

**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

---

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

Electronically Filed  
Oct 05 2022 05:09 p.m.  
[District Court Case No. A-22-85107-COA]  
Elizabeth A. Brown  
Clerk of Supreme Court

Appeal from Eighth Judicial District Court Order Denying  
Motion for Equitable Relief Pursuant to NRS 179.085,  
Honorable Jerry A. Wiese II, District Judge

---

**OPENING BRIEF OF APPELLANTS LAS VEGAS BISTRO, LLC AND  
LITTLE DARLINGS OF LAS VEGAS, LLC**

---

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*

## NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

1. Appellant, Las Vegas Bistro, LLC (“LV Bistro”) is a Nevada limited liability company managed by Jason Mohney with no other corporate affiliations.

2. Appellant, Little Darlings of Las Vegas, LLC (“LDLV”) is a Nevada limited liability company managed by Trevor Bowen with no other corporate affiliations.

3. Appellants were represented in the district court, and are represented in this Court, by the undersigned attorneys of the law firm of Fox Rothschild LLP and Shafer & Associates, P.C.

Dated this 5th day of October, 2022.

By: /s/ Colleen E. McCarty

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  
**SHAHER & ASSOCIATES, P.C.**  
3800 Capital City Blvd., Suite 2  
Lansing, Michigan 48906  
Telephone: (517) 886-6560  
Facsimile: (517) 886-6565  
*Attorneys for Appellants*

## TABLE OF CONTENTS

	Page
JURISDICTIONAL STATEMENT .....	1
ROUTING STATEMENT .....	2
ISSUES PRESENTED FOR REVIEW .....	3
I. STATEMENT OF THE CASE .....	8
II. STATEMENT OF RELEVANT FACTS .....	10
III. SUMMARY OF ARGUMENT .....	13
IV. ARGUMENT .....	14
A. Standard of Review. ....	14
B. The District Court Clearly Erred By Denying Appellants’ Motion to Quash and for Other Relief.....	14
1. The Search Warrants Should Have Been Quashed. ....	14
2. The Search Warrant Affidavits Should Have Been Unsealed. .	16
3. The Seized Property Should Have Been Returned. ....	18
C. Reversal and Remand of the District Court’s Order Is Further Required to Protect Appellants’ Attorney-Client and Other Privileged Information. ....	20
V. CONCLUSION.....	21

## TABLE OF AUTHORITIES

### Page(s)

### Cases

<i>City of Reno v. Reno Gazette-Journal</i> , 119 Nev. 55, 63 P.3d 1147 (2003).....	14
<i>Ford v. State</i> , 127 Nev. 608, 262 P.3d 1123 (2011).....	8, 9
<i>Harris Assocs. v. Clark Cty. Sch. Dist.</i> , 119 Nev. 638, 81 P.3d 532 (2003).....	18
<i>Howard v. State</i> , 128 Nev. 736, 291 P.3d 137 (2012).....	17
<i>Nevada Att’y for Injured Workers v. Nevada Self-Insurers Ass’n</i> , 126 Nev. 74, 225 P.3d 1265 (2010).....	18
<i>Publicker Indus., Inc. v. Cohen</i> , 733 F.2d 1059 (3rd Cir. 1984).....	17

### Statutes

NRS 49.045 .....	20
NRS 49.095 .....	12, 20
NRS 49.185 .....	12
NRS 179.045(4).....	16, 17
NRS 179.085 .....	1, 8, 13
NRS 179.085(1).....	14
NRS 179.085(2).....	15
NRS 179.085(3).....	15
NRS 179.105 .....	7, 15, 18, 19
NRS 179.11518 .....	7, 18, 19

NRS 201.295(5).....	3, 8, 15
NRS 201.320 .....	3, 8, 15
NRS 201.395 .....	3, 8, 15
NRS 201.395(3).....	10, 16

### **Other Authorities**

Nevada Constitution Article 1, Section 18 .....	13, 16
United States Constitution First Amendment .....	13

## **JURISDICTIONAL STATEMENT**

This Court has appellate jurisdiction pursuant to NRAP 3A(b)(1), where the instant appeal arises from a final judgment entered in an action or proceeding commenced in the court in which the judgment was rendered.

