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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LISA MCALLISTER, an individual; BRANDON SUMMERS, an individual; and JORDAN POLOVINA, an individual, Plaintiffs, vs. CLARK COUNTY, a political subdivision of the state of Nevada, Defendant.	Case No.: 2:24-cv-00334-JAD-NJK **PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL [ECF NO. 67] AND MOTION FOR SANCTIONS [ECF NO. 68]; AND** **OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR PROTECTIVE ORDER [ECF NO. 72]; AND** **OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR SANCTIONS [ECF NO. 73]**

Plaintiffs Lisa McAllister, Brandon Summers, and Jordan Polovina, by and through their undersigned counsel of record, file this reply in support of their Motion to Compel [ECF No. 67] and their Motion for Sanctions [ECF No. 68], their opposition to Defendant Clark

County's Countermotion for Protective Order [ECF No. 72] and opposition to Countermotion for Sanctions [ECF No. 73].[1]

This Reply and Opposition is based on Fed. R. Civ. P. 26 and 37(a)-(b) and Local Rule 26-6, the following Memorandum of Points and Authorities, the pleadings and papers on file in this case, and any additional argument the Court may wish to entertain. Plaintiffs also seek their reasonable attorneys' fees and costs for having to file this motion to compel.

DATED: February 21, 2025.

By: /s/ *Leo S. Wolpert*

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[1] These are an identical document filed four times to comply with the Court's efilings rules. Plaintiffs refer to this document as the "opposition" or "Opp." unless otherwise specified.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs' motion to compel is wholly justified and appropriate, and the County offers nothing of substance to change this fact. Apart from its self-serving rendition of the "claims at issue in this litigation," the County spends ten pages on introductory sections that are nothing more than an improper motion for reconsideration in disguise that distort and ignore this Court's findings authorizing Plaintiffs' discovery that is the subject of the instant motion to compel.

The County's casting of Plaintiffs' discovery as "overbroad and abusive" is meritless and is simply an attempt to shift attention away from the County's unreasonable and groundless objections and claims of privilege, while simultaneously failing to provide an adequate privilege log in compliance with Fed. R. Civ. P. Rule 26(b)(5). The record shows that Plaintiffs bent over backwards in the meet and confer process to try to accommodate and work with the County, but the County refused and said it would not cooperate and said it would wait for an order from the Court.

Plaintiffs have met the burden required for them to compel discovery, and the County has failed to meet its burden that follows thereafter to show with precision and specificity why Plaintiffs' discovery should not be permitted. The County has done nothing to support its inapplicable and unspecified invocations of legislative and deliberate process privilege and other privileges, and its attempts to limit the scope of discovery directly contradict the Court's findings as to what discovery is permitted in this case. Most disturbing is the County's complete disregard for the discovery the Court authorized as to Plaintiffs' as-applied challenges.

Notably, the County's opposition to Plaintiffs' motion to compel is bereft of the precision required in addressing a motion to compel as the County fails to specifically address all but a handful of the interrogatories and requests for production at issue, and this alone justifies the granting of Plaintiffs' motion.

The County has failed to address the substance of Plaintiffs' motion for sanctions, and it should be granted on that basis alone.

The County's countermotion for a protective order fails for a host of reasons, the most important being the County's failure to carry out any meet and confer process. The County's hypothetical request for a *sua sponte* order from the Court improperly styled as a countermotion for sanctions is a rogue document that should not be given any credence, and Plaintiffs cannot meaningfully respond to it.

Plaintiffs' motion to compel and motion for sanctions should be granted in their entirety, the County's motion for protective order should be denied, and its improper request for a *sua sponte* order from the Court should likewise be denied.

II. REPLY IN SUPPORT OF MOTION TO COMPEL

A. The County Has Failed to Meet Its Fundamental Burden of Showing Why Discovery Should Not Be Permitted.

The party moving for an order to compel discovery bears the initial burden of informing the Court: (1) which discovery requests are the subject of the motion to compel; (2) which of the responses are disputed; (3) why the party believes the response is deficient; (4) why the opposing parties' objections are not justified; and (5) why the information the party seeks through discovery is relevant to the prosecution of this action.[2]

Thereafter, the party seeking to avoid discovery bears the burden of showing why that discovery should not be permitted.[3] **The party resisting discovery must specifically detail the reasons why each request is irrelevant or otherwise objectionable**, and may not rely on boilerplate, generalized, conclusory, or speculative arguments.[4] Arguments against discovery must be supported by "specific examples and articulated reasoning."[5]

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[2] *Flynn v. Love*, No. 3:19-CV-00239-MMD-CLB, 2023 U.S. Dist. LEXIS 45170, at *7-8 (D. Nev. Mar. 16, 2023) (citations omitted).

