

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTOINE SALLOUM,

Appellant.

vs.

BOYD GAMING CORPORATION,
d/b/a MAIN STREET STATION, a
Delaware corporation,

Respondent.

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Dec 18 2020 03:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Docket No.: 80769
District Court Case No.: A-19-804678-C

JOINT APPENDIX

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CHRONOLOGICAL INDEX

<u>Date</u>	<u>Description</u>	<u>Bates Numbers</u>	<u>Vol.</u>
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01-14-2020	Transcript of Cont. Hearing on Defendant's Motion to Dismiss	JA100 - JA119	1
01-01-2020	Transcript of Defendant's Motion to Dismiss	JA069 - JA099	1

DATED this 18th Day of December, 2020.

WATKINS & LETOFSKY, LLP.

/s/ Daniel R. Watkins

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/s/ Paul S. Prior

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CERTIFICATE OF SERVICE

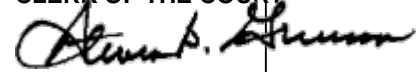
I certify that I am an employee of Watkins & Letofsky, LLP, and that on this **18TH day of December 2020**, I electronically served the foregoing **JOINT APPENDIX** on the interested parties in this action via Electronic Service through the Nevada Supreme Court E-filing.

- ☒ Electronic: by submitting the foregoing document via Electronic Service through the Nevada Supreme Court E-filing System upon the parties/counsel listed on the Court's Electronic Service List pursuant to ADKT 404. The copy of the document electronically served bears a notation of the date and time of service. The original document will be maintained with the document(s) served and be made available, upon reasonable notice, for inspection by counsel or the Court. The document will be served on the following:

SEE THE COURT'S E-FILING SERVICE LIST

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Farah Kachermeyer
Farah H. Kachermeyer
An Employee of Watkins & Letofsky, LLP



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CASE NO: A-19-804678-C
Department 25

DISTRICT COURT
CLARK COUNTY, NEVADA

ANTOINE SALLOUM,
Plaintiff,

Case No.:

Dept. No.:

vs.

BOYD GAMING CORPORATION, d/b/a
MAIN STREET STATION, a Delaware
corporation; DOES 1-50, ROE
CORPORATIONS 1-50, inclusive,
Defendants.

COMPLAINT FOR DAMAGES

COMES NOW, Antoine Salloum (hereinafter "PLAINTIFF") and files this civil action against Defendants, and each of them, for violations of Nevada Revised Statutes §613.330 et seq.; and related claims under Nevada law, seeking damages, and alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction and venue over this action pursuant to NRS §3.040 and §613.333 et seq., which confer jurisdiction to address the deprivation of rights, privileges and immunities secured by Nevada law.

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2. Venue is proper in the Eighth Judicial District Court because the unlawful employment practices alleged herein were committed in whole or in part in Clark County, Nevada.

3. Plaintiff has exhausted his administrative remedies.

4. All conditions precedent to jurisdiction under section NRS §613.310 et seq. have occurred or been complied with:

5. A charge of employment discrimination was filed with the Equal Employment Opportunity Commission ("EEOC") within 180 days of the commission of the unlawful employment practice alleged herein and / or within 300 days of PLAINTIFF instituting proceedings with a State or local agency with authority to grant or seek relief from such unlawful employment practices alleged herein:

6. A Notice of Right to Sue in state or federal court was received from the EEOC, dated August 13, 2019. (A true and correct copy of said letter is attached and incorporated herein as Exhibit “1”.)

7. This complaint is filed within 90 days of receipt of the EEOC's Notification of Right to Sue.

PARTIES

PLAINTIFF

8. Plaintiff, ANTOINE SALLOUM, is a qualified/eligible “employee” of Defendant, BOYD GAMING., within the meaning of Nevada Revised Statutes §608.101 and 613.010 et seq. and resided in Clark County, Nevada.

DEFENDANTS

9. Defendant, BOYD GAMING CORPORATION, (hereinafter “BOYD” or “Defendant”) is a Delaware corporation qualified to do business in Nevada. Defendant employs 15 or more employees and as such, is an "employer" within the meaning of Nevada Revised Statutes §608.011 and 613.310. Defendant has offices located at 3883 Howard Hughes Parkway, Ninth Floor, Las Vegas, Nevada, 89169.

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10. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1 through 50 and ROE CORPORATIONS 1-50, inclusive, are unknown to Plaintiff at this time, who therefore sues said Defendants by such fictitious names. PLAINTIFF is informed and believes and thereon alleges that each of the fictitiously named DEFENDANTS are in some way responsible for, or participated in, or contributed to, the matters and things complained of herein, and are legally responsible in some manner. PLAINTIFF will seek leave to amend this Complaint when the true names, capacities, participation and responsibilities have been ascertained.

STATEMENT OF FACTS

11. PLAINTIFF is a 66 year old male with a date of birth of July 28, 1953. PLAINTIFF is a former employee of Defendant BOYD, where he worked as a food and beverage manager. At the time of his employment, PLAINTIFF'S pay included a salary of \$48,300.00 annually.

12. PLAINTIFF is a member of the group of individuals over the age of 40 protected by the civil rights law referenced herein.

13. PLAINTIFF was employed by Defendant from April 23, 2003 until August 15, 2018.

14. In approximately 2017, the general manager and the director at Main Street Station retired. Terri Mercer, a female, was named the new director.

15. Terri Mercer engaged in misandrist behavior by harassing the male employees at the Main Street Station.

16. Terri Mercer's harassing conduct consisted of speaking to Plaintiff in condescending tones to make him feel inferior, speaking to him in verbally abusive language in front of management and employees and screaming at him in front of guests.

17. On or about January 20, 2018, Plaintiff was making his rounds to check on the status of the Garden Court Buffet and to see if the supervisor of the buffet, a female, needed assistance. When Plaintiff arrived, Terri Mercer approached him, noted that the salad bowl at the salad bar was empty, blamed him for the missing salad bowl, and told him, in front of his subordinates that he was not doing his job as a manager.

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1 18. On or about January 30, 2018, Jennifer Billings, the food and beverage supervisor, a
2 female, asked Plaintiff, the food and beverage manager, if she could leave early for personal
3 reasons. Plaintiff, as food and beverage manager, had direct authority over the food and
4 beverage supervisors. Plaintiff granted the request. When Terri Mercer learned of this event,
5 she became angry and instructed Jennifer Billings never to ask Plaintiff for any changes to the
6 schedule because "Antoine is not your boss."

7 19. On or about February 4, 2018, Plaintiff was working in the Triple Seven Brewpub for
8 a promotional Super Bowl Party, which was first come, first serve. During the game, in front of
9 guests and employees, Terri Mercer yelled at Plaintiff, accusing him of accepting bribes for
10 reservations. "How much money do you have in your pockets?" she asked in front of guests and
11 employees.

12 20. On or about June 9, 2018, Defendant's Human Resources department investigated a
13 claim that Plaintiff was borrowing money from subordinates. Defendant closed the investigation
14 because it was unable to substantiate the claims.

15 21. In early July, 2018, Plaintiff received a card from Defendant's human resources
16 department, inviting him to attend the Garden Court Buffet with a friend, free of charge, for his
17 birthday. It was Defendant's standard practice to send these invitations to every employee and
18 manager for their birthdays.

19 22. On July 28, 2018, Plaintiff's birthday, Plaintiff was walking through the California
20 Hotel, on his way to meet his friend at the Garden Court Buffet at Main Street Station, when he
21 encountered Terri Mercer. Terri Mercer asked Plaintiff where he was going and Plaintiff
22 informed her that he was celebrating his birthday at the Garden Court Buffet. Terri Mercer told
23 Plaintiff, "You cannot go to the buffet and eat tonight." When Plaintiff asked why he could not
24 go to the buffet, Terri Mercer refused to give him an explanation, telling him, "As your
25 supervisor, I am giving you a direct order not to go to the buffet tonight."

26 23. Plaintiff proceeded to the Garden Court Buffet to meet his friend and inform his
27 friend that they needed to eat somewhere else. Terri Mercer followed Plaintiff, stood in front of
28 the buffet, and told him in front of his guest and customers, "You are not coming in here."

1 Plaintiff replied that he understood and would go to the California or the Fremont. Terri Mercer
2 replied, again in front of Plaintiff's friend and other patrons, "I don't want you to go to either
3 one. Maybe you should go somewhere else and not a Boyd property"

4 24. On or about August 9, 2018, Terri Mercer called Plaintiff to her office and questioned
5 him about borrowing money from team members. When Plaintiff adamantly denied borrowing
6 money from team members, Terri Mercer smirked, laughed and shook her head in a manner that
7 Plaintiff understood to mean that she did not believe him.

8 25. Later in the afternoon on August 9, 2018, Terri Mercer placed Plaintiff on suspension
9 and informed him he was under investigation for borrowing money from employees and or
10 soliciting and/or coercing employees to donate to charitable causes.

11 26. Plaintiff's suspension was due, in part, to claims made by cocktail server Eva Pilapil
12 that Plaintiff borrowed money from her husband's PayDay loan company.

13 27. Plaintiff denied the accusations and requested proof and documentation to support
14 Ms. Pilapil's accusations. Defendant never provided any proof to support the accusations.

15 28. On or about August 15, 2018, Terri Mercer terminated Plaintiff's employment for
16 allegedly borrowing money from employees and/or soliciting and/or coercing employees to
17 donate to charitable causes.

18 29. Defendant replaced Plaintiff with a younger, female employee.

19 30. During Plaintiff's employment, Plaintiff regularly fielded customer complaints about
20 food and beverage supervisor, Jennifer Billings, for her rude and unprofessional conduct.
21 Guests complained about Jennifer Billings to both Plaintiff and Terri Mercer nearly daily.
22 Despite multiple complaints from customers regarding Jennifer Billings' rude and unprofessional
23 demeanor, Terri Mercer promoted her.

24 31. Throughout the time of Plaintiff's employment that Terri Mercer was director of
25 Main Street Station, Terri Mercer never fired any female employees.

26 32. Throughout the time of Plaintiff's employment that Terri Mercer was director of
27 Main Street Station, Terri Mercer fired several male employees, including Plaintiff.

28 //

1 33. At the time of his termination from employment, PLAINTIFF was qualified for the
2 position he held of food and beverage manager.

3 **COUNT I**

4 **SEX (GENDER) DISCRIMINATION**

5 **NV Rev. Stat. §613.330 et seq.**

6 34. PLAINTIFF hereby incorporates paragraphs 1 through 33 of this Complaint as
7 though fully set forth herein.

8 35. The subjection of Plaintiff to disparate treatment and adverse employment actions by
9 defendants in whole or substantial part because of his sex (male) was in violation of the NRS
10 613.330 et. seq.

11 36. Defendant BOYD's violation of the NRS 613.330 et. seq. was intentional, willful and
12 deliberate and Plaintiff seeks liquidated damages for each violation.

13 37. Defendant BOYD's unlawful actions were intentional, willful, malicious and/or done
14 with reckless disregard for PLAINTIFF'S statutorily protected rights.

15 38. Defendant BOYD, through its agents or supervisors, failed to adequately supervise,
16 control, discipline, and/or otherwise penalize the conduct, acts, and failures to act of BOYD as
17 described above and thereby ratified the unlawful conduct of its agents or supervisors.

18 39. As a direct and proximate result of Defendant BOYD's discriminatory actions as
19 alleged herein, Plaintiff has been made to suffer mental anguish and emotional distress, loss of
20 employment and future employment opportunities, and loss of wages and benefits. Plaintiff is
21 reasonably certain to continue to suffer these damages in the future.

22 40. As a result of Defendant's conduct, PLAINTIFF has sustained damages in excess of
23 \$15,000.00 and requests relief as described in the Prayer for Relief below.

24 **COUNT II**

25 **AGE DISCRIMINATION**

26 **NV Rev. Stat. §613.330 et seq.**

27 41. PLAINTIFF hereby incorporates paragraphs 1 through 40 of this Complaint as
28 though fully set forth herein.

42. The subjection of Plaintiff to disparate treatment and adverse employment actions by defendants in whole or substantial part because of his age was in violation of NRS 613.330 et seq.

43. Defendant BOYD's violation of NRS 613.330 was intentional, willful and deliberate and Plaintiff seeks liquidated damages for each violation.

44. Defendant BOYD's unlawful actions were intentional, willful, malicious and/or done with reckless disregard for PLAINTIFF'S statutorily protected rights.

45. Defendant BOYD, through its agents or supervisors, failed to adequately supervise, control, discipline, and/or otherwise penalize the conduct, acts, and failures to act of BOYD as described above and thereby ratified the unlawful conduct of its agents or supervisors.

46. As a direct and proximate result of Defendant BOYD's discriminatory actions as alleged herein, Plaintiff has been made to suffer mental anguish and emotional distress, loss of employment and future employment opportunities, and loss of wages and benefits. Plaintiff is reasonably certain to continue to suffer these damages in the future. Plaintiff is entitled to the rights and remedies at law provided by NRS 613.330 et. seq., including actual damages, liquidated damages, and attorneys' fees, in an amount to be proven at trial.

47. As a result of Defendant's conduct, PLAINTIFF has sustained damages in excess of \$15,000.00 and requests relief as described in the Prayer for Relief below.

COUNT III

HOSTILE WORK ENVIRONMENT

NV Rev. Stat. §613.330 *et seq.*

48. PLAINTIFF hereby incorporates paragraphs 1 through 47 of this Complaint as though fully set forth herein.

49. PLAINTIFF was subjected to verbally abusive, condescending, demeaning language during his employment with BOYD which was perpetrated upon him by Defendant, and that this conduct was based upon and directed at PLAINTIFF by reason of his gender.

50. The conduct was unwelcome.

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1 51. The conduct was sufficiently severe or pervasive to alter the conditions of the
2 PLAINTIFF's employment and create an abusive and/or hostile work environment;

3 52. This harassing and discriminatory conduct was sufficiently severe and pervasive so as
4 to unreasonably interfere with PLAINTIFF'S physical health, work performance and so as to
5 create an intimidating, hostile and offensive working environment.

6 53. Plaintiff perceived the working environment to be abusive or hostile.

7 54. During the times referenced herein, PLAINTIFF was subject to a number of
8 inappropriate comments made by his supervisor, Terri Mercer. Ms. Mercer made highly
9 inappropriate comments to PLAINTIFF such as berating him in front of subordinates for an error
10 made by supervisor, refusing to allow him to redeem his BOYD-issued birthday certificate at a
11 Boyd property, birthday certificate, and accusing him of privately charging patrons for reserved
12 seating at a Super Bowl party.

13 55. As a direct and proximate result of the harassing and hostile environment of BOYD
14 and his supervisors, PLAINTIFF suffered great embarrassment, humiliation and mental and
15 physical anguish.

16 56. Defendant's unlawful actions were intentional, willful, malicious and/or done with
17 reckless disregard for PLAINTIFF'S federally protected rights.

18 57. BOYD through its agents or supervisors failed to adequately supervise, control,
19 discipline, and/or otherwise penalize the conduct, acts, and failures to act of BOYD described
20 above thereby ratifying the unlawful conduct of its agents or supervisors.

21 58. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has
22 suffered damages including, but not limited to, a loss of income and benefits, and has further
23 suffered emotional distress and other general damages.

24 59. In doing the things alleged herein, Defendants' conduct was despicable, and
25 Defendants acted toward Plaintiff with malice, oppression, fraud, and with willful and conscious
26 disregard of Plaintiff's rights, entitling Plaintiff to an award of punitive damages. The
27 Defendants' conduct described herein was engaged in by managing agents for Defendant and/or
28 ratified by managing agents.

1 60. As a result of Defendant's conduct, PLAINTIFF has sustained damages in excess of
2 \$15,000.00 and requests relief as described in the Prayer for Relief below.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays that this Court grant the following relief:

- 5 A. Grant PLAINTIFF economic loss including front and back pay, plus interest.
6 B. Grant general and special damages in amounts according to proof..
7 C. Grant liquidated damages in amounts according to proof.
8 D. Grant punitive damages to deter and punish the defendants;
9 E. Grant reasonable attorneys' fees;
10 F. Grant costs of suit incurred herein; and
11 G. Grant such other and further relief as the court deems just and proper.

12
13 DATED this 1st day of November, 2019.

WATKINS & LETOFSKY, LLP

14 */s/ Daniel R. Watkins*

15 By:

16 Daniel R. Watkins
17 Theresa M. Santos
18 8215 S. Eastern Ave., Ste. 265
19 Las Vegas, NV 89123
20 Attorneys for Plaintiff,
21 Antoine Salloum
22
23
24
25
26
27
28

Exhibit 1

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Antoine S. Salloum
c/o Theresa M. Santos
WATKINS & LETOFSKY LLP
8215 S. Eastern Ave., Suite 265
Las Vegas, NV 89123

From: Las Vegas Local Office
333 Las Vegas Blvd South
Suite 5560
Las Vegas, NV 89101

☐ On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
487-2019-00649	Amy Nigro, Investigator	(702) 388-5014

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA must be filed in a federal or state court **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- ☐ More than 180 days have passed since the filing of this charge.
- ☒ Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- ☒ The EEOC is terminating its processing of this charge.
- ☐ The EEOC will continue to process this charge.

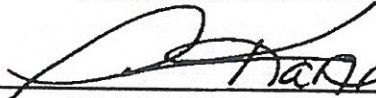
Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- ☒ The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
- ☐ The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



Patricia A. Kane,
Acting Director

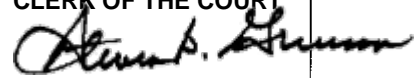
8/13/19

(Date Mailed)

Enclosures(s)

CC: Sarah Bassett
Associate General Counsel
BOYD GAMING CORPORATION
6465 S Rainbow Blvd.
Las Vegas, NV 89118

JA011



IN THE EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF CLARK

ANTOINE SALLOUM,

Plaintiff(s),

VS.

CASE NO: A-19-804678-C

BOYD GAMING CORPORATION d/b/a MAIN STREET

STATION, a delware corporation,

Defendant(s),

DECLARATION OF SERVICE

STATE OF NEVADA

COUNTY OF WASHOE

ss.:

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

That Affiant received copy(ies) of the CIVIL COVER SHEET; SUMMONS; COMPLAINT FOR DAMAGES; INITIAL APPEARANCE FEE DISCLOSURE; On 11/4/2019 and served the same on 11/4/2019 at 11:19 AM by delivery and leaving a copy with:

Kris Osborne - Administrative Assistant, pursuant to NRS 14.020 as a person of suitable age and discretion, of the office of CORPORATION SERVICE COMPANY, registered agent for BOYD GAMING CORPORATION, at the registered address of:

112 N Curry St, Carson City, NV 89703-4934

A description of Kris Osborne is as follows

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	White	Brown	41-45	5'1 - 5'6	141-160 Lbs

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

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

Executed on: 11/5/2019

by ROBERT JAMES CLARK

Registration: R -060170

No notary is required per NRS 53.045

X

ROBERT JAMES CLARK

Registration: R -060170

Reno Carson Messenger Service, Inc #322

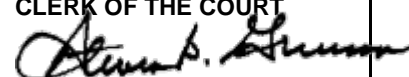
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hcummings@swlaw.com

Attorneys for Defendant Boyd Gaming Corporation

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ANTOINE SALLOUM,

Plaintiff,

v.

