

ORIGINAL

1 LAURIE L. TROTTER, ESQ.  
Nevada State Bar No. 8696  
2 STATE OF NEVADA, Department of  
Employment, Training & Rehabilitation (DETR)  
3 Employment Security Division (ESD)  
500 East Third Street  
4 Carson City, NV 89713  
Telephone No.: (775) 684-3996  
5 Facsimile No.: (775) 684-3992  
*Attorney for DETR/ESD*

REC'D & FILED

2018 AUG -3 PM 4: 17

SUSAN MERRIWETHER  
CLERK

Electronically Filed  
Aug 09 2018 11:19 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR CARSON CITY**

10 SIERRA NATIONAL CORPORATION,  
DBA, THE LOVE RANCH, A NEVADA  
11 CORPORATION,

CASE NO.: 17 OC 00222 1B

12 Petitioner,

DEPT. NO.: I

13 vs.

14 NEVADA DEPARTMENT OF  
EMPLOYMENT, TRAINING AND  
15 REHABILITATION – EMPLOYMENT  
SECURITY DIVISION,

16 Respondent.

18 **NOTICE OF APPEAL**

19 **TO:** PETITIONER and the CLERK OF THE ABOVE-ENTITLED COURT:

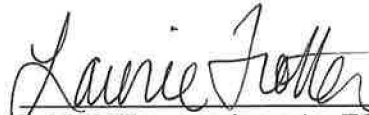
20 **NOTICE IS HEREBY GIVEN** that the Administrator, State of Nevada,  
21 Department of Employment, Training and Rehabilitation, Employment Security Division (ESD),  
22 Respondent above-named, hereby appeals to the Supreme Court of Nevada from the Orders  
23 granting Petition for Writ of Mandamus entered in this action on February 7, 2018, and the Writ

1 of Mandamus, issued thereby, on February 8, 2018, and the July 11, 2018 Order Lifting Stay and  
2 Denying Reconsideration.

3 AFFIRMATION Pursuant to NRS 239B.030:

4 The undersigned does hereby affirm that the preceding document does not contain  
5 confidential information; including, but not limited to: the Social Security number or employer  
6 identification number of any person or party.

7 **DATED** this 3rd day of August, 2018.

8   
9 LAURIE L. TROTTER, ESQ.  
10 *Attorney for Respondent ESD*



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of  
3 Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and  
4 correct copy of the foregoing NOTICE OF APPEAL, by placing the same within an envelope  
5 and depositing said envelope with the State of Nevada Mail for postage and mailing from Carson  
6 City, Nevada, addressed for delivery as follows:

7 Anthony L. Hall, Esq.  
8 Rico Cordova, Esq.  
9 *Holland & Hart LLP*  
5441 Kietzke Lane, **Second Floor**  
Reno, NV 89511

10  
11 **DATED** this 3<sup>d</sup> day of August, 2018.

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14 SHERI C. IHLER  
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**ORIGINAL**

REC'D & FILED

2010 AUG -3 PM 4:18

SUSAN MERRIWETHER  
CLERK

BY  DEPUTY

1 LAURIE L. TROTTER, ESQ.  
Nevada State Bar No. 8696  
2 STATE OF NEVADA, Department of  
Employment, Training & Rehabilitation (DETR),  
3 Employment Security Division (ESD)  
500 East Third Street  
4 Carson City, Nevada 89713  
Telephone No.: (775) 684-3996  
5 Facsimile No.: (775) 684-3992  
*Attorney for DETR/ESD*

6  
7 **IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**  
8 **IN AND FOR CARSON CITY**

9  
10 SIERRA NATIONAL CORPORATION, *dba*  
THE LOVE RANCH, A NEVADA  
CORPORATION,

CASE NO. 17 OC 00222 1B

DEPT. NO. I

11  
12 Petitioner,

13 vs.

14 NEVADA DEPARTMENT OF  
EMPLOYMENT, TRAINING AND  
REHABILITATION – EMPLOYMENT  
15 SECURITY DIVISION,

16 Respondent.

17 **CASE APPEAL STATEMENT**

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

19 The Nevada Department of Employment, Training and Rehabilitation, Employment  
20 Security Division.

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

22 Honorable James T. Russell, Department I, First Judicial District Court, in and for Carson  
23 City.

24 ///

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

The State of Nevada Department of Employment, Training and Rehabilitation, Employment Security Division; represented by Laurie L. Trotter, Esq., Division Senior Legal Counsel, 500 E. Third Street, Carson City, NV 89713.

4. Identify each respondent and the name and address of counsel for each respondent:

Sierra National Corporation, *dba* The Love Ranch, represented in the First Judicial District Court, in and for Carson City, Anthony L. Hall Esq. and Ricardo N. Cordova, Esq., Holland & Hart LLP, 5441 Kietzke Lane, Second Floor, Reno, NV 89511.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

All attorneys in response to questions 3 and 4 are licensed to practice law in Nevada.

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

Appellant was represented by retained counsel in the district court.

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

Appellant will be represented by the same retained counsel on appeal.

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

No, appellant did not apply for and were not granted leave to proceed *in forma pauperis*.

1                   9.       Indicate the date the proceedings commenced in district court (e.g., date  
2 complaint, indictment, information, or petition was filed):

3                   October 26, 2017, with the filing of a Petition for Writ of Mandamus by Respondent on  
4 Appeal, Sierra National Corporation, *dba* The Love Ranch.

5                   10.       Provide a brief description of the nature of the action and result in the  
6 district court, including the type of judgment or order being appealed and the relief granted by  
7 the district court:

8                   The nature of the action is a Petition for Writ of Mandamus filed in the District Court  
9 under NRS 34.150 *et seq.* and NRS 239.001 *et seq.* The District Court issued an Order Granting  
10 Petition for Writ of Mandamus and issued a Writ of Mandamus upon the Nevada Department of  
11 Employment, Training and Rehabilitation, Employment Security Division (ESD). The action of  
12 the District Court resulted in an Order Granting Petition for Writ of Mandamus and a Writ of  
13 Mandamus directing ESD to make records described in the Petition for Writ of Mandamus  
14 accessible/available for copying by Sierra National Corporation, *dba* The Love Ranch within  
15 thirty (30) days. The Order Granting Petition for Writ of Mandamus and the Writ of Mandamus  
16 are being appealed. The matter was timely appealed to the Supreme Court, however, since the  
17 tolling Motion to Reconsider had not yet been decided, the parties stipulated to dismiss the  
18 appeal and remand the matter to the District Court, with the right to appeal the District Court's  
19 final order. The District Court resolved the tolling motion by issuing an Order to Lift Stay and  
20 Denying Reconsideration on July 11, 2018. This Order is also being appealed. A Stipulation  
21 and Order for Stay of the Proceedings Pending Supreme Court Decision was filed on July 31,  
22 2018.

23                   ///

24                   ///

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

The appeal referenced in section 10 above: The State of Nevada Department of Employment, Training & Rehabilitation, Employment Security Division, v. Sierra National Corporation, *d/b/a* The Love Ranch, a Nevada Corporation, case number 75392.

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

No.

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

No.

**AFFIRMATION Pursuant to NRS 239B.030:**

The undersigned does hereby affirm that the preceding document does not contain the Social Security number or employer identification number of any person or party.


**DATED** this 3<sup>rd</sup> day of August, 2018.

*Laurie Trotter*  
LAURIE L. TROTTER, ESQ.  
*Attorney for Nevada ESD*

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Anthony L. Hall, Esq.  
Ricardo Cordova, Esq.  
*Holland & Hart LLP*  
5441 Kietzke Lane, **Second Floor**  
Reno, NV 89511

**DATED** this 3<sup>rd</sup> day of August, 2018.

  
TIFFANI M. SILVA

Judge: RUSSELL, JUDGE JAMES  
TODD

Case No. 17 OC 00222 1B

Ticket No.,  
CTN:

SIERRA NATIONAL CORPORATION

By:

-vs-

EMPLOYMENT SECURITY DRSPND  
DIVISION

By:

Dob: Sex:  
Lic: Sid:  
NEVADA DEPT. OF DRSPND  
EMPLOYMENT, TRAINING &  
REHABILITAT

By:

Dob: Sex:  
Lic: Sid:Plate#: Make:  
Year: Accident:  
Type:  
Venue:  
Location:SIERRA NATIONAL PLNTPET  
CORPORATIONBond:  
Type:Set:  
Posted:

## Charges:

Ct. Offense Dt: Cvr:  
Arrest Dt:  
Comments:Ct. Offense Dt: Cvr:  
Arrest Dt:  
Comments:

## Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	08/03/18	NOTICE OF ENTRY OF STIPULATION AND ORDER FOR STAY OF PROCEEDINGS PENDING SUPREME COURT DECISION	1BJHIGGINS	0.00	0.00
2	08/03/18	CASE APPEAL STATEMENT	1BVANESSA	0.00	0.00
3	08/03/18	NOTICE OF APPEAL FILED	1BVANESSA	24.00	0.00
4	07/31/18	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BVANESSA	0.00	0.00
5	07/31/18	STIPULATION AND ORDER FOR STAY OF PROCEEDINGS PENDING SUPREME COURT DECISION	1BVANESSA	0.00	0.00
6	07/26/18	NOTICE OF ENTRY OF ORDER LIFTING STAY AND DENYING RECONSIDERATION	1BCTORRES	0.00	0.00
7	07/11/18	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BVANESSA	0.00	0.00
8	07/11/18	ORDER LIFTING STAY AND DENYING RECONSIDERATION	1BVANESSA	0.00	0.00
9	07/09/18	PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION FOR LIMITED LIFT OF STAY	1BCTORRES	0.00	0.00
10	07/09/18	REQUEST FOR SUBMISSION OF ESD'S MOTION FOR LIMITED LIFT OF STAY	1BCTORRES	0.00	0.00
11	07/09/18	RESPONSE TO PETITIONER'S MOTION TO LIFT STAY AND DENY RECONSIDERATION	1BCTORRES	0.00	0.00
12	06/25/18	MOTION TO LIFT STAY AND DENY RECONSIDERATION	1BCTORRES	0.00	0.00
13	06/21/18	MOTION FOR LIMITED LIFT OF STAY	1BCCOOPER	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
14	06/19/18	ORDER DISMISSING APPEAL	1BCTORRES	0.00	0.00
15	03/20/18	FILE RETURNED AFTER SUBMISSION - NO ACTION TAKEN	1BCTORRES	0.00	0.00
16	03/20/18	ORDER DENYING REQUESTS FOR SUBMISSION	1BCTORRES	0.00	0.00
17	03/15/18	NOTICE REGARDING STAY	1BCTORRES	0.00	0.00
18	03/15/18	CASE APPEAL STATEMENT	1BJHIGGINS	0.00	0.00
19	03/15/18	NOTICE OF APPEAL FILED	1BJHIGGINS	24.00	0.00
20	03/14/18	NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR STAY OF PROCEEDINGS PENDING SUPREME COURT DECISION	1BJHIGGINS	0.00	0.00
21	03/14/18	REQUEST FOR SUBMISSION OF MOTION FOR ORDER SHORTENING TIME RE: MOTION TO STRIKE, OR OPPOSITION TO MOTION FOR EXTENSION OF TIME	1BJHIGGINS	0.00	0.00
22	03/14/18	REQUEST FOR SUBMISSION OF MOTION TO STRIKE, OR OPPOSITION TO MOTION FOR EXTENSION OF TIME	1BJHIGGINS	0.00	0.00
23	03/14/18	RESPONSE TO REQUEST FOR SUBMISSION OF MOTION FOR RECONSIDERATION	1BJHIGGINS	0.00	0.00
24	03/14/18	OPPOSITION TO MOTION FOR RECONSIDERATION	1BJHIGGINS	0.00	0.00
25	03/13/18	MOTION FOR ORDER SHORTENING TIME	1BJHIGGINS	0.00	0.00
26	03/13/18	MOTION TO STRIKE, OR OPPOSITION TO MOTION FOR EXTENSION OF TIME	1BJHIGGINS	0.00	0.00
27	03/13/18	ORDER GRANTING MOTION FOR STAY OF PROCEEDINGS PENDING SUPREME COURT DECISION	1BJULIEH	0.00	0.00
28	03/12/18	REQUEST FOR SUBMISSION OF MOTION FOR ORDER SHORTENING TIME	1BJULIEH	0.00	0.00
29	03/12/18	REQUEST FOR SUBMISSION OF MOTION TO STAY	1BJULIEH	0.00	0.00
30	03/09/18	REQUEST FOR SUBMISSION OF RESPONDENT'S MOTION TO RECONSIDER PURSUANT TO NRCP 59(e) AND 60(b)	1BCTORRES	0.00	0.00
31	03/09/18	MOTION FOR STAY	1BCTORRES	0.00	0.00
32	03/09/18	MOTION FOR ORDER SHORTENING TIME	1BCTORRES	0.00	0.00
33	03/09/18	MOTION FOR EXTENSION OF TIME TO FILE OPPOSITION	1BCTORRES	0.00	0.00
34	02/27/18	NOTICE OF CHANGE OF ADDRESS AND TELEPHONE NUMBERS	1BCCOOPER	0.00	0.00
35	02/22/18	REQUEST FOR SUBMISSION OF EX PARTE MOTION FOR ORDER SHORTENING TIME	1BCCOOPER	0.00	0.00
36	02/21/18	WRIT OF MANDAMUS	1BJHIGGINS	0.00	0.00
37	02/20/18	PETITIONER'S BILL OF COSTS AND ITEMIZATION OF FEES	1BCTORRES	0.00	0.00



No.	Filed	Action	Operator	Fine/Cost	Due
38	02/16/18	EX-PARTE MOTION FOR ORDER SHORTENING TIME	1BCTORRES	0.00	0.00
39	02/16/18	RESPONDENT'S MOTION TO RECONSIDER PURSUANT TO NRCF 59(e) AND 60(b)	1BCTORRES	0.00	0.00
40	02/14/18	PETITIONERS NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
41	02/08/18	ISSUANCE OF WRIT OF MANDAMUS	1BJULIEH	10.00	0.00
42	02/07/18	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
43	02/07/18	ORDER GRANTING PETITION FOR WRIT OF MANDAMUS	1BJULIEH	0.00	0.00
44	01/30/18	REQUEST FOR SUBMISSION OF PETITION FOR WRIT OF MANDAMUS	1BCTORRES	0.00	0.00
45	01/18/18	PETITIONER'S NOTICE OF ENTRY OF ORDER	1BCTORRES	0.00	0.00
46	01/05/18	REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS	1BJULIEH	0.00	0.00
47	01/04/18	ORDER GRANTING MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS	1BJULIEH	0.00	0.00
48	01/02/18	REQUEST FOR SUBMISSION OF MOTION FOR LEAVE	1BCCOOPER	0.00	0.00
49	01/02/18	REPLY IN SUPPORT OF MOTION FOR LEAVE	1BCCOOPER	0.00	0.00
50	12/20/17	ESD'S OPPOSITION TO MOTION FOR LEAVE TO FILE REPLY	1BCTORRES	0.00	0.00
51	12/05/17	MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS	1BCTORRES	0.00	0.00
52	11/21/17	AFFIDAVIT OF LAURIE L. TROTTER, IN SUPPORT OF THE ANSWER TO PETITION FOR WRIT OF MANDAMUS	1BCCOOPER	0.00	0.00
53	11/21/17	AFFIDAVIT OF MELANIE MAGUIRE, IN SUPPORT OF THE ANSWER TO PETITION FOR WRIT OF MANDAMUS	1BCCOOPER	0.00	0.00
54	11/21/17	ANSWER TO PETITION FOR WRIT OF MANDAMUS	1BCCOOPER	0.00	0.00
55	11/09/17	DECLARATION OF SERVICE	1BVANESSA	0.00	0.00
56	10/26/17	ISSUING SUMMONS	1BVANESSA	0.00	0.00
57	10/26/17	PLAINTIFF'S/PETITIONER'S INITIAL APPEARANCE AFFIRMATION PURSUANT TO NRS 239.030	1BVANESSA	0.00	0.00
58	10/26/17	PETITION FOR WRIT OF MANDAMUS Receipt: 52161 Date: 10/30/2017	1BVANESSA	265.00	0.00
Total:				323.00	0.00
Totals By: COST				323.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

SIERRA NATIONAL CORPORATION, dba  
THE LOVE RANCH, a Nevada Corporation,

Petitioner,

vs.

NEVADA DEPARTMENT OF  
EMPLOYMENT, TRAINING AND  
REHABILITATION – EMPLOYMENT  
SECURITY DIVISION,

Respondent.

Case No. 170C002221B

Dept. No. I

SUSAN MERRIWETHER  
CLERK

**ORDER GRANTING PETITION FOR WRIT OF MANDAMUS**

**I. INTRODUCTION**

This matter came before the Court upon the Petition for Writ of Mandamus (“Petition”), filed on October 26, 2017, by Petitioner Sierra National Corporation, dba The Love Ranch (“Petitioner” or “The Love Ranch”). Pursuant to the Nevada Public Records Act (“NPRA”), NRS 239.001 *et seq.*, and NRS 34.150 *et seq.*, The Love Ranch seeks issuance of a writ of mandamus directing Respondent Nevada Department of Employment, Training and Rehabilitation – Employment Security Division (“Respondent” or “DETR”) to permit copying of the public records described herein. DETR filed an Answer on November 20, 2017. Petitioner filed a Reply on January 5, 2018. After careful review of the Petition, Answer, Reply, and the other papers on file with the Court, the Court GRANTS the Petition for the reasons explained in the following Findings of Fact and Conclusions of Law.

**II. FINDINGS OF FACT**

**A. Background**

DETR is an agency of the Executive Department of the State of Nevada and, as such, is a “governmental entity” subject to the requirements of the NPRA, as set forth in NRS Chapter 239. DETR is the state agency responsible for, among other things, collecting unemployment taxes (or “contributions”) from employers (or “employing units”) based upon the wages that are paid

1 by those employers to their employees. *See* NRS 612.045; NRS 612.060. DETR deposits those  
2 contributions into a fund established by statute (“State Unemployment Fund”). *See* NRS  
3 612.165. DETR then makes payments (or “benefits”) out of the State Unemployment Fund, as a  
4 form of wage replacement, to employees who become unemployed under certain circumstances.  
5 *See id.*

6 The Love Ranch operates legal, fully-licensed brothels in Lyon County, Nevada. The  
7 Love Ranch rents space to tenants who are licensed by the State of Nevada and/or the political  
8 subdivisions of the State to engage in the business of prostitution and/or adult entertainment. It  
9 is undisputed that for many years, if not decades, The Love Ranch and other legal brothels in  
10 Nevada have classified their tenants as independent contractors, rather than employees. *See* NRS  
11 612.085. Accordingly, like other establishments that rent space to tenants, The Love Ranch does  
12 not make contributions into the State Unemployment Fund based upon the earnings the tenants  
13 receive from their clients.

14 The Love Ranch maintains that DETR has been well aware of The Love Ranch’s  
15 classification of the tenants as independent contractors. The Love Ranch avers that despite  
16 conducting audits of The Love Ranch and affiliated brothels over the years, DETR did not object  
17 to the classification of the tenants as independent contractors, nor did it assert that contributions  
18 should be made into the State Unemployment Fund based upon the tenants’ earnings. DETR  
19 does not dispute this in its Answer. As recently as December 2016, DETR’s own Board of  
20 Review issued an Order, of which this Court takes judicial notice, indicating its view that The  
21 Love Ranch’s tenants are independent contractors, not employees. *See* Reply in Support of  
22 Petition at Ex. A.

23 In 2016, DETR announced that it wished to audit The Love Ranch. On May 12, 2017,  
24 DETR issued a determination now stating that The Love Ranch’s tenants are employees. As a  
25 result, DETR now claims The Love Ranch owes a substantial tax liability to the State  
26 Unemployment Fund. The Love Ranch filed an administrative appeal, which remains pending  
27 before an Appeals Referee for DETR.

28 ///

1           **B.       The Love Ranch's Public Records Request**

2           On October 4, 2017, The Love Ranch made a public records request ("the Request") to  
3 DETR. *See* Petition at Ex. 2. The Love Ranch expressly explained in its Request that it does not  
4 seek the identity of any other employing unit or person from whom DETR has obtained  
5 information pursuant to the administration of NRS Chapter 612. *See id.* Thus, The Love Ranch  
6 noted that in responding to the request, DETR should redact portions of records that would  
7 reveal the identity of another employing unit or employing person, and provide an appropriate  
8 log regarding such redactions or any other records withheld, along with citation to the specific  
9 statute or legal authority that makes the public book or record, or a part thereof, confidential. *See*  
10 *id.* The Love Ranch also completed the Public Records Request form made available on  
11 DETR's website. *See id.* The Love Ranch included an attachment with its Request in which it  
12 spelled out, in great detail, the records it seeks. *See id.*

13           **C.       DETR's Blanket Denial of the Public Records Request**

14           DETR responded to the Public Records Request on October 16, 2017 (the "Response").  
15 *See* Petition at Ex. 3. In its Response, DETR refused to provide any of the requested records,  
16 stating, "[t]his agency respectfully declines to provide information pursuant to such request  
17 because it does not sufficiently identify any specific records as required by NAC 239.863." *See*  
18 *id.* In addition, DETR stated, "[m]oreover, this agency is not required to create records to satisfy  
19 your request. *See*, NAC 239.867." *See id.* These are the only two grounds DETR raised in its  
20 Response. *See id.* DETR did not provide a log or any description of any records it has withheld.  
21 *See id.* Nor did DETR cite to any legal authority that makes the requested records confidential or  
22 privileged—indeed, DETR did not even assert that the records, or any portions thereof, are  
23 confidential or privileged in any way.