[3] *V5 Techs. v. Switch, Ltd.*, 334 F.R.D. 306, 309 (D. Nev. 2019) (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975) and *Carr v. State Farm Mut. Auto. Ins. Co.*, 312 F.R.D. 459, 469 (N.D. Tex. 2015)).

[4] *F.T.C. v. AMG Servs., Inc.*, 291 F.R.D. 544, 553 (D. Nev. 2013).

[5] *E.E.O.C. v. Caesars Ent.*, 237 F.R.D. 428, 432 (D. Nev. 2006).

Here, Plaintiffs have met their burden. They have explained the relevance and propriety of ROGs 1-9 and RFPs 18-71, 73-80 and the deficiencies in the County's responses and their objections in painstaking detail.[6] Moreover, Plaintiffs have also provided additional explanation as to the proper scope of permissible discovery, why the documents and information sought by Plaintiffs are relevant and necessary, and why the County's objections are an invalid attempt to improperly limit the scope of permissible discovery.[7]

The County has failed to meet its burden. It has ignored and failed to specifically address almost all of the discovery requests addressed in Plaintiffs' motion, providing explicit discussion only of RFPs 51, 52, 57-59, 62-65, 69, 77, 78, and not identifying any ROGs by number and only vaguely referencing interrogatories at all.[8] "Arguments must be meaningfully developed in the briefing for the Court to address them,"[9] and the County has failed to provide a cogent response to the vast majority of the RFPs and ROGs specifically addressed in Plaintiffs' motion. The County has thus conceded that Plaintiffs' motion should be granted as to ROGs 1-9 and RFPs 18-50, 53-56, 60, 61, 66-68, 70, 71, 73-76, 79, and 80 by failing to explicitly address them.[10]

For these reasons alone, the Court should grant Plaintiffs' motion to compel, as the County has failed to provide a cogent response and fails to address the vast majority of the

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[6] *See* Motion, ECF No. 67 at 17:1-36:21.

[7] *See id*. at 12:23-16:28.

[8] *See* Opp., ECF No. 70 at 25:26 (citing RFPs 57-59, 69); *id*. at 27:12 (citing RFPs 77, 78, 51, and 52); *id*. at 28:16 (citing RFPs 62-65); *id*. at 22:5-10 (vague discussion of unidentified interrogatories).

[9] *On Demand Direct Response, LLC v. McCart-Pollak*, No. 2:15-cv-01576-MMD-NJK, 2018 U.S. Dist. LEXIS 71737, at *3 (D. Nev. Apr. 30, 2018) (citing *Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 582, n.3 (D. Nev. 2013)).

[10] *See*, *e.g*., *Griffin v. City of Lake Elsinore*, No. 2:17-cv-00730-KJD-VCF, 2017 U.S. Dist. LEXIS 101032, 2017 WL 2817884, at *2 (D. Nev. June 28, 2017) (citing *Walsh v. Nev. Dep't of Human Res*., 471 F.3d 1033, 1037 (9th Cir. 2006)) ("By failing to address arguments in an opposition, a party effectively concedes a claim . . . ."); *see also* LR 7-2(d) ("The failure of an opposing party to file points and authorities in response to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney's fees, constitutes a consent to the granting of the motion.").

RFPs and ROGs identified and discussed in Plaintiffs' motion.

B. <u>The County's Introductory Sections Ignore the Court's Findings as to Necessary Discovery and Are Improper and Meritless Camouflaged Motions For Reconsideration</u>

While the County addresses "Claims At Issue In This Litigation" (Section I),[11] the Court is well aware of the issues in this case.

