



## Board of Storey County Commissioners Agenda Action Report

Meeting date: 11/13/2023 10:00 AM -  
Special BOCC Meeting

Estimate of Time Required: 1 min

Agenda Item Type: Discussion/Possible Action

- **Title:** Consideration and possible approval of the agenda for the November 13, 2023, special meeting.
- **Recommended motion:** Approve or amend as necessary.
- **Prepared by:** Drema Smith

**Department:**                      **Contact Number:** 7758470968

- **Staff Summary:** See attached.
- **Supporting Materials:** See attached
- **Fiscal Impact:**
- **Legal review required:** False
- **Reviewed by:**

\_\_\_\_\_ Department Head

**Department Name:**

\_\_\_\_\_ County Manager

**Other Agency Review:** \_\_\_\_\_

- **Board Action:**

<input type="checkbox"/> Approved	<input type="checkbox"/> Approved with Modification
<input type="checkbox"/> Denied	<input type="checkbox"/> Continued



## Board of Storey County Commissioners Agenda Action Report

**Meeting date: 11/13/2023 10:00 AM -  
Special BOCC Meeting**

**Estimate of Time Required: 1 day**

**Agenda Item Type: Discussion/Possible Action**

- **Title:** Consideration and possible action in regard to the holding of a hearing and ruling on the possible revocation of the business licenses (including liquor license) of Virginia City Gaming LLC and or Vincent Malfitano for the business being conducted at the Bonanza Saloon. The Board may recess during the hearing to privately consult with counsel.
- **Recommended motion:** I (commissioner), move to approve.
- **Prepared by:** KEITH LOOMIS

**Department:**

**Contact Number:** 7758470964

- **Staff Summary:** On August 3, 2023, the Storey County Sheriff's Office suspended the business licenses of the business being conducted at the Bonanza Saloon. The licenses were suspended because an investigation by the Nevada Department of Taxation gave probable cause to believe that Mr. Malfitano, the managing member of Virginia City Gaming LLC and the owner of the Bonanza Saloon had been purchasing, transporting, re-bottling, and selling alcohol obtained from sellers not licensed as wholesale liquor distributors in violation of the Nevada Revised Statutes. That suspension was upheld by the Board of County Commissioners on August 15, 2023. The Board also authorized the commencement of proceedings to formally revoke and/or suspend the licenses of Virginia City Gaming LLC and/or Vincent Malfitano. A complaint seeking revocation of the licenses was filed on September 6, 2023, (attached). Virginia City Gaming and Malfiatano through their attorneys filed a Motion to Dismiss/Answer to the Complaint on September 18, 2023, (attached). This office responded to the motion on October 2, 2023, (attached). Virginia City Gaming/Vincent Malfitano filed a reply to the response on October 11, 2023, (attached). A hearing on the proposed license revocation is presently scheduled for November 13, 2023. At the hearing it is expected that testimony of witnesses and the submission of documentary evidence will be submitted.
- **Supporting Materials:** See attached
- **Fiscal Impact:**
- **Legal review required:** TRUE

- **Reviewed by:**

\_\_\_\_\_ Department Head

**Department Name:**

\_\_\_\_\_ County Manager

**Other Agency Review:** \_\_\_\_\_

- **Board Action:**

<input type="checkbox"/> Approved	<input type="checkbox"/> Approved with Modification
<input type="checkbox"/> Denied	<input type="checkbox"/> Continued

# **COMPLAINT FOR REVOCATION OF LICENSES**

Comes now, the Storey County District Attorney's Office and submits this Complaint as follows:

Under Storey County Code (SCC) Section 5.04.110 the Storey County Board of County Commissioners may suspend, revoke or cancel any licenses including liquor licenses issued for the conducting of business pursuant to SCC Chapter 5.04 for good cause. Good cause includes, but is not limited to:

The commission of, or permitting or causing the commission of, any act in the operation of the business which act is made unlawful or is prohibited by any ordinance, rule or law of Storey County, or state or federal government. SCC 5.04.110(A)(2).

Fraudulent practices or misrepresentations in the operation of the business, or concealment or misrepresentation in procuring the license. SCC 5.04.110(A)(3).

In this case it is alleged that the following person or entity i.e., Vincent Malfitano, and/or Virginia City Gaming LLC., (hereafter Respondents) have engaged in activities which establish good cause for the revocation of the business licenses that authorize business and the sale of liquor to be conducted at the Bonanza Saloon located at 27 South C Street in Virginia City, Storey County, Nevada. It is alleged that Virginia City Gaming LLC is an owner of the Bonanza Saloon whose manager is Vincent Malfitano. It is alleged that good cause exists for the revocation, cancellation or suspension of business licenses of Respondents in relation to their business activities involving the Bonanza Saloon as set forth hereafter.

## **GROUND ONE**

Respondents, between 2020 and 2023, repeatedly purchased or caused the purchase of liquor for retail sale in the Bonanza Saloon from outlets such as Costco and Sam's Club which were not state-licensed wholesalers of liquor, a violation of NRS 369.487.

## **GROUND TWO**

Respondents, between 2020 and 2023, have repeatedly caused the liquor of one brand to be transferred to liquor bottles of another brand and have sold or provided the substituted liquor to patrons and customers of the Bonanza Saloon without obtaining the consent of the patrons and customers to be provided with the substitute liquor, a violation of NRS 597.260.

## **GROUND THREE**

Respondents have between 2020 and 2023 repeatedly engaged in fraudulent practices or misrepresentations by transferring one brand of liquor into empty bottles of another brand

of liquor which they supplied to customers and patrons of the Bonanza Saloon thereby fraudulently representing or misrepresenting that the liquor in the previously empty bottles is liquor provided or produced by the entity whose name is on the bottle to which the liquor was transferred.

#### **GROUND FOUR**

Respondents have conducted business at the Bonanza saloons in such a way as to: 1. Suffer declarations of default as to a deed of trust encumbering the real property of the Delta and Bonanza Saloons; 2. Be unable to purchase supplies for the conduct of their businesses at the Bonanza Saloon from Nevada-licensed wholesale suppliers of liquor who are no longer willing to supply liquor to respondents because of the failure of respondents to fulfill their financial obligations to the suppliers; 3. Repeatedly provide checks or drafts for services provided by employees or contractors of the Bonanza Saloon which bounce or do not clear the banks on which they are drawn; and, 4. Fail to pay the real property taxes owed to the County thereby suffering the transfers of title to the real property on which the Bonanza Saloon is located to the Storey County Treasurer in trust for the benefit of Storey County and the State of Nevada. By such activities they have demonstrated the inability to successfully conduct business at the Bonanza Saloons, all of which constitute good and sufficient ground for revoking the business license of the Bonanza Saloon.