24           As detailed below, the Court finds that DETR's blanket denial of The Love Ranch's  
25 Public Records Request violated the NPRA. Accordingly, the Court has determined that  
26 issuance of a writ of mandamus is necessary to compel DETR to allow The Love Ranch access  
27 to the requested public records.

28           ///

1 **III. CONCLUSIONS OF LAW**

2 At the outset, the Court notes that it has jurisdiction to issue writs of mandamus. *See*  
3 Nev. Const. Art. 6, § 6; NRS 34.160. Further, venue lies in this District because the public  
4 records at issue are located in Carson City, Nevada. *See* NRS 239.011.

5 As explained below, the Court finds that DETR has waived the majority of the arguments  
6 it asserts in its Answer. Accordingly, the Court will first address the arguments that DETR  
7 raised in its Response to the Request, specifically, that the Request was not sufficiently specific  
8 and that it requested the creation of records. Then, the Court will address the newly-raised  
9 arguments in DETR's Answer.

10 **A. DETR's Arguments about the Specificity of the Request are Unavailing**

11 The Court rejects DETR contention that the Request did not "identify specific records,"  
12 was "exceedingly general in nature," and was a "fishing expedition" for information "clearly"  
13 beyond the scope of the NPRA. *See* Answer at 12-13.

14 Although DETR lumps all of the categories in the Request together and announces they  
15 are too general, the Court has reviewed the Request, and disagrees with DETR. *See* Petition at  
16 Ex. 2. As can easily be seen from the Request, The Love Ranch spelled out, in detail, the records  
17 sought. In fact, The Love Ranch's description of the requested records is far more detailed than  
18 public records requests the Nevada Supreme Court has routinely discussed approvingly.  
19 *Compare* Petition at Ex. 2 *with Reno Newspapers, Inc. v. Gibbons*, 266 P.3d 623, 630 n.3 (Nev.  
20 2011) (approving request for "e-mail communications sent over a six-month time period between  
21 Governor Gibbons and ten individuals" and describing the 106 e-mails in dispute as a "relatively  
22 limited number"); *Reno Newspapers v. Haley*, 234 P.3d 922, 924 (Nev. 2010) (approving request  
23 for "all records 'detailing the status of any and all [concealed firearms] permits issued by the  
24 Washoe County Sheriff's Office to Gov. Jim Gibbons,' and all 'documents detailing action taken  
25 by the Washoe County Sheriff's Office on that permit, including a decision to suspend, revoke,  
26 or hold the permit.'").

27 Notably, NAC 239.865 authorizes an agency responding to a public records request to  
28 ask for additional information or clarification from the requesting party. Despite this, and

1 despite an invitation in the Request for DETR to contact The Love Ranch with any questions, *see*  
2 Petition at Ex. 2, DETR does not deny that it failed to request any additional information or  
3 clarification. Nor did DETR request any “narrowing” of the Request that it now suggests was  
4 necessary. This belies DETR’s claim that the Request is not sufficiently detailed.

5 Finally, the Court rejects DETR’s complaint that the Request was not contained in the  
6 “designated” DETR form, but was instead detailed in an attachment to the form. On the one  
7 hand, DETR claims the Request was too generalized. On the other hand, DETR complains that  
8 the Request was not confined to the small space on DETR’s “designated” form, where it would  
9 have been impossible to specify the records sought. The Court finds DETR’s arguments  
10 unpersuasive. Accordingly, the Court rejects DETR’s claim that the Request was not sufficiently  
11 detailed.

#### 12 **B. The Request Did Not Seek the Creation of Records**

13 The Court also rejects the only other argument that DETR timely raised in its Response,  
14 namely, that the Request supposedly sought the creation of records. DETR has essentially  
15 abandoned this argument in its Answer. Indeed, in its 17 page Answer, DETR only provided a  
16 one-sentence argument on this issue, stating, “to the extent that the information requested by  
17 SNC is not already included in a public record, ESD is not required to create a record to satisfy  
18 SNC’s request.” *See* Answer at 13. In any event, the Court finds that, contrary to DETR’s  
19 suggestion, The Love Ranch never requested DETR to create any records.

#### 20 **C. DETR Waived the Majority of the Arguments Raised in its Answer**

21 The Court observes that the remaining arguments in DETR’s Answer were not asserted in  
22 its Response to The Love Ranch’s Public Records Request. As noted, in DETR’s Response to  
23 the Request, it based its blanket denial solely on two grounds: (1) the Request allegedly did not  
24 sufficiently identify specific records; and (2) DETR is not required to create Records to satisfy  
25 the request. *See* Ex. 3 to Petition.

26 DETR has asserted several new arguments for the first time in its Answer. For instance,  
27 DETR argues that The Love Ranch “has a plain, speedy and adequate remedy under the NRS  
28 Chapter 612 administrative process” and “failed to exhaust its administrative remedies.” DETR

1 raised several other new arguments, including: The Love Ranch was “less than candid with the  
2 Court regarding the discovery it had already received in the pending administrative proceeding”;  
3 the NPRA “was not intended for use after the start of litigation”; the requested records are  
4 “confidential by state and federal law”; and the Request sought “privileged material.”

5 DETR did not raise these arguments in its Response to the Public Records Request, as  
6 required. *See Gibbons*, 266 P.3d at 629 (even prior to the initiation of an NPRA lawsuit, the  
7 agency withholding records has a legal obligation to provide citation to legal authority “that  
8 justifies nondisclosure,” and “merely pinning a string of citations to a boilerplate declaration of  
9 confidentiality” does not suffice); *see also* NRS 239.0107(1)(d). DETR does not contend  
10 otherwise in its Answer. Permitting DETR to raise these arguments for the first time in its  
11 Answer would defeat the clear intent of the NPRA that an agency must promptly respond with  
12 any and all grounds for the denial a public records request so the requesting party can analyze  
13 whether to challenge the denial via mandamus. Accordingly, the Court finds that DETR waived  
14 any arguments it failed to raise in its Response to the Public Records Request. Even if not  
15 waived, DETR’s newly-raised arguments are unavailing, as detailed below.

16 **D. Mandamus is the Proper Vehicle to Challenge the Denial of an NPRA Request**

17 One of the new arguments DETR has raised in its Answer is procedural, namely, that  
18 mandamus relief is not available because there is allegedly a plain, speedy, and adequate remedy  
19 available under the unemployment compensation statutes set forth in NRS Chapter 612. *See*  
20 Answer at 4-5. According to DETR, The Love Ranch is seeking to “short-circuit” the  
21 administrative process which, DETR says, supplies the exclusive means to seek records  
22 associated with such disputes. *See id.* The Court disagrees.

23 The Nevada Legislature has expressly declared that a party that has been denied access to  
24 public records may proceed with an action before the district court:

25 If a request for inspection, copying or copies of a public  
26 book or record open to inspection and copying is denied, the  
27 requester may apply to the district court in the county in which the  
28 book or record is located for an order:

(a) Permitting the requester to inspect or copy the book or  
record; or



(b) Requiring the person who has legal custody or control of the public book or record to provide a copy to the requester, as applicable.

NRS 239.011(1) (emphasis added).

It is undisputed that The Love Ranch's request for public records was denied. Thus, under the plain language of NRS 239.011(1), The Love Ranch has a statutory right to bring this action. Nowhere does this statute exempt public records that may also be relevant in administrative proceedings under the unemployment compensation statutory scheme set forth in NRS Chapter 612. Moreover, the Nevada Supreme Court has held that mandamus is the appropriate procedural vehicle to compel production of public records. *DR Partners v. Bd. of County Comm'rs*, 6 P.3d 465, 468 (Nev. 2000). The law is settled on this point. *See Morrow v. LeGrand*, 2017 WL 1397335, at \*1, Case No. 68768 (Nev., April 14, 2017) (unpublished disposition) ("This court has repeatedly recognized that mandamus is the appropriate procedural remedy to compel the production of public records under NRS Chapter 239.").<sup>1</sup>

The Nevada Supreme Court recently reaffirmed the validity of this principle in *City of Sparks v. Reno Newspapers*, 399 P.3d 352 (Nev. 2017). There, much like DETR in the instant case, the City of Sparks argued that mandamus relief was not available because it had denied a public records request by invoking a confidentiality regulation which could have been challenged by way of a declaratory judgment proceeding under NRS 233B.110 of the Administrative Procedure Act. *Id.* at 354. The court disagreed, observing, "a writ of mandamus is generally the appropriate means for pursuing the disclosure of public records pursuant to NRS 239.011." *Id.* at 355. In addition, the newspaper was challenging the denial of its records request, not merely seeking to determine its rights regarding the confidentiality regulation invoked by the City. *Id.* Thus, NRS 239.011 specifically applied, and took precedence over a separate statute generally providing an alternate avenue of relief. *Id.*

<sup>1</sup>See, e.g., *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 343 P.3d 608 (Nev. 2015) (affirming writ of mandamus compelling the disclosure of public records); *Reno Newspapers, Inc. v. Gibbons*, 266 P.3d 623 (Nev. 2011) ("mandamus was the appropriate procedural vehicle" to seek access to public records and a log regarding records withheld by the government); *PERS v. Reno Newspapers*, 313 P.3d 221 (Nev. 2013) (affirming writ of mandamus requiring production of public records); *Donrey of Nevada v. Bradshaw*, 798 P.2d 144, 148 (Nev. 1990) (directing district court to issue a writ of mandamus compelling disclosure of public records).



1 Here, as in *City of Sparks v. Reno Newspapers*, DETR misconstrues the records at issue  
2 and the relief sought by The Love Ranch. To be sure, some of the records sought by The Love  
3 Ranch may ultimately prove relevant in its pending administrative appeal. But The Love Ranch  
4 maintains that the records it seeks may also expose what it calls “DETR’s systematically biased  
5 and arbitrary practices.” See Reply in Support of Petition at 4. This is supported by The Love  
6 Ranch’s submissions to this Court, including an Order by DETR’s own Board of Review  
7 indicating that The Love Ranch’s tenants are independent contractors. This indicates that DETR  
8 has made an about-face by now determining that The Love Ranch’s tenants are employees. And,  
9 nowhere in any of the voluminous papers submitted by DETR does it attempt to dispel the  
10 appearance that it has acted arbitrarily.

11 The Court notes that the public undoubtedly has an interest in rooting out such activity,  
12 and the NPRA provides citizens an avenue to do so. See, e.g., *DR Partners*, 6 P.3d at 467  
13 (approving of an NPRA request made in connection with investigation into governmental waste  
14 and the extent of influence over public officials by private lobbyists); *Donrey*, 798 P.2d at 145  
15 (approving of an NPRA request to obtain a report generated by the Reno Police Department  
16 regarding bribery of a public official).

17 Most importantly, the Court notes that the remedial process The Love Ranch is entitled to  
18 pursue to enforce its rights under the plain language of NRS 239.011(1) is not dictated by  
19 DETR’s re-characterization of the parties’ dispute. If credited, DETR’s position would mean  
20 that a party to an administrative dispute has less rights under the NPRA than the general public.  
21 This would be an absurd result and is unsupported by any caselaw or statutory language. Thus,  
22 the Court rejects DETR’s contention that mandamus relief is not available here.

23 **E. The Court is Not Persuaded by DETR’s Arguments Regarding Exhaustion**

24 **1. The NPRA Does Not Require Exhaustion of Administrative Remedies**

25 Another new procedural argument raised in DETR’s Answer is that The Love Ranch  
26 allegedly failed to exhaust its administrative remedies. See Answer at 6-7. As noted, NRS  
27 239.011(1) expressly declares that a party that has been denied access to public records may  
28 proceed with an action before the district court. The Love Ranch is indisputably a party that has

been denied access to public records, and thus, under NRS 239.011(1), it properly brought this action. The NPRA does not impose any obligation to exhaust any of the administrative remedies that DETR argues may be available. Further, any of the general requirements in NRS Chapter 613, including exhaustion, are inapplicable because this action is specifically governed by the NPRA. *See City of Sparks v. Reno Newspapers*, 399 P.3d at 355. Stated simply, the only pre-requisites to an action under the NPRA is that a party make a request that is denied. The Court finds that such pre-requisites have been fulfilled here.

## 2. *Exceptions to the Exhaustion Doctrine Apply Here*

Further, there are exceptions to statutory schemes that do have exhaustion requirements.<sup>2</sup> First, “[t]he exhaustion doctrine will not deprive the court of jurisdiction ‘where the issues relate solely to the interpretation or constitutionality of a statute.’” *State, Nevada Dep’t of Taxation v. Scotsman Mfg. Co.*, 849 P.2d 317, 319 (Nev. 1993) (quoting *State v. Glusman*, 651 P.2d 639 (Nev. 1982)). Second, “where resort to administrative procedures would be futile, exhaustion of administrative remedies is not required.” *Englemann v. Westergard*, 647 P.2d 385, 388-89 (Nev. 1982).

The Court finds that this dispute falls within both of the exceptions to the exhaustion doctrine. To begin, the Petition raises purely legal questions regarding the interpretation of the NPRA and other statutes. *See Las Vegas Metro. Police Dep't v. Blackjack Bonding*, 343 P.3d 608, 612 (Nev. 2015) (the interpretation of caselaw and the statutory language of the NPRA are questions of law, subject to de novo review). In addition, exhaustion of the administrative procedures under NRS Chapter 612 would have been futile. In fact, The Love Ranch requested the Appeals Referee to issue an administrative subpoena compelling DETR to produce records concerning, among other things, its previous audits and determinations regarding The Love Ranch and other brothels. *See Reply in Support of Petition at Ex. B.* It is undisputed that the Appeals Referee denied the request. Thus, although DETR suggests that The Love Ranch can seek to discover such records via the administrative process, it has already done so, and its effect

<sup>2</sup>Even the authorities cited by DETR recognize these exceptions. See *Malecon Tobacco, LLC v. State*, 59 P.3d 474, 476 (Nev. 2002) (“Two exceptions exist to the exhaustion requirement.”).

1 is futile. Thus, the Court rejects DETR's arguments regarding exhaustion.

2 **F. The Court Rejects DETR's Accusations of Bad Faith and Improper Motives**

3 Next, DETR has accused The Love Ranch of being "less than candid with the Court" in  
4 its Petition. *See* Answer at 7. DETR claims it "already provided" the "audit file" regarding its  
5 Determination, and says The Love Ranch "omitted the material fact that [DETR] has disclosed  
6 the information relevant to [The Love Ranch's] appeal." *See id.* at 8. The Court finds that  
7 DETR's accusations do not withstand scrutiny.

8 **1. DETR Relies on Non-responsive and Incomplete Materials**

9 DETR has failed to demonstrate that the documents it produced in the context of the  
10 Parties' administrative dispute satisfy the thirteen (13) categories of public records requested by  
11 The Love Ranch. DETR has simply lumped all of the requested categories or records together,  
12 and then claimed it already provided all of the requested records. This is simply not the case, as  
13 is easily seen from an examination of the categories spelled out in the Request.

14 The Court notes that if DETR actually believed it "already provided" the requested  
15 records, then there would have been no reason for DETR to deny the Request. DETR could have  
16 simply responded by identifying the supposedly responsive materials. Instead, DETR issued a  
17 blanket denial, claiming that the Request did not "sufficiently identify any specific records" and  
18 that DETR "is not required to create records to satisfy your request." *See* Petition at Ex. 3.  
19 Nowhere in DETR's Response did it raise what it now calls the "material fact" that it allegedly  
20 already provided the requested records. *See id.*

21 **2. DETR's Accusations of Bad Faith and Improper Motives are Irrelevant**

22 The Court further finds that DETR's accusations are irrelevant. The Nevada Supreme  
23 Court's opinion in *Las Vegas Metropolitan Police Department v. Blackjack Bonding, Inc.* is  
24 instructive on this point. 343 P.3d 608 (Nev. 2015). There, Blackjack Bonding, a private bond  
25 company, made an NPRA request for records of telephones used by prison inmates. *Id.* at 610-  
26 11. The police department that administered the prison denied the request, arguing, among other  
27 things, that it "had no duty to fulfill Blackjack's records request because Blackjack purportedly  
28 acted to serve a business interest." *Id.* at 611 n.2. The court found that this argument was

1 “without merit,” explaining, “the NPRA does not provide that a requester’s motive is relevant to  
2 a government entity’s duty to disclose public records.” *Id.* (emphasis added).

3 As *Blackjack Bonding* makes clear, DETR’s accusations of supposed bad faith and  
4 improper motives are irrelevant. The Court notes that this is simply a matter of common sense.  
5 The Love Ranch does not have any fewer rights under the NPRA simply because it is involved in  
6 an administrative dispute with DETR. In sum, the Court rejects DETR’s accusations of bad faith  
7 and improper motives.

### 8 **G. DETR Misconstrues the Nevada Supreme Court’s NPRA Jurisprudence**

9 Referencing *Reno Newspapers v. Gibbons*, DETR has argued that “relief under [the  
10 NPRA] only applies to the pre-litigation context.” *See* Answer at 8-9. DETR contends that  
11 *Gibbons* established that the NPRA does not apply during the pendency of an administrative  
12 proceeding. *See id.* The Court disagrees.

13 In *Gibbons*, the Nevada Supreme Court held if a state entity denies a public records  
14 request prior to the initiation of an NPRA lawsuit, “it must provide the requesting party with  
15 notice and citation to legal authority that justifies non-disclosure.” 266 P.3d at 631 (citing NRS  
16 239.0107(1)(d)). There, the State’s “blanket denial” of a newspaper’s pre-litigation NPRA  
17 request was improper where it “provided no explanation whatsoever as to why the cases it cited  
18 actually supported its claim of confidentiality or were anything other than superfluous.” *Id.*  
19 Additionally, the Court explained, “[w]e cannot conclude that merely pinning a string of  
20 citations to a boilerplate declaration of confidentiality satisfies the State’s prelitigation obligation  
21 under NRS 239.0107(1)(d)(2) to cite to ‘specific’ authority ‘that makes the public book or  
22 record, or a part thereof, confidential.’” *Id.*

23 The court further held that “after the commencement of an NPRA lawsuit, the requesting  
24 party is generally entitled to a log.” *Id.* at 629. As the court reasoned, “in view of the emphasis  
25 placed on disclosure and the importance of testing claims of confidentiality in an adversarial  
26 setting, we agree . . . that ‘it is anomalous’ and inequitable to deny the requesting party basic  
27 information about the withheld records, thereby relegating it to a nebulous position where it is  
28 powerless to contest a claim of confidentiality.” *Id.* Accordingly, “in most cases, in order to

1 preserve a fair adversarial environment, this log should contain, at a minimum, a general factual  
2 description of each record withheld and a specific explanation for nondisclosure.” *Id.* Because  
3 the State failed to provide such a log to the newspaper, its “response was, in a word, deficient.”  
4 *Id.* at 630.

5 **1. DETR Failed to Meet its Pre-litigation Obligations Under the NPRA**

6 The *Gibbons* court did not, contrary to DETR’s suggestion, hold that the NPRA does not  
7 apply after the commencement of litigation or during the pendency of an administrative  
8 proceeding. If anything, a governmental entity’s obligations under the NPRA increase after the  
9 start of litigation. *Gibbons* underscores that DETR has not met its obligations under the NPRA.  
10 In its blanket denial of The Love Ranch’s Public Records Request, DETR failed to provide  
11 citation to legal authority that justifies non-disclosure. DETR did not even assert that the  
12 records, or any portions thereof, are confidential or privileged in any way. Instead, as noted,  
13 DETR based its denial on only two grounds: (1) the Request allegedly did not sufficiently  
14 identify specific records; and (2) DETR is not required to create Records to satisfy the request.

15 The Court determines that both of these grounds are superfluous and pretextual, in  
16 contravention of *Gibbons* and NRS 239.0107(1)(d)(2). To begin, NAC 239.865 authorizes an  
17 agency responding to a public records request to ask for additional information or clarification  
18 from the party that made the request. Despite this, and despite a specific invitation in the  
19 Request for DETR to contact The Love Ranch with any questions, DETR did not ask for any  
20 additional information or clarification. The Court finds that this belies DETR’s claim that the  
21 Request is not sufficiently detailed or that it requested the creation of records, and shows that  
22 DETR does not actually believe its own purported justifications for its denial of the Request. In  
23 fact, in its Answer, DETR made only a cursory argument about the detail of the Request,  
24 lumping that contention together with its new arguments regarding privileges. And, as noted,  
25 DETR essentially abandoned its argument that the Request supposedly asked for the creation of  
26 records.