1. The County has ignored the Court's holdings as to permitted discovery.

This Court has already made a series of rulings and findings in this case which mandated the discovery at issue in the instant motion to compel and related filings, but which the County has refused to accept. The Court found that Plaintiffs have adequately pled First and Fourteenth Amendment facial challenges.[12] The Court has found Plaintiffs have sufficiently alleged that the ordinance at issue is overbroad and burdens a substantial amount of constitutionally protected activity, and that discovery is needed to fully address this issue.[13] Specifically, the Court has sided with the body of authority that holds that discovery is necessary as to Plaintiffs' facial challenges:

> Some district courts, when faced with a motion to dismiss a facial challenge based on the overbreadth doctrine, have even determined that "weighing [a law's] legitimate applications . . . against its potentially illegitimate applications would . . . benefit from a factual record," so any determination at the motion-to-dismiss stage would be premature. . . . **I am persuaded by this reasoning and find that, to determine the scope of the law's applications, development of a factual record** and more robust briefing on the question **is required**.[14]

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[11] *See* ECF No. 70 at 8:2-10:4.

[12] *See* Order, ECF No. 51 at 17:11-24:2.

[13] *Id*. at 25:3-28:6.

[14] *Id*. at 27:3-8, 27:18-21 (citing *Stark v. Patreon, Inc*., 656 F. Supp. 3d 1018, 1039 (N.D. Cal. 2023) and *Boelter v. Advance Mag. Publishers Inc*., 210 F. Supp. 3d 579, 603 (S.D.N.Y. 2016)) (emphasis added). *See also City of Los Angeles v. Patel*, 576 U.S. 409, 416 (2015) (quoting *Sibron v. New York*, 392 U.S. 40, 59 (1968)((holding that "when there is substantial ambiguity as to what conduct a statute authorizes," evaluating the constitutional validity of the statute "is pre-eminently the sort of question which can only be decided in the concrete factual context of the case" and it is no longer merely a matter of law).

> ***
> **At a minimum, development of the factual record is needed to determine whether CCC [Clark County Code] 16.13.030's unconstitutional applications are substantial when compared to its constitutional ones**—a threshold question for plaintiffs' facial challenges. The Court further concluded the need for discovery as to Plaintiffs' facial challenges.[15]

As to Plaintiffs' as-applied challenges, the Court has found that "discovery is necessary to determine":

> (1) whether the County has met its burden to show that the ordinance responds to a real, rather than speculative, significant government interest; (2) whether the ordinance is narrowly tailored to that interest when compared to other narrower laws that prohibit similar conduct and whether the County considered alternatives that would have had a lesser impact on speech; and (3) whether ample alternatives truly exist for First Amendment activity on the Strip.[16]

Despite this crystal clarity, Defendants simply refuse accept the Court's determination to allow discovery as to Plaintiffs' facial and as-applied challenges. Instead, the County purposefully distorts the record and this Court's findings, and proffers improper and meritless "stealth" motions for reconsideration on the question of scope of discovery.

2. The County's Section Entitled "Facial Challenges Are Questions Of Law" is an improper request for reconsideration

The County's argument Section II entitled "Facial Challenges Are Questions of Law" is nothing more than an attempt to reargue the issue and seek reconsideration of the Court's determination to allow discovery as to Plaintiffs' facial challenges.[17] It consists of a single sentence that is the point of the string citations that follow it, all without any clarifying argument: "Facial challenges like those brought by Plaintiffs in this action are questions of law which are reviewed *de novo* by the appellate courts."[18] A similar argument is made in

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[15] *Id*. at 38:9-11 (emphasis added).

[16] *Id.* at 38:11-39:1 (footnote omitted); *see also U.S. v. Carolene Products*, 304 U.S. 144, 153 (1938) (citing *Chastleton Corp. v. Sinclair*, 264 U.S. 543 (1924) ("a statute predicated upon the existence of a particular state of facts may be challenged upon showing to the court that those facts have ceased to exist.")).

[17] *See* Opp., ECF No. 70 at 10-11.

[18] *Id*. at 10:7-8.

cases cited in Section IV, "Reasons for Limited Scope of Discovery," where the County cites cases to support the proposition the Bridge Ordinance should be "presumed constitutional," challenges to it should be "highly disfavored," and that such challenges should be limited to a "barebones records."[19]

This is all simply an improper attempt to repudiate and seek reconsideration of the Court's finding that discovery is necessary as to Plaintiffs' facial challenges. **The Court has already considered and rejected the County's argument and authority "generically stating that facial challenges are disfavored."**[20]

"Reconsideration may be appropriate if a district court: (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) there has been an intervening change in controlling law." *Rich v. TASER Int'l, Inc*., 917 F. Supp. 2d 1092, 1094 (D. Nev. 2013) (quotations omitted).

The County's stealth motion for reconsideration should be denied because it has not asserted any new evidence, clear error, or a change in law to justify its stealth attempt to overturn this Courts determination that discovery is required as to Plaintiffs' facial challenges.

