

Law Offices of
OLSON CANNON GORMLEY & STOBERSKI
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012
Telecopier (702) 383-0701

1 THOMAS D. DILLARD, JR., ESQ. (#6270)
2 OLSON CANNON GORMLEY & STOBERSKI
3 9950 West Cheyenne Avenue
4 Las Vegas, NV 89129
5 Phone: 702-384-4012
6 tdillard@ocgas.com

7 ROBERT T. WARHOLA, ESQ. (#004410)
8 Deputy District Attorney
9 500 Grand Central Pkwy
10 Las Vegas, Nevada 89155
11 robert.warhola@clarkcountyda.com
12 Attorneys for Defendants

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 GYPSUM RESOURCES, LLC, a Nevada)
16 limited liability company,)
17)
18 Plaintiff,)
19 vs.) CASE NO.: A-23-871997-B
20) DEPT. NO.: 31
21 CLARK COUNTY, a political subdivision)
22 of the State of Nevada; CLARK COUNTY)
23 BOARD OF COMMISSIONERS,)
24)
25 Defendants.)
26)
27)
28)
Hearing Date: July 5, 2023
Hearing Time: 8:30 a.m.

29 **CLARK COUNTY’S OPPOSITION TO PLAINTIFF’S MOTION FOR ORDER TO**
30 **PRESERVE EVIDENCE ON ORDER SHORTENING TIME**

31 COME NOW, Defendants CLARK COUNTY and the CLARK COUNTY BOARD OF
32 COMMISSIONERS¹ ("Clark County Defendants"), by and through their counsel of record,
33 THOMAS D. DILLARD, JR., ESQ., of the law firm of OLSON, CANNON, GORMLEY &
34 STOBERSKI and ROBERT T. WARHOLA, ESQ., Deputy District Attorney, and oppose
35 Plaintiff Gypsum Resources, LLC’s (“Gypsum”) Motion for Order to Preserve Evidence on
36 Order Shortening Time.

37 ///

38 _____

39 ¹ The Clark County Board of Commissioners is not a suable entity. The Clark County
40 Defendants herein do not waive Rule 12 defense with respect to this named party in responding
41 to this motion on shortened time requiring a response before any answer or Rule 12 response is
42 due to the Complaint filed on June 7, 2023.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. Background and Summary of the Alleged Controversy Raised by Gypsum.

Approximately a year and a half after discovery closed in the case of Gypsum Resources LLC v. Clark County, et. al., Case No. 2:19-cv-00850-GMN-EJY and BK-S-14796-MKN (“Federal Case”), Gypsum effectively launched a second wave of discovery through public records requests of Clark County. The requests were clearly intended to support a belated claim, made well after the summary judgment briefing closed, to try to shore up liability issues with Gypsum’s claims. Not only did Gypsum initially raise spoliation with Clark County well after the close of discovery, Gypsum initiated the discovery to try to find information that might support spoliation. Clark County, despite seeking a protective order from the Court, still responded to all of Gypsum’s public records requests notwithstanding making several objections. Clark County in fact provided six (6) different responses to Gypsum’s requests from December 22, 2022 to June 15, 2023 and provided a total of 1,188 pages of documents. (Clark County Office of the District Attorney Public Records Response (dated June 15, 2023), attached as Exhibit “A”).

Gypsum previously asserted that text message data from Commissioner Justin Jones’ personal mobile phone was within Clark County’s custody and control when it was deleted. Clark County made no argument that Commissioner Jones’ text data involving Clark County business constituted public records; however, Clark County did contend that any loss of data from his phone was not the result of any intentional or negligent wrongdoing of Clark County. The U.S. District Court of Nevada agreed and held that there was “simply no evidence to support the conclusion that Defendants spoliated relevant evidence that would justify the sanctions Gypsum now seeks against Defendants.” (Motion, Exhibit 4 at 41:18-20).

Clark County, in two different papers filed in the Federal Case, did take the position that text message data contained on government employees’ personal devices were neither public records nor within the custody and control of Clark County. Unlike elected public officials, the Nevada Public Records Act (“NPRA”) did not include designate information contained on employee mobile phones as public records. Clark County could only provide data contained on

1 personal devices with the express consent of the employee and had no duty or right to inspect and
2 collect such data without consent. While failing to address the points and authorities made in
3 support of this position, Gypsum claims that all such data are within the County’s custody and
4 control and Clark County is culpable for the loss of any personal phone data. Clark County
5 addresses this issue below and maintains that personal device data is producible only through
6 Clark County with voluntary consent of the employee and refuses to enter into any stipulation
7 otherwise.

8 Gypsum also contends that Nancy Amundsen, an employee of Clark County and current
9 Director of Comprehensive Planning, has caused text data to be lost based upon her deposition
10 testimony that she occasionally texted with former Commissioner Steve Sisolak and that Clark
11 County provided text data from current Commissioners Michael Naft² and Justin Jones³
12 indicating they had text communications with Ms. Amundsen. Clark County already informed
13 Gypsum’s counsel that it was unable to retrieve text data from an older phone used by Ms.
14 Amundsen because it could no longer be charged because Samsung Galaxy S7 updates ended in
15 2020. (Correspondence of May 11, 2023, attached as Exhibit “B”). Clark County has provided
16 Gypsum text communications involving Ms. Amundsen that was still recoverable from other
17 work and personal devices of consenting employees. Gypsum’s complaints regarding loss of data
18 from Ms. Amundsen appear to be based upon data that can no longer be retrieved from the
19 unsupported phone.

20 Gypsum fails to establish that Clark County is taking any position inconsistent with the
21 NPRA or has been culpable in the loss of any public records. Gypsum has further failed to
22 establish any exigency requiring judicial intervention before Clark County has to respond to
23 Gypsum’s complaint and before the mandatory pretrial conference with the Court. Clark County

24
25 ² This includes three pages of texts addressing basis questions about one public matter,
Allegiant stadium parking and a picture of Ms. Amundsen’s dog. (Ex. 1 to Gypsum’s motion).

26 ³ The texts with Commissioner Jones comprise five pages of communications related to Ms.
27 Amundsen responding to continued requests from a citizen apparently in Commissioner Jones
28 district, discussion regarding potential annexation into a major project community in the
district, discussion about an amendment to NRS 278 and passing on information related to a
news article. (Ex. 2 to Gypsum’s motion).

