

CIVIL COVER SHEET

X I I I

Clark County, Nevada

Case No. _____

(Assigned by Clark's Office)

I. Party Information

Plaintiff(s) (name/address/phone): MICHAEL SHACKLEFORD, as Individual.

Attorney (name/address/phone):

Brandon L. Phillips, Esq.

3960 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

(702) 795-0097; (702) 795-0098

Defendant(s) (name/address/phone):

NEVADA GAMING COMMISSION, a Nevada Government Entity

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

Arbitration Requested

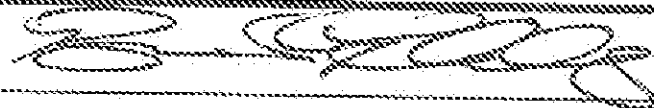
Civil Cases

<p>Real Property</p> <p><input type="checkbox"/> Landlord/Tenant</p> <p style="padding-left: 20px;"><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Title to Property</p> <p style="padding-left: 20px;"><input type="checkbox"/> Foreclosure</p> <p style="padding-left: 20px;"><input type="checkbox"/> Liens</p> <p style="padding-left: 20px;"><input type="checkbox"/> Quiet Title</p> <p style="padding-left: 20px;"><input type="checkbox"/> Specific Performance</p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property</p> <p style="padding-left: 20px;"><input type="checkbox"/> Partition</p> <p style="padding-left: 20px;"><input type="checkbox"/> Planning/Zoning</p>	<p>Negligence</p> <p><input type="checkbox"/> Negligence -- Auto</p> <p><input type="checkbox"/> Negligence -- Medical/Dental</p> <p><input type="checkbox"/> Negligence -- Premises Liability (Slip/Fall)</p> <p><input type="checkbox"/> Negligence -- Other</p>	<p>Torts</p> <p><input type="checkbox"/> Product Liability</p> <p style="padding-left: 20px;"><input type="checkbox"/> Product Liability/Motor Vehicle</p> <p style="padding-left: 20px;"><input type="checkbox"/> Other Torts/Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p style="padding-left: 20px;"><input type="checkbox"/> Torts/Defamation (Libel/Slander)</p> <p style="padding-left: 20px;"><input type="checkbox"/> Interfere with Contract Rights</p> <p><input type="checkbox"/> Employment Torts (Wrongful termination)</p> <p><input type="checkbox"/> Other Torts</p> <p style="padding-left: 20px;"><input type="checkbox"/> Anti-trust</p> <p style="padding-left: 20px;"><input type="checkbox"/> Fraud/Misrepresentation</p> <p style="padding-left: 20px;"><input type="checkbox"/> Insurance</p> <p style="padding-left: 20px;"><input type="checkbox"/> Legal Tort</p> <p style="padding-left: 20px;"><input type="checkbox"/> Unfair Competition</p>
<p>Probate</p> <p><input type="checkbox"/> Summary Administration</p> <p><input type="checkbox"/> General Administration</p> <p><input type="checkbox"/> Special Administration</p> <p><input type="checkbox"/> Set Aside Estates</p> <p><input type="checkbox"/> Trust/Conservatorships</p> <p style="padding-left: 20px;"><input type="checkbox"/> Individual Trustee</p> <p style="padding-left: 20px;"><input type="checkbox"/> Corporate Trustee</p> <p><input type="checkbox"/> Other Probate</p>	<p>Other Civil Filing Types</p> <p><input type="checkbox"/> Construction Defect</p> <p style="padding-left: 20px;"><input type="checkbox"/> Chapter 40</p> <p style="padding-left: 20px;"><input type="checkbox"/> General</p> <p><input type="checkbox"/> Breach of Contract</p> <p style="padding-left: 20px;"><input type="checkbox"/> Building & Construction</p> <p style="padding-left: 20px;"><input type="checkbox"/> Insurance Carrier</p> <p style="padding-left: 20px;"><input type="checkbox"/> Commercial Instrument</p> <p style="padding-left: 20px;"><input type="checkbox"/> Other Contracts/Acct/Judgment</p> <p style="padding-left: 20px;"><input type="checkbox"/> Collection of Actions</p> <p style="padding-left: 20px;"><input type="checkbox"/> Employment Contract</p> <p style="padding-left: 20px;"><input type="checkbox"/> Guarantee</p> <p style="padding-left: 20px;"><input type="checkbox"/> Sale Contract</p> <p style="padding-left: 20px;"><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Civil Petition for Judicial Review</p> <p style="padding-left: 20px;"><input type="checkbox"/> Other Administrative Law</p> <p style="padding-left: 20px;"><input type="checkbox"/> Department of Motor Vehicles</p> <p style="padding-left: 20px;"><input type="checkbox"/> Worker's Compensation Appeal</p>	

