denied the
2 request on August 24, 2015 asserting that the names of the medical marijuana establishments
3 (“MME’s”) were confidential under Nevada law and not subject to disclosure. The City of
4 Sparks provided the licenses, but redacted the names of the holders. RGJ sent a second request,
5 which was also denied by the City of Sparks.

6 STANDARD OF REVIEW

7 “A writ of mandamus may be issued by . . . a district court to compel the performance
8 of an act of an inferior state tribunal, corporation, board or person.” NRS 34.160. A court has
9 complete discretion in deciding whether to consider a petition for mandamus. *Sims v. Eight Jud.*
10 *Dist. Ct. ex rel. Cnty. Of Clark*, 125 Nev. 126, 129, 206 P.3d 980, 982 (2009). The issuance of a
11 writ of mandamus to compel an officer of the state must be for a duty resulting from the office
12 and required by law. *State ex rel. McGuire v. Watterman*, 5 Nev. 323, 326 (1869).

13 Before a writ of mandamus may be issued, certain requirements must be met: first, the
14 act required to be performed must be a duty resulting from the office and required by law. *Id.* It
15 must appear that the defendant has it in his power to perform the duty required and the writ will
16 have a beneficial effect to the applying party. *Id.*

17 Mandamus should not be used unless the usual and ordinary remedies fail to provide a
18 plain, speedy, and adequate remedy, and without it there would be a failure of justice. *Sims* at
19 129, 982. A petition will only be granted when the petitioner has a clear right to the relief
20 requested and has met the burden of establishing that writ relief is appropriate. *Halverson v.*
21 *Miller*, 124 Nev. 484, 488, 186 P.3d 893, 896 (2008). To have standing, the petitioner must
22 demonstrate that it possesses a “beneficial interest” in obtaining writ relief. *Mesagate*
23 *Homeowners’ Ass’n v. City of Fernley*, 124 Nev. 1092, 1097, 194 P.3d 1248, 1251 (2008). The
24 court will not conduct a hearing de novo.

25 DISCUSSION

26 ***I. Petitioner’s Petition for Writ of Mandamus is Not Procedurally Deficient***

27 As a preliminary matter, the Court first addresses Respondent’s assertion that
28 Petitioner’s petition is procedurally deficient insofar as Petitioner did not exhaust all available
administrative remedies before lodging the petition with the Court. *See* (Opposition, 5 citing

1 *Allstate Ins. Co. v. Thorpe*, 170 P.3d 989, 993 (Nev. 2007)). Respondent argues that pursuant to
2 NRS 233B.110(1), the Court is explicitly prohibited from rendering a judgment in this case until
3 all administrative procedures have been exhausted. *Id.* Petitioner should have filed for a
4 declaratory judgment and not a petition for writ of mandamus. *Id.*

5 The Court disagrees with Respondent's reading of NRS 233B.110. Upon a plain
6 language reading of the statute, nothing mandates Petitioner bring a declaratory judgment.
7 Pursuant to the statute, "[t]he validity of applicability of any regulation *may* be determined in a
8 proceeding for a declaratory judgment in the district court . . . when it is alleged that the
9 regulation, or its proposed application, interferes with or impairs, or threatens to interfere with
10 or impair, the legal rights or privileges of the plaintiff." (emphasis added). The statute clearly
11 and unambiguously uses permissive language; nothing requires Petitioner to assert declaratory
12 relief.

13 Further, the Court agrees that *Allstate* requires a person to "exhaust all available
14 administrative remedies before proceeding in district court renders the matter unripe for judicial
15 review." 170 P.3d 989, 993 (Nev. 2007). However, NRS 239.011(1) provides a specific remedy
16 for denied requests of public records documents: "[i]f a request for inspection, copying or
17 copies of a public book or record open to inspection and copying is denied, the requester may
18 apply to the district court in the county in which the book or record is located for an order."
19 Insofar as NRS 239.011(1) provides a specific and separate remedy for denied requests of
20 public record documents, the Court finds Petitioner's petition for writ of mandamus is the
21 proper vehicle for judicial review of the issues.

