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

APPELLANT'S APPENDIX

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1 its rights under the plain language of NRS 239.011(1) is not dictated by DETR's re-
2 characterization of the parties' dispute. And, if credited, DETR's position would mean that a
3 party to an administrative dispute has less rights under the NPRA than the general public. This
4 would be an absurd result and is unsupported by any caselaw or statutory language. In sum,
5 DETR's contention that mandamus relief is not available here is unavailing.

6 **C. DETR's Argument Regarding Exhaustion Fails**

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

8 Another new procedural argument raised in DETR's Answer is that The Love Ranch
9 supposedly failed to exhaust its administrative remedies. *See* Answer at 6-7. This argument
10 likewise fails. As noted, NRS 239.011(1) expressly declares that a party who has been denied
11 access to public records may proceed with an action before the district court. The Love Ranch is
12 indisputably a party who has been denied access to public records, and thus, under NRS
13 239.011(1), it may proceed with this action. The NPRA does not impose any obligation to
14 exhaust supposedly available administrative remedies. Further, any of the general requirements
15 in NRS Chapter 613, including exhaustion, are inapplicable because this action is specifically
16 governed by the NPRA. *See City of Sparks v. Reno Newspapers*, 399 P.3d at 355. Stated
17 simply, the only pre-requisites to an action under the NPRA is that a party make a request that is
18 denied. Such pre-requisites have indisputably been fulfilled here.

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

20 Further, there are exceptions to statutory schemes that do have exhaustion requirements.³
21 First, "[t]he exhaustion doctrine will not deprive the court of jurisdiction 'where the issues relate
22 solely to the interpretation or constitutionality of a statute.'" *State, Nevada Dep't of Taxation v.*
23 *Scotsman Mfg. Co.*, 849 P.2d 317, 319 (Nev. 1993) (quoting *State v. Glusman*, 651 P.2d 639
24 (Nev. 1982)). Second, "where resort to administrative procedures would be futile, exhaustion of
25 administrative remedies is not required." *Englemann v. Westergard*, 647 P.2d 385, 388-89 (Nev.
26 1982).

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

1 This dispute falls squarely within the exceptions to the exhaustion doctrine. To begin, the
2 Petition raises purely legal questions regarding the interpretation of the NPRA and other statutes.
3 *See Blackjack Bonding*, 343 P.3d at 612 (the interpretation of caselaw and the statutory language
4 of the NPRA are questions of law, subject to de novo review). In addition, exhaustion of the
5 administrative procedures under NRS Chapter 612 would have been futile. In fact, The Love
6 Ranch requested the Appeals Referee to issue an administrative subpoena compelling DETR to
7 produce records concerning, among other things, its previous audits and determinations
8 regarding The Love Ranch, and other brothels. *See* June 6, 2017, Letter Regarding Subpoena to
9 Compel the Production of Records, attached as “**Exhibit B.**” It is undisputed that the Appeals
10 Referee denied the request. Thus, although DETR disingenuously suggests that The Love Ranch
11 can seek to discover such records via the administrative process, it has already done so, and its
12 effect is futile. Thus, DETR’s argument regarding exhaustion misses its mark.

13 **D. DETR’s Accusations of Bad Faith and Improper Motives are Baseless**

14 Next, DETR accuses The Love Ranch of being “less than candid with the Court” in its
15 Petition. *See* Answer at 7. In support of this accusation, DETR claims it “already provided” the
16 “audit file” regarding its Determination, and says The Love Ranch “omitted the material fact that
17 [DETR] has disclosed the information relevant to [The Love Ranch’s] appeal.” *See id.* at 8.
18 DETR’s accusations do not withstand scrutiny.

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

20 The “audit file” and the other materials DETR says are “relevant to [The Love Ranch’s]
21 appeal,” do not satisfy the Public Records Request. Indeed, these materials are non-responsive,
22 or do not even begin to scratch the surface of the thirteen (13) categories of public records
23 requested by The Love Ranch.

24 To summarize those categories, The Love Ranch requested: (1) records obtained by
25 DETR in connection DETR’s audit and determination concerning The Love Ranch, (2) records
26 DETR prepared in connection with its audit and determination, (3) communications between
27 DETR’s investigators/auditors and other DETR employees regarding its audit, (4) documents
28 concerning DETR’s initiation and implementation of its audit, (5) records concerning the

1 methodology used by DETR in selecting The Love Ranch to be audited, (6) records of
2 conversations or interviews with any witnesses any other evidence obtained by DETR in
3 connection with any of its prior audits and determinations concerning The Love Ranch, (7)
4 records prepared by DETR in connection with its prior audits and determinations concerning The
5 Love Ranch, (8) communications between DETR and its employees concerning The Love
6 Ranch's Appeal of DETR's audit and determination, (9) records of conversations or interviews
7 with any witnesses and other evidence obtained by DETR in connection with any of its audits
8 and determinations concerning other brothels, (10) records prepared by DETR in connection
9 with its audits and determinations concerning other brothels, (11) records of communications
10 between DETR's investigators/auditors and other DETR employees regarding the preparation for
11 its audits of other brothels, (12) records concerning DETR's initiation and implementation of its
12 audits of other brothels, (13) records concerning the methodology used by DETR in selecting
13 any other brothels to be audited. *See* Petition at Ex. 2.

14 DETR does not, and cannot, even attempt to argue that the documents it produced in the
15 context of the Parties' administrative dispute satisfy each of these specific categories. Instead,
16 DETR lumps all of these categories together, and then announces it already provided all of the
17 requested records. This is simply not the case, as is easily seen from an examination of the
18 categories spelled out above.

19 *If* DETR actually believed it "already provided" the requested records, then there would
20 have been no reason for it to deny the Request. DETR could have simply responded by
21 identifying the supposedly responsive materials. Instead, DETR issued a blanket denial,
22 claiming that the Request did not "sufficiently identify any specific records" and that DETR "is
23 not required to create records to satisfy your request." *See* Petition at Ex. 3. *Nowhere in*
24 *DETR's Response did it raise what it now calls the "material fact" that it supposedly "already*
25 *provided" the requested records.*⁴

26
27 ⁴This is particularly egregious given that DETR now uses its *own* omission to attempt to defame the
28 undersigned by claiming that the failure to "anticipate" this newly-raised argument, and pre-emptively raise it for
DETR (i.e., to do DETR's job for it), violated Rule 11. *See* Opposition to Motion for Leave at 4.

1 DETR has concocted a shell game to draw attention away from its blatant violation of the
2 NPRA. In effect, DETR is attempting to grant itself an exception to the NPRA by pointing to
3 materials it voluntarily produced in the Parties' administrative dispute (i.e., the materials DETR
4 believes are beneficial to its own case). If this is permitted, the NPRA is a dead-letter.
5 Fortunately, it is for the courts, not DETR, to decide whether DETR has complied with the
6 NPRA.

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

8 DETR's accusations are not only unfounded, but they are irrelevant. The Nevada
9 Supreme Court's opinion in *Las Vegas Metropolitan Police Department v. Blackjack Bonding,*
10 *Inc.* is instructive on this point. 343 P.3d 608 (Nev. 2015). There, Blackjack Bonding, a private
11 bond company, made an NPRA request for records of telephones used by prison inmates. *Id.* at
12 610-11. The police department that administered the prison denied the request, arguing, among
13 other things, that it "had no duty to fulfill Blackjack's records request because Blackjack
14 purportedly acted to serve a business interest." *Id.* at 611 n.2. The court found that this
15 argument was "without merit," explaining, "*the NPRA does not provide that a requester's*
16 *motive is relevant to a government entity's duty to disclose public records.*" *Id.* (emphasis
17 added).

18 As *Blackjack Bonding* makes clear, DETR's accusations of supposed bad faith and
19 improper motives are irrelevant. This is simply a matter of common sense. The Love Ranch
20 does not have any fewer rights under the NPRA simply because it was targeted for an audit,
21 assessed a substantial tax liability, and forced into administrative proceedings by bureaucrats at
22 DETR. In sum, DETR's accusations of bad faith and improper motives are meritless and
23 irrelevant.

24 **E. DETR Misconstrues the Nevada Supreme Court's NPRA Jurisprudence**

25 Referencing *Reno Newspapers v. Gibbons*, DETR next argues "relief under [the NPRA]
26 only applies to the pre-litigation context." See Answer at 8-9. DETR contends that *Gibbons*
27 supposedly established that the NPRA does not apply during the pendency of an administrative
28 proceeding. See *id.* DETR badly misreads *Gibbons*.

1 In *Gibbons*, the Nevada Supreme Court held if a state entity denies a public records
2 request prior to the initiation of an NPRA lawsuit, “it must provide the requesting party with
3 notice and citation to legal authority that justifies non-disclosure.” 266 P.3d at 631 (citing NRS
4 239.0107(1)(d)). There, the State’s “blanket denial” of a newspaper’s pre-litigation NPRA
5 request was improper where it “provided no explanation whatsoever as to why the cases it cited
6 actually supported its claim of confidentiality or were anything other than superfluous.” *Id.*
7 Additionally, the Court explained, “[w]e cannot conclude that merely pinning a string of
8 citations to a boilerplate declaration of confidentiality satisfies the State’s prelitigation obligation
9 under NRS 239.0107(1)(d)(2) to cite to ‘specific’ authority ‘that makes the public book or
10 record, or a part thereof, confidential.’” *Id.*

11 The court further held that “after the commencement of an NPRA lawsuit, the requesting
12 party is generally entitled to a log.” *Id.* at 629. As the court reasoned, “in view of the emphasis
13 placed on disclosure and the importance of testing claims of confidentiality in an adversarial
14 setting, we agree . . . that ‘it is anomalous’ and inequitable to deny the requesting party basic
15 information about the withheld records, thereby relegating it to a nebulous position where it is
16 powerless to contest a claim of confidentiality.” *Id.* Accordingly, “in most cases, in order to
17 preserve a fair adversarial environment, this log should contain, at a minimum, a general factual
18 description of each record withheld and a specific explanation for nondisclosure.” *Id.* Because
19 the State failed to provide such a log to the newspaper, its “response was, in a word, deficient.”
20 *Id.* at 630. Accordingly, the Court reversed the district court’s denial of the newspaper’s writ
21 petition, and remanded the case with instructions to direct the State to provide the newspaper
22 with the requisite log. *Id.*

23 ***1. DETR Failed to Meet its Pre-litigation Obligations under the NPRA***

24 The *Gibbons* court did not, contrary to DETR’s bizarre suggestion, hold that the NPRA
25 does not apply after the commencement of litigation or during the pendency of an administrative
26 proceeding. If anything, a governmental entity’s obligations under the NPRA *increase* after the
27 start of litigation. *Gibbons* underscores that DETR has fallen woefully short of its obligations
28 under the NPRA. In its blanket denial of The Love Ranch’s Public Records Request, DETR

1 failed to provide citation to legal authority that justifies non-disclosure. DETR did not even
2 assert that the records, or any portions thereof, are confidential or privileged in any way. Instead,
3 as noted, DETR based its denial on only two grounds: (1) the Request allegedly did not
4 sufficiently identify specific records; and (2) DETR is not required to create Records to satisfy
5 the request.

6 Both of these grounds are superfluous and pretextual, in contravention of *Gibbons* and
7 NRS 239.0107(1)(d)(2). To begin, NAC 239.865 authorizes an agency responding to a public
8 records request to ask for additional information or clarification from the party that made the
9 request. Despite this, and despite a specific invitation in the Request for DETR to contact The
10 Love Ranch with any questions, DETR did not ask for any additional information or
11 clarification. This belies DETR's claim that the Request is not sufficiently detailed or that it
12 requested the creation of records, and shows that DETR does not actually believe its own
13 purported justifications for its denial of the request.

14 DETR does not deny any of this. In fact, in its Answer, DETR makes an argument about
15 the detail of the Request only as an afterthought, lumping that contention together with its new
16 arguments regarding privileges. And, DETR has essentially abandoned its argument that the
17 Request supposedly asked for the creation of records.⁵ Accordingly, DETR failed to comply
18 with its pre-litigation obligations under the NPRA.

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

20 In addition, DETR has failed to satisfy its obligations under the NPRA that were
21 triggered after the commencement of this lawsuit. In particular, DETR has failed to provide a
22 log containing, at a minimum, a general factual description of each record withheld and a
23 specific explanation for non-disclosure, as required under *Gibbons*. Considered alone or
24 cumulatively, DETR's inexplicable failures to comply with the NPRA justify granting the
25 Petition in its entirety. At a minimum, in order to preserve a fair adversarial environment, this

26
27 ⁵In its 17-page Answer, DETR only provides a one-sentence argument on this issue, stating, "to the extent that
28 the information requested by SNC is not already included in a public record, ESD is not required to create a record
to satisfy SNC's request." See Answer at 13. Contrary to DETR's suggestion, The Love Ranch never requested
DETR to create any records.

1 Court should compel DETR to provide the requisite log to The Love Ranch.

2 **F. DETR's Assertions of Confidentiality are Meritless**

3 **1. DETR Ignores the Applicable NPRA Framework**

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

12 In reviewing public records requests, Nevada courts "begin with the *presumption* that *all*
13 government-generated records are open to disclosure." *Id.* at 628 (emphasis added). "[O]pen
14 records are the rule,' and any nondisclosure of records is the exception." *Id.* at 627 (quoting
15 *Haley*, 234 P.3d at 926). Indeed, "the provisions of the NPRA place an unmistakable emphasis
16 on disclosure." *Id.* at 629. "In harmony with the overarching purposes of the NPRA, the burden
17 of proof is imposed on the state entity *to prove* that a requested record is confidential." *Id.*
18 (emphasis added). Absent a statutory provision that "*expressly and unequivocally*" declares a
19 record to be confidential, any limitations on disclosure may only be based upon a broad
20 balancing of the interests involved. *Haley*, 234 P.3d at 924 (emphasis added). Even if portions
21 of a public record may be properly deemed confidential, this does not mean that the entire
22 document may be withheld. *See id.* at 927-28. Instead, the state entity has a duty to redact any
23 confidential portions. *Id.* (citing NRS 239.010(3)).

24 DETR's Answer runs afoul of each of these principles. To begin, as will be shown in a
25 moment, DETR broadly and liberally construes the confidentiality provisions it invokes for the
26 first time in its Answer. At the same time, DETR affords a cramped construction of the NPRA,
27 or simply ignores its provisions altogether. Thus, DETR has turned the applicable rules of
28 construction directly on their head.