BOYD GAMING CORPORATION, d/b/a
MAIN STREET STATION, a Delaware
corporation; DOES 1-50, ROE
CORPORATIONS 1-50, inclusive,

Defendants.

Case No. A-19-804678-C
Dept. No. XXV

**BOYD GAMING CORPORATION'S
MOTION TO DISMISS**

HEARING REQUESTED

Defendant Boyd Gaming Corporation, incorrectly identified as Boyd Gaming Corporation d/b/a Main Street Station¹ (“Boyd” or the “Company”), by and through its counsel, the law firm of Snell & Wilmer L.L.P., moves this Court to dismiss Plaintiff Antoine Salloum’s (“Plaintiff”) Complaint (the “Motion”).

This Motion is based on the following Memorandum of Points and Authorities, all papers on file with this Court, any documents incorporated by reference or attached to the Complaint, and any oral argument that this Court may entertain.

¹ The proper party to this action is M.S.W., Inc. d/b/a Main Street Station Hotel, Casino and Brewery (“M.S.W.”). M.S.W. is a subsidiary of Boyd.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's allegations that his female supervisor supposedly discriminated against him because he is a man are woefully insufficient to sustain his claims under NRS § 613.330. The Court, however, need not assess the substantive sufficiency of Plaintiff's Complaint because Plaintiff's claims are time-barred. And due to this fatal defect, Plaintiff's Complaint must be dismissed with prejudice. To explain, Plaintiff's Complaint asserts three baseless causes of action under NRS § 613.330, related to Plaintiff's employment with the Company, which ended on August 15, 2018. However, the law is well-established: claims brought under NRS § 613.330 *must* be filed no more than 180 days after the last date of the alleged discrimination. Here, with tolling accounted for, Plaintiff initiated this action 379 days after the Company terminated Plaintiff's employment. Thus, Plaintiff's Complaint is untimely and must be dismissed.

Further, even if the claims were not time-barred, Boyd is not the proper party to this action. None of Plaintiff's allegations assert any misconduct by the Company. They only concern alleged actions by M.S.W., Inc. d/b/a Main Street Station Hotel, Casino and Brewery ("M.S.W."), which is a subsidiary of the Company. For any or all of these reasons, Plaintiff's claims fail as a matter of law and must be dismissed.

II. FACTUAL BACKGROUND AS ALLEGED IN THE COMPLAINT

Plaintiff claims that, in 2017 (after several years of work), he suddenly experienced "misandrist behavior" generated by Terri Mercer ("Ms. Mercer")—a woman and the general director and manager for Main Street Station. Compl. ¶¶ 13–15.² Plaintiff goes on to allege a laundry list of inane grievances (attempting to claim that Ms. Mercer hates men³), none of which amount to employment discrimination under NRS § 613.330. Compl. ¶¶ 16–28. The Company ultimately suspended Plaintiff on August 10, 2018 after investigating numerous claims of financial coercion and solicitation of his subordinates. Compl. ¶¶ 24–28. And based on its investigation, the Company terminated Plaintiff's employment on August 15, 2018. Compl. ¶ 13.

²Misandrist means "a person that hates men." *Misandrist*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/misandrist> (last visited Nov. 21, 2019).

³*Id.*

Two hundred and ninety-nine days later, on June 10, 2019, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) (the “Charge”). *See* Charge of Discrimination (June 10, 2019), attached as **Exhibit A**.⁴ Plaintiff did not file a complaint with the Nevada Equal Rights Commission (“NERC”), and did not file a joint charge of discrimination with the EEOC. Even more so, Plaintiff’s Charge with the EEOC did not include any state claims under NRS § 613.330. *See* Ex. A. Thus, at no time did Plaintiff file a Charge with NERC in accordance with the legal requirements set forth in NRS § 233.160. Obviously, having never filed a charge with NERC, the agency did not review or issue a right-to-sue letter.

However, upon Plaintiff’s request of a right-to-sue notice, the EEOC disposed of Plaintiff’s flatly insufficient federal causes of action and issued a notice of right-to-sue on August 13, 2019. Compl. ¶ 6. Plaintiff then commenced the instant action (only alleging state causes of action) on November 1, 2019—**379 days after** the last date of the alleged discrimination.⁵

III. ARGUMENT

A. Legal Standard.

A defendant is entitled to dismissal of a claim when a plaintiff fails “to state a claim upon which relief can be granted.” NRCP 12(b)(5). A plaintiff fails to state a claim if it appears beyond a doubt that the claimant can prove no set of facts that would entitle it to relief. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228 (2008); *Morris v. Bank of America*, 110 Nev. 1274, 1277 (1994.) In considering the motion, the court must accept all of a plaintiff’s factual allegations as true and construe them in the plaintiff’s favor. *Buzz Stew*, 124 Nev. at 228; *Morris*, 110 Nev. at

⁴ On a motion to dismiss, “the court is not limited to the four corners of the complaint.” *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (citing 5B Charles Alan Wright & Arthur Miller, *Federal Practice & Procedure: Civil* § 1357, at 376 (3d ed. 2004)). The Court may take judicial notice of documents that are incorporated by reference into a complaint, *even if not attached* to the same, if: (1) the complaint refers to the document, (2) the document is central to the plaintiff’s claims, and (3) the authenticity of the document is undisputed. *Baxter*, 131 Nev. at 764, 357 P.3d at 930 (citing *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011)); *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994) (“documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss”). Here, Plaintiff’s Charge of Discrimination is referenced in the Complaint, the Charge is central to Plaintiff’s claims, the Charge’s authenticity is undisputed, and Plaintiff directly incorporated the Charge by attaching the EEOC’s right-to-sue notice to the Complaint.

⁵ While there are 443 days between August 15, 2018 and November 1, 2019, the Company does not count the days that Plaintiff’s Charge was under review with the EEOC.

1 1276. However, the court is “not bound to accept as true a legal conclusion couched as a factual
2 allegation.” *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *see also Pack v. LaTourette*, 128 Nev.
3 264, 268 (2012) (holding that the court must accept *factual* allegations as true and then determine
4 whether these allegations are *legally* sufficient to satisfy the elements of the claim asserted). Even
5 if Plaintiff’s factual averments were true, Plaintiff can prove no set of facts that would entitle him
6 to relief. Accordingly, the Court must dismiss Plaintiff’s Complaint as a matter of law.

7 **B. Plaintiff’s Claims under NRS § 613.330 *et seq.* Expired on February 11, 2019 and,**
8 **Plaintiff’s Complaint Is Time-Barred.**

9 While Plaintiff’s Complaint unquestionably shows that Plaintiff can prove no set of facts
10 that would entitle him to relief,⁶ the Court need not assess the substance of Plaintiff’s allegations
11 to find that dismissal, with prejudice, is warranted. To explain, on February 11, 2019—180 days
12 after Plaintiff’s termination—Nevada law was clear: “no action authorized by 613.420 may be
13 brought more than 180 days after the date of the act complained of.” Nev. Rev. Stat. § 613.430. By
14 extension, on February 11, 2019, with no charge filed with the EEOC or NERC, Plaintiff’s NRS §
15 613.330 claims unequivocally expired under NRS § 613.430. And, as a matter of law, Plaintiff’s
16 claims cannot be revived.

17 Though the Nevada Supreme Court has not had the occasion to assess analogous
18 circumstances, well-established precedent from the United States District Court for the District of
19 Nevada is instructive.⁷ Courts in the District of Nevada have repeatedly held that discrimination
20 claims “authorized by Chapter 613 of the Nevada Revised Statutes may not be ‘brought more than
21 180 days after the date of the act complained of.’” *Richardson v. HRHH Gaming Senior Mezz, LLC*,
22 99 F. Supp. 3d 1267, 1271 (D. Nev. 2015) (quoting NRS § 613.430).

24 ⁶ *See Sell v. Diehl*, 431 P.3d 38, 2018 WL 6264754, at *3 (Nev. 2018) (“[A] complaint must set forth
25 sufficient facts to establish all necessary elements of a claim for relief, so that the adverse party has adequate
26 notice of the nature of the claim and relief sought.” (citing *Johnson v. Travelers Ins. Co.*, 89 Nev. 467, 472,
515 P.2d 68, 71-72 (1973); *Branda v. Sanford*, 97 Nev. 643, 648, 637 P.2d 1223, 1227 (1981))).

27 ⁷ The Court may consider federal case law interpreting NRS § 613.430 as persuasive authority. *See, e.g.,*
28 *Terry v. Sapphire Gentlemen’s Club*, 130 Nev. 879, 886, 336 P.3d 951, 957 (2014) (“having no substantive
reason to break with the federal courts on this issue, “judicial efficiency implores us to use the same test as
the federal courts. . . .”) (internal quotation omitted).

1 By way of example, in *Young v. Boggs*, No. 2:10-cv-01846-KJD, 2011 WL 2690125 (D.
2 Nev. July 11, 2011), the plaintiff asserted race and age discrimination violations under NRS §
3 613.330. While the plaintiff filed a charge with the EEOC 240 days after the alleged discriminatory
4 act, the court dismissed plaintiff's NRS § 613.330 claims with prejudice because the plaintiff failed
5 to file her charge within Nevada's 180-day deadline. *Young*, 2011 WL 2690125, at *2. The court
6 explicitly stated, "NRS 613.430 requires plaintiffs who wish to bring lawsuits under Nevada's
7 unfair employment practice laws to file charges with NERC within 180 days after the alleged
8 discriminatory or retaliatory act. This 180-day deadline is not expanded even though Nevada has a
9 work sharing agreement with the EEOC that lengthens the deadline to file with the EEOC to 300
10 days." *Id.* Here, like the plaintiff in *Young*, Plaintiff filed his Charge of discrimination within 300
11 days of the alleged discriminatory act but failed to meet NRS § 613.430's 180-day deadline. As a
12 result, Plaintiff's Complaint must be dismissed.

13 In understanding the time-barred nature of Plaintiff's Complaint, the court's reasoning in
14 *Russo v. Clearwire US, LLC*, No. 2:12-cv-01831-PMP, 2013 WL 1855753 (D. Nev. Apr. 30, 2013)
15 is informative:

16 As for [plaintiff's] argument that his claim was timely because it was filed within
17 300 days of his constructive discharge, § 233.160(1) (b) does not apply to claims in
18 which a plaintiff seeks to file a district court action. Instead, § 233.160(1)(b)
19 provides that a plaintiff has 300 days from the date of a discriminatory employment
20 practice to file a complaint with NERC. A plaintiff might timely file a complaint
21 with NERC within the 300-day deadline, but be unable to file a district court action
22 once that complaint has been disposed of by NERC if 180 days had elapsed before
23 the NERC complaint was filed. Such is the case here. Although it is somewhat
confusing that a plaintiff has 300 days to file a complaint with NERC and only 180
days to bring suit in district court, nothing prevented [plaintiff] from filing his
complaint with NERC before § 613.430's 180-day deadline, which would have
tollled the limitations period for his district court action. The Court therefore will
dismiss with prejudice [plaintiff's] claim for violation of § 613.330.

24 *Russo*, 2013 WL 1855753, at *4; *see also Lo v. Verizon Wireless LLC*, No. 2:13-CV-2329-JCM-
25 NJK, 2014 WL 2197636, at *2 (D. Nev. May 27, 2014) ("Plaintiff did not file his complaint [within]
26 the 180-day limitations period. Therefore, the plaintiff is time barred from raising . . . causes of
27 action [under NRS § 613.330]."). Plaintiff never even filed a charge with NERC. Undoubtedly,
28

1 Plaintiff's failure to file his NRS § 613.330 claims within NRS § 613.430's 180-day deadline is a
2 fatal defect, and, for this reason, the Complaint must be dismissed with prejudice.⁸

3 **C. Boyd Must Be Dismissed Under NRCP 8 and 12(b)(5) Because the Company Is Not**
4 **the Proper Party to Plaintiff's Claims.**

5 NRCP 8(a)(1) states that a complaint must contain "a short and plain statement of the claim
6 showing that the pleader is entitled to relief" Moreover, NRCP 12(b)(5) provides for dismissal
7 of a claim where the claim fails to state a claim upon which relief can be granted.

8 Here, Plaintiff's Complaint admits that he was an employee of Main Street Station Hotel,
9 Casino and Brewery. *See* Compl. ¶ 14. M.S.W. operates Main Street Station Hotel, Casino and
10 Brewery. Thus, M.S.W. d/b/a Main Street Station Hotel, Casino and Brewery is the proper party to
11 Plaintiff's Complaint, and none of the allegations in the Complaint relate to the Company. Rather,
12 Plaintiff's allegations exclusively concern M.S.W. Accordingly, no claim is stated against Boyd
13 and, on this basis, Boyd must be dismissed from the Complaint.

14 **IV. CONCLUSION**

15 For the foregoing reasons, Boyd respectfully requests that this Court grant its Motion to
16 Dismiss with prejudice because Plaintiff's Complaint is time-barred.

17 Dated: November 25, 2019

SNELL & WILMER L.L.P.

19 By: /s/ Paul Swenson Prior

20 Paul Swenson Prior
21 Nevada Bar No. 9324
22 Hayley J. Cummings, Esq.
23 Nevada Bar No. 14858
3883 Howard Hughes Parkway, Suite
1100
Las Vegas, NV 89169

24 *Attorneys for Defendant Boyd Gaming*
25 *Corporation*

26 ⁸ Any argument suggesting that the Court should apply NRS § 613.430's amended language is meritless.
27 NRS § 613.430's pre-amendment language controls as it was the language in effect when Plaintiff's claims
28 accrued. *See Nevada Power Co. v. Metro. Dev. Co.*, 104 Nev. 684, 686, 765 P.2d 1162, 1163 (1988) ("In
the absence of clear legislative intent to make a statute retroactive, it will be interpreted to have only a
prospective effect."). Moreover, at no time did NERC issue a right-to-sue letter to Plaintiff pursuant to
Section 2 of NRS § 613.420.

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **BOYD GAMING CORPORATION'S MOTION TO DISMISS** by method indicated below:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by, a messenger service with which this firm maintains an account, of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

DATED this 25th day of November, 2019.

/s/ Maricris Williams
An employee of SNELL & WILMER L.L.P.

4817-1756-6893

EXHIBIT A

EXHIBIT A

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA
☒ EEOC
487-2019-00649**Nevada Equal Rights Commission**

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mr. Antoine S. Salloum

Home Phone (Incl. Area Code)

(702) 355-0070

Date of Birth

1953

Street Address

City, State and ZIP Code

1700 Alta Drive, Apt. 2079, Las Vegas, NV 89106

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

BOYD GAMING CORPORATION

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(702) 387-1896

Street Address

City, State and ZIP Code

M.S.W, Inc. d/b/a MAIN STREET STATION, 200 N. Main Street, Las Vegas, NV 89101

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☒ NATIONAL ORIGIN
☐ RETALIATION ☒ AGE ☐ DISABILITY ☐ GENETIC INFORMATION
☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE
Earliest Latest**08-15-2018**☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

On or about April 23, 2003, I was hired by BOYD GAMING CORPORATION as a Food & Beverage Supervisor. My last position with the company was a Food and Beverage Manager. On or about August 9, 2018, I was suspended. On or about August 15, 2018, I was discharged. Other similarly situated co-workers, not of my protected classes, were not suspended or discharged for same or similar reasons. I believe I was discriminated against because of my sex, male, my national origin, Lebanese, in violation of Title VII of the Civil Rights Act of 1964, as amended. I believe I was discriminated against because of my age, over age 40, in violation of the Age Discrimination in Employment Act of 1967, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Date

Charging Party Signature

RECEIVED
JUN 10 2019
EEOC/LVLO

JA021



1 OMD
2 Daniel R. Watkins
3 Nevada State Bar No. 11881
4 DW@wl-llp.com
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11 Office:(702) 901-7553; Fax: (702) 974-1297
12 Attorneys for Plaintiff, Antoine Salloum

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

12 ANTOINE SALLOUM,
13 Plaintiff,

Case No.: A-19-804678-C

Dept. No. XXV

14 vs.

15 BOYD GAMING CORPORATION, d/b/a
16 MAIN STREET STATION, a Delaware
17 corporation; DOES 1-50, ROE
18 CORPORATIONS 1-50, inclusive,
19 Defendants.

OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS

20 PLAINTIFF, Antoine Salloum (hereinafter "PLAINTIFF") hereby submits his
21 Opposition to the Motion to Dismiss filed by Defendants. This opposition is based on the
22 Complaint, the memorandum of points and authorities attached hereto; all pleadings, filed and
23 other records in this action; and all other argument and evidence that may be presented at the
24 hearing on this matter.

25 //

26 //

27 //

28 //

OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

-1-

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3
4 This case arises from various unlawful employment practices by Defendant Boyd
5 Gaming Corporation, d/b/a Main Street Station. Plaintiff began his employment with Main
6 Street Station in 2003. His employment ended on August 15, 2018 when he was discharged.

7 During his employment at Main Street Station, Plaintiff was subject to misandrist
8 behavior by his manager, Terri Mercer. Ms. Mercer's harassing conduct consisted of speaking to
9 Plaintiff in condescending tones to make him feel inferior, speaking to him in verbally abusive
10 language in front of management and employees and screaming at him in front of guests.

11 On or about August 15, 2018, Terri Mercer, in the course and scope of her employment
12 as Plaintiff's manager, terminated Plaintiff's employment for allegedly borrowing money from
13 employees and/or soliciting and/or coercing employees to donate to charitable causes. Plaintiff's
14 discharge occurred despite his adamant denials of any wrongdoing and in spite of several long-
15 time employees approaching management in his defense. Shortly thereafter, Defendant replaced
16 Plaintiff with a younger, female employee. *See* Plaintiff's Complaint.

17 Plaintiff filed a Complaint with the Equal Employment Opportunity Commission
18 (hereinafter "EEOC") on February 11, 2019 – exactly 180 days after his termination. The EEOC
19 and the Nevada Equal Rights Commission (hereinafter, "NERC"), have a work-sharing
20 agreement and as such, a complaint is timely if it is filed with an appropriate federal agency
21 within that period. *See* NRS 233.160 (1).