22 ***II. A Duty Exists Under NRS Chapter 239 Requiring the City of Sparks to Disclose the Public*** 23 ***Records***

24 The primary issue before the Court is whether the names of the holders of MME
25 licenses are "otherwise declared by law to be confidential" within the meaning of the NRS
26 239.010. The Court finds that the names of holders of MME licenses are not protected under the
confidentiality provision exceptions of NRS 239.010.

27 Pursuant to NRS 239.0105, "[r]ecords of a local government entity are confidential and
28 not public books or records within the meaning of NRS 239.010" if the records meet certain
provision outlined in the statute. NRS 329.010 outlines a list of the public books and records

1 that are not open to public inspection “unless otherwise declared by law to be confidential.”

2 *Reno Newspapers v. Sheriff*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010) states

3 The purpose of the [Nevada Public Records] Act is to foster principles of
4 democracy by allowing the public access to information about government
5 activities. NRS 239.001(1); *see Dr. Partners v. Bd. Of County Comm’rs*, 116 Nev.
6 616, 621, 6 P.3d 465, 468 (2000). In 2007, the Legislature amended the Act to
7 ensure the presumption of openness, and provided that all statutory provisions
8 related to the Act must be construed liberally in favor of the Act’s purpose. NRS
9 239.001(2); 2007 Nev. Stat., Ch. 435 § 2, at 2061. In contrast, any exemption,
10 exception, or a balancing of interests that restricts the public’s right to access a
11 governmental entity’s records *must be construed narrowly*. NRS 239.001(3);
12 2007 Nev. Stat., ch. 435 § 2, at 2061. Thus, this court will presume that all public
13 records are open to disclosure unless either (1) the Legislature has expressly and
14 unequivocally created an exemption or exception by statute, . . .; or (2) balancing
15 the private or law enforcement interests for nondisclosure against the general
16 policy in favor of an open and accessible government requires restricting public
17 access to government records.

18 (referencing *Cowles Pub. Co v. Kootenai County Bd.*, 144 Idaho 259, 159 P.3d 896, 899 (2007);
19 *Kroeplin v. Wisconsin DNR*, 297 Wis.2d 254, 725 N.W.2d 286, 292 (Wis.Ct.App2006); and
20 *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 635-36, 798 P.2d 144, 147-48 (1990)).¹

21 Therefore, this Court follows the test laid out in *Sheriff* and finds that the Nevada
22 Legislature did not expressly or unequivocally create an exemption or exception by statute
23 protecting MME license holders under NRS 239.010.² NRS 239.010 added two specific sections
24 regarding medical marijuana establishments in 2013. *See* AB31, 78th Nevada Legislative Session
25 (2013). First, NRS 453A.610 keeps information regarding research at the University of Nevada
26 School of Medicine confidential. Second, NRS 453A.700 keeps certain information regarding
27 physicians prescribing medical marijuana and those prescribed medical marijuana confidential.
28 NRS 239.010 is current through 2015 and the most recent legislative session. The Court finds

¹ In meeting minutes of the 2013 Legislative Session, Keith Munro, Assistant Attorney General, Office of the Attorney General, stated in regards to Assembly Bill 31, which added NRS 453A.610 and NRS 453A.700 to the list of public records not subject to disclosure, “[t]his bill proposes changes to NRS Chapter 239, the Nevada Public Records Law . . . The intent of this legislation is to provide procedures for members of the public seeking access to records and for agencies responding to public records requests in a timely, consistent, and efficient manner . . . Both public agencies and the public should have better clarity as to that process. Disagreements should not be left to expensive litigation.” *See* Assembly Committee on Government Affairs, Minutes at page 25 (February 7, 2013).

² The second element was not at issue before the Court.

