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November 20, 2008

State of Nevada  
Office of the Labor Commissioner  
555 E. Washington Avenue - #4100  
Las Vegas, Nevada 89101  
Attention: Michael Tanchek, Labor Commissioner

VIA FAX AND FIRST CLASS MAIL

Re: Baldonado v. Wynn  
Request for Order Directing  
Production of Information

Dear Commissioner Tanchek:

I write to seek a ruling on this office's request for production of certain information by Respondent in advance a final hearing in this matter. After conferring with all other counsel in this matter, and Ms. Hegeduis, that production remains subject to a dispute between the parties. In compliance with the suggestion of Ms. Hegeduis, I now write to secure a resolution of that dispute.

This office seeks the production of the names and addresses of Respondent's former team leads/boxmen/floor supervisors who terminated their employment after September 1, 2006. Such former employees are believed to be relevant witnesses to the facts and circumstances at issue in these proceedings. It is also believed that such persons, being no longer employed by the Respondent, will be more likely to provide fully accurate testimony. Witness testimony from former employees is commonly sought in employment litigation matters.

Respondent has advised it will not honor this office's request for the production of such information. It has taken the position that no such pre-hearing disclosures are explicitly authorized by the N.R.S. or N.A.C. and therefore it need not comply with such request. I do not believe Respondent's refusal to produce this information is either well based or should be sustained.

Respondent's position is based upon a narrow and convoluted reading of N.A.C. Chapter 607. Those regulations provide for the taking of depositions by parties, N.A.C. § 607.430. They also provide for the issuance of subpoenas upon a party's request, subject to your approval. N.A.C. § 607.320(1) states:

Upon proper application, the Commissioner will issue subpoenas for the attendance of witnesses or the production of documents, books or other records at a hearing conducted by him.

Respondent insists that this language must be applied in a stilted and literal fashion and that a subpoena can only require the production of documents or records at the time of the actual "hearing" conducted in this case. This contorted reasoning does not comply with the intended meaning of N.A.C. § 607.320(2) or the need for a fair and expeditious administrative hearing process.

Under Respondent's tortured logic, you can grant a subpoena request by this office for these records but you cannot direct the production of the records directly to this office. Instead, the records would have to be produced to you at a specified "hearing" date. Yet the N.A.C. also authorizes you to then continue such a hearing to a future date for the express purpose of allowing Complainants to utilize those produced records to secure additional relevant evidence.<sup>1</sup> It is patently ridiculous to impose upon your office, and the parties, such a pointless procedure so that the fairness and integrity of the hearing process can be assured.

Respondent's position also ignores the power granted to parties under N.A.C. § 607.430 to "depose witnesses in the manner prescribed by the Nevada Rules of Civil Procedure." Depositions under the Nevada Rules of Civil Procedure are governed by Rule 30. That rule provides for the simultaneous production of documents at the time of the deposition, either via subpoena (Rule 30(b)(1)) or via a request for production of documents under N.R.C.P. Rule 34 (Rule 30(b)(5)).

Notwithstanding the incorporation of N.R.C.P. Rule 30 into N.A.C. § 607.430, the Respondent insists that the subpoena or

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<sup>1</sup> N.A.C. § 607.440 provides:

Continuances: The Commissioner may, before or during a hearing, and on a proper showing, grant continuances for submission of further proof of any matter, or for any other just cause.

notice of production processes contemplated by Rule 30 cannot be allowed in these proceedings because they are not expressly mentioned by the N.A.C. That argument is rendered completely superfluous by the provisions of N.R.C.P. Rule 30(b)(6):

A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. **The persons so designated shall testify as to matters known or reasonably available to the organization.** (emphasis provided)

The reliance of N.A.C. § 607.430 on the provisions of N.R.C.P. Rule 30 renders Respondent's objection to providing the requested information completely absurd. Under Respondent's reasoning it would not have to produce the actual records but it would still have to produce a deposition witness able to provide the requested information because the relevant records are "reasonably available" to the Respondent. That means it would comply with its obligations under N.A.C. § 607.430 by producing a witness who would read the requested information from the Respondent's records into the deposition transcript. It is difficult, if not impossible, to imagine a more pointless and obstructive process.

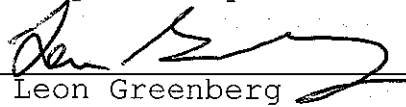
In sum, it is clear the provisions of N.A.C. § 607.430, through their incorporation of N.R.C.P. Rule 30, contemplate the use of both pre-hearing depositions and document production devices by parties to administrative proceedings before your office.<sup>2</sup> I am asking you to issue a subpoena, or other Order, requiring the Respondent to produce to this office the following:

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<sup>2</sup> The other forms of civil discovery, requests for admissions and interrogatories, are not expressly mentioned by N.A.C. Chapter 607 and I am unaware of their incorporation by reference. Nonetheless, you clearly have broad authority to provide for such procedures, and any other appropriate pre-hearing procedures, pursuant to N.R.S. § 607.160(1)(b) and (2) and N.A.C. § 607.040.

That last known name and address of all persons employed as Boxmen, Floor Supervisors, Casino Team Leads or Box Team Leads, from September 1, 2006 to the present, such persons no longer being employed by the Respondent.

Respectfully submitted,

  
Leon Greenberg

cc.: Gregory Kamer, Esq.  
Lawrence Jay Litman, Esq.  
Diana Hegedius, Esq.