22 On June 10, 2019, the NERC issued a formal Charge of Discrimination against
23 Defendant, citing discrimination based upon age, sex, and national origin. On August 13, 2019,
24 the EEOC issued a Right to Sue letter. Plaintiff filed his Complaint in District Court eighty one
25 days later, on November 1, 2019.

26 //

27 //

28 //

1 **II. LEGAL ARGUMENT**

2 **A. Standard of Review**

3 Defendant filed its Motion to Dismiss pursuant to Rule 12(b)(6) of the Nevada Rules of
4 Civil Procedure, claiming that Plaintiff failed to state a claim upon which relief can be granted.
5 A plaintiff fails to state a claim if it appears beyond a doubt that the claimant can prove no set of
6 facts that would entitle it to relief. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224,
7 228 (2008). In evaluating a motion to dismiss, courts primarily focus on the allegations in the
8 complaint. *Baxter v Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927 (2015). However, the
9 court is not limited to the four corners of the complaint. Under NRCP 10(c), a copy of any
10 written instrument which is an exhibit to a pleading is a part thereof for all purposes.” A court
11 “may also consider unattached evidence on which the complaint necessarily relief if: (1) the
12 complaint refers to the document; (2) the document is central to the plaintiff’s claim ; and (3) no
13 party questions the authenticity of the document.” *Id.*, citing *United States v. Corinthian*
14 *Colleges*, 655 F.3d 984, 999 (9th Cir. 2011).

15 **B. Plaintiff Timely Filed a Complaint Pursuant to NRS 613.430**

16 Defendant’s Motion to Dismiss is based upon the premise that Plaintiff’s Complaint is
17 untimely. Specifically, Defendant maintains Plaintiff had only 180 days following his
18 termination to file his Complaint in District Court. Plaintiff cites NRS 613.420 in support of this
19 argument.

20 NRS 613.420 provides that an aggrieved party may file suit in District Court if the
21 Nevada Equal Rights Commission does not conclude that an unfair employment practice
22 occurred.

23 NRS 613.430 follows, providing that any action authorized by NRS 613.420 must be
24 brought within 180 days of the employment violation. The 180 day deadline to bring an action
25 in District Court is tolled while a matter proceeds through the NERC.

26 //

27 //

28 //

1 No action authorized by NRS 613.420 may be brought more than 180 days after the date
2 of the act complained of. When a complaint is filed with the Nevada Equal Rights
3 Commission the limitation provided by this section is tolled as to any action authorized
by NRS 613.420 during the pendency of the complaint before the Commission.

4 NRS 613.430.

5 Here, the 180th day following Plaintiff's discharge was February 11, 2019. Plaintiff filed
6 his Complaint with the EEOC that day. See Exhibit 1 – Plaintiff's written complaint to the
7 EEOC, submitted electronically on February 11, 2019.

8 Importantly, the legislature amended NRS 613.430 via Senate Bill 177 during the 2019
9 legislative session. The changes became effective on October 1, 2019.¹ Section 8 of Senate Bill
10 177 (hereinafter "SB177") overhauled NRS 613.430 and further clarifies the relationship
11 between state actions and the exhaustion of administrative remedies. It now reads:

12 613.430 1. No action authorized by NRS 613.420 may be brought more than 180 days
13 after the date of the act complained of **or more than 90 days after the date of the**
14 **receipt of the right-to-sue notice pursuant to section 2 of this act, whichever is later.**
15 When a complaint is filed with the Nevada Equal Rights Commission, the limitation
16 provided by this section is tolled as to any action authorized by NRS 613.420 during the
pendency of the complaint before the Commission.

17 See Exhibit 2 – SB177. Emphasis added.

18 The additional language to NRS 613.430 better clarifies the time limits for bringing an
19 action in state court for unlawful employment practices. The statute now clearly provides that a
20 state action for a wrongful employment action must be brought either within 180 days of the
21 wrongful act *or* within 90 days following the right-to-sue notice from the Nevada Equal Rights
22 Commission.

23 In the instant matter, Plaintiff was discharged from employment on August 15, 2018.
24 Plaintiff filed a complaint with the NERC on February 11, 2019. The NERC issued a Right to
25 Sue Letter on August 13, 2019. The 90 day deadline for Plaintiff to bring an action in District
26

27 ¹ Although SB177 became effective October 1, 2019, the Nevada Legislative Bureau has not yet codified the bill
28 into the state statute online reference website. In addition to reviewing as Exhibit 2, the final version of the bill,
signed by Governor Sisolak, can be reviewed at:
<https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6295/Text>

1 Court was November 13, 2019. Plaintiff filed his Complaint on November 1, 2019 – well within
2 the 90 day deadline set forth by SB177.

3 Given that Plaintiff filed his Complaint within the 90 days of receipt of the EEOC’s Right
4 to Sue letter, Plaintiff’s Complaint is timely.

5 **C. Because SB177 Relates to Remedies and Procedure, It Applies to the Instant**
6 **Case**

7 As indicated supra, SB177 greatly expanded the remedies available under Nevada’s anti-
8 discrimination statute and provided other significant changes to the NERC’s administrative
9 process. SB177 went into effect on October 1, 2019.

10 SB177 was silent regarding whether it applies to violations that occurred prior to October
11 1, 2019 or only those violations that occur after October 1, 2019. However, the Nevada Supreme
12 Court has discussed this issue in the past and has held that a statute is presumed to apply
13 prospectively, unless it relates to remedies and procedure. *Friel v. Cessna Aircraft Co.*, 751 F.2d
14 1037, 1039 (1985). See also *Valdez v. Employers Ins. Co. of Nevada*, 123 Nev. 170, 179 (2007).
15 If a statute relates to remedies and procedure, it will apply to any case pending when it is
16 enacted, because remedies do not alter the conduct that occurred before the change:

17 It is a rule of construction that statutes are ordinarily given prospective effect. But when
18 a statute is addressed to remedies or procedures and does not otherwise alter substantive
19 rights, it will be applied to pending cases. . . . The legislative change in no way alters the
20 effect given to conduct before the change.”

21 Id.

22 SB177 sought to extend the remedies available under Title VII to the four categories of
23 discrimination that the Nevada Constitution protects but which are not enumerated as
24 discrimination under Title VII — sexual orientation, gender identity or expression, age and
25 disability. See Exhibit 3– Assembly Committee Notes, May 7, 2019. SB177 also addressed the
26 administrative remedies provision of NRS 613.420 and clarified the relationship of the 180 day
27 filing deadline. Because SB177 addresses remedies and procedures, as opposed to specific
28 conduct, the changes to NRS 613.430 apply to all pending unlawful employment actions – not

1 simply those that have occurred since October 1, 2019. As such, the amendments to NRS
2 613.420 that took effect on October 1, 2019 apply to Plaintiff's case and are controlling in the
3 instant matter.

4 **D. Plaintiff Requests Leave to Substitute the Proper Party as a Plaintiff**

5 As its final argument in support of its Motion to Dismiss, Defendant claims that M.S.W.,
6 Inc. d/b/a Main Street Station Hotel, Casino and Brewery (hereinafter "M.S.W.") is the proper
7 party to the action, not Boyd Gaming Corporation, d/b/a/ Main Street Station. In its Motion,
8 Defendant represents that M.S.W. is a subsidiary of Boyd Gaming.

9 Rather than dismiss the instant action, Plaintiff proposes that the parties stipulate to
10 substitute the correct party in place of Defendant Boyd Gaming Corporation, d/b/a Main Street
11 Station. In the event that Defendant is not willing to stipulate, Plaintiff respectfully requests
12 leave to substitute M.S.W. as one of its Roe Defendants.

13 **III. CONCLUSION**

14 In light of the changes to NRS 613.430, Plaintiff's Complaint was timely. Because the
15 amendments to NRS Chapter 613 address remedies and procedures and do not alter substantive
16 rights, they apply to all pending causes of action. Any deficiency in Plaintiff's pleading of the
17 proper Defendant can be easily cured through a stipulation to substitute the proper party or an
18 order granting Plaintiff leave to substitute the proper party. As such, Plaintiff respectfully
19 requests that this Court deny Defendant's Motion to Dismiss.

20
21 DATED this 6th day of December, 2019. WATKINS & LETOFSKY, LLP

22 */s/ Daniel R. Watkins*

23 By:

24 Daniel R. Watkins
25 Theresa M. Santos
26 8215 S. Eastern Ave., Ste. 265
27 Las Vegas, NV 89123
28 Attorneys for Plaintiff, Antoine Salloum

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☒ BY ELECTRONIC SUBMISSION: submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

/s/ Farah Kachermeyer
Farah Kachermeyer
An Employee of Watkins & Letofsky

Exhibit 1

Antoine Salloum

1700 Alta Dr. Appt 2079 Las Vegas NV. 89106

Cell: 702-355-0070

Fax: 702-483-6927

Cecy0075@gmail.com

Monday, February 11, 2019

To: EEOC
Claim By: Antoine S. Salloum
Claim For: 1. Discrimination (Age, National Origin, Gender)

Claim Against: Main Street Station Casino
200 N. Main Street
Las Vegas, Nevada 89101

I Antoine S. Salloum was employed at Main Street Station from April 23, 2003 to August 15, 2018 as a restaurant & beverage manager employee number 54887.

On August 15 2018 the management of Main Street Station terminated my employment with the reason given as follow:

(exhibit 1)

Discharge 28 – willful misconduct

Violation of General Rule:

Rule #42 Any violation of established company solicitation and distribution policy.

Rule #43 Lending of barrowing money from customers or other team members at any time or pressuring or coercing a team member or customer in an attempt to borrow money.

Sequence of events and facts:

I was on vacation July 24, 2018 to July 28, 2018 (exhibit 2) with two days off returning to work July 31, 2018. Prior to my vacation I received a letter by mail from Main Street Station Human Resources. (exhibit 3) inviting me for my birthday for buffet for me and a guest at either Main Street Station or Fremont Hotel. All employees and managers at Main Street Station receive the same latter from Human Resources for their birthdays. On July 28, 2018 my birthday I was on my way to the Main Street Buffet with my friend Mercedes Banco whom is not an employee at Main Street Station. The Food & Beverage Director of Main Street Station, Terri Mercer, my supervisor, stopped me in front of the buffet and told me that I cannot go in to the buffet (without reason or explanation). I

told her I have an invitation letter from Human Resources. Then she proceeded to give me a directive order not to go to Main Street Station or the California Hotel. I left with my friend and did not use my invitation letter. This incident to the best of my knowledge never happened to any other employee or manager.

When I returned from vacation on Tuesday, July 31, 2018, Terry Mercer, told me that I must go with her to the General Manager's Office which we did. In the office at the meeting the following managers were present; the General Manager, Andre Felosi; Human Resources Manager, Jovaghoun Bruno; Food and Beverage Director, Terri Mercer and myself. The General Manager asked me several questions of which all were investigated by Human Resources and my director a few weeks prior, and found no legitimacy or truth to any allegation. After the meeting I was told by the General Manager to go back to work.

On August 9 2018, Terri Mercer called me to her office with Executive Chef, Ben Gries for a Question and Answer meeting. 1) Terri asked, "Did you barrow any money from an employee?" I answered "no". 2) Terri asked, "Did you do any solicitation or collection?" I answered, "no I did not if the shop Stewart presented me with the card to sign or donate for a team member who lost a family member, I normally donate \$10 or \$20." 3) Terri asked, "Did you ever ask or take money when you hired a new employee?" I answered "absolutely not, this is the lowest any manager can do. I only get money from Mr. Boyd with my earned pay check." She then proceeded to suspend me pending an investigation (exhibit 4)

On August 15, 2018 Terri Mercer called me at home and asked me to meet with her at 2pm in her office. I went to her office at 2pm. Ben Gries was sitting as a witness. She terminated my employment based on solicitation and barrowing money from an employee without explanation (exhibit 5 & 6).

I filed for unemployment benefits, Main Street Station submitted documentation denying my eligibility. I then filed for an appeal. During the appeal hearing. I was able to read written statements from 4 employees. I argued that these statements are false and that there was no proof to support their claim. The referee ruled that I qualified for unemployment benefits based on previous court decisions and precedent (exhibit 7). Main Street Station filed an appeal to the appeal to reverse the decision. The panel of judges voted unanimously to uphold the referee's decision. Basically, stating that there was not support argument of misconduct (exhibit 8).

Explanation of wrongful termination:

#42 – Violation of the established Company Solicitation and Distribution Policy.

- A. I did not solicit or coerce employees as the employer claimed. The Union Shop Stewart, Florenda Tullao bought a card and asked anyone whom

wished to sign and donate for Misha Castillo's sister's funeral. Misha is a former employee at Main Street Station. Florenda works dayshift. She asked me to let swing shift staff know about the card. Collections of this type are done many times when a relative of a team member passed away. I have never forced or tell any employee that they must or have to donate, it was a voluntary collection that was not done by me.

- B. Birthday Collection: there is an employee Ana Miguel a food server in the 777 Brewpub. Every time there is an employee's birthday in the restaurant Ana will purchase a cake with her money and bring it so everyone can sing happy birthday. On her birthday I personally purchased a gift for her as an appreciation for what she does for me on my birthday. I approached the hostess Tara Dean a close friend to Ana and suggested that we should all buy a cake for Ana from all of us as a gesture of appreciation and to reciprocate what she does for everyone. Tara Suggested to collect \$5 from a few people and that should be enough. After she collected from a few people a server by name Marites Wells told Tara to return the money to everyone because she had already bought a cake. Money was returned to everyone because Tara put the \$5 on my desk. During the unemployment hearing, Tara was the only witness present and she claim she felt uncomfortable to collect the money. That fact is I did not force or coerces Tara or anyone. She was happy to do it and told me "for my princess, of course I do it." Secondly, I personally did not make a collection or solicit anything to anyone.
- C. Church Collection: 1) I did not make any collection for any church. 2) I have on the side of my desk a baby bottle that I put my coin in. few food servers and a few cocktails servers ask me what the bottle was for. I told them that I put my loose change in there for the nursing woman of Nevada who cannot afford milk for the kids. They asked me if thy can put some change. I said that I don't care its up to you. It was only coins no paper money and it was one night and I took the bottle home. This happed 5 years ago. If this was violation then, why was it not mentioned at that time and it is an issue now?
- D. Conclusion of Solicitation: 1) I did not solicit or personally collet or coerces any employee. 2) I did not cost the company any harm or financial loss. 3) Collections are done almost every week at all restaurants and bars with a sympathy card when fellow employee's relatives pass away. This has happened over a hundred times or more since I been there. Usually the union shop Stewart or any employee will buy a card and employees sign donate voluntarily. The employee who received the card and the donation, a week later or so will post a thank you card on the board in the hall, thanking them for the donation. Everyone to include management can see the posted card.
- E. Then management at Main Street Station do a United Way Campaign every year will ask every employee to check the donation amount and sign. Even if you do not want to donate the employees are forces to mark the form with

a zero and sign. What is the difference between the company's action or my actions even though I did not ask, force, coerce anyone?

Main Street Station presented the statements from 4 employees. Eva Pilapil, Alix Bertling, Tera Dean, Loetta Spikes. As for Eva Pilapil the main witness, when her daughter and grandson passed away, she received thousands of dollars donated from her co-workers with a card. As for her credibility she claimed she had cancer and received money from VIP players Judith Tomlin and her co-workers who felt sorry for her, but later on everyone found out that she never had cancer. As for Loetta Spikes. I saw her during a viewing and approached me and hugged me and said that she did not say anything bad about me and that she had asked her about the collection for Misha and she said yes. I told her then as I told everyone. Florinda did the collection not me. Main Street Station's Human Resources fail to present that several employees had gone the Human resources office to voluntarily state that the claims against me are incorrect. A few names of the employees are: Florinda Tullao (Union Shop Stewart), Monique Lane, Katherine Vansoophet, CK aceron, Waratee Chimstrai, and many others. I was told by those employees that they formed a long line in front of the Human Resources waiting to be called to make their supporting statement.

#43 – Lending or borrowing money from customs or other team members at any time of pressuring or coercing a team member or customer in an attempt to borrow money.

I do not recall that I ever borrowed or signed a loan document related to borrowing money from any team member this issue was investigated two months ago by human resources and found no valid evidence to the claim. If this is true that I borrowed money. The rules state that the lender is in violation as well. I was the only party terminated. This is a clear case of discrimination and wrongful termination against me.

During the unemployment hearing the Human Resources manager Jovi Bruno, stated that an employee name Eva Pilapil claimed that I borrowed \$1000 from her ex-husband's payday loan business. I asked for proof and documentation to support this claim and so did the referee. Jovi Bruno replied, "we have none." If this had been a legitimate claim there would have been documentation.

Main Street Station has a progressive disciplinary policy for management. 1 written warning 2 one day suspension. 3. A five-day suspension. 4 termination. In regard to employees' disciplinary action any discipline is live for one year. In my file during my 15 years of employment. I had a written warning or a one-day suspension 10 years ago. There in nothing else in my file or in my annual performance review. (Exhibit 10) mentioning solicitation, borrowing money, or any discipline in this manner. I believe serious violation may warrant immediate termination such as stealing, violence in the workplace, sexual harassment or causing the company a serious financial loss. I did not commit any of these violations. Helping others in not-direct solicitation is not a justified

reason for termination without progressive discipline. It is not only a wrongful termination it is also a clear discrimination caused by my age, gender, and national origin.

In conclusion: I believe I was discriminated against because of the reasons given were false with the following explanations.

- 1) Barrowing money, two months prior to the final event in August 2018, the Human Resources department conducted a complete investigation wit the beverage department regarding the claim of money barrowing by me. They found no fact to the claim. The cocktail server, Eva Pilapil was asked during that investigation and she said no. Now in August 2018 she claimed that I barrowed money from her husbands PayDay loan company without any documentation to support the claim. Why is this issue brought up now senses in was investigated by the same employee now? In the company hand book rule #43 states any employee who lends or barrow money is in violation. Even I did not barrow any money from Eva Pilapil the company believed her claim without documentation and I was the only one whom was disciplined. If the claim was true why is Eva Pilapil still employed and I was terminated!
- 2) Solicitation, it is obvious and clear that I personally did not solicited or collect any money from any employee. I am the only one targeted for this issue. The Following solicitation has been practiced at Main Street Station for many years.
 - a. The company conducts an annual United Way collection from every employee.
 - b. Many employees solicit chocolate and cockiest for school fundraising.
 - c. Member of management sells gold to employees and have never been question or discipline.
- 3) Discrimination by my supervisor, My director Terri Mercer continually criticized me and verbally abused me in front of management and employees. Even though my experience and performance exceed my co-managers team. I was the only one that she picked on. During the 2018 Super Bowl event, In the Triple 7, Terri Mercer Screamed at me on the floor in view of guests (witnessed by Arcelly Rosales) During my Q&A with Terri prior to my suspension she asked accusational questions without giving the name or situation for me to explain. It was very clear to me that she does not like men because of her personal preferences. She replaced my position wit a younger female. Obviously being an older man did not please her.

