

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

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[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

APPELLANTS' APPENDIX

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

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October, 2022, I caused the foregoing **APPELLANTS' APPENDIX** 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



CASE NO: A-22-851073-C
Department 4

MOT
DEANNA L. FORBUSH
Nevada Bar No. 6646
dforbush@foxrothschild.com
COLLEEN E. MCCARTY
Nevada Bar No. 13186
cmccarty@foxrothschild.com
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
Telephone: (702) 262-6899
Facsimile: (702) 597-5503

ZACHARY M. YOUNGSMA
Nevada Bar No. 15680
zack@BradShaferLaw.com
SHAFFER & ASSOCIATES, P.C.
3800 Capital City Blvd., Ste. 2
Lansing, Michigan 48906
Telephone: (517) 886-6560
Facsimile: (517) 886-6565
*Attorneys for Movants and Real Parties in Interest
Las Vegas Bistro, LLC and Little Darlings of Las Vegas, LLC*

DISTRICT COURT
CLARK COUNTY, NEVADA

IN RE SEARCH WARRANT 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,

Case No.:
Dept No.:

HEARING REQUESTED

Movants and Real Parties in Interest.

**MOTION OF REAL PARTIES IN INTEREST LAS VEGAS BISTRO, LLC DBA LARRY
FLYNT'S HUSTLER CLUB AND LITTLE DARLINGS OF LAS VEGAS, LLC DBA
LITTLE DARLINGS TO: (1) UNSEAL SEARCH WARRANT APPLICATIONS AND
SUPPORTING AFFIDAVITS; (2) QUASH SEARCH WARRANTS, AND
(3) RETURN SEIZED PROPERTY**

Pursuant to the Fourth and Fourteenth Amendments to the Constitution of the United States;
Article 1, Section 18 of the Constitution of the State of Nevada; and Nevada Revised Statutes
("NRS"), Sections 179.105; 179.045, 179.085, and 179.11518. Movants Las Vegas Bistro, LLC
dba Larry Flynt's Hustler Club (the "Hustler Club") and Little Darlings of Las Vegas, LLC dba
Little Darlings ("Little Darlings" and collectively with the Hustler Club, "Movants"), by and

1 through their attorneys of record, Deanna L. Forbush, Esq., and Colleen E. McCarty, Esq., of the
2 law firm of Fox Rothschild, LLP, and Zachary M. Youngsma of the law firm of Shafer &
3 Associates, P.C., hereby respectfully request that this Honorable Court enter an Order:

4 1. Unsealing the Application and Affidavit of Las Vegas Metropolitan Police
5 Department ("LVMPD") Detective R. Chavez, P#7758 ("Hustler Club Application and Supporting
6 Affidavit") submitted in support of the Search Warrant issued on April 1, 2022 in the matter of
7 6007 Dean Martin Dr., Las Vegas, NV 89118 (the Hustler Club) by the Honorable Harmony Letizia,
8 Justice of the Peace for the Las Vegas Township Justice Court ("the Hustler Club Search Warrant"),
9 authorizing a search by law enforcement officers of the business known as Larry Flynt's Hustler
10 Club and further authorizing seizure of, among other items, business documents and electronic and
11 digital storage devices, inclusive of computers, cellular phones and tablets (the "Property"), which
12 Search Warrant Application and Supporting Affidavit was sealed by Judge Letizia pending further
13 order of the court. *See Exhibit A.* The Hustler Club Search Warrant was executed on April 5,
14 2022. *See Exhibit B.*

15 2. Likewise, unsealing the Application and Affidavit of LVMPD Detective R. Chavez,
16 P#7758 ("Little Darlings Application and Supporting Affidavit" and collectively with the Hustler
17 Club Application and Supporting Affidavit, the "Applications and Supporting Affidavits")
18 submitted in support of the Search Warrant issued on April 1, 2022 in the matter of 1514 Western
19 Ave., Las Vegas, NV 89102 (Little Darlings) by the Honorable Harmony Letizia, Justice of the
20 Peace for the Las Vegas Township Justice Court ("the Little Darlings Search Warrant" and
21 collectively with the Hustler Club Search Warrant, the "Search Warrants").¹ authorizing a search
22 by law enforcement officers of the business known as Little Darlings and further authorizing seizure
23 of the identical aforementioned Property, which Search Warrant Application and Supporting
24
25

26 ¹ For reasons unknown to Movants, a Duplicate Original Search Warrant and Order Sealing
27 Affidavit was issued by Justice of the Peace Joseph Scisento of the Las Vegas Township Justice
28 Court on April 5, 2022 for Little Darlings. Both the original Little Darlings search warrant and
sealing order and the duplicate search warrant and sealing order were left at the business following
the search.

1 Affidavit was also sealed by Judge Letizia pending further order of the court. *See Exhibit C.* The
2 Little Darlings Search Warrant was executed on April 5, 2022. *See Exhibit D.*

3 3. Providing Movants' counsel with an opportunity to review and evaluate the
4 representations contained in the Applications and Supporting Affidavits and to thereafter submit a
5 Supplemental Memorandum of Points and Authorities in support of this Motion with the benefit of
6 such review, regarding Movants' contention, presently based upon information and belief, that the
7 search warrants are facially deficient under Nevada law and that the representations contained
8 therein fail to establish probable cause to justify the seizure of Movants' Property pursuant to the
9 Search Warrants as set forth *infra*;

10 4. Quashing the Search Warrants should the Court find, in view of supplemental
11 briefing, that probable cause to seize Movants' Property was in fact lacking; and

12 5. Thereafter, requiring the immediate return of Movants' Property and before any
13 application for a warrant to search said Property is even considered by the Court; the examination
14 of any of its content by any law enforcement officer or designee; or the presentation of any of its
15 content to any judicial officer, grand jury, or other entity or person whomsoever for any purpose
16 whatsoever.

17 This Motion is made and based upon the following Memorandum of Points and Authorities:
18 the Declaration of Deanna L. Forbush, Esq. ("Forbush Declaration") included herein and the
19 exhibits attached thereto; all pleadings and papers already on file; and any oral argument the Court
20 may permit at a hearing of this matter.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I.**

23 **INTRODUCTION**

24 In broad searches of the premises of two expressive businesses that are presumptively
25 protected by the First Amendment to the United States Constitution and Article 1, Section 18, of
26 the Constitution of the State of Nevada, LVMPD seized from Movants and their employees, among
27 other things, a variety of documents and digital storage devices, including computers, cell phones
28 and tablets, that undeniably contain information and communications subject to the attorney/client,

1 accountant/client, and work product privileges; virtually none of which relates to the subject matter
2 of the search warrants at issue. Neither the search warrants nor, upon information and belief, the
3 underlying supporting materials used to obtain those warrants authorized, or even sought to
4 authorize, the search or seizure of such privileged materials.

5 The clear case law applicable to these matters permits the Court, in the proper exercise of
6 its discretion, to immediately protect Movants' interests by, at minimum, ordering LVMPD to
7 return all seized property pending further review by the Movants and the Court of the Applications
8 and Supporting Affidavits at issue and ordering the unsealing of same for this purpose.

9 STATEMENT OF RELEVANT FACTS

10 On January 26, 2022 and March 12, 2022, LVMPD sent correspondence to the Hustler Club
11 purportedly providing "notice" that one or more entertainers, who LVMPD *failed to identify* and
12 incorrectly referenced as "employees"² of the Hustler Club, had solicited an undercover police
13 detective for sexual acts on the premises. *See Exhibit E.* As advised by LVMPD and required
14 pursuant to NRS 201.395, the Hustler Club responded in writing to LVMPD Detective R. Sioson
15 on February 1, 2022, and LVMPD Detective R. Chavez on March 15, 2022, asking for identification
16 of the entertainer(s) at issue, affirming its zero-tolerance policy regarding illegal sexual conduct,
17 and outlining its extensive efforts to ensure that no acts of solicitation of prostitution occurred on
18 its premises. *See Exhibits F and G.* In its correspondence, the Hustler Club further invited
19 guidance from LVMPD regarding additional actions, policies and procedures it could implement
20 to address the issue and ensure compliance with NRS 201.395(3). *See id.* No further response was
21 provided by LVMPD.

22 Similarly, on January 8, 2022 and March 12, 2022, Little Darlings received correspondence
23 from LVMPD regarding alleged prostitution activity by one or more unidentified entertainer(s).
24 Like the Hustler Club, Little Darlings responded to Detective Chavez, via email on January 11,
25 2022, and March 14, 2022, detailing its efforts to ensure that no such conduct occurred on its
26

27 _____
28 ² The dancers/entertainers who perform at the Hustler Club and Little Darlings are independent contractors, not employees, of the respective businesses.

1 premises, and inviting further input from LVMPD regarding the same. *See Exhibit H.* And, like
2 the Hustler Club. Little Darlings received no further communication from LVMPD.

3 On April 5, 2022, members of LVMPD's Special Investigations Section executed a search
4 of the premises of Larry Flynt's Hustler Club (as well as premises leased to another entity) and
5 Little Darlings.³ Upon their arrival, detectives corralled the employees of each respective business
6 and seized the personal cellular telephones of the persons who identified themselves as management
7 employees of each club. *See Exhibits B and D.* Police officers took three (3) cellular telephones
8 from managers of the Hustler Club and one cellular telephone from a manager at Little Darlings.
9 To be clear, these phones were not the property of either business and instead were purchased by
10 and solely belong to the individuals from whom they were seized for their personal and business
11 use.

12 Among other items, LVMPD also removed multiple computers from the premises of each
13 business. At the Hustler Club, detectives seized three (3) laptop computers and two (2) iPads. *See*
14 **Exhibit B.** At Little Darlings, LVMPD removed four (4) computers and three (3) tablets. *See*
15 **Exhibit D.** Detectives also seized computer servers, thumb drives and mountains of documents
16 from both businesses. *See Exhibits B and D.* LVMPD's digital forensics team worked in
17 collaboration with detectives on scene at the Hustler Club and advised the undersigned counsel that
18 they could, and in fact did, create mirror images of some of the devices using the mobile forensics
19 unit parked on site.

20 Notwithstanding the hardship created by the seizure of the Property to the business interests
21 of the Movants, and the personal interests of those owning the phones seized, the Property contains
22 documents and communications which are privileged pursuant to the attorney-client privilege and
23 work product doctrine, NRS 49.095, and the accountant-client privilege, NRS 49.185. By this
24 Motion, Movants seek to protect all privileged information contained within the Property seized by
25 LVMPD, inclusive of the personal cellular telephones of the managers.

26
27
28 ³ LVMPD executed a third search warrant the same day at another adult nightclub, Play It Again
Sam's.

1 II.

2 LEGAL ARGUMENT

3 1. Legal Standard.

4 The Fourth Amendment to the United States Constitution provides that “[t]he right of the
5 people to be secure in their persons, houses, papers, and effects, against unreasonable searches and
6 seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by
7 Oath or affirmation, and particularly describing the place to be searched and persons or things to
8 be seized.” A “seizure” of property occurs when there is some meaningful interference with an
9 individual’s possessory interests in ... [some type of] property. *United States v. Jacobsen*, 466 U.S.
10 109, 113 (1984) (holding at 466 U.S. at 120 that “agents’ assertion of dominion and control over
11 the package and its contents did constitute a ‘seizure’” and at 122 n. 18 that “the decision by
12 governmental authorities to exert dominion and control over the package for their own purposes
13 clearly constituted a “seizure”). And, as the United States Supreme Court explained in *Jacobsen*,
14 absent the application of exceptional circumstances, under the Fourth Amendment, a “seizure”
15 requires “a warrant, based on probable cause.” 466 U.S. at 122.

16 Under Nevada law, search and seizure protections are embodied in Article 1, Section 18 of
17 the Nevada Constitution. And, like both constitutional provisions, NRS 179.045(1) and (6)(a) also
18 provide that warrants authorizing searches or seizures must be based upon a sworn showing of
19 probable cause by affidavit.⁴ NRS 179.045(4) further sets forth that “upon a showing of good
20 cause, [a judge or] magistrate may order [such] an affidavit ... to be sealed. [And that likewise,
21 *[u]pon a showing of good cause, a court may cause the affidavit ... to be unsealed*” (emphasis
22 added).

23 NRS 179.085(1) provides that a “person aggrieved by an unlawful search and seizure or the
24 deprivation of property may move the court having jurisdiction where the property was seized for
25 the return of the property on the ground that: . . . (b) The warrant is insufficient on its face: (c) There

26 ⁴ It is well-settled that a state’s own judiciary may interpret a state constitutional provision to
27 provide greater protection to its citizenry than its federal counterpart requires as interpreted by the
28 Supreme Court of the United States, and by statute, a state Legislature may do likewise. *Virginia v.*
Moore, 553 U.S. 164, 171 (2008); *State v. Kincade*, 129 Nev. 953, 956, 317 P.3d 206, 208 (2013)
(en banc); *Osburn v. State*, 118 Nev. 323, 326, 44 P.3d 523, 525 (2002).

1 was not probable cause for believing the existence of the grounds on which the warrant was issued;
2 (d) The warrant was illegally executed; or (e) Retention of the property by law enforcement is not
3 reasonable under the totality of the circumstances.” Upon such showing pursuant to paragraphs (b)
4 – (d), the property must be restored and deemed inadmissible at any hearing or trial. NRS
5 179.085(2). If the motion is granted on the ground set forth in paragraph (e), the property must be
6 returned, but the Court may set reasonable conditions to protect future access. NRS 179.085(3).
7 Similarly, NRS 179.105 provides, “[i]f it appears that the property taken is not the same as that
8 described in the warrant, [or] that there is no probable cause for believing the existence of the
9 grounds on which the warrant was issued ... [it] *shall* ... be restored to the person from whom it was
10 taken.” (emphasis added).

11 **2. The Search Warrants are Legally Deficient Under NRS 179.085; and Therefore, This**
12 **Court Should Enter An Order Unsealing the Applications and Supporting Affidavits;**
Quashing the Search Warrants; and Requiring the Immediate Return of the Property.

13 Movants respectfully submit, upon information and belief, that the instant Applications and
14 Supporting Affidavits fail to set forth sufficient facts and circumstances to establish probable cause
15 to justify the seizure of the Property pursuant to the Search Warrants as required by the Fourth
16 Amendment, Article 1, Section 18 of the Nevada Constitution, and NRS 179.045(1) and (6)(a).
17 Absent such mandatory support, the Search Warrants should be quashed. Further, Movants assert
18 that LVMPD has failed to meet the strict requirements of NRS 179.085(b), (d) and (e) where the
19 Search Warrants are insufficient on their face, illegally executed, and the continuing retention of
20 the Property is unreasonable under the totality of the circumstances.

21 Movants, however, are at an extreme disadvantage as the instant Applications and
22 Supporting Affidavits, the very documents Movants require to meet their evidentiary burden, are
23 currently under seal without reasonable basis. Upon information and belief, the gravamen of the
24 instant LVMPD investigation is the alleged solicitation of prostitution at the Hustler Club and Little
25 Darlings in January and March of this year, and Movants’ responses thereto to abate the alleged
26 illegal activity as required under NRS 201.395(c). As such, all of the events at issue have already
27 occurred. LVMPD sent its notices in January and March, 2022, and Movants provided their written
28 responses immediately thereafter. LVMPD executed the Search Warrants on April 5, 2022 at both

1 clubs. There can be no good cause to maintain the Applications and Supporting Affidavits under
2 seal when unsealing them will in no way impact the investigation of any such events that, even
3 assuming that they did in fact actually occur, did so in the past and where the searches of the subject
4 premises have concluded. To the contrary, Movants must be permitted the opportunity to preserve
5 this issue for briefing pending an opportunity to evaluate the contents of the underlying documents,
6 in recognition that a failure of the necessary showings constitutes “good cause” upon which to order
7 *unsealing* within the meaning of NRS 179.045(4).

8 Accordingly, the instant Applications and Supporting Affidavits should be ordered unsealed
9 and Movants’ counsel afforded the opportunity to evaluate the representations contained therein
10 and to submit a supplemental memorandum of points and authorities regarding these issues with
11 the benefit of such review. And should the Court find, in view of supplemental briefing, that support
12 to seize the Property was indeed lacking, this Court should order the immediate return of the
13 Property before any application for a warrant to search its contents is even considered by the Court,
14 and before the examination of any of its internal contents by any law enforcement officer or
15 designee, or the presentation of any of its internal contents to any judicial officer, grand jury, or
16 other entity or person for any purpose whatsoever.

17 **3. Emails, Documents, Notes and Other Correspondence with Movants’ Attorneys and**
18 **Accountants are Contained Within the Property and Protected by the Attorney-Client**
and Accountant-Client Privileges and Work Product Doctrine.

19 The Property seized by LVMPD, inclusive of paper documents and digital storage devices,
20 contains emails, documents and other correspondence with Movants’ attorneys and accountants that
21 are privileged pursuant to the attorney-client privilege and work product doctrine and the
22 accountant-client privilege. As mandated by statute, this information is not subject to disclosure
23 and must be protected and returned to Movants. NRS § 179.105 states, in relevant part, “[i]f it
24 appears . . . that the property is determined pursuant to NRS 179.11518 to be subject to the attorney-
25 client privilege, the magistrate *shall cause it to be restored to the person from whom it was taken.*”
26 (emphasis added). NRS § 179.11518 states, in its entirety:

27 A district attorney or the Attorney General shall ensure that any property seized
28 during a search conducted under a search warrant issued pursuant to NRS

1 179.11514⁵ is reviewed to determine whether the attorney-client privilege applies
2 and that any seized property that is subject to the attorney-client privilege is
3 returned as provided in NRS 179.105 to the attorney from whom the property was
4 seized.

5 (footnote added).

6 The attorney-client privilege is set forth in NRS 49.095, which provides:

7 A client has a privilege to refuse to disclose, and to prevent any other person from
8 disclosing, confidential communications:

- 9 1. Between the client or the client's representative and the client's lawyer or the
10 representative of the client's lawyer.
- 11 2. Between the client's lawyer and the lawyer's representative.
- 12 3. Made for the purpose of facilitating the rendition of professional legal services
13 to the client, by the client or the client's lawyer to a lawyer representing another
14 in a matter of common interest.

15 "For this privilege to apply, the communications must be between an attorney and client.
16 for the purpose of facilitating the rendition of professional legal services, and be confidential."
17 *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 133 Nev. 369, 374, 399 P.3d 334,
18 341 (Nev. 2017). "A communication is confidential if it is not intended to be disclosed to third
19 persons other than those to whom disclosure is in furtherance of the rendition of professional legal
20 services to the client or those reasonably necessary for the transmission of the communication."
21 NRS 49.055.

22 "The work-product doctrine protects more than just communications between a client and
23 attorney, and is thus broader than the attorney-client privilege." *Wynn Resorts*, 399 P.3d at 347.
24 "[A]n attorney's work product, which includes 'mental impressions, conclusions, opinions, and
25 legal theories of counsel are not discoverable under any circumstances.'" *Id.* (quoting *Wardleigh v.*
26 *Second Jud. Dist. Ct. In & For Cty. of Washoe*, 111 Nev. 345, 359, 891 P.2d 1180, 1189 (Nev.
27 1995)). "Both the attorney and client have the power to invoke the work-product privilege." *Id.*
28 Protected materials must have the following "two characteristics: (1) they must be prepared in
anticipation of litigation or for trial, and (2) they must be prepared by or for another party or by or

⁵ NRS 179.11514 deals with special rules for issuing a search warrant for property of an attorney.
The warrant at issue here was not issued under this statute.

1 for the other party's representative.'" *Id.* (quoting *In re Grand Jury Subpoena (Mark Torf/Torf*
2 *Envtl. Mgmt.) (Torf)*, 357 F.3d 900, 907 (9th Cir. 2004)).

3 Nevada has adopted the "because of" test when determining whether materials are prepared
4 in anticipation of litigation. *Wynn Resorts*, 399 P.3d at 347-48. Under this test, "documents are
5 prepared in anticipation of litigation when 'in light of the nature of the document and the factual
6 situation in a particular case, the document can fairly be said to have been prepared or obtained
7 because of the prospect of litigation,'" this necessarily includes "protecting records prepared by or
8 at the request of an attorney." *Id.* (quoting *Restatement (Third) of the Law Governing Lawyers*, §
9 87 cmt. 1 (2000)). This "because of" test is applied using a "totality of the circumstances standard".
10 *Id.* at 348. "'[I]t considers the totality of the circumstances and affords protection when it can fairly
11 be said that the document was created in anticipation of litigation, and would have not have been
12 created in substantially similar form but for the prospect of litigation.'" *Id.* (quoting *Torf*, 357 F.3d
13 900, at 908). Notably, "'a document does not lose protection under this formulation [the "but for
14 the prospect of litigation, the document would not exist formulation"] merely because it is created
15 in order to assist with a business decision.'" *Id.* at 348 (quoting *Torf*, 357 F.3d 900, at 908; *United*
16 *States v. Adlman*, 134 F.3d 1194, 1202 (2d Cir. 1998)).

17 Similarly, NRS § 49.185 provides:

18 A client has a privilege to refuse to disclose, and to prevent any other person from
19 disclosing, confidential communications:

- 20 1. Between the client or the client's representative and the client's accountant or
the representative of the client's accountant.
- 21 2. Between the client's accountant and the accountant's representative.
- 22 3. Made for the purpose of facilitating the rendition of professional accounting
23 services to the client, by the client or the client's accountant to an accountant
representing another in a matter of common interest.

24 "A communication is 'confidential' if it is not intended to be disclosed to third persons other
25 than those to whom disclosure is in furtherance of the rendition of professional accounting services
26 to the client or those reasonably necessary for the transmission of the communication." NRS §
27 49.155. "Accountant means a person certified or registered as a public accountant under Chapter
28 628 of NRS who holds a live permit." NRS § 49.135.

1 This privilege extends to out-of-state accountants under Chapter 628 of NRS. "Except as
2 otherwise provided in this chapter, a natural person who holds a valid license as a certified public
3 accountant from any other than this State shall be deemed to be a certified public accountant for all
4 purposes under the laws of this State other than this chapter." NRS § 628.315(1). Further out-of-
5 state accountants are exempted from the live permit requirement. "[a] natural person granted
6 practice privileges pursuant to subsection 1 is not required to obtain: (a) a certificate pursuant to
7 NRS 628.190; or (b) a permit pursuant to NRS 628.380." NRS § 628.315(2).

8 Here, Movants cannot stress enough the amount of material stored on the Property that is
9 indisputably protected by the attorney-client privilege and work product doctrine, as well as the
10 accountant-client privilege. The seized computers, thumb drives, hard drives and tablets are used
11 to run/oversee/manage numerous businesses worldwide. The owners of the Hustler Club and Little
12 Darlings, their respective general managers, and in some cases, certain personnel, are in near daily
13 contact with their businesses' attorneys and accountants, and the vast majority of these
14 communications are conducted through the Property. *See* Forbush Declaration at ¶ 3. Further,
15 documents sent and received from attorneys and accountants are stored within the Property and
16 many of these stored electronic documents are also protected by the work-product doctrine as they
17 were prepared by counsel in preparation for litigation (virtually all of which has absolutely nothing
18 to do with the allegations of prostitution that are supposedly the bases of these searches and
19 seizures). *See* Forbush Declaration at ¶ 4. Movants' concern regarding these privileges also extends
20 to the voluminous paper documents seized by LVMPD.

21 Accordingly, Movants respectfully request this Court enter an order prohibiting LVMPD,
22 the Clark County District Attorney's Office, and any person acting on their behalf (hereafter the
23 "Government"), from reviewing any of the seized property, as that term (property) is defined in
24 NRS § 179.015, until such a time as Movants and the Court can facilitate the scrubbing of the seized
25 property of any materials protected by either the attorney-client, work product, or accountant-client
26 privileges. In addition, Movants seek the permanent return of all property that contains information
27 protected by the attorney-client, work product, or accountant-client privileges.

28

1 III.

2 CONCLUSION

3 For all the foregoing reasons, Movants respectfully request that the Court grant this Motion.
4 together with such further and other relief as the Court deems fair and just.

5 DATED this 12th day of April, 2022.

6 FOX ROTHSCHILD LLP

7
8 /s/ Deanna L. Forbush
9 DEANNA L. FORBUSH
10 Nevada Bar No. 6646
11 dforbush@foxrothschild.com
12 COLLEEN E. MCCARTY
13 Nevada Bar No. 13186
14 cmccarty@foxrothschild.com
15 1980 Festival Plaza Drive, Suite 700
16 Las Vegas, Nevada 89135

13 ZACHARY M. YOUNGSMA
14 Nevada Bar No. 15680
15 zack@BradShaferLaw.com
16 **SHAFFER & ASSOCIATES, P.C.**
17 3800 Capital City Blvd., Ste. 2
18 Lansing, Michigan 48906
19 *Attorneys for Movants and Real Parties in Interest*
20 *Las Vegas Bistro, LLC and Little Darlings of Las*
21 *Vegas, LLC*

18 **DECLARATION OF DEANNA L. FORBUSH ESQ. IN SUPPORT OF MOTION OF**
19 **REAL PARTIES IN INTEREST LAS VEGAS BISTRO, LLC DBA LARRY FLYNT'S**
20 **HUSTLER CLUB AND LITTLE DARLINGS OF LAS VEGAS, LLC DBA LITTLE**
21 **DARLINGS, TO: (1) UNSEAL SEARCH WARRANT APPLICATIONS AND**
22 **SUPPORTING AFFIDAVITS; (2) QUASH SEARCH WARRANTS;**
23 **AND (3) RETURN SEIZED PROPERTY**

22 I, Deanna L. Forbush, hereby declare as follows:

23 1. I am an attorney licensed to practice law in the State of Nevada and am a Partner
24 with the law firm of Fox Rothschild LLP, attorneys of record for Movants Las Vegas Bistro, LLC
25 dba Larry Flynt's Hustler Club and Little Darlings of Las Vegas, LLC dba Little Darlings. I have
26 personal knowledge of the facts stated in this Declaration, and if called upon to testify to the same.
27 I am competent to do so.

2. I make this Declaration in support of the Motion of Real Parties in Interest Las Vegas Bistro, LLC dba Larry Flynt's Hustler Club and Little Darlings of Las Vegas, LLC dba Little Darlings to: (1) Unseal Search Warrant Applications and Supporting Affidavits; (2) Quash Search Warrants; and (3) Return Seized Property.

3. As counsel for Las Vegas Bistro, LLC ("Las Vegas Bistro") and Little Darlings of Las Vegas, LLC ("Little Darlings"). I am aware that my clients routinely exchange materials with me and other attorneys and accountants in their employ via email and text which are protected by the attorney-client and accountant-client privileges and the work product doctrine.

4. I am also aware that materials protected by the attorney-client and accountant-client privileges and the work product doctrine are stored on digital storage devices which were seized by the Las Vegas Metropolitan Police Department ("LVMPD").

5. Attached hereto as **Exhibit A** is a true and correct copy of the Search Warrant for Larry Flynt's Hustler Club issued on April 1, 2022 and executed on April 5, 2022 and the Order Sealing Affidavit associated therewith issued on April 1, 2022.

6. Attached hereto as **Exhibit B** is a true and correct copy of the Search Warrant Return for Larry Flynt's Hustler Club left by the LVMPD following the search conducted on April 5, 2022. Upon information and belief, it does not reflect all items seized.

7. Attached hereto as **Exhibit C** is a true and correct copy of the Search Warrant for Little Darlings issued on April 1, 2022 and executed on April 5, 2022, the Order Sealing Affidavit associated therewith issued on April 1, 2022, and the Duplicate Original Search Warrant and Order Sealing Affidavit issued on April 5, 2022.

8. Attached hereto as **Exhibit D** is a true and correct copy of the Search Warrant Return for Little Darlings left by the LVMPD following the search conducted on April 5, 2022.

9. Attached hereto as **Exhibit E** are true and correct copies of correspondence from the LVMPD to Larry Flynt's Hustler Club, dated January 26, 2022 and March 12, 2022, which advise that an undercover officer was allegedly solicited for prostitution at the Hustler Club on January 13, 2022 and March 9, 2022, and requesting information regarding the Hustler Club's abatement efforts.

10. Attached hereto as **Exhibit F** is a true and correct copy of an email from me, in my capacity as legal counsel for the Hustler Club, to LVMPD Detective R. Sioson, dated February 1, 2022, advising of the Hustler Club's prostitution prevention efforts.

11. Attached hereto as **Exhibit G** is a true and correct copy of a letter from Jason Mohney, owner of the Hustler Club, to LVMPD Detective R. Chavez, dated March 15, 2022, advising of the Hustler Club's prostitution prevention efforts.

12. Attached hereto as **Exhibit H** are true and correct copies of emails from Trevor Bowen, General Manager of Little Darlings, to LVMPD Detective R. Sioson, and LVMPD Detective R. Chavez, dated January 11, 2022 and March 14, 2022 respectively, advising of Little Darling's prostitution prevention efforts.

I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045)⁶, that the foregoing is true and correct.

DATED this 12th day of April, 2022.

/s/ Deanna L. Forbush
DEANNA L. FORBUSH

⁶ **NRS 53.045** Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the prescribed form.

EXHIBIT “A”

SEARCH WARRANT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

The State of Nevada, to any Peace Officer in the County of Clark. Proof by Affidavit having been made before me by R. Chavez, P#7758, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause to believe that certain property, namely:

- 1) Business documents to include, but not limited to, financial and bank records, credit card receipts, ownership records, lease contracts, tax reports, business and professional licenses, lists of services provided, employee lists, customer lists, financial ledgers, owe sheets, and travel documents.
- 2) Electronic and digital storage devices, as well as digital storage media, to include, but not limited to, computers, cellular phones, tablets, discs, thumb drives, hard drives, credit card readers, point of sale devices, and digital video recorder (DVR) systems.
- 3) Condoms, lubricants, medications used to treat or counteract sexually transmitted diseases, and other paraphernalia related to Erotic Dance establishments operating as brothels.
- 4) Limited items of personal property, which would tend to establish a possessory interest in the items sought to be seized pursuant to this search warrant, to include, but not limited to, personal identification, documents, utility bills, receipts, letters, photographs, insurance policies, and governmental notices, whether such items are

SEARCH WARRANT
(Continuation)

Page 2

written, typed, or stored on an electronic medium are presently located at:

1) The business known as Larry Flynt's Hustler Club, located at 6007 Dean Martin Dr., Las Vegas, NV 89118. The structure is a four-story commercial building, located on the southwest corner of Dean Martin Dr. and West Ponderosa Way. The building is primarily pink and white in color stucco. The numbers "6007" are affixed above the northeast corner of the building on the east facing wall and are pink in color. The words "Larry Flynt's Hustler" are affixed above the southeast side of the building. The words "Larry Flynt's" is blue in color and "Hustler" is in pink. 2) The persons of adults or minors working at the premises at the time of the execution of this search warrant.

And as I am satisfied that there is probable cause to believe that said property is located as set forth above and that based upon the affidavit attached hereto, there are sufficient grounds for the issuance of the Search Warrant. Furthermore, I acknowledge this is not a no-knock search warrant, as defined by SB50 Section 1.9.

SEARCH WARRANT
(Continuation)

Page 3

You are hereby commanded to search forthwith said premises for said property, serving this warrant between the hours of anytime, day or night, and if the property is there to seize it, prepare a written inventory of the property seized, and make a return for me within ten days.

Dated this 15th Day day of Apr. 1 Month, 2022

HH Letizia
JUDGE

FYI

IN RE: SEARCH WARRANT for

**6007 Dean Martin Dr.,
Las Vegas, NV 89118**

**ORDER SEALING
AFFIDAVIT**

Upon the ex parte application of Det. R. Chavez P#7758, a commissioned officer with the Las Vegas Metropolitan Police Department and Affiant, to seal the Affidavit in support of the attached Search Warrant, and for good cause appearing therefore,

IT IS HEREBY ORDERED that the Affidavit in support of the attached Search Warrant be ordered sealed pending further order of this Court except that copies may be provided to the office of the Clark County District Attorney and the District Attorney may provide copies to a Defendant in a criminal proceeding as part of the criminal discovery process, and

IT IS FURTHER ORDERED a copy of this order sealing the Affidavit be left at the premises along with the Search Warrant in lieu of the Affidavit in support of the Warrant.

DATED this 15th day of April, 2021.



JUDGE


AFFIANT

EXHIBIT “B”

RETURN

(Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

6007 DEL MAR DR LAS VEGAS NV 89118

was executed on 4-5-22
(month, day, year)

A copy of this inventory was left with AT THE PLACE OF SEARCH
(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

3 X CELL PHONES (APPLE)
 OFFICE DOCUMENTS
 DVR SAMSUNG S/H ZC1T6V2H200267A
 DELL SERVER E02S
 DVR HIKVISION DVRT2 MAIN FLOOR
 DVR HIKVISION DVRT3 VIB FLOOR
 DVR HIKVISION S/H 819264409
 1 X CELL PHONE (APPLE)
 APPLE LAPTOP SN C02VHAP11HTDS
 HP LAPTOP SN C1U4402W8S

This inventory was made by: TTTSS

T. THOMAS
(at least two officers including affiant if present. If person from whom property is taken is present include that person.)

RETURN (continued)

location: 6007 DEAN MARTIN DR LEXINGTON 19118

2 X APPLE I-PAD
1 X APPLE MACBOOK LADTOP

DL
Officers Initials

TS

EXHIBIT “C”

SEARCH WARRANT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

The State of Nevada, to any Peace Officer in the County of Clark. Proof by Affidavit having been made before me by R. Chavez P#7758, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause to believe that certain property, namely:

- 1) Business documents to include, but not limited to, financial and bank records, credit card receipts, ownership records, lease contracts, tax reports, business and professional licenses, lists of services provided, employee lists, customer lists, financial ledgers, owe sheets, and travel documents.
- 2) Electronic and digital storage devices, as well as digital storage media, to include, but not limited to, computers, cellular phones, tablets, discs, thumb drives, hard drives, credit card readers, point of sale devices, and digital video recorder (DVR) systems.
- 3) Condoms, lubricants, medications used to treat or counteract sexually transmitted diseases, and other paraphernalia related to Erotic Dance establishments operating as brothels.
- 4) Limited items of personal property, which would tend to establish a possessory interest in the items sought to be seized pursuant to this search warrant, to include, but not limited to, personal identification, documents, utility bills, receipts, letters, photographs, insurance policies, and governmental notices, whether such items are

**SEARCH WARRANT
(Continuation)**

Page 2

written, typed, or stored on an electronic medium are presently located at: 1) The business known as Little Darlings, located at 1514 Western Ave., Las Vegas, NV 89102. The structure is a single-story building located on Western Ave, north of W. Wyoming Ave. The building is primarily pink in color stucco with brown trim. The numbers "1514" are affixed above the northeast corner of the building, on the east facing wall and they are white in color. The words "Little Darlings" are affixed above the main entrance, located on the northeast side of the building, and are white in color. 2) The persons of adults or minors working at the premises at the time of the execution of this search warrant.

2) The persons of adults or minors working at the premises at the time of the execution of this search warrant.

And as I am satisfied that there is probable cause to believe that said property is located as set forth above and that based upon the affidavit attached hereto, there are sufficient grounds for the issuance of the Search Warrant. Furthermore, I acknowledge this is not a no-knock search warrant, as defined by SB50 Section 1.9.

SEARCH WARRANT
(Continuation)

Page 3

You are hereby commanded to search forthwith said premises for said property, serving this warrant between the hours of anytime, day or night, and if the property is there to seize it, prepare a written inventory of the property seized, and make a return for me within ten days.