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

November 14, 2012





CLERK OF THE COURT

1 PMAN
2 BRANDON L. PHILLIPS, ESQ.
3 Nevada Bar No. 12264
4 Brandon L. Phillips, Attorney at Law, PLLC
5 3960 Howard Hughes Parkway, Suite 500
6 Las Vegas, NV 89169
7 702-795-0097, 702-795-0098fax
8 blp@abetterlegalpractice.com
9 Attorney for Petitioner
10 MICHAEL SHACKLEFORD

11 EIGHTH JUDICIAL DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 MICHAEL SHACKLEFORD, as an
14 Individual.

15 vs.

16 NEVADA GAMING COMMISSION, a
17 Nevada Government Entity.

18 Defendants.

A - 1 2 - 6 7 1 9 9 8 - W

CASE NO.

X I I I

DEPT. NO.

19 PETITION FOR WRIT OF MANDAMUS

20 Petitioner, MICHAEL SHACKLEFORD, (hereinafter "Petitioner"), by and through his
21 counsel of record, BRANDON L. PHILLIPS, ESQ., from the law firm, BRANDON L.
22 PHILLIPS, ATTORNEY AT LAW, PLLC hereby moves this Court by Original Petition for a
23 Writ of Mandamus requiring the Nevada Gaming Commission to disclose information under the
24 Nevada Open Information Act.

25 This Original Petition is based upon Nevada Revised Statute, Chapter 34, the attached
26 Exhibits, Points and Authorities, Affidavits, and any oral argument and/or evidence that this
27 Court will entertain at the hearing on this matter.

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1 NOTICE OF HEARING

2 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

3 PLEASE TAKE NOTICE that the undersigned will bring the PETITION FOR WRIT OF
4 MANDAMUS on for hearing on the 17 day of December, 2012, at the hour of
5 9 : 00 a.m/p.m, in Department , or as soon thereafter as counsel may be heard.
6 X I I I

7 DATES this day of November, 2012

8 BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC

9 By /s/ Brandon L. Phillips

10 BRANDON L. PHILLIPS, ESQ.
11 Nevada Bar No. 12264
12 Brandon L. Phillips, Attorney at Law, PLLC
13 3960 Howard Hughes Parkway, Suite 500
14 Las Vegas, NV 89169
15 702-795-0097, 702-795-0098fax
16 blp@abetterlegalpractice.com
17 Attorney for Petitioner

18 NATURE OF THE CASE AND SUMMARY OF THE ARGUMENT

19 Petitioner, MICHAEL SHACKLEFORD, is bringing this original proceeding, seeking
20 extraordinary relief in the form of a writ of mandamus. This proceeding arises following the
21 Nevada Gaming Commission's (NGC) denial of Petitioner's request to disclose non-privileged
22 and/or non-protected information under the Nevada Open Information Act (NRS 239.010). On or
23 about September 28, 2012, Petitioner, through his counsel of record, sent a request to the Nevada
24 Gaming Commission to disclose the following public information, Gaming Revenue
25 Information, specifically slot win percentages for Clark County casinos with \$1,000,000 in
26 revenue, by both denomination and casino for the last available twelve (12) month period. The
27 specific information requested is categorized under "Revenue," however, the slot payback
28 percentage requested by Petitioner does not reveal any "revenue" related information. Following

1 discussions between NGC and Petitioner's counsel any and all access to the public records was
2 denied in its entirety.