1 NRS 453A.610 and 453A.710 are currently the only two exemptions regarding medical
2 marijuana to NRS 239.010.

3 Respondent argues that NAC 453A.714 lays out another exemption, specifically for the
4 names of MME license holders, to public records disclosure under NRS 239.010. (Opposition,
5 6). On April 1, 2014, the Division of Health and Human Services enacted NAC 453A.714, which
6 provides,

7 [e]xcept as otherwise provided in this section and NRS 239.0115, the Division
8 will and any designee of the Division shall maintain the confidentiality of and
9 shall not disclose the name or any other identifying information of any person
10 who facilitates or delivers services pursuant to this chapter or chapter 453A of
11 NRS. Except as otherwise provided in NRS 239.0115, the name and any other
12 identifying information of any person who facilitates or delivers services pursuant
13 to this chapter or chapter 453A of NRS are confidential, not subject to subpoena
14 or discovery and not subject to inspection by the general public.

15 Respondent argues that “the name or any other identifying information of any person who
16 facilitates or delivers services pursuant to this chapter” includes license holders of MME’s. *Id.*
17 at 7. According to Respondent, a person who “delivers services” necessarily includes the license
18 holders of MME’s. However, the Court disagrees with Respondent’s arguments. *Id.*

19 Following the specific test laid out by *Sheriff*, public records are subject to disclosure
20 only if the Legislature has created an express and unequivocal exception or exemption.
21 Respondent argues that the exception is found in the catchall phrase, “unless otherwise declared
22 by law to be confidential.” This phrase thus leads to a parallel construction with NAC
23 453A.714, which provides that specific exemption for MME license holders. However, NAC
24 453A.714 is silent as to who is included under the phrase “delivers services.”

25 The Court finds that silence of NAC 453A.714 regarding who exactly “delivers
26 services” is ambiguous and thus not express or unequivocal pursuant to *Sheriff*. Currently,
27 MME license holders are not expressly or unequivocally protected under the confidentiality
28 protections of NRS 239.010. The Court finds that in order to bring another exception into NRS
239.010 through the phrase “unless otherwise declared by law,” any separate exception not
included under NRS 239.010 must also comply with the express and unequivocal test laid out
by *Sheriff*. The ambiguity of those who “deliver services” does not bring MME license holders

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4 **III. Conclusion**

5 **THEREFORE**, and good cause appearing, a petition for writ of mandamus is therefore
6 **GRANTED** insofar as Petitioner has established it has a clear right to the relief requested.
7 *Halverson v. Miller*, 124 Nev. 484, 488, 186 P.3d 893, 896 (2008).

8 **THE COURT HEREBY ORDERS** issuance of a writ of mandamus directing
9 Respondent the CITY OF SPARKS to provide Petitioner RGJ unredacted copies of the
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11 **IT IS FURTHER ORDERED** the City of Sparks pay RGJ an award of its reasonable
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13 award said fees upon a showing of proof by motion and affidavit.

14
15 DATED: this 28 day of January, 2016.

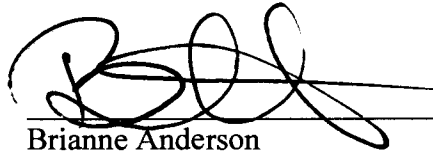
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18 _____
19 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of _____, 2016, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Further, I certify that on the 28th day of January, 2016, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

SCOTT GLOGOVAC, ESQ. for RENO NEWSPAPER, INC.
DOUGLAS THORNLEY, ESQ. for CITY OF SPARKS
CHESTER ADAMS, ESQ. for CITY OF SPARKS



Brianne Anderson
Judicial Assistant

1 CODE: 2540
2 SCOTT A. GLOGOVAC, ESQ.
3 Nevada Bar No. 226
4 GLOGOVAC & PINTAR
5 427 West Plumb Lane
6 Reno, Nevada 89509
7 Telephone: 775-333-0400
8 Facsimile: 775-333-0412
9 sglogovac@gplawreno.net

10 Attorneys for Petitioner
11 *Reno Newspapers, Inc.*

12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

13 IN AND FOR THE COUNTY OF WASHOE

14 RENO NEWSPAPERS, INC., a Nevada Corporation,
15 Case No. CV15-01871

16 Dept. No. 9

17 Petitioner,

18 vs.