1 Elsewhere in its Answer, DETR discusses what it believes “an applicant for a court order
2 must first show” to bring a “successful” NPRA claim, *see* Answer at 7, or to “prevail” on such a
3 claim. *See id.* at 15. In addition, DETR suggests it is entitled to deference, claiming its denial
4 was not “an abuse of discretion.” *Id.* at 11, 15. Tellingly, these arguments are unaccompanied
5 by citation to any relevant authority, because no such authority exists. The law is well-settled
6 that DETR, as the state entity resisting disclosure, bears the burden to overcome the NPRA’s
7 presumption of openness by proving that the requested records are expressly and unequivocally
8 declared confidential by law. DETR’s attempt to shift its burden onto The Love Ranch is at odds
9 with the provisions of the NPRA, and nearly three decades of NPRA jurisprudence. *See* NRS
10 239.001(2)-(3); NRS 239.0113; *Gibbons*, 266 P.3d at 626-28; *Haley*, 234 P.3d at 924-26;
11 *Donrey*, 798 P.2d at 147.

12 **2. DETR’s Reliance on NRS 612.265 is Misplaced**

13 Because DETR refuses to acknowledge the applicable NPRA framework, it has utterly
14 failed to meet its burden to overcome the NPRA’s presumption of openness. DETR first invokes
15 NRS 612.265, claiming the statute broadly makes “*all* information and communications prepared
16 under Nevada’s unemployment chapter confidential and privileged.” *See* Answer at 9 (emphasis
17 added). NRS 612.265 does no such thing.

18 Notwithstanding the selective quotation offered in DETR’s Answer, NRS 612.265
19 provides, in relevant part, as follows:

20 1. Except as otherwise provided in this section and NRS
21 239.0115 and 612.642, information obtained from any employing
22 unit or person pursuant to the administration of this chapter and
23 any determination as to the benefit rights of any person is
24 confidential and may not be disclosed or be open to public
25 inspection *in any manner which would reveal the person’s or*
26 *employing unit’s identity.*

27 2. Any claimant or a legal representative of a claimant is
28 entitled to information from the records of the Division, to the
extent necessary for the proper presentation of the claimant’s claim
in any proceeding pursuant to this chapter. A claimant or an
employing unit is not entitled to information from the records of
the Division for any other purpose.

(Emphasis added).

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

Further, any supposedly confidential portions of the requested records simply triggered DETR's duty to redact such information. *See* NRS 239.010(3); *Haley*, 234 P.3d at 927-28. This is a routine process and could have easily been completed given the narrow scope of confidentiality arguably afforded by NRS 612.265(1). Specifically, the only information which is confidential under NRS 612.265(2) is that "which would reveal the person's or employing unit's identity." And, 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, DETR has failed to demonstrate that NRS 612.265 expressly and unambiguously declares the requested records to be confidential.

3. DETR's Resort to Federal Regulations is Fruitless

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

1 Interpretation. The Department of Labor interprets Section
2 303(a)(1), SSA, to mean that ‘methods of administration’ that are
3 reasonably calculated to insure the full payment of UC when due
4 must include provision for maintaining the confidentiality of any
5 UC information *which reveals the name or any identifying*
6 *particular about any individual or any past or present employer*
7 *or employing unit, or which could foreseeably be combined with*
8 *other publicly available information to reveal any such*
9 *particulars*, and must include provision for barring the disclosure
10 of any such information, except as provided in this part.

11 20 C.F.R. § 603.4(b) (emphasis added).

12 Thus, this regulation, like NRS 612.265, shields only a narrow segment of information
13 *to the extent it reveals the identity of an unemployment claimant or his or her employer.* As
14 noted, The Love Ranch did not request such information, and it expressly informed DETR of
15 this. Further, The Love Ranch specifically requested that if any such information was reflected
16 in the requested records it should be redacted. Rather than what the law required of it, DETR
17 issued a blanket denial of the Request. Thus, DETR has failed to meet its burden to demonstrate
18 that the requested records expressly and unambiguously declared confidential by law.
19 Accordingly, DETR’s assertions of confidentiality should be rejected.⁶

20 **G. DETR’s Arguments about the Specificity of the Request are Spurious**

21 Next, DETR claims the Request did not “identify specific records,” was “exceedingly
22 general in nature,” and was a “fishing expedition” for information “clearly” beyond the scope of
23 the NPRA. *See Answer at 12-13.* DETR further quibbles that the Request “was not contained
24 within DETR’s designated Public Records Form.” *See id.* at 13. DETR’s arguments are
25 spurious.

26 Although DETR lumps all of the categories in the Request together and announces they
27 are too general, The Love Ranch invites the Court to review the actual Request. *See Petition at*
28 *Ex. 2.* As can easily be seen from the Request, The Love Ranch spelled out, in painstaking
detail, the records sought. In fact, the Love Ranch’s description of the requested records is far

⁶DETR relies exclusively on NRS 612.265 and 20 C.F.R. § 603.4, announcing that it need not resort to the
Bradshaw balancing test as a basis for non-disclosure. *See Answer at 10-11.* Accordingly, DETR has failed to
demonstrate that the requested records are expressly and unambiguously declared by law to be confidential, and
waived any other basis, including the *Bradshaw* balancing test, for asserting that the records are confidential.

1 more detailed than public records requests the Nevada Supreme Court has routinely discussed
2 approvingly. *Compare* Petition at Ex. 2 with *Gibbons*, 266 P.3d at 625 and 630 n.3 (approving
3 request for “e-mail communications sent over a six-month time period between Governor
4 Gibbons and ten individuals” and describing the 106 e-mails in dispute as a “relatively limited
5 number”); *Haley*, 234 P.3d at 924 (approving request for “all records ‘detailing the status of any
6 and all [concealed firearms] permits issued by the Washoe County Sheriff’s Office to Gov. Jim
7 Gibbons,’ and all ‘documents detailing action taken by the Washoe County Sheriff’s Office on
8 that permit, including a decision to suspend, revoke, or hold the permit.’”).

9 Notably, NAC 239.865 authorizes an agency responding to a public records request to
10 ask for additional information or clarification from requesting party. Despite this, and despite a
11 specific invitation in the Request for DETR to contact The Love Ranch with any questions, *see*
12 Petition at Ex. 2, DETR does not deny that it failed to request any additional information or
13 clarification. Nor did DETR request any “narrowing” of the Request that it now suggests was
14 necessary. This belies DETR’s claim that the Request is not sufficiently detailed.

15 Finally, DETR’s quibbling over the fact that the Request was not contained on the
16 “designated” DETR form, but was instead detailed in an attachment to the form, is unavailing.
17 On the one hand, DETR claims the Request was too generalized. On the other hand, DETR
18 complains that the Request was not confined to the small space on DETR’s “designated” form,
19 where it would have been impossible to specify the records sought. In short, DETR’s arguments
20 are contradictory. Accordingly, DETR’s claim that the Request was not sufficiently detailed
21 should be rejected.

22 H. DETR’s Belated and Haphazard Invocation of Privileges Fails

23 1. DETR Waived Any Privileges

24 Finally, as yet another afterthought, DETR claims the requested records are privileged.
25 *See* Answer at 13-15. This claim fails for several reasons. To begin, DETR waived its
26 arguments regarding privileges due to its failure to timely raise them in its Response to The Love
27 Ranch’s Public Records Request, as required. *See Gibbons*, 266 P.3d at 629; NRS
28 239.0107(1)(d). In addition, DETR has waived any privileges a second time by failing to supply

1 a privilege log in this litigation at the point when it asserted the privilege. Under the Nevada
2 Rules of Civil Procedure, which are applicable in writ proceedings pursuant to NRS 34.300, a
3 party invoking a privilege must provide a privilege log. In particular,

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

9 See NRCP 26(b)(5).

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

25 Here, DETR has failed to provide any privilege log whatsoever, despite the fact that The
26 Love Ranch specifically requested a log if DETR withheld any of the requested records. Due to
27 this failure, DETR does not, for instance, separately identify any allegedly privileged materials
28 by date or otherwise, making it impossible to verify its claim that it is withholding materials that

1 purportedly predate its audit determination. Nor has DETR provided any summary of the subject
2 matter of the supposedly privileged materials, or the parties to any communications it is
3 withholding, making it impossible to verify its claim that it is withholding attorney-client
4 communications. Thus, by failing to provide a privilege log, DETR has completely failed to
5 support its claims of privilege, and thwarted The Love Ranch and this Court from meaningfully
6 evaluating DETR's assertions of privilege. Therefore, DETR has impliedly waived any of its
7 purported privileges.

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

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

10 Even if not already waived, DETR's eleventh-hour assertion of the deliberative process
11 privilege is unavailing. DETR claims, in astonishingly conclusory fashion, that the deliberative
12 process privilege "clearly" applies because the requested records are "clearly" predecisional and
13 deliberative. *See* Answer at 14. All that DETR offers in support of this claim is its counsel's
14 sweeping assertion that the requested records "involve" its deliberative processes. *See id.*
15 DETR's invocation of the deliberative process privilege is embarrassingly deficient.

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

25 Here, DETR does nothing to demonstrate that the requested records are anything other
26 than purely factual. This is a glaring omission. Nor does DETR attempt to meet its burden to
27 establish the character of the decision, the deliberative process, the role played by the documents
28 in that process. In fact, does DETR even bother to support its assertions with so much as a

1 declaration and, as noted, DETR does not even provide any description of the documents it has
2 withheld. DETR has utterly failed to meet its burden to show that the deliberative process
3 privilege applies.

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

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

15 ***3. The attorney-client privilege does not shield the requested public records***

16 Parroting its conclusory arguments regarding the deliberative process privilege, DETR
17 next claims that the requested records are “clearly” attorney-client privileged. *See Answer at 15.*
18 Once again, DETR’s haphazard invocation of privilege fails.

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

1 lightly created nor expansively construed, for they are in derogation of the search for truth.
2 *Ashokan v. State, Dep't of Ins.*, 856 P.2d 244, 247 (Nev. 1993).

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

11 Here, DETR’s blanket invocation of the attorney-client privilege fails for multiple
12 reasons. To begin, DETR identifies no specific communications or the grounds supporting the
13 privilege as to each communication over which it asserts the privilege. Nor does DETR provide
14 any detail to support its claim that the communications it is apparently withholding were made
15 for the purpose of obtaining legal advice. And, DETR does not provide any evidence, such as a
16 declaration, to support its claim of privilege. Accordingly, DETR has failed to meet its burden to
17 show the requested records are privileged.⁷

18 **4. DETR should have Redacted any Arguably Privileged Records**

19 A careful examination of the (13) categories sought in the Request shows that the vast
20 majority do even remotely implicate any supposed privileges. *See* Petition at Ex. 2. The only
21 categories in the Request that could arguably implicate privileged material are the requests for e-
22 mails and communications by DETR about its audit and determination. It is conceivable that
23 portions of a small number of those communications implicated a privilege, such as emails to
24 and from DETR’s legal counsel, but it was improper for DETR to deny *all* of the requested
25 communications on basis that some portions might, hypothetically, be privileged. Any
26

27 ⁷Also unavailing is DETR’s presumptuous announcement that the Court “must” deny The Love Ranch’s
28 request for attorneys’ fees. *See* Answer at 15-16. As detailed in the Petition, attorney’s fees and costs are expressly
authorized here by the NPRA.

1 privileged portions simply should have been redacted, with an accompanying privilege log
2 describing any redactions, and the remainder of the communications should have been disclosed.

3 **III. CONCLUSION**

4 For the foregoing reasons, the Petition should be granted in its entirety.

5 The undersigned affirms that the foregoing does not contain the social security of any person.

6 DATED this 2nd day of January 2018.

7 
8 
9 Anthony L. Hall, Esq. (SBN 5977)
Ricardo N. Cordova, Esq. (SBN 11942)
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10 *Attorneys for Petitioner*

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EXHIBIT "A"

EXHIBIT "A"

HOLLAND & HART
THE LAW OUT WEST



Anthony L. Hall
Phone (775) 327-3000
Fax (775) 786-6179
ahall@hollandhart.com

June 6, 2017

Via U.S. Mail

Attn: Contributions / Appeal Tribunal
Nevada Department of Employment,
Training and Rehabilitation
Employment Security Division
Field Audit Office
500 East Third St.
Carson City, NV 89713

Re: Sierra National Corporation
Account No. 16379400
Subpoena to Compel the Production of Records

Dear Appeal Tribunal:

As you know, this firm represents Sierra National Corporation, Inc. ("SNC"), dba The Love Ranch, in its appeal of the audit determination issued by the Nevada Department of Employment, Training and Rehabilitation ("DETR"), dated May 12, 2017 (the "audit and May 12, 2017 determination"). Pursuant to NRS 612.270(1)(c), SNC requests that the Appeal Tribunal issue a subpoena to DETR to compel its production of the records set forth below to SNC. These documents should be provided to SNC's counsel, Anthony L. Hall, Esq., Holland & Hart, 5441 Kietzke Lane, Second Floor, Reno, Nevada 89511, within twenty-one (21) days of the date of this request.

General Instructions

DETR should be compelled to produce any and all documents that are in its possession, custody or control, that fit any of the descriptions below. An attorney for SNC will clarify any ambiguity in the following definitions and descriptions upon request.

Definitions

1. "Document" means all forms of tangible expression including, but not limited to, e-mails, notes, letters, memoranda, writings, diaries, calendars, day-planners,

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videotapes, audio tapes, photographs, computer disks, printouts, data on the hard drives of computers, etc.

2. "DETR" specifically includes any individual acting on DETR's behalf, including its auditors, agents, representatives, and employees;

3. "Referencing," "referring to," or "regarding" means, without limitation, constituting, discussing, covering, supporting or contradicting, directly or indirectly in any way.

4. The singular form of a noun or pronoun includes the plural form, and the plural form includes the singular.

5. The conjunctions "and" and "or" should be construed either disjunctively or conjunctively so as to bring within the scope of the subpoena all documents that otherwise might be construed to be outside of its scope.

6. If DETR objects to any request in part, it should be directed to respond to such request fully to the extent that it is not objected to, and set forth specifically the grounds upon which the objection is based.

7. If DETR withholds any document on the basis of privilege, it should be directed to provide the following information: (1) the date the document was prepared or the date it bears; (2) the author of the document; (3) the addressee(s) and recipient(s) of the document; (4) the title and/or subject matter of the document; (5) the source of the document; (6) the identity of persons to whom the document or any portion thereof has already been revealed, and (7) the basis for withholding the document.

Description of Documents Sought

1. Any and all records of all of DETR's audit and May 12, 2017 determination regarding SNC, including notices, correspondence, notes, audio or video recordings or other records of conversations or interviews with any witnesses and any documents or other tangible evidence obtained by NDETR (such as photographs, film, recordings, text messages, and emails), and any other evidence obtained by NDETR in connection with any of its audits and May 12, 2017 determinations regarding SNC.

2. Any and all documents prepared, relied upon, consulted, or reviewed by DETR in connection with its audit and May 12, 2017 determination, including but not limited to, all notes, e-mails and communications regarding the audit, including the decision to conduct the audit, or directing or framing the scope of the audit.