3 As discussed in more detail below, a writ of mandamus should issue in this case for the
4 following reasons: First, the NGC abused its discretion by claiming protection or privilege in
5 refusing to disclose the requested information. Secondly, the stated purpose of the Nevada Open
6 Information Act "is to foster democratic principles by providing members of the public with
7 access to inspect and copy public books." Petitioner is a member of the intended class and NGC
8 holds public books and records which should be disclosed to the public. Thirdly, Petitioner has
9 no other venue from which to challenge NGC's denial of Petitioner's request so it is appropriate
10 that Petitioner seek relief here.

13 RELIEF SOUGHT

14 Petitioner, MICHAEL SHACKLEFORD, respectfully requests the Court enter relief as
15 follows:

- 16 1. to grant its Petition for Writ of Mandamus;
- 17 2. to issue a writ of mandamus to the Nevada Gaming Commission demanding that it
18 disclose the requested information or in the alternative;
- 19 3. in the alternative, to issue a writ of mandamus to the Nevada Gaming Commission
20 demanding that the governmental entity redact, delete, conceal or separate the confidential
21 information from the information included in the public book or record that is not otherwise
22 confidential; and
- 23 4. to grant it all such other and further relief to which it may be entitled at law or equity.

26 ISSUES PRESENTED

- 27 1. Whether the Nevada Gaming Commission abused its discretion in denying Petitioner's request
28 for disclosure of public information.

1 II. In the alternative, whether the Nevada Gaming Commission could disclose the requested
2 information by redacting, deleting, concealing, or separating the alleged confidential information
3 from the information included in the public book or record.

4 NECESSARY FACTS

5 **A. Factual Background**

6
7 Petitioner, MICHAEL SHACKLEFORD, is an expert in gaming statistics having taught
8 statistic courses at the UNLV, has been retained to as an outside consultant for casinos
9 worldwide, and owns his own consulting firm focused on the design and development of casino
10 games. Petitioner also owns and operates multiple websites devoted to gaming statistics and
11 player advocacy. Therefore, Petitioner has a legitimate and reasonable purpose for pursuing
12 public information from the Nevada Gaming Commission. On or about September 28, 2012,
13 Petitioner, by and through his counsel, BRANDON L. PHILLIPS, ESQ., sent a letter to the
14 Nevada Gaming Commission requesting the production or disclosure of Gaming Revenue
15 Information, specifically win percentages or payback percentages of slot machines for Clark
16 County casinos with \$1,000,000 in revenue, by both denomination and casino for the last
17 available twelve (12) month period. This request was made pursuant to the Nevada Open
18 Information Act (NRS 239.010). Currently, on the Nevada Gaming Commission's website the
19 requested gaming percentage information is available only by region and not by specific casinos.
20 By the production of regional information, NGC has admitted that the information requested by
21 Petitioner is not privileged. While the information requested is categorized under "revenue," no
22 revenue information is being requested. Petitioner's request is for slot payback percentages or
23 slot hold percentages. On or about October 5, 2012, an agent of the Nevada Gaming Commission
24 reviewed Petitioner's request and subsequently denied Petitioner's request, claiming absolute
25 privilege not to disclose the requested information under NRS 463.120 and NRS 463.3407.
26
27
28

1 Petitioner requested further review, but Petitioner's request was again denied. Petitioner then
2 inquired as to any appeal process or any other administrative process before seeking relief from
3 this Court.

4 B. STATEMENT OF LAW

5 (1.) NRS 239.010 Public books and public records open to inspection;
6 confidential information in public books and records; copyrighted books and
7 records; copies to be provided in medium requested.

8 1. Except as otherwise provided in subsection 3, all public books and public
9 records of a governmental entity, the contents of which are not otherwise
10 declared by law to be confidential, must be open at all times during office
11 hours to inspection by any person, and may be fully copied or an abstract or
12 memorandum may be prepared from those public books and public records.
13 Any such copies, abstracts or memoranda may be used to supply the general
14 public with copies, abstracts or memoranda of the records or may be used in
15 any other way to the advantage of the governmental entity or of the general
16 public. This section does not supersede or in any manner affect the federal laws
17 governing copyrights or enlarge, diminish or affect in any other manner the rights
18 of a person in any written book or record which is copyrighted pursuant to federal
19 law.

