

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

Dr. VINCENT M. MALFITANO, an individual; VIRGINIA CITY GAMING LLC, a Nevada limited liability company; and DELTA SALOON, INC., a Nevada corporation,

Appellants,

vs.

COUNTY OF STOREY, acting by and through the STOREY COUNTY BOARD OF COUNTY COMMISSIONERS and the STOREY COUNTY LIQUOR BOARD,

Respondent.

Electronically Filed  
Nov 02 2016 02:23 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Supreme Court No. 70055  
District Court Case No. 15 OC 00008 1E

APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT  
STATE OF NEVADA, STOREY COUNTY  
HONORABLE JAMES E. WILSON, JR.

**RESPONDENT'S MOTION FOR ORDER DIRECTING THE FIRST  
JUDICIAL DISTRICT COURT CLERK'S OFFICE TO TRANSMIT  
EXHIBIT**

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Attorney for Respondent

Respondent, Storey County, by and through its attorney, the Storey County District Attorney's Office hereby moves this Court for an order directed to the First Judicial District Court Clerk's Office for the transmission of an exhibit contained in the court clerk's file of this case that was inadvertently left out of the Joint Appendix filed with this Court.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Respondent seeks an order from this Court directing the First Judicial District Court Clerk's Office to transmit to this Court Exhibit 2 attached to Respondents Supplemental Brief in Opposition to the Verified Petition for Writ of Mandamus (Verified Petition). The exhibit is referenced in Respondents Answering Brief and was supposed to be included in the Joint Appendix. It was inadvertently left out.

### **II. Legal Analyses.**

Under NRAP 11(a)(1) the court has the authority to issue an order to the district court clerk's office requiring that office to transmit exhibits to this court. Additionally, under NRAP 30(a) the parties to an appeal are required to attempt to agree on a joint appendix for their briefs. Further, under NRAP 30(d):

Copies of relevant and necessary exhibits shall be clearly identified and shall be included in the appendix as far as practicable. If the Exhibits are too large or otherwise incapable of being reproduced in

the appendix, the parties may file a motion to request the court to direct the district court clerk to transmit the original exhibits. The court will not permit transmittal of original exhibits except upon a showing that the exhibits are relevant to the issues raised on appeal, and that the courts review of the original exhibits is necessary to the determination of the issues.

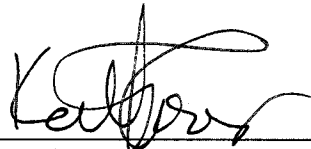
In this case, the parties did agree on a joint appendix for their briefs. That joint appendix was supposed to include Respondents Supplemental Brief in Opposition to Verified Petition for Writ of Mandamus (Supplemental Brief) and accompanying exhibits. The Supplemental Brief is found in Volume V of the Joint Appendix at pages JA000718 – JA000745. Exhibit 2 to the Supplemental Brief is a DVD recording of the meeting of the Board of County Commissioners held on September 1, 2015. The DVD did not make it into the Joint Appendix. Rather there is only a depiction of that DVD attached to the Supplemental Brief. See JA 000745. The inclusion of the exhibit is important because there are references to the contents of the DVD in Respondent's Answering Brief. See Answering Brief @ pg. 28. The recording is referenced because it recorded the statements made to Malfitano by Commissioner McBride and County Manager Whitten at the time Malfitano's applications for business and liquor licenses were denied by the Board of County Commissioners and the county's Liquor Board. Malfitano has relied on the statements as the basis for his claim that he entered into a contract with the Boards for the later issuance of liquor and business licenses. The exhibit rebuts that claim. The exhibit is part of the original record filed with the First Judicial

District Court Clerk's Office. Accordingly, this motion seeks the transmission of that exhibit to this court.

### **III. Conclusion.**

It is respectfully submitted that good cause for the issuance of an order directing transmission of the exhibit in question has been demonstrated. It is therefore further respectfully submitted that this Court should issue its order to the First Judicial District Court Clerk's Office requiring the clerk's office to transmit Exhibit 2 to the Supplemental Brief filed in that office in the First Judicial District Court Case Number 15 OC 00008 1E. It is further submitted that upon receipt of the exhibit, that it be included in the Joint Appendix at page JA 000745.

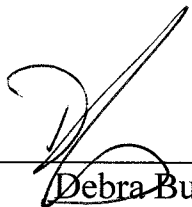
Dated this 2nd day of November, 2016.

  
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Keith Loomis, No 1912  
Deputy District Attorney  
Storey County, Nevada  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(c)(1)(A-D)(2)(3), I certify that I am an employee of the Office of the District Attorney of Storey County, Nevada, and that on or about the 2<sup>nd</sup> day of November, 2016, the foregoing **RESPONDENT'S MOTION FOR ORDER DIRECTING THE FIRST JUDICIAL DISTRICT COURT CLERK'S OFFICE TO TRANSMIT EXHIBIT** was electronically filed with the clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-filing system (Eflex). Participants in the case who are registered with the Eflex as users will be served by the Eflex system as follows:

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