1 has issued a litigation hold letter for this instant case and served it upon the relevant witnesses
2 including those individuals named in Gypsum’s public records requests. (Clark County District
3 Attorney’s Office Correspondence (dated June 20, 2023) attached as Exhibit “C). Gypsum’s
4 motion is simply an attempt to use public records issues as a property interest strand to resurrect
5 Gypsum’s damage claims that did not stave off summary judgment in the Federal Case despite
6 Gypsum’s best efforts to raise in the eleventh hour a spoliation claim based upon text message
7 data. The Court should deny Gypsum’s motion because there is no live controversy regarding
8 public records, Clark County conduct while the Federal Action was pending was consistent with
9 Nevada law and the motion is an inappropriate preemptive measure to try to insulate Gypsum’s
10 excessive damage claims predicated upon a non-existent property interest—in a manner that is
11 completely inconsistent with the final order from the U.S. District Court of Nevada in the Federal
12 Case.

13 **B. Nature and Summary of the Federal Case**

14 The procedural backdrop was Gypsum had filed suit shortly after the Board of
15 Commissioners (“Board”), in April of 2019, unanimously upheld (by denying Gypsum’s petition
16 for reconsideration) the key condition set by an entirely different makeup of the Board in August
17 of 2011. This key condition effectively unanimously imposed by the Board then afforded
18 Gypsum the ability to move past the Concept Plan Phase for a major project atop Blue Diamond
19 Hill. The approval of the Concept Plan is just step one in a six-step approval process provided by
20 Title 30 of the Clark County Code. The 2011 conditional approval of the Concept Plan with five
21 (5) voting for conditional approval and two (2) voting to deny the concept altogether was voted
22 on and approved after an eight (8) hour public meeting dominated by citizens expressing
23 overwhelming opposition to the development concept at issue. [#35-1 at paras. 16-19, 47-49].
24 Gypsum’s concept was then to develop property high atop Blue Diamond Hill, next-door to Red
25 Rock Canyon and near Scenic Route SR 159, and turn the property that Gypsum was and still is
26 using for mining purposes into a small city. Gypsum did not want to develop this property within
27 the limits of the zoning restriction in place long before it acquired the land and so Gypsum had to
28 get Clark County to approve a development in this environmentally sensitive, and as it turns out,

1 controversial location at much higher densities than 1 residential unit per 2 acres. Indeed, the
2 2020-2021 Board has since approved Gypsum’s petition to develop the property at the level of
3 the zoning restrictions that were in place since Gypsum acquired the property in 2003.

4 The 2011 Board narrowly voted to allow Gypsum room to take further steps in an
5 attempted development by allowing the proposed Major Project to continue down the procedural
6 track of Title 30 of the Clark County Code. Id. Gypsum thus had leave to put together a Specific
7 Plan and a Public Facility Needs Assessment Plan (steps 2 and 3 of 6 total steps laid out in the
8 Code) provided it first satisfied the condition that was imposed by five commissions—without it
9 Gypsum likely would not have obtained the votes to enable it to move forward in any respect. Id.
10 at 13-14. The condition was related to access to the property from the federal government. Due to
11 its unique location and because Gypsum did not own contiguous property to allow ingress and
12 egress from SR-160 (the one and only legally viable connector) to the top of the South-easterly
13 facing escarpment atop the property, Gypsum had to get Bureau of Land Management (“BLM”)
14 approval to put in a five (5) mile connector road installed with utilities from SR-160 and over
15 the high elevation ridge. Id. at 10-11.

16 Accordingly, the 2011 Board majority (permitting Gypsum to move past the Concept Plan
17 phase) required Gypsum to demonstrate that it had obtained BLM access before Clark County
18 would consider steps 2 and 3 of the Major Projects Process. Gypsum had represented to the
19 Board and to the state court that it agreed with fulfilling this condition, but instead elected to
20 petition to waive this condition just before the 2018 elections. Clark County staff had inquired
21 about what efforts Gypsum had made with the BLM before seeking the waiver and Gypsum
22 responded in writing that it wanted more time to work with the BLM before obtaining an up or
23 down vote on its waiver application. Id. at 40-45. After supplementing a plan of development it
24 submitted in 2016 with some additional reports in January of 2019, the waiver application that
25 came to a public meeting on April 17, 2019 was denied unanimously. Id. at 47-49.

26 Led by a Fifth Amendment Takings Claim alleging a value well north of a Billion dollars,
27 Gypsum filed suit in the U.S. District Court of Nevada, in Clark County’s view, to weary Clark
28 County’s will to maintain access conditions to the proposed development by facing an existential

1 threat to the public fisc. Gypsum was indifferent to the lack of BLM access approval and the lack
2 of a property interest to develop the property above zoning limits. Gypsum filed suit on May 17,
3 2019 in the U.S. District Court of Nevada. See Gypsum Resources LLC v. Clark County, et. al.,
4 Case No. 2:19-cv-00850-GMN-EJY.⁴ The U.S. District Court of Nevada issued a judgment to
5 the Clark County Defendants on May 30, 2023 after granting the Clark County Defendants’
6 motion for summary judgment and dismissing all federal jurisdiction claims for relief.
7 (Judgment, attached as Exhibit “D”); (Order of 05/26/23, attached as Exhibit “E”). The Federal
8 Court granted summary judgment on Gypsum’s 42 U.S.C. § 1983 claims brought under the Fifth
9 Amendment’s Takings Clause and the Fourteenth Amendment’s Due Process Clause for lack of
10 an underlying property interest. Id. at 28. The Court also granted summary judgment on
11 Gypsum’s Section 1983 claim under the Equal Protection Clause due to failure to show that it
12 was similarly situated with any other party that received better treatment. Id. at 32.

13 **C. Gypsum Inundated Clark County with Discovery Requests in the Federal**
14 **Case; However, It Did Not Seek Text Message Data from Clark County**
15 **Officials and Employees During the Discovery Phase or Even the Summary**
16 **Judgment Phase.**

17 Clark County made it through the discovery phase of the federal case that ended on
18 August 30, 2021 after making good faith efforts to respond to Gypsum’s excessive discovery
19 requests but at great public expense. [BK, #235]. Gypsum served Clark County with three
20 hundred and thirty-seven (337) requests for production of documents and took 20 depositions,
21 including seven (7) from former or current County Commissioners and eight (8) from County
22 employees. In response, Clark County located and produced in excess of 350,000 pages of
23 electronic documents. A substantial number of these documents were from emails generated
24
25

26 ⁴ The case was referred to the United States Bankruptcy Court for the District of Nevada due to
27 Gypsum’s bankruptcy, under case number BK-S-14796-MKN, on November 7, 2019. [Case
28 No. 2:19-cv-00850 at ECF. No. (“ECF No.”) 28]. The case was then transferred back to the
U.S. District Court of Nevada on October 5, 2021 immediately after the Clark County
Defendants moved for summary judgment. [ECF. Nos. 33 & 34].