LV Bistro and LDLV, whose businesses were raided by Respondent, Las Vegas Metropolitan Police Department (“LVMPD”), appeal from the final order of the Eighth Judicial District Court, the Honorable Jerry A. Wiese II presiding (the “district court”), entered on May 22, 2022 and noticed on May 24, 2022, which order denied Appellants’ request to: (1) unseal search warrant applications and supporting affidavits, (2) quash search warrants, and (3) return all seized property. The order resolved all matters pertaining to Appellants’ motion made pursuant to NRS 179.085, which was properly treated by the district court as a civil complaint for equitable relief. (Appellants’ Appendix (“AA”) AA000147 – AA000160).

Pursuant to NRAP 4(a)(1), “a notice of appeal must be filed after entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served.” On June 23, 2022, Appellants timely filed their Notices of Appeal of the district court’s final order. (AA000163 – AA000182).

## **ROUTING STATEMENT**

On July 7, 2022, the Supreme Court issued a Notice of Transfer to Court of Appeals, pursuant to NRAP 17(b). The transfer came the same day the settlement judge recommended the matter be removed from the settlement program, and the Supreme Court entered a corresponding order of removal and reinstatement of briefing, which set the date for Appellants' opening brief and appendix in 90 days.

## **ISSUES PRESENTED FOR REVIEW**

The instant appeal presents the following ultimate issue for this Court's consideration:

1) Whether the district court erred in finding probable cause to believe the crimes of Advancing Prostitution (NRS 201.395) and Living from Earnings of Prostitution (NRS 201.320) were committed by Appellants where an essential element of each crime is the act of Prostitution, which is specifically defined in statute as "engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value" (NRS 201.295(5)), and LVMPD's Search Warrants and Search Warrant Affidavits in question reference acts involving undercover police officers only and, thus, by definition cannot include the element of Prostitution?

If the Court is not inclined to address the ultimate issue of the district court's error in not granting Appellants' requested equitable relief, where LVMPD could not and did not show probable cause to survive the challenge to the Search Warrants and Search Warrant Affidavits, then Appellants respectfully submit the following itemized issues presented in the instant appeal:

1) Whether the district court erred in denying Appellants' request to unseal the Application and Affidavit of Las Vegas Metropolitan Police Department ("LVMPD") Detective R. Chavez, P#7758 ("Hustler Club Application and



Supporting Affidavit”) submitted in support of the Search Warrant issued April 1, 2022 in the matter of 6007 Dean Martin Drive, Las Vegas, Nevada 89118 by the Honorable Harmony Letizia, Justice of the Peace for the Las Vegas Township Justice Court (“Hustler Club Search Warrant”), authorizing the search by law enforcement officers of the business known as Larry Flynt’s Hustler Club and further authorizing seizure of, among other items, business documents and electronic storage devices, inclusive of computers, cellular phones, and tablets (the “Property”), which Search Warrant Application and Supporting Affidavit was sealed by Judge Letizia pending further order of the court?

2) Whether the district court erred in denying Appellants’ request to unseal the Application and Affidavit of LVMPD Detective R. Chavez, P#7758 submitted in support of the Search Warrant for Digital Storage Device issued on April 7, 2022 by the Honorable Joseph S. Sciscento, Justice of the Peace for the Las Vegas Township Justice Court (“Hustler Club Digital Search Warrant”), authorizing the search by law enforcement officers of the Property seized from Hustler Club, which Search Warrant Application and Supporting Affidavit was sealed by Judge Sciscento pending further order of the court?

3) Whether the district court erred in denying Appellants’ request to unseal the Application and Affidavit of LVMPD Detective R. Chavez, P#7758 (“Little Darlings Application and Supporting Affidavit”) submitted in support of

the Search Warrant issued on April 1, 2022 in the matter of 1514 Western Avenue, Las Vegas, Nevada 89102, by the Honorable Harmony Letizia, Justice of the Peace for the Las Vegas Township Justice Court (“Little Darlings Search Warrant”), authorizing a search by law enforcement officers of the business known as Little Darlings and further authorizing seizure of, among other items, business documents and electronic storage devices, inclusive of computers, cellular phones and tablets (the “Property”), which Search Warrant Application and Supporting Affidavit was sealed by Judge Letizia pending further order of the court?

4) Whether the district court erred in denying Appellants’ request to unseal the Application and Affidavit of LVMPD Detective A. Carreon, P#9025 submitted in support of the Search Warrant for Digital Storage Device issued on April 7, 2022 by the Honorable Joseph S. Sciscento, Justice of the Peace for the Las Vegas Township Justice Court (“Little Darlings Digital Search Warrant”), authorizing the search by law enforcement officers of the Property seized from Little Darlings, which Search Warrant Application and Supporting Affidavit was sealed by Judge Sciscento pending further order of the court?