Dated this 15th Day day of Apr 1 Month, 2022

H. Retizia
JUDGE

IN RE: SEARCH WARRANT for
LITTLE DAKLING
1500/1502/1514
WESTERN AVE LVN 89102

ORDER SEALING
AFFIDAVIT

Upon the ex parte application of Officer's Name, a commissioned officer with the Las Vegas Metropolitan Police Department and Affiant, to seal the affidavit in support of the attached search warrant, and for good cause appearing therefore,

IT IS HEREBY ORDERED that the affidavit in support of the attached search warrant be ordered sealed pending further order of this Court except that copies may be provided to the office of the Clark County District Attorney and the District Attorney may provide copies to a Defendant in a criminal proceeding as part of the criminal discovery process, and

IT IS FURTHER ORDERED a copy of this order sealing the affidavit be left at the premises along with the search warrant in lieu of the affidavit in support of the warrant.

DATED this 5TH day of APRIL, 2022.

J. SCISENTO
JUDGE

DET. A CARRERON P#9025
AFFIANT

LLV

Event # 220400019181

**DUPLICATE ORIGINAL SEARCH WARRANT
N.R.S. 179.045**

STATE OF NEVADA }
 } ss.
 }

The State of Nevada, to any Peace Officer in the County of Clark. Proof having been made before me by Det. A. CARPSON #9025, by oral statements given under oath, that there is probable cause to believe certain evidence, to wit:

- (1) ~~United States Currency~~
- (2) Business documents to include but not limited to financial and bank records, credit card receipts, ownership records, rent receipts and lease contracts, tax reports, business and professional licenses, lists of services provided, employee lists, customer list, financial ledgers and owe sheets, travel documents, etc.
- (3) Condoms, Lubricants, medications used to treat or counteract sexually transmitted diseases and other paraphernalia related to massage parlors operating as brothels.
- (4) Electronic and Digital Storage Devices as well as Digital Storage Media, to include but not limited to, computers, cellular phones, tablets, discs, thumb drives, hard drives, credit card readers, and a digital video recorder (DVR) system.

~~()~~ _____

() _____

() Limited items of personal property

Demonstrating the crime(s) of ADVANCING PROSTITUTION has / have been committed and said evidence is presently located at: 1502 / 1500 WESTERN AVE LUN 89102 Las Vegas, Clark County, Nevada, and as I am satisfied that there is probable cause to believe that said evidence is located as set forth above and based upon the statements of Det. A. CARPSON, there are sufficient grounds for the issuance of the Search Warrant.

You are hereby commanded to search and examine said premise(s) for said property and trace evidence, serving this warrant (anytime day or night) / (between 7 a.m. and 7 p.m.), and if the evidence/property is there, to seize it and leave a written inventory and make a return before me within 10 days. The attached recorded oral statement upon which this warrant is based is hereby incorporated by this reference as though fully set forth herein.

Dated this 5 day of APRIL, 2022 at 1602 hours.

(Write Judges Name) Judge JOSEPH SCISCENTO

Signed by Det. A. CARPSON, acting on oral authorization of Judge JUDGE SCISCENTO

Endorsed this 5 day of APRIL, 2022

Judge J. SCISCENTO

EXHIBIT “D”

CLV
220400019131

Page 1 of 1

RETURN

(Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

LITTLE BALLINGS 1500 / 1502 / 1514 WESTERN AVE
CUN 89102

was executed on

4/5/22

(month, day, year)

A copy of this inventory was left with

PETER DOTORME (MANAGER)

(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

- USB 5 DRIVES
- CELLPHONES
- APPLE SQUARE COMPUTER
- COMPUTER TOWER
- MISC PAPER WORK
- DVR'S (VOICE RECORDING SYSTEM) 5 TOTAL
- (2) TABLETS w/ CHARGER.
- DELL DESK TOP COMPUTER
- DELL SCANNER w/ STAND

This inventory was made by:

A. CARROO # 7025
Sgt. J. MAATY # 9584

(at least two officers including affiant if present. If person from whom property is taken is present include that person.)

EXHIBIT “E”



**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

JOSEPH LOMBARDO, Sheriff

Partners with the Community

January 26, 2022

Attn: Ralph James – General Manager
Larry Flynt's Hustler Club, LLC
6007 Dean Martin Dr.,
Las Vegas, NV 89118

In Response, Please Reply To:
Detective R. Sioson P#10055
702-828-3724 Office
702-659-1351 Cell
R10055S@LVMPD.COM

Re: Larry Flynt's Hustler Club

The purpose of this letter is to inform the owner or operator of **Larry Flynt's Hustler Club** that on January 13th, 2022, solicitation for illegal prostitution occurred at this place of business where three **Larry Flynt's Hustler Club** employees solicited undercover detectives for sexual acts, under LVMPD event LLV220100051719. The investigation was conducted following recent information of dancers/entertainers at **Larry Flynt's Hustler Club** soliciting customers for sex in exchange for money on multiple occasions. Mr. Ralph James was identified as the General Manager of **Larry Flynt's Hustler Club** during a site check of the business establishment on 01/13/2022 at approximately 2200 hours.

Jason Mohny Revocable Trust, Cherry II LLC, have been identified as the owner, member and trustee of **Larry Flynt's Hustler Club, LLC** (per business licensing records).

Prostitution is **illegal** in Clark County, Nevada under NRS 201.354, 201.300, 201.301.

You are advised to contact the LVMPD Special Investigations Section (SIS), VICE section or the nearest LVMPD area command for assistance in abating future instances of illegal prostitution within this business.

Please contact the Special Investigations Section Det. R. Sioson P# 10055 by email to document the steps you have taken to abate this illegal activity.



LAS VEGAS METROPOLITAN
POLICE DEPARTMENT

JOSEPH LOMBARDO, Sheriff

Partners with the Community

Future instances of illegal prostitution that occur within **Larry Flynt's Hustler Club** may result in criminal charges against the owner/ operator of this business under NRS 201.300, 201.301.

Received by:

Sincerely,
Joseph Lombardo, Sheriff

By, Sgt. T. Thayer
Special Investigations Section



March 12, 2022

Attn: Ralph James – General Manager
Larry Flynt's Hustler Club, LLC
6007 Dean Martin Dr.,
Las Vegas, NV 89118

In Response, Please Reply To:
Detective R. Chavez P#7758
702-828-3724 Office
702-239-0444 Cell
R7758C@LVMPD.COM

Re: **Larry Flynt's Hustler Club**

The purpose of this letter is to inform the owner or operator of **Larry Flynt's Hustler Club** that on March 9, 2022, solicitation for illegal prostitution occurred at this place of business where a **Larry Flynt's Hustler Club** employee solicited an undercover detective for sexual acts, under LVMPD event LLV220300038211. The investigation was conducted following recent information of dancers/entertainers at **Larry Flynt's Hustler Club** soliciting customers for sex in exchange for money on multiple occasions. Mr. Ralph James was identified as the General Manager of **Larry Flynt's Hustler Club** during a site check of the business establishment on 03/09/2022 at approximately 2300 hours.

Jason Mohny Revocable Trust, Cherry II LLC, have been identified as the owner, member and trustee of **Larry Flynt's Hustler Club, LLC** (per business licensing records).

Prostitution is **illegal** in Clark County, Nevada under NRS 201.354, 201.300, 201.301.

You are advised to contact the LVMPD Special Investigations Section (SIS), VICE section or the nearest LVMPD area command for assistance in abating future instances of illegal prostitution within this business.

Please contact the Special Investigations Section Det. R. Chavez P#7758 by email to document the steps you have taken to abate this illegal activity.





**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

JOSEPH LOMBARDO, Sheriff

Partners with the Community

Future instances of illegal prostitution that occur within **Larry Flynt's Hustler Club** may result in criminal charges against the owner/ operator of this business under NRS 201.300, 201.301.

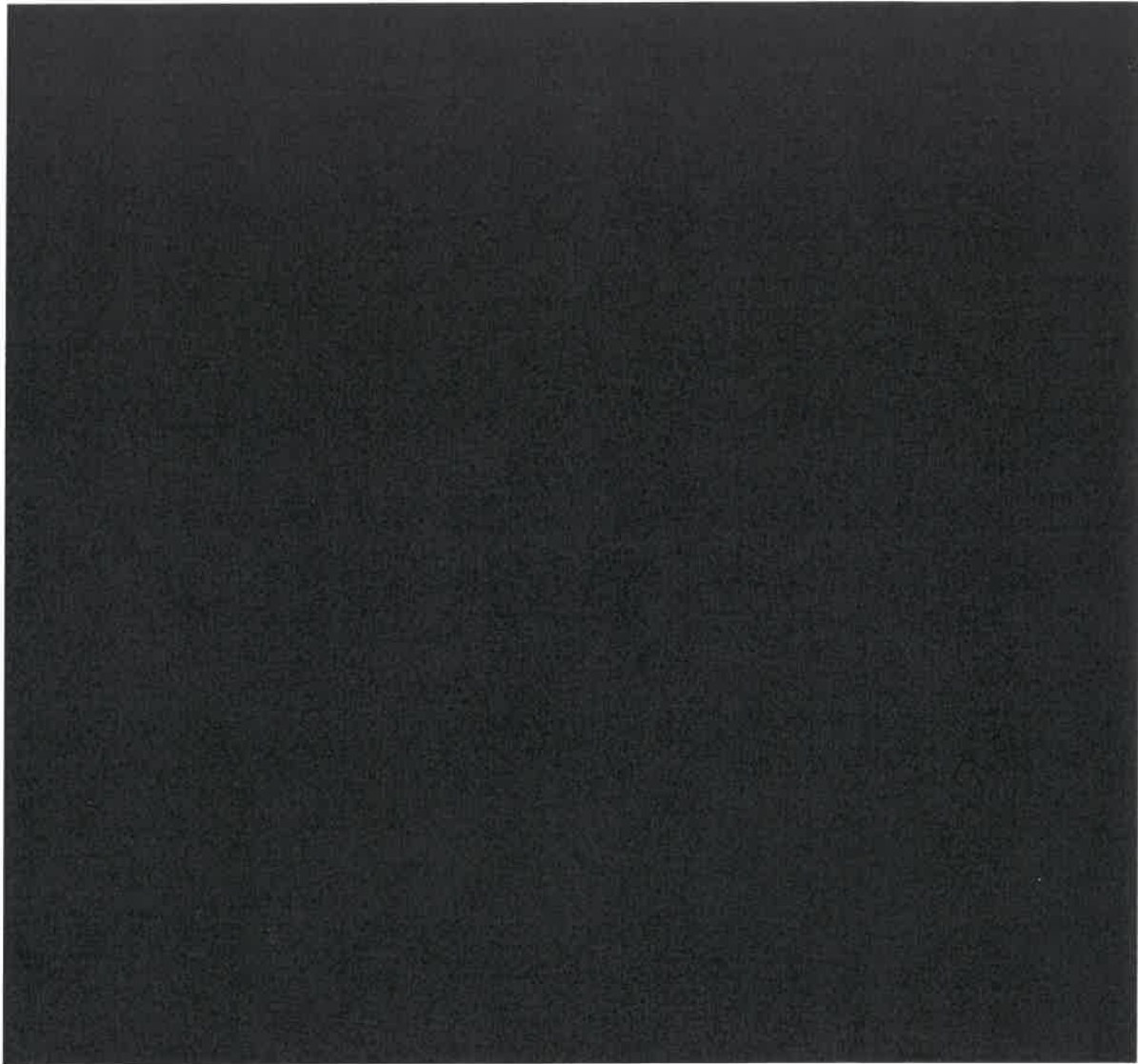
Received by:

Sincerely,
Joseph Lombardo, Sheriff

By, Sgt. T. Thayer
Special Investigations Section



EXHIBIT “F”



From: "Forbush, Deanna L." <DForbush@foxrothschild.com>

Date: February 1, 2022 at 2:41:58 PM CST

To: R10055S@lvmpd.com

Cc: "Wade, Michelle" <MWade@foxrothschild.com>

Subject: Las Vegas Bistro d/b/a Larry Flynt's Hustler Club

Dear Detective R. Sioson:

Further to my voice-mail message left for you earlier today, I and this law firm are legal counsel to Ralph James and Las Vegas Bistro d/b/a Larry Flynt's Hustler Club ("Hustler Club" or "Club"). I have been trying to reach you to discuss your letter to the Hustler Club Of

January 26, 2022 ("Correspondence"). Please call me at your earliest convenience to discuss the same. In the interim, will you please have a copy of report concomitant to Event LLV220100051719 ("Report") sent to me through this email address or at the address listed below?

Additionally, further to your request that my Client document steps taken to abate the alleged illegal activity referenced in your Correspondence, allow me to take the opportunity to emphasize the fact that the Hustler Club prides itself in being an active partner with law enforcement and works hard to ensure compliance with all applicable laws and ordinances. Nevertheless, the Club will take all further reasonably recommended steps to ensure that the persons performing and/or working at the Club remain compliant with the laws of Clark County and the State of Nevada.

To that end:

1. The Club has met with and will continue to meet with each entertainer to review the local ordinances governing exotic dance establishments. Should any person fail to comply with the requirements of the law, we will terminate performance contracts of all offending entertainers. Further action can be taken in this regard upon receipt of the names of the persons mentioned but not named in your Correspondence. To the extent that a list of names of infringing entertainers are not contained in the referenced Report, please provide them so that we may further address the situation;
2. The Club will host a meeting with all entertainers to remind them of the applicable laws and that what they say in conversation (whether or not intended to be carried out) may be interpreted as solicitation;
3. The Club will additionally host a meeting with all employees to remind them of the applicable laws and their responsibility to

actively enforce the applicable laws; and

4. The Club will increase the frequency of security patrols of dance areas to ensure that no illicit activity occurs.

As noted, all entertainers at the Hustler Club are independently contracted and we desire to remove any contractor from our establishment that does not follow the law. The Club monitors dance areas closely to ensure that illicit activities do not occur and will continue to do so.

The efforts expressed herein are made in a sincere effort to continue to strengthen the Club's strong pro-law enforcement reputation. In doing so however, the Hustler Club admits no liability by way of this correspondence, but does wish to convey its earnest interest in abating any and all alleged illicit activity and to continue an amicable relationship with law enforcement.

Please call me at your convenience so that we may continue our discussion regarding this matter.

Best regards,

Deanna Forbush

Partner

Fox Rothschild LLP

One Summerlin

1980 Festival Plaza Drive, Suite 700

Las Vegas, NV 89135

(702) 699-5169 - direct

(702) 597-5503 - fax

DForbush@foxrothschild.com

www.foxrothschild.com

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the

intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Fox Rothschild LLP by replying to this email and delete the original and reply emails. Thank you.

EXHIBIT “G”



March 15, 2022

Detective R Chavez P #7758
400 S Martin L King Blvd
Las Vegas, NV 89106

Jason Mohny
Larry Flynt's Hustler Club Las Vegas
6007 Dean Martin Drive
Las Vegas, NV 89118

RE: The Prevention of Illicit Activity at Larry Flynt's Hustler Club Las Vegas

The purpose of this letter is to affirm management's zero tolerance approach to acts of illicit sexual conduct on our premises, or arising from any interaction between entertainers and guests on our premises, and to outline the following proactive steps we've enacted and will continue to enact to prevent such conduct:

Although the majority of our entertainers are independent professionals and are expected to be familiar with local, state and federal laws pertaining to their profession, we provide each with an orientation video outlining these laws and will, going forward, provide them with a copy of all laws and ordinances governing adult entertainment establishments for their records. We will be hosting multiple meetings with entertainers to remind them of the laws, as well as the fact that making misleading statements to guests—even if there is no intention to follow through—can be perceived as a crime. We will make clear that—as in the past—any entertainer found to have engaged in, or have promised to engage in, an act of illicit sexual conduct is in breach of her contract and will no longer be able to perform at Larry Flynt's Hustler Club of Las Vegas.

Additionally, we plan to meet with all managers and cast members, including security, hosts and service staff, to remind them of the applicable laws and their roles with respect to enforcing them. Every cast member will be instructed to remain vigilant and report any suspected illicit activity directly to management, while security and hosts will increase the frequency and visibility of their dance area patrols. We regularly inspect our surveillance cameras and employ a dedicated "eye in the sky" to monitor dances and alert management to any visibly questionable activity.

EXHIBIT “H”

From: Trevor Bowen trevor@littledarlingsvegas.com
Subject: Letter
Date: Jan 11, 2022 at 1:09:54 PM
To: R10055S@lvmpd.com

Hello Det. Sioson,

This is Trevor Bowen at Little Darlings. In regards to your letter dated January 8, 2022, we intend to take the following steps to abate the alleged illicit activity at Little Darlings.

1. Upon receipt of the names of allegedly infringing entertainers, we will immediately meet with each entertainer to review the local ordinances governing exotic dance establishments and will have each entertainer sign a copy thereof. Should they fail to comply, we will terminate their performance contracts.
2. We will host a meeting with all entertainers to remind them of the applicable laws and that what they say in conversation can be interpreted as solicitation.
3. We will host a meeting with all employees to remind them of the applicable laws and their responsibility to enforce the applicable laws.
4. We will increase the frequency of security patrols of dance areas to ensure that no illicit activity occurs.
5. We will find additional areas to install the anti-prostitution signage throughout our facility. As a reminder, this is already posted throughout our facility and printed on receipts.

Further, all entertainers at Little Darlings are independently contracted and we desire to remove any contractor from our establishment that does not follow the law. The club monitors dance areas closely to ensure that illicit activities do not occur.

Little Darlings admits no liability by way of this letter, but is strongly interested in abating alleged illicit activity and wants an amicable relationship with law enforcement.

Please reply with the list of names of infringing entertainers so that we may address the situation accordingly and please also advise if there are any further recommendations you can provide to ensure compliance.

Thank you,
Trevor Bowen
General Manager
Little Darlings of Las Vegas, LLC

From: Trevor Bowen trevor@littledarlingsvegas.com
Subject: Little Darlings of Las Vegas, LLC
Date: Mar 14, 2022 at 1:38:59 PM
To: R7758C@lvmpd.com

Hello Det. Chavez,

This is Trevor Bowen at Little Darlings. In regards to your letter dated March 12, 2022, we intend to take the following steps to abate the alleged illicit activity at Little Darlings.

1. We met with each entertainer in question to review the local ordinances governing exotic dance establishments and had each entertainer sign a copy thereof. Should they fail to continue to comply or be found guilty of the violations with which they were charged, we will terminate their performance contracts.
2. We hosted a meeting with all entertainers to remind them of the applicable laws and that what they say in conversation can be interpreted as solicitation.
3. We hosted a meeting with all employees to remind them of the applicable laws and their responsibility to enforce the applicable laws.
4. We increased the frequency of security patrols of dance areas to ensure that no illicit activity occurs.
5. We clearly posted all pricing signage throughout our facility. As a reminder, the legally mandated anti-prostitution signage is already posted throughout our facility and printed on receipts.
6. We required each entertainer to sign a summary document acknowledging the laws, and will continue to do so regularly for the foreseeable future.
7. We met with each manager to discuss the letter and to remind them to be diligent to ensure that no illicit activities occur.

Further, all entertainers at Little Darlings are independently contracted and we desire to remove any contractor from our establishment that does not follow the law. The club monitors dance areas closely to ensure that illicit activities do not

occur.

Little Darlings admits no liability by way of this letter, but is strongly interested in abating alleged illicit activity and wants an amicable relationship with law enforcement.

Please advise if there are any further recommendations you can provide to ensure compliance. We welcome the opportunity to work with you to discuss any additional safeguards that you feel would be helpful.

Thank you,
Trevor Bowen
General Manager
Little Darlings of Las Vegas, LLC

Steven D. Grierson

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY
CLARK COUNTY, STATE OF NEVADA

IN RE SEARCH WARRANT 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,

Movants And Real Parties In Interest.

Case No.: A-22-851073-C
Colleen E. McCarty, Esq. Bar No. 13186
FOX ROTHCHILD, LLP
1980 Festival Plaza Drive Suite 700
Las Vegas, NV 89135
(702) 262-6899
Attorneys for the Movants/Real Parties in Interest
Client File# LV Bistro

I, Alejandro Yanez, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Motion Of Real Parties In Interest Las Vegas Bistro, LLC; Peremptory Challenge; (2) Notices Of Department Reassignment; (2) Minute Orders; Ex Parte Application For Order And Order Shortening Time To Hear Motion Of Real Parties In Interest Las Vegas Bistro LLC, from FOX ROTHCHILD, LLP

That on 4/22/2022 at 2:00 PM at 200 Lewis Avenue, Las Vegas, NV 89101 I served Clark County District Attorney's Office - Criminal Division, by personally delivering and leaving a copy of the above-listed document(s) with Chan Tu - Office Specialist, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:

Gender: Female, Race: Asian, Age: 37 yrs., Height: 5'2", Weight: 145 lbs., Hair: Black, Eyes: Black

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: 4/27/22

Alejandro Yanez
Alejandro Yanez
Registered Work Card# R-083925
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656



Control #: NV257165
Reference: LV Bistro

**Marquis Aurbach**

Nick D. Crosby, Esq.
Nevada Bar No. 8996
Jackie V. Nichols, Esq.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
ncrosby@maclaw.com
jnichols@maclaw.com

Attorneys for Real Party in Interest, Las
Vegas Metropolitan Police Department

DISTRICT COURT**CLARK COUNTY, NEVADA**

IN RE SEARCH WARRANT 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,

Case No.: A-22-851073-C
Dept. No.: 30

Date of Hearing: May 12, 2022
Time of Hearing: 10:30 A.M.

Movants and Real Parties in Interest.

**REAL PARTY IN INTEREST, LAS VEGAS METROPOLITAN POLICE
DEPARTMENT'S OPPOSITION TO MOTION OF REAL PARTIES IN INTEREST LAS
VEGAS BISTRO, LLC dba LARRY FLYNT'S HUSTLER CLUB AND LITTLE
DARLINGS OF LAS VEGAS, LLC dba LITTLE DARLINGS TO: (1) UNSEAL SEARCH
WARRANT APPLICATIONS AND SUPPORTING AFFIDAVITS; (2) QUASH SEARCH
WARRANTS; AND (3) RETURN SEIZED PROPERTY ON AN ORDER SHORTENING
TIME**

Real Party in Interest, the Las Vegas Metropolitan Police Department (the "Department" or "LVMPD"), by and through their attorneys of record, the law firm of Marquis Aurbach, hereby submits its Opposition to Motion of Real Parties In Interest Las Vegas Bistro, LLC dba Larry Flynt's Hustler Club and Little Darlings of Las Vegas, LLC dba Little Darlings to: (1) Unseal Search Warrant Applications and Supporting Affidavits; (2) Quash Search Warrants; and (3) Return Seized Property on an Order Shortening Time.

...

...

...

...

1 This Opposition is made and based upon all papers, pleadings, and records on file herein,
2 the attached Memorandum of Points and Authorities, and any oral argument allowed at a hearing
3 on this matter.

4 Dated this 5th day of May, 2022.

5 MARQUIS AURBACH

6
7 By: /s/ Jackie V. Nichols
8 Nick D. Crosby, Esq.
9 Nevada Bar No. 8996
10 Jackie V. Nichols, Esq.
11 Nevada Bar No. 14246
12 10001 Park Run Drive
13 Las Vegas, Nevada 89145
14 Attorneys for Real Party in Interest, Las
15 Vegas Metropolitan Police Department

16 **MEMORANDUM OF POINTS & AUTHORITIES**

17 **I. INTRODUCTION**

18 This matter involves an investigation into Erotic Dance Establishments for the crime of
19 Advancing Prostitution and Living from Earnings of Prostitution. After conducting several
20 covert operations, LVMPD obtained information that entertainers at these establishments were
21 soliciting customers for the purpose of prostitution. Despite receiving notice from LVMPD of
22 this conduct, the establishments failed to take reasonable steps to abate the conduct. Based on
23 the information that LVMPD obtained during its covert operations, Judge Harmon Letizia issued
24 search warrants and directed the applications of those warrants to be sealed.

25 Petitioners now seek to unseal the search warrant applications and quash the warrants on
26 the basis that they are legally deficient. Petitioners also seek return of all the property that was
27 seized on the same basis, as well as on the basis that the electronic devices contain privileged
28 information. Petitioners have failed to meet their burden at every turn. Petitioners provide no
basis to unseal or quash the warrants other than that they are at a "disadvantage" and cannot
determine whether actual probable cause existed. This is not a sufficient basis to unseal a
warrant application. Likewise, there is no basis for the return of the seized property, including

1 the electronic devices, as there is an active, on-going criminal investigation. Accordingly, the
2 Petitioners' motion must be denied in its entirety.

3 **II. STATEMENT OF FACTS**

4 **A. LVMPD CONDUCTS COVERT OPERATIONS AT THE ESTABLISHMENTS.**

5
6 LVMPD's SIS has the primary responsibility for the enforcement of all federal, state,
7 county, and city laws concerning privileged and regulated businesses in Clark County and the
8 City of Las Vegas. *See* Declaration of Robert Chavez attached as **Exhibit 1**, ¶ 5. Privileged
9 licenses include Erotic Dance establishments and Adult Cabaret's. *Id.* In particular to the instant
10 case, the crime of Advancing Prostitution and Living from Earnings of Prostitution is being
11 investigated in relation to the Petitioners' two establishments. *Id.* at ¶ 6.

12 SIS has conducted numerous criminal investigations of illicit Erotic Dance businesses. *Id.*
13 ¶ 7. Through these investigations, SIS has become familiar with common ways in which these
14 illicit businesses operate. *Id.* Illicit businesses often post suggestive advertisements on adult-
15 oriented websites and print media. *Id.* Erotic dances are offered for an upfront fee, then, during
16 the dance, an act of prostitution is solicited for an additional fee. *Id.* The dances are often
17 conducted in private rooms; however, some are also done in open areas within view of
18 management, other employees, or other patrons. *Id.* The prostitutes working in these
19 establishments are often victims of sex trafficking and are afraid of cooperating with law
20 enforcement. Normally, an individual directs the activities of the prostitutes. *Id.* at ¶ 8 Monies
21 earned are split between the business and the prostitute. *Id.*

22 **1. The Hustler Club**

23 In January 2022, SIS learned that entertainers had been soliciting for the purpose
24 prostitution within the establishment. *Id.* at ¶ 9. SIS then advised the Hustler Club that an
25 undercover operation was conducted at their establishment and three females were observed
26 soliciting for the purpose of prostitution. At the same time, SIS provided Hustler Club with its
27 Advancing Prostitution letter. *Id.* at ¶ 10. The letter advised they needed to contact SIS, via
28 email, of the steps taken to prevent this illegal activity. A manager signed the letter, and a copy

1 was left with her. *Id.* at ¶ 11. In March 2022, SIS conducted additional undercover investigations
2 that lead entertainers to solicit an undercover officer for sex. *Id.* at ¶ 12. Subsequently, SIS
3 advised the Hustler Club of the incident and provided it with another Advancing Prostitution
4 letter. *Id.* at ¶ 13.

5 2. Little Darlings

6 SIS was informed that an individual had been sexually assaulted at Little Darlings
7 sometime in November 2021. *Id.* at ¶ 22. In January, SIS conducted an undercover operation
8 where three entertainers within the established were observed soliciting for the purpose of
9 prostitution. *Id.* at ¶ 23. Subsequently, SIS advised Little Darlings of this information and
10 provided it with its Advancing Prostitution letter. *Id.* at ¶ 24. The letter advised they needed to
11 contact SIS, via email, of the steps taken to prevent this illegal activity. *Id.* at ¶ 25. In March
12 2022, SIS conducted additional undercover investigations that lead entertainers to solicit an
13 undercover officer for sex. *Id.* at ¶ 26. Two of the entertainers were cited for soliciting
14 prostitution and released. *Id.* at ¶ 27. Subsequently, SIS once more advised Little Darlings of the
15 incident and provided it with another Advancing Prostitution letter. The manager at the time
16 advised that she was aware of the two entertainers being cited and confirmed that the two
17 entertainers were still employed by Little Darlings. *Id.* at ¶ 28.

18 B. LVMPD PROPERLY OBTAINS AND EXECUTE SEARCH WARRANTS 19 FOR THE ESTABLISHMENTS.

20 These documented events demonstrate there is a pattern within the business of an
21 accepted culture involving prostitution. **Exhibit 1.** Based on SIS's investigation, both the Hustler
22 Club and Little Darlings failed to take reasonable steps to abate such illegal prostitution within
23 30 days after receiving notice from LVMPD. *Id.* The information contained in the search
24 warrant application relates to an ongoing criminal investigation. As such, it would be detrimental
25 to reveal it at this time. *Id.*

26 If the Court were to unseal the search warrant affidavits, it is possible that additional
27 evidence necessary for the investigation would be destroyed. *Id.* Pursuant to the warrants,
28 LVMPD seized various items, including: laptops, cellphones, office documents, and the point-of-

1 sale system. *Id.*; see also Exhibit 1-A. During the execution of the warrant, LVMPD obtained
2 passwords to some of these devices from various employees of the Hustler Club and Little
3 Darlings to assist with search process. LVMPD, however, was not able to obtain passwords for
4 all electronic devices seized.¹ *Id.*

5 Due to the nature of the electronic devices seized, LVMPD obtained an additional search
6 warrant to access the electronically stored information, including to image and copy the devices.
7 *Id.*; see also Exhibits 1-B and 1-D. The searches can be conducted on images of the devices, but
8 the lack of passwords will still provide an additional hurdle to the search. *Id.* No devices should
9 be returned until they have been imaged. Otherwise, searches cannot take place, which defeats
10 the entire purpose of the warrants. *Id.*

11
12 **C. THE STATUS OF THE SEARCHES AND ON-GOING INVESTIGATIONS.**

13 After executing the initial search warrants at each of the establishments, LVMPD
14 obtained additional search warrants for the electronic devices and electronically stored
15 information. See Exhibit 1-B and 1-D. These warrants expressly permit LVMPD, through its
16 Digital Forensic Lab (DFL), to examine and image and copy the electronic devices as part of its
17 search. *Id.* DFL has imaged the following property from the Hustler Club:

- 18 • White Apple Phone with clear case
- 19 • Black iPhone w/ black case
- 20 • Blue iPhone w/ clear case
- 21 • Black iPhone w/ pink case
- 22 • iPad S/N GG8WQ3S3JF8J
- 23 • iPad S/N DMPRLA6MH1MK

24 See Declaration of Zachary Johnson attached hereto as **Exhibit 2**. Likewise, the following
25 property has been imaged from Little Darlings:

26
27 ¹ It is worth noting that Play It Again Sam's also had a similar search warrant executed on their
28 establishment during the same time period. Play It Again Sam's was cooperative and all their property
was imaged and returned.

- 1 • HP Prop, desktop computer
- 2 • Dell OptiPlex 3060 desktop computer
- 3 • HP Pro desktop computer
- 4 • Black Cell Phone
- 5 • Black Apple iPhone
- 6 • (3) Lexar 64 GB thumb drives
- 7 • (1) SanDisk 32GB thumb drive
- 8 • (7) Unknown make thumb drives
- 9 • (1) Microsoft thumb drives

10 Id. These items have not yet been returned and are still located in the DFL Evidence Vault. *Id.*
11 DFL is currently processing the images and it would be best to maintain the custody of the
12 original evidence until DFL can confirm that the imaging was successful. *Id.* For instance, DFL
13 began to image Dell desktop XPS computer but ran into an issue. *Id.* This device will need to be
14 re-imaged to correct the issue. *Id.* Once DFL confirms that the processing of the imaging was
15 successful, the original electronic devices can be returned. *Id.* Return of the original devices prior
16 to confirming the successful imaging of the same could result in a loss of evidence. *Id.*

17 DFL also currently possesses three HIKVision DVR Systems from the Hustler Club.
18 which are estimated to contain around 54 TB of data. *Id.* There are also five HIKVision DVR
19 Systems, which are estimated to contain around 120 TB of data in DFL's possession. *Id.* To
20 process this data, DFL needs to purchase additional equipment, including additional hard drives.
21 No action can be taken regarding the DVR systems until DFL receives this equipment. *Id.*

22 At this juncture, no search of any of the electronic devices has occurred. *Id.* Once DFL
23 assesses the data and confirms imaging of all the electronic devices are completed and
24 successful, passwords are likely to remain an issue in completing the search of the devices. *Id.*
25 However, DFL will not know the full extent of any complications until it is able to completely
26 review the data. *Id.*

27 With respect to the concern of privileged information, in other scenarios, DFL has been
28 provided a list of full names, email addresses, and/or phone numbers that would be considered

1 privileged. *Id.* DFL utilizes software that can search for these keywords. *Id.* After the search is
2 completed, DFL reviews the keyword hits for the provided information. Items relates to those
3 keywords will be redacted. *Id.* The software system then generates a report for the investigative
4 detectives. in this case the Special Investigations Section, to review. *Id.* The detectives would
5 not be privy to the redacted, privileged information. *Id.*

6 Only DFL would see the full extraction of the electronic devices. *Id.* In relation to this
7 case, DFL has not been provided any information regarding names, email addresses or telephone
8 numbers for purposes of redaction. *Id.* DFL does not participate in the investigation of any
9 alleged criminal acts but merely facilitates the process to allow the detectives to search electronic
10 devices. *Id.*

11 **III. LEGAL ARGUMENT**

12 **A. THE ISSUING JUDGE IS THE APPROPRIATE JURIST TO 13 DETERMINE WHETHER THE SEARCH WARRANT MATERIALS 14 SHOULD BE UNSEALED.**

15 The appropriate method for Petitioners is to file a motion before the Honorable Harmony
16 Letizia who initially ordered the affidavits to be sealed. *See In re Searches & Seizures*, 2008 WL
17 5411772 (December 19, 2008) (where movants sought to unseal search warrant records in the
18 same court that issued search warrants and ordered records sealed). NRS 179.045 confers
19 jurisdiction upon the Justice of the Peace to seal an affidavit in support of a search warrant upon
20 a showing of good cause. Here, Judge Letizia determined that good cause existed and ordered
21 the affidavit sealed. See Exhibits A and B to Motion. The order further provides that the
22 affidavit is to remained sealed pending further order of *this* Court. *Id.* Accordingly, the Order
23 Sealing the Affidavit requires the Petitioners to seek relief from the issuing Court and not file a
24 separate action. Thus, the Court must deny Petitioners' requested relief and transfer the matter to
25 Judge Letizia in relation to the issued search warrants.

26 Judicial economy further supports transferring this matter to the issuing judge. Despite
27 setting a briefing schedule on the motion, this Court has not expended a significant amount of
28 time or resources into this matter. In fact, this Court has not even had the opportunity to review
the search warrants or the search warrant application at issue. Given the ongoing criminal

1 investigation, LVMPD cannot divulge the confidential and sensitive details contained in the
2 sealed affidavits within its briefing. While LVMPD maintains its position that Petitioners have
3 not satisfied their burden in demonstrating that unsealing is warranted, in the event the Court
4 entertains the motion, a review of the search warrant materials in camera may be necessary to
5 determine with nondisclosure remains appropriate. While this Court is more than capable of
6 reviewing such materials and reaching a determination, judicial economy is served by the
7 transfer as Judge Letizia is already familiar with the matter. Furthermore, if the matter is heard
8 before issuing judge, additional briefing, hearings, and resources by the parties will not be
9 necessary. On the other hand, this Court will likely require additional *in camera* briefing or a
10 hearing because of its unfamiliarity with the various search warrant materials at issue. LVMPD
11 respectfully requests that the motion be transferred to Judge Letizia.

12 **B. PETITIONERS PROVIDE NO BASIS TO UNSEAL THE SEARCH**
13 **WARRANT APPLICATIONS OR TO QUASH THE WARRANTS.**

14 In the event this Court does not transfer the request to unseal the search warrant
15 applications to the issuing judge, denial of the request is appropriate. Without any rhyme or
16 reason, Petitioners demand that this Court unseal the search warrant applications so that *they* can
17 determine whether or not probable cause existed for the warrant.