1 from search terms provided by Gypsum.⁵ Clark County also imaged and produced data from
2 several electronic devices possessed by two former Clark County Commissioners. Clark County
3 in so doing incurred \$161,279.90 in costs for technical support assistance to identify, produce
4 and store all of the ESI. However, the record was devoid of Gypsum making any effort to meet
5 and confer or compel additional documentation to data within Clark County's custody and
6 control. (Declaration of Thomas D. Dillard, attached as Exhibit "F").

7 The Clark County Defendants moved for summary judgment on October 11, 2021. [ECF
8 No. 35]. Gypsum made no argument in opposition to the motion based upon failure to produce
9 documents or discovery spoliation. [ECF No. 42]. Clark County closed the briefing on their
10 motion for summary judgment on November 21, 2021 when filing their reply brief. [#48] The
11 motion then had been pending with the Court therefore for nearly a year and a half when the
12 Court issued an order indicating Gypsum's failure to fulfill the condition precedent with the
13 BLM may require dismissal of the case. The Court, on January 11, 2023, requested supplemental
14 briefing on the precise issue of whether Gypsum could still obtain approval from the BLM to
15 allow access to the property to ascertain whether Gypsum's Takings Claim is even ripe or
16 consideration. [ECF No. #88].

17 This event (along with Clark County's firm defense against being responsible for
18 spoliation of text messages on a newly elected County Commissioner's personal mobile phone)
19 triggered Gypsum effectively reopening a second discovery phase through public records
20 requests to Clark County. Gypsum's public records requests were made well after the close of
21 discovery, and over a year after the parties finished summary judgment briefing, in an attempt to
22 create a discovery sanction motion. With the benefit of 20/20 hindsight on summary judgment
23 briefing and the Court's focus on the issue that Gypsum has to first obtain BLM access approval,
24 Gypsum's belated spoliation strategy was to thwart summary judgment after all the briefing.

25
26 ⁵ Gypsum speculates based upon glib evidence at best that Clark County knew that some
27 employees used texts and not emails to do business. The fact that Clark County produced tens
28 of thousands of pages of emails containing the Gypsum identified key words during discovery
and Gypsum attached as exhibits to depositions nearly 250 relevant emails belies the conjecture
about the frequency of employee text messaging.

1 Gypsum in fact even not only raised a spoliation theory against Clark County nearly a 1.5 years
2 late; Gypsum had to also conduct more discovery at that time to even try to develop the
3 argument. [ECF. Nos. 115 & 128]. Gypsum consequently made a series of late discovery
4 requests to try to dredge up a spoliation theory (in December of last year and March of this year)
5 that Gypsum was obliged to bring to the Federal Court well over a year previous. More precisely,
6 Gypsum took to the offense to aggressively and belatedly pursue a discovery tort against Clark
7 County in light of the defective gaps of its Takings Claim (dependent upon BLM access
8 approval) and its lack of a property interest to be able to make any claim for compensatory
9 damages.

10 **D. Gypsum’s Premature Motion in this Case is a Continuation of the Belated**
11 **and Unsuccessful Spoliation Tactic Used in the Federal Case to Gloss over**
12 **and Conceal The Absence of Any Legal Right to Develop the Subject**
13 **Property Beyond Longstanding Zoning Limits.**

14 Gypsum’s litigation strategy (aided by the sheer threat of financial ruin for Clark County
15 that is legally dependent upon the recognition of a property interest) is like a thorny thread sewn
16 in and out of this already protracted litigation procedural history. The strategy is to aggressively
17 initiate a secondary offensive when the previous one wanes. This latest motion--filed even before
18 the Clark County Defendants’ Rule 12 motion is due to be filed--is a continuation of Gypsum’s
19 recent last ditch effort to save in federal court (and now try to resuscitate in state court) its
20 intimidatory property damage claims. The public records issues, prematurely raised by Gypsum
21 before Clark County has even responded to the state court Complaint, is brought just to
22 complicate and confuse the pressing legal issues related to the absence of a protected property
23 interest. This Court should, like the U.S. District Court of Nevada has just done, refrain from
24 getting into the thick of the thin issues raised by Gypsum and disregard this attempt to
25 preemptively and artificially fill in the gaping gaps in the damage claims. (Ex. “E”).

26 The Clark County Defendants have diligently processed and produced documents through
27 public records requests even after Gypsum misused the statute to commence a second wave of
28 discovery long after discovery closed under the federal court’s scheduling order. Clark County
has dutifully served the relevant witnesses with written direction to preserve all public records.

1 (Ex. “C”). In addition, if there is any issues to be resolved at the beginning of the discovery phase
2 of this case, the Court should wait to address them until after Clark County moves to dismiss
3 through the ordinary course through the Nevada Rule of Civil Procedure 16.1 conference.

4 **II. PROCEDURAL HISTORY BEFORE THE U.S. DISTRICT OF NEVADA**
5 **BANKRUPTCY COURT AND THE U.S. DISTRICT COURT OF NEVADA**

6 1. Discovery closed in the Federal Case while it was pending before the U.S. District
7 of Nevada Bankruptcy Court on August 31, 2021. [Case No. BK-S-14796-MKN at ECF No.
8 #235].

9 2. On October 11, 2021, the Clark County Defendants filed their motion for
10 summary judgment in the U.S. District Court of Nevada that it had previously filed in the
11 Bankruptcy Court. [ECF No. 35-1 & 35-2]. As part of the motion, the Clark County Defendants
12 argued that Clark County has made no final decision on Gypsum’s proposed major project
13 because Gypsum “has not complied with the condition to obtain [Bureau of Land Management
14 (“BLM”)] right of way approval to be able to construct a proposed access road from SR 160.”
15 [ECF No. 35-1 at 21-22 (pp. 10-11)]; [ECF No. 35-2 at Exs. “PP” & “OO”].

16 3. On October 22, 2021, Gypsum opposed the motion for summary judgment. [ECF
17 No. 42]. Gypsum made no mention of any outstanding discovery issue or any relevance to text
18 message data on private or work phones of County employees (non-policy making officials).
19 Gypsum further made no argument to address the status of its right-of-way (“ROW”) application
20 to the BLM. In fact, Gypsum provided no evidence and made no mention of what it had done to
21 obtain access from the BLM anywhere in its twenty-eight (28) page opposition. [ECF No. 42].

22 4. On November 29, 2021, the BLM served Gypsum with a formal Notice entitled
23 “Application on Hold - Additional Funds Requested.” (BLM Notice in Reference to N-94501
24 (ROW Application) attached as Exhibit “G”). Gypsum failed to disclose this highly relevant
25 document, however. The Notice stated:

26 On August 30, 2017, the BLM received an amended application that identified the
27 primary purpose and need for the roadway as providing permanent access in
28 support of the current and future mining operations for the Gypsum Mine.
Historically, access to the Gypsum Mine has been provided by a mine haul road
from State Route - 159 and has remained open. . . .