20 2. A governmental entity may not reject a book or record which is copyrighted
21 solely because it is copyrighted.

22 3. A governmental entity that has legal custody or control of a public book or
23 record shall not deny a request made pursuant to subsection 1 to inspect or
24 copy a public book or record on the basis that the requested public book or
25 record contains information that is confidential if the governmental entity
26 can redact, delete, conceal or separate the confidential information from the
27 information included in the public book or record that is not otherwise
28 confidential.

4. A person may request a copy of a public record in any medium in which the
public record is readily available. An officer, employee or agent of a
governmental entity who has legal custody or control of a public record shall not
refuse to provide a copy of that public record in a readily available medium
because the officer, employee or agent has already prepared or would prefer to
provide the copy in a different medium.

[1:149:1911; RL § 3232; NCL § 5620]—(NRS A 1963, 26; 1965, 69; 1993, 1230,
2307, 2623; 1995, 503, 716; 1997, 2386; 1999, 1210; 2007, 2062) [EMPHASIS
ADDED].

Petitioner's request for the production or disclosure of gaming information, specifically
win percentages or payback percentages of slot machines for Clark County casinos with
\$1,000,000 in revenue, by both denomination and casino for the last available twelve (12) months

1 period reasonably falls within the scope of Nevada Revised Statute 239.010. The Nevada
2 Gaming Commission is a governmental entity working by and under the authority of the State of
3 Nevada. Therefore, as a governmental entity NGC's books and records should be made available
4 for public inspection during normal business hours. Petitioner argues that the requested
5 information is not protected or privileged under any Nevada statute. NGC has provided limited
6 access to the requested gaming percentages by region, but not specifically by casino as requested
7 by Petitioner.
8

9
10 In the alternative, NGC is not entitled to deny Petitioner's request if the NGC could
11 reasonably redact, conceal, delete, or separate the alleged confidential information. Should
12 Petitioner's request for gaming revenue by casino be denied as privileged, NGC could redact,
13 conceal, delete, or separate the alleged confidential information and provide the requested
14 information without the individual casino name attached to the information. Thus, NRS
15 239.010(3) provides an alternative method for revealing a portion of the requested information.
16

17
18 (2.) NRS 463.120 (4). Except as otherwise provided in this section, all
information and data:

- 19 (a) Required by the Board or Commission to be furnished to it under chapters 462
20 to 466, inclusive, of NRS or any regulations adopted pursuant thereto or which
21 may be otherwise obtained relative to the finances, earnings or revenue of any
applicant or licensee;
- 22 (b) Pertaining to an applicant's or natural person's criminal record, antecedents
23 and background which have been furnished to or obtained by the Board or
Commission from any source;
- 24 (c) Provided to the members, agents or employees of the Board or Commission by
25 a governmental agency or an informer or on the assurance that the information
26 will be held in confidence and treated as confidential;
- 27 (d) Obtained by the Board from a manufacturer, distributor or operator, or from
28 an operator of an inter-casino linked system, relating to the manufacturing of
gaming devices or the operation of an inter-casino linked system; or

1 (e) Prepared or obtained by an agent or employee of the Board or Commission
2 pursuant to an audit, investigation, determination or hearing, are confidential and
3 may be revealed in whole or in part only in the course of the necessary
4 administration of this chapter or upon the lawful order of a court of competent
5 jurisdiction. The Board and Commission may reveal such information and data to
6 an authorized agent of any agency of the United States Government, any state or
7 any political subdivision of a state or the government of any foreign country.
8 Notwithstanding any other provision of state law, such information may not be
9 otherwise revealed without specific authorization by the Board or Commission.