3. Response to improper omissions and meritless argument in "Scope of Discovery," "Reasons for Limited Scope of Discovery," and "The Court's View on Necessary Discovery" Sections

The County's argument Sections III, IV, and V entitled "Scope of Discovery," "Reasons for Limited Scope of Discovery," and "The Court's View on Necessary Discovery," respectively, are deceptive and incomplete, and are likewise meritless attempts to reargue and seek reconsideration of the Court's determination to allow discovery as to Plaintiffs' as-applied challenges.[21]

These sections omit any discussion of Plaintiffs' as-applied challenges or the

[19] *Id*. at 13:15-22.

[20] *See* Order, ECF No. 51 at 26:2, 27:3-8 & n.124.

[21] *See* Opp., ECF No. 70 at 11:16-13:12, 15:6-16:4.

Court's authorization of discovery concerning them.[22] It is disingenuous and deceptive to the point of bad faith to present these discussions on the scope of discovery, and particularly to represent "The Court's View," while omitting the Court's clear directive permitting discovery as to Plaintiffs' as-applied challenges.

This deception likewise fails as a motion for reconsideration, as the County offers nothing in the way of new evidence, clear error, or a change in law to justify this attempt to erase the Court's explicit granting of discovery to as to Plaintiffs' as-applied challenges.

Moreover, the argument the County submits as to "Reasons for Limited Scope of Discovery" is additionally flawed, as the County does not address Plaintiffs' response to this argument in their motion. After pointing out the County's improper attempt to limit discovery, Plaintiffs note that they are entitled to meaningfully contest whether the County's evidence that it has asserted meets its burden by challenging, *inter alia*, whether the interests asserted by the County in passing CCC 16.13.030 were in reality issues that needed to be addressed, as well as the fit between the asserted harms and the ordinance, citing *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989).[23] The County does not address this argument or the *Ward* case, thus conceding the issue.[24]

C. The County's Claims Of "Overbroad And Abusive Discovery" And Its Claims Of "Good Faith" in the Meet and Confer Process Are Meritless

The County spends over four pages on its rendition of the meet and confer process, seeking to convince the Court that Plaintiffs' discovery is somehow abusive and that the County has acted in good faith.[25] These contentions are meritless and demonstrably false.

First, from the outset, it must be pointed out that the County's discussion of the meet and confer process is rendered incomprehensible by its references to the pages in its

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[22] *See* n.16, *supra*, and accompanying text.

[23] *See* Motion, ECF 67 at 12:23-14:17.

[24] *See* n.10, *supra*.

[25] *See* Opp., ECF No. 70 at 16:5-19:24.

Exhibit A throughout its opposition. The pages in this exhibit are not numbered,[26] so Plaintiffs cannot determine exactly what the County is attempting to assert when it refers to pages in Exhibit A. Additionally, the page references to Exhibit A in Section VI of the County's opposition do not match the County's assertions, *even if the CM/ECF pagination is used*. There is no way to make sense of the County's arguments and assertions, or to figure out what the County is referring to in support of its assertions and arguments in Section IV of the opposition.

Second, the conduct which the County claims is abusive is based on nothing more than question-begging—*i.e.*, it is all based the groundless assumptions that Plaintiffs discovery requests were somehow improper and the County's refusal to properly respond to the requested discovery was justified. The County's attempt to rewrite the record fails with a simple review of: (1) Plaintiffs' December 9, 2024, email requesting a meet and confer; (2) the County's December 18, 2024, letter written in response; and most importantly (3) Plaintiff's December 24, 2024, summarizing the parties' meet and confer.[27]

Third, there is nothing "abusive" about Plaintiffs' submitted 82 RFPs. They clearly fall within the ambit of the Court's directives as to permissible discovery, and the County's failure to directly address all but a handful of the requests belies this scurrilous allegation.

The County simply has, in Plaintiffs' opinion, taken an unjustified overly-narrow view of the scope of discovery authorized by the Court, and the parties disagreed, followed the meet and confer process, and have now ended up before the Court. However, the Court should recall that the record clearly shows that Plaintiffs offered to work together to narrow requests and to craft electronic discovery searches, but the County's position remained that such efforts would be premature considering the County's position regarding the scope of discovery, *and even took the position it would do nothing to clarify the disputed issues between the parties and instead would wait until Plaintiffs filed a motion to compel and the*

[26] *See* Exhibit A, ECF No. 70-1 at 20-59.