27 ///

28 ///

1                                   **2.       DETR Failed to Satisfy its Litigation Obligations under the NPRA**

2           In addition, DETR has failed to satisfy its obligations under the NPRA that were  
3 triggered after the commencement of this lawsuit. In particular, DETR has failed to provide a  
4 log containing, at a minimum, a general factual description of each record withheld and a  
5 specific explanation for non-disclosure, as required under *Gibbons*. Whether considered alone or  
6 cumulatively, DETR's failures to comply with the NPRA justify granting the Petition in its  
7 entirety.

8                                   **H.       DETR Failed to Meet its Burden to Prove the Records are Confidential**

9                                   **1.       The Applicable NPRA Framework**

10          The NPRA provides that all public books and public records of governmental entities  
11 must remain open to the public, unless "otherwise declared by law to be confidential." NRS  
12 239.010(1). The Legislature has declared that the purpose of the NPRA is to foster democratic  
13 principles and governmental accountability and transparency by ensuring that records are  
14 broadly accessible. NRS 239.001(1). The provisions of the NPRA must be liberally construed  
15 to maximize the public's right of access. NRS 239.001(1)-(2). In contrast, "any limitations or  
16 restrictions on the public's right of access must be narrowly construed." *Gibbons*, 266 P.3d at  
17 626.

18          In reviewing public records requests, Nevada courts "begin with the presumption that all  
19 government-generated records are open to disclosure." *Id.* at 628 (emphasis added). "[O]pen  
20 records are the rule,' and any nondisclosure of records is the exception." *Id.* at 627 (quoting  
21 *Haley*, 234 P.3d at 926). Indeed, "the provisions of the NPRA place an unmistakable emphasis  
22 on disclosure." *Id.* at 629. "In harmony with the overarching purposes of the NPRA, the burden  
23 of proof is imposed on the state entity to prove that a requested record is confidential." *Id.*  
24 Absent a statutory provision that "expressly and unequivocally" declares a record to be  
25 confidential, any limitations on disclosure may only be based upon a broad balancing of the  
26 interests involved. *Haley*, 234 P.3d at 924. Even if portions of a public record may be properly  
27 deemed confidential, this does not mean that the entire document may be withheld. *See id.* at  
28

1 927-28. Instead, the state entity has a duty to redact any confidential portions. *Id.* (citing NRS  
2 239.010(3)).

3 The Court finds that DETR's Response to the Public Records Request, and its Answer to  
4 the Petition, are at odds with the foregoing principles. To begin, DETR broadly and liberally  
5 construes the confidentiality provisions it has invoked for the first time in its Answer. At the  
6 same time, DETR affords a cramped construction of the NPRA. In effect, DETR has the  
7 applicable rules of construction backwards.

8 Elsewhere in its Answer, DETR discusses what it believes "an applicant for a court order  
9 must first show" to bring a "successful" NPRA claim, *see* Answer at 7, or to "prevail" on such a  
10 claim. *See id.* at 15. In addition, DETR suggests it is entitled to deference, claiming its denial  
11 was not "an abuse of discretion." *Id.* at 11, 15. DETR has not brought any authority to the  
12 Court's attention that supports these positions. The law is well-settled that DETR, as the state  
13 entity resisting disclosure, bears the burden to overcome the NPRA's presumption of openness  
14 by proving that the requested records are expressly and unequivocally declared confidential by  
15 law. Thus, the Court finds that DETR's attempt to shift its burden onto The Love Ranch is  
16 inconsistent with the provisions of the NPRA and the Nevada Supreme Court's NPRA  
17 jurisprudence. *See* NRS 239.001(2)-(3); NRS 239.0113; *Gibbons*, 266 P.3d at 626-28; *Haley*,  
18 234 P.3d at 924-26; *Donrey*, 798 P.2d at 147.

## 19 **2. DETR's Reliance on NRS 612.265 is Misplaced**

20 Because DETR has not acknowledged the applicable NPRA framework, it has not met its  
21 burden to overcome the NPRA's presumption of openness. DETR first cites NRS 612.265,  
22 claiming the statute broadly makes "all information and communications prepared under  
23 Nevada's unemployment chapter confidential and privileged." *See* Answer at 9 (emphasis  
24 added). The Court disagrees.

25 Notwithstanding the selective quotation offered in DETR's Answer, NRS 612.265  
26 provides, in relevant part, as follows:

27 1. Except as otherwise provided in this section and NRS  
28 239.0115 and 612.642, information obtained from any employing  
unit or person pursuant to the administration of this chapter and



1 any determination as to the benefit rights of any person is  
2 confidential and may not be disclosed or be open to public  
3 inspection in any manner which would reveal the person's or  
4 employing unit's identity.

5 2. Any claimant or a legal representative of a claimant is  
6 entitled to information from the records of the Division, to the  
7 extent necessary for the proper presentation of the claimant's claim  
8 in any proceeding pursuant to this chapter. A claimant or an  
9 employing unit is not entitled to information from the records of  
10 the Division for any other purpose.

11 Thus, NRS 612.265(1) narrowly exempts information from the NPRA only to the extent  
12 that disclosure of such information would reveal the identity of a claimant for unemployment  
13 benefits or his or her employer. Even then, this narrow exemption is conditional, as NRS  
14 612.265(2) provides that such information may still be disclosed to the extent it is needed for any  
15 proceeding pursuant to NRS Chapter 612. In other words, when NRS 612.265 is narrowly  
16 construed, as it must be, *see Gibbons*, 266 P.3d at 626-28; *Haley*, 234 P.3d at 924-26, it does not  
17 afford the sweeping protection DETR would have this Court believe. Stated simply, NRS  
18 612.265 does not even begin to justify DETR's blanket denial of The Love Ranch's Public  
19 Records Request. Indeed, the Request expressly explained that it does not seek the identity of  
20 any claimant or his or her employer. *See* Petition at Ex. 2. The Request further explained that to  
21 the extent such information was reflected in the requested records, such documents should still  
22 be disclosed, as they are necessary for the proper resolution of its appeal of DETR's  
23 Determination. *See id.*

24 Further, any supposedly confidential portions of the requested records simply triggered  
25 DETR's duty to make redactions. *See* NRS 239.010(3); *Haley*, 234 P.3d at 927-28. This is a  
26 routine process and could have easily been completed given the narrow scope of confidentiality  
27 arguably afforded by NRS 612.265(1). Specifically, the only information which is confidential  
28 under NRS 612.265(2) is that "which would reveal the person's or employing unit's identity."  
The Love Ranch specifically requested that any records that arguably would reveal such  
information simply be redacted, with an appropriate log. *See* Petition at Ex. 2. In summary, the  
Court finds that DETR has not met its burden to show that NRS 612.265 expressly and



1 unambiguously declares the requested records to be confidential.

2 **3. DETR's Resort to Federal Regulations Fails**

3 Another confidentiality provision, 20 C.F.R. § 603.4, was also raised by DETR for the  
4 first time in its Answer. *See* Answer at 10. Even as paraphrased by DETR, however, this  
5 regulation does not help its cause. Entitled, "[w]hat is the confidentiality requirement of Federal  
6 UC law?" this provision reads, in pertinent part, as follows:

7 Interpretation. The Department of Labor interprets Section  
8 303(a)(1), SSA, to mean that 'methods of administration' that are  
9 reasonably calculated to insure the full payment of UC when due  
10 must include provision for maintaining the confidentiality of any  
11 UC information which reveals the name or any identifying  
12 particular about any individual or any past or present employer or  
13 employing unit, or which could foreseeably be combined with  
14 other publicly available information to reveal any such particulars,  
15 and must include provision for barring the disclosure of any such  
16 information, except as provided in this part.

17 20 C.F.R. § 603.4(b).

18 Thus, this regulation, like NRS 612.265, shields only a narrow segment of information  
19 to the extent it reveals the identity of an unemployment claimant or his or her employer. As  
20 noted, The Love Ranch did not request such information, and it expressly informed DETR of  
21 this. Further, The Love Ranch specifically requested that if any such information was reflected  
22 in the requested records it should be redacted. Rather than what the law required of it, DETR  
23 issued a blanket denial of the Request. Thus, the Court determines that DETR has failed to carry  
24 its burden to demonstrate that the requested records expressly and unambiguously declared  
25 confidential by law. Accordingly, the Court rejects DETR's assertions of confidentiality.<sup>3</sup>

26 **I. DETR Failed to Meet its Burden to Prove the Records are Privileged**

27 **1. DETR Waived Any Privileges**

28 Finally, DETR has claimed that the requested records are privileged. *See* Answer at 13-

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<sup>3</sup>DETR relies exclusively on NRS 612.265 and 20 C.F.R. § 603.4, stating that it need not resort to the *Bradshaw* balancing test as a basis for non-disclosure. *See* Answer at 10-11. Accordingly, the Court finds that DETR has failed to demonstrate that the requested records are expressly and unambiguously declared by law to be confidential, and has waived any other basis, including the *Bradshaw* balancing test, for asserting that the records are confidential.

1 15. The Court determines that DETR's claim fails for several reasons. To begin, the Court finds  
2 that DETR waived its arguments regarding privileges due to its failure to timely raise them in its  
3 Response to The Love Ranch's Public Records Request, as required. *See Gibbons*, 266 P.3d at  
4 629; NRS 239.0107(1)(d). In addition, DETR has waived any privileges a second time by failing  
5 to supply a privilege log in this litigation at the point when it asserted the privilege. Under the  
6 Nevada Rules of Civil Procedure, which are applicable in writ proceedings pursuant to NRS  
7 34.300, a party invoking a privilege must provide a privilege log. In particular,

8 [w]hen a party withholds information . . . by claiming that  
9 it is privileged . . . the party shall make the claim expressly and  
10 shall describe the nature of the documents, communications, or  
11 things not produced or disclosed in a manner that, without  
12 revealing information itself privileged or protected, will enable  
other parties to assess the applicability of the privilege or  
protection.

13 *See* NRCP 26(b)(5).

14 As the Nevada Supreme Court has noted, this rule "requires a party claiming privilege to  
15 describe the nature of the materials that are allegedly privileged." *Valley Health Sys., LLC v.*  
16 *Eighth Judicial Dist. Court*, 252 P.3d 676, 681 n.7 (Nev. 2011). Federal courts have likewise  
17 recognized that the party asserting a privilege has an affirmative burden to produce "a detailed  
18 privilege log." *Nevada Power Co. v. Monsanto Co.*, 151 F.R.D. 118, 121 (D. Nev. 1993). A  
19 privilege log generally must "separately identify each document withheld under claim of  
20 privilege, and set forth for each document (1) its type (i.e., letter, memo, notes, etc.), (2) its  
21 author, (3) its intended recipients, (4) the names of any other individuals with access to the  
22 document, (5) the date of the document, (6) the nature of the claimed privilege (i.e., attorney-  
23 client, work-product, etc.), and (7) a brief summary of the subject matter of the document." *Id.* at  
24 121 n.5. Thus, a privilege log must contain enough detail to "enable other parties to assess the  
25 applicability of the privilege or protection," and the "[f]ailure to do so may constitute an  
26 'implied' waiver of the privilege or protection." *In re Imperial Corp. of Am.*, 174 F.R.D. 475,  
27 477 (S.D. Cal. 1997); *see also Koninklijke Philips Electronics N.V. v. KXD Technology, Inc.*,  
28 2007 WL 778153, at \*4 (D. Nev., Mar. 12, 2007).

1 Here, DETR failed to provide any privilege log whatsoever, despite the fact that The  
2 Love Ranch specifically requested a log if DETR withheld any of the requested records. Due to  
3 this failure, DETR does not, for instance, separately identify any allegedly privileged materials  
4 by date or otherwise, making it impossible to verify its claim that it is withholding materials that  
5 purportedly predate its audit determination. Nor has DETR provided any summary of the subject  
6 matter of the supposedly privileged materials, or the parties to any communications it is  
7 withholding, making it impossible to verify its claim that it is withholding attorney-client  
8 communications. Thus, by failing to provide a privilege log, DETR has failed to support its  
9 claims of privilege, and thwarted The Love Ranch and this Court from meaningfully evaluating  
10 DETR's assertions of privilege. Therefore, DETR has impliedly waived any of its purported  
11 privileges.

12 **2. DETR's Assertion of the Deliberative Process Privilege Fails**

13 **(a) DETR's invocation is conclusory and unsupported**

14 Even if not already waived, DETR's assertion of the deliberative process privilege is  
15 unavailing. DETR has claimed, in conclusory fashion, that the deliberative process privilege  
16 "clearly" applies because the requested records are "clearly" predecisional and deliberative. *See*  
17 Answer at 14. All that DETR has offered in support of this claim is its counsel's sweeping  
18 assertion that the requested records "involve" its deliberative processes. *See id.* The Court finds  
19 that DETR's invocation of the deliberative process privilege is deficient.

20 "It is well settled that privileges, whether creatures of statute or the common law, should  
21 be interpreted and applied narrowly." *DR Partners*, 6 P.3d at 468. As DETR admits, *see*  
22 Answer at 14, the deliberative process privilege does not protect "purely factual matters." *DR*  
23 *Partners*, 6 P.3d at 469. Instead, "[t]o qualify for non-disclosure under this privilege, the  
24 requested documents must be both predecisional and deliberative." *Id.* To satisfy the  
25 "deliberative" prong, "the materials must consist of opinions, recommendations, or advice about  
26 agency policies." *Id.* "The agency bears the burden of establishing the character of the  
27 decision, the deliberative process involved, and the role played by the documents in the course of  
28 that process." *Id.* at 470 (quoting *Paisley v. C.I.A.*, 712 F.2d 686, 698 (D.C. Cir. 1983)).

1 Here, DETR failed to demonstrate that the requested records are anything other than  
2 purely factual. Nor did DETR attempt to meet its burden to establish the character of the  
3 decision, the deliberative process, the role played by the documents in that process. In fact,  
4 DETR did support its assertions with a declaration and, as noted, DETR has not provided any  
5 description of the documents it has withheld. Thus, the Court finds that DETR has failed to meet  
6 its burden to show that the deliberative process privilege applies.

7 ***(b) Any deliberative process privilege is qualified, and overcome here***

8 Even if DETR could satisfy its threshold burden, “a deliberative process privilege, even  
9 when applicable, is conditional.” *DR Partners*, 6 P.3d at 471. As “a qualified privilege,” it can  
10 be overcome by a showing that the “need for the information outweighs the regulatory interest  
11 in preventing disclosure.” *Id.* (quoting *Capital Info. Group v. Office of the Governor*, 923 P.2d  
12 29, 36 (Alaska 1996)). Here, any supposed regulatory interest DETR may have in non-  
13 disclosure is easily overcome. In contrast to DETR’s unarticulated and unsupported interests in  
14 non-disclosure, The Love Ranch has demonstrated that it may need the requested records for  
15 several critical reasons. Among other things, The Love Ranch asserts the requested public  
16 records are necessary to expose arbitrary rulings by DETR. Nevada law—specifically the  
17 NPRA—recognizes The Love Ranch’s legitimate interest in doing so. Accordingly, the Court  
18 rejects DETR’s invocation of the deliberative process privilege.

19 **3. *The Attorney-Client Privilege Does Not Shield the Requested Records***

20 The Court also disagrees with DETR’s claim that the requested records are attorney-  
21 client privileged. *See* Answer at 15. Even if DETR has not already waived the attorney-client  
22 privilege, it has not met its burden to show that the requested records are privileged. As with the  
23 deliberative process privilege, the party asserting the attorney-client privilege bears the burden of  
24 establishing that it applies. *DR Partners*, 6 P.3d at 468; *United States v. Martin*, 278 F.3d 988,  
25 1000 (9th Cir. 2002); *Weil v. Investment/Indicators, Research & Management, Inc.*, 647 F.2d 18,  
26 24 (9th Cir. 1980). “[B]lanket assertions are ‘extremely disfavored,’” *Martin*, 278 F.3d at 1000,  
27 and, “[b]ecause it impedes full and free discovery of the truth, the attorney-client privilege is  
28 strictly construed.” *Weil*, 647 F.2d at 25. As the Nevada Supreme Court has put it, “[w]hatever

1 their origins, these exceptions to the demand for every man's evidence [i.e., privileges] are not  
2 lightly created nor expansively construed, for they are in derogation of the search for truth.  
3 *Ashokan v. State, Dep't of Ins.*, 856 P.2d 244, 247 (Nev. 1993).

4 A party asserting the privilege "must identify specific communications and the grounds  
5 supporting the privilege as to each piece of evidence over which privilege is asserted." *Martin*,  
6 278 F.3d at 1000. Further, it is axiomatic that in order for the attorney-client privilege to apply,  
7 "the communication must be between the client and the attorney for the purpose of obtaining  
8 legal advice." *Id.* In determining whether a document was created for the purpose of securing  
9 legal advice, "courts have examined the nature, content, and context in which the document was  
10 prepared." *LightGuard Systems, Inc. v. Spot Devices, Inc.*, 281 F.R.D. 593, 600 (D. Nev. 2012).

11 Here, the Court finds that DETR's invocation of the attorney-client privilege fails for  
12 multiple reasons. To begin, DETR identifies no specific communications or the grounds  
13 supporting the privilege as to each communication over which it asserts the privilege. Nor does  
14 DETR provide any detail to support its claim that the communications it is apparently  
15 withholding were made for the purpose of obtaining legal advice. And, DETR does not provide  
16 any evidence, such as a declaration, to support its claim of privilege. Accordingly, the Court  
17 determines that DETR has failed to meet its burden to show the requested records are privileged.

#### 18 **4. DETR Should Have Redacted Any Arguably Privileged Records**

19 Finally, a careful examination by the Court of the (13) categories sought in the Request  
20 shows that the vast majority do even remotely implicate any supposed privileges. *See* Petition at  
21 Ex. 2. Even if any of the requested records implicated a privilege, it was improper for DETR to  
22 deny all of the requested records on basis that some portions might, hypothetically, be privileged.  
23 *See Haley*, 234 P.3d at 927-28 (even if portions of a public record may be properly deemed  
24 confidential, this does not mean that the entire document may be withheld; the state entity has a  
25 duty to redact any confidential portions) (citing NRS 239.010(3)). Thus, any conceivably  
26 privileged portions of the requested records simply should have been redacted by DETR, with an  
27 accompanying privilege log describing any redactions, and the remainder of the communications  
28 should have been disclosed. Having failed to meet its duty under the NPRA to redact any

1 alleged privileged portions of the requested records, however, the Court finds that DETR has  
2 waived its right to assert that the records are privileged in any way.

3 **J. The Love Ranch is Entitled to its Attorney's Fees**


4 Under NRS 239.011(2), if the party that made an NPRA request prevails in an action to  
5 permit access to public records, it is entitled to recover its costs and reasonable attorney's fees in  
6 the proceeding. "[B]y its plain meaning, this statute grants a requester who prevails in NPRA  
7 litigation the right to recover attorney fees and costs." See *Blackjack Bonding*, 343 P.3d at 615.  
8 "A party prevails 'if it succeeds on any significant issue in litigation which achieves some of the  
9 benefit it sought in bringing suit.'" *Id.* (quoting *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10,  
10 106 P.3d 1198, 1200 (2005) (emphasis in original). For a party to be "prevailing," it "need not  
11 succeed on every issue." *Id.* Here, the Court has determined that The Love Ranch is entitled to a  
12 writ compelling the disclosure of the records it sought in its Public Records Request. Thus,  
13 because The Love Ranch is the prevailing party, the Court grants its request under NRS  
14 239.011(2) for its costs and reasonable attorney's fees in this proceeding.

15 **IV. CONCLUSION**

16 Based upon the foregoing, the Court determines that the Petition should be granted.  
17 Accordingly, directs the Clerk of the Court to issue the enclosed Writ of Mandamus compelling  
18 DETR to allow access to the requested public records within thirty (30) days. Petitioner shall  
19 arrange to have the Writ served on Respondent, and Petitioner shall return the original Writ with  
20 proof of service attached thereto. Additionally, the Court directs The Love Ranch to submit a  
21 Bill of Costs and Itemization of Fees for its costs and attorney's fees within fourteen (14) days of  
22 entry of this Order. DETR shall file any Objections within fourteen (14) days of service of the  
23 Bill of Costs and Itemization of Fees. The Love Ranch shall file a Reply within ten (10) days of  
24 service of any Objections.

