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Clerk of Supreme Court

*Attorneys for My Entertainment TV*

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

MICHAEL SOLID,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT  
COURT JUDGE, THE HONORABLE  
VALERIE ADAIR,

Respondents,

and

MY ENTERTAINMENT, INC., THE  
STATE OF NEVADA,

Real Parties in Interest.

Supreme Court No. 71089

District Court No. C-13-290260-1

Dept. No. 21

**OPPOSITION TO  
EMERGENCY MOTION  
UNDER NRAP 27(e) FOR STAY  
OF DISTRICT COURT'S  
ORDER ALLOWING MEDIA  
COVERAGE BY MY  
ENTERTAINMENT**

Comes now Real Party in Interest, MY ENTERTAINMENT TV, INC. (“My Entertainment”),<sup>1</sup> by and through its counsel of record, GREENBERG TRAURIG, LLP, and submits its Opposition to Emergency Motion Under NRAP 27(e) For Stay of District Court’s Order Allowing Media Coverage by My Entertainment.

DATED this 23<sup>rd</sup> day of August, 2016.

**GREENBERG TRAURIG, LLP**

/s/ Lisa J. Zastrow

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**MEMORANDUM OF POINTS AND AUTHORITIES**

***I. Statement of Facts and Procedural History***

Petitioner Michael Solid (“Petitioner”) styles his emergency motion as one seeking a stay, but it is without doubt a baseless emergency motion to *reverse* a valid Order of the Honorable Judge Valerie Adair, without due process of law.

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<sup>1</sup> Real Party in Interest’s actual name is My Tupelo Entertainment d/b/a My Entertainment LLC. To avoid confusion in these emergency proceedings, deference will be made to Petitioner’s usage.

Petitioner sought to exclude a single news entity, My Entertainment, from access to his criminal trial by filing an Emergency Petition on Order Shortening time a few days before trial, when multiple other news entities have been granted access. My Entertainment had no time to brief the issues due to the emergency setting, but appeared in court on August 18, 2016 and orally argued the matter. After full hearing on the merits, Judge Adair issued a three page, thoroughly supported order denying Petitioner's request to deny My Entertainment access to trial, finding:

1. My Entertainment TV is a news reporter as defined by Supreme Court Rule 229(c).
2. There is a presumption that all courtroom proceedings that are open to the public are subject to electronic coverage. SCR 230(2).
3. Filming by My Entertainment TV will have no greater impact on the proceedings than filming by any other media outlet.
4. The factors set forth in Supreme Court Rule 230(2) favor coverage by My Entertainment TV:
  - a. Coverage by My Entertainment TV will not impact the parties' right to a fair trial. Defense counsel, Robert Arroyo's claim that he will be distracted with concern over how he is being portrayed in the My Entertainment TV docudrama is not sufficient to overcome the presumption in favor of coverage. As experienced trial counsel who has defended other murder cases, Mr. Arroyo should have the professional competence to overcome this distraction.
  - b. Coverage by My Entertainment TV will have no greater impact on the privacy of any party or witness than coverage by any other outlet.

- c. Coverage by My Entertainment TV will have no impact on the safety and well-being of any party, witness or juror. My Entertainment TV is prohibited from filming the jurors and prospective jurors.
  - d. Filming by My Entertainment TV, subject to the same rules and restrictions imposed upon other media outlet, should have no impact upon the dignity of the proceedings. Participants, other than court personnel, the Defendant and the attorneys should be unaware of My Entertainment TV's presence as their cameras should be indistinguishable from those of any other television station or program. Defendant's concern that defense witnesses will refuse to testify if My Entertainment TV is allowed to cover the trial can be addressed by instructing My Entertainment TV not to film those witnesses.
  - e. The physical facilities of the Court are adequate for coverage.
5. The contract between Clark County and My Entertainment TV<sup>2</sup> does not give defense counsel, Randall Pike and Robert Arroyo, as county employees, a right of consent in this instance. As licensed Nevada attorneys appearing as counsel in a public proceeding, they are subject to the same rules as any other attorney."

See August 22, 2016 Order Denying Motion to Reconsider and Deny My Entertainment TV'S Request to Record All Hearing in This Case attached hereto as **Exhibit 1**. As reflected in Judge Adair's well-reasoned Order, in Nevada, there is an overriding presumption that all courtroom proceedings that are open to the

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<sup>2</sup> See also Nev. Sup. Ct. R. 239 & 240 expressly stating consent of participants is not required. The contract referenced by Petition in the companion request for Writ is a text book red herring for this reason; moreover, the contract relates to filming *outside the courtroom*.

public, such as this case. *See Nev. Sup. Ct. R. 230(2).*<sup>3</sup> The Petitioner failed to offer any persuasive argument that this overriding presumption is overcome by any substantive right of the Defendant. In fact, My Entertainment was just one of several news entities given access to the trial, yet My Entertainment is the only news entity Petitioner seeks to exclude. As such, the Petitioner's motion below was denied, which order must be upheld. Certainly an emergency "stay" of Judge Adair's order is not proper, as a stay would effectively overturn her order as the trial is continuing.