18 In Nevada, a search warrant may issue only on affidavit or affidavits sworn to before the
19 magistrate and establishing the grounds for issuing the warrant. NRS 179.045(1). If the
20 magistrate is satisfied that grounds for the application exist or that there is probable cause to
21 believe that they exist, the magistrate shall issue a warrant identifying the property and naming
22 or describing the person or place to be searched. *Id.* Upon a showing of good cause, the
23 magistrate may order an affidavit be sealed. NRS 179.045(3). The unsealing of the affidavit
24 must also be based on good cause. *Id.*

25 Petitioners provide no basis to unseal the applications other than the bald assertion that
26 the warrants are insufficient on their face and illegally executed. Of course, Petitioners rightfully
27 recognize that in order to support these bald assertions, a review of the actual applications are
28 necessary. Despite the fact that a neutral magistrate already determined that probable cause

1 existed for the warrants, if Petitioners truly believe that the applications are deficient, the
2 appropriate remedy, undoubtedly, would be for this Court to review the sealed materials and
3 make a determination as to whether probable cause exists. Instead, Petitioners claim that they are
4 at a disadvantage and take the absurd position that unsealing is required. The Supreme Court has
5 rejected similar arguments in the past and noted that the party must “trust th[e] Court’s
6 determination.” *See Republican Att’ys Gen. Ass’n v. Las Vegas Metro. Police Dep’t*, 136 Nev.
7 28, 36, 458 P.3d 328, 335 (2020). Thus, the “disadvantage” claimed by the Petitioners cannot
8 establish good cause to unseal the search warrant applications in this case.

9 “It is within the district court’s discretion to decide whether to seal an affidavit made in
10 support of a warrant.” *Bodden v. State*, 2010 Nev. LEXIS 107, at *5 (Feb. 1, 2010)
11 (unreported),² citing *Matter of Searches of Semtex Indus. Corp.*, 876 F. Supp. 426, 429
12 (E.D.N.Y. 1995). “The propriety of sealing search warrant documents turns on the government’s
13 need for secrecy....” *Id.* Petitioners assert that unsealing is proper because all the conduct
14 occurred in the past and that the unsealing will not impact the investigation of past events.
15 Notably, Petitioners’ assertion is not supported by any facts or authority. While the covert
16 operations described herein are certainly relevant and play a part in the obtaining the warrant,
17 such conduct is not the sole basis of the warrant. As detailed above, the remaining aspects of the
18 investigation are confidential in nature and would be detrimental to the investigation if revealed.
19 either by including such facts in the instant brief or by unsealing the warrant applications.

20 On the other hand, it is well established that the on-going criminal investigation serves as
21 a compelling reason against disclosure of the search warrant materials. The Ninth Circuit has
22 clearly established that there is no established qualified right of access to search warrant
23 proceedings and materials while a criminal investigation remains ongoing. *Times Mirror Co. v.*
24 *U.S.*, 873 F.2d 1210 (9th Cir. 1989).³ There is no doubt that the issuance of search warrants has
25 traditionally be carried out in secret, and normally, a search warrant is issued after an ex parte

26 ² There do not appear to be any reported cases in Nevada on what constitutes “good cause.”

27 ³ LVMPD recognizes that the Ninth Circuit Court of Appeals decisions are not binding on this Court.
28 Nonetheless, such holdings are more persuasive than decisions from other circuit courts.

1 application by the government and an *in camera* consideration by a judge or magistrate. *Id.* at
2 1213-14.

3 There are several compelling reasons for maintaining the secrecy of warrant proceedings
4 and materials. As the *Times Mirror* court discussed, the experience of history implies a
5 judgment that warrant proceedings and materials should not be accessible to the public, at least
6 while a pre-indictment investigation is still ongoing as in these cases. *Id.* at 1214. It follows that
7 the information disclosed to the magistrate in support of the warrant request is entitled to the
8 same confidentiality accorded other aspects of the criminal investigation. *Id.* Both the
9 magistrate in granting the original sealing order and the district court in reviewing such orders
10 have necessarily been highly deferential to the government's determination that a given
11 investigation requires secrecy and that warrant materials be kept under seal. *Id.*

12 In addition, the *Times Mirror* court recognized that although the public has an interest in
13 warrant proceedings, which can enhance the quality and safeguard the integrity of the fact-
14 finding purpose, the criminal investigatory process gravely outweighs such interests. *Id.* at 1215.
15 The court further explained that the criminal investigatory process would be harmed by public
16 access. *Id.* Finally, the court described its concern with individual privacy rights associated with
17 search warrant materials. *Id.* at 1216. For example, persons who prove to be innocent are
18 frequently the subjects of government investigations. *Id.* A search warrant affidavit may supply
19 only the barest details of the government's reasons for believing that an individual may be
20 engaging in criminal activity. *Id.* Nonetheless, the issuance of a warrant-even on this minimal
21 information-may indicate to the public that government officials have reason to believe that
22 persons named in the search warrant have engaged in criminal activity. *Id.* Moreover, persons
23 named in the warrant papers will have no forum in which to exonerate themselves if the warrant
24 materials are made public before indictments are returned. *Id.* Thus, possible injury to privacy
25 interests is another factor weighing against public access to warrant materials during the pre-
26 indictment stage of an investigation. *Id.* In sum, while public access would doubtless have some
27 positive effect by increasing the flow of information to the public about the workings of the
28 government and by deterring judicial and law enforcement officers from abusing the warrant

1 process, the incremental value in public access is slight compared to the government's interest in
2 secrecy at this stage of the investigation. *Id.* at 1218.

3 The court affirmed its *Times Mirror* decision decades later and further held that a
4 common law right of access applies to warrant materials *after* an investigation has ended. *U.S. v.*
5 *Business of Custer Battlefield Museum and Store*, 658 F.3d 1188, 1192 (9th Cir. 2011) (emphasis
6 added). In support of its decision, the Ninth Circuit recognized that warrant applications
7 proceedings are highly secret in nature and have historically been closed to the press and public.
8 *Id.* at 1193 (citation omitted).

9 While good cause is not defined, Court has held that disclosure of warrant materials is
10 only appropriate if the movant can demonstrate a threshold showing that disclosure would serve
11 the ends of justice. *Id.* (citing *Berry v. Dep't. of Justice*, 733 F.2d 1313, 1352 (9th Cir. 1984).
12 Whether disclosure is warranted in a given case requires the court to balance the need for
13 disclosure against the reasons for confidentiality. *U.S. Indus., Inc. v. United States Dist. Court*,
14 345 F.2d 18, 21 (9th Cir. 1965). In the absence of an absolute prohibition against disclosure, an
15 exercise of judicial discretion is manifestly required to determine whether such a need exists. *Id.*

16 The government's interest in confidentiality clearly outweighs Petitioners' concern that
17 the warrants may be facially invalid or illegally executed. As explained in *Times Mirror*, public
18 access to search warrant materials gravely impedes the criminal investigatory process.
19 Moreover, the warrant process is a confidential, *ex parte* process. While the public does have an
20 interest in ensuring the quality and safeguarding the fact-finding process, it is not entitled to cart
21 blanche access into governmental investigations. For example, such access would reveal
22 investigative techniques used by law enforcement. Furthermore, other safeguards are in place to
23 ensure the government's response to the 1 October Massacre was lawful, such as 42 U.S.C. §
24 1983 lawsuits. Finally, privacy interests of others that may be named in search warrant materials
25 also serve as a compelling interest in favor of confidentiality. As such, the governmental need
26 for confidentiality of an on-going criminal investigation outweighs the Petitioners' need to
27 whether there was probable cause for the warrant. More importantly, as addressed above, the
28 proper remedy would be for the Court to review the materials *in camera*, along with an

1 explanation by Det. Chavez as to the details of the investigation before any unsealing of the
2 applications.

3 Finally, sealing the search warrant materials in the entirety is the less restrictive means
4 due to the active investigation. Although the Eighth Circuit Court of Appeals determined that
5 the public had a First Amendment qualified right to search warrant materials, it nonetheless
6 determined that the government demonstrated that restricting public access to these documents
7 served a compelling interest because of the on-going investigation. *In re Search Warrant for*
8 *Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 574 ("Gunn"). The court further
9 explained that the documents describe in considerable detail the nature, scope and direction of
10 the government's investigation and the individuals and specific projects involved. *Id.* Many of
11 the specific allegations in the documents are supported by verbatim excerpts of telephone
12 conversations obtained through court-authorized electronic surveillance or information obtained
13 from confidential informants or both. *Id.* There is a substantial probability that the government's
14 on-going investigation would be severely compromised if the sealed documents were released.
15 *Id.* The court also determined that line-by-line redaction was not practicable. *Id.*

16 It is apparent that courts have recognized a general exception to disclosing search warrant
17 materials that concern an active criminal investigation. As established by *Gunn*, complete
18 confidentiality is the less restrictive means during an active criminal investigation due to
19 substantial probability that disclosure would compromise and impede the investigation.
20 Therefore, in the event the Court believes that the Petitioners have raised any doubt as to the
21 validity of the search warrant applications, LVMPD requests that the Court first allow LVMPD
22 to provide this Court with a supplemental declaration from Det. Chavez explaining the status of
23 the investigation and basis for the search warrants. If that declaration is not sufficient to satisfy
24 the Court's inquiry, the Court should then look to the search warrant materials to ensure that
25 probable cause existed for the issuance of the search warrant, rendering Petitioners' request to
26 unseal the search warrant entirely baseless. As a last resort, if this Court has any doubt about
27 whether an on-going criminal investigation exists or whether disclosure of the materials will
28 impede the investigation, LVMPD requests this Court to hold an *in camera* hearing in order for

representatives of LVMPD to articulate how such disclosure will impact the current criminal investigation.

C. PETITIONERS DID NOT MEET THEIR HIGH-BURDEN AND THE ON-GOING INVESTIGATION PROHIBITS THE RETURN OF THE PROPERTY.

Return of seized property is governed by NRS 179.085, which provides:

NRS 179.085 Motions for return of property and to suppress evidence.

1. 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:

- (a) The property was illegally seized without warrant;
- (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.

The judge shall receive evidence on any issue of fact necessary to the decision of the motion.

“[T]he moving party [Petitioners] bears the initial burden to show that the government’s retention of his or her property is facially unreasonable under the totality of all of the circumstances that then exist.” *Las Vegas Metro. Police Dep’t v. Anderson (In re 12067 Oakland Hills, Las Vegas)*, --- Nev. ---, 435 P.3d 672, 678 (2018).⁴ To meet this burden, Petitioners could, for example, present evidence that the property is no longer needed as evidence, that no charges have been filed, or that the “criminal case has been completely resolved, either through a trial or a guilty plea, because such a resolution suggests that any criminal investigation is likely over.” *Id.*

⁴ The *Anderson* case concerns subsection (e), but there is no reason that the burden-shifting analysis would not apply regardless of which subsection the moving party is relying upon. Nevertheless, as argued above, Petitioners have not, and cannot, demonstrate that the warrant is facially invalid or that it was illegally executed.

1 *Anderson* cites to federal law. Nevada's return of property statute, codified at NRS
2 179.085, mirrors Fed. R. Crim. P. 41(g). Under federal law, it is clear that a law enforcement
3 agency has the right to take temporary custody of property which is or may contain evidence of a
4 crime. A motion for return of property is properly denied if the government's need for the
5 property continues. *United States v. Mills*, 991 F.2d 609, 612 (9th Cir. 1993), *citing United States*
6 *v. U.S. Currency Amounting to Sum of \$20,294.00 More or Less*, 1495 F. Supp. 147, 150
7 (E.D.N.Y. 1980). If property has evidentiary value and it is legally seized, it need not be
8 returned until its evidentiary value has been exhausted. *Id.* The court has the duty to return the
9 contested property once the government's need for it has ended. *United States v. Martinson*, 809
10 F.2d 1364, 1370, *citing United States v. Wilson*, 540 F.2d 1100, 1103-1104 (D.C. Cir. 1976);
11 \$20,294.00, *supra*; *United States v. Totaro*, 468 F.Supp. 1045, 1048 (D. Md. 1979).

12 Here, Petitioners have not met this initial burden. Even Petitioners cannot dispute that
13 there is an on-going investigation. *See* Mot. at 8. ("unsealing them will in no way impact the
14 investigation . . ."). The request for the property to be returned should end there. "If the movant
15 fails to meet this initial burden, nothing more is required and the motion may be denied even if
16 the government produces no evidence in response." *Id.*

17 Only if Petitioners had met this initial burden would the burden then shift to LVMPD.
18 For the sake of argument, LVMPD could easily satisfy its burden, which *Anderson* holds can be
19 done in "several ways," including by "show[ing] that the property was related to an ongoing
20 criminal investigation." *Id.* LVMPD must do so with "more than a naked assertion of counsel."
21 *Id.* If necessary, LVMPD can submit information to the Court *in camera*, because "the
22 disclosure of an active and ongoing criminal investigation may jeopardize the integrity of the
23 investigation itself by revealing to a suspect that he or she is being investigated, how the
24 investigation is being conducted, and by whom." *Id.* at 679.

25 Here, LVMPD submits a declaration of Detective Chavez regarding the ongoing and
26 active investigation and Supervisor Zachary Johnson regarding the status of the searches and the
27 ability to return some of the devices once imaging has been completed and vetted. They offer to
28 provide the Court with additional details *in camera* if needed.

1 LVMPD has acknowledged in other cases that at some point, the length of time that
2 property is being held can become problematic. The *Anderson* Court recognized something like
3 this when it stated that the moving party can meet its initial burden by demonstrating that “no
4 charges have been filed even after the government has had more than enough time to conduct its
5 investigation.” *Id.* at 678. For this proposition, the *Anderson* Court cited *Mr. Lucky Messenger*
6 *Serv., Inc. v. United States*, 587 F.2d 15, 17 (7th Cir. 1978). In *Mr. Lucky Messenger*, the Court
7 was faced with a motion to return property that had been seized 17 months prior yet no charges
8 had been filed. The Court provided the following factors that should be addressed when
9 deciding whether the length of time is too long to be constitutional:

10 The critical inquiry then is whether the Government has an
11 adequate justification for withholding the plaintiff’s \$65,000 for
12 over seventeen months without bringing any charges against the
13 plaintiff. The Government, of course, is not required to secure an
14 indictment immediately after it seizes property pursuant to a grand
15 jury investigation. But if no charges are filed for nearly one and
16 one-half years after the property was seized, and the Government
17 is unable to present evidence justifying such a delay, constitutional
18 violations emerge which would seem on equitable principles to
19 mandate that the property be returned...

20 * * *

21 . . . [O]ther factors a court should consider . . . are whether the
22 plaintiff has an individual interest in and need for the material
23 whose return it seeks; whether it would be irreparably injured by
24 denial of the return of the property; and whether it has an adequate
25 remedy at law for redress of its grievance.

26 *Id.* at 17 (citations omitted and emphasis added).

27 Here, Petitioners failed to provide any evidence whatsoever to demonstrate any
28 irreparable injury. And, a declaration from counsel merely stating that the property has attorney-
client privilege or accountant-client privilege, is not enough. Moreover, Petitioner’s application
for the return of the particular “privileged” documents is not persuasive and entirely contrary to
the plain language of the statute. Petitioners rely on NRS 179.105 for the notion that attorney-
client privilege protects materials that are otherwise subject to a warrant. NRS 179.105 provides:

All property or things taken on a warrant must be retained in an officer's custody,
subject to the order of the court to which the officer is required to return the

proceedings before the officer, or of any other court in which the offense in respect to which the property or things are taken is triable. If it appears that the property taken is not the same as that described in the warrant, that there is no probable cause for believing the existence of the grounds on which the warrant was issued or that the property is determined pursuant to NRS 179.11518 to be subject to the attorney-client privilege, the magistrate shall cause it to be restored to the person from whom it was taken. However, no search warrant shall be quashed by any magistrate or judge within this State nor shall any evidence based upon a search warrant be suppressed in any criminal action or proceeding because of mere technical irregularities which do not affect the substantial rights of the accused.

(emphasis added). Under NRS 179.11518, a district attorney or the Attorney General is required to review the property for attorney-client privilege if the search warrant was issued pursuant to NRS 179.11514. NRS 179.11514 expressly applies to search warrants issued and executed upon an attorney engaged in the practice of law. Thus, the attorney-client provision within NRS 179.105 has no application here because LVMPD did seize property from an attorney engaged in the practice of law. Other than NRS 179.11518, Petitioners cite to no authority for the position that such material must be returned, despite the property being subject to a search warrant. Accordingly, Petitioners once more have failed to meet their burden in obtaining the relief they have requested.

In contrast, LVMPD has demonstrated a justification for not being able to return the electronic devices. The electronic devices are needed to complete an ongoing criminal investigation, which has only just begun. This investigation is complex and may take months to complete. The warrants themselves recognize that time is needed. It is common that this process can take many months. In sum, there is no basis to return the seized electronic devices. Petitioners' motion for return of property must be denied.

D. THERE IS NO LEGAL BASIS TO ALTER THE WARRANT OR MANDATE A PROTOCOL.

Petitioners ask that the evidence be returned so that they can scrub the devices of all evidence and then return the cleaned property to LVMPD to conduct a search. Notably, Petitioners fail to cite to any authority in support of this proposition. Indeed, many courts have rejected protocols in searching through electronic devices and through electronically stored information due to the difficult nature of the same. *See United States v. Mann*, 592 F.3d 779,

1 785 (7th Cir. 2010) (finding the attempt “overbroad”); *see also United States v. Burgess*, 576
2 F.3d 1078, 1092-94 (10th Cir. 2009) (despite efforts to establish search protocols for computer
3 drives to limit “overseizures,” given the capacity of a computer to store and intermingle vast
4 amounts of data. at bottom “there may be no practical substitute for actually looking in many
5 (perhaps all) folders and sometimes at the documents contained within those folders”); *United*
6 *States v. Richards*, 659 F.3d 527, 539-540 (6th Cir. 2011) (same); *United States v. Stabile*, 633
7 F.3d 219, 239-240 & n.13 (3d Cir. 2011) (same).

8 In sum, there is no legal basis - statutory, constitutional, or otherwise - that allows this
9 Court to alter an already-issued warrant by mandating a particular protocol to conduct the search.

10 **E. LVMPD ALREADY HAS A FAIR AND BALANCED PROTOCOL.**

11 Even though there is no legal basis to mandate a protocol, the evidence before the Court
12 is that a protocol is in place. Despite Petitioners arguments, the warrants themselves do limit the
13 scope of the search to evidence of a certain crime from certain dates. LVMPD has also
14 demonstrated that a separate section, DFL, conducts the search and provides only evidence
15 within the scope of the warrant to SIS. Privileged material, like attorney-client communications
16 or accountant-client communications are able to be screened if information is provided to
17 LVMPD. When Petitioners made LVMPD aware of the concern for privileged material,
18 LVMPD asked for names and email addresses. Petitioners have never provided LVMPD with
19 this information. Thus, even if there were a legal basis to mandate a protocol, which there is
20 not, no other protocol is needed.

21 The Constitution requires that searches be reasonable and that penalties would apply for
22 constitutional violations, like a motion to suppress pursuant to NRS 179.085 or a civil rights
23 lawsuit under 42 U.S.C. § 1983. The law is well-established in this area, balancing the rights of
24 suspects with the rights of victims to obtain justice. Here, there is no clearly established right to
25 a electronic device search protocol, and even if there were, and even if LVMPD did not follow it,
26 the remedy would not be seeking alteration, or even the quashing, of an already-issued search
27 warrant.

1 **IV. CONCLUSION**

2 Based on the foregoing, LVMPD respectfully requests the Court denies Motion of Real
3 Parties In Interest Las Vegas Bistro, LLC dba Larry Flynt's Hustler Club and Little Darlings of
4 Las Vegas, LLC dba Little Darlings to: (1) Unseal Search Warrant Applications and Supporting
5 Affidavits; (2) Quash Search Warrants; and (3) Return Seized Property on an Order Shortening
6 Time.

7 Dated this 5th day of May, 2022.

8
9 MARQUIS AURBACH

10
11 By: /s/ Jackie V. Nichols
12 Nick D. Crosby, Esq.
13 Nevada Bar No. 8996
14 Jackie V. Nichols, Esq.
15 Nevada Bar No. 14246
16 10001 Park Run Drive
17 Las Vegas, Nevada 89145
18 Attorneys for Real Party in Interest, Las
19 Vegas Metropolitan Police Department
20
21
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25
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27
28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REAL PARTY IN INTEREST, LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S OPPOSITION TO MOTION OF REAL PARTIES IN INTEREST LAS VEGAS BISTRO, LLC DBA LARRY FLYNT'S HUSTLER CLUB AND LITTLE DARLINGS OF LAS VEGAS, LLC DBA LITTLE DARLINGS TO: (1) UNSEAL SEARCH WARRANT APPLICATIONS AND SUPPORTING AFFIDAVITS; (2) QUASH SEARCH WARRANTS; AND (3) RETURN SEIZED PROPERTY ON AN ORDER SHORTENING TIME** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 5th day of May, 2022. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁵

Deanna L. Forbush, Esq.
Colleen E. McCarty, Esq.
Fox Rothschild LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
dforbush@foxrothschild.com
cmccarty@foxrothschild.com
dloffredo@foxrothschild.com

Zachary M. Youngsma, Esq.
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906
zack@BradShaferLaw.com

Attorneys for Movants and Real Parties in Interest
Las Vegas Bistro, LLC and Little Darlings of Las Vegas, LLC

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Rosie Wesp
An employee of Marquis Aurbach

⁵ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 1

DECLARATION OF ROBERT CHAVEZ

I, Robert Chavez, P#7758, hereby declares under the penalty of perjury:

1. I have personal knowledge of the facts stated herein, except for those stated upon information and belief, and, as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am employed by the Las Vegas Metropolitan Police Department (LVMPD) as a Detective in the Special Investigations Section ("SIS").

3. My understanding is that Las Vegas Bistro, LLC, on behalf of Larry Flynt's Hustler Club, and Little Darlings of Las Vegas, LLC, on behalf on Little Darlings (collectively referred to as the "Petitioners"), seek a Court order to unseal the search warrant applications that served the basis of the search warrants that were executed on their respective properties on April 5, 2022.

4. I also have an understanding that the Petitioners are attempting to obtain a court order quashing the search warrants.

5. LVMPD's SIS has the primary responsibility for the enforcement of all federal, state, county, and city laws concerning privileged and regulated businesses in Clark County and the City of Las Vegas. Privileged licenses include Erotic Dance establishments and Adult Cabaret's.

6. In particular to the instant case, the crime of Advancing Prostitution and Living from Earnings of Prostitution is being investigated in relation to the Petitioners' two establishments.

7. SIS has conducted numerous criminal investigations of illicit Erotic Dance businesses. Through these investigations, SIS has become familiar with common ways in which these illicit businesses operate. Illicit businesses often post suggestive advertisements on adult-oriented websites and print media. Erotic dances are offered for an upfront fee, then, during the dance, an act of prostitution is solicited for an additional fee. The dances are often conducted in private rooms; however, some are also done in open areas within view of management, other employees, or other patrons.

8. The prostitutes working in these establishments are often victims of sex trafficking and are afraid of cooperating with law enforcement. Normally, an individual directs the activities of the prostitutes. Monies earned are split between the business and the prostitute.

HUSTLER CLUB

9. In January 2022, SIS learned that entertainers had been soliciting for the purpose of prostitution within the establishment.

10. SIS then advised the Hustler Club that an undercover operation was conducted at their establishment and three females were observed soliciting for the purpose of prostitution. At the same time, SIS provided Hustler Club with its Advancing Prostitution letter.

11. The letter advised they needed to contact SIS, via email, of the steps taken to prevent this illegal activity. A manager signed the letter, and a copy was left with her.

12. In March 2022, SIS conducted additional undercover investigations that lead entertainers to solicit an undercover officer for sex.

13. Subsequently, SIS advised the Hustler Club of the incident and provided it with another Advancing Prostitution letter.

14. These documented events demonstrate there is a pattern within the business of an accepted culture involving prostitution.

15. Under NRS 201.395, the owner/operator of the Hustler Club failed to take reasonable steps to abate such illegal prostitution within 30 days after receiving notice from LVMPD.

16. The information contained in the search warrant application relates to an ongoing criminal investigation. As such, it would be detrimental to reveal it at this time.

17. If the Court were to unseal the search warrant affidavits, it is possible that additional evidence necessary for the investigation would be destroyed.

18. Pursuant to the warrants, LVMPD seized various items, including: laptops, cellphones, office documents, and the point-of-sale system. A true and accurate copy of the Search Warrant Return is attached hereto as **Exhibit A**.

19. During the execution of the warrant, LVMPD obtained passwords to some of these devices from various employees of the Hustler Club to assist with search process. LVMPD, however, was not able to obtain passwords for all electronic devices seized.¹

20. Due to the nature of the electronic devices seized, LVMPD obtained an additional search warrant to access the electronically stored information. The searches can be conducted on images of the devices, but my understanding is that lack of passwords will still provide an additional hurdle to the search. A true and accurate copy the Digital Forensic Search Warrant is attached hereto as **Exhibit B**.

21. No devices should be returned until they have been imaged. Otherwise, searches cannot take place, which defeats the entire purpose of the warrants.

LITTLE DARLINGS

22. SIS was informed that an individual had been sexually assaulted at Little Darlings sometime in November 2021.

23. In January, SIS conducted an undercover operation where three entertainers within the established were observed soliciting for the purpose of prostitution.

24. Subsequently, SIS advised Little Darlings of this information and provided it with its Advancing Prostitution letter.

25. The letter advised they needed to contact SIS, via email, of the steps taken to prevent this illegal activity.

26. In March 2022, SIS conducted additional undercover investigations that lead entertainers to solicit an undercover officer for sex.

27. Two of the entertainers were cited for soliciting prostitution and released.

28. Subsequently, SIS once more advised Little Darlings of the incident and provided it with another Advancing Prostitution letter. The manager at the time advised that she was aware of

¹ It is worth noting that Play It Again Sam's also had a similar search warrant executed on their establishment during the same time period. Play It Again Sam's was cooperative and all their property was imaged and returned.

1 the two entertainers being cited and confirmed that the two entertainers were still employed by
2 Little Darlings.

3 29. Under NRS 201.395, the owner/operator of the Little Darlings failed to take
4 reasonable steps to abate such illegal prostitution within 30 days after receiving notice from
5 LVMPD.

6 30. The information contained in the search warrant application relates to an ongoing
7 criminal investigation. As such, it would be detrimental to reveal it at this time.

8 31. If the Court were to unseal the search warrant affidavits, it is possible that additional
9 evidence necessary for the investigation would be destroyed.

10 32. Pursuant to the warrants, LVMPD seized various items, including: laptops,
11 cellphones, office documents, and the point-of-sale system. A true and accurate copy of the Search
12 Warrant Return is attached hereto as **Exhibit C**.

13 33. During the execution of the warrant, LVMPD attempted to obtain passwords to these
14 devices from various employees of the Little Darlings to expedite the search process. While the
15 employees were initially cooperative, lawyers quickly directed the employees to stop providing
16 information to LVMPD.

17 34. During the execution of the warrant, LVMPD obtained passwords to some of these
18 devices from various employees of the Little Darlings to assist with search process. LVMPD,
19 however, was not able to obtain passwords for all electronic devices seized.

20 35. Due to the nature of the electronic devices seized, LVMPD obtained an additional
21 search warrant to access the electronically stored information. The searches can be conducted on
22 images of the devices, but my understanding is that the lack of passwords will still provide an
23 additional hurdle to the search. A true and accurate copy the Digital Forensic Search Warrant is
24 attached hereto as **Exhibit D**.

25 36. These documented events at both establishments demonstrate there is a pattern
26 within the business of an accepted culture involving prostitution.

37. The fact that repeated incidents have occurred within a short time span at both establishments, after the businesses were served with written notification of the occurrences, shows that the business' practices promote advancing prostitution.

38. While these documented incidents serve as the basis for the search warrant, the search warrant application contains specific details of covert police operations. These details include police procedures, and intelligence obtained, during those operations. Knowledge of this sensitive information would compromise officers' safety and inhibit the effectiveness of future operations.

39. If the court deems it necessary, I can provide, *in camera*, further details about the investigation, its scope, its status, and the confidential nature of the search warrant applications.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. NRS 53.045.

EXECUTED this 5TH day of May, 2022.

Signature

Robert Chavez

Exhibit 1A

RETURN

(Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

6007 DEAN MARTIN DR LAS VEGAS, NV 89118

was executed on

4-5-22
(month, day, year)

A copy of this inventory was left with

AT THE PLACE OF SEARCH

(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

3 X CELL PHONES (APPLE)

OFFICE DOCUMENTS

DVR SAMSUNG S/N ZC1T6V2H200287A

DELL SERVER E02S

DVR HIKVISION DVR2 MAIN FLOOR

DVR HIKVISION DVR23 VIP FLOOR

DVR HIKVISION SN B19264409

1 X CELLPHONE (APPLE)

APPLE LAPTOP SN C02VHAAHHTDS

HP LAPTOP SN CND4402W8S

This inventory was made by:

RT775JC

T. THAYER 8248

(at least two officers including affiant if present. If person from whom property is taken is present include that person.)

RETURN (continued)

location: 6007 DEAN MARTIN DR LV NV 89118

2 X APPLE I-PAD

1 X APPLE MACBOOK LADTOP

DL TV
Officers Initials

Exhibit 1B

**SEARCH WARRANT
DIGITAL STORAGE DEVICE
LVMPD Event Number: LLV220400019200**

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

The State of Nevada, to any peace officer in the County of Clark. Proof by affidavit having been made before me by R. Chavez, that there is probable cause to believe that certain records, namely:

1. Digitally stored records of user and/or device created data, which may constitute evidence of Stevi Bethae, Andrea Woods, and Reynaldo Martinez's involvement in the planning or commission of the crime(s) of Advancing Prostitution and Living from the Earnings of Prostitution, which occurred on or about 10/21 - 04/05/22.
2. Digitally stored records of user and/or device created data, which would tend to establish the identity of the persons who were in sole or joint control of the below listed digital storage device(s).

Are presently located upon or within digital storage device(s), previously seized under LVMPD event number LLV220400019200 and in the custody of the LVMPD, currently located Digital Investigations Lab 400 S. Marin Luther King Blvd Las Vegas, NV 89106, specifically:

Pkg. 1 Item 1: Black HP Laptop S/N CNDLK102W85
Pkg. 1 Item 2: Silver Apple Laptop S/N C02VNAANHTD5
Pkg. 2 Item 4: White Apple iPhone w/clear case
Pkg. 3 Item 5: Samsung DVR S/N ZCIT6V2H200287A
Pkg. 4 Item 6: DVR Hikvision DVRT2 Main floor
Pkg. 5 Item 7: DVR Hikvision DVRT3 VIP Floor
Pkg. 6 Item 8: DVR Hikvision S/N 819264409
Pkg. 7 Item 9: Black iPhone w/black case
Pkg. 8 Item 10: Blue iPhone w/clear case
Pkg. 9 Item 11: Black iPhone w/pink case
Pkg. 10 Item 12: Dell server E02S

Pkg. 1 Item 1: iPad S/N GG8WQ3S3JF8J
Pkg. 2 Item 2: iPad S/N DMPRLA8MH1MK
Pkg. 3 Item 3: Apple MacBook S/N C02T2W9NGTFJ

SEARCH WARRANT
DIGITAL STORAGE DEVICE
LVMPD Event Number: LLV220400019200

And as I am satisfied that there is probable cause to believe that said records are located as set forth above and that, based upon the affidavit attached hereto, there are sufficient grounds for the issuance of the warrant.

You are hereby commanded to search forthwith said device(s) for said records, serving this warrant at any time, day or night, and if the records are there to seize them, and make a return to me within ten (10) days.

Authorization is granted for a forensic technician, sworn or non-sworn, to examine; make duplicate images/copies of the digital content of the previously listed digital storage device(s); and to determine if evidence of the offenses enumerated above are contained therein.

Authorization is granted for a forensic technician to identify, circumvent, defeat, or bypass any password, encryption, security device or other mechanism that serves to impede or hinder the execution of this warrant.

Authorization is granted for a forensic technician to disassemble the device(s) and to repair or replace parts including, but not limited to, screens and charging/data ports, as necessary for the examination.

Authorization is granted to move the device(s) to an off-site facility for examination, as needed.

DATED this 7th day of April, 2022.

Joseph S. Sciscento
JUDGE

IN RE: SEARCH WARRANT for

Pkg. 1 Item 1: Black HP Laptop S/N CNDLK102W85
Pkg. 1 Item 2: Silver Apple Laptop S/N C02VNAANHTD5
Pkg. 2 Item 4: White Apple iPhone w/clear case
Pkg. 3 Item 5: Samsung DVR S/N ZCIT6V2H200287A
Pkg. 4 Item 6: DVR Hikvision DVRT2 Main floor
Pkg. 5 Item 7: DVR Hikvision DVRT3 VIP Floor
Pkg. 6 Item 8: DVR Hikvision S/N 819284409
Pkg. 7 Item 9: Black iPhone w/black case
Pkg. 8 Item 10: Blue iPhone w/clear case
Pkg. 9 Item 11: Black iPhone w/pink case
Pkg. 10 Item 12: Dell server E02S

Pkg. 1 Item 1: iPad S/N GG8WQ3S3JF8J
Pkg. 2 Item 2: iPad S/N DMPRLA6MH1MK
Pkg. 3 Item 3: Apple MacBook S/N C02T2W9NGTFJ

**ORDER SEALING
AFFIDAVIT**

LVMPD Event Number: LLV220400019200

Upon the ex parte application of R. Chavez, a detective with the Las Vegas Metropolitan Police Department and Affiant, to seal the affidavit in support of the attached search warrant, and for good cause appearing therefore,

IT IS HEREBY ORDERED that the affidavit in support of the attached search warrant be ordered sealed pending further order of this Court except that copies may be provided to the office of the Clark County District Attorney and the District Attorney may provide copies to a Defendant in a criminal proceeding as part of the criminal discovery process, and

**ORDER SEALING
AFFIDAVIT**

IT IS FURTHER ORDERED a copy of this order sealing the affidavit be left at the premises along with the search warrant in lieu of the affidavit in support of the warrant.

DATED this 7th day of April, 2022.

Joseph S. Sciscento
JUDGE


R. Chavez

RETURN

(Must be made within 10 days of issuance of Warrant)

LVMPD Event Number: LLV220400019200

The search warrant authorizing a search and seizure of the following digital storage device(s), previously seized under LVMPD event number LLV220400019200, was executed on the 7th day of APRIL, 2022.

Pkg. 1 Item 1: Black HP Laptop S/N CNDLK102W85
Pkg. 1 Item 2: Silver Apple Laptop S/N C02VNAANHTD5
Pkg. 2 Item 4: White Apple iPhone w/clear case
Pkg. 3 Item 5: Samsung DVR S/N ZCIT6V2H200287A
Pkg. 4 Item 6: DVR Hikvision DVRT2 Main floor
Pkg. 5 Item 7: DVR Hikvision DVRT3 VIP Floor
Pkg. 6 Item 8: DVR Hikvision S/N 819264409
Pkg. 7 Item 9: Black iPhone w/black case
Pkg. 8 Item 10: Blue iPhone w/clear case
Pkg. 9 Item 11: Black iPhone w/pink case
Pkg. 10 Item 12: Dell server E02S

Pkg. 1 Item 1: iPad S/N GG8WQ3S3JF8J
Pkg. 2 Item 2: iPad S/N DMPRLA6MH1MK
Pkg. 3 Item 3: Apple MacBook S/N C02T2W9NGTFJ

The execution of this warrant consisted of a forensic examination of one or more digital storage device(s) that were previously seized and in the custody of the LVMPD. No additional property was seized.


