

**IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

IN THE MATTER OF SEARCH WARRANTS  
REGARDING SEIZURE OF DOCUMENTS,  
LAPTOP COMPUTERS, CELLULAR  
TELEPHONES, AND OTHER DIGITAL  
STORAGE DEVICES FROM THE PREMISES  
OF LAS VEGAS BISTRO, LLC AND LITTLE  
DARLINGS OF LAS VEGAS, LLC

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LAS VEGAS BISTRO, LLC D/B/A LARRY  
FLYNT'S HUSTLER CLUB; AND LITTLE  
DARLINGS OF LAS VEGAS, LLC,  
Appellants,  
vs.  
LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT,  
Respondent.

Supreme Court Case No.:  
84931-COA

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Elizabeth A. Brown  
Clerk of Supreme Court

From the Eighth Judicial District Court  
Honorable Jerry A. Wiese II, District Judge

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**APPELLANTS' REPLY TO LVMPD'S OPPOSITION TO MOTION  
TO SUSPEND THE RULES PURSUANT TO NRAP 2 AND ORDER  
PROCEEDINGS FOR EXPEDITED BRIEFING AND DECISION**

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DEANNA L. FORBUSH  
Nevada Bar No. 6646  
COLLEEN E. MCCARTY  
Nevada Bar No. 13186  
**FOX ROTHSCHILD LLP**  
1980 Festival Plaza Drive, Suite 700  
Las Vegas, Nevada 89135  
Telephone: (702) 262-6899  
Facsimile: (702) 597-5503  
*Attorneys for Appellants*

ZACHARY M. YOUNGSMA  
Nevada Bar No. 15680  
**SHAFFER & ASSOCIATES, P.C.**  
3800 Capital City Blvd., Suite 2  
Lansing, Michigan 48906  
Telephone: (517) 886-6560  
Facsimile: (517) 886-6565  
*Attorneys for Appellants*

Appellants, Las Vegas Bistro, LLC d/b/a Larry Flynt's Hustler Club and Little Darlings of Las Vegas, LLC d/b/a Little Darlings ("Appellants"), by and through their attorneys of Fox Rothschild LLP, hereby Reply to the Opposition filed by Las Vegas Metropolitan Police Department ("LVMPD") to their NRAP 2 Motion seeking an expedited review and decision on this finite yet exigent matter (the "Reply," "Opposition" and "Motion," respectively).

## **POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

LVMPD's Opposition incorrectly states that Appellants' Motion seeks only expedited briefing regarding the instant appeal challenging the decisions of the district court concerning LVMPD's search warrants executed on Appellants' businesses (*see* Opposition at p. 5). On the contrary, as the Motion title itself makes clear, the relief respectfully sought by Appellants is for all proceedings to be ordered expedited and a decision on the merits reached as soon as practicable.

NRAP 2, upon which the Motion is based, specifically permits that "[o]n the court's own or a party's motion, the court may—to expedite its decision or for other good cause—suspend any provision of these Rules in a particular case and order proceedings as the court directs, except as otherwise provided in Rule 26(b)." (Emphasis added). Good cause exists, first and foremost, where the record below is extremely limited and concerns one hearing to determine the narrow issues of the efficacy of the search warrants in question and the district court's decision not to

grant Appellants' request for equitable relief and order: (1) the search warrant applications unsealed, (2) the search warrants quashed, and/or (3) the seized property returned without further review. This, coupled with the time sensitivity attendant to LVMPD's pending review of Appellants' privileged materials, warrant the Court's order for briefing on a significantly truncated schedule, and should oral argument be needed, the scheduling thereof as expeditiously as possible.

## **II. ARGUMENT**

### **A. Suspension of the Rules Is Warranted Based on Appellants' Showing of a Substantial Case on the Merits.**

In addition to not addressing Appellants' primary argument regarding their substantial case on the merits, which is evident from the crimes being investigated, LVMPD wholly misdirects the Court concerning the return of property containing Appellants' privileged materials in an errant attempt to suggest NRAP 2 relief is not warranted. *See* Opposition at pp. 4-5. As to this latter point, notably absent from the Notice of Returned Property attached as Exhibit A to LVMPD's Opposition are each Appellant's Dell computer servers, 8 digital video recorders and an Apple MacBook, in addition to the silver Apple laptop purportedly withheld over an ownership dispute. This lack of candor aside, however, the more obvious point is that LVMPD returned Appellants' devices only upon their imaging, giving LVMPD full access to the information, privileged or otherwise, with impunity.