19 CITY OF SPARKS, a Municipal Corporation,
20

21 Respondent.

22 **NOTICE OF ENTRY OF ORDER GRANTING**
23 **PETITION FOR WRIT OF MANDAMUS**

24 **PLEASE TAKE NOTICE** that an Order Granting Petition for Writ of Mandamus was
25 entered by the Court in this matter on January 28, 2016.

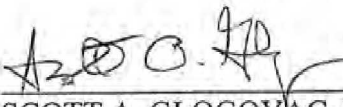
26 A copy of the Order is attached hereto as Exhibit 1.

27 **AFFIRMATION**
28 **Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the
social security number of any person.

1 DATED this 2nd day of February, 2016.

2 GLOGOVAC & PINTAR

3
4 By: 
5 SCOTT A. GLOGOVAC, ESQ.
6 Nevada Bar No. 226

7 Attorneys for Petitioner
8 *Reno Newspapers, Inc.*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 West Plumb Lane, Reno, NV 89509, and that on the 2nd day of February 2016, I served the foregoing document(s) described as follows:

**NOTICE OF ENTRY OF ORDER GRANTING PETITION FOR WRIT
OF MANDAMUS**

On the party(s) set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices, addressed as follows:

 X I electronically filed with the Clerk of the Court, using ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF System:

SCOTT A. GLOGOVAC, ESQ. for RENO NEWSPAPERS, INC.
DOUGLAS R. THORNLEY, ESQ. for CITY OF SPARKS
CHESTER ADAMS, ESQ. for CITY OF SPARKS

_____ Personal delivery via messenger.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

Dated this 2nd day of February 2016.


Mele D. Fonokalafi

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INDEX OF EXHIBITS

Exhibit No.	Description	Pages
1	Order Granting Petition for Writ of Mandamus	7

EXHIBIT 1

EXHIBIT 1

1 CODE: 3370
2
3

4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF WASHOE
6

7 RENO NEWSPAPERS, INC.,
8 a Nevada Corporation,

Case No. CV15-01871
Dept. No. 9

9 Petitioner,

10 v.

11 CITY OF SPARKS, a Municipal Corporation,

12 Respondent.
13 _____/

14 **ORDER GRANTING PETITION FOR WRIT OF MANDAMUS**

15 This case came on for hearing on January 14, 2016. At the time of the hearing, the Court
16 was in receipt of Petitioner RENO NEWSPAPERS, INC. d/b/a RENO GAZETTE
17 NEWSPAPER's ("RGJ") *Request for Oral Argument* filed on October 21, 2015. The Court was
18 also in receipt of Petitioner's *Petition for Writ of Mandamus* filed on September 18, 2015. On
19 October 8, 2015, Respondent, CITY OF SPARKS ("City of Sparks") filed a *Response in*
20 *Opposition to Petition for Writ of Mandamus*. Petitioner filed a *Reply in Support of Petition for*
21 *Writ of Mandamus* on October 20, 2015.

22 Upon review of the oral arguments, moving papers and exhibits, the Court GRANTS
23 Petitioner RENO NEWSPAPERS' *Petition for Writ of Mandamus* and directs Respondent
24 CITY OF SPARKS to provide Petitioner with copies of the public records at issue in the above
25 entitled matter.

26 **BACKGROUND**

27 On August 20, 2015, Reno Gazette Journal reporter Channele Bessette sent an email to
28 the City of Sparks requesting copies of business licenses of medical marijuana establishments in

1 Sparks, Nevada, including the names of the applicants/licensees. The City of Sparks denied the
2 request on August 24, 2015 asserting that the names of the medical marijuana establishments
3 ("MME's") were confidential under Nevada law and not subject to disclosure. The City of
4 Sparks provided the licenses, but redacted the names of the holders. RGJ sent a second request,
5 which was also denied by the City of Sparks.