#### **GROUND FIVE**

Respondents have from 2021 through 2023 misclassified employees as independent contractors rather than employees in that persons working at the Bonanza Saloon do so in the service of Virginia City Gaming LLC and/or Vincent Malfitano under any appointment or contract of hire express or implied, oral or written, whether lawfully or unlawfully employed. Furthermore, respondents do not provide persons working at the Bonanza with IRS Form 1099's all of which causes the workers to be misclassified by respondents as independent contractors in violation of NRS 608.400.

#### **GROUND SIX**

Respondents, from 2021 through 2023 did not confirm the eligibility of prospective employees of the Bonanza Saloon to work in the United States by failing to obtain I-9 forms in violation of 8 CFR 274a.2.

#### **GROUND SEVEN**

Respondents have from 2021 through 2023 did not obtain W-4 forms from prospective employees and did not deduct income taxes through withholding from employee paychecks in violation of 26 CFR 3402.

## GROUND EIGHT

Respondents from 2021 through 2023 did on numerous occasions fail to pay the wages of their employees at the Bonanza Saloon with good and valuable negotiable checks in violation of NRS 608.120.

Wherefore your complainant submits that the information and evidence to be submitted to the Board establishes the grounds for revoking, cancelling or suspending the business licenses including liquor license issued to respondents or either of them pursuant to SCC Chapter 5.04. This complaint is made upon information and belief that the allegations set forth above are true.

Dated this 6th day of September, 2023.

STOREY COUNTY DISTRICT ATTORNEY

By 

Keith Loomis, Chief Deputy District Attorney  
Storey County District Attorney's Office  
P.O. Box 496 201 S. C Street  
Virginia City, NV 89440  
(775) 847-0964 kloomis@storeycounty.org

FILED

2023 SEP 18 PM 3: 56

STOREY COUNTY CLERK

31 

1 Devon T. Reese (7496)  
Alex Velto (14961)  
2 HUTCHISON & STEFFEN, PLLC  
5371 Kietzke Lane  
3 Reno, NV 89511  
(775) 853-8746 tel  
4 (775) 201-9611 fax  
jreynolds@hutchlegal.com  
5 avelto@hutchlegal.com

6 *Attorneys for Virginia City Gaming LLC*  
*and Vincent Malfitano*

7  
8 **STOREY COUNTY BOARD OF**  
**COUNTY COMMISSIONERS**

9  
10  
11 IN THE MATTER OF  
12 VINCENT MALFITANO AND/OR  
13 VIRGINIA CITY GAMING LLC  
14  
15  
16  
17

**Motion to Dismiss Complaint for**  
**Revocation of License and Answer**  
  
Hearing Requested

18 Virginia City Gaming LLC and Vincent Malfitano (hereinafter, "Dr. Malfitano") by and  
19 through their legal counsel, Devon T. Reese, Esq. and Alex Velto, Esq., of Hutchison  
20 & Steffen, PLLC, hereby Move to Dismiss the Complaint for Revocation of Licenses and Answer  
21 the same, and, in the alternative, request a hearing to afford Dr. Malfitano due process. This filing  
22 is accompanied by a Memorandum of Points and Authorities to be supplemented by argument  
23 and evidence at a hearing, if ordered by this the Storey County Commission ("Commission").

**Memorandum of Points and Authorities**

**I. Introduction**

The Storey County District Attorney's Complaint for Revocation of Licenses, filed with the Storey County Board of County Commission on September 6, 2023, seeks to revoke the business licenses issued for the Bonanza Saloon & Café and Delta Saloon. The Complaint is a smear campaign, singling out a lawful business owner who merely tries to support Virginia City. The Complaint's shot-gun style approach that seeks to turn this Commission into a criminal Court. It is the next step in a series of targeted actions to single-out and revoke Dr. Malfitano business licenses permanently. The County already suspended the license for Bonanza Saloon & Café, and when Dr. Malfitano attempted to pay the business and licensing fees owed on Delta Saloon, the County refused to allow him to pay. All of this shows the animus at the heart of the Complaint.

The Claims themselves are without merit. But more importantly, they are not claims that this Commission is legally able to enforce or consider. The District Attorney makes brash claims of criminal behavior, without providing enough detail or evidence to support a criminal indictment. It also seeks to circumvent all rights that Dr. Malfitano would be entitled if the District Attorney followed the appropriate process to bring criminal charges. This Commission should dismiss the Complaint because it fails to comport with Nevada law and asks this Commission to take illegal action in revoking Dr. Malfitano's license for the following reasons:

First, under Nevada and Federal law, the Commission is without authority to adjudicate or enforce claims hinging on alleged criminal activities until such time that these allegations mature into conclusive criminal convictions. Civil claims predicated on potential criminal actions are not a basis for revoking a license unless and until the criminal process has been followed. The District Attorney's attempt to litigate these claims absent a criminal conviction stretches beyond



1 the Commission's jurisdiction and infringes on Dr. Malfitano's constitutionally protected rights,  
2 including the paramount Fifth Amendment right against self-incrimination. The Commission  
3 should not violate Dr. Malfitano's rights by converting itself into a court and jury for criminal  
4 proceedings.

5 Second, while the Commission has the authority to oversee both licensed and unlicensed  
6 businesses in Storey County, its powers do not extend to enforcing or interpreting criminal  
7 statutes, neither can it probe into alleged criminal activities. The crux of the District Attorney's  
8 Complaint hinges on multiple state and federal provisions, each of which can only be enforced  
9 by agency designated by state and federal provisions. This Commission has no authority to  
10 enforce any of them. As such, the Complaint does not provide good cause to the Commission  
11 because the Commission cannot make the required findings to sustain the alleged Counts.

12 Third, it is a fundamental tenet of justice that an accused be provided clear and specific  
13 notice of the allegations against them. Such precision ensures fair proceedings and upholds the  
14 principle of due process. The Complaint lodged by the District Attorney's Office against Dr.  
15 Malfitano falls far short of this threshold. There is a higher standard for detailing allegations of a  
16 criminal nature. Yet, the Complaint is deficient on multiple fronts, both for allegations rooted in  
17 criminal conduct and those that are not. The Complaint is a blanket approach that resembles  
18 casting a wide net rather than offering focused allegations to would provide Dr. Malfitano due  
19 process. This Commission can dismiss the complete on the basis that it is facially deficient,  
20 alone.