R. Chavez

Exhibit 1C

LLU
220400019/81

Page 1 of 1

RETURN

(Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

LITTLE DARLINGS 1500 / 1502 / 1514 WESTERN AVE.
LUN 89102

was executed on

4/5/22

(month, day, year)

A copy of this inventory was left with

PETER DOTORNE (MANAGER)

(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

- USB'S DRIVES
- CELLPHONES
- APPLE SQUARE COMPUTER.
- COMPUTER TOWER
- MISC PAPERWORK
- DVR'S (DIGITAL RECORDING SYSTEM) 5 TO TPC.
- (3) TABLETS W/ CHARGER.
- DELL DESKTOP COMPUTER
- DELL SERVER W/ COND.

This inventory was made by: A. CARACOU #9025

Sgt. J. MARTY #9884

(at least two officers including affiant if present. If person from whom property is taken is present include that person.)

Exhibit 1D

SEARCH WARRANT
DIGITAL STORAGE DEVICE
LVMPD Event Number: LLV220400019181

And as I am satisfied that there is probable cause to believe that said records are located as set forth above and that, based upon the affidavit attached hereto, there are sufficient grounds for the issuance of the warrant.

You are hereby commanded to search forthwith said device(s) for said records, serving this warrant at any time, day or night, and if the records are there to seize them, and make a return to me within ten (10) days.

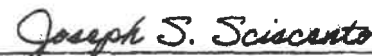
Authorization is granted for a forensic technician, sworn or non-sworn, to examine; make duplicate images/copies of the digital content of the previously listed digital storage device(s); and to determine if evidence of the offenses enumerated above are contained therein.

Authorization is granted for a forensic technician to identify, circumvent, defeat, or bypass any password, encryption, security device or other mechanism that serves to impede or hinder the execution of this warrant.

Authorization is granted for a forensic technician to disassemble the device(s) and to repair or replace parts including, but not limited to, screens and charging/data ports, as necessary for the examination.

Authorization is granted to move the device(s) to an off-site facility for examination, as needed.

DATED this 7th day of April, 2022.



JUDGE

IN RE: SEARCH WARRANT for

Item 1 Package 1	Hikvision Digital Video Recorder
Serial # E05289049	
2	2 Hikvision Digital Video Recorder
Serial # 775478252	
3	3 Hikvision Digital Video Recorder
Serial # 775478075	
4	4 Hikvision Digital Video Recorder
Serial # 775478066	
5	5 Hikvision Digital Video Recorder
Serial # 768969998	
6	6 Dell Power Edge R710 server
Serial # 3d26vv1	
7	7 HP Pro Desktop Computer
Serial # Mx29240qs	
8	8 Apple Mini Portable Desktop
Computer Serial # C07xn8pajyo	
9	9 Dell Desktop XPS Computer
Serial # J79x2w2	
10	10 Dell Optiplex 3080 Desktop
Computer Serial # H3dw2w2	
11	11 HP Pro Desktop Computer
Serial # 2ua6311qs	
12	12 (3) Electronic Tablets
(no serial numbers)	
13	13 Black Cellphone
(no serial numbers)	
14	14 Black Apple I-phone
(no serial numbers)	
15	15 (3) Lexar 64gb Thumb drives
16	16 (1) Sandisk 32gb Thumb drive
17	17 (7) Unknown make Thumb drive
18	18 (1) Microsoft Thumb drive
19	19 Samsung gray cellphone
Serial # SMN97SU	

**ORDER SEALING
AFFIDAVIT**

LVMPD Event Number: LLV220400019181

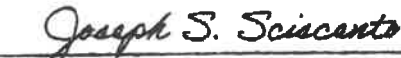
Upon the ex parte application of A Carson P# 9025, a Detective with the Las Vegas Metropolitan Police Department and Affiant, to seal the affidavit in support of the attached search warrant, and for good cause appearing therefore,

**ORDER SEALING
AFFIDAVIT**

IT IS HEREBY ORDERED that the affidavit in support of the attached search warrant be ordered sealed pending further order of this Court except that copies may be provided to the office of the Clark County District Attorney and the District Attorney may provide copies to a Defendant in a criminal proceeding as part of the criminal discovery process, and

IT IS FURTHER ORDERED a copy of this order sealing the affidavit be left at the premises along with the search warrant in lieu of the affidavit in support of the warrant.

DATED this 7th day of April, 2022.



JUDGE



A Carreon P# 9025

RETURN

(Must be made within 10 days of issuance of Warrant)

LVMPD Event Number: LLV220400019181

The search warrant authorizing a search and seizure of the following digital storage device(s), previously seized under LVMPD event number LLV220400019181, was executed on the

7 day of April, 2022.

Item 1	Package 1	Hikvision Digital Video Recorder	Serial # E05289049
2	2	Hikvision Digital Video Recorder	Serial # 775478252
3	3	Hikvision Digital Video Recorder	Serial # 775478075
4	4	Hikvision Digital Video Recorder	Serial # 775478066
5	5	Hikvision Digital Video Recorder	Serial # 768969998
6	6	Dell Power-Edge R710 server	Serial # 3d26vv1
7	7	HP Pro Desktop Computer	Serial # Mx29240qs
8	8	Apple Mini Portable Desktop Computer	Serial # C07xn6psjywo
9	9	Dell Desktop XPS Computer	Serial # J79x2w2
10	10	Dell Optiplex 3060 Desktop Computer	Serial # H3dw2w2
11	11	HP Pro Desktop Computer	Serial # 2ua6311tjs
12	12	(3) Electronic Tablets	(no serial numbers)
13	13	Black Cellphone	(no serial numbers)
14	14	Black Apple I-phone	(no serial numbers)
15	15	(3) Lexar 64gb Thumb drives	
16	16	(1) Sandisk 32gb Thumb drive	
17	17	(7) Unknown make Thumb drive	
18	18	(1) Microsoft Thumb drive	
19	19	Samsung grey cellphone	Serial # SMN97SU

The execution of this warrant consisted of a forensic examination of one or more digital storage device(s) that were previously seized and in the custody of the LVMPD. No additional property was seized.


A Carrion P# 9025

Exhibit 2

9. DFL also currently possesses three HIKVision DVR Systems, which are estimated to contain around 54 TB of data.

10. To process this data, DFL needs to purchase additional equipment, including additional hard drives.

11. No action can be taken regarding the DVR systems until DFL receives this equipment.

LITTLE DARLINGS

12. DFL has imaged the following property:

- a. HP Prop, desktop computer
- b. Dell OptiPlex 3060 desktop computer
- c. HP Pro desktop computer
- d. Black Cell Phone
- e. Black Apple iPhone
- f. (3) Lexar 64 GB thumb drives
- g. (1) SanDisk 32GB thumb drive
- h. (7) Unknown make thumb drives
- i. (1) Microsoft thumb drives
- j. Samsung grey cellphone

13. These items have not yet been returned and are still located in the DFL Evidence Vault.

14. DFL is currently processing the images and it would be best to maintain the custody of the original evidence until DFL can confirm that the imaging was successful.

15. Once DFL confirms that the processing of the imaging was successful, the original electronic devices can be returned.

16. Return of the original devices prior to confirming the successful imaging of the same could result in a loss of evidence.

17. DFL began to image Dell desktop XPS computer but ran into an issue. This device will need to be re-imaged to correct the issue.

1 18. DFL also currently possesses five HIKVision DVR Systems, which are estimated to
2 contain around 120 TB of data.

3 19. To process this data, DFL needs to purchase additional equipment, including
4 additional hard drives.

5 20. No action can be taken regarding the DVR systems until DFL receives this
6 equipment.

7 **SEARCHING THE ELECTRONIC DEVICES**

8 21. At this juncture, no search of any of the electronic devices has occurred.

9 22. Once DFL assesses the data and confirms imaging of all the electronic devices are
10 completed and successful, passwords are likely to remain an issue in completing the search of the
11 devices.

12 23. However, DFL will not know the full extent of any complications until it is able to
13 completely review the data.

14 24. With respect to the concern of privileged information, in other scenarios, DFL has
15 been provided a list of full names, email addresses, and/or phone numbers that would be considered
16 privileged.

17 25. DFL utilizes software that can search for these keywords.

18 26. After the search is completed, DFL reviews the keyword hits for the provided
19 information. Items relates to those keywords will be redacted.

20 27. The software system then generates a report for the investigative detectives, in this
21 case the Special Investigations Section, to review. The detectives would not be privy to the
22 redacted, privileged information.

23 28. Only DFL would see the full extraction of the electronic devices.

24 29. In relation to this case, DFL has not been provided any information regarding names,
25 email addresses or telephone numbers for purposes of redaction.

26 30. DFL does not participate in the investigation of any alleged criminal acts but merely
27 facilitates the process to allow the detectives to search electronic devices.

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31. If the court deems it necessary, I can provide, *in camera*, further details about DFL's role in the investigation and the protocol and procedures used to search the electronic devices.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. NRS 53.045.

EXECUTED this 5 day of May, 2022.

Signature 
Zachary Johnson



1 **RIS**

2 DEANNA L. FORBUSH

3 Nevada Bar No. 6646

4 dforbush@foxrothschild.com

5 COLLEEN E. MCCARTY

6 Nevada Bar No. 13186

7 cmccarty@foxrothschild.com

8 **FOX ROTHSCHILD LLP**

9 1980 Festival Plaza Drive, Suite 700

10 Las Vegas, Nevada 89135

11 Telephone: (702) 262-6899

12 Facsimile: (702) 597-5503

13 **ZACHARY M. YOUNGSMA**

14 Nevada Bar No. 15680

15 zach@bradshaferlaw.com

16 **SHAFFER & ASSOCIATES, P.C.**

17 3800 Capital City Blvd., Suite 2

18 Lansing, Michigan 48906

19 Telephone: (517) 886-6560

20 Facsimile: (517) 886-6565

21 *Attorneys for Movants and Real parties in Interest*

22 *Las Vegas Bistro, LLC and Little Darlings of Las Vegas, LLC*

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 IN RE SEARCH WARRANT REGARDING
26 SEIZURE OF DOCUMENTS, LAPTOP
27 COMPUTERS, CELLULAR TELEPHONES
28 AND OTHER DIGITAL STORAGE DEVICES
FROM THE PREMISES OF LAS VEGAS
BISTRO, LLC AND LITTLE DARLINGS OF
LAS VEGAS, LLC,

Movants and Real Parties in Interest.

Case No.: A-22-851073-C

Dept No.: XXX

**REPLY IN SUPPORT OF MOTION OF
REAL PARTIES IN INTEREST TO (1)
UNSEAL SEARCH WARRANT
APPLICATIONS AND SUPPORTING
AFFIDAVITS, (2) QUASH SEARCH
WARRANTS, AND (3) RETURN
SEIZED PROPERTY**

Date of Hearing: May 12, 2022

Time of Hearing: 10:30 a.m.

Movants and Real Parties in Interest, Las Vegas Bistro, LLC and Little Darlings of Las Vegas, LLC (collectively "Movants"), by and through their attorneys of record, Deanna L. Forbush,

1 Esq. and Colleen E. McCarty, Esq. of Fox Rothschild LLP, and Zachary Youngsma, Esq. of Shafer
2 & Associates, P.C., hereby submit their Reply to the Opposition filed by the Las Vegas Metropolitan
3 Police Department ("LVMPD") to the Motion of Real Parties in Interest Las Vegas Bistro, LLC dba
4 Larry Flynt's Hustler Club and Little Darlings of Las Vegas, LLC dba Little Darlings to: (1) Unseal
5 Search Warrant Applications and Supporting Affidavits; (2) Quash Search Warrants; and (3) Return
6 Seized Property, filed on Order Shortening Time on April 21, 2022 (the "Reply," "Opposition," and
"Motion," respectively).

7 This Reply is made and based on the following Memorandum of Points and Authorities, the
8 Declarations of Jason Mohnney, Ralph James, Andrea Woods and Angela Swank, attached hereto as
9 **Exhibit I**, the pleadings and papers already on file, and any oral argument permitted at the hearing
of this matter.

10 Dated this 9th day of May, 2022.

11 **FOX ROTHSCHILD LLP**

12
13 By: /s/ Deanna L. Forbush

14 DEANNA L. FORBUSH

15 Nevada Bar No. 6646

16 COLLEEN E. MCCARTY

17 Nevada Bar No. 13186

18 1980 Festival Plaza Drive, Suite 700

19 Las Vegas, Nevada 89135

20 Telephone: (702) 262-6899

21 ZACHARY M. YOUNGSMA

22 Nevada Bar No. 15680

23 SHAFER & ASSOCIATES, P.C.

24 3800 Capital City Blvd., Suite 2

25 Lansing, Michigan 48906

26 Telephone: (517) 886-6560

27 *Attorneys for Movants/Real Parties in Interest*

28
MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

In a markedly contorted response, LVMPD never cogently or directly addresses the

1 fundamental issue underlying the Motion at bar: whether the sealed affidavits even *sought*, let alone
2 *justified*, the seizure of any materials or communications protected by either the attorney-client or
3 the accountancy privileges. Rather, it argues, variously, that Movants have not sufficiently
4 established even the *existence* of privileged materials in the seized business documents and
5 electronic and digital storage devices, inclusive of servers, computers, tablets, DVRs, personal
6 cellular phones, tablets and other materials (the “Property”); that there is no actual law precluding
7 the government from reviewing privileged materials or procedure to compel LVMPD to return
8 improperly seized privileged materials; that its personnel have not yet begun a “search” of any of the
9 Property, [Johnson Declaration, ¶ 21], while at the same time *acknowledging that it has sought*,
10 *obtained*, and in fact attaches as Exs. 1B & 1D to its Opposition, subsequent search warrants
11 specifically authorizing the searching of all of the seized electronic equipment/devices; that,
12 regardless, it won’t look at any privileged communication as long as it knows the identities of the
13 attorneys and accountants involved, while conceding that it does not possess such information; that
14 irrespective of the privileges involved, some members of its department will *admittedly* be able to
15 access and review such privileged information; and that irrespective of all of the foregoing, it should
16 just be trusted to “do the right thing” while acknowledging that it is already “processing”
17 electronically stored information (“ESI”) containing privileged information. LVMPD also asserts
18 that the instant Motion has been filed in the wrong court.

19 For the reasons set forth herein, LVMPD is egregiously in error on all counts.

20 II.

21 LEGAL ARGUMENT

22 A. THE DISTRICT COURT IS THE ONLY APPROPRIATE VENUE TO HEAR THE 23 INSTANT MATTER.

24 LVMPD asserts that the only appropriate person to review the instant motion is Justice of the
25 Peace Harmony Letizia because of her role in issuing the initial search warrants, and for judicial
26 economy. *See* Opposition at 7:14-15, 25. Both arguments fail as a matter of law and reason.

27 As a threshold matter, LVMPD makes no mention of the subsequent search warrants, each
28 labeled “Duplicate Original Search Warrant,” entered by Justice of the Peace Joseph Sciscento on
April 5, 2022, several hours into LVMPD’s actual execution of the search warrants at the Hustler
Club and Little Darlings. It appears from their face that these additional search warrants were
submitted by LVMPD due to the facial deficiencies of the original warrants (specifically the failure

1 to state the grounds or probable cause for their issuance, as required by NRS 179.045(6)(a)), as well
2 as an error in Little Darlings' address. Nor does LVMPD acknowledge that the search warrants for
3 digital storage devices and associated sealing orders subsequently obtained on April 7, 2022, were
4 also entered by Judge Sciscento. *See* Exhibits 1B and 1D to the Opposition. As such, not one but two
Justice Court magistrates ostensibly have some knowledge of the search warrants at issue.

5 Of course, these facts would not serve LVMPD's argument, and their exclusion is telling.
6 Regardless, LVMPD's argument fails for the myriad of reasons set forth below. This motion can and
7 must be heard by this Court.

8 **1. Relevant Procedural History**

9 Movants filed the instant matter on April 12, 2022, in the Eighth Judicial District Court and
10 were randomly assigned to Department IV. Following Movants' peremptory challenge, on April 14,
11 2022, the matter was randomly reassigned to Department XIV. *See* Notice of Department
12 Reassignment, dated April 14, 2022, on file herein. Thereafter, on April 19, 2022, the Chief Judge of
13 the Eighth Judicial District Court, the Honorable Linda Marie Bell, entered a Minute Order ordering
14 that the case be reassigned to a department that handles criminal matters. *See* Minute Order, dated
15 April 19, 2022, on file herein. The case was then reassigned the following day, consistent with Judge
16 Bell's Order, to this Court. *See* Notice of Department Reassignment, dated April 20, 2022, on file
17 herein. Significantly, Judge Bell, a long-time jurist and criminal practitioner, found no basis to
18 transfer the matter to the Justice Court, where the search warrants were issued and sealed, and indeed
there is none as is explained below.

19 Thereafter, on April 21, 2022, this Court granted Movants' Ex Parte Application for Order
20 and Order Shortening Time and entered the order setting this matter for hearing on May 12, 2022,
21 along with a briefing schedule. *See* Order Shortening Time, dated April 21, 2022, on file herein.
Judicial economy may only be served for the matter to finally be heard as currently assigned.

22 **2. NRS 179.085 Requires the Instant Matter Be Heard By the District Court.**

23 LVMPD wholly ignores NRS 179.085, the statute providing the mechanism for return of
24 property motions *pre-indictment*. Specifically, NRS 179.085(5) states, "[i]f a motion pursuant to this
25 section is filed when no criminal proceeding is pending, the motion must be treated as a civil
26 complaint seeking equitable relief." As this Court is aware, Justice Courts enjoy limited jurisdiction.
27 NRS 4.370 sets forth the civil actions and proceedings over which the Justice Court has jurisdiction,
28 and nowhere in the exhaustive list did the Legislature provide jurisdiction for equitable relief

1 matters, as is required here.

2 The instant Motion seeks the unsealing and review of search warrant materials submitted to
3 the Justice Court and the return of Movants' Property seized under the issued warrants in accordance
4 with NRS 179.085(5). Monetary damages and other matters properly before the Justice Court are not
5 at issue. The District Court, as the only proper court in equity, must retain this matter.

6 Moreover, the specific statute governing the sealing and unsealing of warrant materials
7 permits jurisdiction in this Court. "Upon a showing of good cause, the *magistrate* may order an
8 affidavit or a recording of an oral statement given pursuant to this section to be sealed. Upon a
9 showing of good cause, *a court* may cause the affidavit or recording to be unsealed." NRS
10 179.045(4) (emphasis added). Courts must examine the plain language of a statute to determine the
11 Legislature's intent, must "avoid statutory interpretation that renders language meaningless or
12 superfluous," and "[if] the statute's language is clear and unambiguous, [must] enforce the statute as
13 written." *Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011).

14 Pursuant to NRS 179.045(4), the magistrates in this case can and did seal the search warrant
15 affidavits, and *any court*, including this Court, can unseal them. If the Legislature intended to craft a
16 law that only permitted the issuing magistrate to unseal an affidavit, it would have so specifically
17 stated. It did not. This Court may and should retain jurisdiction and unseal the affidavits.

18 **3. Local Rules and Judicial Economy Warrant Retention of This Matter.**

19 EDCR 1.30(b)(15) vests the Chief Judge with the authority to "[r]eassign cases from a
20 department to another department as convenience or necessity requires." And indeed, Chief Judge
21 Bell reassigned this case from Judge Escobar to this Court. Notably, Chief Judge Bell, who herself is
22 a veteran criminal practitioner, did not transfer this matter to the Justice Court, as LVMPD asserts
23 should be done. Judge Bell recognized what this Court will recognize; this matter is properly before
24 this Court.

25 Finally, despite LVMPD's unsupported claim to the contrary, judicial economy favors
26 retention of this matter in this Department. The search warrants at issue were executed more than
27 thirty (30) days ago. This case has been reassigned twice, significantly slowing consideration of this
28 time sensitive matter. And, as of the date of this filing, LVMPD enjoys possession of, and has
unrestricted access to, the seized Property, much of which contains information and communications
indisputably protected by the attorney-client and accountancy privileges and the work product
doctrine. Absent court intervention, these materials remain vulnerable to improper examination, and

1 further reassignment will only serve to further delay court review of Movants' grievances and
2 issuance of the critical relief they seek in order to preserve these fundamental privileges.

3 **B. ACCESS TO WARRANT MATERIALS PRE-INDICTMENT IS LEGALLY**
4 **PERMITTED, AND LVMPD HAS FAILED TO MEET ITS BURDENS OF**
5 **DEMONSTRATING A COMPELLING INTEREST FOR, AND THE LACK OF**
6 **LESSER RESTRICTIVE MEANS TO, CONTINUED SEALING.**

7 LVMPD asserts that it "is well established that the on-going criminal investigation serves as
8 a compelling reason against the disclosure of search warrant materials" and that "there is no
9 established qualified right of access to search warrant proceedings and materials while a criminal
10 investigation remains ongoing;" citing to *Times Mirror Co. v. U.S.*, 873 F.2d 1210 (9th Cir. 1998) in
11 support of those statements. Opposition at 9:20-24. It also argues that *U.S. v. Business of Custer*
12 *Battlefield Museum and Store*, 658 F.3d 1188 (9th Cir. 2011), "affirmed its *Times Mirror*
13 *decision[.]*" Opposition at 11:3-4. LVMPD, however, overstates *Times Mirror*, ignores the
14 procedural posture of these matters, utterly fails to meet its burden under applicable case law, and
15 misrepresents the holding of *Custer Battlefield*.

16 First, *Times Mirror* is factually distinguishable from the matter at bar and at least two other
17 courts have rejected the very arguments LVMPD makes here. See *In re Searches & Seizures*, 2008
18 WL 5411772, at *3 (E.D. Cal. Dec. 19, 2008) (emphasis added) (the government there similarly
19 arguing "that in [*Times Mirror Co*] the court held that 'sealed warrant affidavits should not be
20 ordered unsealed before an indictment is returned," which the court succinctly rejected: "[t]his court
21 *disagrees.*"). In addition, as *Searches & Seizures* noted, the *Times Mirror* court was only presented
22 with the question of "whether *the media* has a qualified right of access" to sealed search warrant
23 materials and had "merely held that . . . no such right" existed. *Id.* Relevant here, *Times Mirror* did
24 not "address the entirely different question of *a property owner's* 'abiding interest in challenging the
25 reasonableness of the government's invasion of his property and/or privacy' which is left
26 unanswered by inquiries into the general public's right of access to search warrant materials." *Id.*
27 More recently, the Eastern District of California, in specifically addressing that "unanswered"
28 question, observed that "there exists a *private* 'right of access under the Fourth Amendment to the
affidavit in support of the search warrant' during the pre-indictment stage, *which vests with the*
individual or entity whose property was seized." *Societe d'Equipments Internationaux Nigeria, Ltd.*
v. Dolarian Cap., Inc., 2016 WL 4191887, at *1 (E.D. Cal. Aug. 8, 2016) (all emphasis added) (in
fact quoting *In re Searches & Seizures*, 2008 WL 5411772). It is under this private *constitutional*
right of access that Movants, as the persons from whom the Property was seized, seek to unseal the

underlying warrant materials. Moreover, there is extensive caselaw support for the proposition that the *target* of a search warrant has the *right* of access to the underlying support materials, *and to obtain the same pre-indictment*.¹

Once the warrants have been returned (as here; Exs. 1A -1D to the Opposition), unsealing the application materials is, indeed, standard fare.² In fact, analogous Fed. R. Crim. P. 41(i) provides as such. *See* 8A Fed. Proc., L. Ed. § 22:211 (noting Fed. R. Crim. P. 41(i) “contemplates that, *upon the warrant’s return*, all papers in connection with the warrant—including the application or affidavit in support of the warrant—will be made public”) (emphases added).³

¹ *See, e.g., In re Search Warrant for 2934 Anderson Morris Rd., Niles, Ohio 44406*, 48 F. Supp. 2d 1082, 1083 (N.D. Ohio 1999) (“a person whose property has been seized pursuant to a search warrant has a *right* under the Warrant Clause of the Fourth Amendment *to inspect and copy the affidavit upon which the warrant was issued*.”) (emphasis added); *e.g., In re Search Warrants Issued in Connection with Investigation of Death of Michael Jackson*, Eighth Judicial District Court Case No. A-09-601140-C, dated Nov. 20, 2009 (courtesy copy attached hereto as **Exhibit J**) (unsealing search warrant materials during criminal investigation into Michael Jackson’s death); *In re Search Warrants Issued on Apr. 26, 2004*, 353 F. Supp. 2d 584, 591 (D. Md. 2004) (affirming the magistrate’s order and recognizing “a search subject’s pre-indictment Fourth Amendment right to inspect the probable cause affidavit”); *Matter of Up N. Plastics, Inc.*, 940 F. Supp. 229, 232 (D. Minn. 1996) (denying government’s pre-indictment motion to keep in place a previously entered order sealing the affidavit in support of a search warrant”); *In re Search Warrants Issued Aug. 29, 1994*, 889 F. Supp. 296, 299 (S.D. Ohio 1995) (granting a home and business owner’s pre-indictment motion to unseal search warrant materials, stating “the Fourth Amendment right to be free from unreasonable searches and seizures includes the right to examine the affidavit that supports a warrant after the search has been conducted and a return has been filed”); *United States v. Oliver*, 208 F.3d 211, *2 (4th Cir. 2000) (table decision) (recognizing a Fourth Amendment right to examine the search warrant affidavit); *In the Matter of the Search of a Residence*, 121 F.R.D. 78, 80 (E.D. Wisc. 1988) (emphasis and clarification added) (“They [the subjects of the warrant] have a right to know what information is contained in the applications in order to determine *whether or not they wish to pursue a return of the seized property*.”).

² *See, e.g., United States v. All Funds on Deposit at Wells Fargo Bank in San Francisco, California, in Acct. No. 7986104185. Held in the Name of Acct. Servs. Inc., & All Prop. Traceable Thereto*, 643 F. Supp. 2d at 586 (S.D.N.Y. 2009) (unsealing narrowly redacted versions of warrant application materials despite the fact that the government “has not yet publicly filed a criminal or civil forfeiture action and that it is actively investigating matters discussed in the affidavits that [intervenor] seeks to unseal”); *Matter of Found. Foods Grp., Inc.*, 21 WL 2561772, at *3 (N.D. Ga. June 3, 2021) (unsealing the docket “except” documents related to the warrant application, “which are to remain sealed pending the execution of the warrant”), *report and recommendation adopted sub nom., United States v. Found. Foods Grp., Inc.*, 2021 WL 4900948 (N.D. Ga. Oct. 18, 2021); *In re Documents 1, 2, 3 Search Warrant & Supporting Affidavits Relating to Kaczynski*, No. MCR 96-6-H-CCL, 1996 WL 343429, at *1 (D. Mont. Apr. 10, 1996) (unsealing warrant materials after “[t]he return of the search warrant . . .”).

³ NRS 179.075 and Fed. R. Crim. P. 41(i) are quite similar in their warrant return requirements. “[W]here Nevada statutes track their federal counterparts, federal cases interpreting the rules can be instructive[.]” *In re 12067 Oakland Hills, Las Vegas, Nevada 89141*, 134 Nev. 799, 805, 435 P.3d 672, 677 (Nev. App. 2018). Thus, the cases and federal supplement cited above are instructive here;

1 This, of course, makes perfect sense where: i) there may *never* be any criminal charges
2 brought and, absent this reasoning, private property could be retained by the government *forever*
3 without any showing of constitutional justification; and ii) targets of searches and seizures have an
4 absolute right to challenge the validity and legality of the same but obviously cannot competently do
5 so unless they can *review and analyze the sufficiency* of the affidavits and other supporting materials
6 that served as the underlying constitutional basis for the issuance of the warrants.

7 Nevertheless, LVMPD cites to *U.S. v. Business of Custer Battlefield Museum and Store*, 658
8 F.3d 1188 (9th Cir. 2011) as supposedly “affirming” its interpretation of *Times Mirror*. Opposition
9 at 11:3-6. Not so. Rather, *Custer Battlefield* answered one of the questions left open by *Times*
10 *Mirror*: “[w]hether the common law right of access applies to warrant materials after an
11 investigation has ended[.]” 658 F.3d at 1192. *Custer Battlefield* unequivocally held that it did, but its
12 ruling cuts directly against LVMPD’s position in that it explicitly stated that this right *also applies*
13 *even before the investigation is terminated*. “Search warrant applications generally are unsealed at
14 later stages of criminal proceedings, such as upon the return of the execution of the warrant[.]”
15 *Custer Battlefield*, 658 F.3d at 1193-94 (emphasis added; quoting *United States v. All Funds on*
16 *Deposit at Wells Fargo Bank in San Francisco, California, in Acct. No. 7986104185, Held in the*
17 *Name of Acct. Servs. Inc., & All Prop. Traceable Thereto*, 643 F. Supp. 2d 577, 581 (S.D.N.Y.
18 2009)). And, of course, as noted above, the calculus changes when it is not the general public
19 requesting to unseal the warrant materials but, rather, the person whose property has been seized.

20 Second, recognizing the balancing of rights that sealing requires, *some*—not all—courts have
21 concluded that certain circumstances may justify that warrant materials be kept confidential post
22 return. In such cases, however, “**the government** must demonstrate to the court that a **compelling**
23 **government interest** requires the materials to be kept under seal **and that there is no less restrictive**
24 **means, such as redaction, capable of serving that interest.**” *Searches & Seizures*, 2008 WL
25 5411772, at *3 (citing *In re Search Warrants Issued Aug. 29, 1994*, 889 F. Supp. 296, 299 (S.D.
26 Ohio 1995)).

27 Here, LVMPD’s only asserted interest is the rote line that “on-going criminal investigation
28 serves as a compelling reason[.]” Opposition at 9:20-21, 11:25-26. **But nowhere does LVMPD assert**
29 **any reason whatsoever to be able to retain attorney/client and accountancy privileged materials.**
30 And, LVMPD’s claimed “on-going criminal investigation” interest, without more, has been found to

especially, given the lack of authority from Nevada courts.

1 be *insufficient* to maintain warrant affidavits under seal. See *United States v. Wei Seng Phua*, No.
2 2:14-CR-00249-APG, 2015 WL 1281603, at *3 (D. Nev. Mar. 20, 2015) (“[T]he government’s
3 unsupported statement that disclosure of the information in the search warrants ‘might possibly
4 jeopardize the investigation’ and that the government’s ‘right to secrecy far outweighs the public
5 right to know^[4]’ do not support maintaining the applications and warrants under seal.”).⁵ LVMPD
6 has not provided any information whatsoever to permit the Court to invoke a less restrictive remedy.
7 Moreover, such bald and unsupported assertions by the government are insufficient to outweigh the
8 Movants’ right of access. As one court explained: “More than a conclusory allegation of an ongoing
9 investigation is required, however. The government must make *a specific factual showing of how* its
10 investigation *will be compromised* by the release of the affidavit[.]” *Up North Plastics*, 940 F. Supp.
11 at 233 (emphasis added); *Accord in re Search Warrant for Second Floor Bedroom*, 489 F. Supp.
12 207, 210 (D.R.I. 1980) (emphasis added) (“A general allegation, totally unsupported by any
evidence or explanation is **not** enough[.]”). LVMPD does not even *attempt* to make such a factual
showing.

13 Then, somewhat astonishingly, LVMPD actually argues for an interest in “protect[ing]”
14 *Movants* from “possible injury to privacy interests[.]” Opposition at 10:24-25. Movants, however,
15 are not interested in having LVMPD “protect” their interests—they’d much rather have their
16 privileged materials returned, *and immediately so*.

17 And further tipping the scales in Movants’ favor is LVMPD’s concession that “[t]his
18 investigation is complex and . . . this process can take *many months*,” Opposition at 16:18-21

19 4 As pointed out above, at issue here is not the public's right to know but, rather, the targets’
20 constitutional right to review and potentially challenge the affidavits that caused the seizure of
21 voluminous business records and personal information, including communications protected under
the attorney-client and accountancy privileges.

22 ⁵ LVMPD’s conclusory assertion (in its statement of facts; it does not substantively argue this point
23 in its memorandum) that if the warrant materials were unsealed, “it is *possible* that additional
24 evidence necessary for the investigation would be destroyed,” Opposition at 4:26-27 (emphasis
25 added), should be afforded little weight. First, LVMPD does not identify any type or form of
26 evidence that it believes “could” be destroyed with the unsealing of the affidavits. Second, LVMPD
27 fails to explain in any logical fashion whatsoever how the unsealing of affidavits so as to permit
28 Movants to be able to demonstrate that there was no basis to either seize or search privileged
materials could result in *other evidence* being destroyed. And, of course, if LVMPD had at the very
least articulated *what evidence* it is concerned about being destroyed and, more importantly, how
specifically the unsealing of the affidavits could lead to such conduct, this Court could, of course,
redact any such *limited portions* of the affidavits. But the Court can’t do that because LVMPD has
not provided it with any information whatsoever to permit the Court to invoke a less restrictive
remedy.

1 (emphasis added), and its admission that it actually “need[s] to purchase additional equipment” in
2 order to be able to review some of the seized materials. *Id.* at 6:20. With supply chains the way they
3 are today, there is no way of knowing how long it may take LVMPD to obtain such unidentified
4 “additional equipment,” and LVMPD provides no estimate of time or costs. Opposition at p. 6:20.
5 Concern over the prolonged nature of governmental investigations has been specifically noted by the
6 Ninth Circuit in *Offs. of Lakeside Non-Ferrous Metals, Inc. v. United States*, 679 F.2d 778 (9th Cir.
7 1982), where the court observed: “the Government has the obligation to conduct its investigation
8 with diligence, for under any other interpretation, the Government, having all its evidence under
9 seal, might be inclined to delay proceedings, rather than to expedite them.” *Id.* at p. 779-80.⁶

10 Nor does LVMPD seriously attempt to fulfill the second prong of its burden: establishing that
11 lesser restrictive options—such as redaction, attorney’s eyes-only unsealing, or even execution of
12 non-disclosure agreements—would fail to serve its supposed continued-sealing interest. LVMPD
13 simply cites to *In re Search Warrant for Secretarial Area Outside Off. of Gunn*, 855 F.2d 569 (8th
14 Cir. 1988), for the proposition that “sealing the search warrant materials in the entirety is the less
15 restrictive means due to the active investigation.” Opposition at 12:3-4. Comparing this case to
16 *Gunn*, however, is apples to oranges.

17 Unlike the facts and circumstances at bar, fundamental privileges were not at issue in *Gunn*
18 (the media, not *Gunn*—the target of the warrant, who actually “opposed unsealing the affidavits”—
19 sought to unseal the materials). 855 F.2d at 571. In addition, the district court there “reviewed the
20 sealed documents and determined that redaction on a line-by-line basis was impracticable because of
21 the complex and interrelated nature of the allegations and the large number of individuals and
22 activities involved.” *Id.* The investigation in *Gunn* involved a “large number of individuals and
23 activities involved,” and the simultaneous execution of “more than 40 search warrants at various
24 sites across the nation in connection with a nationwide investigation conducted by the [FBI] and
25 Naval Investigation Service of alleged fraud and bribery in the Department of Defense and in the
26 defense industry.” *Id.* at 570-71.

27 By comparison, LVMPD admits its investigation revealed a total of only six individuals
28 (between *both* the Hustler Club and Little Darlings) purportedly observed soliciting for the purpose
of prostitution, Opposition at 3:24-25, 4:7-8, one individual who had allegedly “been sexually

⁶ It also must be emphasized that included in the materials seized were *personal* cell phones and laptop computers containing a great deal of information of specific necessity to their owners. LVMPD does not even *attempt* to address the difficulties caused to these individuals by the seizure of their personal equipment or to give them any hope of return in the foreseeable future.