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<sup>3</sup> The U.S. Constitution First Amendment requires that Congress shall pass no law abridging the freedom of the press and free speech. *See U.S. Const. amend. I.* The U.S. Supreme Court has consistently recognized that the public and press have a presumptive First Amendment right to judicial proceedings in a criminal case. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980). A state court's restraining order prohibiting media coverage of a case may result in violation of the First Amendment. *See Nebraska Press Assn. v. Stuart, Judge*, 427 U.S. 539, 96 S. Ct. 2791 (1976). The media has the same right of access to criminal trials as the public and that absent an overriding interest articulated in a finding, the trial of a criminal case must be open to the public. *Id.* In this day and age, this principal is axiomatic. The Nevada Supreme Court has adopted rules consistent with the long line of US Supreme Court cases to guide a Judge in its decision whether or not media coverage may be allowed in a trial. The Judge shall consider the following six factor test; (a) The impact of coverage upon the right of any party to a fair trial; (b) The impact of coverage upon the right of privacy of any party or witness; (c) The impact of coverage upon the safety and well-being of any party, witness or juror; (d) The likelihood that coverage would distract participants or would detract from the dignity of the proceedings; (e) The adequacy of the physical facilities of the court for coverage; and (f) Any other factor affecting the fair administration of justice. *See Nev. Sup. Ct. R. 230(2)(a-f).*

## *II. Standard of Review*

Petitioner seeks emergency relief pursuant to NRAP 27(e) which may be available “if a movant certifies that *to avoid irreparable* harm relief is needed...” See NRAP 27(e)(emphasis added). Here, Petitioner failed to engage in any analysis as to how failure to stay Judge Adair’s Order would cause irreparable harm to Petitioner.<sup>4</sup> To the contrary, a “stay” of Judge Adair’s order will effectively reverse her order and preclude My Entertainment from filming this public trial which is ongoing, causing irreparable harm to My Entertainment.

If the Petitioner truly believed any harm to his defense would come from allowing My Entertainment cameras in the courtroom, he could have sought a stay of the trial. He did not. He only seeks to unlawfully exclude My Entertainment’s cameras in the face of solidified legal precedent allowing access.

Pursuant to NRAP 8(c), the following factors must be reviewed for an emergency stay to be granted: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner

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<sup>4</sup> Note, many of the news entities covering the trial will air their footage on the nightly news. My Entertainment’s footage will not be aired for many months after a final adjudication, this there is absolutely no harm, at all, to allowing their cameras – cameras which Judge Adair correctly noted are indistinguishable from others – electronically film the trial. The trial is much more likely disrupted by nightly news coverage. Additionally, the public benefits through a greater insight and knowledge of the operation of the criminal justice system captured by My Entertainment. My Entertainment provides background and context which the public would not otherwise get.

will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition. *See* NRAP 8(c).<sup>5</sup>

First, the object of the appeal will not be defeated as My Entertainment TV's footage will not air for many months. However, if the stay were granted, the appeal itself would become mooted, as the trial would proceed.

Next, as to the second factor, as detailed by Judge Adair's Order, the petitioner will suffer no harm, much less irreparable harm, as My Entertainment TV's cameras are indistinguishable from other media outlets.

In contrast, and as to the third factor, harm will come to My Entertainment as its cameras will be removed from the trial which is currently ongoing, thereby wholly depriving My Entertainment from being allowed to film this newsworthy trial.

Lastly, Petitioner is entirely unlikely to succeed on the merits of its writ petition given the overriding legal authority, as referenced in Judge Adair's order.

None of the requested factors favor granting of the requested stay. Accordingly, the motion must therefore be denied.

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<sup>5</sup> While the underlying matter here is a criminal case, the requested relief is civil.

### ***III. Conclusion***

Petitioner has failed to show irreparable harm as required for emergency relief under NRAP 27(e). Additionally, Petitioner has failed to show that any of the required factors under NRAP 8 favor the grant of a stay. Accordingly, the motion should be denied.

DATED this 23<sup>rd</sup> day of August, 2016.

**GREENBERG TRAURIG, LLP**

/s/ Lisa J. Zastrow

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*Attorneys for My Entertainment TV*

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Accordingly, NRAP 8(k) applies.



## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to NRAP 26.1, Real Party in Interest, My Tupelo Entertainment d/b/a My Entertainment LLC, through its undersigned counsel, states:

My Tupelo Entertainment d/b/a My Entertainment LLC is a privately held corporation with no publicly traded ownership.