5) Whether the district court erred in denying Appellants’ request to review and evaluate the representations contained in each Application and Supporting Affidavit for the Search Warrant and Digital Search Warrant served at each business location, and to permit the submission of supplemental briefing in

support of their complaint for equitable relief with the benefit of such review, specifically regarding Appellants' contention that all Search Warrants and Search Warrant Affidavits in question are facially deficient under Nevada law and the representations contained therein fail to establish probable cause to support the seizure of Appellants' Property and subsequent imaging and forensic examination?

6) Whether the district court erred in denying Appellants' request to quash all Search Warrants in question, where probable cause to search each business location of Appellants, to seize Appellants' Property, and to image and search the contents of Appellants' Property, cannot exist because the Search Warrants and Search Warrant Affidavits referencing acts involving undercover police officers only cannot include the element of Prostitution?

7) Whether the district court erred in denying Appellants' request for the return of each Appellant's Property prior to its presentation to any judicial officer, grand jury, or other entity or person whomsoever, for any purpose whatsoever?

8) Whether the district court erred in denying Appellants' request to prohibit LVMPD, and any person acting on its behalf, from reviewing each Appellant's Property, which contains privileged materials protected by the attorney-client, work product and accountant-client privileges, and to permit Appellants the opportunity to review the Property and prepare appropriate privilege logs for subsequent review *in camera* by the Court or special master to

ensure that the privileges are preserved pursuant to NRS 179.105 and NRS 179.11518?

## I.

### **STATEMENT OF THE CASE**

Appellants maintain that the district court erred as a matter of law when it denied their motion, treated as a civil complaint for equitable relief pursuant to NRS 179.085, which sought to unseal LVMP's search warrant applications and supporting affidavits, quash LVMPD's search warrants, and return property seized following execution of LVMPD's search warrants, inclusive of Appellants documents and electronic devices containing attorney-client, work product, and accountant-client privileged information.

LVMPD based its search warrants on an investigation into the purported crimes of Living from Earnings of a Prostitute (NRS 201.320) and Advancing Prostitution (NRS 201.395). Each crime requires as an essential element the act of prostitution. Prostitution is specifically defined in statute as "engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value." *See* NRS 201.295(5). Where interactions between Appellants' independent contractors and undercover police officers form the basis for the search warrants in question, however, there is no possibility of a probable cause showing of the act of prostitution. To the extent there was evidence of solicitation for prostitution, the inchoate crime of offering or agreeing to commit the crime of prostitution, this is not the same as the act of prostitution. *See Ford v. State*, 127

Nev. 608, 619, 262 P.3d 1123, 1130 (2011). Thus, in addition to the obvious missing element for the crimes actually being investigated, probable cause if any to investigate solicitation of prostitution could only extend to Appellants' independent contractors with whom the undercover officers engaged. Under no circumstances in the instant appeal could the district court have properly found probable cause for any crimes involving Appellants.

Appellants have never been afforded the opportunity to review the full set of records in question, but to the extent they depict undercover police officers engaging with female dancers concerning payment for services, regardless of the nature of those services no legal basis exists for the search warrants and search warrant affidavits to remain sealed and in effect or for LVMPD to retain any of Appellants' seized property or the digital contents imaged therefrom.

A second and equally compelling basis to grant the instant appeal, and thereafter remand the matter for further orders to return Appellants' property and its contents, exists where the evidence obtained from Appellants' electronic devices during LVMPD's improper investigation contains attorney-client, work product and accountant-client privileged information. Should the Court grant Appellants relief based on a finding the district court lacked probable cause, then the additional protections Appellants seek to maintain their privileges are moot. If the Court is not inclined to grant Appellants' appeal in its entirety, then Appellants

request the appropriate opportunity to seek all legal protections prior to LVMPD's review of any seized and imaged documents.