1 In accordance with BLM Manual 2804, Applying for FLPMA Grants, Section .25,
2 the BLM field offices must establish priorities for their Lands and Realty
3 Program. **The determination of priorities is a discretionary action based on**
4 **the information available to the Authorized Officer. . . .**

5 Based on the available information to the BLM, **the presence of the existing**
6 **authorized mine haul road and the priorities of the Las Vegas Field Office**
7 **your application for a paved roadway from State Route-160 to the Gypsum**
8 **Mine has been put on hold** until it can be assigned to a Realty Specialist for
9 Processing.

10 Our records indicated that your [Cost Recovery Account (“CRA”)] was
11 established on or before 2016 and **the remaining balance of \$41,358.91 was**
12 **refunded to you.** If you choose to do so, you may submit the total of the refunded
13 amount of \$41,358.91 to the BLM to reestablish a CRA for your application. . . .

14 Id. at 1-2 (emphasis added).

15 5. On February 7, 2022, Gypsum filed a motion for sanctions and for an evidentiary
16 hearing; in so doing, Gypsum went so far as to seek a default judgment based alone upon
17 Commissioner Justin Jones’ missing text message data following the public meeting on April 17,
18 2019. [ECF No. 55]. The only documents raised in the motion pertained to a gap in text data
19 from Commissioner Jones’ mobile phone that went back to the day of that public meeting.

20 6. On November 15, 2022, U.S. Magistrate Judge Elayna J. Youchah denied
21 Gypsum’s motion to convene an evidentiary hearing to impose spoliation sanctions without
22 prejudice. [ECF No. 78].

23 7. On December 1, 2022, Gypsum then served a public records request on Clark
24 County “in light of the litigation” and requested production for eight (8) categories of documents
25 and requested prompt production in order to use the documents in Gypsum’s motion for
26 sanctions. [ECF No. 115 at Ex. G]. Gypsum’s second wave of discovery came fifteen (15)
27 months after the close of discovery and over a year after the motion for summary judgment was
28 fully briefed. Despite pressing Clark County Defendants for production of additional documents,
Gypsum disregarded its duty to supplement document productions probative on the key issue of
the case.

8. On December 22, 2022, Clark County responded to Gypsum’s first public records
request and provided Gypsum 462 pages of documents. (Ex. “A” at 3).

///

1 9. On January 11, 2023, the District Court entered a minute order due to the pending
2 motion for summary judgment specifically related to the ripeness of Gypsum’s Fifth Amendment
3 Takings Claim. [ECF. No. 88 (corrected at #89)]. The Court order stated:

4 As the parties have explained, any approval of a Major Project Application
5 submitted by Gypsum is contingent upon Gypsum receiving approval from the
6 [BLM] for a right-of-way access condition. To date, Gypsum has not received
approval for said condition by the BLM. . . . The relevant question that thereby
arises is whether Gypsum *can* still obtain approval from the BLM.

7 Thus, as understood by the Court, the fulcrum of whether Gypsum’s Fifth
8 Amendment Takings Claim is ripe for review can be reduced to the following
9 question: can Gypsum still receive approval from the BLM on the right-of-way
10 condition thereby mooted the denial of the Clark County Board of
11 Commissioners? . . . Accordingly, IT IS HEREBY ORDERED that Clark County
file a supplemental brief . . . addressing this question . . . whether avenues still
remain for Clark County to clarify or change its decision on Gypsum’s Major
Project Application despite denying Gypsum’s waiver for the right-of-way
condition. Gypsum may file a response . . . Id. at 1-2.

12 10. Then, on January 18, 2023, five hundred and six (506) days after the close of
13 discovery, Gypsum filed a motion for sanctions directly against Clark County and raised, for the
14 first time, the adequacy of Clark County’s documentary disclosures pertaining to text data from
15 someone other than County Commissioner Justin Jones. [ECF No. 90].

16 11. The Clark County Defendants, on February 10, 2023, opposed Gypsum’s motion
17 for sanctions directed at them. [ECF No. 102]. The Clark County Defendants argued that there
18 was no evidence that any elected County Commissioner held Gypsum related text messages and
19 that Gypsum failed to raise any discovery issue timely. Therefore, Gypsum’s attempt to obtain
20 evidentiary advantage through spoliation sanctions was without merit and time barred. Id. at 4-8.

21 12. On February 15, 2023, Gypsum again served a second public records request on
22 Clark County, “in light of the ongoing litigation,” that demanded production of fifteen (15)
23 categories of documents pertaining to County employees that were deposed during the discovery
24 phase of the litigation. [ECF No. 115 at Ex. H].

25 13. On March 13, 2023, the respective counsel for the parties met and conferred
26 regarding Gypsum’s use of public records requests. The Clark County Defendants further made a
27 specific request for Gypsum to supplement with any additional information regarding its BLM
28 access application since there had never been any supplement following the BLM’s subpoena

1 response on July 12, 2021. [#115 at 3-4]; (Ex. “F” at).

2 14. On March 23, 2023, Clark County provided a response to the 02/15/23 public
3 records request and provided another fifty-five (55) pages of documents and gave notification
4 that it was still working on production of additional documents without a charge for processing.
5 Clark County additionally reserved all objections regarding the public records request
6 constituting an untimely discovery request in the litigation. (Ex. “A” at 3).

7 15. On March 30, 2023, Clark County supplemented the response to Gypsum’s
8 second public records request and provided an additional 267 pages of documents. Id.

9 16. On April 13, 2023, Clark County provided an additional 25 pages responsive to
10 Gypsum’s public records requests. Id.

11 17. On April 4, 2023, the Clark County Defendants moved for a protective order to
12 preclude Gypsum from serving public document requests on them (adding to the 337 requests
13 Clark County had already responded to during discovery) to preclude Gypsum from conducting
14 new discovery in violation of the scheduling order and to preclude Gypsum from using those
15 documents in the instant case. [ECF No. 115] (relying upon Heinrich v. Ethicon, Inc., Case No.
16 2:20-cv-00166-CDS-VCF, 2022 WL 17406510 (D. Nev., Dec. 2, 2022)). (Motion for a
17 Protective Order, attached as Exhibit “H”) (without exhibits).