25 IT IS SO ORDERED.

26 DATED this 7<sup>th</sup> day of February, 2018.


27   
28 DISTRICT COURT JUDGE

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 7 day of February, 2018, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Laurie L. Trotter, Esq.  
1340 South Curry Street  
Carson City, NV 89703

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5441 Kietzke Lane, Second Floor  
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*Attorneys for Petitioner*

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**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY**

SIERRA NATIONAL CORPORATION, dba  
THE LOVE RANCH, a Nevada Corporation,

Petitioner,

vs.

NEVADA DEPARTMENT OF  
EMPLOYMENT, TRAINING AND  
REHABILITATION – EMPLOYMENT  
SECURITY DIVISION,

Respondent.

Case No. 170C002221B


Dept. No. I

**PETITIONER'S NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on the 7th day of February, 2018, the Court entered the attached Order Granting Petition for Writ of Mandamus. A copy of the Order is attached hereto as Exhibit 1.

Pursuant to NRS 239B.030, the undersigned hereby affirms that the preceding document does not contain the social security number of any person.

DATED this 13th day of February 2018.

  
\_\_\_\_\_  
Anthony L. Hall, Esq. (SBN 5977)  
Ricardo N. Cordova, Esq. (SBN 11942)  
HOLLAND & HART LLP  
*Attorneys for Petitioner*



HOLLAND & HART LLP  
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CERTIFICATE OF SERVICE

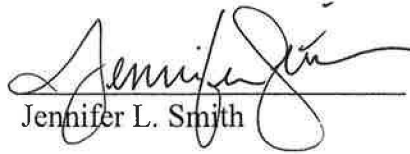
I, Jennifer L. Smith, certify:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor, Reno, Nevada 89511. I am over the age of 18 years and not a party to this action.

I am readily familiar with Holland & Hart LLP's practice for collection and processing of its hand deliveries. Such practice in the ordinary course of business provides for the distribution of hand deliveries the same day they are collected.

On February 13, 2018, I served the foregoing **PETITIONER'S NOTICE OF ENTRY OF ORDER** by First-Class Mail, postage prepaid, to the following:

Laurie Trotter, Esq.  
NDETR-Employment Security Division  
1340 South Curry Street  
Carson City, NV 89703

  
Jennifer L. Smith

10549583\_1

HOLLAND & HART LLP  
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RENO, NV 89511

**EXHIBIT INDEX**

**NUMBER                      DESCRIPTION                      NO. PAGES (W/ COVER)**

Exhibit "1"	Order	22
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**EXHIBIT "1"**

**EXHIBIT "1"**

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SUSAN MERRIWETHER  
CLERK.  
BY [Signature]  
60022-1

Case No. 170C002221B

VS.

Respondent.

1 by those employers to their employees. *See* NRS 612.045; NRS 612.060. DETR deposits those  
2 contributions into a fund established by statute ("State Unemployment Fund"). *See* NRS  
3 612.165. DETR then makes payments (or "benefits") out of the State Unemployment Fund, as a  
4 form of wage replacement, to employees who become unemployed under certain circumstances.  
5 *See id.*

6 The Love Ranch operates legal, fully-licensed brothels in Lyon County, Nevada. The  
7 Love Ranch rents space to tenants who are licensed by the State of Nevada and/or the political  
8 subdivisions of the State to engage in the business of prostitution and/or adult entertainment. It  
9 is undisputed that for many years, if not decades, The Love Ranch and other legal brothels in  
10 Nevada have classified their tenants as independent contractors, rather than employees. *See* NRS  
11 612.085. Accordingly, like other establishments that rent space to tenants, The Love Ranch does  
12 not make contributions into the State Unemployment Fund based upon the earnings the tenants  
13 receive from their clients.

14 The Love Ranch maintains that DETR has been well aware of The Love Ranch's  
15 classification of the tenants as independent contractors. The Love Ranch avers that despite  
16 conducting audits of The Love Ranch and affiliated brothels over the years, DETR did not object  
17 to the classification of the tenants as independent contractors, nor did it assert that contributions  
18 should be made into the State Unemployment Fund based upon the tenants' earnings. DETR  
19 does not dispute this in its Answer. As recently as December 2016, DETR's own Board of  
20 Review issued an Order, of which this Court takes judicial notice, indicating its view that The  
21 Love Ranch's tenants are independent contractors, not employees. *See* Reply in Support of  
22 Petition at Ex. A.

23 In 2016, DETR announced that it wished to audit The Love Ranch. On May 12, 2017,  
24 DETR issued a determination now stating that The Love Ranch's tenants are employees. As a  
25 result, DETR now claims The Love Ranch owes a substantial tax liability to the State  
26 Unemployment Fund. The Love Ranch filed an administrative appeal, which remains pending  
27 before an Appeals Referee for DETR.

28 ///

1           **B.       The Love Ranch's Public Records Request**

2           On October 4, 2017, The Love Ranch made a public records request ("the Request") to  
3       DETR. *See* Petition at Ex. 2. The Love Ranch expressly explained in its Request that it does not  
4       seek the identity of any other employing unit or person from whom DETR has obtained  
5       information pursuant to the administration of NRS Chapter 612. *See id.* Thus, The Love Ranch  
6       noted that in responding to the request, DETR should redact portions of records that would  
7       reveal the identity of another employing unit or employing person, and provide an appropriate  
8       log regarding such redactions or any other records withheld, along with citation to the specific  
9       statute or legal authority that makes the public book or record, or a part thereof, confidential. *See*  
10      *id.* The Love Ranch also completed the Public Records Request form made available on  
11      DETR's website. *See id.* The Love Ranch included an attachment with its Request in which it  
12      spelled out, in great detail, the records it seeks. *See id.*

13           **C.       DETR's Blanket Denial of the Public Records Request**

14           DETR responded to the Public Records Request on October 16, 2017 (the "Response").  
15      *See* Petition at Ex. 3. In its Response, DETR refused to provide any of the requested records,  
16      stating, "[t]his agency respectfully declines to provide information pursuant to such request  
17      because it does not sufficiently identify any specific records as required by NAC 239.863." *See*  
18      *id.* In addition, DETR stated, "[m]oreover, this agency is not required to create records to satisfy  
19      your request. *See*, NAC 239.867." *See id.* These are the only two grounds DETR raised in its  
20      Response. *See id.* DETR did not provide a log or any description of any records it has withheld.  
21      *See id.* Nor did DETR cite to any legal authority that makes the requested records confidential or  
22      privileged—indeed, DETR did not even assert that the records, or any portions thereof, are  
23      confidential or privileged in any way.

24           As detailed below, the Court finds that DETR's blanket denial of The Love Ranch's  
25      Public Records Request violated the NPRA. Accordingly, the Court has determined that  
26      issuance of a writ of mandamus is necessary to compel DETR to allow The Love Ranch access  
27      to the requested public records.

28           ///

1 **III. CONCLUSIONS OF LAW**

2 At the outset, the Court notes that it has jurisdiction to issue writs of mandamus. *See*  
3 Nev. Const. Art. 6, § 6; NRS 34.160. Further, venue lies in this District because the public  
4 records at issue are located in Carson City, Nevada. *See* NRS 239.011.

5 As explained below, the Court finds that DETR has waived the majority of the arguments  
6 it asserts in its Answer. Accordingly, the Court will first address the arguments that DETR  
7 raised in its Response to the Request, specifically, that the Request was not sufficiently specific  
8 and that it requested the creation of records. Then, the Court will address the newly-raised  
9 arguments in DETR's Answer.

10 **A. DETR's Arguments about the Specificity of the Request are Unavailing**

11 The Court rejects DETR contention that the Request did not "identify specific records,"  
12 was "exceedingly general in nature," and was a "fishing expedition" for information "clearly"  
13 beyond the scope of the NPRA. *See* Answer at 12-13.

14 Although DETR lumps all of the categories in the Request together and announces they  
15 are too general, the Court has reviewed the Request, and disagrees with DETR. *See* Petition at  
16 Ex. 2. As can easily be seen from the Request, The Love Ranch spelled out, in detail, the records  
17 sought. In fact, The Love Ranch's description of the requested records is far more detailed than  
18 public records requests the Nevada Supreme Court has routinely discussed approvingly.  
19 *Compare* Petition at Ex. 2 *with* *Reno Newspapers, Inc. v. Gibbons*, 266 P.3d 623, 630 n.3 (Nev.  
20 2011) (approving request for "e-mail communications sent over a six-month time period between  
21 Governor Gibbons and ten individuals" and describing the 106 e-mails in dispute as a "relatively  
22 limited number"); *Reno Newspapers v. Haley*, 234 P.3d 922, 924 (Nev. 2010) (approving request  
23 for "all records 'detailing the status of any and all [concealed firearms] permits issued by the  
24 Washoe County Sheriff's Office to Gov. Jim Gibbons,' and all 'documents detailing action taken  
25 by the Washoe County Sheriff's Office on that permit, including a decision to suspend, revoke,  
26 or hold the permit.'").

27 Notably, NAC 239.865 authorizes an agency responding to a public records request to  
28 ask for additional information or clarification from the requesting party. Despite this, and

1 despite an invitation in the Request for DETR to contact The Love Ranch with any questions, *see*  
2 Petition at Ex. 2, DETR does not deny that it failed to request any additional information or  
3 clarification. Nor did DETR request any “narrowing” of the Request that it now suggests was  
4 necessary. This belies DETR’s claim that the Request is not sufficiently detailed.

5 Finally, the Court rejects DETR’s complaint that the Request was not contained in the  
6 “designated” DETR form, but was instead detailed in an attachment to the form. On the one  
7 hand, DETR claims the Request was too generalized. On the other hand, DETR complains that  
8 the Request was not confined to the small space on DETR’s “designated” form, where it would  
9 have been impossible to specify the records sought. The Court finds DETR’s arguments  
10 unpersuasive. Accordingly, the Court rejects DETR’s claim that the Request was not sufficiently  
11 detailed.

12 **B. The Request Did Not Seek the Creation of Records**

13 The Court also rejects the only other argument that DETR timely raised in its Response,  
14 namely, that the Request supposedly sought the creation of records. DETR has essentially  
15 abandoned this argument in its Answer. Indeed, in its 17 page Answer, DETR only provided a  
16 one-sentence argument on this issue, stating, “to the extent that the information requested by  
17 SNC is not already included in a public record, ESD is not required to create a record to satisfy  
18 SNC’s request.” *See* Answer at 13. In any event, the Court finds that, contrary to DETR’s  
19 suggestion, The Love Ranch never requested DETR to create any records.

20 **C. DETR Waived the Majority of the Arguments Raised in its Answer**

21 The Court observes that the remaining arguments in DETR’s Answer were not asserted in  
22 its Response to The Love Ranch’s Public Records Request. As noted, in DETR’s Response to  
23 the Request, it based its blanket denial solely on two grounds: (1) the Request allegedly did not  
24 sufficiently identify specific records; and (2) DETR is not required to create Records to satisfy  
25 the request. *See* Ex. 3 to Petition.

26 DETR has asserted several new arguments for the first time in its Answer. For instance,  
27 DETR argues that The Love Ranch “has a plain, speedy and adequate remedy under the NRS  
28 Chapter 612 administrative process” and “failed to exhaust its administrative remedies.” DETR



1 raised several other new arguments, including: The Love Ranch was “less than candid with the  
2 Court regarding the discovery it had already received in the pending administrative proceeding”;  
3 the NPRA “was not intended for use after the start of litigation”; the requested records are  
4 “confidential by state and federal law”; and the Request sought “privileged material.”

5 DETR did not raise these arguments in its Response to the Public Records Request, as  
6 required. *See Gibbons*, 266 P.3d at 629 (even prior to the initiation of an NPRA lawsuit, the  
7 agency withholding records has a legal obligation to provide citation to legal authority “that  
8 justifies nondisclosure,” and “merely pinning a string of citations to a boilerplate declaration of  
9 confidentiality” does not suffice); *see also* NRS 239.0107(1)(d). DETR does not contend  
10 otherwise in its Answer. Permitting DETR to raise these arguments for the first time in its  
11 Answer would defeat the clear intent of the NPRA that an agency must promptly respond with  
12 any and all grounds for the denial a public records request so the requesting party can analyze  
13 whether to challenge the denial via mandamus. Accordingly, the Court finds that DETR waived  
14 any arguments it failed to raise in its Response to the Public Records Request. Even if not  
15 waived, DETR’s newly-raised arguments are unavailing, as detailed below.

16 **D. Mandamus is the Proper Vehicle to Challenge the Denial of an NPRA Request**

17 One of the new arguments DETR has raised in its Answer is procedural, namely, that  
18 mandamus relief is not available because there is allegedly a plain, speedy, and adequate remedy  
19 available under the unemployment compensation statutes set forth in NRS Chapter 612. *See*  
20 Answer at 4-5. According to DETR, The Love Ranch is seeking to “short-circuit” the  
21 administrative process which, DETR says, supplies the exclusive means to seek records  
22 associated with such disputes. *See id.* The Court disagrees.

23 The Nevada Legislature has expressly declared that a party that has been denied access to  
24 public records may proceed with an action before the district court:

25 If a request for inspection, copying or copies of a public  
26 book or record open to inspection and copying is denied, the  
27 requester may apply to the district court in the county in which the  
28 book or record is located for an order:

(a) Permitting the requester to inspect or copy the book or  
record; or

1 (b) Requiring the person who has legal custody or control  
2 of the public book or record to provide a copy to the requester, as  
3 applicable.

4 NRS 239.011(1) (emphasis added).

5 It is undisputed that The Love Ranch's request for public records was denied. Thus,  
6 under the plain language of NRS 239.011(1), The Love Ranch has a statutory right to bring this  
7 action. Nowhere does this statute exempt public records that may also be relevant in  
8 administrative proceedings under the unemployment compensation statutory scheme set forth in  
9 NRS Chapter 612. Moreover, the Nevada Supreme Court has held that mandamus is the  
10 appropriate procedural vehicle to compel production of public records. *DR Partners v. Bd. of*  
11 *County Comm'rs*, 6 P.3d 465, 468 (Nev. 2000). The law is settled on this point. *See Morrow v.*  
12 *LeGrand*, 2017 WL 1397335, at \*1, Case No. 68768 (Nev., April 14, 2017) (unpublished  
13 disposition) ("This court has repeatedly recognized that mandamus is the appropriate procedural  
14 remedy to compel the production of public records under NRS Chapter 239.").<sup>1</sup>

15 The Nevada Supreme Court recently reaffirmed the validity of this principle in *City of*  
16 *Sparks v. Reno Newspapers*, 399 P.3d 352 (Nev. 2017). There, much like DETR in the instant  
17 case, the City of Sparks argued that mandamus relief was not available because it had denied a  
18 public records request by invoking a confidentiality regulation which could have been challenged  
19 by way of a declaratory judgment proceeding under NRS 233B.110 of the Administrative  
20 Procedure Act. *Id.* at 354. The court disagreed, observing, "a writ of mandamus is generally the  
21 appropriate means for pursuing the disclosure of public records pursuant to NRS 239.011." *Id.* at  
22 355. In addition, the newspaper was challenging the denial of its records request, not merely  
23 seeking to determine its rights regarding the confidentiality regulation invoked by the City. *Id.*  
24 Thus, NRS 239.011 specifically applied, and took precedence over a separate statute generally  
25 providing an alternate avenue of relief. *Id.*

26 <sup>1</sup>See, e.g., *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 343 P.3d 608 (Nev. 2015) (affirming  
27 writ of mandamus compelling the disclosure of public records); *Reno Newspapers, Inc. v. Gibbons*, 266 P.3d 623  
28 (Nev. 2011) ("mandamus was the appropriate procedural vehicle" to seek access to public records and a log  
regarding records withheld by the government); *PERS v. Reno Newspapers*, 313 P.3d 221 (Nev. 2013) (affirming  
writ of mandamus requiring production of public records); *Donrey of Nevada v. Bradshaw*, 798 P.2d 144, 148 (Nev.  
1990) (directing district court to issue a writ of mandamus compelling disclosure of public records).

1 Here, as in *City of Sparks v. Reno Newspapers*, DETR misconstrues the records at issue  
2 and the relief sought by The Love Ranch. To be sure, some of the records sought by The Love  
3 Ranch may ultimately prove relevant in its pending administrative appeal. But The Love Ranch  
4 maintains that the records it seeks may also expose what it calls “DETR’s systematically biased  
5 and arbitrary practices.” See Reply in Support of Petition at 4. This is supported by The Love  
6 Ranch’s submissions to this Court, including an Order by DETR’s own Board of Review  
7 indicating that The Love Ranch’s tenants are independent contractors. This indicates that DETR  
8 has made an about-face by now determining that The Love Ranch’s tenants are employees. And,  
9 nowhere in any of the voluminous papers submitted by DETR does it attempt to dispel the  
10 appearance that it has acted arbitrarily.

11 The Court notes that the public undoubtedly has an interest in rooting out such activity,  
12 and the NPRA provides citizens an avenue to do so. See, e.g., *DR Partners*, 6 P.3d at 467  
13 (approving of an NPRA request made in connection with investigation into governmental waste  
14 and the extent of influence over public officials by private lobbyists); *Donrey*, 798 P.2d at 145  
15 (approving of an NPRA request to obtain a report generated by the Reno Police Department  
16 regarding bribery of a public official).

17 Most importantly, the Court notes that the remedial process The Love Ranch is entitled to  
18 pursue to enforce its rights under the plain language of NRS 239.011(1) is not dictated by  
19 DETR’s re-characterization of the parties’ dispute. If credited, DETR’s position would mean  
20 that a party to an administrative dispute has less rights under the NPRA than the general public.  
21 This would be an absurd result and is unsupported by any caselaw or statutory language. Thus,  
22 the Court rejects DETR’s contention that mandamus relief is not available here.

23 **E. The Court is Not Persuaded by DETR’s Arguments Regarding Exhaustion**

24 **1. The NPRA Does Not Require Exhaustion of Administrative Remedies**

25 Another new procedural argument raised in DETR’s Answer is that The Love Ranch  
26 allegedly failed to exhaust its administrative remedies. See Answer at 6-7. As noted, NRS  
27 239.011(1) expressly declares that a party that has been denied access to public records may  
28 proceed with an action before the district court. The Love Ranch is indisputably a party that has

1 been denied access to public records, and thus, under NRS 239.011(1), it properly brought this  
2 action. The NPRA does not impose any obligation to exhaust any of the administrative remedies  
3 that DETR argues may be available. Further, any of the general requirements in NRS Chapter  
4 613, including exhaustion, are inapplicable because this action is specifically governed by the  
5 NPRA. *See City of Sparks v. Reno Newspapers*, 399 P.3d at 355. Stated simply, the only pre-  
6 requisites to an action under the NPRA is that a party make a request that is denied. The Court  
7 finds that such pre-requisites have been fulfilled here.

## 8                   2.       *Exceptions to the Exhaustion Doctrine Apply Here*

9           Further, there are exceptions to statutory schemes that do have exhaustion requirements.<sup>2</sup>  
10 First, “[t]he exhaustion doctrine will not deprive the court of jurisdiction ‘where the issues relate  
11 solely to the interpretation or constitutionality of a statute.’” *State, Nevada Dep’t of Taxation v.*  
12 *Scotsman Mfg. Co.*, 849 P.2d 317, 319 (Nev. 1993) (quoting *State v. Glusman*, 651 P.2d 639  
13 (Nev. 1982)). Second, “where resort to administrative procedures would be futile, exhaustion of  
14 administrative remedies is not required.” *Englemann v. Westergard*, 647 P.2d 385, 388-89 (Nev.  
15 1982).

16           The Court finds that this dispute falls within both of the exceptions to the exhaustion  
17 doctrine. To begin, the Petition raises purely legal questions regarding the interpretation of the  
18 NPRA and other statutes. *See Las Vegas Metro. Police Dep’t v. Blackjack Bonding*, 343 P.3d  
19 608, 612 (Nev. 2015) (the interpretation of caselaw and the statutory language of the NPRA are  
20 questions of law, subject to de novo review). In addition, exhaustion of the administrative  
21 procedures under NRS Chapter 612 would have been futile. In fact, The Love Ranch requested  
22 the Appeals Referee to issue an administrative subpoena compelling DETR to produce records  
23 concerning, among other things, its previous audits and determinations regarding The Love  
24 Ranch and other brothels. *See Reply in Support of Petition at Ex. B.* It is undisputed that the  
25 Appeals Referee denied the request. Thus, although DETR suggests that The Love Ranch can  
26 seek to discover such records via the administrative process, it has already done so, and its effect

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27  
28 <sup>2</sup>Even the authorities cited by DETR recognize these exceptions. *See Malecon Tobacco, LLC v. State*, 59  
P.3d 474, 476 (Nev. 2002) (“Two exceptions exist to the exhaustion requirement.”).

1 is futile. Thus, the Court rejects DETR's arguments regarding exhaustion.