3. Any and all records of all of DETR's prior audits and determinations regarding SNC, including notices, correspondence, notes, audio or video recordings or other



records of conversations or interviews with any witnesses and any documents or other tangible evidence obtained by DETR (such as photographs, film, recordings, text messages, and emails), and any other evidence obtained by DETR in connection with any of the prior audits and determinations regarding SNC.

4. Any and all documents prepared, relied upon, consulted, or reviewed by DETR in connection with its prior audits and determinations regarding SNC, including but not limited to, all notes, e-mails and communications regarding the audits, including the decisions to conduct the audits, or directing or framing the scope of the audits.

5. Any and all records of all of DETR's audits and determinations regarding other brothels, including notices, correspondence, notes, audio or video recordings or other records of conversations or interviews with any witnesses and any documents or other tangible evidence obtained by DETR (such as photographs, film, recordings, text messages, and emails), and any other evidence obtained by DETR in connection with any of the audits and determinations regarding other brothels.

6. Any and all documents prepared, relied upon, consulted, or reviewed by DETR in connection with its audits and determinations regarding other brothels, including but not limited to, all notes, e-mails and communications regarding the audits, including the decisions to conduct the audits, or directing or framing the scope of the audits.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions or need anything further.

Sincerely,

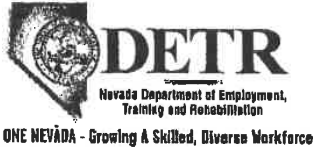
Anthony L. Hall, Esq.
of Holland & Hart LLP

ALH/RNC: mf
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EXHIBIT “B”

EXHIBIT “B”

Employment Security Division
Board of Review
500 East Third Street
Carson City, NV 89713
Tel (775) 687-6820
Fax (775) 684-0466



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<https://www.nvdetr.org>

BOARD OF REVIEW

In the Matter of:

SAGEBRUSH LLC
162 GARNET CIRCLE
CARSON CITY, NV 89706

MEGAN LAPORTE
116 LINEHAN RD
MOUND HOUSE, NV 89706

Date Decision is Mailed: 12/13/2016

Date Board's Decision is Final: 12/27/2016

Final Date for Appeal to Court: 01/09/2017

SSN: REDACTED

Appeal Rights: An appeal to the state district court of the county in which the work was performed must be filed on or before the "Final Date for Appeal to Court," as set forth above (NRS 612.525 and 612.530).

Docket Number: V-16-B-01175 (V-16-A-06842)

REVERSAL OF REFEREE'S DECISION:

Having reviewed the complete record and having considered the arguments of the parties:

The Board of Review reverses the decision of the appeals referee, issued pursuant to Nevada Revised Statutes (NRS) 612.380 (voluntary quit). The referee found that the claimant had good cause to quit her employment. The Board disagrees.

NRS 612.380 provides that a person is ineligible for benefits if she has left her last or next-to-last employment without good cause, or to seek other employment, and until she earns remuneration in covered employment equal to or exceeding her weekly benefit amount in each of ten weeks, or until she secures other employment.

To constitute "good cause" for quitting, a claimant must establish a compelling reason that would cause a reasonably prudent person, genuinely desirous of maintaining her employment, to consider leaving. Having done so, she must act reasonably and in good faith. Her actions must be consistent with a genuine desire to resolve the matter without sacrificing her employment. Further, "good cause" is generally held to mean that the individual had reasons so urgent and compelling that she had no reasonable alternative to quitting, and that she exhausted reasonable recourse prior to leaving her job.

Additionally, the Unemployment Compensation Law is not intended to provide financial support for individuals endeavoring to start a new business. Thus, good cause for voluntarily quitting covered employment is not established, if the reason for quitting is to enter self-employment and become an independent contractor. Furthermore, the Nevada Supreme Court has held that the Board of Review acts as "an independent trier of fact" *Clark County School District v. Bundley*, 122 Nev. 1440, 1444 (2006) (citation omitted).

Docket #V-16-B-01175

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In the present case, the Board finds the following:

On September 2, 2016, the Employment Security Division issued a disqualifying determination, after the claimant filed for unemployment insurance benefits and was found to have voluntarily quit her previous employment, without good cause. The claimant appealed the disqualification, and an evidentiary hearing was conducted. The written decision issued after the evidentiary hearing found the claimant eligible for benefits, reversing the disqualification from the original determination.

However, as an aside, the Board notes that in addition to a dearth of information in the referee's written decision, in an apparent scrivener's error the written decision purports to "affirm" the determination, when the referee's intent was to "reverse" the determination. Nevertheless, as explained, *infra*, the Board finds that the conclusion which was a scrivener's error of the referee, was in fact the correct result.

In the instant case, the claimant was a bartender for the employer. The employer owned other businesses, including a brothel, "Kit Kat Ranch." The prostitutes in the brothel were not employees of the brothel, but rather, were independent contractors, i.e., they were engaged in self-employment. The claimant had decided she wanted to engage in self-employment as a prostitute in the Kit Kat Ranch. On May 25, 2016, the claimant worked her last shift for the employer as a bartender, and she voluntarily quit her bartender position to become an independent contractor in the Kit Kat Ranch brothel.

Based upon the foregoing, the Board finds that the claimant has not established a compelling or urgent reason for choosing to become unemployed, and she did not secure other employment prior to quitting, since she quit to start her own business. Accordingly, good cause for quitting has not been established.

DECISION: The appealed decision, issued under NRS 612.380, is reversed. The claimant is disqualified for benefits from May 22, 2016 onward, until she works in covered employment and earns an amount equal to or greater than the weekly benefit amount in each of ten weeks.

This decision is unanimous.

BOARD OF REVIEW

/s/ KATIE JOHNSON, CHAIRPERSON

Recipient List

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MOUND HOUSE, NV 89706-7036

SAGEBRUSH LLC
162 GARNET CIRCLE
CARSON CITY, NV 89706

1 LAURIE L. TROTTER, ESQ.
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3 Employment Security Division (ESD)
1340 South Curry Street
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Telephone No.: (775) 684-6317
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Attorney for DETR/ESD
6

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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
11 CORPORATION,

CASE NO. 17 OC 00222 1B

DEPT. NO. I

12 Petitioner,

13 vs.

14 NEVADA DEPARTMENT OF
EMPLOYMENT, TRAINING AND
15 REHABILITATION – EMPLOYMENT
SECURITY DIVISION,
16

Respondent.
17

18 **REQUEST FOR SUBMISSION OF PETITION FOR WRIT OF MANDAMUS**

19 **TO: THE CLERK OF THE ABOVE-ENTITLED COURT**

20 It is hereby requested that the Petition for Writ of Mandamus, together with all
21 Briefs, as well as all other pleadings and records on file herein, be submitted to the Court for
22 decision without oral argument.

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AFFIRMATION Pursuant to NRS 239B.030:

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

DATED this 30th day of January, 2018.


LAURIE L. TROTTER, ESQ.
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 REQUEST FOR SUBMISSION OF PETITION FOR WRIT OF
5 MANDAMUS, by placing the same within an envelope which was thereafter sealed and
6 deposited for postage and mailing with the State of Nevada Mail at Carson City, Nevada,
7 addressed for delivery as follows:

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

11 DATED this 30th day of January, 2018.

12 
13 SHERI C. IHLER
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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 ("NPR"), 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 NPR, 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.

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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.

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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
book or record is located for an order:

28 (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.").¹

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 ¹See, 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 requites 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.²
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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28 ²Even 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.

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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
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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
employing unit's identity.

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

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

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

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.³

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-

³DETR 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.L.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 it 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 7th day of February, 2018.

27 
DISTRICT COURT JUDGE

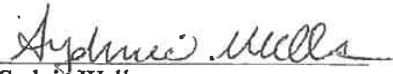
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 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

Laurie Trotter

From: Rico Cordova <RNCordova@hollandhart.com>
Sent: Friday, February 09, 2018 9:58 AM
To: April Bryant
Cc: Laurie Trotter; Anthony Hall; Jennifer L. Smith
Subject: Sierra National Corporation (Docket # V-17-A-04041-TX)
Attachments: 2018-02-07 Order Granting Petition for Writ of Mandamus.pdf

Good Morning:

Pursuant to Referee Larsen's request during this morning's status check in this matter, I am providing the attached order. SNC also requests that the attached be added to the exhibits it may use at the hearing on this matter. Please let me know if there are any questions.

Sincerely,

Ricardo Cordova
Associate Attorney
5441 Kietzke Lane, Second Floor, Reno, Nevada 89511
Main: (775) 327-3000 Fax: (775) 786-6179
Email: RNCordova@hollandhart.com



CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.

WRIT OF MANDAMUS

[4]

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

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

5 Petitioner,

6 vs.

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

11 Respondent.

Case No. 170C002221B

Dept. No. I



12 **WRIT OF MANDAMUS**

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

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

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

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

23 Susan Muether
24 District Clerk of Court
25 by J. Blackwood, deputy

26
27 10649640_4
28

**PETITIONER'S NOTICE OF ENTRY OF ORDER
[Granting Petition for Writ of Mandamus]
RECEIVED BY ESD FEBRUARY 14, 2018**

[5]

HOLLAND & HART LLP
5441 KIETZKE LANE
SECOND FLOOR
RENO, NV 89511

1 Anthony L. Hall, Esq. (SBN 5977)
Ricardo N. Cordova, Esq. (SBN 11942)
2 HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
3 Reno, Nevada 89511
Tel.: 775-327-3000
4 Fax: 775-786-6179
Ahall@hollandhart.com
5 Rncordova@hollandhart.com

6 *Attorneys for Petitioner*

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

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

11 *Petitioner,*

12 *vs.*

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

15 *Respondent.*

Case No. 170C002221B


Dept. No. I

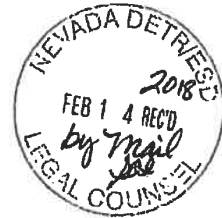
16
17 **PETITIONER'S NOTICE OF ENTRY OF ORDER**

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

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

23 DATED this 13th day of February 2018.

24
25 
26 Anthony L. Hall, Esq. (SBN 5977)
Ricardo N. Cordova, Esq. (SBN 11942)
HOLLAND & HART LLP
27 *Attorneys for Petitioner*
28



HOLLAND & HART LLP
5441 KIETZKE LANE
SECOND FLOOR
RENO, NV 89511

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
5441 KIETZKE LANE
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EXHIBIT INDEX

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>NO. PAGES (W/ COVER)</u>
Exhibit "1"	Order	22

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)
1340 South Curry Street
4 Carson City, NV 89703
Telephone No.: (775) 684-6317
5 Facsimile No.: (775) 684-6344
Attorney for DETR/ESD
6
7

REC'D & FILED
2018 FEB 16 PM 2:07
SUSAN MERRIWETHER
CLERK
BY C. TORRES
DEPUTY

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

DEPT. NO.: I

12 Petitioner,

13 vs.

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

16 Respondent.
17

18 **RESPONDENT'S MOTION TO RECONSIDER**
19 **PURSUANT TO NRCP 59(e) and 60(b)**

20 **COMES NOW**, Respondent, Administrator, State of Nevada, Department of
21 Employment, Training and Rehabilitation, Employment Security Division (ESD), by and

22 ///

23 ///

24 ///

1 through counsel, Laurie L. Trotter, Esq., and submits this Motion to Reconsider pursuant to
2 NRCP 59(e) and NRCP 60(b).

3 DATED this 16th day of February, 2018.

4 
5 LAURIE L. TROTTER, ESQ.
6 Attorney for Respondent ESD
7
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1 I. INTRODUCTION

2 ESD incorporates herein by this reference, its previously-filed "ANSWER TO
3 PETITION FOR WRIT OF MANDAMUS" and its "OPPOSITION TO MOTION FOR LEAVE
4 TO FILE REPLY," together with all Exhibits attached thereto. Petitioner, Sierra National
5 Corporation *dba* The Love Ranch (SNC) filed its Petition for Writ of Mandamus (Petition) in
6 advancement of its ongoing NRS Chapter 612 administrative case (Docket No. V-17-A-04041-
7 TX). Because SNC's Nevada Public Records Act (NPRA) request is inextricably intertwined
8 with the underlying administrative case, judicial review is controlled by NRS 612.525 and
9 612.530. The discovery sought by SNC must be addressed administratively and judicial review
10 is strictly limited -- requiring finality and confinement to the administrative record. Judicial
11 review would be conducted by the Third Judicial District Court. NRS 612.530(1). This Court
12 should reconsider its Order entered herein on February 7, 2018 and, in light of a manifest error at
13 law, mistake, inadvertence, or that it is void (NRCp 59(e) and 60(b)), deny the Petition for Writ
14 of Mandamus.

15 II. FACTS

16 1. ESD incorporates the facts as set forth in its Answer to Petition filed on
17 November 21, 2017. Additionally, and for reiteration purposes, consider the following:

18 2. On May 12, 2017, ESD issued an audit determination in the related and
19 underlying NRS Chapter 612 administrative matter. *See*, Exhibits 1-4 to ESD's Answer to
20 Petition.

21 3. On May 23, 2017, SNC wrote a letter to appeal the audit determination.
22 SNC appealed to the ESD Appeal Tribune (Referee). *See*, Exhibits 7-20 to ESD's Answer to
23 Petition.

24 ///

1 4. On June 6, 2017, SNC wrote a letter to ESD notifying it to preserve
2 evidence. The documentation SNC referred to was similar to what it sought in its NPRA request
3 on October 10, 2017 (Exhibit 2 to the Petition). *See*, Exhibit 30 attached hereto.

4 5. Also on June 6, 2017, SNC wrote to the Referee requesting subpoenas to
5 be issued within 21 days. Again, the documentation sought was similar to that addressed in
6 SNC's NPRA request of October 10, 2017 (Exhibit 2 to the Petition). *See*, Exhibit 31 attached
7 hereto.

8 6. On June 15, 2017, SNC wrote a letter to the Referee in this matter
9 regarding the scheduling of the hearing in the fall of October 2017. SNC mentioned subpoenas
10 to compel the attendance of witnesses and subpoenas to compel the production of certain
11 documents authorized under NRS 612.270(1)(c). *See*, Exhibit 32 attached hereto.

12 7. On September 20, 2017, the Referee's assistant sent the parties' counsel
13 an email regarding the scheduling of a Prehearing Conference. It was explained that at such
14 conference the parties were to identify all documentary evidence and witnesses. *See*, Exhibit 21
15 to ESD's Answer to Petition.

16 8. On September 20, 2017, ESD's counsel sent an email to SNC's counsel in
17 which an offer to discuss discovery was made. *See*, Exhibit 33, attached hereto.

18 9. On September 25, 2017, SNC's counsel wrote a letter to ESD's counsel.
19 At page 2 of the letter, in the second full paragraphs, it reads:

20 ...[O]n June 6, 2017, SNC requested the Appeals Referee to issue
21 administrative subpoenas to compel DETR to produce relevant
22 records within twenty-one (21) days. DETR simply ignored SNC.
And, the Appeals Referee did not issue, or even respond, regarding
the requested subpoenas. ...