The following law firms have represented Real Party in Interest in this litigation:

Greenberg Traurig, LLP

### **GREENBERG TRAURIG, LLP**

/s/ Lisa J. Zastrow

Mark G. Tratos, Esq.  
Nevada Bar No. 1086  
Tami D. Cowden, Esq.  
Nevada Bar No. 8994  
Lisa J. Zastrow, Esq.  
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Suite 400 North  
Las Vegas, Nevada 89169

*Attorneys for My Entertainment TV*

## **CERTIFICATE OF SERVICE**

This is to certify that on the 23<sup>rd</sup> day of August, 2016, a true and correct copy of the foregoing Opposition was served via this Court's e-filing system, on counsel of record for all parties to the action below in this matter, as follows:

JoNell Thomas  
Chief Deputy Special Public Defender  
State Bar No. 4771  
Randall H. Pike  
Assistant Special Public Defender  
State Bar No. 1940  
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Steven Owens, Clark County District Attorney  
District Attorney's Office  
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Las Vegas, NV 89101

### **BY UNITED STATES FIRST CLASS MAIL TO:**

Agnes Lexis, Clark County District Attorney  
District Attorney's Office  
200 Lewis Ave., 3rd Floor  
Las Vegas, NV 89101

**BY HAND DELIVERY TO:**

The Honorable Judge Valerie Adair  
200 Lewis Ave., 11th Floor, Dept. 21  
Las Vegas NV 89101

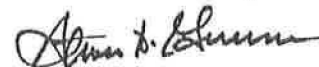
/s/ Joyce Heilich

An employee of Greenberg Traurig LLP

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## EXHIBIT 1

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CLERK OF THE COURT

1 ORDR

2  
3  
4 DISTRICT COURT  
CLARK COUNTY, NEVADA

5  
6 THE STATE OF NEVADA )

7 Plaintiff, )

8 v. )

9 MICHAEL SOLID )

10 Defendant. )

CASE NO. C-13-290260-1  
DEPT NO. XXI

11  
12 **ORDER DENYING MOTION TO RECONSIDER AND DENY MY ENTERTAINMENT**  
13 **TV'S REQUEST TO RECORD ALL HEARINGS IN THIS CASE**

14 This matter having come on for hearing on August 18, 2016, the Defendant being  
15 represented by Robert Arroyo, and real party in interest, My Entertainment TV, making a  
16 special appearance through its counsel, Lisa Zastrow and Mark Tratos of the law firm  
17 Greenberg Traurig, LLP. The Court having considered the pleadings on file and the arguments  
18 of counsel hereby denies Defendant's motion and finds as follow;

- 19  
20 1. My Entertainment TV is a news reporter as defined by Supreme Court Rule 229(c).  
21 2. There is a presumption that all courtroom proceedings that are open to the public are  
22 subject to electronic coverage. SCR 230(2).  
23 3. Filming by My Entertainment TV will have no greater impact on the proceedings than  
24 filming by any other media outlet.  
25 4. The factors set forth is Supreme Court Rule 230(2) favor coverage by My  
26 Entertainment TV:  
27  
28

1 a. Coverage by My Entertainment TV will not impact the parties' right to a fair trial.

2 Defense counsel, Robert Arroyo's claim that he will be distracted with concern over

3 how is he being portrayed in the My Entertainment TV docudrama is not sufficient to

4 overcome the presumption in favor of coverage. As experienced trial counsel who has

5 defended other murder cases, Mr. Arroyo should have the professional competence to

6 overcome this distraction.

7 b. Coverage by My Entertainment TV will have no greater impact on the privacy of any

8 party or witness than coverage by any other outlet.

9 c. Coverage by My Entertainment TV should have no impact upon the safety and well-

10 being of any party, witness, or juror. My Entertainment TV is prohibited from filming

11 the jurors and prospective jurors.

12 d. Filming by My Entertainment TV, subject to the same rules and restrictions imposed

13 upon any other media outlet, should have no impact upon the dignity of the

14 proceedings. Participants, other than court personnel, the Defendant, and the attorneys,

15 should be unaware of My Entertainment TV's presence as their cameras should be

16 indistinguishable from those of any other television station or program. Defendant's

17 concern that defense witnesses will refuse to testify if My Entertainment TV is allowed

18 to cover the trial can be addressed by instructing My Entertainment TV not to film those

19 witnesses.

20 e. The physical facilities of the Court are adequate for coverage.

21 5. The contract between Clark County and My Entertainment TV does not give defense

22 counsel, Randall Pike and Robert Arroyo, as county employees, a right of consent in this

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1 instance. As licensed Nevada attorneys appearing as counsel in a public proceeding, they are  
2 subject to the same rules as any other attorney.

3 It is hereby ORDERED that Defendant's Motion to Reconsider and Deny My  
4 Entertainment TV's Request to Record All Hearing in this Case on an Order Shortening Time  
5 is DENIED. My Entertainment TV may film the trial in this matter beginning on August 23,  
6 2016 or as soon thereafter as a jury is sworn.  
7

8 DATED: August 22, 2016

9   
10 DISTRICT COURT JUDGE

11  
12  
13 CERTIFICATE OF SERVICE

14 I hereby certify that on or about the date e-filed, I served a copy of the foregoing  
15 document electronically through Wiznet or by placing a copy in the attorney's folder  
16 located in the Regional Justice.

17 Jacqueline Bluth, Esq. (Clark County District Attorney's Office)  
18 Agnes Lexis, Esq. (Clark County District Attorney's Office)  
19 Randall H. Pike, Esq. (Special Public Defender's Office)  
20 Robert Arroyo, Esq. (Special Public Defender's Office)  
21 Lisa J. Zastrow, Esq. (Greenberg Traurig, LLP)

22   
23 Krystal Jacobs  
24 Judicial Executive Assistant  
25  
26  
27  
28