2 **F. The Court Rejects DETR's Accusations of Bad Faith and Improper Motives**

3 Next, DETR has accused The Love Ranch of being "less than candid with the Court" in  
4 its Petition. *See* Answer at 7. DETR claims it "already provided" the "audit file" regarding its  
5 Determination, and says The Love Ranch "omitted the material fact that [DETR] has disclosed  
6 the information relevant to [The Love Ranch's] appeal." *See id.* at 8. The Court finds that  
7 DETR's accusations do not withstand scrutiny.

8 **1. DETR Relies on Non-responsive and Incomplete Materials**

9 DETR has failed to demonstrate that the documents it produced in the context of the  
10 Parties' administrative dispute satisfy the thirteen (13) categories of public records requested by  
11 The Love Ranch. DETR has simply lumped all of the requested categories or records together,  
12 and then claimed it already provided all of the requested records. This is simply not the case, as  
13 is easily seen from an examination of the categories spelled out in the Request.

14 The Court notes that if DETR actually believed it "already provided" the requested  
15 records, then there would have been no reason for DETR to deny the Request. DETR could have  
16 simply responded by identifying the supposedly responsive materials. Instead, DETR issued a  
17 blanket denial, claiming that the Request did not "sufficiently identify any specific records" and  
18 that DETR "is not required to create records to satisfy your request." *See* Petition at Ex. 3.  
19 Nowhere in DETR's Response did it raise what it now calls the "material fact" that it allegedly  
20 already provided the requested records. *See id.*

21 **2. DETR's Accusations of Bad Faith and Improper Motives are Irrelevant**

22 The Court further finds that DETR's accusations are irrelevant. The Nevada Supreme  
23 Court's opinion in *Las Vegas Metropolitan Police Department v. Blackjack Bonding, Inc.* is  
24 instructive on this point. 343 P.3d 608 (Nev. 2015). There, Blackjack Bonding, a private bond  
25 company, made an NPRA request for records of telephones used by prison inmates. *Id.* at 610-  
26 11. The police department that administered the prison denied the request, arguing, among other  
27 things, that it "had no duty to fulfill Blackjack's records request because Blackjack purportedly  
28 acted to serve a business interest." *Id.* at 611 n.2. The court found that this argument was

1 “without merit,” explaining, “the NPRA does not provide that a requester’s motive is relevant to  
2 a government entity’s duty to disclose public records.” *Id.* (emphasis added).

3 As *Blackjack Bonding* makes clear, DETR’s accusations of supposed bad faith and  
4 improper motives are irrelevant. The Court notes that this is simply a matter of common sense.  
5 The Love Ranch does not have any fewer rights under the NPRA simply because it is involved in  
6 an administrative dispute with DETR. In sum, the Court rejects DETR’s accusations of bad faith  
7 and improper motives.

#### 8 **G. DETR Misconstrues the Nevada Supreme Court’s NPRA Jurisprudence**

9 Referencing *Reno Newspapers v. Gibbons*, DETR has argued that “relief under [the  
10 NPRA] only applies to the pre-litigation context.” *See* Answer at 8-9. DETR contends that  
11 *Gibbons* established that the NPRA does not apply during the pendency of an administrative  
12 proceeding. *See id.* The Court disagrees.

13 In *Gibbons*, the Nevada Supreme Court held if a state entity denies a public records  
14 request prior to the initiation of an NPRA lawsuit, “it must provide the requesting party with  
15 notice and citation to legal authority that justifies non-disclosure.” 266 P.3d at 631 (citing NRS  
16 239.0107(1)(d)). There, the State’s “blanket denial” of a newspaper’s pre-litigation NPRA  
17 request was improper where it “provided no explanation whatsoever as to why the cases it cited  
18 actually supported its claim of confidentiality or were anything other than superfluous.” *Id.*  
19 Additionally, the Court explained, “[w]e cannot conclude that merely pinning a string of  
20 citations to a boilerplate declaration of confidentiality satisfies the State’s prelitigation obligation  
21 under NRS 239.0107(1)(d)(2) to cite to ‘specific’ authority ‘that makes the public book or  
22 record, or a part thereof, confidential.’” *Id.*

23 The court further held that “after the commencement of an NPRA lawsuit, the requesting  
24 party is generally entitled to a log.” *Id.* at 629. As the court reasoned, “in view of the emphasis  
25 placed on disclosure and the importance of testing claims of confidentiality in an adversarial  
26 setting, we agree . . . that ‘it is anomalous’ and inequitable to deny the requesting party basic  
27 information about the withheld records, thereby relegating it to a nebulous position where it is  
28 powerless to contest a claim of confidentiality.” *Id.* Accordingly, “in most cases, in order to

1 preserve a fair adversarial environment, this log should contain, at a minimum, a general factual  
2 description of each record withheld and a specific explanation for nondisclosure.” *Id.* Because  
3 the State failed to provide such a log to the newspaper, its “response was, in a word, deficient.”  
4 *Id.* at 630.

5 ***1. DETR Failed to Meet its Pre-litigation Obligations Under the NPRA***

6 The *Gibbons* court did not, contrary to DETR’s suggestion, hold that the NPRA does not  
7 apply after the commencement of litigation or during the pendency of an administrative  
8 proceeding. If anything, a governmental entity’s obligations under the NPRA increase after the  
9 start of litigation. *Gibbons* underscores that DETR has not met its obligations under the NPRA.  
10 In its blanket denial of The Love Ranch’s Public Records Request, DETR failed to provide  
11 citation to legal authority that justifies non-disclosure. DETR did not even assert that the  
12 records, or any portions thereof, are confidential or privileged in any way. Instead, as noted,  
13 DETR based its denial on only two grounds: (1) the Request allegedly did not sufficiently  
14 identify specific records; and (2) DETR is not required to create Records to satisfy the request.

15 The Court determines that both of these grounds are superfluous and pretextual, in  
16 contravention of *Gibbons* and NRS 239.0107(1)(d)(2). To begin, NAC 239.865 authorizes an  
17 agency responding to a public records request to ask for additional information or clarification  
18 from the party that made the request. Despite this, and despite a specific invitation in the  
19 Request for DETR to contact The Love Ranch with any questions, DETR did not ask for any  
20 additional information or clarification. The Court finds that this belies DETR’s claim that the  
21 Request is not sufficiently detailed or that it requested the creation of records, and shows that  
22 DETR does not actually believe its own purported justifications for its denial of the Request. In  
23 fact, in its Answer, DETR made only a cursory argument about the detail of the Request,  
24 lumping that contention together with its new arguments regarding privileges. And, as noted,  
25 DETR essentially abandoned its argument that the Request supposedly asked for the creation of  
26 records.

27 ///

28 ///



1                   2.     ***DETR Failed to Satisfy its Litigation Obligations under the NPRA***

2           In addition, DETR has failed to satisfy its obligations under the NPRA that were  
3 triggered after the commencement of this lawsuit. In particular, DETR has failed to provide a  
4 log containing, at a minimum, a general factual description of each record withheld and a  
5 specific explanation for non-disclosure, as required under *Gibbons*. Whether considered alone or  
6 cumulatively, DETR's failures to comply with the NPRA justify granting the Petition in its  
7 entirety.

8           **H.     DETR Failed to Meet its Burden to Prove the Records are Confidential**

9                   1.     ***The Applicable NPRA Framework***

10          The NPRA provides that all public books and public records of governmental entities  
11 must remain open to the public, unless "otherwise declared by law to be confidential." NRS  
12 239.010(1). The Legislature has declared that the purpose of the NPRA is to foster democratic  
13 principles and governmental accountability and transparency by ensuring that records are  
14 broadly accessible. NRS 239.001(1). The provisions of the NPRA must be liberally construed  
15 to maximize the public's right of access. NRS 239.001(1)-(2). In contrast, "any limitations or  
16 restrictions on the public's right of access must be narrowly construed." *Gibbons*, 266 P.3d at  
17 626.

18          In reviewing public records requests, Nevada courts "begin with the presumption that all  
19 government-generated records are open to disclosure." *Id.* at 628 (emphasis added). "[O]pen  
20 records are the rule,' and any nondisclosure of records is the exception." *Id.* at 627 (quoting  
21 *Haley*, 234 P.3d at 926). Indeed, "the provisions of the NPRA place an unmistakable emphasis  
22 on disclosure." *Id.* at 629. "In harmony with the overarching purposes of the NPRA, the burden  
23 of proof is imposed on the state entity to prove that a requested record is confidential." *Id.*  
24 Absent a statutory provision that "expressly and unequivocally" declares a record to be  
25 confidential, any limitations on disclosure may only be based upon a broad balancing of the  
26 interests involved. *Haley*, 234 P.3d at 924. Even if portions of a public record may be properly  
27 deemed confidential, this does not mean that the entire document may be withheld. *See id.* at  
28



1 927-28. Instead, the state entity has a duty to redact any confidential portions. *Id.* (citing NRS  
2 239.010(3)).

3 The Court finds that DETR's Response to the Public Records Request, and its Answer to  
4 the Petition, are at odds with the foregoing principles. To begin, DETR broadly and liberally  
5 construes the confidentiality provisions it has invoked for the first time in its Answer. At the  
6 same time, DETR affords a cramped construction of the NPRA. In effect, DETR has the  
7 applicable rules of construction backwards.

8 Elsewhere in its Answer, DETR discusses what it believes "an applicant for a court order  
9 must first show" to bring a "successful" NPRA claim, *see* Answer at 7, or to "prevail" on such a  
10 claim. *See id.* at 15. In addition, DETR suggests it is entitled to deference, claiming its denial  
11 was not "an abuse of discretion." *Id.* at 11, 15. DETR has not brought any authority to the  
12 Court's attention that supports these positions. The law is well-settled that DETR, as the state  
13 entity resisting disclosure, bears the burden to overcome the NPRA's presumption of openness  
14 by proving that the requested records are expressly and unequivocally declared confidential by  
15 law. Thus, the Court finds that DETR's attempt to shift its burden onto The Love Ranch is  
16 inconsistent with the provisions of the NPRA and the Nevada Supreme Court's NPRA  
17 jurisprudence. *See* NRS 239.001(2)-(3); NRS 239.0113; *Gibbons*, 266 P.3d at 626-28; *Haley*,  
18 234 P.3d at 924-26; *Donrey*, 798 P.2d at 147.

## 19 2. ***DETR's Reliance on NRS 612.265 is Misplaced***

20 Because DETR has not acknowledged the applicable NPRA framework, it has not met its  
21 burden to overcome the NPRA's presumption of openness. DETR first cites NRS 612.265,  
22 claiming the statute broadly makes "all information and communications prepared under  
23 Nevada's unemployment chapter confidential and privileged." *See* Answer at 9 (emphasis  
24 added). The Court disagrees.

25 Notwithstanding the selective quotation offered in DETR's Answer, NRS 612.265  
26 provides, in relevant part, as follows:

27 1. Except as otherwise provided in this section and NRS  
28 239.0115 and 612.642, information obtained from any employing  
unit or person pursuant to the administration of this chapter and

1 any determination as to the benefit rights of any person is  
2 confidential and may not be disclosed or be open to public  
3 inspection in any manner which would reveal the person's or  
4 employing unit's identity.

5 2. Any claimant or a legal representative of a claimant is  
6 entitled to information from the records of the Division, to the  
7 extent necessary for the proper presentation of the claimant's claim  
8 in any proceeding pursuant to this chapter. A claimant or an  
9 employing unit is not entitled to information from the records of  
10 the Division for any other purpose.

11 Thus, NRS 612.265(1) narrowly exempts information from the NPRA only to the extent  
12 that disclosure of such information would reveal the identity of a claimant for unemployment  
13 benefits or his or her employer. Even then, this narrow exemption is conditional, as NRS  
14 612.265(2) provides that such information may still be disclosed to the extent it is needed for any  
15 proceeding pursuant to NRS Chapter 612. In other words, when NRS 612.265 is narrowly  
16 construed, as it must be, *see Gibbons*, 266 P.3d at 626-28; *Haley*, 234 P.3d at 924-26, it does not  
17 afford the sweeping protection DETR would have this Court believe. Stated simply, NRS  
18 612.265 does not even begin to justify DETR's blanket denial of The Love Ranch's Public  
19 Records Request. Indeed, the Request expressly explained that it does not seek the identity of  
20 any claimant or his or her employer. *See* Petition at Ex. 2. The Request further explained that to  
21 the extent such information was reflected in the requested records, such documents should still  
22 be disclosed, as they are necessary for the proper resolution of its appeal of DETR's  
23 Determination. *See id.*

24 Further, any supposedly confidential portions of the requested records simply triggered  
25 DETR's duty to make redactions. *See* NRS 239.010(3); *Haley*, 234 P.3d at 927-28. This is a  
26 routine process and could have easily been completed given the narrow scope of confidentiality  
27 arguably afforded by NRS 612.265(1). Specifically, the only information which is confidential  
28 under NRS 612.265(2) is that "which would reveal the person's or employing unit's identity."  
The Love Ranch specifically requested that any records that arguably would reveal such  
information simply be redacted, with an appropriate log. *See* Petition at Ex. 2. In summary, the  
Court finds that DETR has not met its burden to show that NRS 612.265 expressly and

1 unambiguously declares the requested records to be confidential.

2 **3. DETR's Resort to Federal Regulations Fails**

3 Another confidentiality provision, 20 C.F.R. § 603.4, was also raised by DETR for the  
4 first time in its Answer. *See* Answer at 10. Even as paraphrased by DETR, however, this  
5 regulation does not help its cause. Entitled, "[w]hat is the confidentiality requirement of Federal  
6 UC law?" this provision reads, in pertinent part, as follows:

7  
8 Interpretation. The Department of Labor interprets Section  
9 303(a)(1), SSA, to mean that 'methods of administration' that are  
10 reasonably calculated to insure the full payment of UC when due  
11 must include provision for maintaining the confidentiality of any  
12 UC information which reveals the name or any identifying  
13 particular about any individual or any past or present employer or  
14 employing unit, or which could foreseeably be combined with  
15 other publicly available information to reveal any such particulars,  
16 and must include provision for barring the disclosure of any such  
17 information, except as provided in this part.

18 20 C.F.R. § 603.4(b).

19 Thus, this regulation, like NRS 612.265, shields only a narrow segment of information  
20 to the extent it reveals the identity of an unemployment claimant or his or her employer. As  
21 noted, The Love Ranch did not request such information, and it expressly informed DETR of  
22 this. Further, The Love Ranch specifically requested that if any such information was reflected  
23 in the requested records it should be redacted. Rather than what the law required of it, DETR  
24 issued a blanket denial of the Request. Thus, the Court determines that DETR has failed to carry  
25 its burden to demonstrate that the requested records expressly and unambiguously declared  
26 confidential by law. Accordingly, the Court rejects DETR's assertions of confidentiality.<sup>3</sup>

27 **I. DETR Failed to Meet its Burden to Prove the Records are Privileged**

28 **1. DETR Waived Any Privileges**

Finally, DETR has claimed that the requested records are privileged. *See* Answer at 13-

<sup>3</sup>DETR relies exclusively on NRS 612.265 and 20 C.F.R. § 603.4, stating that it need not resort to the *Bradshaw* balancing test as a basis for non-disclosure. *See* Answer at 10-11. Accordingly, the Court finds that DETR has failed to demonstrate that the requested records are expressly and unambiguously declared by law to be confidential, and has waived any other basis, including the *Bradshaw* balancing test, for asserting that the records are confidential.

1 15. The Court determines that DETR's claim fails for several reasons. To begin, the Court finds  
2 that DETR waived its arguments regarding privileges due to its failure to timely raise them in its  
3 Response to The Love Ranch's Public Records Request, as required. *See Gibbons*, 266 P.3d at  
4 629; NRS 239.0107(1)(d). In addition, DETR has waived any privileges a second time by failing  
5 to supply a privilege log in this litigation at the point when it asserted the privilege. Under the  
6 Nevada Rules of Civil Procedure, which are applicable in writ proceedings pursuant to NRS  
7 34.300, a party invoking a privilege must provide a privilege log. In particular,

8 [w]hen a party withholds information . . . by claiming that  
9 it is privileged . . . the party shall make the claim expressly and  
10 shall describe the nature of the documents, communications, or  
11 things not produced or disclosed in a manner that, without  
12 revealing information itself privileged or protected, will enable  
other parties to assess the applicability of the privilege or  
protection.

13 *See* NRCP 26(b)(5).

14 As the Nevada Supreme Court has noted, this rule "requires a party claiming privilege to  
15 describe the nature of the materials that are allegedly privileged." *Valley Health Sys., LLC v.*  
16 *Eighth Judicial Dist. Court*, 252 P.3d 676, 681 n.7 (Nev. 2011). Federal courts have likewise  
17 recognized that the party asserting a privilege has an affirmative burden to produce "a detailed  
18 privilege log." *Nevada Power Co. v. Monsanto Co.*, 151 F.R.D. 118, 121 (D. Nev. 1993). A  
19 privilege log generally must "separately identify each document withheld under claim of  
20 privilege, and set forth for each document (1) its type (i.e., letter, memo, notes, etc.), (2) its  
21 author, (3) its intended recipients, (4) the names of any other individuals with access to the  
22 document, (5) the date of the document, (6) the nature of the claimed privilege (i.e., attorney-  
23 client, work-product, etc.), and (7) a brief summary of the subject matter of the document." *Id.* at  
24 121 n.5. Thus, a privilege log must contain enough detail to "enable other parties to assess the  
25 applicability of the privilege or protection," and the "[f]ailure to do so may constitute an  
26 'implied' waiver of the privilege or protection." *In re Imperial Corp. of Am.*, 174 F.R.D. 475,  
27 477 (S.D. Cal. 1997); *see also Koninklijke Philips Electronics N.V. v. KXD Technology, Inc.*,  
28 2007 WL 778153, at \*4 (D. Nev., Mar. 12, 2007).

1 Here, DETR failed to provide any privilege log whatsoever, despite the fact that The  
2 Love Ranch specifically requested a log if DETR withheld any of the requested records. Due to  
3 this failure, DETR does not, for instance, separately identify any allegedly privileged materials  
4 by date or otherwise, making it impossible to verify its claim that it is withholding materials that  
5 purportedly predate its audit determination. Nor has DETR provided any summary of the subject  
6 matter of the supposedly privileged materials, or the parties to any communications it is  
7 withholding, making it impossible to verify its claim that it is withholding attorney-client  
8 communications. Thus, by failing to provide a privilege log, DETR has failed to support its  
9 claims of privilege, and thwarted The Love Ranch and this Court from meaningfully evaluating  
10 DETR's assertions of privilege. Therefore, DETR has impliedly waived any of its purported  
11 privileges.

12 **2. DETR's Assertion of the Deliberative Process Privilege Fails**

13 **(a) DETR's invocation is conclusory and unsupported**

14 Even if not already waived, DETR's assertion of the deliberative process privilege is  
15 unavailing. DETR has claimed, in conclusory fashion, that the deliberative process privilege  
16 "clearly" applies because the requested records are "clearly" predecisional and deliberative. *See*  
17 Answer at 14. All that DETR has offered in support of this claim is its counsel's sweeping  
18 assertion that the requested records "involve" its deliberative processes. *See id.* The Court finds  
19 that DETR's invocation of the deliberative process privilege is deficient.

20 "It is well settled that privileges, whether creatures of statute or the common law, should  
21 be interpreted and applied narrowly." *DR Partners*, 6 P.3d at 468. As DETR admits, *see*  
22 Answer at 14, the deliberative process privilege does not protect "purely factual matters." *DR*  
23 *Partners*, 6 P.3d at 469. Instead, "[t]o qualify for non-disclosure under this privilege, the  
24 requested documents must be both predecisional and deliberative." *Id.* To satisfy the  
25 "deliberative" prong, "the materials must consist of opinions, recommendations, or advice about  
26 agency policies." *Id.* "The agency bears the burden of establishing the character of the  
27 decision, the deliberative process involved, and the role played by the documents in the course of  
28 that process." *Id.* at 470 (quoting *Paisley v. C.I.A.*, 712 F.2d 686, 698 (D.C. Cir. 1983)).

1 Here, DETR failed to demonstrate that the requested records are anything other than  
2 purely factual. Nor did DETR attempt to meet its burden to establish the character of the  
3 decision, the deliberative process, the role played by the documents in that process. In fact,  
4 DETR did support its assertions with a declaration and, as noted, DETR has not provided any  
5 description of the documents it has withheld. Thus, the Court finds that DETR has failed to meet  
6 its burden to show that the deliberative process privilege applies.

7 ***(b) Any deliberative process privilege is qualified, and overcome here***

8 Even if DETR could satisfy its threshold burden, “a deliberative process privilege, even  
9 when applicable, is conditional.” *DR Partners*, 6 P.3d at 471. As “a qualified privilege,” it can  
10 be overcome by a showing that the “need for the information outweighs the regulatory interest  
11 in preventing disclosure.” *Id.* (quoting *Capital Info. Group v. Office of the Governor*, 923 P.2d  
12 29, 36 (Alaska 1996)). Here, any supposed regulatory interest DETR may have in non-  
13 disclosure is easily overcome. In contrast to DETR’s unarticulated and unsupported interests in  
14 non-disclosure, The Love Ranch has demonstrated that it may need the requested records for  
15 several critical reasons. Among other things, The Love Ranch asserts the requested public  
16 records are necessary to expose arbitrary rulings by DETR. Nevada law—specifically the  
17 NPRA—recognizes The Love Ranch’s legitimate interest in doing so. Accordingly, the Court  
18 rejects DETR’s invocation of the deliberative process privilege.