The larger point, which justifies granting Appellants' Motion, is the substantial case on the merits presented. LVMPD failed to address Appellants' argument, choosing instead to focus on an inapposite probable cause analysis (*see* Opposition at pp. 6-7), and the Court is permitted to treat the failure to oppose or refute Appellants' argument as an admission that the same has merit and grant the relief requested on that basis alone. *Foster v. Dingwall*, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010); *see also Knickmeyer v. Nevada ex. rel. Eighth Jud. Dist. Ct.*, 173 F.Supp. 1034, 1044 (D. Nev. 2016). Should the Court wish to consider the argument substantively regardless, Appellants respectfully remind the Court that they seek a favorable ruling pursuant to the plain language of both NRS 201.320 (Living from the Earnings of Prostitute) and NRS 201.395 (Advancing Prostitution), which are the purported crimes being investigated, where LVMPD's investigation of these crimes is fatally flawed because the predicate crime of Prostitution is specifically required, and, as defined by NRS 201.295(5), the crime cannot be present under the facts and circumstances of the instant undercover case.

**B. Suspension of the Rules Is Necessary to Protect Appellants' Attorney-Client and Other Privileged Information.**

The equally compelling basis to grant Appellants' Motion exists where the evidence obtained from Appellants' electronic devices during LVMPD's improper investigation contains attorney-client, work product and accountant-client privileged information, for which Appellants must be entitled to seek all legal

protections prior to LVMPD's review. As noted in the Motion and not meaningfully disputed by LVMPD, the record below shows the district court's error in denying Appellants' motion for return of property and other requested relief. *See* Order dated May 22, 2022, attached to the Motion as Exhibit 1.

Specifically regarding the return of Appellants' property, distinct from the district court's protocol that places the privilege review in the hands of LVMPD, Appellants point to the clear application of NRS 179.105 to the circumstances at bar. LVMPD argues in its Opposition, as it did below, that NRS 179.105, which addresses the retention and return of property seized pursuant to warrant, is inapplicable. *See* Opposition at p. 8. Any fair reading of the statutes in question, however, says otherwise.

Courts are to "construe statutes to give meaning to all of their parts and language....[f]urther, no part of a statute should be rendered meaningless and its language should not be read to produce absurd or unreasonable results." *Harris Assocs. v. Clark Cty. Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (citations and quotation marks omitted). Despite these well-settled principles, LVMPD's interpretation of both NRS 179.105 and NRS 179.11518 would render meaningless the language in NRS 179.105 that provides for appropriate protections where "....the property is determined pursuant to NRS 179.11518 to be subject to the attorney-client privilege." NRS 179.11518 specifically instructs, in the context of seizing property from an attorney, to return the property "as

provided in NRS 179.105.” If NRS 179.105 does not also command the return of property seized from a non-attorney then there is no reason to include a reference to NRS 179.11518, because the return of property implicating the attorney-client privilege seized from an attorney is already mandated.

Accordingly, there are three circumstances under which the court “shall cause [the seized property] to be returned to the person from whom it was taken,” inclusive of where “[i]t appears that...the property is determined...to be subject to the attorney client privilege.” NRS 179.105. LVMPD cannot dispute there is, in fact, privileged information to be found in the imaged documents from the seized devices, and, indeed, it conceded the same when it suggested a search protocol that the district court approved. Under such circumstances, Appellants respectfully assert it is not reasonable to permit LVMPD to retain these privileged materials and search them without constraint pending the outcome of the instant appeal.

## **II. CONCLUSION**

Any limited interest LVMPD may have in searching Appellants’ documents and electronic devices prior to the Court’s decision on appeal is easily outweighed by the risk of the irreparable harm to Appellants if their privileges are disregarded and destroyed before that decision is rendered. Accordingly, and based additionally on their proffer of a substantial case on the merits, Appellants respectfully ask this Court to suspend the rules, schedule expedited briefing and

oral argument as needed, and ultimately issue an expedited decision, prior to any further investigation by LVMPD of Appellants' businesses.

Dated this 21st day of September, 2022.

**FOX ROTHSCHILD LLP**

By: /s/ Colleen E. McCarty

DEANNA L. FORBUSH

Nevada Bar No. 6646

COLLEEN E. MCCARTY

Nevada Bar No. 13186

1980 Festival Plaza Drive, Suite 700

Las Vegas, Nevada 89135

Telephone: (702) 262-6899

ZACHARY M. YOUNGSMA

Nevada Bar No. 15680

**SHAFER & ASSOCIATES, P.C.**

3800 Capital City Blvd., Suite 2

Lansing, Michigan 48906

Telephone: (517) 886-6560

*Attorneys for Appellants*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21st day of September, 2022, I caused the foregoing **APPELLANTS' REPLY TO LVMPD'S OPPOSITION TO MOTION TO SUSPEND THE RULES PURSUANT TO NRAP 2 AND ORDER PROCEEDINGS FOR EXPEDITED BRIEFING AND DECISION** to be served on all parties to this action by electronically filing it with the Court's e-filing system, which will electronically serve the following:

Nick D. Crosby, Esq.  
ncrosby@maclaw.com  
Jackie V. Nichols, Esq.  
jnichols@maclaw.com  
**MARQUIS AURBACH**  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
*Attorneys for Respondent*

/s/ Sherry Harper  
An employee of Fox Rothschild LLP