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12 **EIGHTH JUDICIAL DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 MICHAEL SHACKLEFORD, as an
15 Individual,

16 Petitioner,

17 vs.

18 NEVADA GAMING COMMISSION, a
19 Nevada Government Entity,

20 Respondent.

21 Case No.: A-12-671998-W

22 Dept No.: XIII

23 **REPLY TO OPPOSITION TO MOTION TO DISMISS**

24 **PETITION FOR WRIT OF MANDAMUS**

25 COMES NOW, Respondent, STATE OF NEVADA, *ex rel* its NEVADA GAMING
26 COMMISSION ("COMMISSION"), by and through its attorneys CATHERINE CORTEZ
27 MASTO, Attorney General, and MICHAEL P. SOMPS, Senior Deputy Attorney General, and
28 hereby replies to Petitioner's Opposition to Motion to Dismiss.

This Reply is based upon the attached Points and Authorities and all other papers and pleadings on file.

POINTS AND AUTHORITIES

I. ARGUMENT

Petitioner erroneously maintains that he is entitled to obtain from the COMMISSION "slot win percentages for Clark County casinos with \$1,000,000 in revenue, by both

1 denomination and casino.” However, as explained in its Motion to Dismiss, the
2 COMMISSION has not calculated that information on a casino-by-casino basis. More
3 importantly, Petitioner has no right to such information, even if it were calculated, as it is
4 made confidential by law and potentially privileged and subject to notice requirements prior to
5 its release.

6 A. THE COMMISSION HAS NOT COMPILED THE INFORMATION SOUGHT BY PETITIONER.

7 Petitioner seeks information that is not maintained in the normal course by the
8 COMMISSION. Moreover, there is no legal basis to require the COMMISSION to calculate
9 for Petitioner the slot win percentages of individual Clark County casinos.

10 Petitioner in his Opposition places significant emphasis on a document made public by
11 the State Gaming Control Board (Board) called the “Gaming Revenue Report” (Report) which
12 provides, on a state-wide and regional basis, slot win percentages¹. Petitioner attempts to
13 cast doubt on the veracity of the COMMISSION and argues that, given this Report, slot win
14 percentages by casino must be available in order to compile the Report. Petitioner is simply
15 wrong in his assertions.

16 Contrary to Petitioner’s belief and suggestions otherwise, gaming licensees do not
17 submit to the COMMISSION or to the Board their “slot win percentages.” Rather, gaming
18 licensees submit “coin in” and “gross revenue” information as part of confidential revenue
19 reporting on a form known as a “NGC-31.” See Exhibit A. With that confidential revenue
20 information, the Board is able to compute win percentages on a state-wide or regional basis
21 as reflected in the Board’s Report, which is disseminated to provide to the public general
22 information concerning the economics of the gaming industry.

23 Petitioner casually questions the integrity of the COMMISSION and suggests, without
24 any evidentiary support, that the COMMISSION is less than truthful in representing that it
25 does not have slot win percentages for each casino. Petitioner’s suggestion is offensive and
26 contrary to the facts. In its Motion to Dismiss, the COMMISSION explained, with the support
27

28 ¹ For the benefit of the court, the COMMISSION and the Board are separate state agencies created pursuant to NRS 463.022 and NRS 463.030, respectively. While the COMMISSION is responsible for ensuring the proper reporting and collection of gaming related taxes and fees, the Board assists in those functions.

1 of an affidavit, that it does not have any documents identifying slot win percentages on a
2 casino-by-casino basis. While the COMMISSION could, with the Board's assistance,
3 determine slot win percentages from the confidential data submitted, it has not done so and
4 NRS chapter 239 does not impose any such requirement.

5 The COMMISSION has no legal obligation to comply with Petitioner's request given
6 that it would require the COMMISSION to compile the information sought. The Petition
7 should be dismissed.

8 B. THE INFORMATION SOUGHT BY PETITIONER IS CONFIDENTIAL.

9 Assuming the COMMISSION actually compiled the information requested by
10 Petitioner, the reality is that the information is not public and thus specifically excluded from
11 NRS chapter 239. NRS 463.120 makes the information Petitioner seeks confidential. As a
12 result, the COMMISSION is not obligated to release to Petitioner the information.

13 NRS 463.120(4)(a) is very clear when it states "all information and data . . . relative to
14 finances, earnings or revenue . . . are confidential." The win percentages associated with
15 different denominations of an individual casino's slot machines, if calculated by the
16 COMMISSION, is a number directly related to the finances, earnings and revenue of a
17 casino. Specifically, a casino's slot win percentage is number derived from gross revenue
18 divided by coin in. It is unavoidable that the information Petitioner seeks is confidential.
19 While Petitioner may not like that conclusion, that is the law in the State of Nevada that the
20 COMMISSION, as well as the Board, is required to follow.

21 Further, before the COMMISSION has any obligation to release confidential
22 information belonging to individual gaming licensees, the provisions of NRS 463.341 must be
23 followed. Each individual casino affected by the potential release of their confidential
24 revenue related information, must be notified of these proceedings. However, such
25 notification has not occurred.

26 The COMMISSION has no legal obligation to release to Petitioner information that is
27 made confidential pursuant to NRS 463.120 as it is related to finances, earnings and
28 revenue. The Petition should be dismissed.