[27] *See* Motion, Exhibit 6 (ECF No. 67-8), Exhibit 8 (ECF No. 67-10), and Exhibit 9 (ECF No. 67-11), respectively.

Court issued an order.[28] It was the County that brought the parties to the point we are now at, not Plaintiffs.

D. <u>The County Provides No Viable Arguments Against Plaintiffs' Motion to Compel.</u>

Remarkably, the County does not reach argument as to the motion to compel until thirteen (13) pages into their opposition, demonstrating that their introductory Sections II through VI are surplusage and unnecessary.

The County argues in its Section VII(A) that Plaintiffs have not met their burden to file their motion to compel, based upon the County's invocation of legislative and deliberative process privilege and its fabricated claimed limitation of discovery to "three categories of evidence for consideration in this case"—*i.e*., the ordinance's language, the legislative history and their self-serving description of "[i]ssues of actual fact."[29] The County makes a similar argument in Section VII(B) relying on *City of Las Vegas v. Foley*, 747 F.2d 1294 (9th Cir. 1984), in attempting to limit Plaintiffs seeking information concerning the definitions used in the ordinance based on Plaintiff being forbidden from exploring the motives of legislators.[30] Section VII(C) makes objections to Plaintiffs RFPs on the same basis, mirroring the above arguments while declaring that Plaintiffs cannot challenge the accuracy of the information presented to the Commission (including Dr. Sousa's study), and objecting to Plaintiffs seeking enforcement data and comparisons with the prior law, relying largely on the County's attempt to rewrite *Colacurcio v. City of Kent*, 163 F.3d 545, 552 (9th Cir. 1998).[31]

As discussed below, the County offers no viable arguments against the Court granting the Plaintiffs' motion to compel.

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[28] *See* Motion, Ex. 9, ECF No. 67-11 at 5-6, Section (b).

[29] *See* Opp., ECF No. 70 at 20:16-22:2.

[30] *See id*. at 22:3-23:19.

[31] *See id*. at 23:20-27:6.

1. Plaintiffs have met their burden justifying the motion to compel; it is the County that failed to meet its burden.

The County's assertions that Plaintiffs have not met their burden is simply incorrect. As discussed in Section II(A), *supra*, Plaintiffs have fulfilled every requirement to meet their burden for the filing of the instant motion, and it is the County that has failed to meet its burden of showing why Plaintiffs' discovery should not be permitted.

2. The County's invocation of legislative and deliberative process privilege and its attempt to improperly limit the scope of discovery is unavailing.

The County argues in its Section VII(A) that Plaintiffs have not met their burden to file their motion to compel, based upon the County's invocation of legislative and deliberative process privilege and its fabricated claimed limitation of discovery to "three categories of evidence for consideration in this case"—*i.e*., the ordinance's language, the legislative history and their self-serving description of "[i]ssues of actual fact."[32] The County makes a similar argument in Section VII(B) relying on *City of Las Vegas v. Foley*, 747 F.2d 1294 (9th Cir. 1984), to seek to limit Plaintiffs seeking information concerning the definitions used in the ordinance based on Plaintiff being forbidden from exploring the motives of legislators.[33] These arguments are meritless.

The County's Section VII(A) is devoid of a single reference to any of the disputed ROGs or RFAs, making this argument incomprehensible and impossible to respond to with the specificity the Court and the Rules require. Plaintiffs have already addressed *Foley* and the arguments the County raises here in their attempt to improperly limit the scope of discovery as to Plaintiffs' facial challenges, and the County offers nothing new.[34] The same holds true for its discussion of interrogatories—without identifying a single interrogatory by number—in Section VII(B). Plaintiffs have disposed of these arguments already.[35]

Moreover, the County fails to reference or discuss the Court's mandate for

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[32] *See id*. at 20:16-22:2.

[33] *See id*. at 22:3-23:19.

[34] *See* Motion, ECF No. 67 at 12:23-17:27, 27:24-30:28.

[35] *See id*. at 17:1-20:9.

discovery "to determine the scope of the law's applications" and the discovery required to "determine whether CCC [Clark County Code] 16.13.030's unconstitutional applications are substantial when compared to its constitutional ones."[36] It similarly ignores the three broad categories of discovery authorized by the Court as to Plaintiffs' as-applied challenges.[37] Every single RFP and ROG proffered by Plaintiffs falls within the scope of the discovery authorized by the Court.