21 Fourth, the Complaint ignores statutes of limitation that preclude this Commission from  
22 considering the alleged conduct. Several of the statutes invoked in the Complaint—specifically  
23 NRS 369.487, NRS 608.400, and NRS 608.120—have clear, legislated time limitations that are

1 either one or two years. The alleged violations, spanning from 2020 or 2021 through to the present,  
2 clearly exceed these time constraints. Thus, the Complaint's overreach challenges both the spirit  
3 and the letter of the law, and it is appropriate and just that these time-barred allegations be  
4 dismissed outright.

5 Fifth, it is not enough to merely allege wrongdoing; the gravity of the consequences  
6 demands a heightened standard of proof. Specifically, any alleged violations must meet the  
7 stringent "clear and convincing evidence" threshold before a license can be revoked based on  
8 purported criminal misconduct. Dr. Malfitano has not engaged in the conduct alleged in the  
9 Complaint, and to insist on the opposite without specifics in the Complaint should lead this Court  
10 to dismiss the Complaint.

11 In the interim, the Commission should reinstate the business licenses for Bonanza Saloon  
12 & Café and Delta Saloon immediately to avoid future litigation and a waste of County resources.

## 13 II. Legal Standard

14 "The protections of due process attach [ ] to deprivations of property or liberty interests."  
15 *Burgess v. Storey County Bd. of Cors*, 116 Nev. 121, 124, 992 P.2d 856, 858 (2000) (quoting  
16 *Tarkanian v. Nat'l Collegiate Athletic Ass'n*, 103 Nev. 331, 337, 741 P.2d 1345, 1349 (1987)).  
17 Nevada courts have recognized that property interests subject to due process protections include  
18 an already issued license. *Burgess*, 116 Nev. at 124, 992 P.2d at 858; *see also Nellis Motors v.*  
19 *State*, 197 P.3d 1061 (Nev. 2008) (Under Nevada laws, licenses to conduct business is a property  
20 right.).

21 Storey County has already granted Dr. Malfitano a business license for his operation of  
22 two saloons in Virginia City, Nevada. Therefore, Dr. Malfitano is entitled due process to  
23 challenge the Complaint filed this Commission. This includes sufficient notice of the allegations,

1 a due process right to the appropriate forum and enforcement mechanism, and a fair opportunity  
2 to be heard. Under Storey County Code 5.04.110, a license may only be revoked for good cause  
3 by the Board of Commissioners. However, there is not good cause because the District Attorney  
4 has not provided Dr. Malfitano due process under the Code, Nevada, and Federal law.

### 5 III. Argument

6 (1) None of the criminal allegations against Dr. Malfitano can serve as a basis for revoking  
7 his business license because there have been no convictions.

8 The Commission is not legally permitted to enforce allegations of criminal actions against  
9 Dr. Malfitano unless there has been a criminal conviction. Until then, the claims alleging criminal  
10 violations are not "good cause" because the legal and factual basis of the claims is not ripe for the  
11 Commission's consideration. *See, e.g., Xinos v. Kappos*, 270 F. Supp. 2d 1027, 1031 (N.D. Ill.  
12 2003) (civil claims based upon allegedly criminal acts are not ripe unless and until "(1) the  
13 Government commences a criminal investigation of Defendants; (2) a grand jury indicts  
14 Defendants for violations; [and] (3) Defendants are found guilty of those violations"). Beyond  
15 the procedural requirement to even allow this Commission to consider the conduct, as a general  
16 legal principle, "a criminal statute cannot be enforced in a civil proceeding." *See Fox v. Warren*,  
17 495 P.3d 82, \*2, 2021 WL 4205697 (2021) (unpublished disposition) (citing *United States v.*  
18 *Clafflin*, 97 U.S. 546, 554, 24 L.Ed. 1082 (1878); *see also United States v. Clafflin*, 97 U.S. 546,  
19 24 L.Ed. 1082 (1878); *United States v. Jourden*, 193 F. 986 (9th Cir. 1912). Equally important,  
20 it is firmly established that criminal statutes can only be enforced by the proper authorities—  
21 which requires an indictment, right to a jury trial, and a court to consider the matter—not other  
22 entities who merely desire to enforce them. *See, e.g., Keenan v. McGrath*, 328 F.2d 610 (1st Cir.  
23 1964); *Pugach v. Klein*, 193 F.Supp. 630 (S.D.N.Y.1961).

1 The Complaint ignores this established law. It is an attempt to enforce criminal violations  
2 against Dr. Malfitano in a civil proceeding, when there has been no criminal conviction, blatantly  
3 violating his rights. This Commission is not permitted to investigate or determine that Dr.  
4 Malfitano has engaged in criminal activity as a basis for revoking his business license. The  
5 standard for finding criminal conduct is "beyond a reasonable doubt." See *Guy v. State*, 108 Nev.  
6 770, 778, 839 P.2d 578, 583 (1992). Dr. Malfitano is also entitled his Fifth Amendment Right  
7 against self-incrimination, which cannot be forcefully waived by the Commission. See *Volmar*  
8 *Distributors v. New York Post Co.*, 152 F.R.D. 36, 39-40 (S.D.N.Y.1993). For criminal charges,  
9 Dr. Malfitano is entitled a trial by jury of his peers. Nevada Constitution, Art. 1, Sect. 3.

10 If the Commission intends to prosecute Dr. Malfitano in an administrative hearing, it will  
11 inevitably violate his due process because Dr. Malfitano will be forced to "effectively forfeit" the  
12 hearing because he has no opportunity to deny the allegations against himself. See *id.* at 39.  
13 Therefore, this Commission should dismiss the Complaint because the criminal allegations,  
14 without a conviction, violate Dr. Malfitano Fifth Amendment right and deprive him of due process  
15 under the law. The Commission is not empowered to act as a judge or jury. It should dismiss the  
16 Complaint before requiring a hearing.

17 (2) The Commission has no authority to investigate criminal activity and the Counts  
18 contained in the Complaint and the Commission has no authority to enforce the statutes  
19 identified in the Complaint.

20 The Commission has authority to investigate complaints regarding licensed and  
21 unlicensed businesses in Storey County. This authority relates to a determination of whether a  
22 business has a license and whether there is good cause to revoke it, so long as the basis for  
23 revocation falls within the Commission's jurisdiction. However, the Commission is not a Court

1 and does not have jurisdiction enforce criminal statutes. Likewise, it has no jurisdiction to  
2 investigate alleged criminal activities.