1 C. THE INFORMATION SOUGHT BY PETITIONER MAY BE PRIVILEGED.

2 The information sought by Petitioner may be privileged and subject to the provisions
3 and protections of NRS 463.3407. Without complying with the provisions of NRS
4 463.3407(3), Petitioner is not entitled to the information he seeks.

5 Petitioner argues that the information he seeks could not be privileged. Further,
6 Petitioner seems to imply that any applicable privilege has been waived given that the Board
7 has published the Gaming Revenue Report and that similar information is published in other
8 jurisdictions. Petitioner's arguments lack merit.

9 Petitioner offers nothing substantive in support of his assertion that the information is
10 not privileged. The mere fact that the Board has released a Report that provides, on a broad
11 regional basis, slot win percentages does not mean that the individual data submittals made
12 by gaming licensees lose their privileged nature. Through the Report, the Board has not
13 released information submitted by and attributable to individual gaming licensees.

14 Further, it is not helpful and it is irrelevant what other states do. First, the
15 COMMISSION, Nevada gaming licensees, and Petitioner are in Nevada and Nevada law
16 applies. Second, while affiliates of Nevada gaming licensees operating in other jurisdictions
17 may have their slot win percentages publicized, actual Nevada gaming licensees' slot win
18 percentages and supporting information have not been publicized and may be privileged
19 under Nevada law.

20 The information sought by Petitioner is potentially privileged. Any gaming licensee
21 falling within the scope of what is sought by Petitioner must either give their consent to the
22 release of the information or be given notice of the Petition and the proceedings so that it can
23 respond accordingly. See NRS 463.3407(3). Neither has happened. Therefore, there is no
24 obligation for the COMMISSION to release to Petitioner the information he seeks and the
25 Petition should be dismissed.

26 II. CONCLUSION

27 There is no basis to conclude that the COMMISSION has failed to fulfill a duty
28 imposed by law necessitating this court's intervention. There is no obligation on the part of

1 the COMMISSION to: 1) compile information to comply with Petitioner's request; 2) to
2 release information clearly made confidential pursuant to NRS 463.120; or 3) to release
3 potentially privileged information when the provisions of NRS 463.3407 have not been
4 complied with. Ultimately, Petitioner cannot meet his burden and his Petition is without merit.
5 Therefore, the COMMISSION requests that the Petition be dismissed.

6 Dated this 22nd day of February, 2013.

7 Submitted by:

8 CATHERINE CORTEZ MASTO
9 Attorney General

10 By: /s/ Michael P. Somps
11 MICHAEL P. SOMPS
12 Senior Deputy Attorney General

NEVADA GAMING COMMISSION - MONTHLY GROSS REVENUE STATISTICAL REPORT

Account No., Name, Address, Zip Code

Account No.:
Legal Name:
Trade Name:
Address:
Zip Code:

FILING DEADLINE FOR THIS REPORT:

For Gaming operations during the month of:

SECTION A: Table with columns for CODE, SLOT MACHINES, NO. OF UNITS, COINS IN (\$), DROP (\$), and GROSS REVENUE (\$). Includes sub-totals for 0 units and 0.00 revenue.

SECTION B: Table with columns for CODE, TABLE GAMES, NO. OF UNITS, PIT CREDIT ISSUES (\$), PIT CREDIT (CHIPS(\$)), PIT CREDIT PAYMENT (CASH)(\$), DROP (\$), WIN (\$), and GROSS REVENUE (\$). Includes sub-totals for 0 units and 0.00 revenue.

PROGRESSIVE KENO (Check One)? Yes No
ACCOUNTING METHOD USED FOR RECORDING RACE AND SPORTS BOOK REVENUE (Please Check One):
CASH: All cash wager received for the day less all cash paid out for day.
MODIFIED ACCRUAL: All wagers for the events completed for the day less cash paid out.
The HASH TOTAL is a number comprised of the following subtotals added together.
SECTION A ("NO. OF UNITS" TOTAL CONVERTED TO DOLLARS) ("COINS IN" TOTAL) ("DROP" TOTAL)
SECTION B ("NO. OF UNITS" TOTAL CONVERTED TO DOLLARS) ("PIT CREDIT ISSUES" TOTAL) ("PIT CREDIT PAYMENTS" (CHIPS) TOTAL) ("PIT CREDIT PAYMENTS (CASH) TOTAL) ("DROP" TOTAL) ("WIN" TOTAL)
SECTION C ("NO. OF UNITS" TOTAL CONVERTED TO DOLLARS) ("WRITE" TOTAL)
SECTION D ("NO. OF UNITS" TOTAL CONVERTED TO DOLLARS)

SECTION C: Table with columns for CODE, COUNTER GAMES, NO. OF UNITS, WRITE (\$), and GROSS REVENUE (\$). Includes sub-totals for 0 units and 0.00 revenue.

SECTION D: Table with columns for CODE, CARD GAMES, NO. OF UNITS, and GROSS REVENUE (\$). Includes sub-totals for 0 units and 0.00 revenue.

HASH TOTAL: 0.00

I, _____, certify and declare under the penalties of perjury that I am the _____ of the business named above; that this is a true, correct and complete report to the best of my knowledge, information, and belief, and that this report is made with the knowledge and consent of all other individuals licensed.
Dated _____ Signed _____
Person to contact regarding this report: _____ Name _____ Phone # _____
Please return to State Gaming Board, Tax and Licence Division
P.O. Box 8004, Carson City, NV 89702-8004

Exhibit A