23 *See*, Exhibit 34 attached hereto.

24 ///

1 10. On October 5, 2017, ESD's counsel wrote back to SNC's counsel. SNC
2 was again invited to discuss discovery with ESD's counsel. *See*, Exhibit 35, attached hereto.
3 ESD's counsel pointed out that on September 20, 2017, the Referee emailed the parties regarding
4 the scheduling of a Prehearing Conference where the parties would "identify all documentary
5 evidence each ... may rely on ... and to disclose and discuss witnesses that may testify at the
6 hearing." Exhibit 35 attached hereto, at p. 1, 3rd para. ESD counsel explained that, with respect
7 to any request for administrative subpoenas, SNC would have an opportunity to request
8 subpoenas at the upcoming Prehearing Conference. This was consistent with NAC 612.225.
9 *See*, Exhibit 35 attached hereto. Specifically, SNC was informed:

10 Given that this is an administrative proceeding pursuant to NRS
11 Chapter 612, you will have an opportunity to request these
12 subpoenas at this Prehearing Conference. Since the actual hearing
date is not yet set, it would be premature for Referee Larsen to
issue a subpoena before the hearing date is known.

13 Exhibit 35 at p. 2, 3rd para.

14 11. On October 5, 2017, ESD's Referee sent the parties a NOTICE OF
15 PREHEARING CONFERENCE set for October 19, 2017. *See*, Exhibit 22 to ESD's Answer to
16 Petition.¹

17 12. On October 6, 2017, ESD's counsel sent an email in compliance with the
18 Referee's instructions contained in the NOTICE OF PREHEARING CONFERENCE. *See*,
19 Exhibit 23 to ESD's Answer to Petition. This was provided to SNC's counsel. *See*, Exhibit 24
20 to ESD's Answer to Petition.

21
22 ¹ NAC 612.225, entitled "Notice of hearing; subpoenas; issues" provides:

23 1. Notice of hearing must be sent to each party ... inform each party that he
or she is entitled to ... request the issuance of subpoenas

24 2. ...[S]ubpoenas will be issued only upon a showing of necessity by the
party requesting issuance of the subpoena.

1 13. On October 10, 2017, rather than pursuing discovery pursuant to NRS
2 Chapter 612, SNC made a Nevada Public Records Act (NPRA) request seeking discovery
3 documentation to advance its claim before the Referee. The information sought, according to
4 SNC, was “necessary for the proper presentation of a proceeding pursuant to NRS Chapter 612,
5 and are not sought for any other purpose.” *See*, Exhibit 2 to Petition.

6 14. On October 16, 2017, ESD’s counsel wrote SNC’s counsel regarding the
7 NPRA request respectfully declining and noting that the information sought is discoverable in
8 the ongoing administrative matter. ESD’s counsel added that no objection was waived. *See*,
9 Exhibit 3 to Petition.

10 15. On October 19, 2017, a Prehearing Conference before the Referee was
11 held. *See*, Exhibit 22 to ESD’s Answer.

12 16. Despite being informed by the Referee to identify documentation, and
13 being told by ESD’s counsel to request any subpoena at the October 19, 2017 Prehearing
14 Conference, no subpoena was proffered. *See*, Exhibit 37, the Affidavit of Laurie L. Trotter,
15 attached hereto.

16 17. On October 26, 2017, SNC filed a Petition for Writ of Mandamus, which
17 neglected to address the availability of proffering subpoenas at a Prehearing Conference identical
18 to the information sought in its NPRA request. *See*, Petition.

19 18. The Petition was brought due to SNC’s belief that it was being
20 “stonewalled” regarding discovery. Petition at p. 3, ll. 11-15. Rather than have the Referee
21 and/or the Board of Review make a determination as to what discovery was “necessary,” SNC
22 appealed to this Court to make such determination. It is the role of the agency here to make such
23 an initial determination regarding discovery. *See*, NAC 612.225(2). SNC’s discovery request,
24 in the guise of an NPRA request, is inextricably intertwined with the ongoing NRS Chapter 612

1 administrative case. Nonetheless, on February 7, 2018, the Court reviewed this aspect of the
2 administrative case and entered its "ORDER GRANTING PETITION FOR WRIT OF
3 MANDAMUS."

4 19. At the February 9, 2018, Prehearing Conference (*see*, Exhibit 36, attached
5 hereto), the Referee indicated that the next Prehearing Conference would be held on April 20,
6 2018. *See*, Exhibit 37, the Affidavit of Laurie L. Trotter, attached hereto.

7 20. On February 9, 2018, SNC's counsel provided the Referee's assistant with
8 a copy of the "ORDER GRANTING PETITION FOR WRIT OF MANDAMUS." SNC's
9 counsel noted, "Pursuant to Referee Larsen's request during this morning's status check in this
10 matter, I am providing the attached order. SNC also requests that the attached be added to the
11 exhibits it may use at the administrative hearing on this matter." *See*, February 9, 2018, email
12 from SNC's counsel attached hereto as Exhibit 38.²

13 III. ARGUMENT

14 A. Standard of Review

15 A court has inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91
16 Nev. 401, 403, 536 P.2d 1026, 1027 (1975). The Nevada Supreme Court held, "A district court
17 may reconsider a previously decided issue if ... the decision is clearly erroneous." *Masonry &*
18 *Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d
19 486, 489 (1997).

20 NRCP 59(e) provides a remedy that, where issues have been litigated and
21 resolved, a motion may be made to alter or amend a judgment. It "provides an opportunity ... to
22 seek correction ... of an erroneous order ... thereby initially avoiding the time and expense of an
23 appeal." *Chiara v. Belaustegui*, 86 Nev. 856, 859, 47 P.2d 587 (1979) Such a motion is not

² ESD's counsel intends to ask that all documents filed herein become part of the Administrative Record.

1 limited in scope, as long as it is timely, in writing and complies with procedural requirements,
2 and requests substantive alteration or vacation of a judgment, not merely a correction of a
3 clerical error or relief that is wholly collateral. *See, AA Primo Builders, LLC v. Washington*, 126
4 Nev. 578, 585, 245 P.3d 1190, 1194 (2010). As described below, this Court should vacate the
5 Order as a manifest error at law.

6 NRCF 60(b) provides that upon motion, a court may relieve a party from a final
7 order due to mistake, inadvertence, excusable neglect or when the order is void. As described
8 below, this Court should vacate the Order based on mistake and/or that it is void given the
9 confines of judicial review of NRS Chapter 612 related matters.

10 **B. The role of the judiciary in NRS Chapter 612 administrative cases**
11 **is limited. Assuming this Court had jurisdiction (it did not), its**
12 **addressing of SNC's NPRA request -- which is inextricably**
13 **intertwined with the underlying administrative case -- would be**
14 **contrary to law.**

15 Even without the strong statutory prohibitions here, a writ of mandate is not an
16 appropriate remedy when there is a "plain, speedy and adequate remedy in the ordinary course of
17 law." NRS 34.170. The Supreme Court, addressing a writ petition, explained "appellant failed
18 to establish below that the Commission's assumption of jurisdiction ..., combined with
19 appellant's right to appeal any adverse decision of the Commission to this court, would deprive
20 appellant of an adequate remedy" *Goldman v. Bryan*, 106 Nev. 30, 38, 787 P.2d 372,
21 377(1990). The same is true here.³ The underlying NRS Chapter 612 case focuses on whether
22 SNC's prostitutes working in Lyon County are employees or independent contractors. The court
23 having jurisdiction to review any aspect of such case is in Lyon County – the Third Judicial
24 District Court. *See*, NRS 612.530(1).

³ Further, the writ of mandate is not properly used to review pretrial orders granting or denying discovery. *Mears v. State*, 83 Nev. 3, 7–8, 422 P.2d 230, 233 (1967); *Franklin v. Eighth Judicial Dist. Court In & For Clark Cty.*, 85 Nev. 401, 403–04, 455 P.2d 919, 921 (1969).

1 In *Clark County School District v. Bundley*, 122 Nev. 1440, 1444-45, 148 P.3d
2 750, 754-55 (2006), our Nevada Supreme Court stated as follows:

3 When reviewing an administrative unemployment compensation
4 decision, this court, like the district court, **examines the evidence**
5 **in the administrative record to ascertain whether the Board**
6 **acted arbitrarily or capriciously, thereby abusing its**
7 **discretion.** With regard to the Board's factual determinations, we
8 note that **the Board conducts *de novo* review of appeals referee**
9 **decisions.** ...In no case may we substitute our judgment for that of
10 the Board as to the weight of the evidence. **Thus, even though we**
11 **review *de novo* any questions purely of law, the Board's fact-**
12 **based legal conclusions with regard to whether a person is**
13 **entitled to unemployment compensation are entitled to**
14 **deference.** (Internal citations omitted and Emphasis added).

15 In *Kraft v. Nev. Emp. Sec. Dept*, 102 Nev. 191, 717 P.2d 583 (1986), the Nevada Supreme Court,
16 quoting *Leeson v. Basic Refractories*, 101 Nev. 384, 705 P.2d 137 (1985), stated:

17 Pursuant to NRS 612.515(3), the Board of Review is authorized to
18 affirm, modify or reverse a decision of the appeals referee. The
19 Board may act solely on the basis of evidence previously
20 submitted, or upon the basis of such additional evidence as it may
21 direct to be taken.

22 The district court's power to review a decision of the Board,
23 however, is more limited. Where review is sought the factual
24 findings of the Board, if supported by evidence ... shall be
conclusive, and the jurisdiction of the court shall be confined to
questions of law. NRS 612.530(4). Our decisional law is to the
same effect. ... In short, **while the Board of Review is empowered**
to conduct a *de novo* review of the decisions of the appeals
referee, the district court has no similar authority with respect
to the decisions of the Board. (Emphasis Supplied)

25 The relief sought by SNC's Petition is administratively available. SNC's Petition
26 addresses discovery for the purpose of its concurrent and pending NRS Chapter 612 appeal. The
27 overlapping and intertwinement is inescapable and not disputed. Accordingly, this Court's
28 jurisdiction is limited in this Chapter 612 special statutory proceeding. *See*, NRS 612.525(1); *see*
29 *also, Bd. of Review, Nevada Dep't of Employment, Training & Rehab., Employment Sec. Div. v.*

1 *Second Judicial Dist. Court in & for Cty. of Washoe*, 396 P.3d 795, 797 (2017) (“We have
2 consistently held that the requirements of the statute are jurisdictional and mandatory”).

3 NRS 612.530 allows for judicial review of NRS Chapter 612 administrative cases
4 only “after the decision of the ESD Board of Review (Board) has become final.” NRS
5 612.530(1). After finality (and SNC could appeal the case to the Board pursuant to NRS
6 612.515) courts are confined to the record. *Lellis v. Archie*, 89 Nev. 550, 553-54, 516 P.2d 469,
7 470 (1973). At this juncture, no adequate record has been created and finality has not been
8 reached. Moreover, upon a timely petition for judicial review in this case, jurisdiction would lie
9 with the Third Judicial District Court. NRS 612.530(1). In the event judicial review occurs, the
10 Third Judicial District Court and perhaps the Nevada Supreme Court would focus on
11 arbitrariness and capriciousness or an error of law. *Nevada Employment Sec. Dept. v. Cline*, 107
12 Nev. 74, 76-77, 847 P.2d 736, 738 (1993).

13 SNC might argue that the mandate of NRS 612.530 (judicial review) causes it a
14 hardship. However, it is not the function of the courts to substitute its judgment for that of the
15 Legislature. *See, Kame v. Employment Sec. Dept.*, 105 Nev. 22, 26, 769 P.2d 66, 68 (1989)
16 citing to, *Caruso v. Nev. Emp. Sec. Dep't*, 103 Nev. 75, 76, 734 P.2d 224, 225 (1987). The
17 *Caruso* Court noted that in *Scott v. Nev. Employ. Sec.*, 70 Nev. 555, 278 P.2d 602 (1954). “where
18 a statute upon a particular subject has provided a tribunal for the determination of questions
19 connected with that subject ... the jurisdiction thus conferred **is exclusive**, unless otherwise
20 expressed or clearly manifested....” 70 Nev. at 559, 278 P.2d at 603–604 (quoting *Minnesota*
21 *Valley Canning Company v. Rehnblom*, 242 Iowa 1112, 49 N.W.2d 553, 555 (1951)) (Emphasis
22 added).

23 ///

24 ///

1 **C. Regardless of the confines of judicial review, NRS 239.010(1)**
2 **carves out many exceptions -- including NRS 612.265. ESD's**
3 **Administrator, through the ESD, administers NRS Chapter 612.**
4 **ESD's Referee or Board makes the determination of necessity in**
5 **connection with the presentation of a claim. SNC is not entitled to**
6 **such information for any other purpose -- including the purpose of**
7 **an NPRA request. NRS 612.265(2)**

8 NRS 239.001(1) states, "The purpose of this chapter is to foster democratic
9 principles by providing members of the public with access to inspect and copy public books and
10 records **to the extent permitted by law.**" (Emphasis added) NRS 239.010(1) provides:

11 1. **Except as otherwise provided in this section and**
12 **... NRS 612.265 ... and unless otherwise declared by law to**
13 **be confidential, all public books and public records of a**
14 **governmental entity must be open at all times during office**
15 **hours to inspection by any person, and may be fully copied or**
16 **an abstract or memorandum may be prepared from those public**
17 **books and public records. (Emphasis added).⁴**

18 NRS 612.265 provides in pertinent part:

19 1. **... [I]nformation obtained from any employing unit or**
20 **person pursuant to the administration of this chapter ... is**
21 **confidential and may not be disclosed or be open to public**
22 **inspection in any manner which would reveal the person's or**
23 **employing unit's identity.**

24 2. **Any claimant or a legal representative of a claimant is**
25 **entitled to information from the records of the Division, to**
26 **the extent necessary for the proper presentation of the**
27 **claimant's claim in any proceeding pursuant to this chapter. A**
28 **claimant or an employing unit is not entitled to information**
29 **from the records of the Division for any other purpose.⁵**
30 ...

31 12. **If any employee or member of the Board of Review,**
32 **the Administrator or any employee of the Administrator, in**
33 **violation of the provisions of this section, discloses information**
34 **obtained from any employing unit or person in the**

35 ⁴ Besides NRS 612.265, the information sought has been declared confidential by federal law. *See*, 20 C.F.R. §§
36 603.4 and 603.7. The "balancing-of-competing-interests test" is not applicable. *LVMPD v. Blackjack Bonding*, 131
37 Nev. ___, 343 P.3d 608, 614 ("The balancing-of-competing-interests test is employed 'when the requested record is
38 not explicitly made confidential by a statute'").