The reasons for my termination is a coverup and unjustified excuse for the real reason that older man with a foreign accent.

I am asking the Equal Employment Opportunity Commission to investigate my discriminatory termination.

Best Regards,

Antoine Salloum

Exhibit 2

Senate Bill No. 177—Senators Cancela, Spearman, Parks; Brooks, Cannizzaro, Denis, Dondero Loop, D. Harris, Ohrenschall, Ratti, Scheible and Woodhouse

CHAPTER.....

AN ACT relating to employment; requiring the Nevada Equal Rights Commission to notify certain persons that the Commission shall, upon request, provide a right-to-sue notice; requiring the Commission to issue a right-to-sue notice in certain circumstances; revising the statute of limitations for bringing a civil action in district court for an unlawful employment practice; authorizing a court to award certain relief to an employee injured by certain unlawful employment practices under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a person may file a complaint which alleges unlawful discriminatory practices in employment with the Nevada Equal Rights Commission not later than 300 days after the date of the occurrence of the alleged unlawful discriminatory practice in employment. (NRS 233.160) Section 9 of this bill requires the Commission to notify in writing the person who filed the complaint that the person may request the Commission to issue a right-to-sue notice. Section 2 of this bill requires the Commission to issue, upon request, a right-to-sue notice if at least 180 days have passed after the complaint was filed. In addition, section 7 of this bill requires the Commission to issue a right-to-sue notice if, after a complaint is filed with the Commission, the Commission does not conclude that an unfair employment practice has occurred. The right-to-sue notice must inform the person that the person may bring a civil action in district court not later than 90 days after the date of receipt of the right-to-sue notice against the person named in the complaint.

Under existing law, if, after a complaint alleging an unfair employment practice is filed with the Commission, the Commission does not conclude that an unfair employment practice has occurred, the person alleging such a practice has occurred is authorized to bring a civil action in the district court for an order granting or restoring to that person the rights to which the person is entitled. (NRS 613.420) Existing law prohibits a person from bringing such a civil action unless it is brought not more than 180 days after the act constituting the unfair employment practice occurred and provides that the 180-day period is tolled during the pendency of the complaint before the Commission. (NRS 613.430) Sections 7 and 8 of this bill prohibit a person from bringing a civil action in district court unless the civil action is brought not later than 180 days after the act constituting the unfair employment practice occurred, including the period for which this 180-day period is tolled during the pendency of the complaint before the Commission, or not later than 90 days after a right-to-sue notice is received, whichever is later.

Title VII of the Civil Rights Act of 1964 sets forth various employment practices that are unlawful if such practices are based on an individual's: (1) race; (2) color; (3) religion; (4) sex; or (5) national origin. (42 U.S.C. §§ 2000e-2, 2000e-3) Title VII of the Civil Rights Act of 1964 provides various forms of legal and equitable relief to individuals against whom such unlawful employment practices were committed. (42 U.S.C. § 2000e-5) Existing Nevada law provides that a person



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who has suffered an injury as a result of certain unlawful employment practices may file a complaint with the Nevada Equal Rights Commission if the complaint is based on discrimination because of: (1) race; (2) color; (3) sex; (4) sexual orientation; (5) gender identity or expression; (6) age; (7) disability; (8) religion; or (9) national origin. (NRS 613.405) Existing Nevada law also provides that if the Commission does not conclude that an unfair employment practice has occurred, any person alleging such a practice may bring an action in district court. (NRS 613.420)

Section 3 of this bill provides that if a court finds that an employee has been injured as the result of certain unlawful employment practices, the court may award to the employee the same legal or equitable relief that may be awarded to a person pursuant to Title VII of the Civil Rights Act of 1964 if the employee is protected by Title VII of the Civil Rights Act of 1964 or certain provisions of existing law. Sections 4-6 of this bill make conforming changes.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 613 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *If a person files a complaint pursuant to paragraph (b) of subsection 1 of NRS 233.160 which alleges an unlawful discriminatory practice in employment, the Commission shall issue, upon request from the person, a right-to-sue notice if at least 180 days have passed after the complaint was filed pursuant to NRS 233.160. The right-to-sue notice must indicate that the person may, not later than 90 days after the date of receipt of the right-to-sue notice, bring a civil action in district court against the person named in the complaint.*

Sec. 3. *If a court finds that an employee has been injured by an unlawful employment practice within the scope of this section and NRS 613.310 to 613.4383, inclusive, and section 2 of this act, the court may award the employee the same legal or equitable relief that may be awarded to a person pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., if the employee is protected by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., or NRS 613.330.*

Sec. 4. NRS 613.310 is hereby amended to read as follows:
613.310 As used in NRS 613.310 to 613.4383, inclusive, and sections 2 and 3 of this act, unless the context otherwise requires:

1. "Disability" means, with respect to a person:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the person, including, without limitation, the human immunodeficiency virus;



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- (b) A record of such an impairment; or
- (c) Being regarded as having such an impairment.

2. "Employer" means any person who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, but does not include:

- (a) The United States or any corporation wholly owned by the United States.

- (b) Any Indian tribe.

- (c) Any private membership club exempt from taxation pursuant to 26 U.S.C. § 501(c).

3. "Employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer, but does not include any agency of the United States.

4. "Gender identity or expression" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.

5. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

6. "Person" includes the State of Nevada and any of its political subdivisions.

7. "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

Sec. 5. NRS 613.320 is hereby amended to read as follows:

613.320 1. The provisions of NRS 613.310 to 613.4383, inclusive, *and sections 2 and 3 of this act* do not apply to:

- (a) Any employer with respect to employment outside this state.

- (b) Any religious corporation, association or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of its religious activities.

2. The provisions of NRS 613.310 to 613.4383, inclusive, *and sections 2 and 3 of this act* concerning unlawful employment practices related to sexual orientation and gender identity or expression do not apply to an organization that is exempt from taxation pursuant to 26 U.S.C. § 501(c)(3).



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Sec. 6. NRS 613.390 is hereby amended to read as follows:

613.390 Nothing contained in NRS 613.310 to 613.4383, inclusive, *and sections 2 and 3 of this act* applies to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because the individual is an Indian living on or near a reservation.

Sec. 7. NRS 613.420 is hereby amended to read as follows:

613.420 1. If the Nevada Equal Rights Commission does not conclude that an unfair employment practice within the scope of NRS 613.310 to 613.4383, inclusive, *and sections 2 and 3 of this act* has occurred, ~~any~~ *the Commission shall issue a right-to-sue notice. The right-to-sue notice must indicate that the person may, not later than 90 days after the date of receipt of the right-to-sue notice, bring a civil action in district court against the person named in the complaint.*

2. *If the Nevada Equal Rights Commission has issued a right-to-sue notice pursuant to this section or section 2 of this act, the person alleging such a practice has occurred may ~~apply to~~ bring a civil action in the district court not later than 90 days after the date of receipt of the right-to-sue notice for any appropriate relief, including, without limitation, an order granting or restoring to that person the rights to which the person is entitled under those sections.*

Sec. 8. NRS 613.430 is hereby amended to read as follows:

613.430 No action authorized by NRS 613.420 may be brought more than 180 days after the date of the act complained of ~~or~~ *more than 90 days after the date of the receipt of the right-to-sue notice pursuant to section 2 of this act, whichever is later.* When a complaint is filed with the Nevada Equal Rights Commission, the limitation provided by this section is tolled as to any action authorized by NRS 613.420 during the pendency of the complaint before the Commission.

Sec. 9. NRS 233.160 is hereby amended to read as follows:

233.160 1. A complaint which alleges unlawful discriminatory practices in:

(a) Housing must be filed with the Commission not later than 1 year after the date of the occurrence of the alleged practice or the date on which the practice terminated.

(b) Employment or public accommodations must be filed with the Commission not later than 300 days after the date of the occurrence of the alleged practice.



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↪ A complaint is timely if it is filed with an appropriate federal agency within that period. A complainant shall not file a complaint with the Commission if any other state or federal administrative body or officer which has comparable jurisdiction to adjudicate complaints of discriminatory practices has made a decision upon a complaint based upon the same facts and legal theory.

2. The complainant shall specify in the complaint the alleged unlawful practice and sign it under oath.

3. The Commission shall send to the party against whom an unlawful discriminatory practice is alleged:

- (a) A copy of the complaint;
- (b) An explanation of the rights which are available to that party; and
- (c) A copy of the Commission's procedures.

4. *If a person files a complaint pursuant to paragraph (b) of subsection 1 which alleges an unlawful discriminatory practice in employment, the Commission shall, as soon as practicable after receiving the complaint, notify in writing the person who filed the complaint that the person may request the Commission to issue a right-to-sue notice pursuant to section 2 of this act.*

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Exhibit 3

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eightieth Session
May 7, 2019**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:07 a.m. on Tuesday, May 7, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea Backus
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblywoman Rochelle T. Nguyen
Assemblywoman Sarah Peters
Assemblyman Tom Roberts
Assemblywoman Jill Tolles
Assemblywoman Selena Torres
Assemblyman Howard Watts

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Joyce Woodhouse, Senate District No. 5
Senator Yvanna D. Cancela, Senate District No. 10
Senator Dallas Harris, Senate District No. 11
Senator Julia Ratti, Senate District No. 13

Minutes ID: 1116



JA043

We will come back to order [at 8:40 a.m.]. At this time, I am going to open the hearing on Senate Bill 177 (1st Reprint).

**Senate Bill 177 (1st Reprint): Revises provisions relating to employment practices.
(BDR 53-723)**

Senator Yvanna D. Cancela, Senate District No. 10:

This bill was heard in the Senate Committee on Commerce and Labor, so it has taken a journey. I will walk through a bit of the history on the bill and then go through each section.

The bill deals with employment discrimination. The *Nevada Constitution* covers categories that are not covered under Title VII of the Civil Rights Act of 1964. Title VII of the Civil Rights Act of 1964 covers an employee from being discriminated against for race, color, religion, sex, or national origin. Title VII also provides the remedies and relief available for individuals who are found to have a credible case against an employer for discrimination based on those things. The *Nevada Constitution* protects people from discrimination based on race, color, sex, religion, or national origin, all of the categories that are covered under Title VII. It also protects people from discrimination based on sexual orientation, gender identity or expression, age, and disability. If an individual sues for one of the four categories that are protected under the *Nevada Constitution* but are not protected under Title VII, there are no remedies assigned. When an employer is found guilty of discrimination based on the four categories that are in the *Nevada Constitution* that are not protected under Title VII, the bill attaches those remedies to the discrimination based on those four categories. That is the problem this bill intends to solve.

Section 9, subsection 4, of the bill requires the Nevada Equal Rights Commission (NERC) to notify the person who filed the complaint that they may request a right-to-sue notice.

Section 2 requires that, once 180 days have passed from the time a Nevada Equal Rights Commission investigation has been started, an individual may then request a right-to-sue notice. Once they have requested a right-to-sue notice, an individual has 90 days to file suit against the employer.

Finally, in section 3, the remedies from Title VII are attached to the provisions that are in the *Nevada Constitution* that are not covered under Title VII.

Sections 4 through 8 provide conforming changes.

Assemblywoman Peters:

I was reading section 7 and got confused. I will read it to see if I am misreading it, and if I am, you can correct me. Section 7, subsection 1 states, "If the Nevada Equal Rights Commission does not conclude that an unfair employment practice within the scope of [*Nevada Revised Statutes*] NRS 613.310 to 613.4383, inclusive, and sections 2 and 3 of this act has occurred, the Commission shall issue a right-to-sue notice." If they have not yet

found that there is an unfair employment practice, shall they then issue a right-to-sue notice? Can you please clarify?

Senator Cancela:

That language is meant to allow an individual to request a right-to-sue notice even if the investigation has not been completed. Investigations can take longer than 180 days, so if the investigation is ongoing, the individual is now permitted to request the right-to-sue notice. It makes the timeline for that explicit.

Assemblywoman Backus:

I am confused by your response, so I want to clarify it. In section 2, in light of the automatic right-to-sue letter going out after the Commission has made its decision, are we now cutting off the agency's decision-making ability by allowing a person who has filed a complaint with NERC to make the request for a right-to-sue notice midstream? What are the parameters for their issuing it?

Senator Cancela:

I believe there are folks from the Commission who can elaborate on this. My understanding is that an individual may file a complaint with NERC, and they may decide to undergo a full investigation of that complaint. Once the case is open with NERC, the bill allows for that individual to request a right-to-sue notice after 180 days. After they have requested the notice, they have 90 days to decide whether to file suit. There is a window in which there may be an outcome at NERC. If they find—in that time or even once the suit has been opened—that the claim is not credible, that may be used as part of the potential litigation.

Assemblywoman Backus:

I do not work in this area, and I am used to exhausting administrative remedies. My understanding is that this is to catch those open investigations that do not go to fruition where there is a final ruling. Does it keep these matters that are in limbo?

Senator Cancela:

Not necessarily those that are in limbo. It could be that individuals decide they no longer want to pursue the NERC route, but want to pursue litigation. This would simply clarify the process. If someone from the Commission is not here, I will follow up to get detailed clarity on that.

Chairman Yeager:

Are there any more questions? I do not see any, so I will now open it up for testimony in support of Senate Bill 177 (1st Reprint). If there is anyone here in Carson City, please come forward, and if there is anyone in Las Vegas to testify in support, please come forward as well.

Misty Grimmer, representing Nevada Resort Association:

We are supportive of this piece of legislation just as we were on the Senate side. We agree that NERC does not always have all the resources or the ability to complete the investigation, so this provides another alternative for the individual.

Chairman Yeager:

Is there anyone else in support? Seeing no additional testimony in support, I will now take opposition testimony. Is there anyone opposed to the bill? I do not see anyone coming forward. Is there anyone in the neutral position? If there is anyone in Las Vegas who is neutral, please come to the table.

Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:

We originally had some concerns about the bill, but with the amended version, we believe it provides employees additional resources and remedies, while providing them consistency with federal laws regarding the right to sue. Therefore, the Las Vegas Metro Chamber of Commerce's concerns have been mitigated, and we are neutral on this bill.

Andy Peterson, Vice President, Government Affairs, Retail Association of Nevada:

We, too, are neutral and agree with Mr. Moradkhan's testimony.

Mendy Elliott, representing Reno Sparks Chamber of Commerce:

We agree with Mr. Moradkhan's presentation.

Paul Moradkhan:

The Nevada Franchised Auto Dealers Association could not be here, but they asked to also be put on the record as neutral.

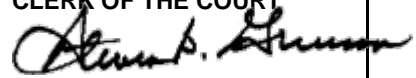
Chairman Yeager:

Are there any questions for the three at the table right now? I do not see any questions. Is there anyone else in Carson City or Las Vegas in the neutral position? I do not see anyone else coming forward. Senator Cancela, would you like to make any concluding remarks? The concluding remarks are waived. I will now close the hearing on Senate Bill 177 (1st Reprint). Moving along, I will now open the hearing on Senate Bill 433 (2nd Reprint).

Senate Bill 433 (2nd Reprint): Revises the provisions of the California-Nevada Compact for Jurisdiction on Interstate Waters. (BDR 14-439)

Senator Dallas Harris, Senate District No. 11:

I am here to introduce Senate Bill 433 (2nd Reprint). This bill was sponsored by the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency (TRPA) and the Marlette Lake Water System (MLWS), also known as the Tahoe Oversight Committee. It has provided oversight of the TRPA, either through an interim study or as a statutory committee, since 1985.



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Attorneys for Defendant Boyd Gaming Corporation

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ANTOINE SALLOUM,

Plaintiff,

v.

BOYD GAMING CORPORATION, d/b/a
MAIN STREET STATION, a Delaware
corporation; DOES 1-50, ROE
CORPORATIONS 1-50, inclusive,

Defendants.

Case No. A-19-804678-C
Dept. No. XXV

**BOYD GAMING CORPORATION'S
REPLY IN SUPPORT OF MOTION TO
DISMISS**

**Hearing Date: January 7, 2020
Hearing Time: 9:00 a.m.**

Defendant Boyd Gaming Corporation, incorrectly identified as Boyd Gaming Corporation d/b/a Main Street Station¹ (“Boyd” or the “Company”), by and through its counsel, the law firm of Snell & Wilmer L.L.P., submits its Reply in Support of its Motion to Dismiss.

This Reply is based on the following Memorandum of Points and Authorities, all papers on file with this Court, any documents incorporated by reference or attached to the Complaint, and any oral argument that this Court may entertain.

¹ The proper party to this action is M.S.W., Inc. d/b/a Main Street Station Hotel, Casino and Brewery (“M.S.W.”). M.S.W. is a subsidiary of Boyd.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff cannot revive his time-barred claims using NRS § 613.430's amended language. As that is the only argument Plaintiff's late-filed Opposition² contains, it is unpersuasive and fails to establish a basis for this Court to allow Plaintiff's claims against the Company to proceed. Thus, Plaintiff's Complaint must be dismissed with prejudice.

II. FACTUAL BACKGROUND

Plaintiff's Opposition contains a series of factual inconsistencies. The Company addresses these first to clarify the record. The Company suspended Plaintiff on August 9, 2018 "for borrowing money from employees and/or soliciting employees to donate to charitable causes." Pl's Compl. ¶ 25. On August 15, 2018, the Company officially terminated Plaintiff after investigating various claims of financial coercion and solicitation. *Id.* at ¶ 28.

According to the Opposition, exactly 180 days after his termination, Plaintiff electronically submitted a "Complaint" to the Equal Employment Opportunity Commission ("EEOC") on February 11, 2019. Pl's Opp. 2:17-18. The "Complaint" is an unsigned letter, with no official timestamp. *See Id.*, Ex. 1. In contrast to Plaintiff's unsigned letter, the EEOC Inquiry Form on file for Plaintiff lists February 14, 2019 as Plaintiff's initial EEOC inquiry date. Pl's EEOC Inquiry Form, attached as **Exhibit A**.³

On June 10, 2019, an EEOC investigator interviewed Plaintiff. That same day, Plaintiff filed his official charge of discrimination (the "Charge") with the EEOC—not the Nevada Equal Rights Commission ("NERC"), as Plaintiff's Opposition suggests. Indeed, the official timestamp on the Charge plainly reads, "RECEIVED . . . EEOC/LVLO." Pl's Charge of Discrimination, attached as

² Per EDCR 2.20(e), Plaintiff's Opposition was due December 5, 2019. Without requesting an extension, Plaintiff submitted his opposition late, on December 6, 2019.