1 assaulted,” *id.* at 4:6; and that “undercover investigations . . . led entertainers to solicit *an*
2 undercover officer for sex.” [Declaration of Robert Chavez, at ¶¶12, 26 (emphasis added)]. Thus, at
3 most, LVMPD has evinced nine people (assuming it was a different officer allegedly solicited for
4 sex at the Hustler Club and Little Darlings), and only two businesses involved. More to the point,
5 however, no matter how complex LVMPD may believe its present investigation to be, it has
6 supplied *no evidence whatsoever* that its complexity is such that line-by-line redaction of the
7 underlying warrant materials would be impracticable. Yet, that is the constitutional burden placed on
LVMPD.⁷

8 Simply put, constitutionally, the blanket sealing of warrant materials is the option of last
9 resort; not the default option. *See Howard v. State*, 128 Nev. 736, 745, 291 P.3d 137, 143, n.4 (2012)
10 (citing SRCR 3(5)(b), (c) and SRCR 3(6) in a criminal case and ruling that “sealing of an entire
11 court file is prohibited and . . . should the court order sealing, it ‘shall use the least restrictive means
12 and duration’”); *see also Kasza v. Whitman*, 325 F.3d 1178, 1181 (9th Cir. 2003) (where release of
13 court records poses risk to *national security*, “[p]ublic release of redacted material is an appropriate
14 response”) (emphasis added); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1074 (3d Cir. 1984)
15 (noting the district court abused its discretion when it “failed to consider less restrictive means to
16 keep this information from the public”).

17 LVMPD failed to meet its burden of demonstrating both a compelling interest in continued
18 sealing and that lesser restrictive means would not preserve any such unarticulated interest.

19 **C. MOVANTS HAVE MET THEIR EVIDENTIARY BURDEN.**

20 Contrary to LVMPD’s argument, Movants have met their burden, and the ongoing

21 ⁷ *See, e.g., In re Providence Journal Co.*, 293 F.3d 1, 15 (1st Cir. 2002) (“[T]he First Amendment
22 requires consideration of the feasibility of redaction on a document-by-document basis.”); *In re N.Y.*
23 *Times Co.*, 834 F.2d 1152, 1154 (2d Cir. 1987) (approving of requirement “to minimize redaction in
24 view of First Amendment considerations”); *Matter of Search Warrants Issued on June 11, 1988, for*
25 *the Premises of Three Buildings at Unisys, Inc.*, 710 F. Supp. 701, 705 (D. Minn. 1989) (with respect
26 to warrant materials, “[w]here redaction is required to protect privacy interests, it must be narrowly
27 tailored to allow as much disclosure as is feasible”); *United States v. Packard*, 733 F.3d 1297, 1303-
28 05 (10th Cir. 2013) (noting under the common law right of access to judicial records, a party seeking
to maintain sealing must demonstrate that “redacting documents instead of completely sealing them
would [not] adequately serve [the] government interest to be protected”); *In re Application of*
Newsday, Inc., 895 F.2d 74, 79 (2d Cir. 1990) (approving of a trial court’s release of redacted
probable cause affidavits to protect privacy interest of innocent third parties whose names were
redacted); *Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 66 (4th Cir. 1989) (cleaned up) (“[T]he judicial
officer must consider alternatives to [blanket] sealing [of] documents. This ordinarily involves
disclosing some of the documents or giving access to a redacted version.”).

1 investigation does not prohibit return of the property, Opposition at 13-16; the latter having been
2 established by the clear line of authorities discussed, *supra*.

3 While LVMPD asserts that Movants have not established the privileged nature of a great deal
4 of the information seized, in addition to the declaration of Deanna Forbush in the Motion and the
5 additional declarations filed contemporaneously herewith, *see Exhibit I*, LVMPD basically
6 concedes that, as a result of its “protocol” arguments, Opposition at 16-17, there is indeed privileged
7 information found in the seized Property. The question then becomes whether it is reasonable under
8 the totality of the circumstances for LVMPD to *retain* those privileged materials and search through
9 them. Opposition at 13 (citing *Las Vegas Metro Police Dep’t v. Anderson (In re 12067 Oakland Hills, Las Vegas)*, --- Nev. ---, 435 P.3d 672, 678 (2018)). It is not.

10 As discussed above, without permitting Movants access to the sealed original search warrant
11 affidavits, neither Movants nor this Court are able to determine whether there is anything contained
12 therein that either requests, or justifies, not only the seizure of, but now the searching through,
13 privileged information and communications. In addition, of course, assuming that there is nothing in
14 those affidavits to justify the seizure of privileged information, which LVMPD’s silence on this topic
15 basically concedes, there is then absolutely no basis whatsoever for either LVMPD’s continued
16 retention of the same (either pending completion of the investigation, the issuance of criminal
17 charges, or even for one second longer) or its review thereof. While LVMPD argues that a motion
18 for return of property is properly denied if the government’s need for the property continues,
19 Opposition at 14, it has articulated absolutely no basis whatsoever to retain privileged information,
20 personal computers and cell phones, or computer records of these businesses, necessary for, among
21 other things, business operations, personal matters, litigation (unrelated to the underlying claims)
22 support, and tax compliance purposes.

23 The assertion that Movants have failed to provide “any evidence whatsoever to demonstrate
24 any irreparable injury,” Opposition at 15, is, of course, nothing short of preposterous. Centrally at
25 issue here are materials and communications protected by these fundamental privileges, which
26 LVMPD admits it intends to have its personnel *review* short of further intervention by this Court.

27 **D. LVMPD’S SUGGESTED PROTOCOLS ARE DEFICIENT, AS NOTED BY**
28 **NUMEROUS COURTS.**

LVMPD’s dismissive response to Movants’ privilege concerns demonstrates better than any
argument Movants could make why LVMPD’s unfettered access to the seized Property requires this
Court’s immediate intervention.

1 In its quest for purported “proof” of prostitution activities at Movants’ businesses, which
2 LVMPD apparently did not find any hard evidence of, LVMPD resorted to seizing all electronic
3 storage devices it came across without regard to the ownership or contents thereof, as well as
4 volumes of documents, for purposes still unknown to Movants and the Court. LVMPD now asks the
5 Court to condone this fishing expedition on the basis that “a separate section, DFL, conducts the
6 search and provides only evidence within the scope of the warrant . . . [and] [p]rivileged material,
7 like attorney-client communications or accountant-client communications are [*sic*] able to be
8 screened if information is provided to LVMPD.” *See* Opposition at 17:14-17. This “protocol” in no
9 way fixes the privilege issues.

10 LVMPD’s proposed use of a subset of its department (here, the DFL) to substantively review
11 attorney-client (and accountant-client) communications has been resoundingly criticized by courts
12 and commentators. The practice inherently invades privilege and work product protections because it
13 does not prevent the government from reviewing privileged documents; it merely “changes the
14 identity of the government attorneys and agents who first review that information.” *See, e.g.,* Loren
15 E. Weiss & Gregory S. Osborne, *Taint Teams and the Attorney-Client Privilege*, American Bar
16 Association (Dec. 2015). These practices have regularly been called into question because
17 government agents cannot be expected to just ignore material when it contains privileged
18 communications and products. If governmental functionaries find information that they think may
19 help a prosecution, their natural tendency will, of course, be to try to find ways to disclose and use
20 the information. Such “conscious knowledge” can “lead investigators to unconsciously alter the
21 course of investigation and prosecution for other criminal matters.” *Id.* at 5.

22 As one Federal District Court noted, “[L]iberal use of taint teams should be discouraged
23 because they present ‘inevitable and reasonably foreseeable risks that privileged information may be
24 leaked to prosecutors.’” *United States v. Renzi*, 722 F. Supp. 2d 1100, 1112 (D. Ariz. 2010) (quoting
25 *In re Grand Jury Subpoenas*, 454 F.3d 511, 523 (6th Cir. 2006)). The court reasoned:

26 [T]he government taint team may have an interest in preserving privilege, but it also
27 possesses a *conflicting interest* in pursuing the investigation, and, human, nature being
28 what it is, occasionally some taint team attorneys will make mistakes or violate their
ethical obligations.

Id. (emphasis added). Certainly nothing is different for government investigators who themselves are
not even bound by attorneys’ ethical obligations.

Other courts have been equally critical of the practice, if not more so. “When considering the
purposes of the attorney-client privilege, it is obvious that no governmental entity should

1 intentionally review privileged material without the express approval of the court.” *United States v.*
2 *Pedersen*, 2014 WL 3871197, at *29 (D. Or. 2014). “It would be a rare defendant who would feel
3 comfortable speaking openly with his defense attorney knowing that somebody from the
4 government, even a filter team attorney, was reviewing those communications.” *Id.* Moreover, such
5 procedures should only be used as a last resort. *See id.* at *31 (“If there is a feasible means to
6 segregate privileged material without risk of accidental review and without use of a taint team, such
7 means should be employed.”). Similarly, in *United States v. Neill*, 952 F. Supp. 834 (D.D.C. 1997),
8 the reviewing court held that “the government’s affirmative decision to invoke [taint team]
9 procedures constitutes a per se intentional intrusion” into the attorney-client relationship. *Id.* at 840-
41.

10 Where the government chooses to take matters into its own hands rather than using the
11 more traditional alternatives of submitting disputed documents under seal for in
12 camera review by a neutral and detached magistrate or by court-appointed special
13 masters,....it bears the burden to rebut the assumption that tainted material was
14 provided to the prosecution team.
15 *Id.* at 841 (emphasis added; internal citations omitted).

16 In fact, LVMPD has disclosed nothing about what its DFL section has done in the past or
17 how it intends to guarantee the protection of the privileges here. Moreover, given the broad scope of
18 the privileged materials seized here, it is impossible to see how agents in the DFL section could
19 possibly assess privilege, both attorney and accountancy, and work product protections, without
20 understanding the actual relationships, agreements, and transactions among the various actors;
21 information that is, itself, subject to privilege. Moreover, LVMPD’s Opposition actually
22 acknowledges coordination between its detectives and its DFL section. *See* Opposition at 6:27-7:5.
23 Yet, the point of setting aside potentially privileged materials is to ensure the government itself,
24 irrespective of which agent or employee may be involved, *does not know, is not able to read, and is*
25 *not able to access*, its contents.

26 For these reasons, as recognized in *United States v. Neill*, the Court should itself or through
27 its duly appointed special master review Movants’ privilege claims, after returning the items to
28 Movants to review and prepare the appropriate privilege logs. *Neill*, 952 F. Supp. at 841. The
spurious suggestion that Movants, who are long time business operators and holders of lucrative
privilege licenses, would attempt to destroy evidence or could even do so without such actions being
obvious, should not be countenanced by the Court. Instead, the Court should exercise its
considerable discretion to ensure the proper balance is struck between the needs of LVMPD to
investigate and the privileges implicated in that investigation by the broad-sweeping seizures

1 following execution of the search warrants.

2 Nevada law is well settled that the burden of establishing that a privilege exists falls to the
3 party claiming the privilege, which Movants can only accomplish upon the return of the items
4 seized. *See Rogers v. State*, 127 Nev. 323, 330, 255 P.3d 1264, 1268 (2011). To assert and correctly
5 preserve the privilege, it will be necessary for Movants to identify and sufficiently describe any
6 information sought to be permanently withheld to permit LVMPD to meaningfully challenge
7 whether it has been properly designated. *See Nev. Power Co. v. Monsanto, Co.*, 151 F.R.D. 118, 121
8 n. 5 (D. Nev. 1993). Under this protocol, the Court or the special master would then have access to
9 the information withheld as privileged or work product, and LVMPD, in turn, would be entitled to
10 the return of everything not sought to be withheld and anything deemed by the Court as not properly
11 withheld.

12 This well-settled procedure is the only one that truly strikes the appropriate balance between
13 “the rights of suspects with the rights of victims to obtain justice,” as LVMPD itself recognizes must
14 be the case for its search to be reasonable. Opposition at 17:23-24.

15 **E. NRS 179.105 APPLIES TO THE CIRCUMSTANCES AT BAR.**

16 LVMPD also asserts that NRS 179.105 is inapplicable to this proceeding. Yet, its contorted
17 statutory “construction” between NRS 179.105 and NRS 179.11518 would dictate the conclusion
18 that there is no procedure whatsoever for a court to compel the return of privileged materials seized
19 from a *client*, as opposed to the attorney. *That cannot be the law of this State.*

20 Initially, LVMPD employs no tools of statutory interpretation and, predictably, reaches an
21 incorrect outcome.⁸ Courts are to “presume that the Legislature enacted the statute ‘with full
22 knowledge of the existing statutes relating to the same subject.’” *Nevada Att’y for Injured Workers v.*
23 *Nevada Self-Insurers Ass’n*, 126 Nev. 74, 84, 225 P.3d 1265, 1271 (2010) (quoting *State, Div. of Ins.*
24 *v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 294, 995 P.2d 482, 486 (2000)). They are also to
25 “construe statutes to give meaning to all of their parts and language, and this court will read each
26 sentence, phrase, and word to render it meaningful within the context of the purpose of the
27 legislation. Further, *no part of a statute should be rendered meaningless* and its language should

28 ⁸ LVMPD also attempts to fault Movants for “cit[ing] to no authority,” yet as they are well aware
there is a dearth of authority surrounding these statutes—most likely because of how new they are. In
fact, there are a total of eleven cases from Nevada courts (including federal) that cite to NRS 179.105
and zero citing to NRS 179.11518. Of the eleven, none are particularly relevant to the topic at issue
here.

1 not be read to produce absurd or unreasonable results.” *Harris Assocs. v. Clark Cty. Sch. Dist.*, 119
2 Nev. 638, 642, 81 P.3d 532, 534 (2003) (cleaned up; citations and quotation marks omitted;
3 emphasis added).

4 Yet, LVMPD’s restrictive interpretation would render the entire following line from NRS
5 179.105 meaningless: “or that the property is determined pursuant to NRS 179.11518 to be subject
6 to the attorney-client privilege.” And, of course, NRS 179.11518 already instructs, in the context of
7 seizing property of an attorney, to return the property “as provided in NRS 179.105[.]” NRS
8 179.11518. If NRS 179.105 was not intended to also command the return of property seized from a
9 *non*-attorney, it would not have been necessary to include the reference to NRS 179.11518 because
10 NRS 179.11518 already commands the return of property subject to the attorney-client privilege
11 seized from an attorney.

12 Furthermore, in 2017, Laws 2017, c. 236, § 6, eff. Oct. 1, 2017, the Legislature both created
13 NRS 179.11512, *et seq.* and amended NRS 179.105. That law’s amendment to NRS 179.105
14 consisted purely of adding the quoted line above that LVMPD seeks to render nugatory. In other
15 words, under the presumption that the Legislature knows the statutes relating to the subject at issue,
16 and giving effect to each sentence, phrase, and word, the Legislature: 1) created the code sections
17 relating to search warrants for attorney’s property; and also 2) amended the *existing* statute relating
18 to general search warrants (NRS 179.105) to include a third statutory reason where “the magistrate
19 shall cause it [the property] to be restored to the person from whom it was taken.” NRS 179.105. The
20 intent is clear: if “property is determined pursuant to NRS 179.11518 to be subject to the attorney-
21 client privilege, [then] the magistrate shall cause it to be restored to the person from whom it was
22 taken.” *Id.*

23 Under rules of statutory construction, the only permissible reading of NRS 179.105 is that
24 there are now three circumstances under which the court “shall cause [the seized property] to be
25 restored to the person from whom it was taken.” NRS 179.105. Those include, “[i]f it appears that”
26 1) the seized property “is not the same as that described in the warrant,” 2) the warrant lacked
27 probable cause, and 3) “the property is determined pursuant to NRS 179.11518 to be subject to the
28 attorney-client privilege.” NRS 179.105.

29 Finally, NRS 179.11518 does *not* state that the district attorney or the Attorney General is
30 “required to review the property for attorney-client privilege[d]” material as LVMPD advocates.
31 Opposition at 16:7-8. That would, of course, completely defeat the purpose of the privilege itself and
32 would, circularly, be like (and actually is) having opposing counsel review the privileged materials

1 themselves to confirm the privileged nature of the information. Rather, NRS 179.11518 says the
2 district attorney or the Attorney General “shall ensure that any property seized . . . is reviewed to
3 determine whether the attorney-client privilege applies[.]” (emphasis added).⁹ Thus, the Court (or its
4 *independent* and neutral designee) is presumed to be the proper reviewer; not an opposing party.

5 III.

6 CONCLUSION

7 The Search Warrants resulting in the seizure of documents, laptop computers, cellular
8 telephones and other digital storage devices, invited the investigative agents to rummage through the
9 entire contents thereof regardless of the undisputed fact that the seized Property contains privileged
10 materials. In light thereof, the Search Warrants were fatally overbroad in their scope and should be
11 quashed, or, at a minimum, narrowed by this Court by way of a protective order to protect Movant’s
12 statutory and common law privileges. Any items seized should be held by the Court until such time
13 as the Court can implement appropriate and independent search protocols to preserve privilege, and
14 any items not properly subject to the Warrants should be returned. Further, as good cause exists for
15 Movants to be afforded the opportunity to examine the facts upon which the Search Warrants were

16 ///

18 ///

21 ///

26 ⁹ NRS 179.11516 provides the optional process, through the use of the term “may,” for reviewing
27 material “during a search conducted pursuant to a search warrant issued pursuant to NRS
28 179.11514,” but even then, it does not permit the involvement of persons who participated in the
searches themselves, in this case the DFL, and specifically requires attorney involvement, not just a
“supervisor in [LVMPD’s] Digital Forensics Lab.” Johnson Declaration, at ¶ 2.

made, the supporting Affidavits and other warrant materials should be unsealed and provided to
Movants immediately upon the Court's order.

Dated this 9th day of May, 2022.

FOX ROTHSCCHILD LLP

By: /s/ Deanna L. Forbush

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

SHAHER & ASSOCIATES, P.C.

3800 Capital City Blvd., Suite 2

Lansing, Michigan 48906

Telephone: (517) 886-6560

Attorneys for Movants/Real Parties in Interest

CERTIFICATE OF SERVICE

I certify that I am an employee of Fox Rothschild LLP, and on the 9th day of May, 2022, I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION OF REAL PARTIES IN INTEREST TO (1) UNSEAL SEARCH WARRANT APPLICATIONS AND SUPPORTING AFFIDAVITS, (2) QUASH SEARCH WARRANTS, AND (3) RETURN SEIZED PROPERTY** via electronic service by operation of the Court's electronic filing system, upon each party and counsel in this case who is registered as an electronic case filing user with the Clerk, as follows:

Nick Crosby, Esq.
Jacqueline Nichols, Esq.
Marquis Aurbach
10001 Park Run Drive
Las Vegas, NV 89145
ncrosby@maclaw.com
jnichols@maclaw.com
*Attorneys for Real Party in Interest,
Las Vegas Metropolitan Police Department*

/s/ Jineen DeAngelis
An employee of Fox Rothschild LLP

EXHIBIT “I”

DECLARATION OF JASON C-H MOHNEY IN SUPPORT OF REAL PARTIES IN INTEREST LAS VEGAS BISTRO, LLC, DBA LARRY FLYNT'S HUSTLER CLUB, AND LITTLE DARLINGS OF LAS VEGAS, LLC, DBA LITTLE DARLINGS, TO (1) UNSEAL SEARCH WARRANT APPLICATIONS AND SUPPORTING AFFIDAVITS, (2) QUASH SEARCH WARRANTS, AND (3) RETURN SEIZED PROPERTY

I, Jason C-H Mohney, pursuant to NRS § 53.045, hereby declare as follows:

1. I make this declaration upon my personal knowledge, unless specifically stated the contrary.

2. I am an adult resident of sound mind of the State of Nevada.

3. I am the Managing Member of Las Vegas Bistro, LLC, d/b/a Larry Flynt's Hustler Club, which is located at 6007 Dean Martin Drive in Las Vegas, Nevada (the "Hustler Club").

4. I am also the Managing Member of Go Best, LLC ("Go Best"). Go Best's offices are located at 3131 Ponderosa Way, Ste. 8500 in Las Vegas, Nevada, which is in the basement of the building that houses the Hustler Club. Go Best's offices have a separate mailing address from the Hustler Club, a locked door, and separate signage.

5. Attached hereto as **Exhibit 1** is a true and accurate photo of the entrance to Go Best's offices taken after the April 5, 2022 raid and the clean-up efforts therefrom, but which still accurately reflects the signage and door lock that were in place before the April 5, 2022 search.

6. Attached hereto as **Exhibit 2** is a true and accurate photo of the interior of Go Best's offices taken after the April 5, 2020 raid and the clean-up efforts therefrom, but which still accurately reflects the signage, decor, and layout of the office as it was before the April 5, 2022 raid.

7. Nearly all of the file cabinets and desk drawers in Go Best's offices were unlocked, yet law enforcement officers executing the warrant still broke the cabinets and drawers.

8. A Go Best laptop, annotated on the Return as "Apple Laptop SN C02VHAAHHTD5," Exhibit 1A to Opposition Brief, was seized from inside Go Best's locked office by law enforcement during the April 5, 2022 police raid of the Hustler Club.

9. In addition to my positions with the Hustler Club and Go Best, I own, directly or indirectly, and/or manage, and/or consult with a large number of businesses across the country.

10. As a result of my various business endeavors, I regularly and frequently correspond, via e-mail, using the seized laptop, with a large number of attorneys across the country who are

1 providing legal advice and services either to me personally or to the businesses with which I am
2 associated. Many of these emails are physically stored on the seized laptop, and all of them are
3 accessible through that laptop. Much of the attorney/client correspondence that is contained on the
4 seized laptop has absolutely nothing whatsoever to do with either the Hustler Club or Go Best, but
5 concerns rather one or more of the other businesses with which I am associated.

6 11. In addition to correspondence either seeking or receiving legal advice, the seized
7 laptop contains many privileged documents prepared and/or created by the attorneys involved for
8 anticipated, pending and/or ongoing litigation.

9 12. In my various business capacities, I also regularly and frequently correspond via e-
10 mail from the seized laptop with a variety of Certified Public Accountants regarding, among other
11 things, accounting matters, tax audits or investigations, litigation support, and the preparation of tax
12 returns. These accountants include, but are not limited to, Angela Swank and Nicole Turnwald of
13 Modern Bookkeeping, Inc., and David Shindel of the accounting firm ShindelRock.

14 13. In addition to mere correspondence either seeking or receiving accounting advice, the
15 seized laptop also contains many privileged documents prepared and/or created by the CPA's that I
16 or the businesses with which I am involved have retained, including but not limited to profit and loss
17 statements, draft tax returns, finalized tax returns, information supporting and annexed to such tax
18 returns, and documents prepared for attorneys in connection with the CPA's litigation support
19 services (including but not limited to for tax audits and investigations). Just as is the case with
20 correspondence from the attorneys discussed above, most of this information that is contained on the
21 seized laptop has nothing whatsoever to do with either the Hustler Club or Go Best, but concerns,
22 rather, one or more of the other businesses with which I am associated.

23 I declare under penalty of perjury under the law of the State of Nevada that the
24 foregoing is true and correct.

25 Executed on 05/09/22
26

DocuSigned by:

993638954B36402
JASON C-H MOHNEY

EXHIBIT “1”



SUITE 8500

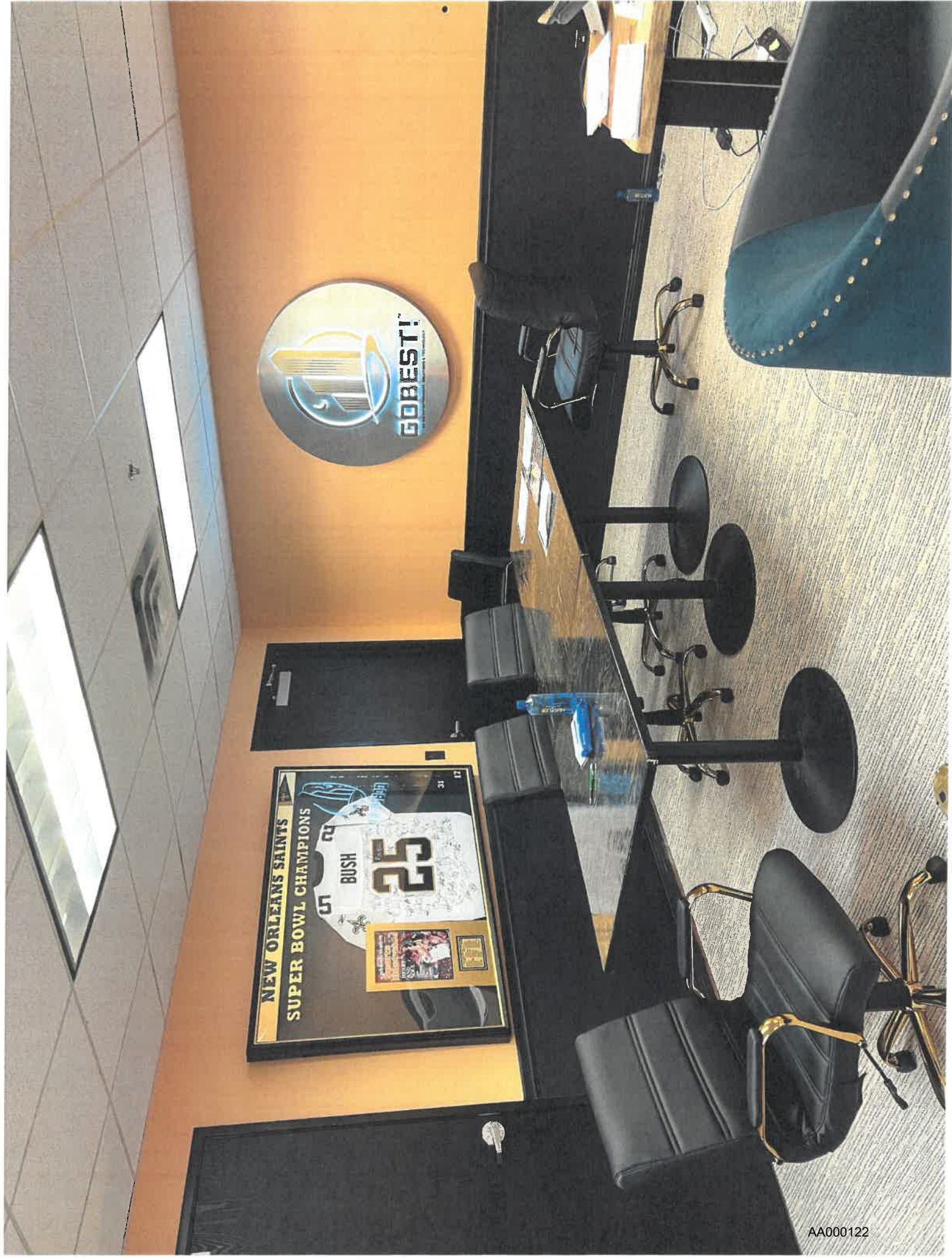


GOBEST!TM

GO BIG ENTERTAINMENT, SOLUTIONS & TECHNOLOGY



EXHIBIT “2”



**DECLARATION OF RALPH JAMES IN SUPPORT OF REAL PARTIES IN INTEREST
LAS VEGAS BISTRO, LLC, DBA LARRY FLYNT'S HUSTLER CLUB, AND LITTLE
DARLINGS OF LAS VEGAS, LLC, DBA LITTLE DARLINGS, TO (1) UNSEAL SEARCH
WARRANT APPLICATIONS AND SUPPORTING AFFIDAVITS, (2) QUASH SEARCH
WARRANTS, AND (3) RETURN SEIZED PROPERTY**

I, Ralph James, pursuant to NRS § 53.045, hereby declare as follows:

1. I make this declaration upon my personal knowledge, unless specifically stated the contrary.

2. I am an adult resident of sound mind of the State of Nevada.

3. I am the General Manager of Las Vegas Bistro, LLC d/b/a Larry Flynt's Hustler Club, Las Vegas (the "Club") at 6007 Dean Martin Drive in Las Vegas, Nevada.

4. My laptop, annotated on the Return as "1x Apple MacBook Laptop," Exhibit 1A to Opposition Brief, was seized by law enforcement during the April 5, 2022, police raid on the Club.

5. I frequently correspond, via e-mail, using the seized laptop, with a large number of attorneys across the country who are providing legal advice and services to me for the Club. Many of these emails are physically stored on my seized laptop, and all of them are accessible through my seized laptop as I was logged into my email accounts and the passwords are stored on the computer at the time it was seized.

6. In addition to simple correspondence either seeking or receiving legal advice, my seized laptop contains many privileged documents prepared and/or created by the attorneys involved for anticipated, pending, and/or ongoing litigation.

7. I also regularly and frequently correspond via e-mail from my seized laptop with a variety of Certified Public Accountants regarding, among other things, accounting matters, tax audits, litigation support, and the preparation of tax returns. These accountants include, but are not limited to, Angela Swank and Nicole Turnwald of Modern Bookkeeping, Inc., and David Shindel of the accounting firm ShindelRock.

8. In addition to mere correspondence seeking or receiving accounting advice, my seized laptop also contains many privileged documents prepared and/or created by the CPA's that the Club retains, including, but not limited to, profit and loss statements, draft tax returns, finalized tax returns, information supporting and annexed to such tax returns, and documents prepared for attorneys in

1 connection with the CPA's litigation support services (including, but not limited to, for tax audits and
2 investigations).

3 9. My seized laptop also contains a wealth of personal information that is completely
4 unrelated to the investigation into the Club, including, but not limited to, access to my various social
5 media accounts; access to my personal email accounts; contact information, including personal
6 addresses, phone numbers, and email accounts, for hundreds of family and friends; and browser
7 histories.

8 **I declare under penalty of perjury under the law of the State of Nevada that the**
9 **foregoing is true and correct.**

10 Executed on 5/9/2022

/s/ Ralph James

RALPH JAMES

1 **DECLARATION OF ANDREA WOODS IN SUPPORT OF REAL PARTIES IN INTEREST**
2 **LAS VEGAS BISTRO, LLC, DBA LARRY FLYNT'S HUSTLER CLUB, AND LITTLE**
3 **DARLINGS OF LAS VEGAS, LLC, DBA LITTLE DARLINGS, TO (1) UNSEAL SEARCH**
4 **WARRANT APPLICATIONS AND SUPPORTING AFFIDAVITS, (2) QUASH SEARCH**
5 **WARRANTS, AND (3) RETURN SEIZED PROPERTY**

6 I, Andrea Woods, pursuant to NRS § 53.045, hereby declare as follows:

7 1. I make this declaration upon my personal knowledge, unless specifically stated the
8 contrary.

9 2. I am an adult resident of sound mind of the State of Nevada.

10 3. I am the Office Manager of Las Vegas Bistro, LLC d/b/a Larry Flynt's Hustler Club,
11 Las Vegas (the "Club") at 6007 Dean Martin Drive in Las Vegas, Nevada. I have nothing to do with
12 entertainers who perform at the Club, or the interactions between Club management and those
13 entertainers.

14 4. On April 5, 2022, members of the Las Vegas Metro Police Department ("LVMPD")
15 conducted a raid on the Club. I was present during the raid.

16 5. My personal cell phone, annotated on the Return as one of the "3 x cell phones
17 (apple)," Exhibit 1A to Opposition Brief, was seized from my person by law enforcement during the
18 April 5, 2022, police raid on the Club.

19 6. Since the raid, I have contacted LVMPD multiple times about the return of my cell
20 phone. LVMPD has not given me a timeline of when it may return my cell phone.

21 7. My cell phone contains a wealth of personal information including, but not limited to,
22 access to my various social media accounts; access to my personal email accounts; photos of my
23 family and friends; contact information, including personal addresses, phone numbers, and email
24 accounts, for hundreds of my family and friends; my GPS data, which includes my personal travels
25 and/or pattern of life; records of my purchases/spending habits; browser histories; and text messages.
26 I am unable to access much of that information without that cell phone.

27 **I declare under penalty of perjury under the law of the State of Nevada that the**
28 **foregoing is true and correct.**

Executed on

5/8/2022


ANDREA WOODS

1 **DECLARATION OF ANGELA SWANK IN SUPPORT OF REAL PARTIES IN INTEREST**
2 **LAS VEGAS BISTRO, LLC, DBA LARRY FLYNT'S HUSTLER CLUB, AND LITTLE**
3 **DARLINGS OF LAS VEGAS, LLC, DBA LITTLE DARLINGS, TO (1) UNSEAL SEARCH**
4 **WARRANT APPLICATIONS AND SUPPORTING AFFIDAVITS, (2) QUASH SEARCH**
5 **WARRANTS, AND (3) RETURN SEIZED PROPERTY**

6 I, Angela Swank, pursuant to NRS § 53.045, hereby declare as follows:

7 1. I make this declaration upon my personal knowledge, unless specifically stated the
8 contrary.

9 2. I am an adult resident of sound mind of the State of Michigan.

10 3. I am a licensed Certified Public Accountant by the State of Michigan's Department of
11 Licensing and Regulatory Affairs. I am employed in that capacity by, and am the President of
12 Modern Bookkeeping, Inc. ("MBI"), located at 8252 Lansing Road in Durand, Michigan.

13 4. Las Vegas Bistro, LLC, d/b/a Larry Flynt's Hustler Club ("Las Vegas Bistro") is a
14 client of MBI.

15 5. In addition to my work as a CPA, MBI also employs Nicole Turnwald as another
16 licensed CPA.

17 6. Ms. Turnwald and I provide substantially the same accounting services and advice to
18 all of MBI's clients, including but not limited to Las Vegas Bistro, and we do so through regular
19 communications with the owners and management of the client entities. For Las Vegas Bistro, this
20 would include communications with, among other people, Jason Mohny, Managing Member of Las
21 Vegas Bistro; Ralph James, General Manager of Las Vegas Bistro; and Andrea Woods, Office
22 Manager of Las Vegas Bistro. These communications are made, variously, through written
23 correspondence exchanged in overnight delivery packages; emails; text messages; and telephone
24 calls, including the leaving of detailed voicemail messages.

25 7. Ms. Turnwald and I provide to the clients of MBI, including to Las Vegas Bistro, a
26 variety of accounting services, including but not limited to collection and collation of business
27 income and expenses, posting of daily sales reports and cash payouts, preparation of profit and loss
28 statements, preparation of draft tax returns (federal, state, and, if applicable, local), and the
preparation and filing of finalized tax returns and supporting information and materials.

1 8. As part of the work that we do for MBI's clients, including for Las Vegas Bistro, Ms.
2 Turnwald and I also provide accounting advice and services in a variety of tax audits and for
3 litigation support. In those matters, we regularly communicate with the principals of the businesses,
4 and the individuals, involved; with the management staff of the entities; and with legal counsel for
5 those entities/persons. In addition, we regularly both seek and receive legal advice from attorneys,
6 often in communications in which the clients and/or their representatives are copied, in order to
7 permit us to provide the best accounting services and litigation support possible to those clients. It is
8 my understanding that all such communications where a lawyer is involved with regard to the
9 services that MBI, and specifically Ms. Turnwald and I, provide to its clients, are protected under the
10 attorney-client privilege.

11 9. I consider the work, as well as the communication and correspondence with the
12 individuals referenced in the three paragraphs immediately above, to be protected by the accountant-
13 client privilege under both federal and state law.

14 10. Specifically with regard to communications between either I or Ms. Turnwald and
15 Messrs. Mohny and James, and/or between or with various legal counsel, much of that involves
16 accounting and/or legal matters that have absolutely nothing to do with either Las Vegas Bistro.
17 Because of the involvement of Messrs. Mohny and James with a variety of other businesses across
18 the country that are also clients of MBI, Ms. Turnwald and I communicate regularly and frequently
19 with these two gentlemen, and/or with their legal counsels or with legal counsels representing those
20 other entities with which they are involved, on a wide variety of matters involving, specifically and
21 exclusively, those other entities (as opposed to Las Vegas Bistro), including, of course, but not
22 limited to, the preparation of their tax returns and supporting materials and information.

23 11. Upon information and belief, it is my understanding that as part of the recent raids that
24 occurred on the business premises of Las Vegas Bistro, a variety of computers, including servers,
25 laptops and tablets, as well as personal cell phones, were seized by the Las Vegas Municipal Police
26 Department. If so, that equipment and those devices contain, as referenced above, correspondence,
27 communication, and information between and among Ms. Turnwald and I, the individuals identified
28 above, and various legal counsel, that are protected by both the accountancy and attorney/client

1 privileges. In addition, as referenced above, much of that correspondence, communication and
2 information has nothing whatsoever to do with Las Vegas Bistro, but concerns, rather, other clients
3 of MBI.