19 **3. *The Attorney-Client Privilege Does Not Shield the Requested Records***

20 The Court also disagrees with DETR’s claim that the requested records are attorney-  
21 client privileged. *See Answer* at 15. Even if DETR has not already waived the attorney-client  
22 privilege, it has not met its burden to show that the requested records are privileged. As with the  
23 deliberative process privilege, the party asserting the attorney-client privilege bears the burden of  
24 establishing that it applies. *DR Partners*, 6 P.3d at 468; *United States v. Martin*, 278 F.3d 988,  
25 1000 (9th Cir. 2002); *Weil v. Investment/Indicators, Research & Management, Inc.*, 647 F.2d 18,  
26 24 (9th Cir. 1980). “[B]lanket assertions are ‘extremely disfavored,’” *Martin*, 278 F.3d at 1000,  
27 and, “[b]ecause it impedes full and free discovery of the truth, the attorney-client privilege is  
28 strictly construed.” *Weil*, 647 F.2d at 25. As the Nevada Supreme Court has put it, “[w]hatever

1 their origins, these exceptions to the demand for every man's evidence [i.e., privileges] are not  
2 lightly created nor expansively construed, for they are in derogation of the search for truth.  
3 *Ashokan v. State, Dep't of Ins.*, 856 P.2d 244, 247 (Nev. 1993).

4 A party asserting the privilege "must identify specific communications and the grounds  
5 supporting the privilege as to each piece of evidence over which privilege is asserted." *Martin*,  
6 278 F.3d at 1000. Further, it is axiomatic that in order for the attorney-client privilege to apply,  
7 "the communication must be between the client and the attorney for the purpose of obtaining  
8 legal advice." *Id.* In determining whether a document was created for the purpose of securing  
9 legal advice, "courts have examined the nature, content, and context in which the document was  
10 prepared." *LightGuard Systems, Inc. v. Spot Devices, Inc.*, 281 F.R.D. 593, 600 (D. Nev. 2012).

11 Here, the Court finds that DETR's invocation of the attorney-client privilege fails for  
12 multiple reasons. To begin, DETR identifies no specific communications or the grounds  
13 supporting the privilege as to each communication over which it asserts the privilege. Nor does  
14 DETR provide any detail to support its claim that the communications it is apparently  
15 withholding were made for the purpose of obtaining legal advice. And, DETR does not provide  
16 any evidence, such as a declaration, to support its claim of privilege. Accordingly, the Court  
17 determines that DETR has failed to meet its burden to show the requested records are privileged.

#### 18 **4. DETR Should Have Redacted Any Arguably Privileged Records**

19 Finally, a careful examination by the Court of the (13) categories sought in the Request  
20 shows that the vast majority do even remotely implicate any supposed privileges. *See* Petition at  
21 Ex. 2. Even if any of the requested records implicated a privilege, it was improper for DETR to  
22 deny all of the requested records on basis that some portions might, hypothetically, be privileged.  
23 *See Haley*, 234 P.3d at 927-28 (even if portions of a public record may be properly deemed  
24 confidential, this does not mean that the entire document may be withheld; the state entity has a  
25 duty to redact any confidential portions) (citing NRS 239.010(3)). Thus, any conceivably  
26 privileged portions of the requested records simply should have been redacted by DETR, with an  
27 accompanying privilege log describing any redactions, and the remainder of the communications  
28 should have been disclosed. Having failed to meet its duty under the NPRA to redact any



1 alleged privileged portions of the requested records, however, the Court finds that DETR has  
2 waived its right to assert that the records are privileged in any way.

3 **J. The Love Ranch is Entitled to its Attorney's Fees**

4 Under NRS 239.011(2), if the party that made an NPRA request prevails in an action to  
5 permit access to public records, it is entitled to recover its costs and reasonable attorney's fees in  
6 the proceeding. "[B]y its plain meaning, this statute grants a requester who prevails in NPRA  
7 litigation the right to recover attorney fees and costs." *See Blackjack Bonding*, 343 P.3d at 615.  
8 "A party prevails 'if it succeeds on any significant issue in litigation which achieves some of the  
9 benefit it sought in bringing suit.'" *Id.* (quoting *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10,  
10 106 P.3d 1198, 1200 (2005) (emphasis in original). For a party to be "prevailing," it "need not  
11 succeed on every issue." *Id.* Here, the Court has determined that The Love Ranch is entitled to a  
12 writ compelling the disclosure of the records it sought in its Public Records Request. Thus,  
13 because The Love Ranch is the prevailing party, the Court grants its request under NRS  
14 239.011(2) for its costs and reasonable attorney's fees in this proceeding.

15 **IV. CONCLUSION**

16 Based upon the foregoing, the Court determines that the Petition should be granted.  
17 Accordingly, directs the Clerk of the Court to issue the enclosed Writ of Mandamus compelling  
18 DETR to allow access to the requested public records within thirty (30) days. Petitioner shall  
19 arrange to have the Writ served on Respondent, and Petitioner shall return the original Writ with  
20 proof of service attached thereto. Additionally, the Court directs The Love Ranch to submit a  
21 Bill of Costs and Itemization of Fees for its costs and attorney's fees within fourteen (14) days of  
22 entry of this Order. DETR shall file any Objections within fourteen (14) days of service of the  
23 Bill of Costs and Itemization of Fees. The Love Ranch shall file a Reply within ten (10) days of  
24 service of any Objections.

25 IT IS SO ORDERED.

26 DATED this 7<sup>th</sup> day of February, 2018.

27   
28 DISTRICT COURT JUDGE




**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 7 day of February, 2018, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Laurie L. Trotter, Esq.  
1340 South Curry Street  
Carson City, NV 89703

Anthony L. Hall, Esq.  
5441 Kietzke Lane, Second Floor  
Reno, NV 89511

  
Sydnie Wells  
Law Clerk, Dept. 1

1 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
2 IN AND FOR CARSON CITY

FILED  
2018 FEB 21 AM 11:49

3 SIERRA NATIONAL CORPORATION, dba  
4 THE LOVE RANCH, a Nevada Corporation,

5 Petitioner,

6 vs.

7 NEVADA DEPARTMENT OF  
8 EMPLOYMENT, TRAINING AND  
REHABILITATION – EMPLOYMENT  
SECURITY DIVISION,

9 Respondent.

Case No. 170C002221B

SUSAN MERRIWETHER  
CLERK  
BY James T. Russell  
DEPUTY

Dept. No. I

10  
11 WRIT OF MANDAMUS

12 TO: Respondent Nevada Department of Employment, Training and Rehabilitation –  
13 Employment Security Division:

14 WHEREAS, This Court having made and filed its written decision that a Writ of  
15 Mandamus may issue,

16 NOW, THEREFORE, you are commanded to make the public records described in the  
17 Petition available for copying by Petitioner Sierra National Corporation, dba The Love Ranch,  
18 within thirty (30) days of receipt of this Writ.

19 WITNESS The Honorable District Judge James T. Russell, of the First Judicial  
20 District Court, in and for Carson City, and attested by my hand and seal this 8<sup>th</sup> day of  
21 February, 2018.

22  
23 Susan Merriwether

24 District Clerk of Court

25 by James T. Russell, deputy  
26  
27  
28

IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF CARSON CITY

SIERRA NATIONAL CORPORATION, dba THE LOVE  
RANCH, A NEVADA CORPORATION,

Plaintiff(s),

CASE NO: 170C002221B

VS.

NEVADA DEPARTMENT OF EMPLOYMENT,  
TRAINING AND REHABILITATION - EMPLOYMENT  
SECURITY DIVISION,

Defendant(s),

DECLARATION OF SERVICE

STATE OF NEVADA

COUNTY OF CARSON CITY SS.:

DANIEL ACTON STEVENS, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the **WRIT OF MANDAMUS** On 2/13/2018 and served the same on 2/14/2018 at 3:01 PM by delivery and leaving a copy with:

1. Delivering and leaving a copy with LAURIE TROTTER, ESQ. at NEVADA DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION 1340 S Curry St Carson City, NV 897035146

**A description of Laurie Trotter is as follows**

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	White	Brown	41-45	5'0 - 5'6	100-120 Lbs

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 2/19/2018

by DANIEL ACTON STEVENS

Registration: R-2018-00348

No notary is required per NRS 53.045

*Daniel J. Acton Stevens*

X

DANIEL ACTON STEVENS

Registration: R-2018-00348

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

SUSAN MERRIWETHER  
CLERK

SIERRA NATIONAL CORPORATION, dba  
THE LOVE RANCH, a Nevada Corporation,

Case No. 170C002221B

Petitioner,

Dept. No. I

vs.

NEVADA DEPARTMENT OF  
EMPLOYMENT, TRAINING AND  
REHABILITATION – EMPLOYMENT  
SECURITY DIVISION,

Respondent.

**PROPOSED ORDER LIFTING STAY AND DENYING RECONSIDERATION**

**I. INTRODUCTION**

This matter came before the Court upon Petitioner Sierra National Corporation, dba The Love Ranch's ("Petitioner" or "The Love Ranch") Motion to Lift Stay and Deny Reconsideration. The Love Ranch requests the Court lift the stay entered on March 13, 2018, and formally deny the Motion to Reconsider Pursuant to NRCP 59(e) and 60(b) ("Motion to Reconsider") submitted by Respondent Nevada Department of Employment, Training and Rehabilitation – Employment Security Division ("Respondent" or "DETR") on or about February 16, 2018. Having carefully reviewed these materials, and the other papers on file with the Court, the Court hereby LIFTS the stay and, finding that DETR has not demonstrated that reconsideration under NRCP 59(e) or NRCP 60(b) is warranted, DENIES DETR's Motion to Reconsider for the reasons explained in the following Findings of Fact and Conclusions of Law.

**II. FINDINGS OF FACT**

On October 26, 2017, The Love Ranch submitted a Petition for Writ of Mandamus ("Petition"). DETR filed an Answer on November 20, 2017 ("Answer to Petition"). Petitioner filed a Reply on January 5, 2018 ("Reply in Support of Petition"). On February 7, 2018, the Court issued an Order Granting Petition for Writ of Mandamus ("Order Granting Petition"). On February 16, 2018, DETR filed its Motion to Reconsider. On March 14, 2018, The Love Ranch

1 filed an Opposition to the Motion to Reconsider.<sup>1</sup> On March 9, 2018, DETR filed a Motion for  
2 Stay of Proceedings Pending Supreme Court Decision. On March 13, 2018, the Court granted  
3 DETR's Motion to Stay. On March 15, 2018, DETR filed a Notice of Appeal.

4 On March 20, 2018, the Court entered an Order Denying Requests for Submission.<sup>2</sup> The  
5 Court further indicated that it does not intend to grant DETR's Motion to Reconsider. However,  
6 the Court observed that DETR's filing of a Notice of Appeal had divested the Court of  
7 jurisdiction.

8 On May 10, 2018, the Nevada Supreme Court issued an Order to Show Cause, directing  
9 DETR "to show why its appeal should not be dismissed for lack of jurisdiction." As the court  
10 noted, a motion for reconsideration tolls the deadline to file a notice of appeal. Thus, the  
11 Nevada Supreme Court explained, "[t]o date, it appears that the notice of appeal was  
12 prematurely filed after the timely filing of a tolling motion for reconsideration pursuant to  
13 NRCP 59 but before the tolling motion was formally resolved."

14 The Parties thereafter agreed and stipulated to dismiss DETR's appeal and temporarily  
15 remand the matter for a formal ruling by this Court regarding DETR's Motion to Reconsider.  
16 Pursuant to the Parties' stipulation, on June 18, 2018, the Nevada Supreme Court dismissed  
17 DETR's appeal and remanded the matter for a formal ruling on DETR's Motion to Reconsider.  
18 On June 22, 2018, The Love Ranch filed its Motion to Lift Stay and Deny Reconsideration.

### 19 **III. CONCLUSIONS OF LAW**

20 A motion for reconsideration under NRCP 59(e) must show "'manifest errors of law or  
21 fact,' 'newly discovered or previously unavailable evidence,' the need 'to prevent manifest  
22 injustice,' or a 'change in controlling law.'" *AA Primo Builders, LLC v. Washington*, 126 Nev.

23 <sup>1</sup>The Love Ranch first filed a Motion for Extension of Time to File Opposition. Although the Motion was  
24 date-stamped March 9, 2018, it was submitted for filing and timely served to DETR on March 8, 2018. Further,  
25 while DETR had initially denied the requested extension due to the deadline for its notice of appeal, as the Nevada  
26 Supreme Court has indicated, DETR's Motion to Reconsider tolled the deadline to file a notice of appeal.  
27 Accordingly, the basis of DETR's denial of the extension request was erroneous. Further, The Love Ranch timely  
28 requested an extension from DETR, and there was good cause for the request. Accordingly, The Love Ranch's  
Motion for Extension of Time is hereby GRANTED *nunc pro tunc*. In any event, the Court finds that DETR has not  
met its burden to demonstrate that reconsideration is warranted.

<sup>2</sup>In particular, the Court denied a number of requests for submission of various motions filed by DETR,  
including an Ex Parte Motion to Shorten Time and a Motion to Strike.

1 578, 582, 245 P.3d 1190, 1193 (2010). Grounds for reconsideration under NRCP 60(b) are  
2 likewise narrow, requiring a showing that the order being challenged was clearly erroneous due  
3 to things such as excusable neglect, fraud, or other extraordinary circumstances. *Moore v. City*  
4 *of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

5 Because NRCP 59(e) and 60(b) echo their counterparts in the Federal Rules of Civil  
6 Procedure, Nevada courts “may consult federal law in interpreting them.” *AA Primo*, 126 Nev.  
7 at 582, 245 P.3d at 1192-93. Federal caselaw instructs that reconsideration is “an extraordinary  
8 remedy, to be used sparingly in the interests of finality and conservation of judicial resources.”  
9 *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Thus, “only a  
10 failure to correct *clear* error” constitutes an abuse of discretion. *McDowell v. Calderon*, 197  
11 F.3d 1253, 1255 n.4 (9th Cir. 1999).

12 Motions for reconsideration are “disfavored,” *Motorola v. J.B. Rogers Mechanical*  
13 *Contractors, Inc.*, 215 F.R.D. 581, 582 (D. Ariz. 2003), and ““should not be granted absent  
14 highly unusual circumstances.”” *Blackmon v. New Albertson’s, Inc.*, 2012 WL 3613956, at \*2  
15 (D. Nev., Aug. 21, 2012) (quoting *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th  
16 Cir. 1999)). Such a motion requires a “significant showing of entitlement to relief,” *Brown v.*  
17 *Adidas USA, Inc.*, 205 F.3d 1350, at \*1 (9th Cir. 1999), and must set forth facts or law “of a  
18 strongly convincing nature to persuade the district court to reverse its prior decision.” *Frasure v.*  
19 *U.S.*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). DETR’s Motion to Reconsider does not make  
20 the requisite showing.

21 **A. DETR is Rearguing Points the Court Already Considered and Rejected**

22 “Only in rare instances in which new issues of fact or law are raised supporting a ruling  
23 contrary to the ruling already reached should a motion for rehearing be granted.” *Moore v. City*  
24 *of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Courts need not even entertain  
25 motions to reconsider points that have already been considered and rejected. *Id.* at 404-05, 551  
26 P.2d at 245-46. Thus, reconsideration may not “be used to ask the Court to rethink what it has  
27 already thought,” *Motorola*, 215 F.R.D. at 582, as such arguments “should be directed to the  
28 court of appeals.” *Sullivan v. Faras-RLS Grp., Ltd.*, 795 F. Supp. 305, 309 (D. Ariz. 1992).

1 Stated simply, a motion for reconsideration “is not a vehicle permitting the unsuccessful party to  
2 reiterate arguments previously presented,” *Blackmon*, 2012 WL 3613956, at \*2, and is “not a  
3 substitute for appeal.” *Villarta v. Swarthout*, 2012 WL 1622895, at \*1 (N.D. Cal. May 8, 2012).<sup>3</sup>

4 Here, DETR’s Motion to Reconsider by and large rehashes its earlier arguments. As a  
5 case in point, in the introduction to its Motion, DETR “incorporates . . . its previously-filed”  
6 briefs in this case. *See* Motion to Reconsider at 3. DETR further “incorporates” the “facts” and  
7 exhibits from its Answer to the Petition, “for reiteration purposes.” *See id.* at 3-7. Then, in the  
8 Argument section of its Motion, DETR reasserts its tired arguments that: (1) mandamus relief is  
9 supposedly not available due to the Parties’ administrative case, (2) the public records at issue  
10 are allegedly confidential, and (3) and the NPRA supposedly does not apply after the start of  
11 litigation. *See id.* at 8-15. DETR already raised these arguments, *see* Answer to Petition at 4-11,  
12 The Love Ranch already replied to these arguments, *see* Reply in Support of Petition at 2-10, and  
13 the Court already analyzed and rejected these arguments. *See* Order Granting Petition at 6-13.

14 In the interests of judicial economy, the Court will not attempt to rehash each of its  
15 findings on these issues. The following is a brief recap of the salient determinations from the  
16 Court’s Order regarding the issues DETR attempts to reargue:

- 17 • Under the plain language of NRS 239.011(1), The Love Ranch has a  
18 statutory right to bring this action. Nowhere does this statute exempt  
19 public records that may also be relevant in administrative  
20 proceedings under the unemployment compensation statutory  
21 scheme set forth in NRS Chapter 612. Moreover, the Nevada  
22 Supreme Court has held that mandamus is the appropriate procedural  
23 vehicle to compel production of public records. The remedial  
24 process The Love Ranch is entitled to pursue to enforce its rights  
25 under NRS 239.011(1) is not dictated by DETR’s re-characterization  
26 of the parties’ dispute. If credited, DETR’s position would mean  
27 that a party to an administrative dispute has less rights under the  
28 NPRA than the general public. This would be an absurd result and is  
unsupported by any caselaw or statutory language. *See* Order  
Granting Petition at 7-8.

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<sup>3</sup>Other courts are in accord. *See, e.g., Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001) (“A party cannot have relief under this rule merely because he or she is unhappy with the judgment.”); *Villarta*, 2012 WL 1622895, at \*1 (“mere dissatisfaction with the court’s order or belief that the court is wrong in its decision are not adequate grounds for relief”).

- Contrary to DETR's suggestion, the Nevada Supreme Court has never held that the NPRA does not apply after the commencement of litigation or during the pendency of an administrative proceeding. If anything, a governmental entity's obligations under the NPRA increase after the start of litigation. *See id.* at 12.
- The confidentiality statutes and regulations cited by DETR narrowly, and conditionally, exempt information from the NPRA only to the extent that disclosure of such information would reveal the identity of a claimant for unemployment benefits or his or her employer. Further, any supposedly confidential portions of the requested records simply triggered DETR's duty to make redactions. *See id.* at 14-16.

In sum, the Court already considered and rejected the central theories DETR reasserts in its Motion to Reconsider. Absent from DETR's Motion for Reconsideration is any acknowledgement of the Court's analysis of these issues, let alone any showing of manifest error. In sum, DETR's Motion to Reconsider reargues issues the Parties already briefed, and the Court already decided. While DETR wishes to relitigate these issues, neither this, nor its mere disappointment with the Court's Order Granting the Petition, fall within the narrow grounds for reconsideration. DETR's arguments should instead be directed to the Nevada Supreme Court or the Nevada Court of Appeals. DETR has tacitly admitted this, having already attempted to file an appeal (albeit prematurely). Courts have routinely denied motions for reconsideration under similar circumstances.<sup>4</sup>

#### **B. The New Arguments in DETR's Motion Fail**

Toward the end of its Motion to Reconsider, DETR asserts two new arguments. *See* Motion at 13-14. In particular, DETR argues that: (1) the Court's Order Granting the Petition "exceeded lawful authority and due process" by relying "upon issues newly raised in [The Love Ranch's] Reply, including waiver of privileges" and (2) confidentiality is "established by law

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<sup>4</sup>*See, e.g., Louisiana-Pacific Corp. v. NLRB*, 52 F.3d 252, 255 (9th Cir. 1995) ("Since [the] Rule 60(b) motion merely reiterated the arguments that [the moving party] had already presented to the district court, the motion was properly denied."); *Fuller v. M.G. Jewelry*, 950 F.2d 1437 (9th Cir. 1991) (whether construed as an FRCP 59(e) or FRCP 60(b) motion, the district court did not abuse its discretion in denying motion for reconsideration that "presented no new arguments which the court had not already considered and rejected."); *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985) (district court did not abuse its discretion in denying motion for reconsideration under FRCP 59(e) and FRCP 60(b) that "presented no new arguments that had not already been raised").