39 ⁵ This would include for the purpose of an NPRA request.

1 administration of this chapter ... he or she is **guilty of a gross**
2 **misdemeanor.**

3 13. **All letters, reports or communications of any kind,**
4 oral or written, from the employer or employee to each other or
5 to the Division or any of its agents, representatives or
6 employees are **privileged and must not be the subject matter**
7 **or basis for any lawsuit** if the letter, report or communication
8 is written, sent, delivered or prepared pursuant to the
9 requirements of this chapter. (Emphasis added).⁶

10 NRS 239.010(1) carves out NRS 612.265 as an exception from its application.

11 The information sought by SNC is confidential pursuant to NRS 612.265. It can only be
12 disclosed pursuant to NRS 612.265(2) upon the ESD Referee's or Board's determination that it
13 is necessary for the proper presentation of SNC's claim. NRS 612.265(2). SNC is not entitled to
14 it for "any other purpose" (NRS 612.265(2)) – including the purpose of an NPRA request or for
15 any lawsuit. *See*, NRS 612.265(13) ("All letters, reports or communications of any kind, oral or
16 written . . . must not be the subject matter or basis of any lawsuit.")

17 The information sought by SNC's NPRA request is also confidential under
18 federal law. *See*, 20 C.F.R. §§ 603.4 and 603.7. 20 C.F.R. § 603.4 requires for purposes of
19 paying federal funds to states that states maintain the confidentiality of any Unemployment
20 Compensation (UC) information which could reveal in any way the name or identifying
21 information about any individual or employer. 20 C.F.R. § 603.7 requires that when a subpoena
22 or other compulsory process is served on a state UC agency [like ESD] or any recipient of
23 confidential UC information, the state must diligently oppose it. *See*, 20 C.F.R. §§ 603.4 and
24 603.7

25 ///

26 ⁶ Although the lawsuit in *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011) was commenced
27 under the NPRA, the term "litigation," was generic in that case. Even if it was specific to NPRA lawsuits, there is
28 no such lawsuit here and there was no underlying administrative litigation in *Gibbons*. In any event, NRS 612.265,
29 at subsection 13, prohibits the information sought by SNC from being the "subject matter or basis of any lawsuit."

1 ESD's Administrator, through the ESD itself, administers NRS Chapter 612 – not
2 the courts. *See*, NRS 612.016, 612.215 and 612.220. ESD reiterates, the role of the courts in
3 such special administrative matters is limited. *See*, NRS 612.530 and *Cline, supra*, 107 Nev. at
4 76-77, 847 P.2d at 738. The ESD Referee makes the determination of what is “necessary” for
5 the proper presentation of an NRS Chapter 612 claim. NRS 612.265(2) (“necessary for the
6 proper presentation of ... claim”) and NAC 612.225(2) (“upon a showing of necessity”). Upon
7 appeal of the Referee’s decision pursuant to NRS 612.515, the Board may consider the matter *de*
8 *novo*. *See, Bundley, supra*, 122 Nev. at 1444-45, 148 P.3d at 754-55 and *Kraft, supra*, 102 Nev.
9 191, 717 P.2d 583. The administrative record is created in a confidential setting. *See*, NAC
10 612.252 (“Hearings and reviews are confidential proceedings under NRS 612.265 and are closed
11 to the public”).⁷

12 **D. Despite of the lack of jurisdiction or that NRS 239.010(1) excepts**
13 **NRS 612.265 from its application, or that ESD administers NRS**
14 **Chapter 612, ESD waived nothing. The ESD cannot waive**
15 **“confidentiality” established by statute and the misplaced NPRA**
16 **request was made *after* the commencement of the administrative**
17 **litigation.**

18 NRS 34.260 allows the Court to grant a petitioner time to reply to a respondent's
19 answer. This Court did so, but did not grant SNC an opportunity to raise new issues – including
20 whether any privilege has been waived. *See*, Reply at pp. 15-17. The Court has no authority to
21 do so. There is no provision in NRS Chapter 34 which permits ESD to respond to new issues
22 raised in SNC's Reply. The Court's Order relied upon issues newly raised in SNC's Reply,
23 including waiver of privileges, and exceeded lawful authority and due process.

24 ///

⁷ If the Court orders NRS Ch. 612 information to be disclosed pursuant to SNC's NPRA request, the order must contain terms requiring SNC to protect and maintain the confidential nature of such information. *See* NAC 612.252 and *City of Sparks v. Reno Newspapers, Inc.*, 133 Nev. ___, 399 P.3d 352, 357 (2017). This is absent from the Court's February 7, 2018 Order.

1 As to waiver of privileges, ESD preserved its objections. *See*, Petition at Exhibit
2 3. Moreover, the Nevada Supreme Court explained, “[I]f a state entity declines a public records
3 request **prior to litigation**, it must provide the requesting party with notice and citation to legal
4 authority that justifies nondisclosure.” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884-
5 885, 266 P.3d 623, 630-631 (2011) (Emphasis added). SNC’s NPRA request came because of
6 perceived stonewalling. *See*, Petition at 3, l. 11. And, it came **after** the ongoing related
7 administrative litigation was well under way. Therefore, even assuming the NPRA applies (and
8 it does not), no log was required and no privilege was waived. As to waiver of “confidentiality,”
9 this is established by law and cannot be waived. *See*, NRS 612.265; *and also*, 20 C.F.R. §§
10 603.4 and 603.7.

11 In order to prevail under NRS 239.011, SNC was required to show: (1) a request
12 for a record that is **open to inspection**; (2) the records were **not** disclosed; and (3) the material
13 requested is **not** confidential. Under NRS 612.265 §§ (1), (12) & (13) and NRS 239.010(1) the
14 material requested by SNC is “expressly and unequivocally deemed ‘confidential.’” *See, City of*
15 *Sparks v. Reno Newspapers*, 399 P.3d 352, 357 (2017). In light of the foregoing, SNC cannot be
16 regarded as having prevailed here.

17 IV. CONCLUSION

18 SNC circumvented the administrative process by advancing an errant NPRA
19 request. It did so because it perceived stonewalling. In following SNC down this statutorily
20 road-blocked path, the Court exceeded its jurisdiction. In granting SNC’s Petition, the Court
21 ignored the exception expressed in NRS 239.010(1) and usurped the role of ESD in
22 administering NRS 612.265. Even assuming SNC was entitled to the information sought for the
23 purpose of an NPRA request (it is not), such request came **after** the commencement of the
24 ongoing administrative litigation. Thus, no log was required and no privilege was waived.

1 Confidentiality is statutorily mandated and cannot be waived. The Court must reconsider and
2 vacate its Order pursuant to NRCP 59(e) and/or NRCP 60(b).⁸

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 16th day of February, 2018.

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

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23 ⁸ If the Court allows its Order to stand to require the administrative discovery documentation sought by SNC to be
disclosed, the Order must contain terms by which the confidential information is protected by SNC – the recipient of
such documentation. *See, City of Sparks, supra*, 399 P.3d at 357.

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 RESPONDENT'S MOTION TO RECONSIDER PURSUANT TO
5 NRCP 59(e) and 60(b), by placing the same within an envelope which was thereafter sealed and
6 deposited for postage and mailing with the State of Nevada Mail at Carson City, Nevada,
7 addressed for delivery as follows:

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

11
12 **DATED** this 16th day of February, 2018.


13 
14 SHERI C. IHLER
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23
24

EXHIBIT 30



Anthony L. Hall
Phone (776) 327-3000
Fax (776) 786-6179
ahall@hollandhart.com

June 6, 2017

Via U.S. Mail

Melanie Maguire, Audit Manager
Sharon Falline, Auditor III
Nevada Department of Employment,
Training and Rehabilitation
Employment Security Division
Field Audit Office
500 East Third St.
Carson City, NV 89713

Re: *Sierra National Corporation*
Account No. 16379400
DETR's Duty to Preserve Evidence

Dear Ms. Maguire and Ms. Falline:

As you know, this firm represents Sierra National Corporation, Inc. ("SNC"), dba The Love Ranch, in its appeal of the audit determination issued by the Nevada Department of Employment, Training and Rehabilitation ("DETR"), dated May 12, 2017 (the "audit and May 12, 2017 determination"). The purpose of this letter is to place DETR on formal notice of its duty to preserve evidence. It is, therefore, imperative that DETR immediately preserve all evidence relating to this case. Please see below for a more detailed description of what is included within DETR's duty to protect and preserve:

Tangible Items and Documents

All items that could be evidence in this matter, whether positive or negative for either side, including but not limited to:

1. Any and all records of all of DETR's audit and May 12, 2017 determination regarding SNC, including notices, correspondence, notes, audio or video recordings or other records of conversations or interviews with any witnesses and any documents or other tangible evidence obtained by DETR (such as photographs, film, recordings, text messages, and emails), and any other evidence obtained by DETR in connection with its audit and May 12, 2017 determination regarding SNC.

Holland & Hart LLP Attorneys at Law
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6411 Kialika Lane, Second Floor, Reno, Nevada 89511
Aspen | Billings | Boise | Boulder | Carson City | Cheyenne | Colorado Springs | Denver | Denver Tech Center | Jackson Hole | Las Vegas | Reno | Salt Lake City | Santa Fe | Washington, D.C.

Docket #: V-17-A-04041-TX
Exhibit#: 98

Restricted: NRS 612.265 limits the use of this material to unemployment compensation litigation except for specified exceptions.

2. Any and all documents prepared, relied upon, consulted, or reviewed by DETR in connection with its audit and May 12, 2017 determination, including but not limited to, all notes, e-mails and communications regarding the audit, including the decision to conduct the audit, or directing or framing the scope of the audit.

3. Any and all records of all of DETR's prior audits and determinations regarding SNC, including notices, correspondence, notes, audio or video recordings or other records of conversations or interviews with any witnesses and any documents or other tangible evidence obtained by DETR (such as photographs, film, recordings, text messages, and emails), and any other evidence obtained by DETR in connection with any of the prior audits and determinations regarding SNC.

4. Any and all documents prepared, relied upon, consulted, or reviewed by DETR in connection with its prior audits and determinations regarding SNC, including but not limited to, all notes, e-mails and communications regarding the audits, including the decisions to conduct the audits, or directing or framing the scope of the audits.

5. Any and all records of all of DETR's audits and determinations regarding other brothels, including notices, correspondence, notes, audio or video recordings or other records of conversations or interviews with any witnesses and any documents or other tangible evidence obtained by DETR (such as photographs, film, recordings, text messages, and emails), and any other evidence obtained by DETR in connection with any of the audits and determinations regarding other brothels.

6. Any and all documents prepared, relied upon, consulted, or reviewed by DETR in connection with its audits and determinations regarding other brothels, including but not limited to, all notes, e-mails and communications regarding the audits, including the decisions to conduct the audits, or directing or framing the scope of the audits.

Please make sure that these items are preserved.

Electronic Data

Please also be advised that the laws and rules prohibiting destruction of evidence apply to electronic data with the same force as they apply to other kinds of evidence. Accordingly, please inform *all DETR personnel* that they should:

1. Suspend *immediately* all document and electronic data (including back up tapes) destruction or rotation policies that would otherwise apply; and
2. Preserve all documents and electronic data referencing SNC.

I strongly suggest that you inform all employees of the contents of this letter, and instruct them that DETR's duty to preserve evidence supersedes and overrides any routine



June 8, 2017
Page 3

recycling or destruction practice or policy applicable to any document or data that is or may be encompassed within this preservation request. Please also inform all of DETR's employees that they are not to destroy any document or data that may potentially fall within the purview of this letter without prior written consent.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

Anthony L. Hall, Esq.
of Holland & Hart LLP

ALH/RNC:mf
9876543

Restricted: NRS 612.265 limits the use of this material to unemployment compensation litigation except for specified exceptions.

Docket #: V-17-A-04041-TX
Exhibit#: 100

EXHIBIT 31



Anthony L. Hall
Phone (775) 327-3000
Fax (775) 786-6179
ahall@hollandhart.com

June 6, 2017

Via U.S. Mail

Attn: Contributions / Appeal Tribunal
Nevada Department of Employment,
Training and Rehabilitation
Employment Security Division
Field Audit Office
500 East Third St.
Carson City, NV 89713

Re: **Sierra National Corporation**
Account No. 16379400
Subpoena to Compel the Production of Records

Dear Appeal Tribunal:

As you know, this firm represents Sierra National Corporation, Inc. ("SNC"), dba The Love Ranch, in its appeal of the audit determination issued by the Nevada Department of Employment, Training and Rehabilitation ("DETR"), dated May 12, 2017 (the "audit and May 12, 2017 determination"). Pursuant to NRS 612.270(1)(c), SNC requests that the Appeal Tribunal issue a subpoena to DETR to compel its production of the records set forth below to SNC. These documents should be provided to SNC's counsel, Anthony L. Hall, Esq., Holland & Hart, 5441 Kietzke Lane, Second Floor, Reno, Nevada 89511, within twenty-one (21) days of the date of this request.

General Instructions

DETR should be compelled to produce any and all documents that are in its possession, custody or control, that fit any of the descriptions below. An attorney for SNC will clarify any ambiguity in the following definitions and descriptions upon request.

Definitions

1. "Document" means all forms of tangible expression including, but not limited to, e-mails, notes, letters, memoranda, writings, diaries, calendars, day-planners,

Holland & Hart LLP Attorneys at Law
Phone (775) 327-3000 Fax (775) 786-6179 www.hollandhart.com
5441 Kietzke Lane Second Floor Reno, Nevada 89511
Alpaq Billings Boise Boulder Carson City Champaign Colorado Springs Denver Denver Tech Center Jackson Hole Las Vegas Reno Salt Lake City Santa Fe Washington, D.C.

Docket #: V-17-A-04041-TX
Exhibit#: 95

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videotapes, audio tapes, photographs, computer disks, printouts, data on the hard drives of computers, etc.

2. "DETR" specifically includes any individual acting on DETR's behalf, including its auditors, agents, representatives, and employees;

3. "Referencing," "referring to," or "regarding" means, without limitation, constituting, discussing, covering, supporting or contradicting, directly or indirectly in any way.

4. The singular form of a noun or pronoun includes the plural form, and the plural form includes the singular.

5. The conjunctions "and" and "or" should be construed either disjunctively or conjunctively so as to bring within the scope of the subpoena all documents that otherwise might be construed to be outside of its scope.

6. If DETR objects to any request in part, it should be directed to respond to such request fully to the extent that it is not objected to, and set forth specifically the grounds upon which the objection is based.

7. If DETR withholds any document on the basis of privilege, it should be directed to provide the following information: (1) the date the document was prepared or the date it bears; (2) the author of the document; (3) the addressee(s) and recipient(s) of the document; (4) the title and/or subject matter of the document; (5) the source of the document; (6) the identity of persons to whom the document or any portion thereof has already been revealed, and (7) the basis for withholding the document.