## II.

### **STATEMENT OF RELEVANT FACTS**

On January 26, 2022 and March 12, 2022, LVMPD sent correspondence to the LV Bistro purportedly providing notice that one or more entertainers, who LVMPD declined to identify and incorrectly referenced as employees of the Hustler Club<sup>1</sup>, had solicited an undercover police detective for sexual acts on the premises. (AA000034 – AA00037). As advised by LVMPD and required pursuant to NRS 201.395, LV Bistro responded in writing to LVMPD Detective R. Sioson on February 1, 2022, and LVMPD Detective R. Chavez on March 15, 2022, asking for identification of the entertainers at issue, affirming its zero-tolerance policy regarding illegal sexual conduct, and outlining its extensive efforts to ensure that no acts of solicitation of prostitution occurred on its premises. (AA000039 – AA000044). In its correspondence, LV Bistro further invited guidance from LVMPD regarding additional actions, policies and procedures it could implement to address the issue and ensure compliance with NRS 201.395(3). *See id.* No further response was provided by LVMPD.

---

<sup>1</sup> The dancers/entertainers who perform at the Hustler Club and Little Darlings are independent contractors, not employees, of the respective businesses.

Similarly, on January 8, 2022 and March 12, 2022, LDLV received correspondence from LVMPD regarding alleged prostitution activity by one or more of its unidentified independent contractor entertainers. Like LV Bistro, LDLV responded to Detective Chavez, via email on January 11, 2022, and March 14, 2022, detailing its efforts to ensure that no such conduct occurred on its premises, and inviting further input from LVMPD. (AA000046 – AA000049). And again, LDLV received no further communication from LVMPD.

On April 5, 2022, members of LVMPD's Special Investigations Section executed a search of the business premises of LV Bistro and LDLV, as well as premises leased through LV Bistro to another entity, Go Best, LLC. (AA000014 – AA000019 and AA000024 – AA000030). Upon arrival, detectives gathered the employees of each respective business and seized the personal cellular telephones of the persons who identified themselves as management employees of each club. (AA000021 – AA000022 and AA000032). Police officers took three (3) cellular telephones from managers of LV Bistro's business and one (1) cellular telephone from a manager at LDLV's business. These phones were not the property of either business and instead were purchased by and solely belonged to the individuals from whom they were seized for their personal and business use.

Among other items, LVMPD also removed multiple computers from the premises of each business. At LV Bistro's premises, detectives seized three (3)



laptop computers and two (2) iPads. (AA000021 – AA000022). At LDLV's premises, detectives removed four (4) computers and three (3) tablets. (AA000032). Detectives also seized computer servers, digital video recorders, thumb drives and mountains of documents from both businesses. (AA000021 – AA000022 and AA000032). During the raid at LV Bistro's premises specifically, LVMPD's digital forensics team worked in collaboration with detectives on scene and advised LV Bistro's counsel that they could, and in fact did at the time, create mirror images of some of the devices using the mobile forensics unit parked on site.

The property seized from Appellants' respective businesses further contains documents and communications that are privileged pursuant to the attorney-client privilege and work product doctrine (NRS 49.095) and the accountant-client privilege (NRS 49.185). Appellants by way of their de facto civil complaint for equitable relief filed on April 12, 2022, sought to protect all privileged information contained within the property seized by LVMPD, inclusive of the personal cellular telephones of the managers, in the event the search warrants were not quashed. (AA000001 – AA000049).

The district court properly treated Appellants' request for relief regarding the search warrants, where no criminal case is pending, as a civil complaint seeking equitable relief pursuant to NRS 179.085 and, in so doing, recognized that

all forms of equitable relief sought by Appellants were available for review. (AA000157 at lines 3 – 5). The district court erred thereafter by finding probable cause existed for their issuance, as well as that good cause existed for the sealing of the warrants, so as not to “compromise the ability of the Metropolitan Police Department....further investigate the crimes alleged to have been committed, and any ongoing crimes allegedly being committed, relating to this investigation.” (AA000157 at lines 7 – 14). The district court took oral argument but ultimately misapplied the law regarding the necessary element of the crime of prostitution and the objective absence of any evidence thereof in the instant case, which by definition precludes LVMPD’s investigation and retention of Appellants’ seized property. (AA000158 at lines 5 – 11).

### **III.**

#### **SUMMARY OF ARGUMENT**

To carry out broad searches of Appellants’ business premises, which are presumptively protected by the First Amendment to the United States Constitution and Article 1, Section 18, of the Constitution of the State of Nevada, LVMPD sought the issuance of search warrants without probable cause and, once issued, seized a variety of documents and digital storage devices including computers, cell phones, and tablets, which contain privileged information and communications of which little if any relates to the subject matter of the search warrants even where

probable cause could be found. The clear case law applicable in these matters permits the Court then, in the proper exercise of its discretion, to immediately protect Appellants' interests by granting the instant appeal and remanding the matter to the district court for all search warrants to be quashed, or, at minimum, for LVMPD to return all seized property pending further review of the search warrant applications and supporting affidavits by the district court, after unsealing the same for purposes of further probable cause and privilege review.