1 and cannot be waived.” *See id.* DETR’s new arguments fail for several reasons.

2 **1. DETR’s new arguments are not cogently presented or supported**

3 It is well-established that courts need not entertain arguments that are “not supported by  
4 cogent argument and citation to relevant authority.” *Berkson v. LePome*, 126 Nev. 492, 501, 245  
5 P.3d 560, 566 (2010).<sup>5</sup> Here, DETR has not provided any cogent argument, much less relevant  
6 legal authority, in support of its new arguments. Nor could it. If anything, due process shows  
7 that the Court appropriately granted The Love Ranch leave, as expressly authorized under NRS  
8 34.260, to reply to the host of new arguments DETR raised for the first time in its Answer to the  
9 Petition.

10 Nor has DETR cogently articulated or supported its new argument that confidentiality  
11 statutes cannot be waived. Instead, the argument is undeveloped, consisting, in its entirety, of a  
12 single sentence. And, while DETR cites NRS 612.265 and 20 C.F.R. §§ 603.4 and 603.7,  
13 nothing in these statutes provides they are non-waivable. It is not the obligation of this Court, or  
14 The Love Ranch, to conduct DETR’s research for it.

15 **2. DETR could have raised its new arguments earlier**

16 A motion for reconsideration “may not be used to raise arguments or present evidence for  
17 the first time when they could reasonably have been raised earlier in the litigation.” *Kona*  
18 *Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Such motions “are not  
19 the place for parties to make new arguments not raised in their original briefs,” *Motorola*, 215  
20 F.R.D. at 582, or to “plug[] the gaps of a lost motion with additional matters.” *Allied Mar., Inc.*  
21 *v. Rice Corp.*, 361 F. Supp. 2d 148, 149 (S.D.N.Y. 2004). “Justice is not served by permitting a  
22 litigant to drop the ball . . . and seek to have it resurrected—at the expense of the other parties  
23 and the tax-paying public.” *389 Orange Street*, 179 F.3d at 665. Thus, “[i]f a party simply  
24

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25 <sup>5</sup>*See also Sandoval v. LVMPD*, 854 F. Supp. 2d 860, 879 (D. Nev. 2012) (rejecting party’s argument where  
26 they “failed to cite any legal authority to justify” their position); *Forsythe v. Brown*, 2011 WL 5190673, at \*8 (D.  
27 Nev. Oct. 27, 2011) (rejecting party’s argument where he “failed to cite any authority” for his position); *Volcano*  
28 *Developers, LLC v. Bonneville Mortg. Co.*, 2011 WL 3651385, at \*2 (D. Nev. Aug. 18, 2011) (a party “cannot  
prevail without providing some legal authority that supports their theory of the case.”); *Yates v. Washoe County*  
*School Dist.*, 2008 WL 4106816, at \*1 n.1 (D. Nev., Aug. 28, 2008) (“It is not the role of this court to scour the  
record in search of evidence to support a party’s position”).

1 inadvertently failed to raise the arguments earlier, the arguments are deemed waived.”  
2 *Blackmon*, 2012 WL 3613956, at \*2. The court does not abuse its discretion by declining to  
3 entertain issues raised for the first time on reconsideration. *Id.*

4 These principles foreclose DETR’s new arguments. DETR had ample opportunity to  
5 argue, as it now does, that it “waived nothing.”<sup>6</sup> From the outset, The Love Ranch specifically  
6 argued that DETR waived any confidentiality provisions or privileges that it did not timely raise.  
7 Despite this, DETR based its blanket denial of the public records request solely on two grounds,  
8 and then appears to have made a tactical decision to try to sidestep the issue of waiver in its  
9 Answer to the Petition. The Court rejects DETR’s attempt to reverse course at the eleventh hour  
10 of this dispute.

11 **3. DETR’s new arguments are unavailing**

12 Even if DETR had cogently presented and timely raised its new arguments, they would  
13 still fail for several reasons.

14 **(a) DETR’s arguments regarding The Love Ranch’s Reply fail**

15 NRS 34.260 expressly permits the Court to grant leave to file a reply in support of a  
16 petition for a writ of mandamus. And, the Nevada Supreme Court has specifically held that  
17 granting leave to file a reply is appropriate under similar circumstances involved here. *See*  
18 *Kieren v. Feil*, 2016 WL 4082463, at \*1 n.1, Case No. 68341 (Nev., July 28, 2016) (unpublished  
19 disposition) (leave to allow a reply should be given where the agency answering the petition  
20 “reframed the claim raised in the petition to exclude it from the ambit of mandamus relief.”).

21 Moreover, contrary to DETR’s claim, The Love Ranch did not raise the issue of waiver  
22 for the first time in its Reply in support of its Petition. In fact, The Love Ranch clearly explained  
23 in its public records request that if DETR denied access to the requested records, it needed to  
24 identify any records withheld, along with citation to legal authority. *See* Petition at Ex. 2 (“in  
25

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26 <sup>6</sup>The same holds true for the new exhibits and affidavit filed by DETR, which are irrelevant under the  
27 NPRA, and most of which concern matters that predated DETR’s Answer and were available to it throughout this  
28 dispute. *See School Dist. No. 1J, Mulnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (“The  
overwhelming weight of authority is that the failure to file documents in an original motion or opposition does not  
turn the late filed documents into ‘newly discovered evidence.’”).

1 responding to this request, DETR should redact portions of records that would reveal the identity  
2 of another employing unit or person, and provide an appropriate log regarding such redactions or  
3 any other records withheld, along with citation to the specific statute or legal authority that  
4 makes the public book or record, or a part thereof, confidential.”). Additionally, in The Love  
5 Ranch’s Petition, it expressly raised the issue of waiver. See Petition at 7 (“By failing to assert  
6 any arguments based upon confidentiality in its Response as required under NRS 239.0107(l)(d)  
7 and well-established NPRA jurisprudence, DETR has waived any such arguments.”). Thus,  
8 despite being specifically alerted to the issue of waiver, DETR appears to have strategically  
9 avoided it.

10 ***(b) DETR’s arguments regarding waiver are unavailing***

11 The apparent reason DETR sidestepped the issue of waiver is it is a battle it cannot win.  
12 Even today, DETR does not seriously deny that its blanket denial of the public records request  
13 was in violation of NPRA. Instead, DETR claimed, for the first time in its Motion to  
14 Reconsider, and without citing any relevant authority, that confidentiality provisions are  
15 “established by law and cannot be waived.” This argument is meritless.

16 It is presumed that laws do “not modify common law unless such intent is explicitly  
17 stated.” *Branch Banking v. Windhaven & Tollway, LLC*, 131 Nev. \_\_\_, \_\_\_, 347 P.3d 1038,  
18 1040 (2015). Under the common law, “[w]aiver occurs where a party knows of an existing right  
19 and either actually intends to relinquish the right or exhibits conduct so inconsistent with an  
20 intent to enforce the right as to induce a reasonable belief that the right has been relinquished.”  
21 *Hudson v. Horseshoe Club Operating Co.*, 112 Nev. 446, 457, 916 P.2d 786, 792 (1996).

22 Crucially, none of the statutory confidentiality provisions DETR has invoked state they  
23 are non-waivable. This is significant because when the Legislature intends to make a provision  
24 non-waivable, it knows how to do so.<sup>7</sup> As such, the omission of any non-waiver language in the

25 \_\_\_\_\_  
26 <sup>7</sup>See, e.g., NRS 40.453(1) (providing that the rights of borrowers and guarantors under Nevada’s deficiency  
27 statutes are not waivable by way of home purchase agreements); NRS 87A.195 (setting forth “nonwaivable  
28 provisions” to Nevada’s Uniform Partnership Act); NRS 612.700(1) (“Any agreement by a person to waive, release  
or commute his or her rights to benefits or any other rights under this chapter is void”); see also Nev. Const. Art 15,  
Sec. 16(B) (providing that the provisions of Nevada’s Minimum Wage Amendment generally “may not be waived  
by agreement”).

1 confidentiality statutes cited by DETR must be presumed to have been intentional. *See Boucher*  
2 *v. Shaw*, 124 Nev. 1164, 1169-70, 196 P.3d 959, 963 (2008) (the mention of one thing implies  
3 the exclusion of another, and if the Legislature intends to deviate from the common law, it must  
4 do so explicitly). Thus, the statutory confidentiality provisions cited by DETR are waivable.

5 This result is not only consistent with ordinary canons of statutory construction, but it is  
6 compelled by the plain language of the NPRA. Under NRS 239.0107(1)(d):

7 If the governmental entity must deny the person's request  
8 because the public book or record, or a part thereof, is confidential,  
9 provide to the person, in writing:

10 (1) Notice of that fact; and

11 (2) A citation to the specific statute or other legal  
12 authority that makes the public book or record, or a part thereof,  
13 confidential.

14 (emphasis added).

15 Thus, as the Nevada Supreme Court observed in *Reno Newspapers, Inc. v. Gibbons*, the  
16 agency withholding records has a legal obligation, even prior to the initiation of an NPRA  
17 lawsuit, to provide citation to legal authority "that justifies nondisclosure." 127 Nev. 623, 631  
18 266 P.3d 623, 629 (2011). There, the State's "blanket denial" of a newspaper's pre-litigation  
19 NPRA request was improper where it "provided no explanation whatsoever as to why the cases it  
20 cited actually supported its claim of confidentiality or were anything other than superfluous." *Id.*  
21 Additionally, the Court explained, "[w]e cannot conclude that merely pinning a string of  
22 citations to a boilerplate declaration of confidentiality satisfies the State's prelitigation obligation  
23 under NRS 239.0107(1)(d)(2) to cite to 'specific' authority 'that makes the public book or  
24 record, or a part thereof, confidential.'" *Id.*

25 Here, DETR did even less than the State did in *Gibbons*. In its blanket denial of the  
26 public records request, DETR failed to provide citation to legal authority that justifies non-  
27 disclosure. DETR did not even assert that the records, or any portions thereof, are confidential  
28 or privileged in any way. Instead, DETR based its denial on only two grounds, both of which  
DETR then effectively abandoned in its Answer. In short, DETR issued a blanket denial of the  
public records request first, and created justifications later. DETR's tactics do not comport with

1 the NPRA.

2 Permitting DETR's tactics would not only be at odds with the plain language of NRS  
3 239.0107(d)(1), but it would undermine the purpose and overarching provisions of the NPRA.  
4 The Legislature has declared that the goal of the NPRA is to foster democratic principles and  
5 governmental accountability and transparency by ensuring that records are broadly accessible.  
6 See NRS 239.001(1). Consistent with its purpose, the provisions of the NPRA must be liberally  
7 construed to maximize the public's right of access. See NRS 239.001(1)-(2). In contrast, "any  
8 limitations or restrictions on the public's right of access must be narrowly construed." *Gibbons*,  
9 127 Nev. at 878, 266 P.3d at 626. In short, the provisions of the NPRA "place an unmistakable  
10 emphasis on disclosure," impose the burden on "the state entity to prove that a requested record  
11 is confidential," *Id.* at 882, 266 P.3d at 629, and establishes a "fundamental right" of citizens to  
12 access public records. *DR Partners v. Board of County Commissioners of Clark County*, 116  
13 Nev. 616, 621, 6 P.3d 465, 468 (2000).

14 Thus, the most natural and appropriate remedy for an agency's failure to comply with  
15 NRS 239.0107(d)(1) is waiver of any grounds the agency failed to raise in its denial of a public  
16 records request.<sup>8</sup> Further, this is the only effective remedy. Without the risk of waiver, the  
17 agency could always issue a blanket denial and force the requesting party to file suit before  
18 providing a meaningful explanation for denying a public records request. Indeed, this is  
19 precisely what DETR attempted to do here. Suffice it to say, this type of cat and mouse game is  
20 antithetical to the NPRA, which emphasizes full and prompt disclosure of public records.  
21 DETR's new argument regarding waiver is therefore rejected.<sup>9</sup>

22 ///

23  
24 <sup>8</sup>Moreover, other jurisdictions with analogous public records statutes have held that statutory exemptions  
25 can be waived. See *County of Santa Clara v. Superior Court*, 89 Cal. Rptr. 3d 374, 389 (Ct. App. 2009) (observing  
26 that "[e]xemptions can be waived" under the California Public Records Act); *Dallas Area Rapid Transit v. Dallas*  
*Morning News*, 4 S.W.3d 469, 474 (Tex. Ct. App. 1999) (agency's failure to timely request an attorney general  
opinion regarding an exception to disclosure in connection with its partial denial of a public records request  
constituted a waiver of the exception under the Texas Open Records Act).

27 <sup>9</sup>DETR's arguments regarding waiver fail for the additional reason that the Court found, in the alternative,  
28 that DETR had failed to meet its burden to establish that the requested records were privileged or confidential. See  
Order Granting Petition at 13-20.

1 **IV. CONCLUSION**

2 Based upon the foregoing, the Court hereby LIFTS the stay entered on March 13, 2018,  
3 and DENIES the Motion to Reconsider.

4 DATED this 11<sup>th</sup> day of July, 2018.

5  
6   
7 DISTRICT COURT JUDGE

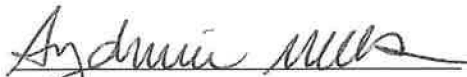
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**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 11 day of July, 2018, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Anthony L. Hall, Esq.  
Ricardo N. Cordova, Esq.  
5441 Kietzke Lane, Second Floor  
Reno, NV 89511

Laurie Trotter, Esq.  
500 East Third Street  
Carson City, NV 89713

  
Sydnie Wells  
Law Clerk, Dept. 1

ORIGINAL

LAURIE L. TROTTER, ESQ.  
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STATE OF NEVADA, Department of  
Employment, Training & Rehabilitation (DETR)  
Employment Security Division (ESD)  
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SUSAN MERRIWETHER  
CLERK  
BY G. Lopez  
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SIERRA NATIONAL CORPORATION,  
DBA, THE LOVE RANCH, A NEVADA  
CORPORATION,

CASE NO.: 17 0C 00222 1B

DEPT. NO.: I

Petitioner,

vs.

NEVADA DEPARTMENT OF  
EMPLOYMENT, TRAINING AND  
REHABILITATION – EMPLOYMENT  
SECURITY DIVISION,

Respondent.

**NOTICE OF ENTRY OF ORDER**  
**LIFTING STAY AND DENYING RECONSIDERATION**

PLEASE TAKE NOTICE that on the 11<sup>th</sup> day of July, 2018, the Court entered an Order Lifting Stay and Denying Reconsideration in the above-entitled matter. Inasmuch as said Order was entered more than two weeks ago, in the interests of promoting a speedy determination of this matter, ESD is filing this instant Notice of Entry of Order, due to Petitioner's inaction in this regard. A copy of said Order is attached hereto.



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AFFIRMATION Pursuant to NRS 239B.030:

The undersigned does hereby affirm that the preceding document does not contain the Social Security number or employer identification number of any person or party.

**DATED** this 26<sup>th</sup> day of July, 2018.




LAURIE L. TROTTER, ESQ.

*Attorney for Nevada ESD Respondents*

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Anthony L. Hall, Esq.  
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July, 2018.



SHERI C. IHLER

REC'D & FILED

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SUSAN MERRIWETHER  
CLERK

SIERRA NATIONAL CORPORATION, dba  
THE LOVE RANCH, a Nevada Corporation,

Petitioner,

Case No. 170C002221B

Dept. No. I

vs.

NEVADA DEPARTMENT OF  
EMPLOYMENT, TRAINING AND  
REHABILITATION – EMPLOYMENT  
SECURITY DIVISION,

Respondent.



**PROPOSED ORDER LIFTING STAY AND DENYING RECONSIDERATION**

**I. INTRODUCTION**

This matter came before the Court upon Petitioner Sierra National Corporation, dba The Love Ranch's ("Petitioner" or "The Love Ranch") Motion to Lift Stay and Deny Reconsideration. The Love Ranch requests the Court lift the stay entered on March 13, 2018, and formally deny the Motion to Reconsider Pursuant to NRCP 59(e) and 60(b) ("Motion to Reconsider") submitted by Respondent Nevada Department of Employment, Training and Rehabilitation – Employment Security Division ("Respondent" or "DETR") on or about February 16, 2018. Having carefully reviewed these materials, and the other papers on file with the Court, the Court hereby LIFTS the stay and, finding that DETR has not demonstrated that reconsideration under NRCP 59(e) or NRCP 60(b) is warranted, DENIES DETR's Motion to Reconsider for the reasons explained in the following Findings of Fact and Conclusions of Law.

**II. FINDINGS OF FACT**

On October 26, 2017, The Love Ranch submitted a Petition for Writ of Mandamus ("Petition"). DETR filed an Answer on November 20, 2017 ("Answer to Petition"). Petitioner filed a Reply on January 5, 2018 ("Reply in Support of Petition"). On February 7, 2018, the Court issued an Order Granting Petition for Writ of Mandamus ("Order Granting Petition"). On February 16, 2018, DETR filed its Motion to Reconsider. On March 14, 2018, The Love Ranch

1 filed an Opposition to the Motion to Reconsider.<sup>1</sup> On March 9, 2018, DETR filed a Motion for  
2 Stay of Proceedings Pending Supreme Court Decision. On March 13, 2018, the Court granted  
3 DETR's Motion to Stay. On March 15, 2018, DETR filed a Notice of Appeal.

4 On March 20, 2018, the Court entered an Order Denying Requests for Submission.<sup>2</sup> The  
5 Court further indicated that it does not intend to grant DETR's Motion to Reconsider. However,  
6 the Court observed that DETR's filing of a Notice of Appeal had divested the Court of  
7 jurisdiction.

8 On May 10, 2018, the Nevada Supreme Court issued an Order to Show Cause, directing  
9 DETR "to show why its appeal should not be dismissed for lack of jurisdiction." As the court  
10 noted, a motion for reconsideration tolls the deadline to file a notice of appeal. Thus, the  
11 Nevada Supreme Court explained, "[t]o date, it appears that the notice of appeal was  
12 prematurely filed after the timely filing of a tolling motion for reconsideration pursuant to  
13 NRCP 59 but before the tolling motion was formally resolved."

14 The Parties thereafter agreed and stipulated to dismiss DETR's appeal and temporarily  
15 remand the matter for a formal ruling by this Court regarding DETR's Motion to Reconsider.  
16 Pursuant to the Parties' stipulation, on June 18, 2018, the Nevada Supreme Court dismissed  
17 DETR's appeal and remanded the matter for a formal ruling on DETR's Motion to Reconsider.  
18 On June 22, 2018, The Love Ranch filed its Motion to Lift Stay and Deny Reconsideration.

### 19 **III. CONCLUSIONS OF LAW**

20 A motion for reconsideration under NRCP 59(e) must show "'manifest errors of law or  
21 fact,' 'newly discovered or previously unavailable evidence,' the need 'to prevent manifest  
22 injustice,' or a 'change in controlling law.'" *AA Primo Builders, LLC v. Washington*, 126 Nev.

23 <sup>1</sup>The Love Ranch first filed a Motion for Extension of Time to File Opposition. Although the Motion was  
24 date-stamped March 9, 2018, it was submitted for filing and timely served to DETR on March 8, 2018. Further,  
25 while DETR had initially denied the requested extension due to the deadline for its notice of appeal, as the Nevada  
26 Supreme Court has indicated, DETR's Motion to Reconsider tolled the deadline to file a notice of appeal.  
27 Accordingly, the basis of DETR's denial of the extension request was erroneous. Further, The Love Ranch timely  
28 requested an extension from DETR, and there was good cause for the request. Accordingly, The Love Ranch's  
Motion for Extension of Time is hereby GRANTED *nunc pro tunc*. In any event, the Court finds that DETR has not  
met its burden to demonstrate that reconsideration is warranted.

<sup>2</sup>In particular, the Court denied a number of requests for submission of various motions filed by DETR,  
including an Ex Parte Motion to Shorten Time and a Motion to Strike.

1 578, 582, 245 P.3d 1190, 1193 (2010). Grounds for reconsideration under NRCP 60(b) are  
2 likewise narrow, requiring a showing that the order being challenged was clearly erroneous due  
3 to things such as excusable neglect, fraud, or other extraordinary circumstances. *Moore v. City*  
4 *of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

5 Because NRCP 59(e) and 60(b) echo their counterparts in the Federal Rules of Civil  
6 Procedure, Nevada courts “may consult federal law in interpreting them.” *AA Primo*, 126 Nev.  
7 at 582, 245 P.3d at 1192-93. Federal caselaw instructs that reconsideration is “an extraordinary  
8 remedy, to be used sparingly in the interests of finality and conservation of judicial resources.”  
9 *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Thus, “only a  
10 failure to correct *clear error*” constitutes an abuse of discretion. *McDowell v. Calderon*, 197  
11 F.3d 1253, 1255 n.4 (9th Cir. 1999).