Description of Documents Sought

1. Any and all records of all of DETR's audit and May 12, 2017 determination regarding SNC, including notices, correspondence, notes, audio or video recordings or other records of conversations or interviews with any witnesses and any documents or other tangible evidence obtained by NDETR (such as photographs, film, recordings, text messages, and emails), and any other evidence obtained by NDETR in connection with any of the its audits and May 12, 2017 determinations regarding SNC.

2. Any and all documents prepared, relied upon, consulted, or reviewed by DETR in connection with its audit and May 12, 2017 determination, including but not limited to, all notes, e-mails and communications regarding the audit, including the decision to conduct the audit, or directing or framing the scope of the audit.

3. Any and all records of all of DETR's prior audits and determinations regarding SNC, including notices, correspondence, notes, audio or video recordings or other

records of conversations or interviews with any witnesses and any documents or other tangible evidence obtained by DETR (such as photographs, film, recordings, text messages, and emails), and any other evidence obtained by DETR in connection with any of the prior audits and determinations regarding SNC.

4. Any and all documents prepared, relied upon, consulted, or reviewed by DETR in connection with its prior audits and determinations regarding SNC, including but not limited to, all notes, e-mails and communications regarding the audits, including the decisions to conduct the audits, or directing or framing the scope of the audits.

5. Any and all records of all of DETR's audits and determinations regarding other brothels, including notices, correspondence, notes, audio or video recordings or other records of conversations or interviews with any witnesses and any documents or other tangible evidence obtained by DETR (such as photographs, film, recordings, text messages, and emails), and any other evidence obtained by DETR in connection with any of the audits and determinations regarding other brothels.

6. Any and all documents prepared, relied upon, consulted, or reviewed by DETR in connection with its audits and determinations regarding other brothels, including but not limited to, all notes, e-mails and communications regarding the audits, including the decisions to conduct the audits, or directing or framing the scope of the audits.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions or need anything further.

Sincerely,



Anthony L. Hall, Esq.
of Holland & Hart LLP

ALH/RNC: mf
9876634_2

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Exhibit#: 97

EXHIBIT 32



Anthony L. Hall
Phone (775) 327-3000
Fax (775) 786-6179
ahall@hollandhart.com

June 15, 2017

Via U.S. Mail
And email (j-austin@nvdetr.org)

Jane Austin
Department of Employment, Training & Rehabilitation
Office of Appeals
2800 E St. Louis Ave
Las Vegas, NV 89104

Re: Scheduling of Tax Hearing

Dear Referee Larson:

As you know, this firm represents Sierra National Corporation, Inc. ("SNC"), dba The Love Ranch, in its appeal of the audit determination issued by the Nevada Department of Employment, Training and Rehabilitation ("DETR"), dated May 12, 2017 (the "audit and May 12, 2017 determination"). I am in receipt of an email from your office inquiring about our availability for a hearing beginning with the week of July 10, 2017.

While we are happy to work with you on scheduling the hearing, there are some preliminary matters that must be completed before a hearing can be scheduled. To begin, SNC has requested that the Appeals Tribunal issue subpoenas to compel the attendance, both for deposition by SNC and for the hearing on this appeal, of the unidentified "former bartender" referenced in DETR's determination, the auditors referenced in DETR's determination, and any other witnesses interviewed by SNC during its audit, as authorized under NRS 612.270(1)(a). In addition, we have requested the Appeal Tribunal to issue a subpoena to DETR to compel its production of certain records, as authorized under NRS 612.270(1)(c).

At this time, I am uncertain whether the Tribunal has issued the requested subpoenas. Attempting to hold the hearing without the requested documents would not comport with Due Process. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("due process is flexible and calls for such procedural protections as the particular situation demands."); NRS 612.500 ("A reasonable opportunity for a fair hearing on appeals must be promptly afforded all parties.").

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Exhibit#: 86

Holland & Hart LLP Attorneys at Law
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5441 Kietzke Lane Second Floor Reno, Nevada 89511

Aspen Billings Boise Boulder Carson City Cheyenne Colorado Springs Denver Denver Tech Center Jacksonville Las Vegas Reno Salt Lake City Santa Fe Washington, D.C.

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In addition, DETR will likely require at least a few weeks to respond to the subpoenas, and I anticipate that my office will need at least a few weeks to review and analyze the responsive documents from DETR and determine if any follow up discovery is needed. In addition, my client needs to know how you will handle the declarations we have submitted. Specifically, if you are going to admit them, then we can call a smaller number of girls for live testimony. On the other hand, if those will not be admitted then the length of the hearing and scheduling of it becomes much more complicated. It is my belief that, if the declarations are admitted, this hearing can be conducted in two (2) days. If not, it will be longer. Finally, some of the girls keep their career as prostitutes secret from their family (their children in particular) and we want to inquire into the process to seal or mark as confidential some the real names of certain witnesses.

Given these factors, we do not believe attempting to schedule the hearing in July would be practical. I have numerous conflicts in August and September. As a result, I would be available for the hearing on October 19-20 and November 8-9.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions or need anything further.

Sincerely,

Anthony L. Hall, Esq.
of Holland & Hart LLP

ALH/RNC: mf
9922750_1

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Docket #: V-17-A-04041-TX
Exhibit#: 87

EXHIBIT 33

From: Laurie Trotter [mailto:l-trotter@nvdehr.org]
Sent: Wednesday, September 20, 2017 2:59 PM
To: Anthony Hall
Subject: Sierra National - V-17-A-04041-TX

Hi Anthony,

I look forward to receiving a response to you regarding ESD's proposal for a supplemental audit in the Sierra National matter in the next few days. Please let me know if you need additional time to respond concerning the supplemental audit. If I don't hear from you by September 27, 2017, I will presume that Sierra National declines ESD's offer for a supplemental audit. In such case, please contact me so that we can discuss discovery so that the parties can be prepared for the prehearing conference beginning the week of October 16, 2017 at 9:00 a.m.

Thank you.

Best regards,

Laurie L. Trotter, Esq.

Laurie L. Trotter
Senior Legal Counsel
Nevada Department of Employment, Training and Rehabilitation
Employment Security Division
1340 South Curry Street
Carson City, Nevada 89703
775-684-6317
775-684-6344 (Fax)
l-trotter@nvdehr.org



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Docket #: V-17-A-04041-TX
Exhibit#: 104

EXHIBIT 34

HOLLAND & HART

Anthony L. Hall
Phone (775) 327-3800
Fax (775) 738-6179
ahall@hollandhart.com

September 25, 2017

Via email (l-trotter@nvdetr.org)
U.S. Mail

Laurie Trotter, Esq.
Division Sr. Legal Counsel
1340 S. Curry Street
Carson City, NV 89703

Re: Sierra National Corporation, Inc. - Proposal for Supplemental Audit

Dear Ms. Trotter:

Sierra National Corporation ("SNC"), is in receipt of your correspondence dated September 11, 2017, on behalf of the Nevada Department of Employment, Training and Rehabilitation ("DETR") in this matter. SNC has considered, and rejects, DETR's proposal for a supplemental audit.

The appropriate remedy for DETR's arbitrary, incomplete, and biased audit is for DETR to reverse its erroneous determination. DETR's request for a do-over is not appropriate considering a number of factors, including the delay, expense, and prejudice it would cause my client. This is especially true given DETR's demand for SNC to waive the statute of limitations as a defense. The notion that DETR is demanding SNC to forfeit rights due to DETR's own mistakes is disturbing in and of itself. Coupled with DETR's request for interviews and records it should have sought in the first place, one cannot help but question the motives behind DETR's proposal. Rather than acting in the supposed "interest of fairness, objectivity, and accuracy," it appears DETR is simply attempting to shore up the gaping holes in its case.

On top of that, DETR continues to fail to grasp the relationship between SNC and the independent contractors to whom it leases rooms ("independent contractors"). As I have detailed, the independent contractors are not employees of SNC. To briefly recap the unrebutted evidence SNC has submitted, the independent contractors are free from SNC's direction and control. Further, the realities of the services provided by the independent contractors, the applicable statutory and regulatory schemes, and common sense, all make clear that the services the independent contractors provide are outside of the usual course of SNC's business. In addition, there is a reason that prostitution is colloquially called "the world's oldest profession"—it is an identifiable trade, occupation, or business. Just as the owner of a shopping mall is not in the business of retail sales, a brothel owner is not in the

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Phone (775) 327-3800 Fax (775) 738-6179 www.hollandhart.com
6141 Raggio Lane, Second Floor, Reno, Nevada 89511
Holland & Hart is a firm of attorneys at law. The undersigned is an attorney at law in the State of Nevada. The undersigned is not an attorney at law in any other state.

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Exhibit#: 105

same occupation as a prostitute. Thus, because the independent contractors are not the employees of SNC, it does not have the power to compel them to appear for DETR's requested interviews, even if SNC were inclined to agree to such interviews.

I am also puzzled by DETR's September 21, 2017, email in which it indicates it wishes to "discuss discovery." To date, DETR has not disclosed any information or materials that it intends to introduce at the appeals hearing. DETR has not even disclosed the identity of the "former bartender," the witness which DETR relied almost exclusively upon in reaching its clearly erroneous determination. In contrast, SNC has disclosed extensive evidence, including the declarations of fifteen independent contractors.

Further, as you know, on June 6, 2017, SNC requested the Appeals Referee to issue administrative subpoenas to compel DETR to produce relevant records within twenty-one (21) days. DETR simply ignored SNC. And, the Appeals Referee did not issue, or even respond, regarding the requested subpoenas. As such, DETR has already made clear that it has no interest in conducting discovery in this matter, and it surely waived any such right long ago. And, it is clear that the Appeal Referee has already implicitly denied SNC's requests for discovery. Suffice it to say, SNC will not agree to permit DETR to conduct unilateral and untimely discovery in this matter.

Incidentally, the total silence by both the Appeals Referee and DETR in response to SNC's request for administrative subpoenas is quite telling. This, in combination with the timing of the obviously coordinated communications from the Appeals Referee and DETR regarding scheduling of the hearing, is disturbing. Indeed, it gives the distinct impression that there has been *ex parte* contact between DETR and the Appeals Referee, in violation of SNC's constitutional and statutory right under NRS 612.500 to a fair hearing by an impartial appeal tribunal.

Thank you for your time and attention. If you have any questions, please do not hesitate to call.

Sincerely,



Anthony L. Hall, Esq.
of Holland & Hart LLP

ALH/RNC: mlf
10223650

EXHIBIT 35

**EMPLOYMENT SECURITY
DIVISION**

Office of Legal Counsel



BRIAN SANDOVAL
Governor

DON SODERBERG
Director

RENEE L. OLSON
Administrator

Laurie L. Trotter, Esq.
Division Sr. Legal Counsel
1340 S. Curry Street
Carson City, Nevada 89703
(775) 684-6317
(775) 684-6344 - Fax

October 5, 2017

via email: ahall@hollandhart.com

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

RE: September 25, 2017 letter from Sierra National Corporation, Inc.,
Docket # V-17-A-04041-TX

Dear Mr. Hall:

The Employment Security Division (ESD) is in receipt of your letter dated September 25, 2017, in which you reject ESD's proposal for a supplemental audit.

ESD disagrees with, and objects to Sierra National Corporation, Inc.'s contention that ESD's audit was arbitrary, incomplete, or biased, and as such, ESD declines to reverse its Determination. The only purpose for suggesting a supplemental audit was in response to comment by Sierra National Corporation, Inc. (SNC) that ESD's audit was incomplete, but in no way should ESD's proposal be construed as agreement with SNC's comment. At no time did ESD demand that SNC forfeit any rights, as you erroneously suggest.

On September 20, 2017 at 2:36 p.m., Referee Larsen emailed the parties, including you, to set up a telephone conference to schedule a Prehearing Conference to identify "all documentary evidence each party may rely on to resolve the issue(s) in dispute, and to disclose and discuss witnesses that may testify at the hearing."

Upon receipt of Referee Larsen's email, on September 20, 2017 at 2:59 p.m., I emailed you as follows:

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Exhibit#: 706

Anthony L. Hall, Esq.
September 27, 2017
Page Two

I look forward to receiving a response [from] you regarding ESD's proposal for a supplemental audit in the Sierra National matter in the next few days. Please let me know if you need additional time to respond concerning the supplemental audit. If I don't hear from you by September 27, 2017, I will presume that Sierra National declines ESD's offer for a supplemental audit. In such case, please contact me so that we can discuss discovery so that the parties can be prepared for the prehearing conference beginning the week of October 16, 2017 at 9:00 a.m.

In response to your apparent question that you were puzzled about the purpose for my September 20, 2016 email I sent to you, since the above-referenced matter concerns your administrative appeal of EDS's determination and does not constitute a civil action filed in District Court, the standard discovery deadlines you might expect in civil litigation are not applicable to this administrative proceeding. The purpose for my September 20, 2017 email was to propose a conference with you to discuss discovery in advance of the Prehearing Conference with Referee Larsen in an effort to save the parties time by stipulating to evidence in advance of the Prehearing Conference, should SNC decline ESD's proposal for a supplemental audit. I also wanted to provide you with [REDACTED] name, who was the bartender interviewed by ESD investigators at the time of the original audit.

You refer to a June 6, 2017 letter you authored regarding a request for administrative subpoenas. Given that this is an administrative proceeding pursuant to NRS Chapter 612, you will have an opportunity to request these subpoenas at this Prehearing Conference. Since the actual hearing date is not yet set, it would be premature for Referee Larsen to issue a subpoena before the hearing date is known. You also refer to a 21-day deadline within which you requested the Referee's response, however, you provide no authority for selecting this arbitrary 21-day deadline for a response to your request. Without having any knowledge on the subject, I speculate that perhaps the reason that Referee Larsen did not previously schedule a Prehearing Conference is because you indicated in your June 15, 2017 letter that you "have numerous conflicts in August and September. As a result, I would be available for the hearing on October 19-20 and November 8-9."

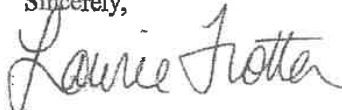
Lastly, there has been no communication between Referee Larsen and ESD regarding the above-referenced administrative matter with SNC other than the email that you received from Referee Larsen September 20, 2107, at 2:36 p.m. I reiterate, there has been no *ex parte* contact between ESD and Referee Larsen regarding this matter, for any reason, whatsoever. Your suggestion of *ex parte* communication in the last paragraph of your letter dated September 25, 2017, is baseless.

Docket #: V-17-A-04041-TX
Exhibit#: 707

Anthony L. Hall, Esq.
October 5, 2017
Page Three

Should you decide to entertain my invitation to confer regarding the subject matter to be addressed at the Prehearing Conference with Referee Larsen currently set for October 24, 2017 at 8:00 a.m., I welcome your call.