18 18. On April 21, 2023, the U.S. District Court of Nevada, in an forty-two (42) page
19 order, granted Gypsum’s motion with respect to imposing monetary sanctions against
20 Commissioner Justin Jones and denied the motion insofar as it sought any sanction against the
21 Clark County Defendants. [ECF No. 117] (attached as Exhibit “I”). The Court only considered
22 entry of an adverse inference regarding the deleted texts against the Clark County Defendants
23 with respect to Gypsum’s claim for breach of good faith and fair dealing. Id. at 33 n.19. The
24 Court thus never considered imposing any evidentiary sanction with respect to Gypsum’s
25 Takings Clause Claim or Equal Protection Clause claim. The Court concluded, however, that no
26 sanction is appropriate against the Clark County Defendants. Id. Denying Gypsum’s motion in
27 this respect, the Court stated:

28 There is nothing presenting supporting the conclusion or would allow the Court to
reasonably infer the County was aware of Mr. Jones’ communications with

1 Commissioner and then-candidate Sisolak, his campaign, the Nevada
2 Conservation League, or anyone else about a deal with Sisolak that would fulfill
3 Mr. Jones' campaign promise to keep Gypsum from developing its Property
4 within 100 days of Jones' role as a County Commissioner.

5 . . . In the absence of evidence showing the County knew or should have known
6 what was on Mr. Jones' phone, and in the absence of information that reasonably
7 leads to the conclusion that the County should have known Gypsum would file a
8 lawsuit, the Court cannot find the County responsible for Mr. Jones' destruction
9 of text messages on April 17, 2019.

10 . . .

11 . . . **There is simply no evidence to support the conclusion that Defendants**
12 **spoliated relevant evidence that would justify the sanctions Gypsum now**
13 **seeks against Defendants.**

14 Id. at 39-40, 41 (emphasis added).

15 19. On April 25, 2023, Gypsum filed a motion to supplement its opposition to the
16 Clark County Defendants' motion for summary judgment (filed 550 days earlier). [ECF No.
17 119]. Gypsum moved to supplement their opposition to include Magistrate Judge Youchah and
18 have the Court consider the spoliation issues when deciding the motion for summary judgment
19 that had been pending since September of 2021.

20 20. Also, on April 25, 2023, Gypsum served (in response to Clark County's specific
21 request for Fed.R.Civ.P. 26 supplementation) a disclosure containing seventeen (17) documents
22 reflecting communication between Gypsum and the BLM beginning with the two page BLM
23 notice regarding the application being held due to its low priority and Gypsum's need to provide
24 additional funds for processing costs. (Ex. "D").

25 21. On April 13, 2023, Clark County provided an additional 248 pages responsive to
26 Gypsum's public records requests. (Ex. "A" at 3-4).

27 22. On May 9, 2023, the Clark County Defendants opposed Gypsum's motion to
28 supplement its opposition to motion for summary judgment. [ECF No. 128]. The Clark County
Defendants further exposed the fact that Gypsum, despite being specifically directed by the Court
to address the "fulcrum issue" of whether the BLM had discretion to grant Gypsum's application
for the SR 160 connector road, failed to apprise the Court of the current status of Gypsum's BLM

1 application in its supplemental brief filed on February 13, 2023.⁶ Clark County additionally
2 argued that the failure to supplement evidence relevant to this specific issue of BLM access and
3 BLM discretion given the inquiry of the Court precludes Gypsum from obtaining spoliation type
4 remedies against Clark County based upon unclean hands.

5 23. On May 26, 2023, the District Court Judge then promptly granted the Clark
6 County Defendants’ motion for summary judgment with respect to all federal claims on May 26,
7 2023. (Final Order in Federal Case, Ex. “E”). The Court also issued a judgment on behalf of the
8 Clark County Defendants. (Ex. “D”). The Court in doing so paid no heed to Gypsum’s belated
9 claim of destruction of evidence.

10 The Court held that the “express terms of the Settlement Agreement neither authorized
11 nor guaranteed the approval of [Gypsum’s] Major Project Application” and it “cannot claim it
12 has a vested right to approval” because Clark County retained discretion to grant or deny the
13 proposed project. (Ex. “B” at 26-27). The Court concluded also that “Clark County Code §
14 30.20.30 requires all Major Projects to receive the CCBC’s discretionary approval on the
15 following items: (1) Concept Plan; (2) Public Facilities Needs Assessment (“PFNA”) Plan; (3)
16 Specific Plan; (4) Development Agreement; and (5) Zone Changes.” *Id.* at 5.

17 The Court accordingly held that Gypsum “lacks a cognizable liberty or property interest
18 under the Fifth and Fourteenth Amendments, rendering it unable to pursue its substantive due
19 process claim and its procedural due process challenge.” *Id.* at 28 (cleaned up and citations
20 omitted). The Court also granted summary judgment to the Clark County Defendants on
21 Gypsum’s Equal Protection claim because “Gypsum has not shown how a specific comparator,
22 similarly situated in all material respects, was treated differently.” *Id.* at 32. The Court did not
23 even analyze the hardy Monell elements (of deliberate indifference of a policy making official
24 and direct causation) because Gypsum’s failed to establish an underlying constitutional violation.
25 *Id.* The Court further noted in the order that Gypsum has obtained approval to develop the

26
27 ⁶ Gypsum had knowingly received, well over a year earlier, the November 29, 2021 BLM notice
28 (Ex. “D”) indicating that the BLM still held discretion to decide the application. Gypsum failed
to disclose the BLM notice and remained silent on the Court’s question despite this notice
speaking specifically to the issue the Court ordered to be answered.

1 subject property in accordance with applicable zoning requirements on August 4, 2021. Id. at 15,
2 n.4.⁷

3 The Court at the same time denied Gypsum’s motion for partial summary judgment with
4 regard to the Substantive Due Process Claim. The Court found that Gypsum failed to present
5 good cause to supplement its opposition to the summary judgment motion. Id. at 2, 34-35. The
6 Court at the same time denied as moot the Clark County’s motion for protective order relative to
7 Gypsum's belated use of the public records statute as a discovery device. Id. at 35. The Court also
8 declined to exercise jurisdiction on the state law (supplemental jurisdiction claims) and
9 dismissed them without prejudice. Id. at 33. The Court finally ordered that judgment shall issue
10 for the Clark County Defendants and the case shall be closed. Id. at 35.

11 24. On June 15, 2023, Clark County provided Gypsum an additional response to its
12 public records requests, notwithstanding Clark County’s numerous objections including
13 untimeliness of Gypsum’s request. Clark County in doing so provided Gypsum ninety-seven
14 additional pages of documents consisting of Verizon billing records for mobile phones issued to
15 two county employees. The response lists all of Clark County’s public records responses to
16 Gypsum beginning on December 22, 2022. (Ex. “A” at 4).