3 When a statute delegates enforcement authority to a specific entity—such as the  
4 Department of Taxation or Labor Commissioner—that entity has exclusive authority to enforce  
5 that statute. *Neville v. Eighth Judicial District Court*, 133 Nev. 777, 780-81, 406 P.3d 499, 502  
6 (2017). In *Neville*, the Nevada Supreme Court considered whether the Labor Commissioner had  
7 exclusive authority to enforce NRS Chapter 608. It determined that because NRS 608.180  
8 “expressly states that ‘[t]he Labor Commissioner . . . shall cause the provisions of [the Chapter]  
9 to be enforced’ . . . such enforcement appears to rest with the Labor Commissioner.” In so doing,  
10 the Nevada Supreme Court reads statutes that delegate enforcement to a specific agency as  
11 precluding enforcement by another agency.

12 The inability of the Commission to enforce the statutes the District Attorney seeks to  
13 enforce is not a novel position; the Nevada Supreme Court has long given agencies exclusive  
14 authority to enforce the statutory scheme that creates them. For example, in *Allstate Ins. Co. v.*  
15 *Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 994 (2007), the Nevada Supreme Court considered  
16 whether the Legislature intended for there to be an independent right of action to enforce a statute.  
17 The Supreme Court concluded that the agency designated by Statute as the enforcing body had  
18 exclusive jurisdiction to enforce the statutory scheme. The only exception to the above rule that  
19 enforcement rests with a Chapter’s designated enforcement agency is when the Legislature  
20 intended a different entity to enforce a statute. *Neville*, 133 Nev. at 782-83, 406 P.3d at 504.  
21 However, that exception does not apply here because the statutes relied upon by the District  
22 Attorney do not provide for any entity other than the designated agency’s in statute to enforce  
23 them.

1 The Complaint alleges Counts under the following statutes or Federal Regulations: NRS  
2 369.487; NRS 597.260; NRS 608.400; 8 CFR 274a.2; 26 CFR 3402; and NRS 608.120. Each of  
3 these statutes or Federal regulations have a specific agency tasked with enforcing them, which  
4 precludes the Commission from enforcing them. In short, the Commission does not have  
5 jurisdiction to enforce the Counts the District Attorney is asking the Commission to consider.  
6 And, because of that, the Complaint should be dismissed.

7  
8 *a. The County Commission has no authority to enforce any of the statutes  
referenced in the Complaint.*

9  
10 This Commission cannot enforce NRS 369.487 because the Department of Taxation has  
11 exclusive enforcement authority. *See* NRS 369.150(1) (“The Department is charged with the duty  
12 of administering the provisions of this chapter”); NRS 369.150(2)(c) (tasking the Department  
13 with “[a]dopt[ing] and enforc[ing] all rules, regulations and standards necessary or convenient to  
14 carry out the provisions of this chapter.”). Therefore, the County Commission cannot enforce  
15 NRS 369.487 in an administrative hearing seeking to revoke Dr. Malfitano’s business license.

16  
17 This Commission cannot enforce NRS 597.260 because the Attorney General and District  
18 Attorney, in criminal proceedings, have exclusive enforcement authority. *See* NRS 597.262(1)  
19 (“[T]he Attorney General has primary jurisdiction to enforce the provisions of NRS 597.120 to  
20 597.260, inclusive.”); *see also* NRS 597.262(2) (“The Attorney General has concurrent  
21 jurisdiction with the district attorneys of this State to enforce the provisions of NRS 597.225 and  
22 597.245.”). Therefore, the County Commission cannot enforce NRS 597.260 in an  
23 administrative hearing seeking to revoke Dr. Malfitano’s business license.

24  
25 This Commission cannot enforce NRS 608.400 because the Labor Commissioner is the  
26 only entity endowed with the authority to determine if in fact an employee has been misclassified.

27  
28 *See* NRS 608.400(3) (Tasking the Labor Commissioner with enforcing NRS 608.400 after notice

1 and an opportunity for a hearing); *see also* NRS 608.410 ("A person may file a complaint alleging  
2 the misclassification of the person as an independent contractor with the Labor Commissioner."").  
3 Therefore, the County Commission cannot enforce NRS 608.400 in an administrative hearing  
4 seeking to revoke Dr. Malfitano's business license.

5 The Commission cannot enforce 8 CFR 274a.2 because only the Immigration and  
6 Naturalization Service and the Department of Labor have authority to enforce that portion of  
7 Federal Code. *See* 8 CFR 274a.9(a) ("Any person or entity having knowledge of a violation or  
8 potential violation of section 274A of the Act may submit a signed, written complaint in person  
9 or by mail to the Service."); *see also* 8 CFR 274a.10(b) ("Civil penalties may be imposed by the  
10 Service or an administrative law judge for violations under section 274A of the Act."). Therefore,  
11 the County Commission cannot enforce 8 CFR 274a.2 in an administrative hearing seeking to  
12 revoke Dr. Malfitano's business license.

13 The Commission cannot enforce 26 CFR 3402 because it does not exist,<sup>1</sup> and if it did, the  
14 Internal Revenue Service would have authority to enforce that portion of Federal code. *See* 26  
15 U.S. Code § 7608 (tasking expressly IRS Officers with enforcing Internal Revenue Service rules  
16 and regulations). Therefore, the County Commission cannot enforce 26 CFR 3402 in an  
17 administrative hearing seeking to revoke Dr. Malfitano's business license.

18 The Commission cannot enforce NRS 608.120 because the Labor Commissioner is the  
19 only entity with authority to enforce the statute. *See* NRS 608.180 ("The Labor Commissioner  
20 or the representative of the Labor Commissioner shall cause the provisions of NRS 608.005 to  
21 608.195, inclusive, and 608.215 to be enforced."). Therefore, the County Commission cannot

---

22  
23  
<sup>1</sup> 26 CFR 3402 does not exist as a Federal Regulation. The Internal Revenue Service's federal code is contained in  
Title 26, Chapter 1, Subchapter C, Part 31 of the Internal Revenue Code.

1 enforce NRS 608.120 in an administrative hearing seeking to revoke Dr. Malfitano's business  
2 license.

3 Even a cursory review of the statutes and regulations relied upon by the District Attorney  
4 in its Complaint makes clear that this Commission has no authority to enforce any of the  
5 provisions of law the District Attorney seeks to enforce. This Commission cannot enforce  
6 criminal laws. It cannot convert civil proceedings into a criminal trial. And it has no authority  
7 to enforce any of the statutes or regulations the District Attorney is asking it to enforce. Therefore,  
8 this Commission should dismiss the entirety of the Complaint.