The County's argument is also boilerplate, generalized, and conclusory, and is not supported by specific examples and articulated reasoning, demonstrating that they have simply not met their burden and that Plaintiffs' motion to compel should be granted.[38]

To the degree the argument in Sections VII(A) and VII(B) of the County's opposition is addressing their invocation of deliberative process privilege or legislative privilege, it fails. Plaintiffs addressed the fatal defects to the County's attempt to invoke these privileges in their motion, and the County offers nothing to overcome Plaintiffs' arguments.[39] Notably, the arguments in Sections VII(A) and VII(B) are inapplicable because, as noted in Plaintiffs' motion, deliberative process privilege does not apply here because Plaintiffs, *inter alia*, are in fact "pressing a non-frivolous challenge to the deliberative process itself," and legislative privilege does not apply here because Plaintiffs are not seeking judicial inquiry into legislative motivation, and Plaintiffs' RFPs and ROGs do not seek legislators' subjective opinions, but rather seek the County's official positions and facts that support the County's contentions and definitions as explicitly set forth in CCC 16.13.010.[40] Beyond this, Plaintiffs are fully entitled to probe the Commission's intent for pretexts for discrimination. *See Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 272, 60 L. Ed. 2d 870,

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[36] *See* notes 14 & 16, *supra*, and accompanying text.

[37] *See* note 16, *supra*, and accompanying text.

[38] *See AMG Servs., Inc.*, 291 F.R.D. at 553 (D. Nev. 2013); *see also Caesars Ent.*, 237 F.R.D. at 432.

[39] *See* Motion, ECF No. 67 at 27:24-30:6.

[40] *Id.*

99 S. Ct. 2282 (1979)).

Finally, the County has utterly ignored the central problem that undermines its attempt to limit discovery to the three categories of evidence identified in its Section VII(A) and expounded upon in Section VII(B), and its invocation of legislative and deliberative process privilege. As noted in the Motion, the County has waived any deliberative process or legislative privilege and made legislators subjective intent and the information they relied upon fair game for discovery based on the fact that CCC 16.13.010, entitled "Purpose," is a 735-word description of its alleged legislative and deliberative process in passing CCC 16.13.010 and CCC 16.13.030, including all the words and phrases for which Plaintiffs seek definitions.[41] Having made these representations and definitions the explicitly stated purpose of the ordinance, and having explicitly made them *part of the ordinance*, the County cannot now claim its basis for passing those ordinances, the definitions used in this rambling statement of purpose, and the information the Commission relied upon, are somehow subject to deliberative process or legislative privilege and not subject to discovery. The County has failed to address this waiver argument, conceding it.[42] And at a commonsense level, it is absurd for the County to claim they cannot be held to defining the terms in the ordinance's stated "Purpose" which the Commission itself passed and made part of the law.

3. The Court has already determined Plaintiffs are entitled to the information and documents addressed by the County in its Section VII(C)(1) & (2).

Again without citing or discussing a single specific RFP, Section VII(C)(1) & (2) makes objections to Plaintiffs RFPs on the same basis described above, while additionally declaring that Plaintiffs cannot challenge the accuracy of the information presented to the Commission (including Dr. Sousa's study, and his communications, which the County claim "[t]hey never saw"), and objecting to Plaintiffs seeking enforcement data and comparisons with the prior law, relying largely on the County's attempt to rewrite *Colacurcio v. City of*

[41] *See id*. at 30:7-14 & Ex. 12 (ECF No. 67-14).

[42] *See* n.10, *supra*.

Kent, 163 F.3d 545, 552 (9th Cir. 1998).[43] The Court has already found otherwise.

The discovery addressed in Section VII(C)(1) has already been authorized when the Court permitted discovery as to whether the County met its burden to show that the ordinance responds to a real, rather than speculative, significant government interest, whether the ordinance is narrowly tailored to that interest when compared to other narrower laws that prohibit similar conduct, whether the County considered alternatives that would have had a lesser impact on speech, and whether ample alternatives truly exist for First Amendment activity on the Strip.[44] Moreover, the same waiver discussed in Section II(D)(2), *supra*, concerning CCC 16.13.010's "Purpose" section applies here, and eliminates the County's claim that Plaintiffs may not inquire into the information that the Commission relied upon in passing the ordinance.