12 Motions for reconsideration are “disfavored,” *Motorola v. J.B. Rogers Mechanical*  
13 *Contractors, Inc.*, 215 F.R.D. 581, 582 (D. Ariz. 2003), and ““should not be granted absent  
14 highly unusual circumstances.”” *Blackmon v. New Albertson’s, Inc.*, 2012 WL 3613956, at \*2  
15 (D. Nev., Aug. 21, 2012) (quoting *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th  
16 Cir. 1999)). Such a motion requires a “significant showing of entitlement to relief,” *Brown v.*  
17 *Adidas USA, Inc.*, 205 F.3d 1350, at \*1 (9th Cir. 1999), and must set forth facts or law “of a  
18 strongly convincing nature to persuade the district court to reverse its prior decision.” *Frasure v.*  
19 *U.S.*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). DETR’s Motion to Reconsider does not make  
20 the requisite showing.

21 **A. DETR is Rearguing Points the Court Already Considered and Rejected**

22 “Only in rare instances in which new issues of fact or law are raised supporting a ruling  
23 contrary to the ruling already reached should a motion for rehearing be granted.” *Moore v. City*  
24 *of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Courts need not even entertain  
25 motions to reconsider points that have already been considered and rejected. *Id.* at 404-05, 551  
26 P.2d at 245-46. Thus, reconsideration may not “be used to ask the Court to rethink what it has  
27 already thought,” *Motorola*, 215 F.R.D. at 582, as such arguments “should be directed to the  
28 court of appeals.” *Sullivan v. Faras-RLS Grp., Ltd.*, 795 F. Supp. 305, 309 (D. Ariz. 1992).

1 Stated simply, a motion for reconsideration "is not a vehicle permitting the unsuccessful party to  
2 reiterate arguments previously presented," *Blackmon*, 2012 WL 3613956, at \*2, and is "not a  
3 substitute for appeal." *Villarta v. Swarthout*, 2012 WL 1622895, at \*1 (N.D. Cal. May 8, 2012).<sup>3</sup>

4 Here, DETR's Motion to Reconsider by and large rehashes its earlier arguments. As a  
5 case in point, in the introduction to its Motion, DETR "incorporates . . . its previously-filed"  
6 briefs in this case. *See* Motion to Reconsider at 3. DETR further "incorporates" the "facts" and  
7 exhibits from its Answer to the Petition, "for reiteration purposes." *See id.* at 3-7. Then, in the  
8 Argument section of its Motion, DETR reasserts its tired arguments that: (1) mandamus relief is  
9 supposedly not available due to the Parties' administrative case, (2) the public records at issue  
10 are allegedly confidential, and (3) and the NPRA supposedly does not apply after the start of  
11 litigation. *See id.* at 8-15. DETR already raised these arguments, *see* Answer to Petition at 4-11,  
12 The Love Ranch already replied to these arguments, *see* Reply in Support of Petition at 2-10, and  
13 the Court already analyzed and rejected these arguments. *See* Order Granting Petition at 6-13.

14 In the interests of judicial economy, the Court will not attempt to rehash each of its  
15 findings on these issues. The following is a brief recap of the salient determinations from the  
16 Court's Order regarding the issues DETR attempts to reargue:

- 17 • Under the plain language of NRS 239.011(1), The Love Ranch has a  
18 statutory right to bring this action. Nowhere does this statute exempt  
19 public records that may also be relevant in administrative  
20 proceedings under the unemployment compensation statutory  
21 scheme set forth in NRS Chapter 612. Moreover, the Nevada  
22 Supreme Court has held that mandamus is the appropriate procedural  
23 vehicle to compel production of public records. The remedial  
24 process The Love Ranch is entitled to pursue to enforce its rights  
25 under NRS 239.011(1) is not dictated by DETR's re-characterization  
26 of the parties' dispute. If credited, DETR's position would mean  
27 that a party to an administrative dispute has less rights under the  
28 NPRA than the general public. This would be an absurd result and is  
unsupported by any caselaw or statutory language. *See* Order  
Granting Petition at 7-8.

<sup>3</sup>Other courts are in accord. *See, e.g., Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001) ("A party cannot have relief under this rule merely because he or she is unhappy with the judgment."); *Villarta*, 2012 WL 1622895, at \*1 ("mere dissatisfaction with the court's order or belief that the court is wrong in its decision are not adequate grounds for relief").

- Contrary to DETR's suggestion, the Nevada Supreme Court has never held that the NPRA does not apply after the commencement of litigation or during the pendency of an administrative proceeding. If anything, a governmental entity's obligations under the NPRA increase after the start of litigation. *See id.* at 12.
- The confidentiality statutes and regulations cited by DETR narrowly, and conditionally, exempt information from the NPRA only to the extent that disclosure of such information would reveal the identity of a claimant for unemployment benefits or his or her employer. Further, any supposedly confidential portions of the requested records simply triggered DETR's duty to make redactions. *See id.* at 14-16.

In sum, the Court already considered and rejected the central theories DETR reasserts in its Motion to Reconsider. Absent from DETR's Motion for Reconsideration is any acknowledgement of the Court's analysis of these issues, let alone any showing of manifest error. In sum, DETR's Motion to Reconsider reargues issues the Parties already briefed, and the Court already decided. While DETR wishes to relitigate these issues, neither this, nor its mere disappointment with the Court's Order Granting the Petition, fall within the narrow grounds for reconsideration. DETR's arguments should instead be directed to the Nevada Supreme Court or the Nevada Court of Appeals. DETR has tacitly admitted this, having already attempted to file an appeal (albeit prematurely). Courts have routinely denied motions for reconsideration under similar circumstances.<sup>4</sup>

#### **B. The New Arguments in DETR's Motion Fail**

Toward the end of its Motion to Reconsider, DETR asserts two new arguments. *See* Motion at 13-14. In particular, DETR argues that: (1) the Court's Order Granting the Petition "exceeded lawful authority and due process" by relying "upon issues newly raised in [The Love Ranch's] Reply, including waiver of privileges" and (2) confidentiality is "established by law

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<sup>4</sup>*See, e.g., Louisiana-Pacific Corp. v. NLRB*, 52 F.3d 252, 255 (9th Cir. 1995) ("Since [the] Rule 60(b) motion merely reiterated the arguments that [the moving party] had already presented to the district court, the motion was properly denied."); *Fuller v. M.G. Jewell*, 950 F.2d 1437 (9th Cir. 1991) (whether construed as an FRCP 59(e) or FRCP 60(b) motion, the district court did not abuse its discretion in denying motion for reconsideration that "presented no new arguments which the court had not already considered and rejected."); *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985) (district court did not abuse its discretion in denying motion for reconsideration under FRCP 59(e) and FRCP 60(b) that "presented no new arguments that had not already been raised").



1 and cannot be waived.” *See id.* DETR’s new arguments fail for several reasons.

2 **1. DETR’s new arguments are not cogently presented or supported**

3 It is well-established that courts need not entertain arguments that are “not supported by  
4 cogent argument and citation to relevant authority.” *Berkson v. LePome*, 126 Nev. 492, 501, 245  
5 P.3d 560, 566 (2010).<sup>5</sup> Here, DETR has not provided any cogent argument, much less relevant  
6 legal authority, in support of its new arguments. Nor could it. If anything, due process shows  
7 that the Court appropriately granted The Love Ranch leave, as expressly authorized under NRS  
8 34.260, to reply to the host of new arguments DETR raised for the first time in its Answer to the  
9 Petition.

10 Nor has DETR cogently articulated or supported its new argument that confidentiality  
11 statutes cannot be waived. Instead, the argument is undeveloped, consisting, in its entirety, of a  
12 single sentence. And, while DETR cites NRS 612.265 and 20 C.F.R. §§ 603.4 and 603.7,  
13 nothing in these statutes provides they are non-waivable. It is not the obligation of this Court, or  
14 The Love Ranch, to conduct DETR’s research for it.

15 **2. DETR could have raised its new arguments earlier**

16 A motion for reconsideration “may not be used to raise arguments or present evidence for  
17 the first time when they could reasonably have been raised earlier in the litigation.” *Kona*  
18 *Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Such motions “are not  
19 the place for parties to make new arguments not raised in their original briefs,” *Motorola*, 215  
20 F.R.D. at 582, or to “plug[] the gaps of a lost motion with additional matters.” *Allied Mar., Inc.*  
21 *v. Rice Corp.*, 361 F. Supp. 2d 148, 149 (S.D.N.Y. 2004). “Justice is not served by permitting a  
22 litigant to drop the ball . . . and seek to have it resurrected—at the expense of the other parties  
23 and the tax-paying public.” 389 *Orange Street*, 179 F.3d at 665. Thus, “[i]f a party simply  
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25 <sup>5</sup>*See also Sandoval v. LVMPD*, 854 F. Supp. 2d 860, 879 (D. Nev. 2012) (rejecting party’s argument where  
26 they “failed to cite any legal authority to justify” their position); *Forsythe v. Brown*, 2011 WL 5190673, at \*8 (D.  
27 Nev. Oct. 27, 2011) (rejecting party’s argument where he “failed to cite any authority” for his position); *Volcano*  
28 *Developers, LLC v. Bonneville Mortg. Co.*, 2011 WL 3651385, at \*2 (D. Nev. Aug. 18, 2011) (a party “cannot  
prevail without providing some legal authority that supports their theory of the case.”); *Yates v. Washoe County*  
*School Dist.*, 2008 WL 4106816, at \*1 n.1 (D. Nev., Aug. 28, 2008) (“It is not the role of this court to scour the  
record in search of evidence to support a party’s position”).



1 inadvertently failed to raise the arguments earlier, the arguments are deemed waived.”  
2 *Blackmon*, 2012 WL 3613956, at \*2. The court does not abuse its discretion by declining to  
3 entertain issues raised for the first time on reconsideration. *Id.*

4 These principles foreclose DETR’s new arguments. DETR had ample opportunity to  
5 argue, as it now does, that it “waived nothing.”<sup>6</sup> From the outset, The Love Ranch specifically  
6 argued that DETR waived any confidentiality provisions or privileges that it did not timely raise.  
7 Despite this, DETR based its blanket denial of the public records request solely on two grounds,  
8 and then appears to have made a tactical decision to try to sidestep the issue of waiver in its  
9 Answer to the Petition. The Court rejects DETR’s attempt to reverse course at the eleventh hour  
10 of this dispute.

11 **3. DETR’s new arguments are unavailing**

12 Even if DETR had cogently presented and timely raised its new arguments, they would  
13 still fail for several reasons.

14 **(a) DETR’s arguments regarding The Love Ranch’s Reply fail**

15 NRS 34.260 expressly permits the Court to grant leave to file a reply in support of a  
16 petition for a writ of mandamus. And, the Nevada Supreme Court has specifically held that  
17 granting leave to file a reply is appropriate under similar circumstances involved here. *See*  
18 *Kieren v. Feil*, 2016 WL 4082463, at \*1 n.1, Case No. 68341 (Nev., July 28, 2016) (unpublished  
19 disposition) (leave to allow a reply should be given where the agency answering the petition  
20 “reframed the claim raised in the petition to exclude it from the ambit of mandamus relief.”).

21 Moreover, contrary to DETR’s claim, The Love Ranch did not raise the issue of waiver  
22 for the first time in its Reply in support of its Petition. In fact, The Love Ranch clearly explained  
23 in its public records request that if DETR denied access to the requested records, it needed to  
24 identify any records withheld, along with citation to legal authority. *See* Petition at Ex. 2 (“in  
25

26 <sup>6</sup>The same holds true for the new exhibits and affidavit filed by DETR, which are irrelevant under the  
27 NPRA, and most of which concern matters that predated DETR’s Answer and were available to it throughout this  
28 dispute. *See School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (“The  
overwhelming weight of authority is that the failure to file documents in an original motion or opposition does not  
turn the late filed documents into ‘newly discovered evidence.’”).

1 responding to this request, DETR should redact portions of records that would reveal the identity  
2 of another employing unit or person, and provide an appropriate log regarding such redactions or  
3 any other records withheld, along with citation to the specific statute or legal authority that  
4 makes the public book or record, or a part thereof, confidential.”). Additionally, in The Love  
5 Ranch’s Petition, it expressly raised the issue of waiver. See Petition at 7 (“By failing to assert  
6 any arguments based upon confidentiality in its Response as required under NRS 239.0107(1)(d)  
7 and well-established NPRA jurisprudence, DETR has waived any such arguments.”). Thus,  
8 despite being specifically alerted to the issue of waiver, DETR appears to have strategically  
9 avoided it.

10 *(b) DETR’s arguments regarding waiver are unavailing*

11 The apparent reason DETR sidestepped the issue of waiver is it is a battle it cannot win.  
12 Even today, DETR does not seriously deny that its blanket denial of the public records request  
13 was in violation of NPRA. Instead, DETR claimed, for the first time in its Motion to  
14 Reconsider, and without citing any relevant authority, that confidentiality provisions are  
15 “established by law and cannot be waived.” This argument is meritless.

16 It is presumed that laws do “not modify common law unless such intent is explicitly  
17 stated.” *Branch Banking v. Windhaven & Tollway, LLC*, 131 Nev. \_\_\_, \_\_\_, 347 P.3d 1038,  
18 1040 (2015). Under the common law, “[w]aiver occurs where a party knows of an existing right  
19 and either actually intends to relinquish the right or exhibits conduct so inconsistent with an  
20 intent to enforce the right as to induce a reasonable belief that the right has been relinquished.”  
21 *Hudson v. Horseshoe Club Operating Co.*, 112 Nev. 446, 457, 916 P.2d 786, 792 (1996).

22 Crucially, none of the statutory confidentiality provisions DETR has invoked state they  
23 are non-waivable. This is significant because when the Legislature intends to make a provision  
24 non-waivable, it knows how to do so.<sup>7</sup> As such, the omission of any non-waiver language in the

25 \_\_\_\_\_  
26 <sup>7</sup>See, e.g., NRS 40.453(1) (providing that the rights of borrowers and guarantors under Nevada’s deficiency  
27 statutes are not waivable by way of home purchase agreements); NRS 87A.195 (setting forth “nonwaivable  
28 provisions” to Nevada’s Uniform Partnership Act); NRS 612.700(1) (“Any agreement by a person to waive, release  
or commute his or her rights to benefits or any other rights under this chapter is void”); see also Nev. Const. Art 15,  
Sec. 16(B) (providing that the provisions of Nevada’s Minimum Wage Amendment generally “may not be waived  
by agreement”).

1 confidentiality statutes cited by DETR must be presumed to have been intentional. *See Boucher*  
2 *v. Shaw*, 124 Nev. 1164, 1169-70, 196 P.3d 959, 963 (2008) (the mention of one thing implies  
3 the exclusion of another, and if the Legislature intends to deviate from the common law, it must  
4 do so explicitly). Thus, the statutory confidentiality provisions cited by DETR are waivable.

5 This result is not only consistent with ordinary canons of statutory construction, but it is  
6 compelled by the plain language of the NPRA. Under NRS 239.0107(1)(d):

7 If the governmental entity must deny the person's request  
8 because the public book or record, or a part thereof, is confidential,  
9 provide to the person, in writing:

10 (1) Notice of that fact; and

11 (2) A citation to the specific statute or other legal  
authority that makes the public book or record, or a part thereof,  
confidential.

12 (emphasis added).

13 Thus, as the Nevada Supreme Court observed in *Reno Newspapers, Inc. v. Gibbons*, the  
14 agency withholding records has a legal obligation, even prior to the initiation of an NPRA  
15 lawsuit, to provide citation to legal authority "that justifies nondisclosure." 127 Nev. 623, 631  
16 266 P.3d 623, 629 (2011). There, the State's "blanket denial" of a newspaper's pre-litigation  
17 NPRA request was improper where it "provided no explanation whatsoever as to why the cases it  
18 cited actually supported its claim of confidentiality or were anything other than superfluous." *Id.*  
19 Additionally, the Court explained, "[w]e cannot conclude that merely pinning a string of  
20 citations to a boilerplate declaration of confidentiality satisfies the State's prelitigation obligation  
21 under NRS 239.0107(1)(d)(2) to cite to 'specific' authority 'that makes the public book or  
22 record, or a part thereof, confidential.'" *Id.*

23 Here, DETR did even less than the State did in *Gibbons*. In its blanket denial of the  
24 public records request, DETR failed to provide citation to legal authority that justifies non-  
25 disclosure. DETR did not even assert that the records, or any portions thereof, are confidential  
26 or privileged in any way. Instead, DETR based its denial on only two grounds, both of which  
27 DETR then effectively abandoned in its Answer. In short, DETR issued a blanket denial of the  
28 public records request first, and created justifications later. DETR's tactics do not comport with

1 the NPRA.

2       Permitting DETR's tactics would not only be at odds with the plain language of NRS  
3 239.0107(d)(1), but it would undermine the purpose and overarching provisions of the NPRA.  
4 The Legislature has declared that the goal of the NPRA is to foster democratic principles and  
5 governmental accountability and transparency by ensuring that records are broadly accessible.  
6 See NRS 239.001(1). Consistent with its purpose, the provisions of the NPRA must be liberally  
7 construed to maximize the public's right of access. See NRS 239.001(1)-(2). In contrast, "any  
8 limitations or restrictions on the public's right of access must be narrowly construed." *Gibbons*,  
9 127 Nev. at 878, 266 P.3d at 626. In short, the provisions of the NPRA "place an unmistakable  
10 emphasis on disclosure," impose the burden on "the state entity to prove that a requested record  
11 is confidential," *Id.* at 882, 266 P.3d at 629, and establishes a "fundamental right" of citizens to  
12 access public records. *DR Partners v. Board of County Commissioners of Clark County*, 116  
13 Nev. 616, 621, 6 P.3d 465, 468 (2000).

14       Thus, the most natural and appropriate remedy for an agency's failure to comply with  
15 NRS 239.0107(d)(1) is waiver of any grounds the agency failed to raise in its denial of a public  
16 records request.<sup>8</sup> Further, this is the only effective remedy. Without the risk of waiver, the  
17 agency could always issue a blanket denial and force the requesting party to file suit before  
18 providing a meaningful explanation for denying a public records request. Indeed, this is  
19 precisely what DETR attempted to do here. Suffice it to say, this type of cat and mouse game is  
20 antithetical to the NPRA, which emphasizes full and prompt disclosure of public records.  
21 DETR's new argument regarding waiver is therefore rejected.<sup>9</sup>

22 ///

23  
24 <sup>8</sup>Moreover, other jurisdictions with analogous public records statutes have held that statutory exemptions  
25 can be waived. See *County of Santa Clara v. Superior Court*, 89 Cal. Rptr. 3d 374, 389 (Ct. App. 2009) (observing  
26 that "[e]xemptions can be waived" under the California Public Records Act); *Dallas Area Rapid Transit v. Dallas*  
*Morning News*, 4 S.W.3d 469, 474 (Tex. Ct. App. 1999) (agency's failure to timely request an attorney general  
opinion regarding an exception to disclosure in connection with its partial denial of a public records request  
constituted a waiver of the exception under the Texas Open Records Act).

27 <sup>9</sup>DETR's arguments regarding waiver fail for the additional reason that the Court found, in the alternative,  
28 that DETR had failed to meet its burden to establish that the requested records were privileged or confidential. See  
Order Granting Petition at 13-20.

1 **IV. CONCLUSION**

2 Based upon the foregoing, the Court hereby LIFTS the stay entered on March 13, 2018,  
3 and DENIES the Motion to Reconsider.

4 DATED this 11<sup>th</sup> day of July, 2018.

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7 DISTRICT COURT JUDGE

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Sydney Wells  
Law Clerk, Dept. 1

# ORIGINAL

## DISTRICT COURT CIVIL COVER SHEET

Carson City County, Nevada

Case No. 170C002221B  
(Assigned by Clerk's Office)

REC'D & FILED

2017 OCT 26 PM 4:27

### I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):  SIERRA NATIONAL CORPORATION, dba THE LOVE RANCH,  Attorney (name/address/phone):  Anthony L. Hall, Esq., Ricardo N. Cordova, Esq., Holland & Hart 5441 Kietzke Lane, Second Floor, Reno, NV 89511 Telephone: 775-327-3000	Defendant(s) (name/address/phone): SUSAN MERRIWETHER CLERK NEVADA DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION - EMPLOYMENT SECURITY DIVISION,  Attorney (name/address/phone):  Laurie Trotter, Esq. -NDETR 1340 South Curry Street, Carson City, NV 89703 Telephone: 775-684-6317
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### II. Nature of Controversy (please select the one most applicable filing type below)


#### Civil Case Filing Types

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Foreclosure Mediation Assistance <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate (select case type and estate value)</b> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-20,000 <input type="checkbox"/> \$2,500 or less	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input checked="" type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

October 26, 2017

Date

  
Signature of initiating party or representative

See other side for family-related case filings.