4 **I declare under penalty of perjury under the law of the State of Nevada that the**
5 **foregoing is true and correct.**

6
7 Executed on 5/9/2022


ANGELA SWANK

EXHIBIT “J”

ORIGINAL

TL

1 **ORDR**

2 DONALD J. CAMPBELL (Nevada State Bar No. 1216)

3 J. COLBY WILLIAMS (Nevada State Bar No. 5549)

4 CAMPBELL & WILLIAMS

5 700 South Seventh Street

6 Las Vegas, Nevada 89101

7 Telephone: (702) 382-5222

8 Facsimile: (702) 382-0540

FILED

NOV 20 2009

Chloe L. Williams
CLERK OF COURT

9 KELLI L. SAGER (California State Bar No. 120162;

10 Nevada Pro Hac Vice Pending)

11 ALONZO WICKERS IV (California State Bar No.

12 169454; Nevada Pro Hac Vice Pending)

13 DAVIS WRIGHT TREMAINE LLP

14 865 S. Figueroa Street, Suite 2400

15 Los Angeles, California 90017-2566

16 Telephone: (213) 633-6800

17 Facsimile: (213) 633-6899

18 Attorneys for Non-Party Press Organizations

19 LOS ANGELES TIMES COMMUNICATIONS LLC;

20 THE ASSOCIATED PRESS; STEPHENS MEDIA LLC

21 d/b/a LAS VEGAS REVIEW-JOURNAL; and TMZ

22 PRODUCTIONS, INC.

A-09-601140-P
537903



23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 IN RE MATTER OF SEARCH WARRANTS)
26 ISSUED IN CONNECTION WITH)
27 INVESTIGATION OF DEATH OF MICHAEL)
28 JACKSON)

Miscellaneous Action No. A-09-601140-C
Dept. No. XXI

**SUPPLEMENTAL ORDER
REGARDING REQUEST TO
INTERVENE AND FOR ORDER
UNSEALING COURT RECORDS
RELATED TO SEARCH WARRANTS**

Hearing Date: November 18-19, 2009
Hearing Time: 10:00 a.m.

29 The Request to Intervene and for Order Unsealing Court Records Related to Search
30 Warrants came on for a status hearing in Department XXI before the Honorable Valerie Adair on

RECEIVED
NOV 20 2009
CLERK OF THE COURT



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1 November 18, 2009. J. Colby Williams, Esq. appeared on behalf of the Non-Party Press
2 Organizations; David Schubert, Chief Deputy District Attorney, appeared on behalf of the State of
3 Nevada. The Court, having previously reviewed the papers and pleadings on file in this matter,
4 considered the arguments of counsel at the time of status hearing, which included *in camera*
5 presentations from Detective Orlando Martinez from the Los Angeles Police Department (on
6 November 18) and Deputy Attorney David Walgren from the Los Angeles District Attorney's
7 Office (on November 19) who are involved in the Michael Jackson murder investigation, hereby
8 rules as follows:
9

10 Upon the Court's inquiry, Deputy Attorney Walgren was unable to articulate a specific
11 reason why the search warrant and affidavit filed on or about August 13, 2009 should be kept
12 sealed or explain how the subject investigation would be compromised by unsealing these
13 materials. Based upon Deputy Attorney Walgren's statements and the testimony of Detective
14 Orlando Martinez of the previous day, the Court FINDS there is not a sufficient basis to continue
15 to keep the materials sealed.
16

17 NOW, THEREFORE, the Court GRANTS the Motion of the Non-Party Press
18 Organizations and ORDERS the warrant and affidavit filed on or about August 13, 2009
19 UNSEALED.
20

21 DATED this ¹⁸20 day of November, 2009.

22 
23 DISTRICT COURT JUDGE
24
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27
28



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-8222
FAX: 702/382-0540

1 Submitted by:

2 CAMPBELL & WILLIAMS
3 DONALD J. CAMPBELL
4 J. COLBY WILLIAMS

5 DAVIS WRIGHT TREMAINE LLP
6 KELLI L. SAGER
7 ALONZO WICKERS IV

8 By:


J. Colby Williams

9 Attorneys for Non-Party Press Organizations
10 LOS ANGELES TIMES COMMUNICATIONS LLC;
11 THE ASSOCIATED PRESS; STEPHENS MEDIA LLC
12 d/b/a LAS VEGAS REVIEW-JOURNAL;
13 and TMZ PRODUCTIONS, INC.
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CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE 702/382-6222
FAX 702/382-0940

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

May 12, 2022

A-22-851073-C Las Vegas Bistro, LLC, Plaintiff(s)
vs.
None, Defendant(s)

May 12, 2022 10:30 AM Motion

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Lauren Kidd

RECORDER: Vanessa Medina

REPORTER:

PARTIES

PRESENT: McCarty, Colleen E. Attorney
 Nichols, Jacqueline Attorney

JOURNAL ENTRIES

- Arguments by Ms. McCarty and Ms. Nichols regarding the merits of and opposition to the motion. Court stated it is inclined to ask that the information be provided in camera so Court can determine whether or not there is a valid basis for the seal. Court noted its concerns with overruling a lower court judge if Court feels there no basis for the sealing, which would normally be done though an appellant process. Upon inquiry of Court if there was a objection to Court reviewing the information in camera, Ms. Nichols stated she did not object. Colloquy regarding time needed to provide the information to the Court and which warrants are subject to the motion. Court stated it is fair to put a pause on the investigation as far as the documents and equipment is concerned and ORDERED, Plaintiff's Motion of Real Parties in Interest Las Vegas Bistro, LLC dba Larry Flynt's Hustler Club and Little Darlings of Las Vegas, LLC dba Little Darlings to: (1) Unseal Search Warrant Applications and Supporting Affidavits; and (2) Quash Search Warrants, and (3) Return Seized Property TAKEN UNDER ADVISEMENT for counsel to provide the information on all the warrants to Court. Court stated it would issue an order or minute order the following week.

CLERK'S NOTE: Minute Order prepared by Nicole McDevitt via listening to JAVS recording. /nm
6/26/2022.

PRINT DATE: 06/25/2022

Page 1 of 2

Minutes Date: May 12, 2022

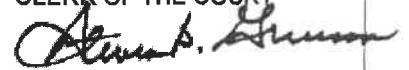
A-22-851073-C

PRINT DATE: 06/25/2022

Page 2 of 2

Minutes Date: May 12, 2022

AA000134



1 **Marquis Aurbach**
2 Nick D. Crosby, Esq.
3 Nevada Bar No. 8996
4 Jackie V. Nichols, Esq.
5 Nevada Bar No. 14246
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 ncrosby@maclaw.com
11 jnichols@maclaw.com
12 Attorneys for Real Party in Interest, Las
13 Vegas Metropolitan Police Department

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 IN RE SEARCH WARRANT REGARDING
11 SEIZURE OF DOCUMENTS, LAPTOP
12 COMPUTERS, CELLULAR TELEPHONES
13 AND OTHER DIGITAL STORAGE DEVICES
14 FROM THE PREMISES OF LAS VEGAS
15 BISTRO, LLC AND LITTLE DARLINGS OF
16 LAS VEGAS, LLC,

Case No.: A-22-851073-C
Dept. No.: 30

14 Movants and Real Parties in Interest.

15 **REAL PARTY IN INTEREST, LAS VEGAS METROPOLITAN POLICE**
16 **DEPARTMENT'S NOTICE**

17 Real Party in Interest, the Las Vegas Metropolitan Police Department (the "Department"
18 or "LVMPD"), by and through their attorneys of record, the law firm of Marquis Aurbach,
19 hereby submits its Notice regarding Assembly Bill 182 (2021).

20 On Thursday, May 12, 2022, this Court held a hearing on a Motion to Unseal Search
21 Warrant Applications and Supporting Affidavits; (2) Quash Search Warrants; and (3) Return
22 Seized Property. At the hearing, Colleen McCarty, Esq., counsel for Las Vegas Bistro, LLC and
23 Little Darlings of Las Vegas, provided the Court with a print-out of the applicable statute, NRS
24 201.395. The statute provided was last updated in 2019. The Nevada Legislature, however,

25 ...

26 ...

27 ...

28 ...

1 amended the statute during the 2021 legislative session as part of Assembly Bill 182. A copy of
2 the fully enrolled bill is attached hereto as **Exhibit A** for the Court's convenience.

3 Dated this 16th day of May, 2022.

4 MARQUIS AURBACH

5
6 By: /s/ Jackie V. Nichols

7 Nick D. Crosby, Esq.

8 Nevada Bar No. 8996

9 Jackie V. Nichols, Esq.

10 Nevada Bar No. 14246

11 10001 Park Run Drive

12 Las Vegas, Nevada 89145

13 Attorneys for Real Party in Interest, Las
14 Vegas Metropolitan Police Department
15
16
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18
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REAL PARTY IN INTEREST, LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S NOTICE** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 16th day of May, 2022. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Deanna L. Forbush, Esq.
Colleen E. McCarty, Esq.
Fox Rothschild LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
dforbush@foxrothschild.com
cmccarty@foxrothschild.com
dloffredo@foxrothschild.com

Zachary M. Youngsma, Esq.
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906
zack@BradShaferLaw.com

Attorneys for Movants and Real Parties in Interest
Las Vegas Bistro, LLC and Little Darlings of Las Vegas, LLC

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Krista Busch
An employee of Marquis Aurbach

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT A

Assembly Bill No. 182—Assemblymen Tolles, Roberts, Hardy,
Yeager, O'Neill; Bilbray-Axelrod, Hansen, Kasama,
Krasner, Marzola and Nguyen

Joint Sponsors: Senators Pickard;
Seevers Gansert and Spearman

CHAPTER.....

AN ACT relating to crimes; revising the elements of the crime of
advancing prostitution; and providing other matters properly
relating thereto.

Legislative Counsel's Digest:

Under existing law, a person is guilty of the crime of advancing prostitution if the person owns, leases, operates, controls or manages any business or private property and: (1) knows or should know that illegal prostitution is being conducted at the business or upon such private property; (2) knows or should know that one or more prostitutes engaging in such illegal prostitution are victims of involuntary servitude; and (3) fails to take reasonable steps to abate such illegal prostitution within 30 days after the person knows or should know about such illegal prostitution. (NRS 201.395) This bill revises the elements of the crime of advancing prostitution by: (1) providing that a person who owns, leases, operates, controls or manages any business or private property is guilty of the crime if the person knows that illegal prostitution is being conducted at the business or upon such private property because the person has been notified, in writing, by a law enforcement agency of at least one incident of illegal prostitution that occurred at the business or upon such private property, including notice that the illegal prostitution may result in prosecution for pandering or sex trafficking, but fails to take reasonable steps to abate such illegal prostitution within 30 days after receipt of such written notice; (2) removing the elements of the crime relating to involuntary servitude; and (3) removing from the list of actions deemed to be reasonable steps to abate illegal prostitution the promotion of ongoing education for employees about illegal prostitution.

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. NRS 201.395 is hereby amended to read as follows:

201.395 1. A person who owns, leases, operates, controls or
manages any business or private property ~~{and who}~~ *is guilty of
advancing prostitution if the person:*

(a) Knows ~~{or should know}~~ that illegal prostitution is being
conducted at the business or upon such private property ~~};~~

~~—(b) Knows or should know that one or more prostitutes engaging
in such illegal prostitution are victims of involuntary servitude as
described in NRS 200.463;}~~ *because the person has been notified,*



81st Session (2021)

in writing, by a law enforcement agency of at least one incident of illegal prostitution that occurred at the business or upon such private property;

(b) Receives notice pursuant to paragraph (a) that the illegal prostitution may result in prosecution for pandering or sex trafficking pursuant to NRS 201.300 or facilitating sex trafficking pursuant to NRS 201.301; and

*(c) Fails to take reasonable steps to abate such illegal prostitution within 30 days after the date on which the person {knows the circumstances set forth in paragraphs (a) and (b),
→ is guilty of advancing prostitution.} receives such written notice from the law enforcement agency.*

2. Unless a greater penalty is provided by specific statute, a person who is guilty of advancing prostitution shall be punished for a category C felony as provided in NRS 193.130.

3. For the purposes of this section, a person who owns, leases, operates, controls or manages any business or private property shall be deemed {:

~~—(a) To know that illegal prostitution is being conducted at the business or upon the private property of the person if a law enforcement agency has notified the person who owns, leases, operates, controls or manages the business or private property, in writing, of at least three incidents of illegal prostitution that occurred at the business or upon the private property of the person within a period of 180 consecutive days.~~

~~—(b) To know that one or more prostitutes engaging in such illegal prostitution are victims of involuntary servitude as described in NRS 200.463 if, in light of all the surrounding facts and circumstances which are known to the person at the time, a reasonable person would believe, under those facts and circumstances, that one or more prostitutes engaging in such illegal prostitution are victims of involuntary servitude as described in NRS 200.463.~~

~~—(c) To} to have taken reasonable steps to abate {such} illegal prostitution if the person has:~~

~~{(1)} (a) Filed a report of such illegal prostitution with a law enforcement agency;~~

~~{(2)} (b) Allowed a law enforcement agency to conduct surveillance or an unrestricted undercover operation;~~

~~{(3) Promoted ongoing education about such illegal prostitution for employees;} or~~

~~{(4)} (c) Used any other available legal means to abate such illegal prostitution.~~



4. Any action taken to abate illegal prostitution pursuant to this section must comply with any other applicable law of this State, including, without limitation, the provisions of chapters 118A and 118C of NRS.

20 ~~~~~ 21





1 **JOIN**

2 DEANNA L. FORBUSH

3 Nevada Bar No. 6646

4 dforbush@foxrothschild.com

5 COLLEEN E. MCCARTY

6 Nevada Bar No. 13186

7 cmccarty@foxrothschild.com

8 **FOX ROTHSCHILD LLP**

9 1980 Festival Plaza Drive, Suite 700

10 Las Vegas, Nevada 89135

11 Telephone: (702) 262-6899

12 Facsimile: (702) 597-5503

13 ZACHARY M. YOUNGSMA

14 Nevada Bar No. 15680

15 zach@bradshaferlaw.com

16 **SHAHER & ASSOCIATES, P.C.**

17 3800 Capital City Blvd., Suite 2

18 Lansing, Michigan 48906

19 Telephone: (517) 886-6560

20 Facsimile: (517) 886-6565

21 *Attorneys for Movants and Real parties in Interest*

22 *Las Vegas Bistro, LLC and Little Darlings of Las Vegas, LLC*

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 IN RE SEARCH WARRANT REGARDING
26 SEIZURE OF DOCUMENTS, LAPTOP
27 COMPUTERS, CELLULAR TELEPHONES
28 AND OTHER DIGITAL STORAGE DEVICES
FROM THE PREMISES OF LAS VEGAS
BISTRO, LLC AND LITTLE DARLINGS OF
LAS VEGAS, LLC,

Movants and Real Parties in Interest.

Case No.: A-22-851073-C

Dept. No.: XXX

**JOINDER OF LAS VEGAS BISTRO,
LLC AND LITTLE DARLINGS OF
LAS VEGAS, LLC TO THE NOTICE
REGARDING NRS 201.395**

Movants and Real Parties in Interest, Las Vegas Bistro, LLC and Little Darlings of Las Vegas, LLC (collectively "Movants"), by and through their attorneys of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq. of Fox Rothschild LLP and Zachary Youngsma, Esq. of Shafer & Associates, P.C., hereby submit their Joinder to the Notice regarding Assembly Bill 182 (2021) and the changes reflected therein to NRS 201.395.

1 The Las Vegas Metropolitan Police Department is correct that the copies of NRS 201.395,
2 which were presented to the Court at its May 12, 2022 hearing, were not inclusive of the changes
3 effectuated by Assembly Bill 182. Movants mistakenly believed the codification of NRS 201.395
4 was current and sincerely regret the error that resulted in the failure to include the changes to NRS
5 201.395 made by the Legislature during the 2021 Legislative Session. Movants would further note
6 that it is their position the revisions to NRS 201.395 reflected in Assembly Bill 182 in no way
7 change Movants' arguments or this Court's pending review of the search warrants in question, but
8 they appreciate the opportunity to join in the correction of the hearing record, to the extent the Court
9 included the earlier version of NRS 201.395 therein.
10

11 Dated this 16th day of May, 2022.

12 **FOX ROTHSCHILD LLP**

13
14 By: /s/ Colleen E. McCarty

15 DEANNA L. FORBUSH

16 Nevada Bar No. 6646

17 COLLEEN E. MCCARTY

18 Nevada Bar No. 13186

19 1980 Festival Plaza Drive, Suite 700

20 Las Vegas, Nevada 89135

21 Telephone: (702) 262-6899

22 ZACHARY M. YOUNGSMA

23 Nevada Bar No. 15680

24 **SHAFFER & ASSOCIATES, P.C.**

25 3800 Capital City Blvd., Suite 2

26 Lansing, Michigan 48906

27 Telephone: (517) 886-6560

28 *Attorneys for Movants/Real Parties in Interest*

CERTIFICATE OF SERVICE

I certify that I am an employee of Fox Rothschild LLP, and on the 16th day of May, 2022, I served a true and correct copy of the foregoing **JOINDER OF LAS VEGAS BISTRO, LLC AND LITTLE DARLINGS OF LAS VEGAS, LLC TO THE NOTICE REGARDING NRS 201.395** via electronic service by operation of the Court's electronic filing system, upon each party and counsel in this case who is registered as an electronic case filing user with the Clerk, as follows:

Nick Crosby, Esq.
Jacqueline Nichols, Esq.
Marquis Aurbach
10001 Park Run Drive
Las Vegas, NV 89145
ncrosby@maclaw.com
jnichols@maclaw.com
*Attorneys for Las Vegas Metropolitan
Police Department*

/s/ Jineen DeAngelis

An employee of Fox Rothschild LLP



1 **Marquis Aurbach**
2 Nick D. Crosby, Esq.
3 Nevada Bar No. 8996
4 Jackie V. Nichols, Esq.
5 Nevada Bar No. 14246
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 ncrosby@maclaw.com
11 jnichols@maclaw.com
12 Attorneys for Real Party in Interest, Las
13 Vegas Metropolitan Police Department

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 IN RE SEARCH WARRANT REGARDING
11 SEIZURE OF DOCUMENTS, LAPTOP
12 COMPUTERS, CELLULAR TELEPHONES
13 AND OTHER DIGITAL STORAGE DEVICES
14 FROM THE PREMISES OF LAS VEGAS
15 BISTRO, LLC AND LITTLE DARLINGS OF
16 LAS VEGAS, LLC,

Case No.: A-22-851073-C
Dept. No.: 30

14 Movants and Real Parties in Interest.

15 **REAL PARTY IN INTEREST, LAS VEGAS METROPOLITAN POLICE**
16 **DEPARTMENT'S NOTICE OF COMPLIANCE**

17 In accordance with the Court's oral order at the hearing dated May 12, 2022, please take
18 notice that Real Party in Interest, Las Vegas Metropolitan Police Department ("LVMPD"), by
19 and through their attorneys of record, the law firm of Marquis Aurbach, provided the Court with
20 the remaining responsive records *in camera* on May 18, 2022.

21 Dated this 18th day of May, 2022.

22 **MARQUIS AURBACH**

23
24 By: /s/ Jackie V. Nichols
25 Nick D. Crosby, Esq.
26 Nevada Bar No. 8996
27 Jackie V. Nichols, Esq.
28 Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Real Party in Interest, Las
Vegas Metropolitan Police Department

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **REAL PARTY IN INTEREST, LAS VEGAS**
3 **METROPOLITAN POLICE DEPARTMENT'S NOTICE OF COMPLIANCE** was
4 submitted electronically for filing and/or service with the Eighth Judicial District Court on the
5 18th day of May, 2022. Electronic service of the foregoing document shall be made in
6 accordance with the E-Service List as follows:¹

7 Deanna L. Forbush, Esq.
8 Colleen E. McCarty, Esq.
9 Fox Rothschild LLP
10 1980 Festival Plaza Drive, Suite 700
11 Las Vegas, Nevada 89135
12 **dforbush@foxrothschild.com**
13 **cmccarty@foxrothschild.com**
14 **dloffredo@foxrothschild.com**

15 Zachary M. Youngsma, Esq.
16 Shafer & Associates, P.C.
17 3800 Capital City Blvd., Suite 2
18 Lansing, Michigan 48906
19 **zack@BradShaferLaw.com**

20 Attorneys for Movants and Real Parties in Interest
21 Las Vegas Bistro, LLC and Little Darlings of Las Vegas, LLC

22 I further certify that I served a copy of this document by mailing a true and correct copy
23 thereof, postage prepaid, addressed to:

24 N/A

25 /s/ Krista Busch
26 An employee of Marquis Aurbach

27 ¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System
28 consents to electronic service in accordance with NRCP 5(b)(2)(D).

Heather S. Smith
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

IN RE 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,)

CASE NO.: A-22-851073-C
DEPT. NO.: XXX

ORDER

Movants and Real Parties
in Interest.

INTRODUCTION

The above-referenced matter came on for a hearing on May 12, 2022, with regard to a Motion of the Real Parties in Interest, Las Vegas Bistro, LLC, d/b/a Larry Flynt's Hustler Club, and Little Darlings of Las Vegas, LLC, d/b/a Little Darlings, to 1) Unseal Search Warrant Applications and Supporting Affidavits; 2) Quash Search Warrants; and 3) Return Seized Property. The Court had reviewed the papers and pleadings on file, and allowed oral argument. The Court thereafter Ordered that the actual Search Warrant Applications be submitted to the Court in camera, so that the Court could determine if there was a basis for the Applications to be sealed, and to determine if there was good cause to quash the warrants and return the property seized. Counsel for the State provided a number of the Warrant Applications at the time of the hearing, and submitted the final Warrant Application to the Court on May 18, 2022. Having now reviewed all of the available information, and good cause appearing, the Court enters the following Order.

FACTUAL AND PROCEDURAL HISTORY

The instant Motion was filed on 4/12/22. There is no separate Complaint on file in this matter. The Civil Cover Sheet indicates that this case is designated as "Other Civil Matters." The case was previously assigned to Department 4, reassigned to Department 14, and most recently reassigned to Department 30. The Las Vegas

1 Metropolitan Police Dept. filed an Opposition on 5/5/22, and Petitioners filed a Reply
2 on 5/9/22.

3 Factually, this case stems from the issuance and service of several Search
4 Warrants. On or about 4/1/22, an Application and Affidavit for Search Warrant was
5 submitted to Judge Harmony Letizia, for the business known as Larry Flynt's Hustler
6 Club. She issued a Search Warrant that same date, and an Order Sealing Affidavit was
7 granted on the same date. The Warrant appears to have been executed on 4/5/22, and
8 a Return was thereafter submitted to the Court, identifying the items seized.

9 On the same date, 4/1/22, an Application and Affidavit for Search Warrant was
10 submitted to Judge Harmony Letizia, for the business known as Little Darlings. She
11 issued a Search Warrant that same date, and an Order Sealing Affidavit was granted on
12 the same date. The Warrant appears to have been executed on 4/5/22, and a Return
13 was thereafter submitted to the Court, identifying the items seized.

14 On 4/7/22, an Application and Affidavit for Search Warrant, Digital Storage
15 Device, was submitted to Judge Joseph Sciscento, requesting authority to search for
16 information in various digital storage devices obtained from Larry Flynt's Hustler Club.
17 Judge Sciscento issued a Search Warrant that same date, and an Order Sealing
18 Affidavit was granted on the same date. The Warrant appears to have been executed on
19 the same date, 4/7/22, and a Return was submitted to the Court, identifying the items
20 searched.

21 On the same date, 4/7/22, an Application and Affidavit for Search Warrant,
22 Digital Storage Device, was submitted to Judge Joseph Sciscento, requesting authority
23 to search for information in various digital storage devices obtained from Little
24 Darlings adult club. Judge Sciscento issued a Search Warrant that same date, and an
25 Order Sealing Affidavit was granted on the same date. The Warrant appears to have
26 been executed on the same date, 4/7/22, and a Return was submitted to the Court,
27 identifying the items searched.

28 The Court was also provided with a transcript of a Telephonic Search Warrant
Application on 4/5/22, which appears to be related to the 4/7/22 Application and
Affidavit for Search Warrant, Digital Storage Device, relating to Little Darlings.

....

1 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

2 Petitioner's Motion requests that the Court:

- 3 1. Unseal Applications and Supporting Affidavits submitted in
4 support of search warrants authorized by Judge Letizia and Judge
5 Sciscento;
6 2. Enter an order prohibiting LVMPD, the Clark County District
7 Attorney's Office, and any person acting on their behalf from
8 reviewing any of the seized property is defined in NRS § 179.015,
9 until such a time as Movants and the Court can facilitate the
10 scrubbing of the seized property of any materials protected by
11 either the attorney-client, work product, or accountant-client
12 privileges; and
13 3. Order the permanent return of all property that contains
14 information protected by the attorney-client, work product, or
15 accountant-client privileges return
16

17 Petitioner states that on January 26, 2022 and March 12, 2022, LVMPD sent
18 correspondence to the Hustler Club purportedly providing "notice" that one or more
19 unidentified entertainers solicited an undercover police detective for sexual acts on the
20 premises. Hustler Club responded in writing to LVMPD Detective R. Sioson on
21 February 1, 2022, and LVMPD Detective R. Chavez on March 15, 2022, asking for
22 identification of the entertainer(s) at issue, affirming its zero-tolerance policy regarding
23 illegal sexual conduct, and outlining its extensive efforts to ensure that no acts of
24 solicitation of prostitution occurred on its premises. Hustler Club requested guidance
25 from LVMPD regarding additional actions, policies and procedures it could implement
26 to address the issue and ensure compliance with NRS 201.395(3). LVPD did not
27 respond.

28 On January 8, 2022 and March 12, 2022, Little Darlings received
correspondence from LVMPD regarding alleged prostitution activity by one or more
unidentified entertainer(s). Like the Hustler Club, Little Darlings 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 regarding the same. Metro did not respond.

Based on the Application and Affidavit of Metro Detective R. Chavez, P#775, on
April 1, 2022, Judge Letizia authorized a 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 and digital storage devices, inclusive of

1 computers, cellular phones and tablets. The Search Warrant Application and
2 Supporting Affidavit was sealed by Judge Letizia, pending further order of the court.

3 On April 5, 2022, members of LVMPD's Special Investigations Section executed
4 a search of the premises of Larry Flynt's Hustler Club (as well as premises leased to
5 another entity) and Little Darlings. Petitioner contends that the detectives corralled the
6 employees of each respective business and seized the personal cellular telephones of
7 the persons who identified themselves as management employees of each club. Police
8 officers took three (3) cellular telephones from managers of the Hustler Club and one
9 cellular telephone from a manager at Little Darlings. Petitioner contends that all of the
phones were personally owned by the individuals for personal and business use.

10 Further, a Duplicate Original Search Warrant and Order Sealing Affidavit was
11 issued by Judge Sciscento on April 5, 2022 for Little Darlings. Both the original Little
12 Darlings search warrant and sealing order and the duplicate search warrant and sealing
13 order were left at the business following the search.

14 Petitioner argues that the search warrant applications and supporting affidavits
15 fail to set forth sufficient facts and circumstances to establish probable cause to justify
16 the seizure of the Property pursuant to the Search Warrants as required by the Fourth
17 Amendment, Article 1, Section 18 of the Nevada Constitution, and NRS 179.045(1) and
18 (6)(a). Petitioners state that the gravamen of the instant LVMPD investigation is the
19 alleged solicitation of prostitution at the Hustler Club and Little Darlings in January
20 and March of this year, and Movants' responses thereto to abate the alleged illegal
21 activity as required under NRS 201.395(c). As such, all of the events at issue have
already occurred.

22 Petitioner states that the Property contains documents and communications,
23 which are privileged pursuant to the attorney-client privilege and work product
24 doctrine, NRS 49.095, and the accountant-client privilege, NRS 49.185. Accordingly
25 seek to protect all privileged information contained within the Property seized by
26 LVMPD, inclusive of the personal cellular telephones of the managers. The seized
27 computers, thumb drives, hard drives and tablets are used to run/oversee/manage
28 numerous businesses worldwide. The owners of the Hustler Club and Little Darlings,
their respective general managers, and in some cases, certain personnel, are in near

1 daily contact with their businesses' attorneys and accountants, and the vast majority of
2 these communications are conducted through the Property.

3 The Metropolitan Police Department's Opposition states that the search
4 warrants were sought and obtained after Petitioner failed to take corrective action
5 following Metro's letters re: illicit activity.

6 Metro argues that the Motion must be denied as this matter should have been
7 brought before Judge Letizia who initially ordered the affidavits to be sealed. See *In re*
8 *Searches & Seizures*, 2008 WL 5411772 (December 19, 2008) (where movants sought
9 to unseal search warrant records in the same court that issued search warrants and
10 ordered records sealed). NRS 179.045 confers jurisdiction upon the Justice of the
11 Peace to seal an affidavit in support of a search warrant upon a showing of good cause.
12 Here, Judge Letizia determined that good cause existed and ordered the affidavit
13 sealed. The order further provides that the affidavit is to remain sealed pending further
14 order of this Court. Accordingly, the Order Sealing the Affidavit requires the Petitioners
15 to seek relief from the issuing Court and not file a separate action.

16 Further, Metro argues that judicial economy supports transferring this matter to
17 the issuing judge. Despite setting a briefing schedule on the motion, this Court has not
18 expended a significant amount of time or resources into this matter. In fact, this Court
19 has not even had the opportunity to review the search warrants or the search warrant
20 application at issue. In the event the Court entertains the motion, a review of the
21 search warrant materials in camera may be necessary to determine with nondisclosure
22 remains appropriate.

23 Moreover, Metro argues that the Petitioner has not provided a basis for the
24 unsealing of the warrant applications. Essentially, Petitioner wants the warrant
25 application unseals so it can determine whether or not probable cause existed for the
26 warrant. Despite the fact that a neutral magistrate already determined that probable
27 cause existed for the warrants, if Petitioner truly believes that the applications are
28 deficient, the appropriate remedy, undoubtedly, would be for this Court to review the
29 sealed materials and make a determination as to whether probable cause exists.

While the covert operations described are certainly relevant and play a part in
the obtaining of the warrants, such conduct is not the sole basis of the warrants. The
remaining aspects of the investigation are confidential in nature and would be

1 detrimental to the investigation if revealed, either by including such facts in the instant
2 brief or by unsealing the warrant applications.

3 Metro's SIS team is primarily responsible for the enforcement of all federal,
4 state, county, and city laws concerning privileged and regulated businesses in Clark
5 County and the City of Las Vegas. Privileged licenses include Erotic Dance
6 establishments and Adult Cabarets. Here, Metro is investigating the crime of
7 Advancing Prostitution and Living from Earnings of Prostitution.

8 Based on SIS's investigation, both the Hustler Club and Little Darlings failed to
9 take reasonable steps to abate such illegal prostitution within 30 days after receiving
10 notice from LVMPD. Metro states that the information contained in the search
11 warrants relate to an ongoing criminal investigation. As such, it would be detrimental
12 to reveal it at this time. Unsealing the search warrant affidavits might result in the
13 destruction of evidence necessary for the investigation. During the execution of the
14 warrant, Metro obtained passwords to some of the seized devices from various
15 employees of the Hustler Club and Little Darlings to assist with search process, but not
16 all.

17 After executing the initial search warrants at each of the establishments, LVMPD
18 obtained additional search warrants for the electronic devices and electronically stored
19 information. These warrants expressly permit LVMPD, through its Digital Forensic Lab
(DFL), to examine, image, and copy the electronic devices as part of its search. DFL has
20 imaged the following property from the Hustler Club:

- 21 1. White Apple Phone with clear case
- 22 2. Black iPhone w/ black case
- 23 3. Blue iPhone w/ clear case
- 24 4. Black iPhone w/ pink case
- 25 5. iPad S/N GG8WQ3S3JF8J
- 26 6. iPad S/N DMPRLA6MH1MK
- 27 7. HP Prop, desktop computer
- 28 8. Dell OptiPlex 3060 desktop computer
9. HP Pro desktop compute
10. Black Cell Phone
11. Black Apple iPhone
12. (3) Lexar 64 GB thumb drives
13. (1) SanDisk 32GB thumb drive
14. (7) Unknown make thumb drives
15. (1) Microsoft thumb drives

1 Metro states that these items have not yet been returned and are still located in
2 the DFL Evidence Vault. DFL is currently processing the images and it would be best to
3 maintain the custody of the original evidence until DFL can confirm that the imaging
4 was successful. Return of the original devices prior to confirming the successful
5 imaging of the same could result in a loss of evidence.

6 With respect to the concern of privileged information, in other scenarios, DFL
7 has been provided a list of full names, email addresses, and/or phone numbers that
8 would be considered privileged. DFL utilizes software that can search for these
9 keywords. After the search is completed, DFL reviews the keyword hits for the provided
10 information. Items related to those keywords will be redacted. The software system
11 then generates a report for the investigative detectives, in this case the SIS team, to
12 review. The detectives would not be privy to the redacted, privileged information. DFL
13 does not participate in the investigation of any alleged criminal acts but merely
14 facilitates the process to allow the detectives to search electronic devices. Here, DFL
15 has not received a list of names, email addresses, and/or phone numbers that would be
16 considered privileged.

17 In reply, Petitioner argues that Metro failed to address the underlying issue of
18 whether the sealed affidavits even sought, let alone justified, the seizure of any
19 materials or communications protected by either the attorney-client or the accountancy
20 privileges. Petitioner argues that Metro did not address the duplicate search warrants
21 signed by JP Sciscento on 4/5/22, several hours into LVMPD's actual execution of the
22 search warrants at the Hustler Club and Little Darlings. It appears from their face that
23 these additional search warrants were submitted by Metro due to the facial deficiencies
24 of the original warrants acknowledge that the search warrants for digital storage
25 devices and associated sealing orders subsequently obtained on 4/7/22, were also
26 entered by Judge Sciscento.

27 With regard to Metro's request to transfer this matter to Justice Court,
28 Petitioner argues that this request is baseless. Petitioner notes the procedural
background of the reassignment of this particular "Motion," including Judge Bell's
minute order reassigning the matter to this criminal department. Petitioner states,
"Significantly, Judge Bell, a long-time jurist and criminal practitioner, found no basis

1 to transfer the matter to the Justice Court, where the search warrants were issued and
2 sealed ...”

3 Further, Petitioner argues that Metro ignores that NRS 179.085 provides the
4 mechanism for return of property pre-indictment. NRS 179.085(5) states, “[i]f a motion
5 pursuant to this section is filed when no criminal proceeding is pending, the motion
6 must be treated as a civil complaint seeking equitable relief. NRS 4.370 sets forth the
7 civil actions and proceedings over which the Justice Court has jurisdiction, and does
8 not provide jurisdiction for equitable relief matters, as is required here. Pursuant to
9 NRS 179.045(4), the magistrates in this case can and did seal the search warrant
10 affidavits, and any court, including this Court, can unseal them. If the Legislature
11 intended to craft a law that only permitted the issuing magistrate to unseal an affidavit,
it would have specifically stated.

12 Without permitting Petitioner access to the sealed original search warrant
13 affidavits, neither Petitioner nor this Court are able to determine whether there is
14 anything contained therein that either requests, or justifies, not only the seizure of, but
15 now the searching through, privileged information and communications. In addition, of
16 course, assuming that there is nothing in those affidavits to justify the seizure of
17 privileged information, which LVMPD’s silence on this topic concedes, there is then
18 absolutely no basis whatsoever for either LVMPD’s continued retention of the same or
its review thereof.