6 STANDARD OF REVIEW

7 "A writ of mandamus may be issued by . . . a district court to compel the performance
8 of an act of an inferior state tribunal, corporation, board or person." NRS 34.160. A court has
9 complete discretion in deciding whether to consider a petition for mandamus. *Sims v. Eight Jud.*
10 *Dist. Ct. ex rel. Cnty. Of Clark*, 125 Nev. 126, 129, 206 P.3d 980, 982 (2009). The issuance of a
11 writ of mandamus to compel an officer of the state must be for a duty resulting from the office
12 and required by law. *State ex rel. McGuire v. Watterman*, 5 Nev. 323, 326 (1869).

13 Before a writ of mandamus may be issued, certain requirements must be met: first, the
14 act required to be performed must be a duty resulting from the office and required by law. *Id.* It
15 must appear that the defendant has it in his power to perform the duty required and the writ will
16 have a beneficial effect to the applying party. *Id.*

17 Mandamus should not be used unless the usual and ordinary remedies fail to provide a
18 plain, speedy, and adequate remedy, and without it there would be a failure of justice. *Sims* at
19 129, 982. A petition will only be granted when the petitioner has a clear right to the relief
20 requested and has met the burden of establishing that writ relief is appropriate. *Halverson v.*
21 *Miller*, 124 Nev. 484, 488, 186 P.3d 893, 896 (2008). To have standing, the petitioner must
22 demonstrate that it possesses a "beneficial interest" in obtaining writ relief. *Mesagate*
23 *Homeowners' Ass'n v. City of Fernley*, 124 Nev. 1092, 1097, 194 P.3d 1248, 1251 (2008). The
24 court will not conduct a hearing de novo.

25 DISCUSSION

26 ***I. Petitioner's Petition for Writ of Mandamus is Not Procedurally Deficient***

27 As a preliminary matter, the Court first addresses Respondent's assertion that
28 Petitioner's petition is procedurally deficient insofar as Petitioner did not exhaust all available
administrative remedies before lodging the petition with the Court. *See* (Opposition, 5 citing

1 *Allstate Ins. Co. v. Thorpe*, 170 P.3d 989, 993 (Nev. 2007)). Respondent argues that pursuant to
2 NRS 233B.110(1), the Court is explicitly prohibited from rendering a judgment in this case until
3 all administrative procedures have been exhausted. *Id.* Petitioner should have filed for a
4 declaratory judgment and not a petition for writ of mandamus. *Id.*

5 The Court disagrees with Respondent's reading of NRS 233B.110. Upon a plain
6 language reading of the statute, nothing mandates Petitioner bring a declaratory judgment.
7 Pursuant to the statute, "[t]he validity of applicability of any regulation *may* be determined in a
8 proceeding for a declaratory judgment in the district court . . . when it is alleged that the
9 regulation, or its proposed application, interferes with or impairs, or threatens to interfere with
10 or impair, the legal rights or privileges of the plaintiff." (emphasis added). The statute clearly
11 and unambiguously uses permissive language; nothing requires Petitioner to assert declaratory
12 relief.

13 Further, the Court agrees that *Allstate* requires a person to "exhaust all available
14 administrative remedies before proceeding in district court renders the matter unripe for judicial
15 review." 170 P.3d 989, 993 (Nev. 2007). However, NRS 239.011(1) provides a specific remedy
16 for denied requests of public records documents: "[i]f a request for inspection, copying or
17 copies of a public book or record open to inspection and copying is denied, the requester may
18 apply to the district court in the county in which the book or record is located for an order."
19 Insofar as NRS 239.011(1) provides a specific and separate remedy for denied requests of
20 public record documents, the Court finds Petitioner's petition for writ of mandamus is the
21 proper vehicle for judicial review of the issues.

22 ***II. A Duty Exists Under NRS Chapter 239 Requiring the City of Sparks to Disclose the Public*** 23 ***Records***

24 The primary issue before the Court is whether the names of the holders of MME
25 licenses are "otherwise declared by law to be confidential" within the meaning of the NRS
26 239.010. The Court finds that the names of holders of MME licenses are not protected under the
27 confidentiality provision exceptions of NRS 239.010.