The discovery addressed in Section VII(C)(2) has already been authorized when the Court permitted discovery to determine whether CCC 16.13.030's unconstitutional applications are substantial when compared to its constitutional ones, and whether the County has met its burden to show that the ordinance responds to a real, rather than speculative, significant government interest, all of which clearly encompasses the enforcement data and information related to prior law relating to the ordinance.[45]

As to *Colacurcio*, Plaintiffs have already addressed this case in detail in the motion, and all of the County's attempts to rewrite it in Section VII(C)(1) & (2) does not change the fact that it supports Plaintiffs' discovery requests.[46]

4. The County's argument in Section VII(C)(3) as to not having custody of information and documents fails.

In one of the few examples of citing actual discovery requests, the County addresses RFPs 77, 78, 51 and 52, *agreeing* that Plaintiffs are entitled to the documents sought therein,

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[43] *See* Opp., ECF No. 70 at 23:20-27:6.

[44] *See* n.16, *supra*, and accompanying text.

[45] *See* notes.15 & 16, *supra*, and accompanying text.

[46] *See* Motion, ECF No. 67 at 15:5-16:22.

but asserting that it need not produce them because the County is not the custodian of these records.[47] The County is dodging the issue. The County has interposed privilege and other objections to these requests but did not produce a proper privilege log. Simultaneously, the County produced some documents, but also stated that discovery is ongoing, and it failed to identify what it is withholding, if anything, based on these unspecified objections and claims of privilege.[48] Plaintiffs addressed this problem in the motion,[49] and the County has not resolved the problem, but instead risibly asks the Court to "disregard Plaintiffs' arguments on the matter of privilege logs." This is unacceptable, and allows the County to withhold documents willy-nilly on its own unbridled discretion without any ability for Plaintiffs to address the issue. The County provides neither a clear privilege log nor a statement that it does not possess responsive documents.

5. The County's argument in Section VII(C)(4) as to Plaintiffs' search requests is largely incomprehensible, and the arguments that are discernable are meritless.

The County addresses RFPs 62-65 by objecting to the "all documents and communications" language and claiming that they are not "admissible," alternatively claiming they are "overly broad," and claiming the requests are "frivolous" without any explanation, while citing to pages of its unnumbered "Exhibit B" that do not exist.[50] It also vaguely refers to "other Requests" without discussing those specifically either.[51]

These objections are meritless. The searches at issue are specific and tailored to the to the discovery authorized by the Court concerning the ordinance. Claiming that the documents are not "admissible" is no objection at all, as they are clearly "discoverable" based on the fact that they are nonprivileged matter that is relevant to Plaintiffs' claims and

[47] *See* Opp., ECF No. 70 at 27:7-28:11.

[48] *See* Motion, Exhibit 10, ECF No. 67-12 at 61-62, 92-95.

[49] *See* Motion, ECF No. 67 at 31:22-32:10.

[50] The County refers to pages "69:20-75:28" of their Exhibit B, which is numbered pages 1-8 and appears at CM/ECF pages 53-59 of ECF No. 70-1.

[51] *See* Opp., ECF No. 70 at 28:12-27.

proportional to the needs of the case, and fall within the scope of the Court's identified areas of permissible discovery, particularly whether the ordinance responds to a real, rather than speculative, significant government interest.[52] The County's vague arguments to the contrary are unavailing, particularly because the County has admitted that it has no idea how allegedly onerous such searches might be, since it never bothered to even attempt to find out how much work might be involved. The County simply refused to respond without looking into the matter, and *refused* to discuss narrowing the searches with Plaintiffs.[53] Oddly, the County cryptically references emails in their argument, but Plaintiffs' requests did not specifically request emails, thus indicating that the County knows that responsive emails exists, but is simply not identifying or providing them.

6. The County's refusal to provide a proper privilege log is clearly in bad faith.

In its Section VII(D), the County actually attempts to argue that it should be able to disregard Fed. R. Civ. P. 26(b)(5), urging the Court to "disregard Plaintiffs' argument on the matter of privilege log" and address the matter only after "the scope of discovery in this case is clearly established."[54] This is nonsensical. The Court has already authorized discovery and defined its scope. Apart from the local rule, the Court explicitly directed the parties to "provide a log for any material claimed to be privileged or protected by the work product doctrine (or material that is withheld for any reason)."[55] The County provides no viable explanation or argument to justify this blatant violation of the local rules and the Court's Order, and there is no provision in the Rules that allows the County to simply shirk its responsibly to comply with Rule 26(b)(5) or violate the Court's order.