³ As Plaintiff notes in his Opposition, "[a] court 'may also consider unattached evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document.'" Pl's Opp. 3:9-14 (quoting *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015)). Here, like the letter Plaintiff attaches to his Opposition as Exhibit 1, Exhibit A, Exhibit B, Exhibit C, and Exhibit D attached to this Reply are public documents central to Plaintiff's claims. Each document stems from Plaintiff's Charge of Discrimination and, as the documents are public record, neither party can question the authenticity of the exhibits.

1 **Exhibit B.** While Plaintiff correctly recognizes that the EEOC and NERC have a work-sharing
2 agreement, this agreement does not mean that the EEOC and NERC are the same entity. Rather,
3 the EEOC and NERC are two entirely separate entities, with the EEOC existing pursuant to federal
4 statute and the NERC existing pursuant to Nevada statute. Therefore, by conflating the EEOC with
5 the NERC throughout the Opposition, Plaintiff's recitation of events is not only incorrect, but it is
6 misleading.

7 Sixty-three days after Plaintiff filed his Charge with the EEOC, on August 12, 2019,
8 Plaintiff's counsel, Theresa Santos, submitted a letter to the EEOC, stating "[p]lease be advised
9 that while we understand the intake process, Mr. Salloum wishes to pursue his claims in federal
10 district court as soon as possible. Accordingly, please issue him a right-to-sue letter immediately."
11 Letter from Theresa Santos, Pl's Counsel, to the EEOC (Aug. 12, 2019), attached as **Exhibit C.**
12 Per Ms. Santos' request, the EEOC issued Plaintiff a right-to-sue letter on August 13, 2019, noting
13 that "less than 180 days [had] passed since the filing of [Plaintiff's] charge." Pl's Compl., Ex. 1.
14 Plaintiff filed the instant action eighty days later on November 1, 2019, asserting three baseless
15 causes of action under NRS § 613.330.

16 If the Court tolls the deadline from Plaintiff's February 11, 2019 letter to the August 13,
17 2019 notice of right-to-sue, Plaintiff filed his state court action 260 days after the last date of the
18 alleged discrimination. If the Court tolls the deadline from Plaintiff's June 10, 2019 Charge to the
19 August 13, 2019 notice, Plaintiff filed his state court action 379 days after the last date of the alleged
20 discrimination. Regardless of the number the Court accepts (260 or 379), Plaintiff's Complaint is
21 time-barred.

22 **III. ARGUMENT**

23 **A. Plaintiff's Complaint is Time-Barred.**

24 Even accepting Plaintiff's unsigned letter as a timely filed charge and applying NRS §
25 613.430's amended language to Plaintiff's Complaint,⁴ Plaintiff's allegations are still absolutely
26 time-barred because discrimination claims "authorized by Chapter 613 of the Nevada Revised
27

28 ⁴ To be clear, the Company does not agree that Plaintiff's unsigned letter constitutes a formal charge and the
Company does not agree that NRS § 613.430's amended language revives Plaintiff's expired claim.

1 Statutes may not be ‘brought more than 180 days after the date of the act complained of.’”
2 *Richardson v. HRHH Gaming Senior Mezz, LLC*, 99 F. Supp. 3d 1267, 1271 (D. Nev. 2015)
3 (quoting NRS § 613.430).⁵ Plaintiff cannot escape the statute’s plain language. Indeed, Senate
4 Bill (“SB”) 177’s legislative history (as provided by Plaintiff in Exhibit 2 to his Opposition) sets
5 forth the prevailing legal standard: “Existing law prohibits a person from bringing such a civil
6 action unless it is brought not more than 180 days after the act constituting the unfair employment
7 practice occurred and provides that the 180-day period is tolled during the pendency of the
8 complaint before the Commission. (NRS 613.430).”

9 1. *Plaintiff’s February 11, 2019 Letter Does Not Revive Plaintiff’s Time-*
10 *Barred Claims.*

11 Plaintiff argues that beginning February 11, 2019—or 180 days after Plaintiff’s
12 termination—the law tolled Plaintiff’s filing deadline. Plaintiff then admits that he received a right-
13 to-sue notice on August 13, 2019, immediately after Plaintiff’s counsel requested the notice. Once
14 the EEOC issued its August 13, 2019 right-to-sue notice, the tolling period ended. Eighty days
15 later, Plaintiff filed his Complaint. Therefore, assuming arguendo that the law tolled Plaintiff’s
16 filing deadline from February 11, 2019 to August 13, 2019, Plaintiff, under counsel’s continued
17 representation, filed the Complaint 260 days after the last date of the act complained of and **80 days**
18 **late** under NRS § 613.430.

19 Again, caselaw from the United States District Court for the District of Nevada is
20 instructive. For example, in *Narayanan*, the plaintiff filed a claim for age discrimination under NRS
21 § 613.330. *Narayanan v. Nevada ex rel. Bd. of Regents of Nevada Sys. of Higher Educ.*, No. 3:11-

22 ⁵ Here, as noted, Plaintiff’s employment-discrimination claim is brought under the Nevada Fair Employment
23 Practices Act, NRS 613.330. Before filing such a claim in a civil court, Nevada law requires the employee
24 to first file an administrative claim with the NERC. NRS 613.420; *Kora v. Renown Health*, No. 3:09-CV-
25 00176-RCJ-VPC, 2010 WL 2609049, at *3 (D. Nev. 2010) (“NRS 613.420 requires an employee alleging
26 employment discrimination to exhaust his administrative remedies by filing a complaint with NERC before
27 filing a district court action.”). The claimant must file the complaint with the NERC “not later than 300 days
28 after the date of the occurrence of the alleged practice.” NRS 233.160(1)(b). After the NERC (i.e., the
“Commission”) issues a determination, the claimant may file in civil court, but a separate statute of
limitations governs the timeliness of the civil court complaint--specifically, the action must be filed within
180 days of “the date of the act complained of,” tolling the time that the claim was pending before the NERC.
NRS 613.430. A claimant may therefore timely file a NERC complaint, but may still be barred from
subsequently filing a civil claim in state court. *Russo v. Clearwire United States, LLC*, No. 2:12-CV-01831-
PMP-VCF, 2013 WL 1855753, *5 (D. Nev. 2013).

1 cv-00744-LRH, 2013 WL 2394934, at *5 (D. Nev. May 30, 2013). The unlawful act triggering
2 NRS § 613.430's "180 day period was, at the latest, [plaintiff's] notice of termination on June 18,
3 2010." *Id.* at *6. The plaintiff filed an age discrimination claim with the NERC 121 days later. *Id.*
4 The NERC issued a right-to-sue notice on July 25, 2011. *Id.* Eighty days later, plaintiff filed his
5 age discrimination claim under NRS § 613.330. *Id.* The court then dismissed plaintiff's age
6 discrimination claim, finding that "since 201 total days passed between the unlawful act and
7 [plaintiff's] filing of suit, [plaintiff's] claim under NRS § 613.330 is untimely." *Id.*⁶

8 Like the plaintiff in *Narayanan*, here, Plaintiff waited eighty additional days to file his
9 Complaint after receiving his right-to-sue notice from the EEOC, and 260 total days passed between
10 the alleged unlawful act and Plaintiff's filing of his suit. Markedly, on August 12, 2019, Plaintiff's
11 counsel wrote to the EEOC requesting that the agency issue Plaintiff a "right-to-sue letter
12 immediately." Letter from Theresa Santos, Pl's Counsel, to the EEOC (Aug. 12, 2019), Ex C. Per
13 the request of Plaintiff's counsel, Ms. Santos, the EEOC issued Plaintiff a right-to-sue letter the
14 next day, August 13, 2019. Presumably, given that Ms. Santos represented Plaintiff when the EEOC
15 issued the right-to-sue letter and based on the fact that Ms. Santos requested immediate issuance of
16 the letter, Plaintiff was on notice that the tolling period expired on August 13, 2019. Thus, Plaintiff
17 could have timely filed his NRS § 613.330 claims⁷ immediately upon receiving the EEOC's notice.
18 Yet, Plaintiff delayed litigation. For this reason, Plaintiff's allegations are time-barred, and the

19 ⁶ See also, e.g., *Richardson*, 99 F. Supp. 3d at 1271 (stating that discrimination claims "authorized by
20 Chapter 613 of the Nevada Revised Statutes may not be 'brought more than 180 days after the date of the
21 act complained of'"); *Lo v. Verizon Wireless LLC*, No. 2:13-CV-2329-JCM-NJK, 2014 WL 2197636, at *2
22 (D. Nev. May 27, 2014) ("Plaintiff did not file his complaint [within] the 180-day limitations period.
23 Therefore, the plaintiff is time barred from raising . . . causes of action [under NRS § 613.330]."); *Hay v.*
24 *Wells Cargo, Inc.*, 596 F. Supp. 635, 641 (D. Nev. 1984), aff'd, 796 F.2d 478 (9th Cir. 1986) ("Under
25 Nevada law, any person injured by an unlawful employment practice may seek relief from a state district
26 court. NRS 613.420. However, such relief must be sought within 180 days of the date of the act complained
27 of. NRS 613.430.").

28 ⁷ For context, it is helpful to note that while Plaintiff's claims under NRS § 613.330 expired 180 days after
the last date of the act complained of, Plaintiff could have brought claims under Title VII of the Civil Rights
Act, 42 U.S.C. § 2000d *et seq.*, or the Age Discrimination and Employment Act (ADEA), 29 U.S.C. §§ 621–
34 within 90 days of receiving the EEOC's right-to-sue notice. Yet, despite referencing Title VII and the
ADEA in his Charge, it appears that, under the representation of counsel, Plaintiff made the affirmative
decision to omit all federal claims from his Complaint. Indeed, Plaintiff's Complaint is silent on the relevant
federal law and Plaintiff specifically identifies his gender discrimination claim, age discrimination claim,
and hostile work environment claim as alleged violations of NRS § 613.330 *et seq.* Now, like Plaintiff's
claims under NRS § 613.330, Plaintiff's claims under Title VII and the ADEA are also time-barred.

Complaint must be dismissed with prejudice.

2. *Even if NRS § 613.430's Amended Language Applied to Plaintiff's Complaint, Plaintiff's Claims Are Still Time-Barred.*

In the Opposition, Plaintiff relies on NRS § 613.430's recently amended language to revive his expired claims. Yet, even if the amended statute applied, the language does not transform Plaintiff's untimely allegations into timely allegations. To explain, during its 80th Legislative Session, the Nevada legislature amended several portions of Chapter 613 of the Nevada Revised Statutes with Senate Bill ("SB") 177. As Plaintiff notes, SB 177 amended NRS § 613.430 as follows:

Sec. 8. NRS 613.430 is hereby amended to read as follows:

613.430 No action authorized by NRS 613.420 may be brought more than 180 days after the date of the act complained of ~~or~~ *or more than 90 days after the date of the receipt of the right-to-sue notice pursuant to section 2 of this act, whichever is later.* When a complaint is filed with the Nevada Equal Rights Commission, the limitation provided by this section is tolled as to any action authorized by NRS 613.420 during the pendency of the complaint before the Commission.

The statute's plain language clarifies that the added 90-day language exclusively applies to right-to-sue notices received "pursuant to section 2 of this act." Notably, Plaintiff omits "section 2" from his Opposition.

Section 2 of Chapter 613 states:

Sec. 2. *If a person files a complaint pursuant to paragraph (b) of subsection 1 of NRS 233.160 which alleges an unlawful discriminatory practice in employment, the Commission shall issue, upon request from the person, a right-to-sue notice if at least 180 days have passed after the complaint was filed pursuant to NRS 233.160. The right-to-sue notice must indicate that the person may, not later than 90 days after the date of receipt of the right-to-sue notice, bring a civil action in district court against the person named in the complaint.*

Based on the foregoing language, a person receives a right-to-sue notice from the Commission "pursuant to section 2" if the person requests the notice, the Commission issues the notice, and at

1 least 180 days have passed since the person filed his employment discrimination charge.⁸

2 Here, Plaintiff did **not** receive his right-to-sue notice pursuant to section 2 of Chapter 613.
3 First, under Nevada law, the “Commission” that “shall issue” the right to sue letter is the NERC—
4 not the EEOC. The Nevada statutes plainly define “Commission,” clarifying that it “means the
5 Nevada Equal Rights Commission [NERC] within the Department of Employment, Training and
6 Rehabilitation.” NRS §233.020 (2). Of note, whenever NRS Chapters 233 and 613 (or SB 177, for
7 that matter) reference the term “Commission,” that reference is to the NERC, not the EEOC. At
8 no time, did the NERC (i.e., the “Commission”) issue Plaintiff a right-to-sue letter. Rather, the
9 EEOC, not the Commission/NERC, issued the right-to-sue letter attached to Plaintiff’s Complaint.

10 Second, though discussed in more detail below, SB 177 was not effective until “October 1,
11 2019;” therefore, the NERC could not—and did not—issue any new right-to-sue letters pursuant to
12 section 2 until then. Rather, on August 13, 2019, the EEOC (not the NERC) issued Plaintiff the
13 purported right-to-sue letter for his alleged claims under Title VII and the ADEA. Obviously, the
14 EEOC issued the letter long before SB 177 was even effective.

15 Third, Plaintiff did not request the right to sue letter after the required 180 days. Instead,
16 on August 12, 2019, sixty-three days after Plaintiff filed his Charge with the EEOC, Plaintiff’s
17 counsel wrote to the EEOC and requested Plaintiff’s right-to-sue notice:

18 To Whom it May Concern:

19 Please be advised that while we understand the intake process, Mr. Salloum
20 wishes to pursue his claims in federal district court as soon as possible. Accordingly,
21 please issue him [sic] right-to-sue letter immediately

22 Letter from Theresa Santos, Pl’s Counsel, to the EEOC (Aug. 12, 2019), Ex. C. From this letter,
23 Plaintiff’s counsel apparently recognized the age of Plaintiff’s EEOC Charge.

24
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26
27 ⁸ The Legislative Counsel’s Digest for SB 177, attached to Plaintiff’s Opposition as Exhibit 2, confirms this
28 interpretation: “**Section 2** of this bill requires the Commission to issue, upon request, a right-to-sue notice if
at least 180 days have passed after the complaint was filed.”

1 Even more so, the right-to-sue notice attached to Plaintiff's Complaint, further underscores
2 the age of Plaintiff's Charge:

- 3 ☒ Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will
4 ☒ be able to complete its administrative processing within 180 days from the filing of this charge.
5 ☒ The EEOC is terminating its processing of this charge.

6 Pl's Compl., Ex. 1. The EEOC's Recommendation for Dismissal/Closure form also confirms that
7 Plaintiff's claims were under investigation for less than 180 days: "Charging Party or his/her
8 attorney has requested an immediate RTS from the EEOC. It has been **less than 180 days** since the
9 filing of Charging Party's charge with the District Office." Recommendation for Dismissal/Closure
10 Form, Charge No. 487-2019-00649, attached as **Exhibit D** (emphasis in original).

11 Undoubtedly, though Plaintiff received a right-to-sue notice, he did not receive his notice
12 "pursuant to section 2" of Chapter 613. Even if the Court ignores the fact that the EEOC, rather the
13 "Commission," issued Plaintiff's right-to-sue notice, it is still apparent that Plaintiff did not receive
14 his right-to-sue notice "pursuant to section 2" because **less than 180 days** passed between the filing
15 of Plaintiff's Charge and receipt of the notice. Indeed, through counsel, Plaintiff requested his right-
16 to-sue notice only sixty-three days after Plaintiff filed his Charge. Accordingly, the primary
17 argument that Plaintiff relies on to show that he "timely filed" his Complaint is entirely
18 unpersuasive. In effect, Plaintiff's Complaint is time-barred and must be dismissed.

19 **B. While SB 177 May Relate in Part to Remedies and Procedures, the Legislation Cannot
20 Revive Expired Claims.**

21 As shown above, even if NRS § 613.430's amended language applied to the instant case,
22 the language would not revive Plaintiff's claims against the Company. However, in an abundance
23 of caution, the Company addresses Plaintiff's argument on legislation affecting remedies and
24 procedures and retroactive application.

25 "It is a principle of the English common law, as ancient as the law itself, that a statute, even
26 of its omnipotent parliament, is not to have a retrospective effect." *Dash v. Van Kleeck*, 1811 WL
27 1243, at *15 (N.Y. Sup. Ct. 1811). The Nevada Supreme Court has expressly analyzed when
28 legislation should be applied retroactively. *See Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 129 Nev.
813, 313 P.3d 849 (2012). Under *Sandpointe*, courts must determine whether enacted legislation

1 would have a retroactive effect. If a court finds there is no retroactive effect, the statute at issue
2 would apply. *See id.*, 129 Nev. at 823, 313 P.3d at 856. On the other hand, if there is a retroactive
3 effect, the court must determine whether the statute was meant to be applied retroactively. *See id.*
4 Here, applying SB 177 would have a retroactive effect, as it would impair vested rights acquired
5 under existing laws, as well as create new obligations and impose new duties. Retroactive
6 application of SB 177, however, is not supported by the legislature.

7 Substantive statutes, like the one at issue here, are presumed to only operate prospectively
8 unless it is clear that the drafters intended the statute to apply retroactively. *Id.*, 129 Nev. at 820,
9 313 P.3d at 853 (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 273 (1994); *Pub. Employees’*
10 *Benefits Program v. Las Vegas Metro. Police Dept.*, 124 Nev. 138, 154, 179 P.3d 542, 553 (2008);
11 *Cnty. of Clark v. Roosevelt Title Ins. Co.*, 80 Nev. 530, 535, 396 P.2d 844, 846 (1964)). Deciding
12 when a statute operates retroactively is not always a simple or mechanical task. *Id.*, 129 Nev. at
13 820, 313 P.3d at 854 (quoting *Landgraf*, at 268). “Broadly speaking, courts take a commonsense,
14 functional approach in analyzing whether applying a new statute would constitute retroactive
15 application.” *Id.* (internal quotations and citations omitted).

16 Indeed, from its inception, the Nevada Supreme Court, has viewed retroactive statutes with
17 disdain, noting that such laws are “odious and tyrannical” and “have been almost uniformly
18 discountenanced by the courts of Great Britain and the United States.” *Id.*, 129 Nev. at 826, 313
19 P.3d at 858 (citing *Milliken v. Sloat*, 1 Nev. 573, 577 (1865)). Thus, as the Nevada Supreme Court
20 has already established, a statute will not be applied retroactively unless: “(1) the Legislature clearly
21 manifests an intent to apply the statute retroactively, or (2) it clearly, strongly, and imperatively
22 appears from the act itself that the Legislature’s intent cannot be implemented in any other fashion.”
23 *Id.* (internal quotations and citations omitted).