19 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

20 Although the issue before this Court sounds like an “Appeal” from the Justice
21 Court, it is not.

22 NRS 179.045 authorizes the issuance and sealing of search warrants. NRS
23 179.045 provides the following:

24 **NRS 179.045 Issuance and contents; sealing information upon which warrant is based; time for serving warrant.**

25 1. A search warrant may issue only on affidavit or affidavits sworn to
26 before the magistrate and establishing the grounds for issuing the
27 warrant or as provided in subsection 3. If the magistrate is satisfied that
28 grounds for the application exist or that there is probable cause to believe
that they exist, the magistrate shall issue a warrant identifying the
property and naming or describing the person or place to be searched.

2. Secure electronic transmission may be used for the submission of
an application and affidavit required by subsection 1, and for the issuance
of a search warrant by a magistrate. The Nevada Supreme Court may

1 adopt rules not inconsistent with the laws of this State to carry out the
2 provisions of this subsection.

3 3. In lieu of the affidavit required by subsection 1, the magistrate
4 may take an oral statement given under oath, which must be recorded in
5 the presence of the magistrate or in the magistrate's immediate vicinity by
6 a certified court reporter or by electronic means, transcribed, certified by
7 the reporter if the reporter recorded it, and certified by the magistrate.
8 The statement must be filed with the clerk of the court.

9 4. Upon a showing of good cause, the magistrate may order an
10 affidavit or a recording of an oral statement given pursuant to this section
11 to be sealed. Upon a showing of good cause, a court may cause the
12 affidavit or recording to be unsealed.

13 5. After a magistrate has issued a search warrant, whether it is based
14 on an affidavit or an oral statement given under oath, the magistrate may
15 orally authorize a peace officer to sign the name of the magistrate on a
16 duplicate original warrant. A duplicate original search warrant shall be
17 deemed to be a search warrant. It must be returned to the magistrate who
18 authorized the signing of it. The magistrate shall endorse his or her name
19 and enter the date on the warrant when it is returned. Any failure of the
20 magistrate to make such an endorsement and entry does not in itself
21 invalidate the warrant.

22 6. The warrant must be directed to a peace officer in the county
23 where the warrant is to be executed. It must:

24 (a) State the grounds or probable cause for its issuance and the
25 names of the persons whose affidavits have been taken in support thereof;
26 or

27 (b) Incorporate by reference the affidavit or oral statement upon
28 which it is based.

☐ The warrant must command the officer to search forthwith the person
or place named for the property specified.

7. The warrant must direct that it be served between the hours of 7
a.m. and 7 p.m., unless the magistrate, upon a showing of good cause
therefor, inserts a direction that it be served at any time.

8. The warrant must designate the magistrate to whom it is to be
returned.

9. As used in this section, "secure electronic transmission" means
the sending of information from one computer system to another
computer system in such a manner as to ensure that:

(a) No person other than the intended recipient receives the
information;

(b) The identity of the sender of the information can be
authenticated; and

(c) The information which is received by the intended recipient is
identical to the information that was sent.

(Added to NRS by 1967, 1459; A 1975, 39; 1981, 1652; 1993, 1412;
1997, 741; 2015, 2487)

1 Preliminarily, this Court notes that subsection 4 of NRS 179.045 not only allows
2 the Court to issue a Search Warrant, but “Upon a showing of good cause, a court may
3 cause the affidavit or recording to be unsealed.” This appears, though it does not say
4 specifically, that it would apply to the Court that issued the Warrant.

5 NRS 179.085 provides the following:

6 **NRS 179.085 Motions for return of property and to
suppress evidence.**

7 1. A person aggrieved by an unlawful search and seizure or the
8 deprivation of property may move the court having jurisdiction where the
property was seized for the return of the property on the ground that:

- 9 (a) The property was illegally seized without warrant;
10 (b) The warrant is insufficient on its face;
11 (c) There was not probable cause for believing the existence of the
grounds on which the warrant was issued;
12 (d) The warrant was illegally executed; or
(e) Retention of the property by law enforcement is not reasonable
under the totality of the circumstances.

13 → The judge shall receive evidence on any issue of fact necessary to the
decision of the motion.

14 2. If the motion is granted on a ground set forth in paragraph (a),
15 (b), (c) or (d) of subsection 1, the property must be restored and it must
not be admissible evidence at any hearing or trial.

16 3. If the motion is granted on the ground set forth in paragraph (e)
17 of subsection 1, the property must be restored, but the court may impose
reasonable conditions to protect access to the property and its use in later
proceedings.

18 4. A motion to suppress evidence on any ground set forth in
19 paragraphs (a) to (d), inclusive, of subsection 1 may also be made in the
court where the trial is to be had. The motion must be made before trial
20 or hearing unless opportunity therefor did not exist or the defendant was
not aware of the grounds for the motion, but the court in its discretion
21 may entertain the motion at the trial or hearing.

22 5. If a motion pursuant to this section is filed when no criminal
proceeding is pending, the motion must be treated as a civil complaint
23 seeking equitable relief.

24 (Added to NRS by 1967, 1460; A 2015, 405)

25 Because the statute indicates, “The judge shall receive evidence on any issue of
26 fact necessary to the decision of the motion,” this Court requested that the Applications
27 and Affidavits for Search Warrants be provided to the Court, in camera, for review. The
28 Court has reviewed those documents and the information contained therein.

NRS 179.085 seems to allow for the Motion filed by the Petitioners in this case,
as it indicates that “If a motion pursuant to this section is filed when no criminal

1 proceeding is pending, the motion must be treated as a civil complaint seeking
2 equitable relief.” Based upon that language, this Court cannot find that it was improper
3 for the Petitioners to file the Motion with the District Court. Although NRS 179.045
4 seems to imply that the issuing judge can unseal a Warrant that he or she sealed, NRS
5 179.085 also indicates that such a motion should be treated as a Complaint seeking
6 equitable relief, and consequently, the District Court would be an appropriate venue.

7 In reviewing the Applications and Affidavits in support of the requested Search
8 Warrants at issue, this Court finds and concludes that good cause was established for
9 the Warrants, and probable cause existed for their issuance. The Court further finds
10 that good cause was established for the sealing of such warrants, as the information
11 provided includes police procedures and intelligence obtained during the investigation,
12 and knowledge of this sensitive information may compromise the ability of the
13 Metropolitan Police Department’s ability to further investigate the crimes alleged to
14 have been committed, and any ongoing crimes allegedly being committed, relating to
15 this investigation. Disclosure of this information may also endanger the detectives
16 involved, and may compromise the identity of various undercover detectives, which
17 would therefore compromise the ability of the Metropolitan Police Department to
18 investigate further.

19 NRS 179.085 allows for a Motion to return seized property, and the Petitioners
20 in this matter have requested that the items seized be returned. This Court, however,
21 does not find that the items seized were improperly seized. The property was legally
22 seized with a warrant. The warrants appear to be valid and sufficient on their face.
23 There was probable cause supporting the issuance of the warrants. The warrants
24 appear to have been legally executed. Finally, retention of the property by Metro does
25 not appear to be unreasonable, due to their ongoing investigation.

26 Finally, Petitioners argue that Metro has seized information which is privileged.
27 Metro has suggested that DFL will redact information that Petitioners believe is
28 privileged, if Petitioners provide a list of names, email addresses, and/or phone
numbers, of information which would be considered privileged. This Court believes
this to be a reasonable resolution of the issue, and consequently, if the Petitioners
believe that there are specific information relating to communications with specific
individuals, they should provide a list of names, email addresses, phone numbers, etc.,

1 which would allow for a search and redaction of such information. It is reasonable,
2 however, for Metro to maintain possession of the seized items, at least for a reasonable
3 period of time, to obtain the stored information and determine if it supports the crimes
4 alleged to have been committed.

5 Petitioners argued that in considering the definitions of "solicitation" and
6 "prostitution," there was insufficient evidence of "prostitution" to support the crimes
7 alleged, and consequently, the warrants issued. The Warrants indicate that the
8 detectives were investigating the crimes of "Advancing Prostitution" and "Living from
9 Earnings of Prostitution." This Court finds and concludes that the evidence submitted
10 in support of the warrants was sufficient, and provided probable cause to believe that
11 the crimes of "Advancing Prostitution" and "Living from Earnings of Prostitution" were
being committed, and consequently, the warrants were appropriate.

12 **CONCLUSION/ORDER**

13 Based upon the foregoing, and good cause appearing,

14 **IT IS HEREBY ORDERED** that Petitioners' Motion of the Real Parties in
15 Interest, Las Vegas Bistro, LLC, d/b/a Larry Flynt's Hustler Club, and Little Darlings of
16 Las Vegas, LLC, d/b/a Little Darlings, to 1) Unseal Search Warrant Applications and
17 Supporting Affidavits; 2) Quash Search Warrants; and 3) Return Seized Property, is
hereby **DENIED**.

18 The Court requests that counsel for Metro prepare and process a Notice of Entry
19 with regard to this Order.

20 Dated this 22nd day of May, 2022

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24 **1E9 F2B 311B 37A0**
25 **Jerry A. Wiese**
26 **District Court Judge**
27
28

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Las Vegas Bistro, LLC,
Plaintiff(s)

CASE NO: A-22-851073-C

7 vs.

DEPT. NO. Department 30

8
9 None, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/22/2022

15 Krista Busch	kbusch@maclaw.com
16 Nicholas Crosby	ncrosby@maclaw.com
17 Jackie Nichols	jnichols@maclaw.com
18 Sherri Mong	smong@maclaw.com
19 Deanna Forbush	dforbush@foxrothschild.com
20 Doreen Loffredo	dloffredo@foxrothschild.com
21 Colleen McCarty	cmccarty@foxrothschild.com
22 Zachary Youngsma	zack@BradShaferLaw.com

23
24
25 If indicated below, a copy of the above mentioned filings were also served by mail
26 via United States Postal Service, postage prepaid, to the parties listed below at their last
27 known addresses on 5/23/2022
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Nick Crosby

10001 Park Run Drive
Las Vegas, NV, 89145



1 **Marquis Aurbach**
Nick D. Crosby, Esq.
2 Nevada Bar No. 8996
Jackie V. Nichols, Esq.
3 Nevada Bar No. 14246
10001 Park Run Drive
4 Las Vegas, Nevada 89145
Telephone: (702) 382-0711
5 Facsimile: (702) 382-5816
ncrosby@maclaw.com
6 jnichols@maclaw.com
Attorneys for Real Party in Interest, Las
7 Vegas Metropolitan Police Department

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 IN RE SEARCH WARRANT REGARDING
SEIZURE OF DOCUMENTS, LAPTOP
11 COMPUTERS, CELLULAR TELEPHONES
AND OTHER DIGITAL STORAGE DEVICES
12 FROM THE PREMISES OF LAS VEGAS
BISTRO, LLC AND LITTLE DARLINGS OF
13 LAS VEGAS, LLC,

Case No.: A-22-851073-C
Dept. No.: 30

14 Movants and Real Parties in Interest.

15 **NOTICE OF ENTRY OF ORDER**

16 TO: ALL INTERESTED PARTIES; and their attorneys of record:

17 PLEASE TAKE NOTICE that an Order was entered on the 22nd day of May, 2022, a
18 copy of which is attached hereto.

19 Dated this 24th day of May, 2022.

20 **MARQUIS AURBACH**

21
22 By: /s/ Jackie V. Nichols
Nick D. Crosby, Esq.
23 Nevada Bar No. 8996
Jackie V. Nichols, Esq.
24 Nevada Bar No. 14246
10001 Park Run Drive
25 Las Vegas, Nevada 89145
Attorneys for Real Party in Interest, Las
26 Vegas Metropolitan Police Department

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 24th day of May, 2022. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Deanna L. Forbush, Esq.
Colleen E. McCarty, Esq.
Fox Rothschild LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
dforbush@foxrothschild.com
cmccarty@foxrothschild.com
dloffredo@foxrothschild.com

Zachary M. Youngsma, Esq.
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906
zack@BradShaferLaw.com

Attorneys for Movants and Real Parties in Interest
Las Vegas Bistro, LLC and Little Darlings of Las Vegas, LLC

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Krista Busch
An employee of Marquis Aurbach

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Heather S. Smith
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

IN RE 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,)

CASE NO.: A-22-851073-C
DEPT. NO.: XXX

Movants and Real Parties
in Interest.

ORDER

INTRODUCTION

The above-referenced matter came on for a hearing on May 12, 2022, with regard to a Motion of the Real Parties in Interest, Las Vegas Bistro, LLC, d/b/a Larry Flynt's Hustler Club, and Little Darlings of Las Vegas, LLC, d/b/a Little Darlings, to 1) Unseal Search Warrant Applications and Supporting Affidavits; 2) Quash Search Warrants; and 3) Return Seized Property. The Court had reviewed the papers and pleadings on file, and allowed oral argument. The Court thereafter Ordered that the actual Search Warrant Applications be submitted to the Court in camera, so that the Court could determine if there was a basis for the Applications to be sealed, and to determine if there was good cause to quash the warrants and return the property seized. Counsel for the State provided a number of the Warrant Applications at the time of the hearing, and submitted the final Warrant Application to the Court on May 18, 2022. Having now reviewed all of the available information, and good cause appearing, the Court enters the following Order.

FACTUAL AND PROCEDURAL HISTORY

The instant Motion was filed on 4/12/22. There is no separate Complaint on file in this matter. The Civil Cover Sheet indicates that this case is designated as "Other Civil Matters." The case was previously assigned to Department 4, reassigned to Department 14, and most recently reassigned to Department 30. The Las Vegas

1 Metropolitan Police Dept. filed an Opposition on 5/5/22, and Petitioners filed a Reply
2 on 5/9/22.

3 Factually, this case stems from the issuance and service of several Search
4 Warrants. On or about 4/1/22, an Application and Affidavit for Search Warrant was
5 submitted to Judge Harmony Letizia, for the business known as Larry Flynt's Hustler
6 Club. She issued a Search Warrant that same date, and an Order Sealing Affidavit was
7 granted on the same date. The Warrant appears to have been executed on 4/5/22, and
8 a Return was thereafter submitted to the Court, identifying the items seized.

9 On the same date, 4/1/22, an Application and Affidavit for Search Warrant was
10 submitted to Judge Harmony Letizia, for the business known as Little Darlings. She
11 issued a Search Warrant that same date, and an Order Sealing Affidavit was granted on
12 the same date. The Warrant appears to have been executed on 4/5/22, and a Return
13 was thereafter submitted to the Court, identifying the items seized.

14 On 4/7/22, an Application and Affidavit for Search Warrant, Digital Storage
15 Device, was submitted to Judge Joseph Sciscento, requesting authority to search for
16 information in various digital storage devices obtained from Larry Flynt's Hustler Club.
17 Judge Sciscento issued a Search Warrant that same date, and an Order Sealing
18 Affidavit was granted on the same date. The Warrant appears to have been executed on
19 the same date, 4/7/22, and a Return was submitted to the Court, identifying the items
20 searched.

21 On the same date, 4/7/22, an Application and Affidavit for Search Warrant,
22 Digital Storage Device, was submitted to Judge Joseph Sciscento, requesting authority
23 to search for information in various digital storage devices obtained from Little
24 Darlings adult club. Judge Sciscento issued a Search Warrant that same date, and an
25 Order Sealing Affidavit was granted on the same date. The Warrant appears to have
26 been executed on the same date, 4/7/22, and a Return was submitted to the Court,
27 identifying the items searched.

28 The Court was also provided with a transcript of a Telephonic Search Warrant
Application on 4/5/22, which appears to be related to the 4/7/22 Application and
Affidavit for Search Warrant, Digital Storage Device, relating to Little Darlings.

....

1 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

2 Petitioner's Motion requests that the Court:

- 3 1. Unseal Applications and Supporting Affidavits submitted in
4 support of search warrants authorized by Judge Letizia and Judge
5 Sciscento;
6 2. Enter an order prohibiting LVMPD, the Clark County District
7 Attorney's Office, and any person acting on their behalf from
8 reviewing any of the seized property is defined in NRS § 179.015,
9 until such a time as Movants and the Court can facilitate the
10 scrubbing of the seized property of any materials protected by
11 either the attorney-client, work product, or accountant-client
12 privileges; and
13 3. Order the permanent return of all property that contains
14 information protected by the attorney-client, work product, or
15 accountant-client privileges return
16

17 Petitioner states that on January 26, 2022 and March 12, 2022, LVMPD sent
18 correspondence to the Hustler Club purportedly providing "notice" that one or more
19 unidentified entertainers solicited an undercover police detective for sexual acts on the
20 premises. Hustler Club responded in writing to LVMPD Detective R. Sioson on
21 February 1, 2022, and LVMPD Detective R. Chavez on March 15, 2022, asking for
22 identification of the entertainer(s) at issue, affirming its zero-tolerance policy regarding
23 illegal sexual conduct, and outlining its extensive efforts to ensure that no acts of
24 solicitation of prostitution occurred on its premises. Hustler Club requested guidance
25 from LVMPD regarding additional actions, policies and procedures it could implement
26 to address the issue and ensure compliance with NRS 201.395(3). LVPD did not
27 respond.

28 On January 8, 2022 and March 12, 2022, Little Darlings received
correspondence from LVMPD regarding alleged prostitution activity by one or more
unidentified entertainer(s). Like the Hustler Club, Little Darlings 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 regarding the same. Metro did not respond.

Based on the Application and Affidavit of Metro Detective R. Chavez, P#775, on
April 1, 2022, Judge Letizia authorized a 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 and digital storage devices, inclusive of

1 computers, cellular phones and tablets. The Search Warrant Application and
2 Supporting Affidavit was sealed by Judge Letizia, pending further order of the court.

3 On April 5, 2022, members of LVMPD's Special Investigations Section executed
4 a search of the premises of Larry Flynt's Hustler Club (as well as premises leased to
5 another entity) and Little Darlings. Petitioner contends that the detectives corralled the
6 employees of each respective business and seized the personal cellular telephones of
7 the persons who identified themselves as management employees of each club. Police
8 officers took three (3) cellular telephones from managers of the Hustler Club and one
9 cellular telephone from a manager at Little Darlings. Petitioner contends that all of the
10 phones were personally owned by the individuals for personal and business use.

11 Further, a Duplicate Original Search Warrant and Order Sealing Affidavit was
12 issued by Judge Sciscento on April 5, 2022 for Little Darlings. Both the original Little
13 Darlings search warrant and sealing order and the duplicate search warrant and sealing
14 order were left at the business following the search.

15 Petitioner argues that the search warrant applications and supporting affidavits
16 fail to set forth sufficient facts and circumstances to establish probable cause to justify
17 the seizure of the Property pursuant to the Search Warrants as required by the Fourth
18 Amendment, Article 1, Section 18 of the Nevada Constitution, and NRS 179.045(1) and
19 (6)(a). Petitioners state that the gravamen of the instant LVMPD investigation is the
20 alleged solicitation of prostitution at the Hustler Club and Little Darlings in January
21 and March of this year, and Movants' responses thereto to abate the alleged illegal
22 activity as required under NRS 201.395(c). As such, all of the events at issue have
23 already occurred.

24 Petitioner states that the Property contains documents and communications,
25 which are privileged pursuant to the attorney-client privilege and work product
26 doctrine, NRS 49.095, and the accountant-client privilege, NRS 49.185. Accordingly
27 seek to protect all privileged information contained within the Property seized by
28 LVMPD, inclusive of the personal cellular telephones of the managers. The seized
computers, thumb drives, hard drives and tablets are used to run/oversee/manage
numerous businesses worldwide. The owners of the Hustler Club and Little Darlings,
their respective general managers, and in some cases, certain personnel, are in near

1 daily contact with their businesses' attorneys and accountants, and the vast majority of
2 these communications are conducted through the Property.

3 The Metropolitan Police Department's Opposition states that the search
4 warrants were sought and obtained after Petitioner failed to take corrective action
5 following Metro's letters re: illicit activity.

6 Metro argues that the Motion must be denied as this matter should have been
7 brought before Judge Letizia who initially ordered the affidavits to be sealed. See *In re*
8 *Searches & Seizures*, 2008 WL 5411772 (December 19, 2008) (where movants sought
9 to unseal search warrant records in the same court that issued search warrants and
10 ordered records sealed). NRS 179.045 confers jurisdiction upon the Justice of the
11 Peace to seal an affidavit in support of a search warrant upon a showing of good cause.
12 Here, Judge Letizia determined that good cause existed and ordered the affidavit
13 sealed. The order further provides that the affidavit is to remain sealed pending further
14 order of this Court. Accordingly, the Order Sealing the Affidavit requires the Petitioners
15 to seek relief from the issuing Court and not file a separate action.

16 Further, Metro argues that judicial economy supports transferring this matter to
17 the issuing judge. Despite setting a briefing schedule on the motion, this Court has not
18 expended a significant amount of time or resources into this matter. In fact, this Court
19 has not even had the opportunity to review the search warrants or the search warrant
20 application at issue. In the event the Court entertains the motion, a review of the
21 search warrant materials in camera may be necessary to determine with nondisclosure
22 remains appropriate.

23 Moreover, Metro argues that the Petitioner has not provided a basis for the
24 unsealing of the warrant applications. Essentially, Petitioner wants the warrant
25 application unseals so it can determine whether or not probable cause existed for the
26 warrant. Despite the fact that a neutral magistrate already determined that probable
27 cause existed for the warrants, if Petitioner truly believes that the applications are
28 deficient, the appropriate remedy, undoubtedly, would be for this Court to review the
sealed materials and make a determination as to whether probable cause exists.

While the covert operations described are certainly relevant and play a part in
the obtaining of the warrants, such conduct is not the sole basis of the warrants. The
remaining aspects of the investigation are confidential in nature and would be

1 detrimental to the investigation if revealed, either by including such facts in the instant
2 brief or by unsealing the warrant applications.

3 Metro's SIS team is primarily responsible for the enforcement of all federal,
4 state, county, and city laws concerning privileged and regulated businesses in Clark
5 County and the City of Las Vegas. Privileged licenses include Erotic Dance
6 establishments and Adult Cabarets. Here, Metro is investigating the crime of
7 Advancing Prostitution and Living from Earnings of Prostitution.

8 Based on SIS's investigation, both the Hustler Club and Little Darlings failed to
9 take reasonable steps to abate such illegal prostitution within 30 days after receiving
10 notice from LVMPD. Metro states that the information contained in the search
11 warrants relate to an ongoing criminal investigation. As such, it would be detrimental
12 to reveal it at this time. Unsealing the search warrant affidavits might result in the
13 destruction of evidence necessary for the investigation. During the execution of the
14 warrant, Metro obtained passwords to some of the seized devices from various
15 employees of the Hustler Club and Little Darlings to assist with search process, but not
16 all.

17 After executing the initial search warrants at each of the establishments, LVMPD
18 obtained additional search warrants for the electronic devices and electronically stored
19 information. These warrants expressly permit LVMPD, through its Digital Forensic Lab
(DFL), to examine, image, and copy the electronic devices as part of its search. DFL has
20 imaged the following property from the Hustler Club:

- 21 1. White Apple Phone with clear case
- 22 2. Black iPhone w/ black case
- 23 3. Blue iPhone w/ clear case
- 24 4. Black iPhone w/ pink case
- 25 5. iPad S/N GG8WQ3S3JF8J
- 26 6. iPad S/N DMPRLA6MH1MK
- 27 7. HP Prop, desktop computer
- 28 8. Dell OptiPlex 3060 desktop computer
9. HP Pro desktop compute
10. Black Cell Phone
11. Black Apple iPhone
12. (3) Lexar 64 GB thumb drives
13. (1) SanDisk 32GB thumb drive
14. (7) Unknown make thumb drives
15. (1) Microsoft thumb drives

1 Metro states that these items have not yet been returned and are still located in
2 the DFL Evidence Vault. DFL is currently processing the images and it would be best to
3 maintain the custody of the original evidence until DFL can confirm that the imaging
4 was successful. Return of the original devices prior to confirming the successful
5 imaging of the same could result in a loss of evidence.

6 With respect to the concern of privileged information, in other scenarios, DFL
7 has been provided a list of full names, email addresses, and/or phone numbers that
8 would be considered privileged. DFL utilizes software that can search for these
9 keywords. After the search is completed, DFL reviews the keyword hits for the provided
10 information. Items related to those keywords will be redacted. The software system
11 then generates a report for the investigative detectives, in this case the SIS team, to
12 review. The detectives would not be privy to the redacted, privileged information. DFL
13 does not participate in the investigation of any alleged criminal acts but merely
14 facilitates the process to allow the detectives to search electronic devices. Here, DFL
15 has not received a list of names, email addresses, and/or phone numbers that would be
16 considered privileged.

17 In reply, Petitioner argues that Metro failed to address the underlying issue of
18 whether the sealed affidavits even sought, let alone justified, the seizure of any
19 materials or communications protected by either the attorney-client or the accountancy
20 privileges. Petitioner argues that Metro did not address the duplicate search warrants
21 signed by JP Sciscento on 4/5/22, several hours into LVMPD's actual execution of the
22 search warrants at the Hustler Club and Little Darlings. It appears from their face that
23 these additional search warrants were submitted by Metro due to the facial deficiencies
24 of the original warrants acknowledge that the search warrants for digital storage
25 devices and associated sealing orders subsequently obtained on 4/7/22, were also
26 entered by Judge Sciscento.

27 With regard to Metro's request to transfer this matter to Justice Court,
28 Petitioner argues that this request is baseless. Petitioner notes the procedural
background of the reassignment of this particular "Motion," including Judge Bell's
minute order reassigning the matter to this criminal department. Petitioner states,
"Significantly, Judge Bell, a long-time jurist and criminal practitioner, found no basis

1 to transfer the matter to the Justice Court, where the search warrants were issued and
2 sealed ...”

3 Further, Petitioner argues that Metro ignores that NRS 179.085 provides the
4 mechanism for return of property pre-indictment. NRS 179.085(5) states, “[i]f a motion
5 pursuant to this section is filed when no criminal proceeding is pending, the motion
6 must be treated as a civil complaint seeking equitable relief. NRS 4.370 sets forth the
7 civil actions and proceedings over which the Justice Court has jurisdiction, and does
8 not provide jurisdiction for equitable relief matters, as is required here. Pursuant to
9 NRS 179.045(4), the magistrates in this case can and did seal the search warrant
10 affidavits, and any court, including this Court, can unseal them. If the Legislature
11 intended to craft a law that only permitted the issuing magistrate to unseal an affidavit,
it would have specifically stated.

12 Without permitting Petitioner access to the sealed original search warrant
13 affidavits, neither Petitioner nor this Court are able to determine whether there is
14 anything contained therein that either requests, or justifies, not only the seizure of, but
15 now the searching through, privileged information and communications. In addition, of
16 course, assuming that there is nothing in those affidavits to justify the seizure of
17 privileged information, which LVMPD’s silence on this topic concedes, there is then
18 absolutely no basis whatsoever for either LVMPD’s continued retention of the same or
its review thereof.

19 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

20 Although the issue before this Court sounds like an “Appeal” from the Justice
21 Court, it is not.

22 NRS 179.045 authorizes the issuance and sealing of search warrants. NRS
23 179.045 provides the following:

24 **NRS 179.045 Issuance and contents; sealing information upon which warrant is based; time for serving warrant.**

25 1. A search warrant may issue only on affidavit or affidavits sworn to
26 before the magistrate and establishing the grounds for issuing the
27 warrant or as provided in subsection 3. If the magistrate is satisfied that
28 grounds for the application exist or that there is probable cause to believe
that they exist, the magistrate shall issue a warrant identifying the
property and naming or describing the person or place to be searched.

2. Secure electronic transmission may be used for the submission of
an application and affidavit required by subsection 1, and for the issuance
of a search warrant by a magistrate. The Nevada Supreme Court may

1 adopt rules not inconsistent with the laws of this State to carry out the
2 provisions of this subsection.

3 3. In lieu of the affidavit required by subsection 1, the magistrate
4 may take an oral statement given under oath, which must be recorded in
5 the presence of the magistrate or in the magistrate's immediate vicinity by
6 a certified court reporter or by electronic means, transcribed, certified by
7 the reporter if the reporter recorded it, and certified by the magistrate.
8 The statement must be filed with the clerk of the court.

9 4. Upon a showing of good cause, the magistrate may order an
10 affidavit or a recording of an oral statement given pursuant to this section
11 to be sealed. Upon a showing of good cause, a court may cause the
12 affidavit or recording to be unsealed.

13 5. After a magistrate has issued a search warrant, whether it is based
14 on an affidavit or an oral statement given under oath, the magistrate may
15 orally authorize a peace officer to sign the name of the magistrate on a
16 duplicate original warrant. A duplicate original search warrant shall be
17 deemed to be a search warrant. It must be returned to the magistrate who
18 authorized the signing of it. The magistrate shall endorse his or her name
19 and enter the date on the warrant when it is returned. Any failure of the
20 magistrate to make such an endorsement and entry does not in itself
21 invalidate the warrant.

22 6. The warrant must be directed to a peace officer in the county
23 where the warrant is to be executed. It must:

24 (a) State the grounds or probable cause for its issuance and the
25 names of the persons whose affidavits have been taken in support thereof;
26 or

27 (b) Incorporate by reference the affidavit or oral statement upon
28 which it is based.

☐ The warrant must command the officer to search forthwith the person
or place named for the property specified.

7. The warrant must direct that it be served between the hours of 7
a.m. and 7 p.m., unless the magistrate, upon a showing of good cause
therefor, inserts a direction that it be served at any time.

8. The warrant must designate the magistrate to whom it is to be
returned.

9. As used in this section, "secure electronic transmission" means
the sending of information from one computer system to another
computer system in such a manner as to ensure that:

(a) No person other than the intended recipient receives the
information;

(b) The identity of the sender of the information can be
authenticated; and

(c) The information which is received by the intended recipient is
identical to the information that was sent.

(Added to NRS by 1967, 1459; A 1975, 39; 1981, 1652; 1993, 1412;
1997, 741; 2015, 2487)

1 Preliminarily, this Court notes that subsection 4 of NRS 179.045 not only allows
2 the Court to issue a Search Warrant, but "Upon a showing of good cause, a court may
3 cause the affidavit or recording to be unsealed." This appears, though it does not say
4 specifically, that it would apply to the Court that issued the Warrant.

5 NRS 179.085 provides the following:

6 **NRS 179.085 Motions for return of property and to
suppress evidence.**

7 1. A person aggrieved by an unlawful search and seizure or the
8 deprivation of property may move the court having jurisdiction where the
property was seized for the return of the property on the ground that:

- 9 (a) The property was illegally seized without warrant;
10 (b) The warrant is insufficient on its face;
11 (c) There was not probable cause for believing the existence of the
grounds on which the warrant was issued;
12 (d) The warrant was illegally executed; or
(e) Retention of the property by law enforcement is not reasonable
under the totality of the circumstances.

13 → The judge shall receive evidence on any issue of fact necessary to the
decision of the motion.

14 2. If the motion is granted on a ground set forth in paragraph (a),
15 (b), (c) or (d) of subsection 1, the property must be restored and it must
not be admissible evidence at any hearing or trial.

16 3. If the motion is granted on the ground set forth in paragraph (e)
17 of subsection 1, the property must be restored, but the court may impose
reasonable conditions to protect access to the property and its use in later
18 proceedings.

19 4. A motion to suppress evidence on any ground set forth in
paragraphs (a) to (d), inclusive, of subsection 1 may also be made in the
20 court where the trial is to be had. The motion must be made before trial
or hearing unless opportunity therefor did not exist or the defendant was
21 not aware of the grounds for the motion, but the court in its discretion
may entertain the motion at the trial or hearing.

22 5. If a motion pursuant to this section is filed when no criminal
23 proceeding is pending, the motion must be treated as a civil complaint
seeking equitable relief.

24 (Added to NRS by 1967, 1460; A 2015, 405)

25 Because the statute indicates, "The judge shall receive evidence on any issue of
26 fact necessary to the decision of the motion," this Court requested that the Applications
27 and Affidavits for Search Warrants be provided to the Court, in camera, for review. The
28 Court has reviewed those documents and the information contained therein.

NRS 179.085 seems to allow for the Motion filed by the Petitioners in this case,
as it indicates that "If a motion pursuant to this section is filed when no criminal

1 proceeding is pending, the motion must be treated as a civil complaint seeking
2 equitable relief.” Based upon that language, this Court cannot find that it was improper
3 for the Petitioners to file the Motion with the District Court. Although NRS 179.045
4 seems to imply that the issuing judge can unseal a Warrant that he or she sealed, NRS
5 179.085 also indicates that such a motion should be treated as a Complaint seeking
6 equitable relief, and consequently, the District Court would be an appropriate venue.

7 In reviewing the Applications and Affidavits in support of the requested Search
8 Warrants at issue, this Court finds and concludes that good cause was established for
9 the Warrants, and probable cause existed for their issuance. The Court further finds
10 that good cause was established for the sealing of such warrants, as the information
11 provided includes police procedures and intelligence obtained during the investigation,
12 and knowledge of this sensitive information may compromise the ability of the
13 Metropolitan Police Department’s ability to further investigate the crimes alleged to
14 have been committed, and any ongoing crimes allegedly being committed, relating to
15 this investigation. Disclosure of this information may also endanger the detectives
16 involved, and may compromise the identity of various undercover detectives, which
17 would therefore compromise the ability of the Metropolitan Police Department to
18 investigate further.

19 NRS 179.085 allows for a Motion to return seized property, and the Petitioners
20 in this matter have requested that the items seized be returned. This Court, however,
21 does not find that the items seized were improperly seized. The property was legally
22 seized with a warrant. The warrants appear to be valid and sufficient on their face.
23 There was probable cause supporting the issuance of the warrants. The warrants
24 appear to have been legally executed. Finally, retention of the property by Metro does
25 not appear to be unreasonable, due to their ongoing investigation.

26 Finally, Petitioners argue that Metro has seized information which is privileged.
27 Metro has suggested that DFL will redact information that Petitioners believe is
28 privileged, if Petitioners provide a list of names, email addresses, and/or phone
numbers, of information which would be considered privileged. This Court believes
this to be a reasonable resolution of the issue, and consequently, if the Petitioners
believe that there are specific information relating to communications with specific
individuals, they should provide a list of names, email addresses, phone numbers, etc.,

1 which would allow for a search and redaction of such information. It is reasonable,
2 however, for Metro to maintain possession of the seized items, at least for a reasonable
3 period of time, to obtain the stored information and determine if it supports the crimes
4 alleged to have been committed.

5 Petitioners argued that in considering the definitions of "solicitation" and
6 "prostitution," there was insufficient evidence of "prostitution" to support the crimes
7 alleged, and consequently, the warrants issued. The Warrants indicate that the
8 detectives were investigating the crimes of "Advancing Prostitution" and "Living from
9 Earnings of Prostitution." This Court finds and concludes that the evidence submitted
10 in support of the warrants was sufficient, and provided probable cause to believe that
11 the crimes of "Advancing Prostitution" and "Living from Earnings of Prostitution" were
12 being committed, and consequently, the warrants were appropriate.

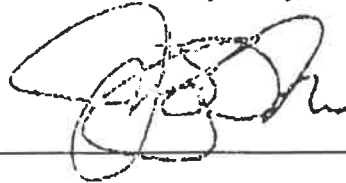
CONCLUSION/ORDER

13 Based upon the foregoing, and good cause appearing,

14 **IT IS HEREBY ORDERED** that Petitioners' Motion of the Real Parties in
15 Interest, Las Vegas Bistro, LLC, d/b/a Larry Flynt's Hustler Club, and Little Darlings of
16 Las Vegas, LLC, d/b/a Little Darlings, to 1) Unseal Search Warrant Applications and
17 Supporting Affidavits; 2) Quash Search Warrants; and 3) Return Seized Property, is
18 hereby **DENIED**.