9 (3) The Complaint is facially deficient because it does not identify the factual basis of its  
10 claims with specificity.

11 A Complaint to this Commission must identify the factual basis for the Complaint with  
12 specificity. Given that the Counts alleged by the District Attorney's Office are criminal in nature,  
13 there is a heightened standard for pursuing the revocation of Dr. Malfitano's business license that  
14 is akin to a criminal indictment. Criminal allegations require that the specific criminal conduct  
15 be alleged and that there be details beyond conclusory allegations. *See Bielling v. Sheriff*, 89 Nev.  
16 112, 508 P.2d 546 (1973); *see also Earlywine v. Sheriff*, 94 Nev. 100, 575 P.2d 599 (1978). For  
17 administrative complaints that are not based in criminal conduct, the Complaint must allege  
18 sufficient facts to provide reasonable notice of the conduct that warrants disciplinary action. *See,*  
19 *e.g., Cottrill v. Department of Ins.*, 685 So.2d 1371, 1372 (Fla. 1st DCA 1996) ("Even though the  
20 administrative complaint contained references to these statutory provisions, it did not allege any  
21 act or omission in violation of either provision. As to these putative violations, the administrative  
22 complaint did not afford 'reasonable notice to the licensee of facts or conduct which warrant'  
23 disciplinary action...."). Neither of these rigorous standards are met by the District Attorney's  
Complaint.



1 The Complaint is legally insufficient because it does not allege with specificity the  
2 allegations it seeks to prosecute. The Complaint states generally that conduct occurred, however,  
3 it does not allege specific dates on which any of the conduct occurred. It does not allege how the  
4 conduct occurred, and it does not allege how the District Attorney's office is aware the conduct  
5 occurred. As a matter of law, Complaints that allege criminal conduct require much more. And,  
6 as a matter of law, all Counts should be dismissed.

7 As to the allegations that are not based in criminal conduct, the Complaint does not allege  
8 with specificity who the injured party is that would allow Dr. Malfitano sufficient notice to defend  
9 himself. The District Attorney's shotgun approach by alleging everything it can does not give Dr.  
10 Malfitano an opportunity to prepare for a future hearing. If Dr. Malfitano is not provided more  
11 information, he will be unable to defend himself at a hearing, unable to provide evidence to  
12 counter the allegations, and unable to perform his own independent investigation into the alleged  
13 conduct. Therefore, the Commission should dismiss the Complaint because it lacks the required  
14 specificity to provide due process to Dr. Malfitano.

15 (4) The Grounds alleged in the Complaint are not timely because the statute of limitations  
16 precludes their enforcement.

17 The Complaint cites a number of statutes that that have a prescribed statute of limitations  
18 of one-year or two-years. Yet, the Complaint seeks to enforce these statutes for a time-period  
19 that is barred by statute. A statute of limitations is not a mere technicality. Time bars exist to  
20 ensure a level of reliability required to prove any allegations. See *People v. Zamora*, 18 Cal.Sd  
21 538, 546 (CA, 1976).

22 Specifically, the Complaint's attempt to enforce NRS 369.487, NRS 608.400, and NRS  
23 608.120 should be dismissed before any hearing because the time period identified in the  
Complaint runs from 2020 or 2021 through the present, even though these statutes have either a

1 one-year or two-year statute of limitation. *See* NRS 369.240(1) (only allowing complaints against  
2 licensees "within 1 year prior to the date of filing the complaint"); *see also* NRS  
3 608.135(2)(limiting enforcement of NRS Chapter 608 to "2 years" after the alleged conduct).

4 (5) In the event this Commission does not dismiss the Complaint, it must apply a clear  
5 and convincing standard to all allegations.

6 If a business license holder challenges an attempt to revoke their license, the violation  
7 must be proven by clear and convincing evidence—the standard of proof required to suspend or  
8 revoke a business license based on alleged criminal violations. *See Pic N' Save, Inc. v. Dep't of*  
9 *Bus. Regulation, Div. of Alcoholic Bevs. & Tobacco*, 601 So. 2d 245, 249-50 (Fla. 1st DCA 1992);  
10 *see also Ferris v. Turlington*, 510 So.2d 292 (Fla. 1987) (holding that after a teacher's plea of nolo  
11 contendere to sexual battery, the administrative revocation of his license must be based on clear  
12 and convincing evidence). If the Commission requires a hearing, the District Attorney will not  
13 be able to prove under the heightened standard the Counts alleged.

14 *a. There is no good cause to revoke the license*

15 There is no good cause to revoke the license. The allegations contained in the Complaint  
16 cannot be proven by beyond a reasonable doubt nor can they be proven by clear and convincing  
17 evidence. There will be no admissible evidence to support the violations of federal and state law,  
18 nor will there be sufficient evidence to support the fraud claims alleged in the Complaint.

19 As to the specific allegations, they do not constitute good cause to revoke Dr. Malfitano's  
20 license. Count one, two, and three require the Department of Taxation to conduct an independent  
21 inquiry and make a determination that Dr. Malfitano has violate the law. This has not occurred.  
22 And there is no known evidence that supports the conclusion's alleged in Count one, two, or three.

23 Count four is not a valid basis to revoke the license because (1) the deed of trust on the  
property does not prevent the business from operating. Even assuming, arguendo, that there was

1 a default as to the deed of trust, that is an independent matter that would be resolved civilly  
2 between Dr. Malfitano and the third party; (2) there is no evidence that licensed suppliers are no  
3 longer willing to supply Dr. Malfitano with liquor; (3) there are no outstanding checks that have  
4 failed to clear and any prior alleged conduct has been resolved civilly. Further, this is a matter  
5 for the Commissioner of Labor to address, not this Commission; (4) there are no outstanding  
6 owed tax liens that are being ignored or unpaid. The mere existence of tax liability, even if true,  
7 would not be considered good cause because the Bonanza Saloon can still operate legally.

8 Count five, six, and seven are all federal or state laws that the Commission cannot enforce.  
9 The Department of Taxation would be the only entity in Nevada who could determine that  
10 employees were misclassified. To date, there has been no investigation or evidence disclosed to  
11 Dr. Malfitano that supports this position.

12 Count eight does not constitute not good cause because there are no outstanding wages  
13 owed. If there were, there would be a Labor Commissioner investigation, which has not occurred  
14 and as far as Dr. Malfitano is aware, there is no investigation pending.