Sincerely,



LAURIE L. TROTTER, ESQ.
Senior Legal Counsel to ESD

LLT:sci

cc Renee Olson, Administrator
Jeffrey Frischmann, Deputy Administrator
Edgar Roberts, Chief, Contributions

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Docket #: V-17-A-04041-TX
Exhibit#: 708

EXHIBIT 36

Employment Security Division

Office of Appeals
2800 E St Louis Ave.
Las Vegas, NV 89104
Tel (702) 486-7933
Fax (702) 486-7949



DETR
Nevada Department of Employment,
Training and Rehabilitation

ONE NEVADA - Growing A Skilled, Diverse Workforce



99999

<https://www.nvdetr.org>



NOTICE OF HEARING

SIERRA NATIONAL CORPORATION
162 GARNET CIR
CARSON CITY, NV 89706

DOCKET NUMBER: V-17-A-04041-TX
DATE MAILED: 01/22/2018
CLAIMANT'S SSN:
REFEREE: SCOTT LARSEN / PT

**PURSUANT TO NRS 612.500,
A HEARING WILL BE HELD ON:
DATE: FRIDAY, FEBRUARY 9, 2018
TIME: 8:30 AM PST
LOCATION:
2800 E. ST. LOUIS AVE.
LAS VEGAS, NV 89104**

**ALL PARTIES INVOLVED IN THIS HEARING
WILL PARTICIPATE BY TELEPHONE.**

ALL PARTIES LOCATED OUTSIDE THE LAS VEGAS METROPOLITAN AREA: You are to participate in the hearing by telephone. At least 48 hours **PRIOR** to the hearing date, you must call (702) 486-7933 **OR** fax (702) 486-7949 to provide the name of the individual to call and the telephone number to use for the hearing.

CC: DETR
JEFFREY FREISCHMANN
EDGAR ROBERTS
MELANIE MAGUIRE
ARTURO MARTINEZ
SHERI IHLER
LISA ROSAS
SHARON FALLINE

This hearing has been rescheduled from Friday, December 15, 2017 to the date shown on this Notice of Hearing.

Have the mailed documents available as they will be used at the prehearing conference.

CC: ANTHONY HALL, ESQ
5441 KIETZKE LANE, 2ND FLOOR
RENO, NEVADA 89511

LAURIE TROTTER, ESQ
1340 SO CURRY STREET
CARSON CITY, NEVADA 89703

THE FOLLOWING ISSUES WILL BE CONSIDERED:

The parties shall come to the prehearing conference prepared to identify all documentary evidence each party may rely on to resolve the issue(s) in dispute, and to disclose and discuss the witnesses that may testify at the hearing. The parties must be prepared to disclose and discuss with sufficient specificity each witness's testimony to enable the Appeals Referee to determine which witnesses' testimony will be relevant to the issue(s) and the required length of the hearing.

Ten days prior to the scheduled prehearing conference, the parties shall submit a written statement identifying all documentary evidence each party may rely upon to resolve the issue(s) in dispute, as well as a list of witnesses that may testify at the hearing and an identification of the issue(s) that are in dispute.

Docket #V-17-A-04041-TX

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EXHIBIT 37

1 **AFFIDAVIT OF LAURIE L. TROTTER**

2 STATE OF NEVADA)

3 : ss.
4 CARSON CITY)

5 Laurie L. Trotter, Esq., after first being duly sworn, deposes and avers under
6 penalty of perjury the assertions of this Affidavit are true as follows:

7 1. That I am an attorney duly licensed to practice law in the State of Nevada.

8 2. That I am employed as Senior Legal Counsel to the Nevada Employment
9 Security Division of the Department of Employment, Training and Rehabilitation.

10 3. That on October 19, 2017, Petitioner Sierra National Corporation *dba* The
11 Love Ranch (SNC) did not proffer any subpoena for purposes of obtaining information necessary
12 for the proper presentation of its claim or claims at a Prehearing Conference in the underlying
13 NRS Chapter 612 case -- Docket No. V-17-A-04041-TX.

14 4. That on November 6, 2017, the Petition for Writ of Mandamus was served
15 upon the ESD Administrator and forwarded to ESD's counsel the following day.

16 5. That at the February 9, 2018, Prehearing Conference, the Referee
17 indicated that the next Prehearing Conference would be held on April 20, 2018.

18 FURTHER YOUR AFFIANT SAYETH NAUGHT.

19 DATED this 16th day of February, 2018.

20 *Laurie Trotter*
21 LAURIE L. TROTTER, ESQ.

22 Subscribed and Sworn to before me

23 this 16th day of February, 2018.

24 NOTARIAL OFFICER

LAURIE L. TROTTER, ESQ.
Division Sr. Legal Counsel
STATE OF NEVADA DETR/ESD
1340 South Curry Street
Carson City, NV 89703
(775) 684-6317
(775) 684-6344 - FAX

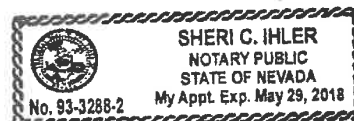


EXHIBIT 38

Laurie Trotter

From: Rico Cordova <RNCordova@hollandhart.com>
Sent: Friday, February 09, 2018 9:58 AM
To: April Bryant
Cc: Laurie Trotter; Anthony Hall; Jennifer L. Smith
Subject: Sierra National Corporation (Docket # V-17-A-04041-TX)
Attachments: 2018-02-07 Order Granting Petition for Writ of Mandamus.pdf

Good Morning:

Pursuant to Referee Larsen's request during this morning's status check in this matter, I am providing the attached order. SNC also requests that the attached be added to the exhibits it may use at the hearing on this matter. Please let me know if there are any questions.

Sincerely,

Ricardo Cordova
Associate Attorney
5441 Kietzke Lane, Second Floor, Reno, Nevada 89511
Main: (775) 327-3000 Fax: (775) 786-6179
Email: RNCordova@hollandhart.com



CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.

EXHIBIT 39

ORIGINAL

Anthony L. Hall, Esq., NSB 5977
Ricardo N. Cordova, Esq., NSB 11942
Holland & Hart LLP

Hand delivered
RECEIVED

NOV 06 2017 PM

EMPLOYMENT SECURITY DIV.
ADMINISTRATOR

Name: _____
Mailing Address: 5441 Kietzke Lane, Second Floor
City, State, Zip: Reno, Nevada 89511
Telephone: (775) 327-3000

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

Sierra National Corporation, dba
The Love Ranch,

Plaintiff,

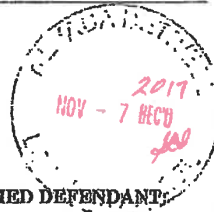
vs.

Nevada Department of Employment, Training and
Rehab - Employment Security Division,
Defendant.

Case No.: 170C00722 IB

Dept. No.: I

SUMMONS



THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT.

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT
YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.
READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is served on you, exclusive of the day of service, file with this Court a written pleading* in response to this Complaint.
2. Unless you respond, your default will be entered upon application of the plaintiff, and this Court may enter a judgment against you for the relief demanded in the Complaint**, which could result in the taking of money or property or the relief requested in the Complaint.
3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is:

SUSAN MERRIWETHER, Clerk of the Court

By: [Signature], Deputy Clerk

Date: October 26, 20 17

*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.

**Note - When service by publication, insert a brief statement of the object of the action. See Rule 4.

RETURN OF SERVICE ON REVERSE SIDE

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 E. 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 MAR -9 PM 5:20
SUSAN MERRIWETHER
CLERK
J. HARKLEROAD
DEPUTY

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

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

CASE NO. 17 OC 00222 1B

DEPT. NO. I

12 Petitioner,

13 vs.

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

16 Respondent.

18 **REQUEST FOR SUBMISSION OF RESPONDENT'S MOTION TO RECONSIDER**
19 **PURSUANT TO NRCP 59(e) and 60(b)**

20 **TO: THE CLERK OF THE ABOVE-ENTITLED COURT**

21 It is hereby requested that Respondent's *unopposed* Motion to Reconsider
22 Pursuant to NRCP 59(e) and 60(b), filed on February 16, 2018, be submitted to the Court for
23 decision.

24 ///

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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 9th day of March, 2018.




LAURIE L. TROTTER, ESQ.
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 REQUEST FOR SUBMISSION OF RESPONDENT'S MOTION
5 TO RECONSIDER PURSUANT TO NRCP 50(e) and 50(b), by placing the same within an
6 envelope upon which first class postage was fully prepaid and affixed, which was thereafter
7 sealed and deposited for mailing with the United States Postal Service at Carson City, Nevada,
8 addressed for delivery as follows:

9 Anthony L. Hall, Esq.
10 Rico Cordova, Esq.
11 *Holland & Hart*
12 5441 Kietzke Lane, **Second Floor**
13 Reno, NV 89511

14
15 **DATED** this 9th day of March, 2018.

16 
17 TIFFANY M. SILVA
18 Administrative Assistant III
19 Nevada DETR/ESD – OFFICE OF LEGAL COUNSEL
20
21
22
23
24

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 E. 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 MAR -9 PM 2:19
SUSAN MERRIWETHER
CLERK
BY _____ DEPUTY

7
8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

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

CASE NO.: 17 OC 00222 1B

11 *Petitioner,*

DEPT. NO.: I

12 *vs.*

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

16 *Respondent.*

17 **MOTION FOR STAY**

18 **COMES NOW**, Respondent, Administrator, State of Nevada, Employment
19 Security Division (ESD), by and through counsel, Laurie L. Trotter, Esq., and hereby files this
20 Motion For Stay. This Motion is made and based upon all pleadings and papers on file herein
21 and the supporting Points and Authorities attached hereto.

22 **DATED** this 9th day of March, 2018.

23 
24 LAURIE L. TROTTER, ESQ.
Attorney for Respondent DETR/ESD

JOSEPH L. WARD, JR., ESQ.
Division Sr. Legal Counsel
State of Nevada DETR/ESD
600 E. Third Street
Carson City, NV 89703
(775) 684-6317
(775) 684-6344 (Fax)

**POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR STAY**

In the event this Court does not grant ESD's pending Motion to Reconsider, ESD intends to appeal this Court's Order Granting the Petition for Writ of Mandamus and the Writ of Mandamus. This Court should issue a stay of the proceedings in this matter pending the Nevada Supreme Court's or Court of Appeal's ruling on ESD's above-described appeal, obviated by this Court granting of ESD's Motion to Reconsider.

In the event that the ultimate decision of the Nevada Supreme Court or Court of Appeals is unfavorable to ESD, in such case ESD requests the Court grant it 30 days from the date of service of the Supreme Court's or Court of Appeal's entry of the Remittitur within which to comply with the District Court's Order Granting Petition for Writ of Mandamus and the Writ of Mandamus.

I. FACTS

On March 5, 2018, ESD requested counsel for Sierra National Corporation dba The Love Ranch (SNC) stipulate to a stay of the proceedings in this case, pending ESD's appeal of this Court's Order Granting Petition for Writ of Mandamus and Writ of Mandamus, obviated by this Court granting ESD's Motion to Reconsider. *See*, Exhibit 1.

On March 6, 2018, counsel for SNC responded that it was inclined to stipulate to the stay of the proceedings in this case, pending client approval. *See*, Exhibit 2.

On March 7, 2018, ESD provided SNC with a proposed draft of the Stipulation and Order for Stay of the Proceedings Pending Appeal to the Supreme Court (Stipulation). *See*, Exhibit 3. To date ESD has not received a copy of a signed Stipulation. In the event such a stipulation is forthcoming, ESD will withdraw this instant motion. ESD respectfully requests that this Court issue a stay of the proceedings in this matter pending the Nevada Supreme Court's or the Court

1 of Appeal's ruling on ESD's above-described appeal.

2 II. ARGUMENT

3 ESD is required to "move first in the district court for" a stay. *See*, NRAP 8(a)(1).
4 NRCP 62(d) explains, "[w]hen an appeal is taken the appellant . . . may obtain a stay." NRCP 62
5 (e) provides, "[w]hen an appeal is taken by the State . . . and the operation or enforcement of the
6 judgment is stayed, no bond or obligation, or other security shall be required by the appellant."

7 The Nevada Supreme Court explained:

8 In deciding whether to issue a stay, this court generally considers
the following factors:

9 (1) Whether the object of the appeal or writ petition will be
defeated if the stay is denied;

10 (2) Whether appellant/petitioner will suffer irreparable or serious
injury if the stay is denied;

11 (3) Whether respondent/real party in interest will suffer irreparable
or serious injury if the stay is granted; and

12 (4) Whether appellant/petitioner is likely to prevail on the merits in
the appeal or writ petition.

13 *See* NRAP 8(c); *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948).

14 *Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 657, 6 P.3d 982,
15 986 (2000). The object of ESD's appeal will be defeated if a stay is denied as this Court entered
16 an Order contrary to law and in absence of subject matter jurisdiction. If this Court denies the
17 stay, ESD will be irreparably injured by having to comply with this Court's Order Granting
18 Petition for Writ of Mandamus and the Writ of Mandamus. SNC and this Court will not suffer
19 irreparably by waiting for the Nevada Supreme Court or Court of Appeals to decide ESD's
20 appeal. ESD is likely to prevail. Accordingly, ESD asks this Court to grant this motion and
21 issue a stay.

22 III. CONCLUSION

23 ESD respectfully requests this Court to enter an Order granting the motion and issuing
24 and Order to stay the proceedings, pending ESD's appeal. ESD also requests that if the ultimate

1 decision by the Supreme Court or Court of Appeals is unfavorable to ESD, that ESD shall have
2 30 days from the date of service of the Remittitur within which to comply with the District
3 Court's Order Granting Petition for Writ of Mandamus and the Writ of Mandamus.

4 AFFIRMATION Pursuant to NRS 239B.030:

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

7 **RESPECTFULLY SUBMITTED** this 9th day of March, 2016.

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

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and correct copy of the foregoing MOTION FOR STAY by placing the same within an envelope, which was thereafter sealed and deposited for postage and mailing with the State of Nevada Mail at Carson City, Nevada, addressed for delivery as follows:

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

DATED this 9th day of March, 2018.



TIFFANI M. SILVA

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INDEX OF EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>LENGTH</u>
1	Counsel for ESD's 3/5/18 request that SNC stipulate to stay the proceedings pending appeal, obviated by a grant of the Motion to Reconsider, and request that SNC stipulate to shortening time.	1
2	SNC's 3/6/18 response to ESD's request for stipulation to stay the proceedings and stipulation to shortening time.	2
3	ESD's 3/7/18 email to SNC which included a proposed Stipulation and Order for Stay of the Proceedings Pending Supreme Court Decision and to shorten time.	4
4	SNC's tentative agreement to stay the proceedings and shorten time.	2

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CHARLIE L. TROTTER, ESQ.
Senior Legal Counsel
STATE OF NEVADA DETR/ESD
500 E. Third Street
Carson City, NV 89713
(775) 684-3986
(775) 684-3982 (Fax)

EXHIBIT 1

Laurie Trotter

From: Laurie Trotter
Sent: Monday, March 05, 2018 11:35 AM
To: 'Anthony Hall'
Subject: Sierra National Corp. dba The Love Ranch v. ESD, Case No. 170C002221B

Good morning, Mr. Hall:

In the event the First Judicial District Court does not grant ESD's pending Motion to Reconsider in the above-referenced case, would you stipulate to stay the Order Granting Petition for Writ of Mandamus and the Writ of Mandamus, pending the outcome of ESD's appeal to the Supreme Court regarding same; and would you stipulate to an order for shortening time regarding the stay, all of which would be obviated if the Court granted the Motion to Reconsider.