19 The Court requests that counsel for Metro prepare and process a Notice of Entry
20 with regard to this Order.

Dated this 22nd day of May, 2022



24 **1E9 F2B 311B 37A0**
25 **Jerry A. Wiese**
26 **District Court Judge**
27
28

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Las Vegas Bistro, LLC,
7 Plaintiff(s)

CASE NO: A-22-851073-C

8 vs.

DEPT. NO. Department 30

9 None, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/22/2022

15 Krista Busch	kbusch@maclaw.com
16 Nicholas Crosby	ncrosby@maclaw.com
17 Jackie Nichols	jnichols@maclaw.com
18 Sherri Mong	smong@maclaw.com
19 Deanna Forbush	dforbush@foxrothschild.com
20 Doreen Loffredo	dloffredo@foxrothschild.com
21 Colleen McCarty	cmccarty@foxrothschild.com
22 Zachary Youngsma	zack@BradShaferLaw.com

23
24
25 If indicated below, a copy of the above mentioned filings were also served by mail
26 via United States Postal Service, postage prepaid, to the parties listed below at their last
27 known addresses on 5/23/2022
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Nick Crosby

10001 Park Run Drive
Las Vegas, NV, 89145



1 NOAS

2 DEANNA L. FORBUSH

3 Nevada Bar No. 6646

4 dforbush@foxrothschild.com

5 COLLEEN E. MCCARTY

6 Nevada Bar No. 13186

7 cmccarty@foxrothschild.com

8 **FOX ROTHSCHILD LLP**

9 1980 Festival Plaza Drive, Suite 700

10 Las Vegas, Nevada 89135

11 Telephone: (702) 262-6899

12 Facsimile: (702) 597-5503

13 ZACHARY M. YOUNGSMA

14 Nevada Bar No. 15680

15 zach@bradshaferlaw.com

16 **SHAFFER & ASSOCIATES, P.C.**

17 3800 Capital City Blvd., Suite 2

18 Lansing, Michigan 48906

19 Telephone: (517) 886-6560

20 Facsimile: (517) 886-6565

21 *Attorneys for Movant/Real Party in Interest*

22 *Las Vegas Bistro, LLC*

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 IN RE SEARCH WARRANT REGARDING
26 SEIZURE OF DOCUMENTS, LAPTOP
27 COMPUTERS, CELLULAR TELEPHONES
28 AND OTHER DIGITAL STORAGE DEVICES
FROM THE PREMISES OF LAS VEGAS
BISTRO, LLC AND LITTLE DARLINGS OF
LAS VEGAS, LLC,

Case No.: A-22-851073-C

Dept. No.: XXX

**NOTICE OF APPEAL REGARDING
LAS VEGAS BISTRO, LLC**

Movants and Real Parties in Interest.

NOTICE IS HEREBY GIVEN that Movant/Real Party in Interest Las Vegas Bistro, LLC, by and through its attorneys of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq. of Fox Rothschild LLP, and Zachary M. Youngsma, Esq. of Shafer & Associates, P.C., hereby appeals to the Supreme Court of Nevada from the Order denying the Motion of Real Parties In Interest Las Vegas Bistro, LLC dba Larry Flynt's Hustler Club and Little Darlings of Las Vegas, LLC dba Little

1 Darlings to: (1) Unseal Search Warrant Applications and Supporting Affidavits; (2) Quash Search
2 Warrants; and (3) Return Seized Property, entered in this action on May 22, 2022 and noticed on
3 May 24, 2022.

4
5 Dated this 23rd day of June, 2022.

6 **FOX ROTHSCHILD LLP**

7
8 By: /s/ Colleen E. McCarty

9 DEANNA L. FORBUSH
10 Nevada Bar No. 6646
11 COLLEEN E. MCCARTY
12 Nevada Bar No. 13186
13 1980 Festival Plaza Drive, Suite 700
14 Las Vegas, Nevada 89135
15 Telephone: (702) 262-6899

16 ZACHARY M. YOUNGSMA
17 Nevada Bar No. 15680
18 **SHAFFER & ASSOCIATES, P.C.**
19 3800 Capital City Blvd., Suite 2
20 Lansing, Michigan 48906
21 Telephone: (517) 886-6560

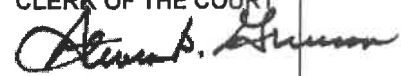
22 *Attorneys for Movant/Real Party in Interest*
23 *Las Vegas Bistro, LLC*
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of Fox Rothschild LLP, and on the 23rd day of June, 2022, I served a true and correct copy of the foregoing **NOTICE OF APPEAL REGARDING LAS VEGAS BISTRO, LLC** via electronic service by operation of the Court's electronic filing system, upon each party and counsel in this case who is registered as an electronic case filing user with the Clerk, as follows:

Nick Crosby, Esq.
Jacqueline Nichols, Esq.
Marquis Aurbach
10001 Park Run Drive
Las Vegas, NV 89145
ncrosby@maclaw.com
jnichols@maclaw.com
*Attorneys for Las Vegas Metropolitan
Police Department*

/s/ Jineen DeAngelis
An employee of Fox Rothschild LLP



1 **NOAS**

2 DEANNA L. FORBUSH

3 Nevada Bar No. 6646

4 dforbush@foxrothschild.com

5 COLLEEN E. MCCARTY

6 Nevada Bar No. 13186

7 cmccarty@foxrothschild.com

8 **FOX ROTHSCHILD LLP**

9 1980 Festival Plaza Drive, Suite 700

10 Las Vegas, Nevada 89135

11 Telephone: (702) 262-6899

12 Facsimile: (702) 597-5503

13 ZACHARY M. YOUNGSMA

14 Nevada Bar No. 15680

15 zach@bradshaferlaw.com

16 **SHAFFER & ASSOCIATES, P.C.**

17 3800 Capital City Blvd., Suite 2

18 Lansing, Michigan 48906

19 Telephone: (517) 886-6560

20 Facsimile: (517) 886-6565

21 *Attorneys for Movant/Real Party in Interest*

22 *Little Darlings of Las Vegas, LLC*

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 IN RE SEARCH WARRANT REGARDING
26 SEIZURE OF DOCUMENTS, LAPTOP
27 COMPUTERS, CELLULAR TELEPHONES
28 AND OTHER DIGITAL STORAGE DEVICES
FROM THE PREMISES OF LAS VEGAS
BISTRO, LLC AND LITTLE DARLINGS OF
LAS VEGAS, LLC,

Case No.: A-22-851073-C

Dept. No.: XXX

**NOTICE OF APPEAL REGARDING
LITTLE DARLINGS OF LAS VEGAS,
LLC**

Movants and Real Parties in Interest.

NOTICE IS HEREBY GIVEN that Movant/Real Party in Interest Little Darlings of Las Vegas, LLC dba Little Darlings, by and through its attorneys of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq. of Fox Rothschild LLP, and Zachary M. Youngsma, Esq. of Shafer & Associates, P.C., hereby appeals to the Supreme Court of Nevada from the Order denying the Motion of Real Parties In Interest Las Vegas Bistro, LLC dba Larry Flynt's Hustler Club and Little

1 Darlings of Las Vegas, LLC dba Little Darlings to: (1) Unseal Search Warrant Applications and
2 Supporting Affidavits; (2) Quash Search Warrants; and (3) Return Seized Property, entered in this
3 action on May 22, 2022 and noticed on May 24, 2022.

4
5 Dated this 23rd day of June, 2022.

6 **FOX ROTHSCHILD LLP**

7
8 By: /s/ Colleen E. McCarty

9 DEANNA L. FORBUSH
10 Nevada Bar No. 6646
11 COLLEEN E. MCCARTY
12 Nevada Bar No. 13186
13 1980 Festival Plaza Drive, Suite 700
14 Las Vegas, Nevada 89135
15 Telephone: (702) 262-6899

16 ZACHARY M. YOUNGSMA
17 Nevada Bar No. 15680
18 **SHAHER & ASSOCIATES, P.C.**
19 3800 Capital City Blvd., Suite 2
20 Lansing, Michigan 48906
21 Telephone: (517) 886-6560

22 *Attorneys for Movant/Real Party in Interest*
23 *Little Darlings of Las Vegas, LLC*
24
25
26
27
28


CERTIFICATE OF SERVICE

I certify that I am an employee of Fox Rothschild LLP, and on the 23rd day of June, 2022, I served a true and correct copy of the foregoing **NOTICE OF APPEAL REGARDING LITTLE DARLINGS OF LAS VEGAS, LLC** via electronic service by operation of the Court's electronic filing system, upon each party and counsel in this case who is registered as an electronic case filing user with the Clerk, as follows:

Nick Crosby, Esq.
Jacqueline Nichols, Esq.
Marquis Aurbach
10001 Park Run Drive
Las Vegas, NV 89145
ncrosby@maclaw.com
jnichols@maclaw.com
*Attorneys for Las Vegas Metropolitan
Police Department*

/s/ Jineen DeAngelis

An employee of Fox Rothschild LLP



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

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

CASE NO. A-22-851073-C
DEPT NO. XXX

**TRANSCRIPT OF
PROCEEDINGS**

Movants and Real)
Parties in Interest.)

BEFORE THE HONORABLE JERRY A. WIESE, DISTRICT COURT JUDGE

THURSDAY, MAY 12, 2022

**PLAINTIFF'S MOTION OF REAL PARTIES IN INTEREST LAS VEGAS
BISTRO, LLC DBA LARRY FLYNT'S HUSTLER CLUB AND LITTLE DARLINGS
OF LAS VEGAS, LLC DBA LITTLE DARLINGS TO: (1) UNSEAL SEARCH
WARRANT APPLICATIONS AND SUPPORTING AFFIDAVITS; AND (2) QUASH
SEARCH WARRANTS, AND (3) RETURN SEIZED PROPERTY**

APPEARANCES:

FOR MOVANTS AND
REAL PARTIES IN INTEREST:

COLLEEN E. McCARTY, ESQ.

FOR RESPONDENT:

JACQUELINE NICHOLS, ESQ.

RECORDED BY: VANESSA MEDINA, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, MAY 12, 2022, 10:39 A.M.**

2 * * * * *

3 THE COURT: This is Case 851073, Las Vegas Bistro
4 versus None. It says, "None."

5 MS. NICHOLS: It's just a petition, Your Honor. So
6 on the other side it would be the Las Vegas Metropolitan Police
7 Department. Jackie Nichols here on their behalf.

8 THE COURT: Good morning. So this is on for a motion
9 to, one, unseal the search warrant applications and supporting
10 affidavits; two, to quash a search warrant; and three, return
11 seized property; right?

12 MS. McCARTY: Correct, Your Honor.

13 THE COURT: So I understand that this has kind of
14 been -- gone to several different Judges until it landed on my
15 lap. I guess the question is do I really have authority or
16 jurisdiction to overrule the Justice Court Judge that entered
17 the order sealing; right?

18 And I know that there's -- I mean, the statute allows
19 for this motion. So it's not like it's an improper motion. I
20 just don't know if it needs to be brought back in front of that
21 Judge or in front of me. So somebody convince me.

22 MS. McCARTY: Yes, Your Honor. So there are a couple
23 of issues with regard to that. First of all, in this
24 particular case, there are two justices of the peace that
25 issued search warrants in this case. One is Judge Letizia.

JD Reporting, Inc.

1 The other is Judge Sciscento. So the first question you would
2 then have to ask yourself is, well, who does it go back to?

3 THE COURT: Well, I think Letizia is the one that
4 sealed it; right?

5 MS. McCARTY: She -- so there's two clubs involved.
6 Larry Flynt's Hustler Club, Little Darlings. Judge Letizia
7 signed the search warrant and sealed the warrant for the
8 Hustler Club. There was then a -- and then after the fact,
9 Judge Sciscento signed and sealed the warrants for the devices.

10 With regard to Little Darlings, Judge Letizia signed
11 and sealed the search warrants.

12 Then Judge Sciscento entered a duplicate original
13 search warrant. Also signing and sealing the warrant for
14 Little Darlings. And then Judge Sciscento signed the warrant
15 for the devices.

16 THE COURT: Okay.

17 MS. McCARTY: And sealed them. Notwithstanding that,
18 as you correctly point out, this is the mechanism in the
19 statute to address the return of property. And additionally,
20 the statute requires that this be treated as a civil complaint
21 seeking equitable relief. And the justice court simply doesn't
22 have jurisdiction to act as a court in equity.

23 Not only can you hear this, you must hear it. The
24 justice court is simply not -- does not have the authority to
25 do so.

1 With regard to that, the statute that provides for
2 the sealing, 179.045, states that the magistrate can seal, and
3 any Court can unseal. So clearly the magistrates,
4 Judge Letizia Judge Sciscento were acting in their proper
5 capacity to be able to seal it, and you would be acting in your
6 proper capacity as any Court to unseal it.

7 THE COURT: Which statute says any Court?

8 MS. McCARTY: 179.045.

9 THE COURT: It says a Court. You're looking at
10 Subsection 4?

11 MS. McCARTY: Yes. A Court. Sorry. A Court may
12 cause an affidavit or a recording to be unsealed.

13 THE COURT: Okay.

14 MS. McCARTY: If the legislature had intended for it
15 to go back to the magistrate, it would have said the magistrate
16 can unseal. That's not what it says. It says a Court.

17 THE COURT: It's a reasonable argument. Okay.

18 MS. McCARTY: Do you want us --

19 THE COURT: Keep going.

20 MS. McCARTY: -- address that issue first?

21 THE COURT: I'm letting do your thing.

22 MS. McCARTY: Well, I have many, many things to tell
23 you, but if you want to deal with venue first, like I'm happy
24 to allow Ms. Nichols to respond to that piece of it, however
25 you want to do it.

1 THE COURT: Oh, no. Go ahead. Just do your whole
2 argument, and then I'll let her do her hers.

3 MS. McCARTY: Okay. Your Honor, I do want to sort of
4 set the stage for you here. As I mentioned, before you you
5 have Las Vegas Bistro, LLC, which does business as Larry
6 Flynt's Hustler Club. You also have Little Darlings Las Vegas,
7 LLC, which does little business -- does business as Little
8 Darlings.

9 Contrary to how Metro refers to them in their
10 opposition, these are not illicit businesses. These are
11 long-standing, legitimate lawful businesses that hold privilege
12 licenses. They are highly regulated. They provide jobs to
13 hundreds of people and pay millions in taxes, and generally,
14 until what brings us here today, have enjoyed a very
15 cooperative relationship with law enforcement. These are
16 highly lucrative businesses that don't need to advance
17 prostitution to make a profit.

18 So why are they being referred to as illicit
19 businesses? Well, because illicit businesses are the intended
20 target of the statute upon which these search warrants are
21 based. Illicit businesses, like fake massage parlors, nail
22 salons, tax-preparation fronts that are nothing more than
23 fronts for illegal prostitution. These are businesses where
24 women are trafficked from other countries. They are held
25 against their will, and they're forced to perform sex acts.

1 That's what these statutes are intended to address.

2 And how do I know that? Well, it's all over the
3 legislative history of this bill, and, in fact, the bill was
4 specifically crafted to avoid legitimate businesses. This
5 statute is about sex trafficking. This statute is about
6 preventing women from living in squalor in the back of a nail
7 salon where there's no nail polish. It wasn't intended to
8 address legitimate licensed, lawful businesses like the ones
9 that are before you.

10 THE COURT: Well, I think their argument is that even
11 though it's a legitimate business that they were encouraging or
12 using prostitutes or allowing prostitution to happen through
13 the business. So, I mean, I understand the argument, but I
14 understand your argument that it's not meant for these
15 businesses.

16 MS. McCARTY: Correct, Your Honor. And let's address
17 that because you bring me right to my next point. And if you
18 don't mind, Your Honor, I printed out a couple of statutes for
19 you. Would it be all right if I brought them up?

20 THE COURT: Sure. Come on up.

21 MS. McCARTY: Just so you have them in front of you.

22 So there's no dispute that the two statutes that
23 match the references that are the basis of this search warrant
24 are the advancing prostitution statute; right, 201.395, and
25 also there was a mention of living from the earnings of a

1 prostitute, which is 201.320.

2 There is, however, zero evidence provided by Metro
3 regarding prostitution.

4 And what do I mean by that? Prostitution and
5 prostitute have statutory definitions. Solicitation is not the
6 same thing as prostitution.

7 And I provided you with those definitions, which are
8 at 201.295. Prostitution means engaging in a sexual conduct
9 with another person in return for a fee, monetary consideration
10 or thing of value. And a prostitute is a man or a woman who,
11 for a fee, engages in certain sex acts, which I will not read
12 for you. I think you can read for yourself. The statute,
13 201.395 and 201.320 require living off the proceeds of any
14 prostitute, so someone who took money and engaged in sexual
15 conduct, or, knows or should know about illegal prostitution,
16 engaging in sexual conduct with another person for money.

17 All Metro has alleged and all that is contained in
18 the letters that it sent to us, all it's alleged in his papers
19 is solicitation of prostitution. That is not the same thing.
20 They are trying to put a square peg in a round hole and trying
21 to apply these statutes when they simply do not apply here.

22 And we suspect that the search warrants are equally
23 lacking, which is why we are asking you to unseal them.

24 But even if, let's just say I'm wrong, even if they
25 have evidence of actual prostitution, not solicitation, actual

1 prostitution, if you look at 201.395, a person who owns,
2 leases, operates, controls or manages any business or private
3 property and who knows or should know illegal prostitution is
4 being conducted, okay, we don't have that, knows or should know
5 that one or more prostitutes engaging in this illegal
6 prostitution are victims of involuntary servitude -- we most
7 certainly don't have that, and, and, fails to take reasonable
8 steps to evade such illegal prostitution within 30 days after
9 the date on which the person knows the circumstances as set
10 forth in A and B.

11 So what you also don't see mentioned anywhere in
12 Metro's opposition are our Exhibits F through H, which is the
13 response that we provided to Metro in response to their notices
14 of solicitation of prostitution defining, outlining, explaining
15 what reasonable steps, as we're required to take under the
16 statute to abate the prostitution.

17 We took reasonable steps. That is what is required.
18 We asked the Las Vegas Metropolitan Police Department, if you
19 have any other suggestions for us, please tell us. We want to
20 work with you. We want to abate prostitution. We do not
21 support prostitution.

22 And you know what response we got from Metro?
23 Crickets until they showed up at our doorstep with a search
24 warrant.

25 The statutes simply don't apply. Even if they do, we

1 complied with them. We took the reasonable steps, and our
2 belief is that these search warrants do not have probable cause
3 because they're based on solicitation and not prostitution.
4 And even if they're not, we still complied, and we need to see
5 those search warrants to see if that is indeed the case, and we
6 need to see them now because, frankly, Your Honor, if there
7 isn't probable cause, we're done here. We don't have to go on
8 and have a lengthy discussion about how we're going to address
9 all of the attorney-client privilege materials that were seized
10 from us.

11 If these warrants are invalid, they should be
12 quashed, our property is returned, and that would be the end of
13 this matter.

14 I'm sure you've seen in the pleadings Metro goes to
15 great lengths to talk about how unsealing the warrants would
16 somehow harm this investigation. Everything that's occurred
17 with regard to this investigation has occurred. Metro seized,
18 under the auspices of these statutes that do not apply, nine
19 digital video recorders, eight computers, seven cell phones,
20 five tablets, 12 thumb drives, two computer servers and
21 mountains of paper records. Hundreds upon hundreds of
22 terabytes of information to determine whether we took
23 reasonable steps to ensure that prostitution is not occurring.
24 This is an egregious, egregious overreach.

25 But even if this Court had concerns about whether

1 this investigation could be harmed, everything that's occurred
2 here has already happened. Either we took the steps that we
3 told Metro we took or we didn't.

4 They tell you they had undercover who were
5 solicited. They already have that evidence. There is nothing
6 else more that is going to occur that could possibly be impeded
7 by unsealing these search warrants now. And they haven't met
8 their burden to convince you of that anyway. They don't get to
9 say -- and this is what's actually written in their affidavit;
10 it's possible. That's not the standard.

11 They have to provide sufficient information, factual
12 evidence that unsealing these search warrants now would somehow
13 be a problem, and they haven't done it. Everything they put in
14 their affidavits is vague and conclusory and without any, any
15 support.

16 They came in. They took all of our -- all of our
17 business materials to determine whether or not we took
18 reasonable steps that we told them we took, as we were required
19 to under the statute, and now they want to tell you that not
20 only can you not unseal the warrants so we can see whether or
21 not they have a basis, but they're also trying to claim that we
22 can't have our stuff back because it would impede investigation
23 when everything has already happened. There is nothing more
24 that's going to happen that can be impeded by unsealing those
25 warrants.

1 They rely on *Times Mirror*, essentially a regurge of
2 an argument that was presented to the District Court with
3 regard to a public records request related to the October 1st
4 shootings. We're not a media outlet. We're not here seeking
5 public records. They have my clients' property. My client
6 owns the property. We are here as the property owners. *Times*
7 *Mirror* doesn't even work here.

8 The case law is clear. The government must
9 demonstrate a compelling government interest that requires the
10 materials to remain sealed, and it must demonstrate that
11 there's no less restrictive means capable of serving that
12 interest.

13 So if there's a CI mentioned in the search warrants,
14 that person's name can be redacted. That does not allow them
15 to maintain our property, keep the search warrant sealed and
16 deny us the right to challenge the search warrants before this
17 Court. It simply doesn't. They haven't met their burden, not
18 even close.

19 With regard to the attorney-client and accountant
20 client privileges, a significant, significant amount of
21 information was seized that is covered by privilege, and it
22 must be protected if this Court is not at this time amenable to
23 unsealing the warrants so that we can challenge what is before
24 the Court.

25 Our suggestion is unseal the warrants, put a pause on

1 everything related to the devices. No more imaging, no more
2 searching until the appropriate challenge to the search
3 warrants has been heard and decided by this Court.

4 If, however, the Court is not inclined to do that, we
5 do have to address the attorney-client privilege information.

6 Metro suggests that one division of Metro should be
7 the one to go through this stuff to give it to another division
8 of Metro. Respectfully, that's the fox guarding the hen house.
9 That does not work.

10 Our suggestion would be that the attorney-client
11 privileges under the law, the material must be returned.
12 179.105 mandates the return of that property. And at that
13 point, we can engage a special master or a third-party vendor
14 who can go through and determine what is privileged and what
15 isn't.

16 We should not be made to provide to the Las Vegas
17 Metropolitan Police Department the name of every attorney and
18 every accountant and every secretary that we work with with
19 regard to those matters, and we certainly should not be made to
20 have the people investigating us decide what is privileged and
21 what is not. We are not waiving the privilege. We do not want
22 Metro to be the determiner of that privilege, and I suspect
23 that the Court can understand why.

24 I know I've been talking a very long time, so I will
25 wrap this up for you.

1 THE COURT: I'll tell you what my inclination is at
2 this time is it seems like I need to see the basis for the
3 warrant. So what my inclination is at this point is to ask
4 that the information be provided to me in camera so I can
5 determine whether or not there's a valid basis for the sealing.

6 The other question I guess I have about that is my
7 concern is that if I decide that there's not a valid basis for
8 the sealing, that seems like an appellate decision that I'm
9 overruling a lower court Judge, and I don't know that the
10 statutes allow for that, and that's the problem that I get --
11 or the concern that I have.

12 MS. McCARTY: Well, Your Honor, I think the statute
13 is clear that any Court can unseal and so --

14 THE COURT: Well, I know that's what the statute
15 says, but you understand my concern because --

16 MS. McCARTY: I do.

17 THE COURT: -- I am then making a decision that would
18 potentially be contrary to a Justice Court Judge who decided
19 that there was a valid basis for the sealing. And that
20 normally would only be done on -- through an appellate process.

21 MS. McCARTY: I understand, and certainly I'm in no
22 way knocking Judge Letizia or Judge Sciscento. I don't know
23 whether she had or he had the statutes in front of them at the
24 time of the call. I know how challenging it can be to be the
25 person on search warrant duty when your phone is ringing off

1 the hook all day every day. I'm not saying that she
2 necessarily made any sort of mistake here. It just perhaps
3 didn't get a thorough review based on the circumstances.
4 That's all I can surmise.

5 I don't think that there is an appellate issue. You
6 know, arguably, and you're correct, that if there was, it would
7 come to you anyway from the Justice Court. It would come up to
8 you first.

9 THE COURT: But that's not how it was raised.

10 MS. McCARTY: That is not how it was raised because I
11 do not believe that there is an appellate issue. I think the
12 statute is clear that a Court can unseal. And I think if the
13 legislature intended for it to remain before the magistrate, it
14 would have stated that, and it didn't. And that's basic
15 statutory --

16 THE COURT: The confusing thing is --

17 MS. McCARTY: -- construction.

18 THE COURT: The confusing thing is the statute
19 indicates that you have a basis to do this, and the motion
20 should be treated as a complaint. And in this case, it almost
21 seems like the motion would be treated as an appeal. So
22 there's some confusion, at least in my mind as far as do the
23 statutes -- I don't know that the statutes apply directly. And
24 I'm a little hesitant, but I think that probably at least what
25 I need to do is look at the basis for the warrants.

1 But I think I need to do that in camera before I
2 reveal anything. So.

3 MS. McCARTY: Well, and, you know, certainly, if this
4 is something you would like us to do some supplemental briefing
5 on, we're happy to do that as well. I know it's not contained
6 in the papers.

7 THE COURT: Well, we'll see if we get there or not.
8 I don't know.

9 MS. McCARTY: All right. Any additional questions
10 for me?

11 THE COURT: No. Thank you.

12 MS. McCARTY: Thank you.

13 THE COURT: Go ahead, Counsel.

14 You know how I'm thinking now. So.

15 MS. NICHOLS: Yeah. So all I -- yes, Your Honor. So
16 I'm going to just address your --

17 THE COURT: Do you have an --

18 MS. McCARTY: -- just address your specific issues.

19 THE COURT: Do you have an objection to me looking at
20 this stuff in camera --

21 MS. NICHOLS: No, Your Honor. That's actually the
22 department's proposal. Even in the briefing, that's the remedy
23 here. They're concerned about whether or not there's probable
24 cause, and the remedy is not to just unseal the search warrant.
25 The remedy is for this Court to review it in camera. And so

1 what the department's proposal would be is to submit the two
2 full search warrant applications to this Court in camera along
3 with a declaration by the lead investigating detective
4 explaining everything in the search warrant from like an open
5 investigation aspect and how that information in the search
6 warrant is detrimental to the current investigation.

7 THE COURT: Well, I don't know that I would want to
8 consider something that is different from what the JPs
9 considered. Then I'm looking at something that they didn't
10 consider to determine whether or not it's a valid warrant.

11 MS. McCARTY: Yes. I guess if I can clarify, Your
12 Honor. You would look at the search warrants to determine if
13 there was probable cause. The declaration would then come in
14 for purposes of unsealing, and the department's interest in its
15 ongoing investigation as well as the return of property aspect
16 that they're arguing. So --

17 THE COURT: Well, as far as the sealing is concerned
18 I mean, that information had to be provided to the JPs in order
19 for them to determine whether or not there was a valid basis to
20 seal. So I don't know that I want to hear additional
21 information about why --

22 MS. NICHOLS: Sure.

23 THE COURT: -- it should be sealed more than what
24 they have.

25 MS. NICHOLS: Okay. Yeah. I completely understand

1 that, Your Honor. It seems to me that their basis for
2 unsealing is solely because of a lack of probable cause.

3 THE COURT: But it's probable cause for the sealing
4 as well. I mean, there's probable cause for the warrant, and
5 then there's probable cause for the sealing. And if there's a
6 basis for the sealing, that had to be provided to the JP.

7 MS. NICHOLS: Yes, Your Honor. I guess what the case
8 law suggests for under the specific statute, that even though
9 that initially probable cause existed for the warrant and for
10 the sealing, at some point later, under the statute, there can
11 be good cause to establish an unsealing of that specific
12 application, and that good cause, you would apply a balancing
13 test.

14 So even if there is probable cause for the warrants,
15 and even if there was probable cause at the time the warrant
16 was sought to seal the warrant, at some point later there could
17 be good cause to unseal the warrant under the statute, and
18 that's how the statute is read is a magistrate can, for good
19 cause seal it, but then a Court could, for good cause, unseal
20 the application.

21 THE COURT: I don't think that's what they're
22 arguing.

23 MS. NICHOLS: And that's why I'm seeking
24 clarification. Because if it's strictly just because it lacked
25 probable cause, and I completely agree with Your Honor that it

1 should just be the -- you should just look at the application
2 itself and make that determination; however, if they are
3 arguing the latter, then I do believe that a declaration would
4 be appropriate.

5 THE COURT: I don't think Ms. McCarty has suggested
6 that something has happened since then that I need to look at
7 to change -- that it's changed circumstances; right?

8 MS. McCARTY: No, Your Honor. I agree with you. You
9 should look at whatever the JPs had and nothing more.

10 THE COURT: Okay.

11 MS. NICHOLS: Then that's fine, Your Honor. Then we
12 wouldn't have to submit a declaration. We could just submit
13 the two warrant applications that Judge Letizia signed.

14 THE COURT: Okay. Why don't we do that.

15 MS. NICHOLS: Okay.

16 THE COURT: I think it is fair to put a pause on the
17 investigation as far as the documents and the equipment is
18 concerned, especially in light of the argument that there's
19 some privileged information in there. I'll try to get to it
20 quickly and look at what you give me so that we can move
21 forward. I mean, they need their equipment to do their
22 business. You guys arguably have an investigation to conduct.
23 I know that both sides -- time is of the essence to both sides
24 I guess. So how quickly can you give me the information that
25 was submitted to the JPs?

1 MS. NICHOLS: If I can confer with my client real
2 quick.

3 THE COURT: Sure.

4 MS. McCARTY: And, Your Honor, to be clear, it would
5 be the stuff that was provided to both Judge Letizia and Judge
6 Sciscento; correct?

7 THE COURT: That's how I'm looking at it, yeah.

8 MS. McCARTY: For all four warrants?

9 THE COURT: Sure.

10 MS. NICHOLS: Well, to that point, Your Honor, the
11 other two warrants aren't subject to this current petition.
12 It's only Letizia's warrants, and those two warrants are
13 completely separate and apart and specific for the digital
14 forensic lab.

15 And if you look at what I submitted as part of the
16 opposition, Your Honor, it talks about, like, breaking into the
17 actual device or circumventing the passwords. It's not like an
18 entirely separate search warrant for the actual devices. It's
19 from like -- I guess the easiest way I can explain it, Your
20 Honor, would be electronic storage information, to bypass any
21 encryptions or passwords, to even destroy the device if
22 necessary to get access to the information contained therein.

23 THE COURT: So I guess I wasn't reading this
24 specifically as to one warrant application or another. I
25 thought there was multiple. So --

1 MS. NICHOLS: So there's two. So we have two
2 establishments, and we're dealing with two sets of warrants for
3 each establishment.

4 THE COURT: Okay.

5 MS. NICHOLS: The first two for both establishments
6 were signed by Judge Letizia, and that was -- that is the
7 search warrant which is at issue in their petition. That was
8 the search warrant that allowed the Department to obtain these
9 devices, their property.

10 And this second search warrant for both
11 establishments that was signed by Judge Sciscento is for
12 purposes of getting into the devices in the sense of bypassing
13 passwords and things like that. So it's not -- the original
14 search warrant by Judge Letizia is the actual search warrant at
15 issue.

16 THE COURT: And, Ms. McCarty, is there something in
17 your motion that deals with Sciscento's?

18 MS. McCARTY: Yes, Your Honor. And can you look
19 please at Exhibit C to our motion. Do you have it handy?

20 THE COURT: Exhibit what?

21 MS. McCARTY: C. I'm happy to bring it up if that's
22 easier.

23 THE COURT: I've got it.

24 MS. McCARTY: All right. So if you'll see here,
25 there is the original search warrant and the sealing affidavit.

1 And then there is a duplicate original search warrant and
2 sealing affidavit signed by Judge Sciscento.

3 Do you see that there are two there?

4 THE COURT: Yes.

5 MS. McCARTY: Additionally, there is a warrant signed
6 by Judge Letizia with respect to the Hustler Club. And then
7 there are the additional search warrants signed by
8 Judge Sciscento for the devices. The only reason the devices
9 weren't referenced in our motion is because we never received
10 returns. We didn't know they existed until Metro filed their
11 opposition. So certainly it is our intent to address all of it
12 now. There's no reason to come back a second time.

13 THE COURT: Let's just do it all at once. Just give
14 me the information on all the warrants.

15 Can I get them by the middle of next week?

16 MS. NICHOLS: Your Honor, I actually have copies of
17 four of the warrants with me today that I can come up and hand
18 to you.

19 THE COURT: Okay.

20 MS. NICHOLS: I don't have -- excuse me. I don't
21 have this one signed by Judge Sciscento, but I'll get on it,
22 and I'll be able to get it to you early next week.

23 THE COURT: Okay. So that will give me a chance to
24 look at most of it at least over the weekend. I should have a
25 decision for you guys by the end of next week.

1 MS. McCARTY: Thank you, Your Honor.

2 THE COURT: Okay.

3 MS. McCARTY: And in the meantime, everything is on
4 hold?

5 THE COURT: Let's put everything on hold until then,
6 and so we protect anything that might be privileged or anything
7 that might be improperly have been taken.

8 MS. McCARTY: Thank you, Your Honor.

9 THE COURT: Okay. Thank you.

10 MS. NICHOLS: And, Your Honor, just for
11 clarification, from a procedure aspect, you'll review those,
12 and then will you be issuing a minute order?

13 THE COURT: Either a minute order or a regular
14 written order, one or the other. Okay.

15 MS. NICHOLS: Okay. Thank you, Your Honor.

16 THE COURT: Thanks, guys. Appreciate your time.

17 MS. McCARTY: Thank you.

18 (Proceedings concluded at 11:08 a.m.)

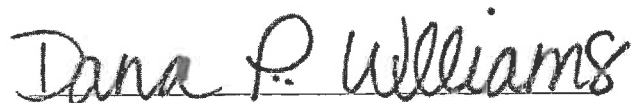
19 -oOo-

20 ATTEST: I do hereby certify that I have truly and correctly
21 transcribed the audio/video proceedings in the above-entitled
22 case to the best of my ability.

23

24

25



Dana L. Williams
Transcriber

JD Reporting, Inc.

<p>MS. McCARTY: [34] MS. NICHOLS: [17] 2/5 15/15 15/21 16/22 16/25 17/7 17/23 18/11 18/15 19/1 19/10 20/1 20/5 21/16 21/20 22/10 22/15 THE COURT: [51] - -oOo [1] 22/19 1 10:39 [1] 2/1 11:08 a.m [1] 22/18 12 [3] 1/12 2/1 9/20 179.045 [2] 4/2 4/8 179.105 [1] 12/12 1st [1] 11/3 2 201.295 [1] 7/8 201.320 [2] 7/1 7/13 201.395 [3] 6/24 7/13 8/1 2022 [2] 1/12 2/1 3 30 [1] 8/8 8 851073 [1] 2/3 A a.m [2] 2/1 22/18 abate [2] 8/16 8/20 ability [1] 22/22 able [2] 4/5 21/22 about [10] 6/5 6/5 7/15 9/8 9/15 9/25 13/6 15/23 16/21 19/16 above [1] 22/21 above-entitled [1] 22/21 access [1] 19/22 accountant [2] 11/19 12/18 act [1] 3/22 acting [2] 4/4 4/5 acts [2] 5/25 7/11 actual [5] 7/25 7/25 19/17 19/18 20/14 actually [3] 10/9 15/21 21/16 additional [3] 15/9 16/20 21/7 additionally [2] 3/19 21/5 address [10] 3/19 4/20 6/1 6/8 6/16 9/8 12/5 15/16 15/18 21/11 advance [1] 5/16 advancing [1] 6/24 affidavit [4] 4/12 10/9 20/25 21/2 affidavits [3] 1/15 2/10 10/14 after [2] 3/8 8/8</p>	<p>against [1] 5/25 agree [2] 17/25 18/8 ahead 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