#### IV.

#### **ARGUMENT**

##### **A. Standard of Review.**

Questions of statutory construction, including the meaning and scope of a statute, are questions of law that this Court will review de novo. *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003).

##### **B. The District Court Clearly Erred By Denying Appellants' Motion to Quash and for Other Relief.**

###### ***1. The Search Warrants Should Have Been Quashed.***

NRS 179.085(1) provides that a "person aggrieved by an unlawful search and seizure or the deprivation of property may move the court having jurisdiction where the property was seized for the return of the property on the ground that: . . . (b) the warrant is insufficient on its face; (c) there was not probable cause for believing the existence of the grounds on which the warrant was issued; (d) the

warrant was illegally executed; or (e) retention of the property by law enforcement is not reasonable under the totality of the circumstances.” Upon such showing pursuant to paragraphs (b) – (d), the property must be restored and deemed inadmissible at any hearing or trial. NRS 179.085(2). If the motion is granted on the ground set forth in paragraph (e), the property must be returned, but the Court may set reasonable conditions to protect future access. NRS 179.085(3). Similarly, NRS 179.105 provides, “[i]f it appears that the property taken is not the same as that described in the warrant, [or] that there is no probable cause for believing the existence of the grounds on which the warrant was issued ... [it] shall ... be restored to the person from whom it was taken.”

In the briefing below, LVMPD admits it is investigating the crimes of Living from Earnings of a Prostitute (NRS 201.320) and Advancing Prostitution (NRS 201.395), each of which require as an essential element the act of prostitution, which is defined in statute as “engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value.” *See* NRS 201.295(5). LVMPD could not have asserted the act of prostitution in support of its search warrants, where undercover police officers were involved and at most could only have witnessed solicitation of prostitution by Appellants’ independent contractors. Accordingly, Appellants respectfully submit that the search warrants and search warrants affidavits in question must necessarily be

devoid of sufficient facts and circumstances to establish probable cause to justify the seizure of Appellants' property, and absent such mandatory support, the district court erred in denying Appellants' request that the search warrants be quashed.

**2.     *The Search Warrant Affidavits Should Have Been Unsealed.***

Further, the district court erred in overlooking the good cause reasons to unseal the search warrants and search warrant affidavits. Under Nevada law, search and seizure protections are embodied in Article 1, Section 18 of the Nevada Constitution and NRS 179.045(4), which sets forth that “upon a showing of good cause, [a judge or] magistrate may order [such] an affidavit ... to be sealed. [And that likewise,] [u]pon a showing of good cause, a court may cause the affidavit ... to be unsealed.” The gravamen of LVMPD's investigation is the alleged solicitation of prostitution at Appellants' businesses in January and March of this year and Appellants' responses thereto to abate the alleged illegal activity as required under NRS 201.395(3)(c). As such, all of the events at issue have already occurred. LVMPD sent its notices in January and March, 2022, and Appellants provided their respective written responses immediately thereafter. LVMPD then executed the search warrants on April 5, 2022 at Appellants' businesses.

For these reasons, there can be no good cause to maintain the search warrants affidavits under seal when unsealing them will in no way impact the

investigation of any such events that, even assuming that they did in fact actually occur, did so in the past and where the searches of the subject premises have concluded. To the contrary, in the event the search warrants themselves are not quashed, Appellants must be permitted the opportunity to preserve this issue for briefing pending an opportunity to evaluate the contents of the underlying documents, in recognition that a failure of the necessary showings constitutes “good cause” upon which to order unsealing within the meaning of NRS 179.045(4).

The continued blanket sealing of warrant materials, as remains the status of the instant appeal, is constitutionally required to be an option of last resort and not the district court’s default position. *Howard v. State*, 128 Nev. 736, 745, 291 P.3d 137, 143, n.4 (2012) (citing SRCR 3(5)(b), (c) and SRCR 3(6) in a criminal case and ruling that “sealing of an entire court file is prohibited and....should the court order sealing, it ‘shall use the least restrictive means and duration’”); *see also Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1074 (3rd Cir. 1984) (noting the district court abused its discretion when it “failed to consider less restrictive means to keep this information from the public”). The only remedy for this legal error now lies with this Court.