17 25. On June 21, 2023, Gypsum filed a Notice of Appeal of the U.S. District Court of
18 Nevada’s final order granting the Clark County Defendants’ summary judgment motion on all
19 federal claims and issuing a judgment to them as the prevailing party in the case. (Notice of
20 Appeal, attached as Exhibit “I”). Gypsum has given notice that it appeals all orders underlying
21 the judgment including the court order of April 21, 2023 denying Gypsum’s motion to sanction
22 the Clark County Defendants finding that there is “simply no evidence to support the conclusion
23 that Defendants spoliated relevant evidence that would justify the sanctions Gypsum now seeks
24 against Defendants.” (Ex. “H” at 41).

25
26 ⁷ The Court stated: “Following the initiation of this lawsuit, on August 4, 2021, the CCBC
27 unanimously approved Gypsum’s application for a non-Major Project residential development
28 of the Gypsum Property in accordance with the applicable zoning requirements. Because this
was not a Major Project application, Gypsum’s proposed development was approved without it
having to obtain right-of-way approval from the BLM. (See generally August 4, 2021, Record
and NOFA, Ex. QQ to Clark County MSJ, ECF No. 36-7).” (Ex. “E” at 15: 24-25).

1 **III. GYPSUM FILED SUIT IN STATE COURT AND SEEKS TO RE-LITIGATE**
2 **DETERMINATION THAT IT HAS NO PROPERTY INTEREST IN**
3 **DEVELOPING PROPERTY ABOVE ZONING LIMITS**

4 In direct conflict with the findings of fact and determinations of law made by the U.S.
5 District Court of Nevada, Gypsum has again sued Clark County for compensatory damages based
6 on being unable to develop the property in excess of zoning (i.e. a deprivation of a property
7 interest). Gypsum’s Third Claim for Relief is based upon a Due Process Violation that is by
8 definition predicated upon Gypsum holding an underlying property interest in its proposed
9 development. (Complaint at 23-24). Further, Gypsum’s fourth cause of action is for a regulatory
10 taking (or inverse condemnation) based upon a non-existent and judicially rejected “right to
11 develop its property” in excess of zoning.⁸ *Id.* at 25-26. Gypsum additionally inexplicably
12 maintains a claim for pre-condemnation damages despite holding no property that was ever
13 condemned. *Id.* at 26. Gypsum inexplicably alleges a direct link loss of property rights
14 “exceeding \$2 Billion dollars” as a result of spoliation of text message data notwithstanding the
15 law of the case being that Clark County is not subject to spoliation sanctions at all. (Complaint ¶
16 115). Gypsum’s Complaint and claim to recover damages of an amount to collapse the public
17 fisc, which entirely hinges on the deprivation of property rights for the entire proposed
18 development, is in defiance of the May 26, 2023 order from the U.S. District Court of Nevada.
19 The issue is decided by an Article III judicial officer that Gypsum holds no property rights to the
20 development based on an analysis of Nevada state law and the terms of the 2010 Settlement
21 Agreement. Gypsum’s rehashed suit is a collateral attack on that order while Gypsum
22 simultaneously pursues an appeal to the U.S. Court of Appeals for the Ninth Circuit.

23 ///

24 ///

25 ///

26 _____

27 ⁸ Gypsum’s newly revised allegations are still predicated upon the taking of property by Clark
28 County. Gypsum requested this case be assigned to the Business Court pursuant to ECCR 1.61.
 However, Rule 1.61(b)(7) states that eminent domain cases are not to be brought in business
 court.

1 **IV. LEGAL ARGUMENT**

2 The prior litigation yielded a conclusive determination that Gypsum does not possess a
3 property interest and, without that, Gypsum can no longer maintain a claim that it has been
4 damaged by being denied its dubious development. Before even the Clark County Defendants are
5 scheduled to address the fact that Gypsum’s exorbitant damage claims have been eviscerated
6 when the U.S. District Court of Nevada determined that Gypsum does not possess a property
7 interest to the subject development under Nevada state law (Ex. “E” at 24-27) (noting that
8 “property rights and their dimensions . . . stem from an independent source such as state law”),
9 Gypsum preemptively tries to immunize itself from the bar against re-litigating issues fully and
10 fairly decided in the federal litigation by effectively claiming the federal court must have made a
11 mistake because additional text messaging from non-policy making employees might exist to
12 talismanically give rise to a property interest. Both the timing and the merits of the motion are
13 problematic. While the Clark County Defendants continue to argue that the merits of the motion
14 are unworthy of any credence, the issue of discovery in this case is appropriately addressed after
15 an answer or a decision on Rule 12 defenses. Clark County further submits the Court should not
16 consider any order touching upon spoliation as a basis to create any property right or advance
17 Gypsum’s two billion dollar damage claim that relies upon the existence of a property right. The
18 potential impact of such a far-reaching order, whether entered with that intention or not and
19 issued on shortened time, meaningfully and adversely impacts Clark County’s due process rights.

20 **A. Gypsum’s Motion is Predicated upon a Manufactured Exigency and Seeks**
21 **Premature Relief Without First Satisfying E.J.D.C.R. 2.34 in Manner**
22 **Inconsistent with an Order that Gypsum Has Now Appealed in the Federal**
23 **Case.**

24 Gypsum has brought a motion related to discovery of documents on shortened time prior
25 to a responsive pleading to the Complaint, without complying with the local rule meet and confer
26 requirements and outside of the Nevada Rule of Civil Procedure 16 process. The motion is
27 procedurally defective for failure to satisfy the meet and confer condition precedent and for
28 taking up a discovery dispute before even the pretrial conference.

1 Rule 2.34(a) states that “all discovery disputes (except disputes presented at a pretrial
2 conference or at trial) must first be heard by the discovery commissioner. See also NRCP
3 16.1(d)(1) (“Where available or unless otherwise ordered by the court, all discovery disputes
4 (except those presented at the pretrial conference or trial) must first be heard by the discovery
5 commissioner). In addition, any discovery motion shall not be heard without a meet and confer
6 conference that “requires either a personal or telephone conference between or among counsel.”
7 Gypsum has brought a motion pertaining to production of documents to the District Court
8 directly without satisfying the personal communication requirement and has done so before the
9 Court even convenes the mandatory pretrial conference pursuant to Nevada Rule of Civil
10 Procedure 16(c).

11 Further, Gypsum has failed to demonstrate that there is a current controversy regarding
12 public records. Gypsum likewise did not prove an exigent need for judicial intervention— one
13 even before Clark County’s response to the Complaint is due to be filed. Clark County has been
14 diligent to respond to Gypsum’s series of public records requests despite having the clear form
15 and intent of late discovery undertaken outside of the Federal Case scheduling order. The
16 requests also were made in a hindsight aided (albeit ultimately unsuccessful) attempt to resist
17 summary judgment on the federal claims and the determination that Clark County has not
18 deprived Gypsum of a protected property interest to support the taking of a property or a due
19 process violation. Gypsum has been provided all the documents requested in the 2022 and 2023
20 public record requests the data that is no longer available on Ms. Amundsen’s outdated Samsung
21 phone. There is no evidence to suggest Clark County has or will purposefully transgress the
22 Nevada Public Records Act; indeed, the Federal Case record reflects Clark County has liberally
23 applied the Act and provided records notwithstanding solid objections. Accordingly, the scope of
24 discovery and document production in this case should be addressed following Clark County’s
25 response to the Complaint and in the ordinary course of the Rule 16(c) pretrial conference.