15 Due to the inadequacy of the Complaint, and requirement that Dr. Malfitano be given  
16 an opportunity for a hearing to preserve his due process, he preserves all rights under Nevada law  
17 to respond to the allegations at a future hearing.

#### 18 **IV. Conclusion**

19 The bedrock of our government is the preservation of fairness, integrity, and unwavering  
20 respect for the rule of law. Dr. Malfitano, like any other individual, is entitled to a just, transparent,  
21 and comprehensive process before being subjected to profound punitive actions, particularly  
22 those that threaten his livelihood and reputation. The Storey County District Attorney's  
23 Complaint, far from representing a just pursuit of truth, paints a picture of a zealous, imbalanced

1 offensive, targeting a legitimate business owner without appropriate legal grounding. The  
2 evidence—or conspicuous lack thereof—underscores a vendetta rather than a meticulous search  
3 for justice.

4 The Complaint seeks to subvert established Nevada and Federal law, misrepresents the  
5 jurisdiction of this Commission, neglects foundational principles of due process, and blithely  
6 overlooks vital statutes of limitations, all while sidestepping the rigorous standards of proof  
7 demanded by our legal system. Such an approach not only jeopardizes Dr. Malfitano's rights but  
8 risks undermining the trust and credibility our constituents place in this Commission.

9 Given the overwhelming legal and procedural shortcomings inherent in the Complaint,  
10 and in deference to the principles of justice and equity, this Commission should feel compelled  
11 to dismiss the Complaint. As a necessary step towards restoring justice and equity, it is incumbent  
12 upon the Commission to reinstate the business licenses for Bonanza Saloon & Café and Delta  
13 Saloon without delay, affirming its commitment to uphold the rule of law, protect individual rights,  
14 and ensure the fair administration of justice.

15 DATED this 17<sup>th</sup> day of September, 2023.

16 HUTCHISON & STEFFEN, PLLC

17 /s/ Alex Velto

18 Devon T. Reese (7496)  
19 Alex R. Velto (14961)  
20 5371 Kietzke Lane  
21 Reno, NV 89511

22 *Attorneys for Virginia City Gaming LLC*  
23 *and Vincent Malfitano*

Verification

I, Vincent Malfitano, under penalties of perjury, declare under oath that I know the contents of this Motion to Dismiss Complaint for Revocation of License and Answer and that the claims and made in the document, except as to those matters stated on information and belief, are true to the best of my recollection.

Dated this 18<sup>th</sup> day of September 2023

Vincent Malfitano  
Vincent Malfitano (Sep 18, 2023 1:04 PM)  
Vincent Malfitano

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

Clerk's Office  
26 S. B St.  
Virginia City, NV 89440

An Employee of Hutchison & Steffen, PLLC

**RESPONSE TO MOTION TO DISMISS COMPLAINT FOR REVOCATION OF  
LICENSE AND ANSWER FILED IN THE MATTER OF VINCENT MALFITANO  
AND/OR VIRGINIA CITY GAMING**

Comes now, Keith Loomis, Chief Deputy District Attorney for Storey County, Nevada and responds to the Motion to Dismiss Complaint for Revocation of License and Answer (motion to dismiss).

**I.**

**1. There is no authority for the filing of a motion to dismiss in this administrative proceeding.**

This is a license revocation proceeding pursuant to Storey County Code Section (SCC) 5.04.110. It is not a civil proceeding subject to the Nevada Rules of Civil Procedure (NRCP). Those rules do provide authority for the filing of motions to dismiss in civil actions. See e.g., NRCP 12. The NRCP, however, apply to civil actions and proceedings in the district courts of the State of Nevada. See NRCP 1. Further, a civil action is commenced by filing a complaint with the court. NRCP 2. The complaint in this proceeding was filed with the clerk of the board of county commissioners as required by SCC 5.04.110, not with the court. The code section authorizing the filing of a complaint with the board of county commissioners then requires the licensee to file a written answer to the complaint under oath. SCC 5.04.220(B)(2). There is no provision for the filing of a motion to dismiss. Nor should there be. A board of county commissioners is not trained in the legal technicalities of administrative, civil or criminal proceedings. Rather, in this

proceeding, their obligation is solely to decide whether good cause exists to warrant the revocation of business licenses. The legalities of the proceeding can be addressed by the filing of a writ of mandamus with the district court if the outcome of the administrative proceeding is not to the liking of the licensee. This is how the matter was handled in *Malfitano v. County of Storey*, 133 Nev. 276, 396 P. 3d 815 (2017). In that case, the district court and, on appeal, the Nevada Supreme Court both addressed issues such as due process. This case should be handled similarly.

## II.

**Should the Board decide to address the motion to dismiss, that motion suffers from numerous erroneous conclusions.**

Initially this office agrees with a number of the contentions of the Licensee. This office agrees that a Storey County business license is an interest in property which cannot be taken from the licensee without due process of law. This office is fulfilling that obligation by giving the licensee notice of the grounds for which revocation of his business licenses is sought. Thereafter he will be provided a hearing at which he can present evidence and make known his objections to that revocation. He will be provided with due process.

### **1. Errors in Licensees Motion.**

**a. The revocation of a business license is an administrative proceeding not an enforcement proceeding.**

The licensee, throughout his motion to dismiss, repeatedly characterizes these proceedings as an enforcement action. Indeed, he uses the term enforcement or its derivatives some 55 times in his motion. Constant repetition, however, of a false statement does not make the statement true. The issue before the Board is one of whether Malfitano's conduct establishes good cause to revoke



the business licenses for the protection of the public. It is not to enforce a criminal statute. Here, SCC 5.04.110(A)(2) specifically provides as one of the grounds for revocation of a license:

1. The commission of, or permitting or causing the commission of, any act in the operation of the business which act is made unlawful or is prohibited by any ordinance, rule or law of Storey County, or state or federal government;

The Board is specifically allowed by this code provision to consider actions in the operation of a business which are prohibited by any ordinance, rule or law of Storey County or state or federal government. It is not to impose a fine or to result in jailing or imprisonment which are the typical consequences of a criminal action. See NRS 169.055. The purpose of the statutory and legal references in the complaint is to give notice that the conduct alleged is prohibited by the identified rule, law of Storey County, or state or federal government. It is not to enforce those laws.