### **3. *The Seized Property Should Have Been Returned.***

With regard to the return of Appellants' property, distinct from the district court's protocol for handling the privilege review discussed below, Appellants point to the clear application of NRS 179.105 to the circumstances at bar. LVMPD argued below that NRS 179.105, which addresses the retention and return of property seized pursuant to warrant, is inapplicable and that when given its requested reading with NRS 179.11518, no procedure exists for the return of privileged materials seized from a client as opposed to the attorney. This is not an accurate reading of Nevada law.

Courts are to "presume that the Legislature enacted the statute 'with full knowledge of the existing statutes relating to the same subject.'" *Nevada Att'y for Injured Workers v. Nevada Self-Insurers Ass'n*, 126 Nev. 74, 84, 225 P.3d 1265, 1271 (2010) (quoting *State Div. of Ins. v. State Farm Mut. Auto Ins. Co.*, 116 Nev. 290, 294, 995 P.2d 482, 486 (2000)). Courts are also 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 the following line from NRS 179.105

meaningless: “....or that the property is determined pursuant to NRS 179.11518 to be subject to the attorney-client privilege.” And, of course, NRS 179.11518 already instructs, in the context of seizing property from an attorney, to return the property “as provided in NRS 179.105.” If NRS 179.105 was not intended to also command the return of property seized from a non-attorney, it would not have been necessary to include the reference to NRS 179.11518 because that provision already commands the return of property subject to the attorney-client privilege seized from an attorney.

Under the rules of statutory construction then, the only permissible reading of NRS 179.105 is that there are now 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. And, consistent with its protocol argument for how Appellants’ privileged information should be addressed, which the district court erred in adopting fully in its order (AA000157 at lines 24 – 28 and AA000158 at line 1), LVMPD has effectively conceded that there is, in fact, privileged information to be found in the extensive seized documents and devices. The only issue to be resolved is whether it is reasonable under the circumstances to permit LVMPD to retain those privileged materials and continue its search of them without further protections being afforded Appellants.



It is not.

**C. Reversal and Remand of the District Court's Order Is Further Required to Protect Appellants' Attorney-Client and Other Privileged Information.**

As the litigation stands now, LVMPD is free to search all information it has imaged from Appellants' devices and documentation seized with impunity. Specifically, LVMPD is permitted to search all documents and devices seized without Appellants themselves first redacting any confidential or privileged information. Allowing LVMPD's Digital Forensics Lab ("DFL") to run a search for certain names and contact information, however, provides no guarantee that privileged information will be properly searched and, if that does not occur, Appellants will have no recourse. There is no way to restore the privileged nature of the information, because once such information is disclosed, it is irretrievable.

The plain language of NRS 49.095 unambiguously guarantees a client the right "to prevent any other person from disclosing" privileged communications, and this broad language in the statute clearly does not allow for persons other than the client itself to use or disclose the privileged information over the client's assertion of privilege. NRS 49.045 defines "client" as "a person, including a public officer, corporation, association or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer."

In a corporate context, then, a client corporation is not a living entity that can make decisions independently – people must make decisions on its behalf. Thus, the issue pertains to all persons who have the authority to assert and/or must hold inviolate a corporation's privilege. In the case of Appellants, the list of names provided to LVMPD numbered over 100, taking into account all the attorneys, accountants and their staff members who interact with members of Appellants' respective management teams. The district court's order allowing LVMPD, through its DFL, to proceed with and be responsible for locating and redacting all of Appellants' privileged materials in this context is legally untenable and requires this Court's intervention.

V.

### **CONCLUSION**

For all of the foregoing reasons, this Court should reverse the district court's order and remand the case with instructions to grant the relief sought by Appellants.

Dated this 5th day of October, 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  
**SHAFFER & ASSOCIATES, P.C.**  
3800 Capital City Blvd., Suite 2  
Lansing, Michigan 48906  
Telephone: (517) 886-6560  
*Attorneys for Appellants*

## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this Opening Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

2. I further certify that this Opening Brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and contains 3,051 words.

3. Finally, I hereby certify that I have read this Opening Brief and, to the best of my knowledge, information, and belief it is not frivolous or interposed for any improper purpose. I further certify that this Opening Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be

///

///

///

subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 5th day of October, 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 5th day of October, 2022, I caused the foregoing **OPENING BRIEF OF APPELLANTS LAS VEGAS BISTRO, LLC AND LITTLE DARLINGS OF LAS VEGAS, LLC** 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/ Doreen Loffredo  
An employee of Fox Rothschild LLP