The County's misconduct of failing and refusing to supply a meaningful privilege log while invoking a bevy of alleged privileges, without identifying what documents are

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[52] *See* notes 14-16, *supra*, and accompanying text; *see also* Fed. R. Civ. P. 26(b)(1).

[53] *See* Motion, Exhibit 9, ECF 67-11 at pages 5-6 (native pages 4-5).

[54] *See* Opp., ECF No. 70 at 30:5-10.

[55] *See* ECF 54 at 5:5-6.

withheld as to particular privilege invocations, is beyond the pale. The County's bad faith position is shown by the fact that is *has* provided a meager privilege log *on the issues it chooses*, but failed to do so for the vast majority of its claims of privilege, and the County does not specifically address any of Plaintiffs' arguments concerning the County's abject failure to comply with the privilege log requirements.[56]

Notably, the County's unjustified refusal to comply with privilege log requirements has fully justified Plaintiffs' motion to compel on this fact alone, and shows that the blame for the instant motion and any bad faith belongs to the County, not Plaintiffs.

III. OPPOSITION TO THE COUNTY'S COUNTERMOTION FOR PROTECTIVE ORDER

The County seeks a protective order.[57] However, the County has not attempted to meet and confer with Plaintiffs on this issue prior to filing this motion, in direct violation of LR 26-6(c), which fatally dooms the motion on this basis.[58] Additionally, for all the reasons discussed above, the substance of the County's motion is meritless and should also be denied on this basis.

IV. REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SANCTIONS

Plaintiffs have laid out their grounds for sanctions in the form of attorney's fees and costs and affirmative findings against the County for its various discovery violations. These violations include withholding almost everything Plaintiffs asked for while hedging its bets and reserving the right to disclose later on in discovery, failing to provide the privilege log ordered by the Court, refusing to meaningfully meet and confer and instead stating that it would only follow an order from the Court, and needlessly delaying the case.[59]

In response, the County does not address any of these issues, and instead simply

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[56] *See* Motion, ECF No. 67 at 31:1-33:13.

[57] *See* Countermotion for Protective Order, ECF No. 72 at 30:13-34:4.

[58] *See*, *e.g.*, *Hollingsworth v. City of N. Las Vegas*, No. 2:21-cv-02230-CDS-NJK, 2024 U.S. Dist. LEXIS 103141, at *5-7 (D. Nev. Feb. 21, 2024)

[59] *See* Motion for Sanctions, ECF No. 68 at 36:22-38:3.

states that "it goes without saying" that Plaintiffs' motion for sanctions should be denied.[60] The County thus concedes that Plaintiffs' requested sanctions in the form of attorney's fees, costs, and appropriate affirmative findings should be granted.[61] Accordingly, Plaintiffs' motion for sanctions should be granted.

V. OBJECTION TO COUNTY'S ROGUE AND HYPOTHETICAL DISCUSSION OF SANCTIONS IMPROPERLY STYLED AS A COUNTERMOTION

The County states that "it does not seek sanctions of its own accord," but states in a rambling 103-word hypothetical statement that it would be "amenable" to sanctions against Plaintiffs "if the Court should deem Plaintiffs' counsel's unreasonableness and abuse of the discovery process in this matter sanctionable and believes that such a sanction may deter future incidents of discovery abuse in Plaintiffs' counsel's future constitutional challenges to ordinances (of which there promises to be many in the future)."[62]

This is not a motion or countermotion. It is a request for a hypothetical *sua sponte* order from the Court that has not been issued, which Plaintiffs cannot comprehensibly address beyond the instant objection. To the extent this rogue, hypothetical, and conditional request is given any credence, it should be denied, because there is absolutely no argument or evidence before the Court justifying sanctions against Plaintiffs in any fashion.

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[60] *See* Opposition to Motion for Sanctions, ECF No. 71 at 34:16-17.

[61] *See* n.10, *supra*.

[62] *See* Countermotion for Sanctions, ECF No. 73 at 34:18-25.

VI. CONCLUSION

For all the reasons set forth in Plaintiff's motion to compel and motion for sanctions, and for all the reasons set forth herein, Plaintiffs' motion to compel and motion for sanctions should be granted in their entirety. The County's motion for protective order should be denied, and its improper request for a *sua sponte* order from the Court should likewise be denied.

DATED: February 21, 2025.

By: /s/ *Leo S. Wolpert*

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