**b. Revocation of a business license for engaging in prohibited conduct does not require evidence that the licensee has been convicted of a crime.**

The Licensee contends that evidence of conduct prohibited by criminal statutes cannot be utilized in a license revocation proceeding until a criminal conviction exists. This contention is refuted by the case of *Rottman v. Kent*, 97 Nev. 184, 185 625 P. 2d 1168, 1169 (1981). In *Rottman* a licensee gave testimony admitting his involvement in committing crimes. The government granted him immunity from the use of his statements in subsequent criminal proceedings. The Nevada Supreme Court held that the admissions of criminal conduct by the licensee could be used in an administrative proceeding to revoke his license. The reason being

that an administrative license revocation proceeding was done to protect the public and was not a criminal proceeding.

**c. The complaint gives sufficient notice of the allegations against which the Licensee must defend.**

The licensee complains that the allegations of the complaint do not meet the specificity required of criminal complaints. Obviously, the complaint in these proceedings is not a criminal complaint. The degree of specificity of the of the allegations in a complaint increases with the significance of the interests affected. *Spinelli v. City of N.Y.* 579 F. 3d 160, 172 (2d Cir. 2009). In a criminal case a defendant's freedom is generally at stake, not the loss of a license to conduct a business. Consequently, the specificity of the notice required in a license revocation proceeding is not as stringent as that required in a criminal case. The notice that is required is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). In this case, the complaint gives notice of the conduct which, if proven, can constitute good cause for revocation of business licenses as set forth in SCC 5.04.110. There is sufficient information in the complaint to give Malfitano notice of the proceeding and to what he can make objections. It is interesting to note that Malfitano states in the motion to dismiss that he "has not engaged in the conduct alleged in the Complaint...". Motion at Pg 4 lns. 8-9. Malfitano has verified under the penalty of perjury that he knows the content of the motion and that claims made in the motion are true to the best of his recollection (Verification at pg 15). This suggest that Malfitano

understands the content of the Complaint and can respond to the allegations. The complaint has sufficient specificity to satisfy due process requirements.

**d. The statute of limitations does not preclude this license revocation proceeding.**

The licensee contends that statutes of limitation applicable to enforcement statutes preclude utilizing the counts alleging purchases of alcohol for retail sale from entities not licensed as wholesalers (NRS 369.487), misclassification of employees as independent contractors (NRS 608.400), and payment of employee wages with invalid checks (NRS 608.120) are barred by statutes of limitations. Malfitano cites to statutes which place a limitation on enforcement actions. This case, however, is brought as a license revocation proceeding under Chapter 5.04 of the Storey County Code. That chapter does not have a statute of limitations as to when such revocation proceedings must be brought. Even if general statutes of limitation could apply, the applicable statute would be NRS 11.220 which provides that, for actions not specifically addressed elsewhere, the statute of limitations is 4 years. All of the counts in the complaint allege conduct which has occurred within the last 4 years.

**e. The standard of proof in a license revocation proceeding is proof by a preponderance of the evidence, not clear and convincing evidence.**

The licensee asserts that the appropriate standard of proof in this proceeding is one of clear and convincing evidence and for this proposition cites cases from other states. The Nevada Supreme Court, however, has made it clear that in license revocation proceedings the standard of proof is one of a preponderance of the evidence. See *Nassiri v. Chiropractic Physicians' Bd.* 130 Nev. 245, 251 327 P 3d 487 (2014) (chiropractor charged with violations of NRS Chapter 634 had his chiropractic physician's license revoked); *Nellis Motors v. State DMV*, 124 Nev. 1263,

1266-68 197 P. 3d 1061 (2008) ( The preponderance of the evidence standard of proof applied to proceedings to revoke emissions testing license and emission station license).

### **CONCLUSION**

This office has given notice of what Malfitano must defend against and will provide an opportunity for a hearing at which he can make known his objections to the complaint. The Complaint itself sets forth a variety of grounds which demonstrate that there is good cause to revoke his authority to conduct business at the Bonanza Casino for the protection of the public and his employees.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Storey County District Attorney's Office

By \_\_\_\_\_  
Keith Loomis Chief Deputy District Attorney

FILED

2023 OCT 11 PM 3:59

STOREY COUNTY CLERK

BY Asst. Clerk  
DEPUTY

Devon T. Reese (7496)  
Alex Velto (14961)  
HUTCHISON & STEFFEN, PLLC  
5371 Kietzke Lane  
Reno, NV 89511  
(775) 853-8746 tel  
(775) 201-9611 fax  
[jreynolds@hutchlegal.com](mailto:jreynolds@hutchlegal.com)  
[avelto@hutchlegal.com](mailto:avelto@hutchlegal.com)

*Attorneys for Virginia City Gaming LLC  
and Vincent Malfitano*

**STOREY COUNTY BOARD OF  
COUNTY COMMISSIONERS**

IN THE MATTER OF  
  
VINCENT MALFITANO AND/OR  
  
VIRGINIA CITY GAMING LLC

**Reply In Support of Motion to Dismiss  
Complaint for Revocation of License and  
Answer**

Virginia City Gaming LLC and Vincent Malfitano (hereinafter, "Dr. Malfitano") by and through their legal counsel, Devon T. Reese, Esq. and Alex Velto, Esq., of Hutchison & Steffen, PLLC, hereby submits this Reply in Support of Motion to Dismiss the Complaint for Revocation of Licenses and Answer the same<sup>1</sup>, and, in the alternative, request a hearing to afford

<sup>1</sup>This response is submitted timely given that Mr. Loomis served by email on Wednesday, October 4, 2023, giving 7 days to respond.

1 Dr. Malfitano due process. This filing is accompanied by a Memorandum of Points and  
2 Authorities to be supplemented by argument and evidence at a hearing, if ordered by this the  
3 Storey County Commission ("Commission").

#### 4 **Memorandum of Points and Authorities**

##### 5 **I. Introduction**

6 The legal underpinning of any administrative proceeding requires both the authority to act  
7 and the fairness of due process to be held inviolable. Dr. Malfitano comes before this Commission,  
8 not as one attempting to circumvent the rule of law but as one seeking the justice that our system  
9 promises. Despite the County's contention to the contrary, the authority for this Commission to  
10 grant a motion to dismiss is both established and clear. Dr. Malfitano's plea is rooted in the  
11 foundational principles of our legal system: plain language, clarity, and unwavering commitment  
12 to justice.

