

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

2
3 K-KEL, INC., d/b/a Spearmint Rhino
Gentlemen's Club, et al.

4 Appellants,

5 v.

6 State of Nevada, ex rel. Department of
7 Taxation and Tax Commission,

8 Respondents.

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Tracie K. Lindeman
Clerk of Supreme Court

Supreme Court Case No. 69886
District Court Case No.:
A-11-648894-J consolidated with
A-14-697515-J

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10 **COME NOW**, Respondents, the State of Nevada, Department of Taxation and
11 Nevada Tax Commission, by and through its attorneys, Adam Paul Laxalt, Attorney
12 General, Vivienne Rakowsky, Deputy Attorney General, and David J. Pope, Senior
13 Deputy Attorney General and hereby submits its RENEWED RESPONSE TO
14 DOCKETING STATEMENT CIVIL APPEALS pursuant to the NRAP 14(f).

15 Appellants responded to Question 9, Issues on Appeal, by stating that "... this
16 appeal presents one issue: whether *facially*, or as applied, Nevada's Live
17 Entertainment Tax.... is an unconstitutional tax on protected expression." (emphasis
18 added). Contrary to the Appellant's statement, the facial challenge, which was not part
19 of the PJR below should not be included in this appeal. The Live Entertainment Tax
20 ("NLET") has already been found facially constitutional by this Honorable Court in an
21 appeal brought by all five of the same Appellants. See Déjà Vu Showgirls et. al. v.
22 Nevada Department of Taxation, 190 Nev. Adv. Op. 73, 334 P.3d 392 (2014).

23 The doctrine of "the law of the case" precludes the court from reconsidering the
24 same issue in later phases of that lawsuit. See *generally*, Recontrust Co. v. Zhang,
25 317 P.3d 814, 818, 130 Nev. Adv. Op. 1 (2014), Ferguson v. LV Metropolitan Police
26 Dep't, 364 P.3d 592, 597, 131 Nev. Adv. Op. 94 (2015). The Appeal before this Court
27 is the third part of the same lawsuit. See Déjà Vu Showgirls et. al. v. Nevada
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1 Department of Taxation lawsuit. 190 Nev. Adv. Op. 72, 334 P.3d 387, 387-390 (2014),
2 Déjà Vu Showgirls et. al. v. Nevada Department of Taxation, 190 Nev. Adv. Op. 73,
3 334 P.3d 392, 396-97 (2014). Accordingly, this Appeal should solely be limited to the
4 as-applied challenge to the NLET and a sub-issue concerning depositions.

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6 DATED this 29th day of June, 2016.

7 Respectfully submitted:

8 ADAM PAUL LAXALT
9 Attorney General

10 By: /S/ VIVIENNE RAKOWSKY
11 DAVID J. POPE
12 Senior Deputy Attorney General
13 VIVIENNE RAKOWSKY
14 Deputy Attorney General
15 Attorneys for Respondents

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 29th day of June, 2016, I filed and served the foregoing **RENEWED RESPONSE TO DOCKETING STATEMENT CIVIL APPEALS** with the Clerk of the Court by using the electronic filing system and placing a true and accurate copy of the foregoing in U.S. Mail at Las Vegas, Nevada, first class, postage prepaid, and via e-mail, to the following:

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