26 Gypsum has not demonstrated that Clark County has caused any loss of public records or
27 that it even has the legal right now to challenge the law of the Federal Case in this separate suit.
28 Gypsum further could not establish that the Court needs to at this earliest juncture make a

1 determination regarding the Nevada Public Records Act when there is no current controversy and
2 the parties now should utilize the Nevada Rules of Civil Procedure regarding discovery for
3 additional documentary production. There was neither good cause to support shortened time and
4 there is likewise not valid cause to grant Gypsum's motion.

5 **B. The Contents on Clark County Employee Personal Cell Phone are Not Public**
6 **Records and Are Outside the Custody and Control of Clark County.**

7 While there is not a live controversy about any employee declining to provide Gypsum
8 text messages pertaining to their work as County employees contained on their personal mobile
9 devices, Gypsum evidently seeks an academic determination on whether the Nevada Public
10 Records Act ("NPR") entails government employee personal cell phone data. Gypsum has
11 assumed, without supporting authority, that the personal phone texts of Ms. Amundsen, Ms.
12 Sami Real and others are "public records" of "the government" under the NPR and are within
13 Clark County custody and control. However, the NPR and Nevada Supreme Court opinions
14 provide otherwise. The Clark County Defendants breached no duty to Gypsum by not previously
15 seizing and maintaining information held in privately possessed devices just because the owner
16 works for Clark County, a municipal entity. There is further no evidence Clark County knew or
17 should have known that there was anything remotely related to this instant case on any
18 employee's own mobile phone. Had Gypsum reasonably raised this issue during discovery in the
19 Federal Case, Clark County could have made specific inquiry to ascertain whether there was
20 anything on any individual's phone having any pertinence to the case and inquire if the employee
21 gave consent for Clark County to collect the information.

22 In its response to Gypsum's public records request, Clark County has provided Gypsum
23 personal mobile phone information upon obtaining employee consent while reserving all
24 objections, including the objection that "County employees are not elected or appointed officers,
25 and therefore are not a 'governmental entity' under the Nevada Public Records Act." (Ex. "A" at
26 5). Consequently, Gypsum has been made aware that employees are not "governmental entities"
27 and that communications on their private cell phones do not fall within the scope of the NPR.
28 The Clark County Defendants have in fact fully briefed the issue in support of their motion for

1 protective order to preclude Gypsum from using the public records statute as an excuse to
2 conduct untimely discovery and in opposition to Gypsum's motions to mulct Clark County with
3 spoliation sanctions. Gypsum has had full notice and an opportunity to address the points and
4 authorities below but has just ignored them in the hope that the court will do likewise. Gypsum's
5 ongoing failure to address any of the case law and argument below speaks volumes.

6 **1. The NPRA Does Not Define a Clark County Employee as a**
7 **Governmental Entity Subject to the Act.**

8 The Nevada Supreme Court stated that the purpose of the NPRA "is to ensure the
9 accountability of the government to the public by facilitating public access to vital information
10 about governmental activities." DR Partners v. Bd. of County Comm., 116 Nev. 616, 621, 6 P.3d
11 465, 468 (2000). The NPRA at NRS 239.005(5) defines "governmental entity" as follows:

- 12 (a) An elected or appointed officer ... of a political subdivision of this State;
- 13 (b) An institution, board, commission, bureau, council, department, division,
14 authority or other unit of government of this State, including, without
15 limitation, an agency of the Executive Department, or of a political
16 subdivision of this State;
- 17 (c) A university foundation, as defined in NRS 396.405;
- 18 (d) An educational foundation, as defined in NRS 388.750, to the extent that
19 the foundation is dedicated to the assistance of public schools; or
- 20 (e) A library foundation, as defined in NRS 379.0056, to the extent that the
21 foundation is dedicated to the assistance of a public library.

22 County employees from which Gypsum sought "public" records from their "private" cell phones
23 are not "elected or appointed officers" of Clark County, nor are they an "institution, board,
24 commission . . . or other unit of government." Id. Clearly, they do not fall under the definition of
25 "governmental entity" under the NPRA.

26 The Nevada Supreme Court has expressly recognized the distinction between County
27 Commissioners, who are elected officials and fall under the NPRA, and county employees, who
28 do not. Gypsum previously has primarily relied upon the case of Comstock Residents v. Lyon
County Bd. of Comm., 134 Nev. 142, 414 P.3d 318 (2018) regarding disclosure of Commissioner
Jones' cell phone contents but disregards the case as it applies to employee personal devices. In
Comstock Residents, the Court considered a writ to compel disclosure of commissioners'

1 communications regarding a change in the zoning plan. Id. at 143, 414 P.3d at 320. Lyon County
2 did not produce communications from the commissioners' private cell phones, although it
3 conceded that the phones were used to conduct county business. Id. The Nevada Supreme Court
4 cited the definition of "government entity" under NRS 239.005(5) and noted that "the
5 commissioners themselves are governmental entities, subject to the NPRA." Id. at 146, 414 P.3d
6 at 322-23. Similarly, the Court held that since "the commissioners themselves are governmental
7 entities, . . . their custody of the requested records would satisfy the requirement of legal custody
8 under NRS 239.010(4)." Id.

9 **2. The Nevada Supreme Court Held that the State Had No Duty to**
10 **Disclose Data from State Employees' Mobile Phones.**

11 Subsequently, the Nevada Supreme Court considered a case where an applicant for a
12 marijuana dispensary brought suit alleging the State licensing procedure was unconstitutional.
13 Dept. of Taxation v. Eighth Jud. Dis. Court, 136 Nev. 366, 466 P.3d 1281 (2020). The applicant
14 moved for an order directing the Department "to preserve relevant electronically stored
15 information from servers, stand-alone computers, and/or cell phones." Id. at 367, 466 P.3d at
16 1282. The applicant sought information on the private cell phones of temporary workers who
17 were hired and trained by the Department to rank the marijuana license applications. Id. The
18 marijuana applicant argued the Department had an obligation to disclose the workers' private cell
19 phone communications under the NPRA. Id. at 372, 466 P.3d at 1285 86, n.3. In response, the
20 Court noted that its decision in Comstock "turned on the fact that 'the commissioners themselves
21 are governmental entities" but that the same could not be said for the temporary workers. Id.