28 Pursuant to NRS 239.0105, "[r]ecords of a local government entity are confidential and
not public books or records within the meaning of NRS 239.010" if the records meet certain
provision outlined in the statute. NRS 329.010 outlines a list of the public books and records

1 that are not open to public inspection “unless otherwise declared by law to be confidential.”

2 *Reno Newspapers v. Sheriff*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010) states

3 The purpose of the [Nevada Public Records] Act is to foster principles of
4 democracy by allowing the public access to information about government
5 activities. NRS 239.001(1); *see Dr. Partners v. Bd. Of County Comm’rs*, 116 Nev.
6 616, 621, 6 P.3d 465, 468 (2000). In 2007, the Legislature amended the Act to
7 ensure the presumption of openness, and provided that all statutory provisions
8 related to the Act must be construed liberally in favor of the Act’s purpose. NRS
9 239.001(2); 2007 Nev. Stat., Ch. 435 § 2, at 2061. In contrast, any exemption,
10 exception, or a balancing of interests that restricts the public’s right to access a
11 governmental entity’s records *must be construed narrowly*. NRS 239.001(3);
12 2007 Nev. Stat., ch. 435 § 2, at 2061. Thus, this court will presume that all public
13 records are open to disclosure unless either (1) the Legislature has expressly and
14 unequivocally created an exemption or exception by statute, . . .; or (2) balancing
15 the private or law enforcement interests for nondisclosure against the general
16 policy in favor of an open and accessible government requires restricting public
17 access to government records.

18 (referencing *Cowles Pub. Co v. Kootenai County Bd.*, 144 Idaho 259, 159 P.3d 896, 899 (2007);
19 *Kroeplin v. Wisconsin DNR*, 297 Wis.2d 254, 725 N.W.2d 286, 292 (Wis.Ct.App2006); and
20 *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 635-36, 798 P.2d 144, 147-48 (1990).¹

21 Therefore, this Court follows the test laid out in *Sheriff* and finds that the Nevada
22 Legislature did not expressly or unequivocally create an exemption or exception by statute
23 protecting MME license holders under NRS 239.010.² NRS 239.010 added two specific sections
24 regarding medical marijuana establishments in 2013. *See* AB31, 78th Nevada Legislative Session
25 (2013). First, NRS 453A.610 keeps information regarding research at the University of Nevada
26 School of Medicine confidential. Second, NRS 453A.700 keeps certain information regarding
27 physicians prescribing medical marijuana and those prescribed medical marijuana confidential.
28 NRS 239.010 is current through 2015 and the most recent legislative session. The Court finds

25 ¹ In meeting minutes of the 2013 Legislative Session, Keith Munro, Assistant Attorney General, Office of the
26 Attorney General, stated in regards to Assembly Bill 31, which added NRS 453A.610 and NRS 453A.700 to the list
27 of public records not subject to disclosure, “[t]his bill proposes changes to NRS Chapter 239, the Nevada Public
28 Records Law . . . The intent of this legislation is to provide procedures for members of the public seeking access to
records and for agencies responding to public records requests in a timely, consistent, and efficient manner . . . Both
public agencies and the public should have better clarity as to that process. Disagreements should not be left to
expensive litigation.” *See* Assembly Committee on Government Affairs, Minutes at page 25 (February 7, 2013).

² The second element was not at issue before the Court.

1 NRS 453A.610 and 453A.710 are currently the only two exemptions regarding medical
2 marijuana to NRS 239.010.

3 Respondent argues that NAC 453A.714 lays out another exemption, specifically for the
4 names of MME license holders, to public records disclosure under NRS 239.010. (Opposition,
5 6). On April 1, 2014, the Division of Health and Human Services enacted NAC 453A.714, which
6 provides,

7 [e]xcept as otherwise provided in this section and NRS 239.0115, the Division
8 will and any designee of the Division shall maintain the confidentiality of and
9 shall not disclose the name or any other identifying information of any person
10 who facilitates or delivers services pursuant to this chapter or chapter 453A of
11 NRS. Except as otherwise provided in NRS 239.0115, the name and any other
identifying information of any person who facilitates or delivers services pursuant
to this chapter or chapter 453A of NRS are confidential, not subject to subpoena
or discovery and not subject to inspection by the general public.