13 The County has made several claims, some of which are grandiose in nature, questioning  
14 the validity of Dr. Malfitano's motion and his right to due process. Yet, as delineated in the pages  
15 that follow, the County's approach is riddled with procedural irregularities and a concerning  
16 disregard for Dr. Malfitano's constitutional rights. It is imperative that this Commission recognize  
17 not just the legal authority, but also the moral obligation, to ensure that justice is neither delayed  
18 nor denied. The issues raised by Dr. Malfitano are not merely relevant, but crucial for the County's  
19 consideration of this matter.

1       **II.     Arguments**

2               **a.   There is authority for this Commission to grant a motion to dismiss in an**  
3               **administrative proceeding.**

4               The County argues that there is no authority to grant the Motion to Dismiss. Respectfully,  
5       Dr. Malfitano disagrees. The County is able to determine there is not “good cause” to revoke a  
6       license. *See* Storey County Code Section 5.04.110. The issues raised in Dr. Malfitano’s motion  
7       are all relevant to the County’s consideration of the matter before it. The Motion highlights a  
8       number of procedural issues and flaws with the County’s attempt to circumvent Dr. Malfitano’s  
9       due process. As such, the County should consider the issues before it in a pre-hearing Motion to  
10      Dismiss.

11              Further, *Malfitano v. County of Storey*, 133 Nev. 276, 396 P.3d 815 (2017), does not  
12      outline the *only* process that is available, rather, it is one example of how a licensing review  
13      process can proceed in Nevada. It is not prescriptive as to how all licensing review occurs in  
14      Nevada. If a process violates due process, as the County’s allegations do, this County  
15      Commission can decide to dismiss the allegations against Dr. Malfitano.

16              **b.   The Motion should be granted, and the claims should be dismissed.**

17              The Claims themselves are without merit. But more importantly, they are not claims that  
18      this Commission is legally able to enforce or consider. The District Attorney makes brash claims  
19      of criminal behavior, without providing enough detail or evidence to support a criminal  
20      indictment. It also seeks to to circumvent all rights that Dr. Malfitano would be entitled if the  
21      District Attorney followed the appropriate process to bring criminal charges. This Commission  
22      should dismiss the Complaint because it fails to comport with Nevada law and asks this  
23      Commission to take illegal action in revoking Dr. Malfitano’s license.

1 1. The County's enforcement of criminal penalties violates Dr.  
2 Malfitano's due process: there is insufficient notice and an Eldridge  
3 violation.

4 In determining how much process is due, there must be: (1) a private interest affected, (2)  
5 no risk of erroneous deprivation through the procedures used and the value of other safeguards,  
6 and (3) that must be balanced against the government's interest. *Mathews v. Eldridge*, 424 U.S.  
7 319, 335 (1976). To provide sufficient notice, the County must "described [ ] the facts and  
8 circumstances of the individual case . . . due process notice contemplates specifications of acts or  
9 patterns of conduct, not general, conclusory charges unsupported by specific factual allegations."  
10 The degree of required specificity also increases with the significance of the interests at stake." *Spinelli v. City of New York*, 579 P.3d 160, 172 (2<sup>nd</sup> Cir. 2009).

11 The County's actions to enforce criminal conduct violates the second standard in *Mathews*.  
12 There is a serious risk of erroneous deprivation of Dr. Malfitano's fifth amendment right against  
13 self-incrimination by seeking to elicit testimony and forcing Dr. Malfitano to waive his  
14 constitutional rights in a civil hearing. If the County actually believed there were criminal  
15 conduct, it could pursue an action. However, forcing Dr. Malfitano to participate in a hearing on  
16 criminal allegations before there is a criminal conviction violates his due process.

17 Mr. Loomis argues that there is no need to establish a crime has been committed for the  
18 County to regulate licensing and impose civil penalties for alleged crimes. However, the case  
19 cited in support of this position, *Rottman v. Kent*, 97 Nev. 184, 185, 625 P.2d 1168 (1981) does  
20 not support this proposition. There, a municipality relied on grand jury testimony where a license  
21 holder admitted to a crime, and then was granted federal immunity for the crime. *Id.* The Court  
22 does not assess whether the municipality needed to have a conviction to consider the crime. It  
23 only assessed whether the license holder's immunity under Federal Law precluded its admission.



1 By testifying at a grand jury in exchange for immunity, the license holder in *Rottman* had already  
2 waived his right against self-incrimination and there was no risk of due process deprivation, which  
3 is not the case here if the County intends to force Dr. Malfitano to testify in response to alleged  
4 criminal conduct.

5 There is also insufficient notice because there is no specificity as to time, place, and  
6 manner of the conduct alleged. The allegations are general in nature and seek to cover a broad  
7 swath of claimed time. This is beyond what is reasonable notice. Given that Dr. Malfitano's  
8 business license is on the line, the degree of required specificity required is significantly higher  
9 than in a lower stakes hearing. *Spinelli v. City of New York*, 579 P.3d 160, 172 (2<sup>nd</sup> Cir. 2009).

10 2. The allegations are beyond the scope of the statute of limitations.

11 While Mr. Loomis relies on NRS 11.220, a majority of the allegations have specific  
12 statutes of limitation that both delegate enforcement authority and limit the timeframe to sustain  
13 an allegation. The general provisions of NRS do not serve to extend statutes of limitation that  
14 specifically proscribed.

15 3. The Standard of proof is elevated for the specific allegations.

16 The case law cited by Mr. Loomis is inapposite. The standard for finding criminal conduct  
17 is "beyond a reasonable doubt." *See Guy v. State*, 108 Nev. 770, 778, 839 P.2d 578, 583 (1992).  
18 Dr. Malfitano is also entitled his Fifth Amendment Right against self-incrimination, which cannot  
19 be forcefully waived by the Commission. *See Volmar Distributors v. New York Post Co.*, 152  
20 F.R.D. 36, 39-40 (S.D.N.Y.1993). Given that the allegations are criminal, the cases cited on  
21 pages 5-6 of the opposition do not apply because there was not criminal conduct alleged in those  
22 matters.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

DATED this 11<sup>th</sup> day of October, 2023.

/s/ Alex Velto

*Attorneys for Virginia City Gaming LLC  
and Vincent Malfitano*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC  
3 and that on this 18<sup>th</sup> day of September 2023, I caused the above and foregoing document entitled  
4 **Motion to Dismiss Complaint for Revocation of License and Answer** to be hand delivered to  
5 the Storey County Clerk:

6 Clerk's Office  
7 26 S. B St.  
8 Virginia City, NV 89440

8 */s/ Rachael L. Chavez*

9 An Employee of Hutchison & Steffen, PLLC  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23