24 Here, the Legislature provided that the Statute becomes effective on October 1, 2019. The
25 Legislature did not manifest an intent to resurrect dead claims or to apply the statute retroactively.
26 Tellingly, the Nevada Legislature has expressly demonstrated its intent to have legislation apply
27 retroactively with respect to other laws, suggesting it could have done the same here if that was
28 indeed the intent. *See, e.g.*, NRS § 278.4787(7) (“The provisions of this section apply

1 retroactively...”); NRS § 176.025 (Laws 2005, c. 33, § 2, providing “this act becomes effective
2 upon passage and approval and applies retroactively”); NRS § 287.023 (Laws 2007, c. 496, § 16,
3 as amended by Laws 2009, c. 369, § 15, eff. May 29, 2009, providing in part that “Section 2 of this
4 bill becomes effective on July 1, 2007, and applies retroactively to October 1, 2003.”). Yet no
5 retroactive language exists here. And the absence of any such language indicates the Legislature
6 did not intend to apply SB 177 retroactively under the *Sandpointe* analysis.

7 Finally, in arguing that SB 177’s 90-day language is procedural, Plaintiff misses a critical
8 distinction, which underscores the statute’s “retroactive effect.” That is, “[w]hen claims are
9 already time-barred at the time the limitations period is enlarged, a clear statement of [the
10 legislature] is required before a court will apply an amendment retroactively to revive a claim.”
11 *United States v. Lewis*, 2013 WL 6407885, at *10 (N.D. Tex. 2013). Indeed, one of the cases on
12 which Plaintiff relies makes this distinction clear. *See Friel v. Cessna Aircraft Co.*, 751 F.2d 1037
13 (9th Cir. 1985). In *Friel*, the Ninth Circuit only applied an amended statute of limitations
14 retroactively because the prior “two-year time bar was not yet complete and the action was viable
15 when the limitation period was lengthened to three years.” *Id.* at 1040. In this case, depending on
16 the Charge date the Court accepts, Plaintiff’s NRS § 613.430 claims either expired on February 11,
17 2019 or August 14, 2019—the day after Plaintiff received his right-to-sue notice. Either way,
18 Plaintiff’s claims expired before SB 177 went into effect on October 1, 2019. By extension, even
19 if applicable, SB 177 could not revive Plaintiff’s time-barred claims.

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IV. CONCLUSION

For the foregoing reasons, Boyd respectfully requests that this Court grant its Motion to Dismiss with prejudice because Plaintiff's Complaint is time-barred.

Dated: January 2, 2020

SNELL & WILMER L.L.P.

By: /s/ Paul Swenson Prior

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*Attorneys for Defendant Boyd Gaming
Corporation*

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **BOYD GAMING CORPORATION'S REPLY IN SUPPORT OF MOTION TO DISMISS** by method indicated below:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by, a messenger service with which this firm maintains an account, of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

DATED this 2nd day of January, 2020.

/s/ Maricris Williams
An employee of SNELL & WILMER L.L.P.

4829-7938-3982

EXHIBIT A

EXHIBIT A

EEOC (INQUIRY) NUMBER: 487-2019-00649

Inquiry Information

REASON(S) FOR CLAIM

Date of Incident (Approximate): 08/15/2018

Reason for Complaint: Race, Age - I am 40 years of age or older, Sex (including pregnancy, sexual orientation and gender identity)

Pay Disparity: No

Location of Incident: Nevada

Submission (Initial Inquiry) Date: 02/14/2019

Claim previously filed as charge with EEOC? No

Approximate Date of Filing: N/A

Charge Number: N/A

Claim previously filed as complaint with another Agency? No

Agency Name: N/A

Approximate Date of Filing: N/A

Nature of Complaint: N/A

INQUIRY OFFICE

Receiving: Las Vegas Local Office

Accountable: Las Vegas Local Office

APPOINTMENT

Appointment Date and time: 06/10/2019 08:30 AM US/Pacific

Interview Type: In-Person

APPROXIMATE DEADLINE FOR FILING A CHARGE: 06/11/2019

POTENTIAL CHARGING PARTY

First Name, Middle Initial: Antoine, S

Last Name: Salloum

Street or Mailing Address: 1700 Alta Drive

Address Line 2: 2079

City, State, Zip: LAS VEGAS, NV, 89106

Country: UNITED STATES OF AMERICA

Year of Birth: 1953

Email Address: cecy0075@gmail.com

Home Phone Number:

Cell Phone Number: (702) 355-0070

RESPONDENT

Organization Name: MAIN STREET STATION

Type of Employer: Business or non-profit organization that I applied to, work for, or worked for

Number of Employees: 20 or more employees

Street or Mailing Address: 200 N. Main Street

Address Line 2:

City, State, Zip Code: LAS VEGAS, NV, 89101

County: Clark

Phone Number: (702) 387-1896

RESPONDENT CONTACT

First and Last Name: Marie Goodwin

Email Address: mariegoodwin@boydgaming.com

Phone Number:

Title: Human Resources Director or Owner

LOCATION OF POTENTIAL CHARGING PARTY'S EMPLOYMENT

Street or Mailing Address:

Address Line 2:

City, State, Zip Code:

County:

POTENTIAL CHARGING PARTY'S DEMOGRAPHICS

Gender: M

Disabled: I do not have a disability

Are you Hispanic or Latino? not hispanic or latino

Ethnicity: White,

National Origin: Lebanese

Adverse Action(s)

I was terminated for false reasons to cover up the discrimination against me for my age, gender, and national origin.

Supplemental Information

What Reason(s) were you given for the action taken against you?

N/A

Was anyone in a similar situation treated the same, better, or worse than you?

N/A

Please provide name(s) and email and/or phone number of anyone who will support your claim, and briefly describe the information this person will provide.

N/A

Please tell us any other information about your experience?

N/A

EXHIBIT B

EXHIBIT B

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**487-2019-00649****Nevada Equal Rights Commission**

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mr. Antoine S. Salloum

Home Phone (Incl. Area Code)

(702) 355-0070

Date of Birth

1953

Street Address

City, State and ZIP Code

1700 Alta Drive, Apt. 2079, Las Vegas, NV 89106

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

BOYD GAMING CORPORATION

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(702) 387-1896

Street Address

City, State and ZIP Code

M.S.W, Inc. d/b/a MAIN STREET STATION, 200 N. Main Street, Las Vegas, NV 89101

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es))

DATE(S) DISCRIMINATION TOOK PLACE
Earliest Latest

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☒ NATIONAL ORIGIN
☐ RETALIATION ☒ AGE ☐ DISABILITY ☐ GENETIC INFORMATION
☐ OTHER (Specify)

08-15-2018☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

On or about April 23, 2003, I was hired by BOYD GAMING CORPORATION as a Food & Beverage Supervisor. My last position with the company was a Food and Beverage Manager. On or about August 9, 2018, I was suspended. On or about August 15, 2018, I was discharged. Other similarly situated co-workers, not of my protected classes, were not suspended or discharged for same or similar reasons. I believe I was discriminated against because of my sex, male, my national origin, Lebanese, in violation of Title VII of the Civil Rights Act of 1964, as amended. I believe I was discriminated against because of my age, over age 40, in violation of the Age Discrimination in Employment Act of 1967, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Date

Charging Party Signature

JUN 10 2019**EEOC/LVLO****JA064**

EXHIBIT C

EXHIBIT C

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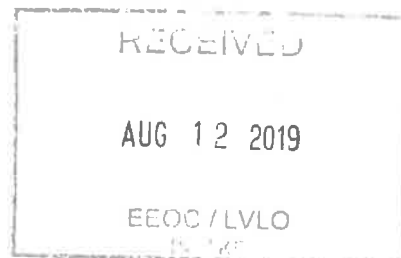
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August 12, 2019

VIA FACSIMILE ONLY
702-388-5094

Equal Employment Opportunity Commission -LAS VEGAS
333 Las Vegas Blvd South, Suite 5560
Las Vegas, NV 89101

RE: **ANTOINE SALLOUM V. BOYD GAMING**
Our File No.: BEL.350
EEOC Charge No.: 487-2019-00649



To Whom It May Concern:

Please be advised that while we understand the intake process, Mr. Salloom wishes to pursue his claims in federal district court as soon as possible. Accordingly, please issue him right-to-sue letter immediately.

Thank you for your time and attention to this matter. If you have any questions, or need additional information, please feel free to call the office

Respectfully,

/s/ Theresa M. Santos

Theresa M. Santos
Licensed in Nevada and Michigan

TMS:fk
BEL.350-Salloum\Correspondence\EEOC.02

CALIFORNIA

NEVADA

COLORADO

JA066

EXHIBIT D

EXHIBIT D

RECOMMENDATION FOR DISMISSAL/CLOSURE

CHARGE NUMBER: 487-2019-00649

TO: Patricia Kane, Acting Director

FROM: Amy Nigro, Investigator

Antoine Salloum	V	Boyd Gaming Corporation
-----------------	---	-------------------------

I recommend dismissal/closure of the subject charge based on the following *(include only the appropriate rationale)*:

- Charging Party or his/her attorney has requested an immediate RTS from the EEOC. It has been **less than 180 days** since the filing of Charging Party's charge with the District Office. Charging Party has been advised that the District Director can deny requests for a RTS which is submitted less than 180 days from the date their charge was filed with the EEOC; Charging Party has been counseled regarding the termination of their investigation; their private suit rights under the applicable EEOC statute; and the requirement of filing a claim in federal court within 90 days. There is no evidence of a potential class or a separate law enforcement reason to continue processing of the charge. A copy of request for RTS is located under TAB II.

Additional Evidence supporting dismissal:

1 TRAN

2
3
4 IN THE EIGHTH JUDICIAL DISTRICT COURT
5 CLARK COUNTY, NEVADA
6
7

8 ANTOINE SALLOUM,)
9 Plaintiff,)
10 vs.) Case No.
11 BOYD GAMING CORPORATION,) A-19-804678
12) Dept. No. 25
13 Defendant.)
14 -----

15 HEARING
16 -----

17 Before the Honorable Kathleen Delaney
18 Tuesday, January 7, 2020, 9:00 a.m.

19 Reporter's Transcript of Proceedings
20 -----
21
22
23
24

25 REPORTED BY ROBERT A. CANGEMI, CCR 888

1 APPEARANCES :

2 FOR THE PLAINTIFF: Theresa Santos, Esq.

3
4
5 FOR THE DEFENDANT: S. Paul Prior, Esq.

1 Las Vegas, Nevada, Tuesday, January 7,
2 2020

3 * * * * *

4 THE COURT: The last matter is page 6,
5 Salloum versus Boyd Gaming.

6 Good morning.

7 MS. SANTOS: Good morning, Your Honor.

8 THE COURT: It is just one of those
9 calendars, the theme for the day dismissal and
10 whether it is appropriate, right?

11 Boyd Gaming has filed a motion to dismiss in
12 this matter, and this one is a little bit more of
13 what we typically see in a motion to dismiss.

14 The other 2 so for this morning have been
15 very fact intensive, but we had to sort of wade
16 through that.

17 In this case there is really is the argument
18 that, is the timing of this appropriate.

19 And I did a lot of employment practice in my
20 prior life, and there is sometimes a mistake that's
21 made between the 300 days federal, and the 180 days
22 state, and depending on what claim is being brought,
23 essentially you have from the time of the event that
24 leads to the cause of action, minus whatever has
25 tolled, pending with the agency, a total of 180

1 days.

2 My confusion on this -- and I am going to
3 jump right in here -- is it is argued in the
4 opposition that the complaint was filed on the 180
5 day.

6 But it is argued, as I understood it, in the
7 motion, and this is probably just my misreading
8 that, that actually now, even if you count all of
9 the tolling, we are well outside of the 180 days.

10 So I am trying to nail down what is the
11 truth here, because I have got the docs and things,
12 but it is really hard for me to tell.

13 I think what we are using is, we are saying
14 complaint, but we are talking about just that
15 letter.

16 Is that correct?

17 Who wants to speak?

18 MS. SANTOS: Yes, Your Honor, Theresa Santos
19 for the Plaintiff.

20 It is Plaintiff's position that Mr. Salloum
21 timely filed his complaint with the EEOC. He timely
22 filed his right to sue letter.

23 THE COURT: So let me make sure that I am
24 understanding this, because I want to calculate this
25 correctly.

1 So the way this works -- and I am just going
2 to do a hypothetical for now -- somebody is
3 terminated on day one.

4 If on day 180 they file the complaint with
5 the agency, then when the agency makes its final
6 determination, they literally have no dates
7 remaining to file the lawsuit.

8 It has to be 180 days total, not counting
9 the tolling.

10 So if you file with the agency on day one
11 hundred, then the agency make its decision, you have
12 80 days left from the day the agency makes a
13 decision to file the lawsuit.

14 So if I am understanding the argument here
15 correctly, the entire 180 days was exhausted going
16 to the agency, and no time was remaining to allow a
17 post agency decision to file the lawsuit.

18 Is that more accurate?

19 MS. SANTOS: That's Defendant's argument,
20 Your Honor.

21 And our argument is that it doesn't matter
22 because it was timely.

23 THE COURT: To get to the agency?

24 MS. SANTOS: Right.

25 Plaintiff was on a train to Federal Court.

1 He filed timely under the EEOC. He filed his right
2 to sue correctly.

3 He was preparing to file his complaint in
4 Federal Court, and he looks out the window, low and
5 behold, the law in Nevada changed a month earlier.

6 Now, the same remedies available in Federal
7 Court are now available in State Court.

8 Well, let's file in State Court, and that's
9 exactly what he did.

10 The Defendant's argument, his logic would
11 have merit, arguably, if Plaintiff filed his
12 complaint in this Court on September 30, but
13 Plaintiff didn't do that.

14 He waited until the new law went into
15 effect, and filed it 30 days after the new law went
16 into effect.

17 Therefore, the new laws apply, SB-177, as
18 outlined, that's Plaintiff's position.

19 THE COURT: Aren't we talking a distinction
20 though between causes of action and remedy?

21 Go ahead, counsel, let me hear from you.

22 MR. PRIOR: With all due respect, she is
23 incorrect, you are correct, and the dates do matter.

24 THE COURT: For state law claims.

25 MR. PRIOR: For state law claims, and let me

1 run through what the timeline actually is based on
2 EEOC documents that we have in the 4 year request.

3 So first of all, he was terminated on August
4 15, 2018, okay.

5 Then we Count 180 days, which is statutory
6 for an individual to be able to pursue his claim in
7 Court.

8 That is statute, and I think that's pretty
9 clear. There are 300 days that allow the agency
10 itself, NERC, to conduct an investigation, but that
11 does not intend the individual's right past 180
12 days.

13 That is very clear.

14 THE COURT: Are you saying it is not
15 tolled by NERC?

16 MR. PRIOR: It is still tolled.

17 THE COURT: You mean it doesn't make it
18 more than 180 days to file?

19 MR. PRIOR: There is always confusion
20 between 180 days and 300.

21 And the confusion is this, because NERC has
22 an individual obligation to ensure no
23 discrimination, so they have an individual right to
24 investigate, and theirs is 300 essentially, but an
25 individual has 180 days to file, and it is tolled

1 during the time it is investigated.

2 So, the timeline then goes, and then based
3 on the opposition, there was some type of letter
4 that she says was filed electrically on February 11
5 of 2019.

6 The EEOC documents themselves, but the
7 intake questionnaire on February 14, that is Exhibit
8 A to our reply.

9 The key there is, February 11 was the 180
10 day. That is done.

11 His state claim is dead as of February 11,
12 so that's why the distinction of when she actually
13 filed.

14 But the interesting issue is, that's not a
15 complaint under Nevada law anyway, regardless of
16 whether they did file that on February 11 or
17 February 14.

18 It is an intake questionnaire, and we don't
19 have to look to her statement, because we can just
20 look right at the law NRS 233.160 defines what a
21 complaint is, and under Section 2, it specifies that
22 it must be made under oath.

23 This letter is not even signed. There is no
24 oath under declaration under penalty of perjury.
25 The only document we have is the EEOC charge, which

1 was June 10, the same day he met with the EEOC
2 investigator.

3 That charge specifies strictly federal
4 claims, no state claims, because they are already
5 dead.

6 Regardless, though, they filed the charge,
7 which was on June 10, signed under penalty of
8 perjury.

9 Also under Nevada law to be a complaint, the
10 complaint has to be sent to the company, and the
11 only one that was sent to the company was the June
12 10 charge.

13 We never saw this letter until we did the 4
14 year request and got it back December 19.

15 THE COURT: Let me ask you a question, is
16 it your position that the statute that allows for
17 180 days for the bringing of a claim, state law
18 claims, would be satisfied if they had -- if he had
19 signed a complaint on day 180, meaning not a capital
20 C complaint, what is filed here in this Court on
21 November 1, 2019, a complaint for damages, but you
22 just mean any complaint, do you think that satisfies
23 the statute?

24 So like if they had done the signed letter,
25 signed complaint, intake, whatever you want to call

1 it, whatever in your mind you say meets the
2 definition of the NRS Chapter 233 provision you are
3 pointing to that, that would allow this complaint to
4 be filed in November because that was within 180
5 days?

6 MR. PRIOR: Oh, no. They can't file if they
7 are late, their return.

8 THE COURT: But you are basically saying
9 they didn't even get to the agency in 180 days.

10 MR. PRIOR: Oh, no, it was dead even before
11 it got there.

12 Every time you look at the calculation and
13 you look back at the law, it doesn't matter, because
14 statutorily it was dead.

15 Even if you said it was filed on February
16 11, it is dead August 13 is when it is dead, and
17 that's the 180 days, even if you allow it, which is
18 not the way it should be, but even if you allow it,
19 it is still dead August 13, doing the 180 day
20 calculation.

21 The only ones that would have survived would
22 have been federal. And then what we have, they
23 waited until November 1 to file, okay, and they
24 filed only state claims without a NERC complaint,
25 without a NERC right to sue letter, without any

1 state claims being alleged under the underlying EEOC
2 charge.

3 The EEOC documents themselves, they are
4 attached to the complaint, stated that it wasn't
5 even pending more than 180 days.

6 So, the documents themselves say that it
7 wasn't filed February 11.

8 The documents themselves say, including to
9 what they cited to, Exhibit 1 to the complaint, sets
10 forth the right to sue, and in there it specifies
11 that state law statute of limitations are different
12 than federal.

13 And then it says under there, under the
14 first box, that 180 days had not passed. The only
15 way you can get that calculation, based on the
16 dates, is it must have been filed on -- the
17 complaint must have been the June 10 date, not
18 February 11, because February 11 preceded 180 days
19 as of August 13.