22 It stands then that a County employee is not a "governmental entity" under the NPRA;
23 thus, an employee's communications on their private cell phones do not fall within the NPRA.
24 There is no meaningful distinction here between the employees involved in the 2020 Department
25 of Taxation case and those working in the Planning Department of Clark County.

26 ///

27 ///

28 ///

1 **3. Clark County Has No Legal Right to Take the Personal Electronic**
2 **Devices of County Employees and Collect Information from Them.**

3 Gypsum’s position also incorrectly assumed that Clark County has a legal right to search
4 or seize the private cell phones of its employees. However, the Fourth Amendment prohibits
5 "unreasonable searches and seizures" by state actors, including public employers. O'Connor v.
6 Ortega, 480 U.S. 709, 717 (1987). "Individuals do not lose Fourth Amendment rights merely
7 because they work for the government instead of a private employer." Id. at 717. An employee's
8 expectation of privacy in the contents of closed personal luggage or a briefcase is not affected
9 merely because of workplace presence. Id. at 716. Privacy interests in a cell phone is similar to, if
10 not greater than, the privacy interest in one's home. Riley v. California, 573 U.S. 373, 396-397
11 (2014) ("[A] cell phone search would typically expose to the government far more than the most
12 exhaustive search of a house...."); see also U.S. v. Heckenkamp, 482 F.3d 1142, 1146 (9th Cir.
13 2007) (recognizing that employees typically expect more privacy in personally-owned devices
14 than devices owned by their employers); Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973)
15 (considering an employee’s notice and consent to search relevant for Fourth Amendment
16 analysis). Gypsum also assumes by implication that Clark County can discipline employees for
17 exercise of their First Amendment rights. When government employees speak as citizens on
18 issues of public interest, the First Amendment shields them from retaliation by their employers.
19 Pickering v Board of Education, 391 U.S. 563, 574–75 (1968).

20 Both are enforceable obstacles against Gypsum using Clark County to have access to
21 private phones. As such, Gypsum’s public records and discovery requests—as well as their
22 spoliation theories—are predicated upon consent of Clark County employees that Gypsum did not
23 sue or subpoena.

24 **4. Clark County Does Not Have Custody or Control of County**
25 **Employees’ Personal Mobile Phones.**

26 In addition, in the Dept. of Taxation case, the Nevada Supreme Court considered whether
27 the Department had "possession, custody, or control" over the workers' private cell phones under
28 the Nevada Rules of Civil Procedure. 136 Nev. at 370, 466 P.3d at 1285. The Court construed

1 "possession, custody, or control" to mean "actual possession or legal control, as that approach
2 best prevents unreasonable results." *Id.* Because the Department did not have actual possession of
3 the private cell phones, the pertinent inquiry was whether the Department had the legal right to
4 seize and copy the contents of the workers' cell phones. *Id.* at 371, 466 P.3d at 1285. The
5 Department maintained that it lacked the legal right to the content of the private cell phones and
6 that the discovery order would "force the Department, a government entity, to seize the personal
7 property of nonparty citizens." *Id.* The Court agreed and held that the workers' cell phones are
8 outside the Department's "possession, custody, or control." *Id.* at 372, 466 P.3d at 1286.

9 **5. There Exists no Basis in the Statute or the Case Law to Support**
10 **Gypsum's Argument Regarding Private Cell Phones.**

11 It stands then that a County employee is not a "governmental entity" under the NPRA;
12 thus, an employee's communications on their private cell phones do not fall within the NPRA and
13 do not constitute data held or controlled by the municipal entity. Electronic devices purchased by
14 and used privately by County employees are not the property of Clark County. The phones are
15 privately and exclusively owned, possessed, maintained and paid for by County non-policy
16 making employees who are not parties to the case at hand. Clark County has no authority to
17 access the employees' private cell phones without the employees' consent. Thus, contrary to
18 Gypsum's assertion, Clark County did not have the legal right to search or seize its employees
19 cell phones when the County responded to Gypsum's discovery requests. To the extent Clark
20 County still provided available data from personal cell phones, the employees consented to turn
21 over their phones and provide selected data of their own volition. Notwithstanding their good
22 faith, Gypsum still previously argued it was insufficient and they make baseless accusations that
23 these employees still destroyed data notwithstanding their consent to produce what they had.
24 Clark County is thus only able to provide data from personal cell phones with voluntary consent
25 of the public employee's whose property is being searched and seized. It is clear regardless of
26 Gypsum's unsupported scoffing at the suggestion that the text messages between employees are
27 not public records within the NPRA. Clark County owed no duty to Gypsum to preserve it as a
28 public record.

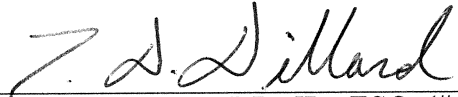
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

IN ACCORDANCE WITH THE FOREGOING, the Clark County Defendants respectfully submit that Gypsum’s Motion for Order to Preserve Evidence on Order Shortening Time should be denied. Gypsum has failed to present good cause for the Court to enter an order suggesting Clark County has previously violated the NPRA or that it has any intent to do so now. There does not exist a live controversy regarding production of documents under the NPRA and production of documents now should proceed only under the rules of civil procedure. The Court should further avoid issuing any order at this early stage in the litigation regarding document preservation and production that bears in any fashion on the merits of the causes of action set forth in the newly filed Complaint or the creation of a Gypsum property interest.

DATED this 27th day of June, 2023.

OLSON CANNON GORMLEY & STOBERSKI

By 
THOMAS D. DILLARD, JR., ESQ. (#6270)
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Clark County Defendants

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the law offices of OLSON CANNON GORMLEY & STOBERSKI, and that on the 27th day of June, 2023, I served a copy of the foregoing, **CLARK COUNTY’S OPPOSITION TO PLAINTIFF’S MOTION FOR ORDER TO PRESERVE EVIDENCE ON ORDER SHORTENING TIME**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court’s facilities to those parties listed on the Court’s Master Service List, (or, if necessary, by U.S. Mail, first class, postage pre-paid, or via email), as registered, including the following:

- James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
- Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
- Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
- Jordan T. Smith, Esq., Bar No. 12097
JTS@pisanellibice.com
- Emily A. Buchwald, Esq., Bar No. 13442
EAB@pisanellibice.com

PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.211

*Attorneys for Plaintiff
Gypsum Resources, LLC*

/s/ Jessica Kaufman
An employee of OLSON CANNON GORMLEY & STOBERSKI

Law Offices of
OLSON CANNON GORMLEY & STOBERSKI
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Telecopier (702) 383-0701

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28