12 Respondent argues that “the name or any other identifying information of any person who
13 facilitates or delivers services pursuant to this chapter” includes license holders of MME’s. *Id.*
14 at 7. According to Respondent, a person who “delivers services” necessarily includes the license
15 holders of MME’s. However, the Court disagrees with Respondent’s arguments. *Id.*

16 Following the specific test laid out by *Sheriff*, public records are subject to disclosure
17 only if the Legislature has created an express and unequivocal exception or exemption.
18 Respondent argues that the exception is found in the catchall phrase, “unless otherwise declared
19 by law to be confidential.” This phrase thus leads to a parallel construction with NAC
20 453A.714, which provides that specific exemption for MME license holders. However, NAC
21 453A.714 is silent as to who is included under the phrase “delivers services.”

22 The Court finds that silence of NAC 453A.714 regarding who exactly “delivers
23 services” is ambiguous and thus not express or unequivocal pursuant to *Sheriff*. Currently,
24 MME license holders are not expressly or unequivocally protected under the confidentiality
25 protections of NRS 239.010. The Court finds that in order to bring another exception into NRS
26 239.010 through the phrase “unless otherwise declared by law,” any separate exception not
27 included under NRS 239.010 must also comply with the express and unequivocal test laid out
28 by *Sheriff*. The ambiguity of those who “deliver services” does not bring MME license holders

1 within the purview of as "otherwise declared by law" under NRS 239.010. Therefore, MME
2 license holders are not protected under NRS 239.010. A duty exists under NRS Chapter 239
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5 **THEREFORE**, and good cause appearing, a petition for writ of mandamus is therefore
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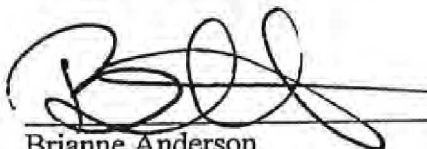
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13 DOUGLAS THORNLEY, ESQ. for CITY OF SPARKS
14 CHESTER ADAMS, ESQ. for CITY OF SPARKS

15 

16 Brianne Anderson
17 Judicial Assistant
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1 **Code 1350**

2
3
4 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
5 **IN AND FOR THE COUNTY OF WASHOE**

6 **RENO NEWSPAPERS, INC.,**
7 **a Nevada Corporation,**

Case No. CV15-01871

8 **Petitioner,**

Dept. No. 9

9 **vs.**

10
11 **CITY OF SPARKS,**

12 **Respondent.**

13 _____/

14 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

15 I certify that I am an employee of the Second Judicial District Court of the State of Nevada,
16 County of Washoe; that on the 9th day of February, 2016, I electronically filed the Notice of Appeal
17 in the above entitled matter to the Nevada Supreme Court.

18 I further certify that the transmitted record is a true and correct copy of the original
19 pleadings on file with the Second Judicial District Court.

Dated this 9th day of February, 2016

20 Jacqueline Bryant
21 Clerk of the Court

22 By /s/ Yvonne Vilorio
23 Yvonne Vilorio
24 Deputy Clerk
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27
28

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND - NOT A WHITE BACKGROUND



CITY OF SPARKS

431 Prater Way
Sparks, NV 89431
(775) 353-2363

BANK OF AMERICA
ODDIE BRANCH, SPARKS NV

94-72
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02/08/2016

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ORDER OF

NEVADA STATE SUPREME COURT
CAPITOL COMPLEX
201 S. CARSON ST, STE 201
CARSON CITY, NV 897014702

CV15-01871

Geno R. Martin
Jeff Coan

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW.

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