Thank you,

Laurie L. Trotter, Esq.

Laurie L. Trotter
Senior Legal Counsel
Nevada Department of Employment, Training and Rehabilitation
Employment Security Division
500 East Third Street
Carson City, Nevada 89713
775-684-3996
775-684-3992 (Fax)
l-trotter@nvdetr.org



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LAURIE L. TROTTER, ESQ.
Senior Legal Counsel
STATE OF NEVADA DETR/ESD
500 E. Third Street
Carson City, NV 89713
(775) 684-3998
(775) 684-3992 (Fax)

EXHIBIT 2

Laurie Trotter

From: Anthony Hall <AHall@hollandhart.com>
Sent: Tuesday, March 06, 2018 3:10 PM
To: Laurie Trotter
Cc: Rico Cordova; Jennifer L. Smith
Subject: RE: Sierra National Corp. dba The Love Ranch v. ESD, Case No. 170C002221B

Ms. Trotter:

In the interest of avoiding fees and costs over the issue, we are inclined to stipulate to a stay, but I will need to confer with our client before we agree. We want to be clear with you, however, that we do not believe DETR is likely to prevail on its contemplated appeal, nor do we concede the other applicable factors regarding a stay. *See, e.g.*, NRAP 8(c). Also, it is my understanding that during the last hearing with Mr. Larsen, DETR indicated that it may appeal the order granting the writ of mandamus, and that if it does appeal, then it would move to stay the administrative proceedings. Can you please let me know if that remains the case so we can have a full understanding of the scope of DETR's proposed stay before we speak with our client? In other words, are you also asking for a stay of the administrative proceedings during the appeal (if the motion to reconsider is not granted)? If so, as I indicate above in order to avoid unnecessary fees for my client, I am inclined to agree, but need to discuss with my client.

On a separate issue, when you email me, please also copy Rico Cordova and my assistant Jennifer Smith (their emails are above)

Thank you,

From: Laurie Trotter [mailto:l-trotter@nvdetr.org]
Sent: Monday, March 05, 2018 11:35 AM
To: Anthony Hall
Subject: Sierra National Corp. dba The Love Ranch v. ESD, Case No. 170C002221B

Good morning, Mr. Hall:

In the event the First Judicial District Court does not grant ESD's pending Motion to Reconsider in the above-referenced case, would you stipulate to stay the Order Granting Petition for Writ of Mandamus and the Writ of Mandamus, pending the outcome of ESD's appeal to the Supreme Court regarding same; and would you stipulate to an order for shortening time regarding the stay, all of which would be obviated if the Court granted the Motion to Reconsider.

Thank you,

Laurie L. Trotter, Esq.

Laurie L. Trotter
Senior Legal Counsel
Nevada Department of Employment, Training and Rehabilitation
Employment Security Division
500 East Third Street
Carson City, Nevada 89713
775-684-3996
775-684-3992 (Fax)

l-trotter@nvdetr.org



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LAURIE L. TROTTER, ESQ.
Senior Legal Counsel
STATE OF NEVADA DET/RESO
500 E. Thlr Street
Carson City, NV 89713
(775) 684-3995
(775) 684-3992 (Fax)

EXHIBIT 3

Laurie Trotter

From: Laurie Trotter
Sent: Wednesday, March 07, 2018 10:57 AM
To: 'Anthony Hall'
Cc: 'Rico Cordova'; Jennifer L. Smith
Subject: Sierra National Corp. dba The Love Ranch v. ESD, Case No. 170C002221B
Attachments: 20180307103157221.pdf

Dear Mr. Hall:

In response to your email yesterday, 3/6/18, I have not yet addressed the stay of the chapter 612 administrative matter pending before ESD's Appeal Tribunal with my client. In the event Judge Russell does not grant ESD's Motion to Reconsider, contingent upon client approval, I will sign your stipulation and order to stay Sierra National Corporation's appeal to the Appeal Tribunal (Docket # V-17-A-04041-TX) in return for your signature on the attached Stipulation and Order for Stay of the Proceedings Pending the Supreme Court Decision, which includes a stipulation to shorten time and the agreement that ESD will have 30 days within which to comply if ESD receives an unfavorable Decision in the Nevada Supreme Court or Court of Appeals.

Please also note that the mailing address and telephone numbers for my office have changed, as set forth below.

Best regards,

Laurie L. Trotter, Esq.

Laurie L. Trotter
Senior Legal Counsel
Nevada Department of Employment, Training and Rehabilitation
Employment Security Division
500 East Third Street
Carson City, Nevada 89713
775-684-3996
775-684-3992 (Fax)
l-trotter@nvdetr.org



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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 E. Third Street
4 Carson City, NV 89713
Telephone No.: (775) 684-3996
5 Facsimile No.: (775) 684-3992
Attorney for DETR/ESD

6
7
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

DEPT. NO.: I

12 Petitioner,

13 vs.

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

16 Respondent.

17
18 **STIPULATION AND ORDER**
19 **FOR STAY OF PROCEEDINGS PENDING SUPREME COURT DECISION**

20 **COME NOW**, Petitioner, Sierra National Corporation, dba, The Love Ranch, a
21 Nevada Corporation, by and through counsel, Anthony L. Hall, Esq.; and, Respondent,
22 Administrator, State of Nevada, Department of Employment, Training and Rehabilitation,
23 Employment Security Division (ESD), by and through counsel, Laurie L. Trotter, Esq., and
24 hereby stipulate, consent and agree as follows:

LAURIE L. TROTTER, ESQ.
Division STATE OF NEVADA
DETR/ESD
Sr. Legal Counsel
500 E. Third Street
Carson City, NV 89713
(775) 684-3996
(775) 684-3992 (Fax)

1 **IT IS HEREBY STIPULATED and AGREED** by and between the parties that
2 the proceedings in this matter be stayed effective March 15, 2018, pending a ruling by the
3 Nevada Supreme Court or Court of Appeals regarding ESD's appeal of the District Court's
4 Order Granting Petition for Writ of Mandamus and the Writ of Mandamus in this case.

5 **IT IS HEREBY FURTHER STIPULATED and AGREED** that, should the
6 Supreme Court's ultimate decision be unfavorable to ESD, in such case ESD shall have 30 days
7 from the date of service of the Supreme Court's or Court of Appeal's entry of the Remittitur
8 within which to comply with the District Court's Order Granting Petition for Writ of Mandamus
9 and the Writ of Mandamus.

10 **IT IS HEREBY FURTHER STIPULATED and AGREED** that the Court
11 render its decision concerning the instant Stipulation and Order for Stay of the Proceedings
12 Pending Supreme Court Decision (Stipulation), at the Court's earliest available date and no later
13 than March 15, 2018.

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

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

17 **DATED** this __ day of March, 2018.

DATED this ____ day of March, 2018.

18
19 _____
20 ANTHONY L. HALL, ESQ.
21 Nevada State Bar No. 5977
22 5441 Kietzke Lane
23 Reno, NV 89511
24 (775) 327-3000
 Attorney for Petitioner

LAURIE L. TROTTER, ESQ.
Nevada State Bar No. 8696
Division Senior Legal Counsel
Attorney for Respondent Nevada DETR/ESD

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ORDER

Based upon the foregoing; and GOOD CAUSE APPEARING THEREFOR, this Court approves the forgoing Stipulation and,

IT IS HEREBY ORDERED that the instant matter is stayed, effective March 15, 2018, pending the Nevada Supreme Court or Court of Appeals ruling on ESD's appeal of this Court's Order Granting Petition for Writ of Mandamus and the Writ of Mandamus in this case. In the event the decision is unfavorable to ESD, ESD shall have 30 days from the date of service of the Nevada Supreme Court or Court of Appeal's entry of the Remittitur to comply with this Court's Order Granting Petition for Writ of Mandamus and the Writ of Mandamus.

IT IS HEREBY FURTHER ORDERED based on the stipulation of the parties that this Court shall shorten time to March 15, 2018, in which to render a decision upon the instant Stipulation.

DATED this _____ day of March, 2018.

HONORABLE JAMES T. RUSSELL
DISTRICT JUDGE

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LAURIE L. TROTTER, ESQ.
Senior Legal Counsel
STATE OF NEVADA DETR/ESD
600 E. Third Street
Carson City, NV 89713
(775) 884-3598
(775) 884-3982 (Fax)

EXHIBIT 4

Laurie Trotter

From: Rico Cordova <RNCordova@hollandhart.com>
Sent: Wednesday, March 07, 2018 4:39 PM
To: Laurie Trotter
Cc: Anthony Hall; Jennifer L. Smith
Subject: RE: Sierra National Corp. dba The Love Ranch v. ESD, Case No. 170C002221B

Ms. Trotter:

Thank you for your email. While we are likely to have some changes to the draft stipulation, we believe we will be able to reach an agreement. In addition, we will prepare a draft stipulation regarding the administrative matter. In the meantime, because tomorrow is the current deadline for our Opposition to the Motion for Reconsideration, can you please confirm whether you agree to our requested extension?

Thank you,

Ricardo Cordova
Associate Attorney
5441 Kietzke Lane, Second Floor, Reno, Nevada 89511
Main: (775) 327-3000 Fax: (775) 786-6179
Email: RNCordova@hollandhart.com



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From: Laurie Trotter [<mailto:l-trotter@nvdetr.org>]
Sent: Wednesday, March 7, 2018 10:57 AM
To: Anthony Hall <AHall@hollandhart.com>
Cc: Rico Cordova <RNCordova@hollandhart.com>; Jennifer L. Smith <JELSmith@hollandhart.com>
Subject: Sierra National Corp. dba The Love Ranch v. ESD, Case No. 170C002221B

Dear Mr. Hall:

In response to your email yesterday, 3/6/18, I have not yet addressed the stay of the chapter 612 administrative matter pending before ESD's Appeal Tribunal with my client. In the event Judge Russell does not grant ESD's Motion to Reconsider, contingent upon client approval, I will sign your stipulation and order to stay Sierra National Corporation's appeal to the Appeal Tribunal (Docket # V-17-A-04041-TX) in return for your signature on the attached Stipulation and Order for Stay of the Proceedings Pending the Supreme Court Decision, which includes a stipulation to shorten time and the agreement that ESD will have 30 days within which to comply if ESD receives an unfavorable Decision in the Nevada Supreme Court or Court of Appeals.

Please also note that the mailing address and telephone numbers for my office have changed, as set forth below.

Best regards,

Laurie L. Trotter, Esq.

Laurie L. Trotter
Senior Legal Counsel
Nevada Department of Employment, Training and Rehabilitation
Employment Security Division
500 East Third Street
Carson City, Nevada 89713
775-684-3996
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HOLLAND & HART LLP
5441 Kietzke Lane
Second Floor
Reno, NV 89511

Anthony L. Hall, Esq. (SBN 5977)
Ricardo N. Cordova, Esq. (SBN 11942)
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
Tel.: 775-327-3000
Fax: 775-786-6179
Ahall@hollandhart.com
Rncordova@hollandhart.com
Attorneys for Petitioner

REC'D & FILED
2010 MAR -9 PM 12:07
BY SUSAN MERRIWETHER
CLERK
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. 170C002221B

Petitioner,

Dept. No. I

vs.

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

Respondent.

MOTION FOR EXTENSION OF TIME TO FILE OPPOSITION

Pursuant to FJDCR 9(a), Petitioner, Sierra National Corporation, dba The Love Ranch (“The Love Ranch”), moves the Court for a two week extension of time to submit an Opposition to the “Motion to Reconsider Pursuant to NRCP 59(e) and 60(b)” (“Motion for Reconsideration”) filed by Respondent Nevada Department of Employment, Training and Rehabilitation – Employment Security Division (“DETR”).

I. INTRODUCTION

Despite having just requested a stay of all proceedings in this case pending its contemplated appeal—which will again delay The Love Ranch from receiving the public records it requested over half a year ago, and extend this case by months, if not years—DETR has refused to agree to grant the Love Ranch a *two week* extension to submit its Opposition. And, despite the professional courtesies that have been extended to DETR, it has refused to agree to

1 what should be a routine, freely-granted extension. This is simply the latest example of the
2 obstructionism DETR has demonstrated throughout this proceeding. DETR's tactics have, once
3 again, necessitated Court intervention and forced The Love Ranch to expend resources to prepare
4 this Motion. Notwithstanding DETR's tactics, there is plainly good cause for a two-week
5 extension for The Love Ranch to submit its Opposition to the Motion for Reconsideration, as
6 detailed below. Pursuant to FJDCR 15(7), and for the Court's convenience, a proposed Order
7 Granting this Motion is attached as "Exhibit 1."

8 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

9 Although the Court is undoubtedly familiar with the underlying facts and procedural
10 history of this matter given the stage of proceedings, some brief background is helpful to provide
11 proper context for this Motion. In October 2017, The Love Ranch made a public records request
12 to DETR. DETR issued a blanket denial of the request, asserting only two grounds for its
13 blanket denial of the request—grounds which it has now largely abandoned. Unfortunately, the
14 obstructionism that DETR demonstrated in its response would only be a harbinger of things to
15 come.

16 As a result of DETR's refusal to provide the public records that the NPRA, and decades
17 of caselaw interpreting it, make clear it must provide, The Love Ranch was forced to file its
18 petition for a writ of mandamus ("Petition"). As this Court has recognized in granting The Love
19 Ranch's Petition, DETR's refusal to disclose the requested records was plainly in violation of the
20 Nevada Public Records Act ("NPRA"). This should have been a straightforward mandamus
21 proceeding. Instead, it has been plagued by DETR's abusive litigation tactics.

22 At the outset, DETR Answered the Petition by springing forward with a kitchen-sink of
23 new arguments that it had never raised in its denial of The Love Ranch's Public Records
24 Request, along with unprofessional personal attacks. As such, The Love Ranch made a
25 reasonable, statutorily-authorized request for leave to file a reply to address DETR's new
26 arguments and attacks. Although such requests are routinely-granted, and rarely opposed at all,
27 DETR filed an Opposition. In its Opposition, rather than responding with any meaningful reason
28 why a reply should not be permitted, DETR launched another bevy of baseless personal