20 The documents themselves show that it is
21 late. But even if we assume that this somehow
22 SB-177 resurrected this dead claim, the language of
23 SB-170 itself precludes it also, because they didn't
24 meet the statutory requirements of SB-177.

25 They cited that there is additional law

1 allowing 90 days post the right to sue letter. By
2 the way, the statute specifies a right to sue letter
3 from NERC, not EEOC.

4 So the statute says that pursuant to Section
5 2, and the opposition didn't reference Section 2,
6 but Section 2 specifies that it had to have been
7 pending before the NERC for at least 180 days.

8 Again, of all documentation say, including
9 the letter that Ms. Santos sent, references that we
10 understand the intake process.

11 EEOC sends them saying, hey, there has not
12 been 180 days pending, but we will give you the
13 right to sue letter.

14 So it wasn't even pursuant to Section 2 for
15 those 2 obvious reasons. It wasn't issues by NERC,
16 and it wasn't -- they didn't pend before NERC for
17 180 days.

18 Anyway you look at it, it is late, and it
19 should be dismissed.

20 THE COURT: All right.

21 MR. PRIOR: I can answer any follow-up
22 questions.

23 THE COURT: I don't have any, but I would
24 like to hear from counsel.

25 MS. SANTOS: Again, Plaintiff disagrees on

1 that.

2 Under NRS 233.160, it says it says
3 employment or public accommodations must be filed
4 with the commissioner not later than 300 days after
5 the date of the occurrence, and it says that the
6 complaint is timely if it is with an appropriate
7 federal agency within that period.

8 Again, Plaintiff was filing and preparing
9 matters through the EEOC, and had realized that the
10 law had changed in Nevada, and decided to file suit
11 in Nevada instead.

12 And this was not a practice of reviving a
13 dead claim. Defendant wants to revive a dead law,
14 but the claim was still alive, because it was still
15 alive in Federal Court. It switched over.

16 THE COURT: But, counsel, here is the
17 problem I am having tracking with your argument, you
18 can bring federal claims in State Court, potentially
19 subject to being removed.

20 You can obviously bring state claims here,
21 and depending on what federal claims you have, you
22 can append state claims to them and go in Federal
23 Court, you have all of those options.

24 But what it sounds like you are arguing to
25 me is because the state law now provides remedies

1 similar to the federal laws, and made changes to be
2 more comporting with the federal laws, that somehow
3 that converts the state law claims to the statute of
4 limitations for federal law claims, is that what you
5 are arguing, because that's the problem that I am
6 having?

7 MS. SANTOS: No, because Nevada law changed
8 on its own. It is not converting any statute of
9 limitations for federal law.

10 The state law changed effective October 1.
11 Plaintiff didn't file his claim until --

12 THE COURT: I guess you need to be more
13 specific then in how you find the state law changed
14 the requirement of 180 days. That's what I am not
15 getting.

16 MS. SANTOS: Because the 180 days no longer
17 apply. It is the 180 days or up to 90 days after
18 the right to sue letter. That's is the law that
19 changed effective October 1.

20 THE COURT: All right.

21 In all candor, not connected to that
22 argument until like this second, so I need you to, I
23 guess, then, point me to the exact provision, so
24 that we can the look the language.

25 MS. SANTOS: Okay.

1 THE COURT: And then we need to do the
2 math, because the right to sue letter was issued on
3 August 13, 2019, and this was filed November 1, so
4 that's within the 90 days.

5 Show me the statute where that change
6 occurred.

7 MS. SANTOS: Okay.

8 The bill changed back in the spring. It is
9 not actually in the NRS yet.

10 THE COURT: So show me in your pleading
11 where you cited it.

12 I didn't get it.

13 MS. SANTOS: Okay.

14 So if you review the opposition, it would be
15 Exhibit 2.

16 THE COURT: Hang on.

17 Okay. Give me the Section.

18 MS. SANTOS: Section 7 -- I am sorry --
19 Section 8, and it says no action authorized may be
20 brought more than 180 days after the date of the
21 acts complained of, or more than 90 days after the
22 date of the receipt of the right to sue notice.

23 THE COURT: Counsel, again, and it might
24 really honestly have just been my own -- sometimes
25 we are done a dis-service by what our own practice

1 history has been.

2 We think we know it better than other
3 things, and maybe we then shortcut arguments, but I
4 really didn't see any acknowledgement of this
5 alternative.

6 I saw the argument about the 180 days. I
7 believe the 180 days is accurate in terms of -- if
8 we look at 180 date, we would definitely be outside
9 of that time frame, because by my calculation, there
10 was 443 days between when the Plaintiff was
11 terminated and when the Plaintiff filed a complaint.

12 And the tolling was only 183 days while it
13 was with the agency, so that would just be outside
14 of that time frame.

15 But I did not connect to the fact that we
16 have the statutory change and we are focusing to
17 survive here on the 90 days from the right to sue
18 letter.

19 Is your argument then squarely just, well,
20 there may be a right to sue letter, but you can't
21 bring state claims period, because that's a very
22 different, and I think a different nuanced argument,
23 because what they are alleging is the wrongful
24 termination.

25 What they are alleging is the actions by the

1 supervisor to this employee, and all of those could
2 give rise to federal claims or state claims.

3 So whether we are artful -- I guess the
4 better way to put it is, I have seen many cases,
5 dealt with many cases, where even just a pro se
6 person goes in and files an agency complaint, and
7 they don't know how to word it or how to state it,
8 but at the end of day, it is what it is, do the
9 actions give rise to the claims.

10 And then at some point the agency, and they
11 did definitely have a work sharing agreement with
12 one agency or another, NERC doesn't issue right to
13 sue letters, EEOC does.

14 And, so, you have a right to sue letter, and
15 you have got this potential new trigger and new
16 deadline, but I guess I am really struggling now to
17 see how you can say the claims were untimely if the
18 factual underpinnings were brought forward, is it
19 just entirely well because the charge was issued
20 June 3 untimely?

21 MR. PRIOR: We have addressed these
22 arguments, but let me --

23 THE COURT: I know you have, but obviously
24 you realize now I didn't connect to them properly,
25 so fix it now.

1 MR. PRIOR: And it is very clear. Again, the
2 proposition is it is untimely for several reasons.
3 Let's take a walk through it.

4 THE COURT: No, give me one highlight of
5 your best argument. I don't have time to walk
6 through it. It is after 11.

7 MR. PRIOR: Each way you turn to these, and
8 you have raised several areas there, and so did she.

9 The first issue is it was not filed on
10 February 11, and that is not a complaint, and,
11 therefore, it was dead even before.

12 THE COURT: And that's just based on your
13 interpretation of the NRS Chapter 233 provision?

14 MR. PRIOR: That is the law.

15 Secondly, even if it is not, the 180 days,
16 even if the SB did that and did this, she did file
17 the right to sue under SB-177.

18 It doesn't meet the statutory requirements
19 of a right to sue letter under the amendment. So,
20 even if it is somehow resurrected this dead claim --

21 THE COURT: The EEOC's right to sue letter
22 being issued on August 13, 2019 isn't the right to
23 sue letter that would trigger this provision?

24 MR. PRIOR: No.

25 And the statute as we say right here as the

1 provision that's specifies, it says under Section 8,
2 or more than 90 days after the date of the receipt
3 of the right to sue notice, pursuant to the Section
4 2 of this Act.

5 THE COURT: All right.

6 Let's go look at that.

7 MR. PRIOR: Whichever is later. So, even if
8 you assume that when this is effective, because now
9 NERC does issue right to sue letters, but they
10 couldn't until October 1, because that's what the
11 law requires.

12 But pursuant to Section 2 of this act, and
13 that's on page 6 of our reply.

14 And then we go pursuant to Section 2, and it
15 says, if a person files a complaint pursuant to
16 paragraph B of Section 1 of NRS 233.160, that
17 specifies that the complaint must be under oath, as
18 we already talked about, so that means the only
19 complaint at issue is the one on June 10.

20 And, then, which alleges on an unlawful
21 discriminatory practice of employment, the
22 Commission shall issue upon request from the person
23 a right to sue notice, and here is the operative
24 language, if at least 100 days have passed after the
25 complaint was filed pursuant NRS 233.160.

1 THE COURT: So, folks, I am going to
2 apologize to you, I have no way to save this
3 argument this morning. I need to go back and look
4 at these documents from a different perspective.

5 When I prepared this today, and I am not
6 trying to make excuses, it is was dense calendar.
7 There was a lot of meat here.

8 I went through most of the motions, and I
9 think I thought I knew this one better than I did in
10 terms of my history.

11 I did not connect to the argument with
12 regard to the law change, and I did not connect to
13 the argument with why this can't meet the right to
14 sue.

15 I am not saying you didn't make the
16 arguments. I am saying that I probably came at it
17 with a more narrow lens of review than I should
18 have, and in fairness to both sides, I need to take
19 a little bit more time to look at this.

20 I don't want to take it under advisement. I
21 don't want to delay you. I hate to inconvenience
22 you.

23 I will call you first, but can you come back
24 next Tuesday? Just give my a chance to re-visit this
25 from a different perspective.

1 I just realized today that I am off track,
2 and the more you argue, the more I realize what I
3 missed and what I didn't connect to, and I want to
4 in fairness reset.

5 So I do apologize to you for that. If you
6 had been early on calendar, I would have gotten to
7 that mistake on my part sooner, but I will get your
8 answer on Tuesday.

9 And, like I said, you don't have to wait
10 until the end of the calendar, we will get you out
11 early.

12 Just step up, and we will make our decision.
13 I am inclined at this point, just to let you know
14 where I think it is going, because of my
15 mis-connection to what the argument was, I am
16 inclined to disagree that the filing of the intake
17 and that ultimately that being recognized as charge
18 worthy, if you will, is somehow outside of the time
19 frame, just because of the way it is signed or not
20 signed, or oath or not oath.

21 I think it does appear that there was enough
22 here to be within the statute of limitations, and
23 then we are within the 90 days of the right to sue,
24 so I don't know that we can say that this is
25 untimely, based on what I am connected to, but

1 that's why in fairness I need to go back and look at
2 it, because if it really is that picayune, and if it
3 is really that specific of when you can have this
4 additional 90 days from the date, because if we are
5 just looking at it from the standpoint of in state
6 law claims, when we got to the agency, and when we
7 filed were clearly outside of the 180 days.

8 But the thing that could save it would be if
9 the right to sue letter were within the 90 days of
10 that, but are we actually entitled to that, and
11 that's the piece that I want at the time look at.

12 So that's where my head is at right now, but
13 I can't do that right now.

14 MR. PRIOR: Would you like any supplemental
15 briefing?

16 THE COURT: No. I just need the time to
17 look at it properly. I will see you all on Tuesday.

18 MS. SANTOS: Okay.

19 MR. PRIOR: 9:00 o'clock?

20 THE COURT: It is the 9:00 o'clock calendar,
21 but step up when I call for any unopposed, quickly
22 disposed of at the beginning. If you are both here,
23 jump up and we will get you out early.

24 Okay?

25 MR. PRIOR: Okay.

(Matter continued.)

1 REPORTER'S CERTIFICATE

2
3 STATE OF NEVADA)

4) ss.

5 CLARK COUNTY)
6
7

8 I, Robert A. Cangemi, a certified court
9 reporter in and for the State of Nevada, hereby
10 certify that pursuant to NRS 239B.030 I have not
11 included the Social Security number of any person
12 within this document.

13 I further certify that I am not a relative
14 or employee of any party involved in said action,
15 nor a person financially interested in said action.
16
17

18 (signed) /s/ Robert A. Cangemi
19 _____

20 ROBERT A. CANGEMI, CCR NO. 888
21
22
23
24
25

C E R T I F I C A T E

STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, Robert A. Cangemi, CCR 888, do hereby
certify that I reported the foregoing proceedings,
and that the same is true and accurate as reflected
by my original machine shorthand notes taken at said
time and place.

(signed) /s/ Robert A. Cangemi

Robert A. Cangemi, CCR 888

Certified Court Reporter

Las Vegas, Nevada

/s/

connected

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1 IN THE EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3
4 ANTOINE SALLOUM,)

5 Plaintiff,)

6 vs.)

CASE NO.

7 BOYD GAMING CORPORATION,)

A-19-804678-1

8 Defendant.)

DEPT. NO. 25

9
10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 BEFORE THE HONORABLE [!JUDGES]

12 TUESDAY, JANUARY 14, 2020

13
14 APPEARANCES:

15 For the Plaintiff:

16 THERESA SANTOS, ESQ.

17
18 For the Defendant:

19 PAUL S. PRIOR, ESQ.

20 HAYLEY J. CUMMINGS, ESQ.

21
22
23
24
25 REPORTED BY: DANA J. TAVAGLIONE, RPR, CCR No. 841

1 LAS VEGAS, NEVADA, MONDAY, JANUARY 14, 2020

2 * * * * *

3
4 THE COURT: All right. I promised I'd call
5 page 12 out of order. This is Salloum vs. Boyd
6 Gaming Corporation.

7 Just, again, state appearances, please, if
8 you'd like.

9 MS. SANTOS: Theresa -- I'm sorry. Theresa
10 Santos for the plaintiff.

11 MR. PRIOR: Paul Prior from Snell & Wilmer
12 and Hayley Cummings on behalf of defendant.

13 THE COURT: All right. Thank you.

14 So I did indicate when we were here last
15 week -- and I appreciate again the opportunity to
16 take a longer look at this -- and, you know, these
17 are never easy calls to make because you'd never
18 want to take someone's right to have their day in
19 court away unless it's clearcut that that right has
20 been lost.

21 And the confusion that the Court had the
22 last time we were here was whether or not the change
23 in the law that allowed for a time frame of either
24 180 days or 90 days from the right-to-sue letter
25 would indicate that this filing was still timely.

1 This, again, focusing on when the Complaint was
2 filed with the court.

3 The Court's original focus had been solely
4 on the 180 days and how that would be counted and
5 the tolling that would take place while the matter
6 was under review by the agency; and then the
7 argument, of course, then shifted to, I think the
8 more appropriate focus, which was really whether or
9 not the right-to-sue letter and the 90.

10 And certainly, you know, the finding would
11 be made that the Complaint was filed within 90 days
12 of the right-to-sue letter. The question was was
13 this a proper right-to-sue letter and did it meet
14 the criteria that the statute contemplated in order
15 to invoke that statute.

16 Is there anything final that the parties
17 wanted to say after they had thought about the last
18 time we were here?

19 I'm not trying to reargue this thing at all
20 because I think you all, not only in your pleadings,
21 but in the oral argument, argued it very well. It's
22 just I kind of truncated things last time we were
23 here because I realized I was off focus and I didn't
24 want to have you making arguments that would fall on
25 deaf ears because now I was distracted at that

1 point.

2 So, Counsel, I'm going start with you. I
3 know it's Boyd's motion, but just to see if you have
4 anything final you want to add, and we'll come back
5 and give Boyd the last word.

6 MS. SANTOS: Right. Thank you, Your Honor.

7 Plaintiff is still sticking to the points
8 that we made last week. Feel it just as strongly
9 today as we did last week by everything that was
10 made.

11 I will add though that, if Your Honor is
12 inclined to grant defendant's motion, ask that you
13 deny it under the basis of equitable tolling. Any
14 delay by the plaintiff was excusable delay. He was
15 under good faith belief that he was doing everything
16 timely. There is no prejudice to the defendant.

17 And, in fact, our Supreme Court has said in
18 the past, and I quote: "Procedural technicalities
19 that would bar claims of discrimination will be
20 looked upon with disfavor," and that's the case of
21 "Copeland vs. Desert Inn Hotel."

22 THE COURT: Okay.

23 MS. SANTOS: I have nothing further to add,
24 Your Honor.

25 THE COURT: I think those are fair

1 references to make in these circumstances.

2 Anything further from the Boyd side?

3 MR. PRIOR: Yeah. To follow-up on what we
4 argued last week, obviously there are several
5 hurdles in order for this case to proceed. The
6 first issue is whether the 100 days, when that
7 180 days, when the case died after the 180 days.
8 Depending on when they filed the Complaint, if they
9 filed the statutory Complaint, that could shift.
10 Regardless, it is either on February 11th, the
11 180th day, or August 13th.

12 So the issue -- and this wasn't argued very
13 much last time. Excuse me. The statute didn't go
14 into effect until October 2nd. So no matter which
15 way you calculate the 180 days, you would have to
16 retroactively apply to resurrect that dead claim.
17 It either died on the 12th of February or
18 August 13th. So and based on the language, there
19 isn't any retroactivity in the statute or the
20 amendment. So you'd have to make that finding as
21 well. So there's several findings --

22 THE COURT: But if it died on the 13th of
23 August, just for purposes of argument sake, you're
24 looking at that related to when the right-to-sue
25 letter came out; correct?

1 So if you are looking at that, then
2 wouldn't it be within the 90 days; or are you
3 indicating, as you started to argue -- and I think
4 that's where I cut you off, which is why I opened
5 the door here for some additional argument -- that
6 it's not an appropriate right-to-sue letter?

7 You had arguments with relation to that
8 they were pursuing essentially federal claims and
9 now they've tried to sort of bootstrap it into the
10 state claims. But if we're just looking at the fact
11 that the matter was closed out with the right-to-sue
12 letter by an agency -- and I think we all are on the
13 same page that these agencies work in cooperation
14 with each other -- then wouldn't it be within the
15 90 days?

16 MR. PRIOR: Okay. Great question.

17 The answer is federal claims are different
18 than state claims. State claims are the 180 days.
19 Even the statute, as amended, it's different than
20 the federal requirements. The federal cause of
21 action, she had 90 days, from the date of the
22 right-to-sue letter, to file the federal claims in
23 federal court or here to remove.

24 State claims died at 180 days. The
25 amendment says 180 days or 90 days pursuant to

1 Section 2, as it requires. So in order to get that
2 extra 90 days, they need to follow the statutory
3 requirements of Section 2, which were not followed
4 here as well. So --

5 THE COURT: And be specific on how you
6 think they weren't followed because that is where
7 the Court primarily focused its attention when you
8 left here last time. Because your argument was, you
9 know, Section 2 is requiring a very specific type of
10 right-to-sue and a specific circumstance.

11 But one of the things, as I understand it,
12 unless this has changed along with the law change,
13 is that Nevada Rights Commission does not issue
14 right-to-sue letters. Only EEOC issues
15 right-to-sue letters.

16 MR. PRIOR: Well, and that depends on the
17 claims obviously. There's certain state rights that
18 are not under federal like, for example, gender
19 identity. So states can issue right to suits. But
20 under this law --

21 THE COURT: I'm not saying they can't. I'm
22 saying it's NERC's policy not to, as I understand it.

23 MR. PRIOR: Okay. And obviously the
24 statute though now requires a right-to-sue letter,
25 the State. So that is the change in the law. I

1 have not seen one from since the law has been passed
2 as far as that goes. But for the state claims,
3 pursuant to Section 2 -- well, let me -- there's
4 several different hurdles that need to be made in
5 order for this case to go forward.

6 First of all, we need to decide when, in
7 fact, a Complaint was filed pursuant to federal law.
8 So there's three different dates that the Court
9 would have to decide which one. Plaintiff has
10 argued that they filed a letter that was unsigned
11 and not even referenced in the Complaint on
12 February 11th, the 180th day from the date.

13 The Intake Questionnaire they got from the
14 FOIA request says it was February 14th, which means
15 that the 100 days are already expired. Then we have
16 a Complaint that's dated June 10th that is under
17 penalty of perjury. That's the charge that was the
18 EEOC charge that was issued and then sent to my
19 client. So we've got to first figure out when that
20 was so we can calculate the proper 180 days.

21 The second issue we have is that the
22 statute says that it must be done -- in order to get
23 the right-to-sue letter, it has to be done pursuant
24 to Section 2. Obviously, Section 2 references that
25 there must be at least 180 days while it was pending

1 at NERC. So the tolling period needs to be at least
2 180 days. Federal court has a similar process of
3 180 days. But federal court says -- well, federal
4 court -- EEOC allows a plaintiff to send, request a
5 right-to-sue letter. The EEOC can deny that saying
6 that we still have our own duty to investigate, but
7 they can still issue that, and that's what happened
8 here.

9 The 180 days hadn't elapsed while pending
10 at the EEOC, there was a specific letter written on
11 August 12th, requesting a right-to-sue letter. The
12 EEOC documents say 180 days have not passed. So we
13 don't have to grant this, but we will, and they
14 issued a right-to-sue letter on August 13th.
15 State, under SB-177, it doesn't have that option.
16 It says that it has to be pending 180 days before
17 you can request a right-to-sue letter.

18 It's not "if" or "then." It's 180 days.
19 That's right in Section 2. So it wasn't done
20 pursuant to Section 2. So, also, pursuant to
21 Section 2, defines what a "Complaint" means, and it
22 references the prior statute. Essentially, it has
23 to be a Complaint of discrimination and must be done
24 under penalty of perjury. Therefore, the
25 February 11th, that wasn't referenced in the

1 Complaint, has no signature, has none of the
2 requirements for that -- but, regardless, the
3 180 days elapsed. And this is the third problem to
4 get the case forward.

5 That would require it died on August 13th,
6 if you assume that the 180 days, the statute didn't
7 even go into effect until October 2nd. So you're
8 between August 13th until October 1st, where it was
9 dead, and then you have to resurrect it. The only
10 ones that were alive at the time were the federal
11 claims.

12 THE COURT: So, Counsel, we had a lot more
13 argument here than I anticipated.

14 Did you have something else you want to say?

15 MR. PRIOR: Yes. I mean, she referenced
16 equitable tolling.

17 THE COURT: Yes.

18 MR. PRIOR: And that was not briefed. But
19 I could tell you that, based on the case law, the
20 stint of time that's gone by, represented by counsel,
21 equitable tolling will not, should not take place.
22 And we could brief that, if you'd like, but the case
23 law is pretty solid.

24 THE COURT: I don't think I need any
25 additional briefing on that.

1 But, Counsel, is there anything you want to
2 briefly add? I know that, in my intention of
3 having, you know, a little bit opportunity to sort
4 of flesh out what we didn't finish last week, we
5 went into a lot more detail than I anticipated.

6 Is there anything else you'd like to say?

7 MS. SANTOS: Your Honor --

8 THE COURT: I think you've covered it.

9 MS. SANTOS: Right. I really don't have
10 anything to add.

11 THE COURT: But your primary position, just
12 to make sure that I'm not mistaking it, is that when
13 that letter, or intake letter, whatever you want to
14 call it, occurred in or about February 11th, that
15 February 11th e-mail of FOIA comes back and says
16 it's very important to you that they got it
17 February 11th and it was submitted, that that is
18 sufficient to trigger the tolling, and then
19 ultimately, it was the right-to-sue letter that
20 ended the tolling.

21 Is that a fair assessment of your position?

22 MS. SANTOS: Yeah.

23 THE COURT: Okay. It's a really tough call
24 to make because, like I said, the last thing the
25 Court ever wants to do is deprive someone of their

1 opportunity to be in court without good reason.

2 And I think although there is some case law
3 that obviously would indicate that, you know,
4 substantial compliance or a good faith effort to
5 comply, whether we put that under the, you know,
6 rubric of equitable tolling or whether we just look
7 at it from the standpoint of is this a substantial
8 compliance situation or is this a strict compliance
9 time, place, manner requirement, I do think that the
10 strict compliance requirement would apply. I've
11 seen case law in the past where that would apply in
12 this circumstance.

13 The only unknown, for this Court, was
14 whether the 90-day tolling would apply and whether
15 or not the right-to-sue letter that was obtained fit
16 that. I think Boyd Gaming's arguments that somehow
17 because federal claims were being pursued by the
18 language of what was occurring with the submission
19 to the investigating agency, and that ultimately
20 state law claims came out of this as far as the
21 Complaint filed with the Court, I think that
22 argument is unveiling.

23 I think you have factual circumstances that
24 you're asserting that are alleged discrimination,
25 and whether or not they ultimately then find their

1 way to court, in a federal case or in a state case
2 or under federal law or under state law, I think is
3 not the controlling factor. I think the controlling
4 factor is what law is in place at the time and what
5 is applicable and whether or not the time is lost.

6 And I think, in this particular case, that
7 I do not see the applicability of the 90-day
8 requirement, based on how this case evolved and the
9 circumstances of the right-to-sue letter. It does
10 appear that this claim was late and that it cannot
11 be resurrected. And I believe it was late because I
12 do not believe that what was submitted on
13 February 11th would be enough to trigger the
14 requirements of the statute such that the 90-day
15 tolling or 90-day -- I'm sorry -- period from the
16 right-to-sue would be applicable.

17 I think at the 180th day of the filing of
18 what was submitted, that it was not under oath, that
19 was not something that, although the agency did
20 ultimately open something and consider it, I don't
21 think it meets the criteria to then eventually
22 evolve into a right-to-sue letter that would then
23 allow the 90 days to apply, even if the 90-day
24 statute was in place and/or could be retroactively
25 implied.

1 I believe the 180-day period was lost after
2 February when no sworn statement was submitted and
3 the preservation of the case did not occur. I don't
4 know, honestly, if the June date is the date to say
5 that that's when the Complaint was properly submitted
6 to the agency. Just because that's when they trumped
7 up the charge, so to speak -- and I don't mean to
8 say that derogatory; it sounded wrong -- when they
9 put together the charge.

10 I think what happened was something was
11 submitted. I think the agency moved forward. I
12 think an agency issued a right-to-sue letter. I
13 think it may be the only agency that would issue the
14 right-to-sue letter. But what seems clear is that
15 in order to trigger the "or" 90-day additional time
16 frame from the right-to-sue letter, you have to have
17 been properly with the agency on a sworn Complaint,
18 in a timely fashion, in the 180 days if you're going
19 to bring these state law claims.

20 And no matter how you slice it, it does
21 appear that the 180 days lapsed before any sworn
22 Complaint was actually submitted, and the date that
23 that would have needed to be done was by
24 February 11th, and that does not appear to have
25 occurred. So, therefore, the claim essentially

1 dead, from a state law standpoint; and whatever
2 occurred thereafter cannot resurrect it, again, even
3 if the statute was applicable for the 90 days to
4 apply.

5 So, Counsel, I'm going to ask you to be --
6 because, again, this is a different -- and I'm going
7 to find that equitable tolling does not apply, not
8 because counsel has been onboard for so long but
9 because this, again, is a strict time, place, manner
10 requirement. It wasn't met.

11 And despite the intentions of the party,
12 the law is clear on what is allowed, and it didn't
13 occur, and these are difficult outcomes. I do feel
14 badly for Mr. Salloum that the case will end at this
15 point, but I think it is the appropriate call.

16 Now, I fully expect it to be challenged,
17 and I fully expect then, if it is, that our
18 appellate courts will give us some better guidance,
19 and if I am incorrect about saying this is strict
20 time, place, manner; would substantial compliance be
21 appropriate; would equitable tolling be appropriate,
22 I will stand corrected and not have any heartburn
23 over that.

24 But I think that, in these circumstances,
25 we have to look at this, as far as strict

1 compliance, that the 180 day time frame wasn't met,
2 that the state agency could not continue to have a
3 role with this; and, therefore, the state law claims
4 coming out the other side do not still have life;
5 and whether or not a right-to-sue letter was issued
6 is sort of beside the point because the claim was
7 dead and the claim cannot be resurrected based on
8 that change in the law at this time.

9 So I'm going to ask counsel for Boyd to
10 prepare the order. Please allow counsel for
11 Mr. Salloum to have a view of it. And please be
12 specific about these findings. Don't just ask your
13 staff to chunk in, you know, what you argued. I
14 need it to be clear that all of these arguments were
15 all considered and this is the basis upon which the
16 ruling is made. All right?

17 MR. PRIOR: Will do. Thank you.

18 THE COURT: Thank you. Thank you for your
19 time. And sorry we took additional time this
20 morning. But thank you, again.

21
22 (The proceedings concluded at 9:48 a.m.)

23 -o0o-

CERTIFICATE OF REPORTER

STATE OF NEVADA)
)SS:
COUNTY OF CLARK)

I, Dana J. Tavaglione, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the proceedings had in the above-entitled matter at the place and date indicated.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said proceedings is a complete, true and accurate transcription of said shorthand notes.

IN WITNESS HEREOF, I have hereunto set my hand, in my office, in the County of Clark, State of Nevada, this 27th day of January 2020.

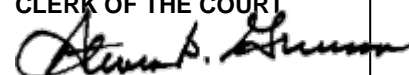
/s/ Dana J. Tavaglione

DANA J. TAVAGLIONE, RPR, CCR NO. 841

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DISTRICT COURT
CLARK COUNTY, NEVADA

ANTOINE SALLOUM,

Plaintiff,

v.

BOYD GAMING CORPORATION, d/b/a
MAIN STREET STATION, a Delaware
corporation; DOES 1-50, ROE
CORPORATIONS 1-50, inclusive,

Defendants.

Case No. A-19-804678-C
Dept. No. XXV

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION TO DISMISS**

PLEASE TAKE NOTICE that an Order Granting Motion to Dismiss was entered in the
above-captioned matter on February 10, 2020, a copy of which is attached hereto.

Dated: February 14, 2020

SNELL & WILMER L.L.P.

By: /s/ Paul Swenson Prior

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO DISMISS** by method indicated below:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by, a messenger service with which this firm maintains an account, of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

DATED this 14th day of February, 2020.

/s/ Maricris Williams
An employee of SNELL & WILMER L.L.P.

4849-2274-3732

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DISTRICT COURT
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ANTOINE SALLOUM,
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BOYD GAMING CORPORATION, d/b/a
MAIN STREET STATION, a Delaware
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CORPORATIONS 1-50, inclusive,
Defendants.

Case No. A-19-804678-C
Dept. No. XXV

**ORDER GRANTING
MOTION TO DISMISS**

On November 25, 2019, Defendant Boyd Gaming Corporation (“Boyd” or the “Company”) filed its Motion to Dismiss (the “Motion”). Plaintiff Antoine Salloum (“Plaintiff”) filed an opposition thereto on December 6, 2019.

The Motion was originally set for a hearing on December 31, 2019, but was subsequently moved to January 7, 2020 to accommodate the Court’s schedule. Boyd filed a reply to the opposition on January 2, 2020.

The Motion was argued on January 7, 2020 and continued argument was heard on January 14, 2020 at the hour of 9:00 a.m. in Dept. XXV of the Eighth Judicial District Court, in and for Clark County, Nevada, with Judge Kathleen E. Delaney presiding. Boyd appeared by and through its attorneys, Paul Swenson Prior, Esq. and Hayley J. Cummings, Esq. of the law firm of Snell &

<input checked="" type="checkbox"/> Motion to Dismiss by Def(s)	<input type="checkbox"/> Voluntary Dismissal
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Judgment of Arbitration	<input type="checkbox"/> Default Judgment

1 Wilmer, L.L.P. Plaintiff appeared by and through his attorney, Theresa M. Santos, Esq. of the law
2 firm Watkins & Letofsky, L.L.P.

3 Having reviewed the papers and pleadings on file, the oral arguments of counsel, and the
4 applicable case law, pursuant to Nev. R. Civ. P. 12(b)(5), the Court makes the following Factual
5 Findings and Conclusions of Law:

6 **FACTUAL FINDINGS**

- 7 1. Plaintiff's employment with the Company ended on August 10, 2018.
- 8 2. The 180-day deadline for filing claims authorized by Chapter 613 of the Nevada
9 Revised Statutes in district court ran on February 11, 2019.
- 10 3. As of February 11, 2019, Plaintiff had not submitted a sworn complaint to either
11 the Nevada Equal Rights Commission ("NERC") or the Equal Employment Opportunity
12 Commission ("EEOC").
- 13 4. Plaintiff filed a charge of discrimination with the EEOC and against the Company
14 on June 10, 2019.
- 15 5. Plaintiff requested a right-to-sue letter on August 12, 2019.
- 16 6. The EEOC issued a right-to-sue letter to Plaintiff on August 13, 2019.
- 17 7. Plaintiff filed his Complaint against the Company on November 1, 2019.

18 **CONCLUSIONS OF LAW**

19 **A. Standard for Motion to Dismiss.**

20 1. A defendant is entitled to dismissal when a plaintiff fails "to state a claim upon
21 which relief can be granted." NRCP 12(b)(5). Dismissal for failure to state a claim is therefore
22 appropriate when the plaintiff cannot prove any set of facts that would entitle her to relief. *See Buzz*
23 *Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 227–28 (2008); *Morris v. Bank of America*,
24 110 Nev. 1274, 1277, 886 P.2d 454, 456 (1994).

25 2. In considering a motion to dismiss, the Court must accept the non-moving party's
26 factual allegations as true and construe them in its favor. *Buzz Stew*, 181 P.3d at 672; *Morris*, 110
27 Nev. at 1276, 886 P.2d at 456. However, the Court is "not bound to accept as true a legal conclusion
28 couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *see also Pack v.*

1 *LaTourette*, 128 Nev. 264, 268, 277 P.3d 1246, 1248 (2012) (holding that the court must accept
2 *factual* allegations as true and then determine whether these allegations are *legally* sufficient to
3 satisfy the elements of the claim asserted).

4 **B. Plaintiff's Complaint Is Untimely Because Plaintiff Did Not Submit a Sworn Charge**
5 **of Discrimination Within Nev. Rev. Stat. § 613.430's 180-Day Deadline.**

6 3. Under NRS § 613.430, employment discrimination claims authorized by Chapter
7 613 of the Nevada Revised Statutes may not be "brought more than 180 days after the date of the
8 act complained of." Thus, per NRS § 613.430, a suit must be filed within 180 days of the allegedly
9 unlawful act (with time for filing tolled during the exhaustion period).

10 4. The alleged unlawful act triggering the 180-day period was, at the latest, Plaintiff's
11 termination on August 10, 2018.

12 5. The 180-day deadline expired on February 11, 2019.

13 6. Plaintiff did not submit a sworn complaint sufficient to toll NRS § 613.430's 180-
14 day period on or before February 11, 2019.

15 7. Without a sworn complaint submitted by February 11, 2019, Plaintiff's claims under
16 NRS § 613.330 expired and Plaintiff lost his right to sue.

17 8. Further, the unsigned letter, dated February 11, 2019, submitted with Plaintiff's
18 opposition to the Company's Motion was insufficient to toll NRS § 613.430's 180-day deadline.

19 9. Since more than 180 days passed between the unlawful act and Plaintiff's filing of
20 suit, Plaintiff's Complaint is time-barred and therefore dismissed with prejudice.

21 **B. The 90-Day Language Added to NRS § 613.430 by Senate Bill 177 Cannot Resurrect**
22 **Plaintiff's Expired State Law Discrimination Claims.**

23 10. Plaintiff's employment discrimination claims authorized by Chapter 613 of the
24 Nevada Revised Statutes expired on February 11, 2019.

25 11. As Plaintiff's employment discrimination claims were dead from a state law
26 standpoint on February 11, 2019, any events that occurred thereafter, including the Nevada
27 Legislature's amendments to NRS § 613.430, cannot revive Plaintiff's claims under NRS §
28 613.330.

1 **C. Equitable Tolling Does Not Apply.**

2 12. The Court considered equitable tolling, which Plaintiff raised for the first time at the
3 January 14, 2020 continued hearing.

4 13. The Court finds that equitable tolling does not apply because the 180-day deadline
5 set forth by NRS § 613.430 is a strict time, place, and manner requirement.

6 14. The statutory period set forth in NRS § 613.430 expired because Plaintiff failed to
7 comply with NRS § 613.430's strict time, place, and manner requirement.


8 15. As the law is clear on what is required, equitable tolling does not apply.

9 **ORDER**

10 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:


11 That Boyd's Motion to Dismiss is **GRANTED** and Plaintiff's Complaint against Boyd
12 is **DISMISSED WITH PREJUDICE** in its entirety.

13 DATED: FEBRUARY 10, 2020

14 
15 DISTRICT COURT JUDGE
16 BJC


16 Respectfully submitted by:

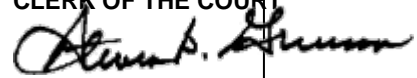
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DISTRICT COURT

CLARK COUNTY, NEVADA

ANTOINE SALLOUM,
Plaintiff,

Case No.: A-19-804678-C

Dept. No. XXV

vs.

NOTICE OF APPEAL

BOYD GAMING CORPORATION, d/b/a
MAIN STREET STATION, a Delaware
corporation; DOES 1-50, ROE
CORPORATIONS 1-50, inclusive,
Defendants.

NOTICE is hereby given that Antoine Salloum, Plaintiff in the above matter, hereby
appeals to the Supreme Court of Nevada from the Order of Dismissal, entered on February 14,
2020.

DATED this 5th day of March, 2020.

WATKINS & LETOFSKY, LLP

/s/ Daniel R. Watkins

By:

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CERTIFICATE OF SERVICE

I hereby certify that on 5th Day of March, 2020, a true and correct copy of the foregoing
NOTICE OF APPEAL was served by the following method(s):

☒ BY ELECTRONIC SUBMISSION: submitted to the above-entitled Court for electronic
filing and service upon the Court's Service List for the above-referenced case.

/s/ Farah Kachermeyer
Farah Kachermeyer
An Employee of Watkins & Letofsky