10 5. Notwithstanding any other provision of state law, any and all information and
11 data prepared or obtained by an agent or employee of the Board or Commission
12 relating to an application for a license, a finding of suitability or any approval that
13 is required pursuant to the provisions of chapters 462 to 466, inclusive, of NRS or
14 any regulations adopted pursuant thereto, are confidential and absolutely
15 privileged and may be revealed in whole or in part only in the course of the
16 necessary administration of such provisions and with specific authorization and
17 waiver of the privilege by the Board or Commission. The Board and Commission
18 may reveal such information and data to an authorized agent of any agency of the
19 United States Government, any state or any political subdivision of a state or the
20 government of any foreign country.

21 Petitioner has not requested access to finances, earnings, or revenue of any casino under
22 the control or authority of the Nevada Gaming Commission, which would violate NRS
23 463.120(4)(a). Petitioner's specific request seeks win percentages or payback percentages of slot
24 machines by casinos. Similar to table games, where a player knows the house edge or hold
25 percentage of the table game, Petitioner's request would allow the public to know the average
26 house edge or hold percentage for slot machines. Granting Petitioner's request would not allow
27 Petitioner access to privileged information (finances, earnings, or revenue) protected by NRS
28 463.120. Further, the requested information is not obtained through an audit, investigation,
determination or hearing by the NGC and therefore is not to be considered confidential by
statute.

Even if the information was considered confidential by the NGC, NRS 463.120, the
statute specifically states that it "may be revealed in whole or in part only in the course of the
necessary administration of this chapter or upon the lawful order of a court of competent

1 jurisdiction." [Emphasis Added]. The present Court is a competent court of jurisdiction to
2 issue a lawful order of the court granting Petitioner's request and issuing a writ of mandamus.
3 The present Court could also order NGC to redact or conceal the privileged information that
4 would still allow Petitioner access to the requested documentation.
5

6 (3). NRS 34.160 Writ may be issued by Supreme Court and district courts;
7 when writ may issue. The writ may be issued by the Supreme Court, a district
8 court or a judge of the district court, to compel the performance of an act which
9 the law especially enjoins as a duty resulting from an office, trust or station; or to
10 compel the admission of a party to the use and enjoyment of a right or office to
11 which the party is entitled and from which the party is unlawfully precluded by
12 such inferior tribunal, corporation, board or person. When issued by a district
13 court or a judge of the district court it shall be made returnable before the district
14 court.

15 Petitioner has rightfully sought relief in the present district court to issue a writ of
16 mandamus. Petitioner argues that the present court should compel the performance of the Nevada
17 Gaming Commission to disclose the requested average slot payback percentage by casino as it is
18 not protected under any Nevada statute. Petitioner has requested this information from the NGC,
19 but was wrongfully denied access to these records. Further, Petitioner cannot seek review in any
20 other forum, expect the present court through a petition for a writ of mandamus. Therefore,
21 Petitioner has sought writ from this Court in compliance with NRS 34.160.
22

23 **CONCLUSION AND REQUEST FOR RELIEF**

24 Petitioner's request for slot payback or slot hold percentages should be granted based on
25 Nevada's Open Information Act. The requested information made by Petitioner does not allow
26 him access to protected and/or privileged information. Petitioner's request does not reveal
27 finances, earnings, or revenue. Slot payback or slot hold percentages do not reveal earnings
28 information or revenues. Petitioner's request only reveals information known about every other

1 game offered in the casino, the house edge or hold percentage, and slot machines should not be
2 afforded greater protection. Players are entitled to know the odds of each and every game they
3 play. Petitioner's request only allows him and the public the limited ability to know the average
4 payback or hold percentage of an entire casino. Thus, Petitioner argues his request is reasonable
5 and falls within the scope of Nevada's Open Information Act.
6

7 Petitioner, MICHAEL SHACKLEFORD, respectfully requests the Court enter relief as
8 follows:

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- 13 3. in the alternative, to issue a writ of mandamus to the Nevada Gaming Commission
14 demanding that the governmental entity redact, delete, conceal or separate the confidential
15 information from the information included in the public book or record that is not otherwise
16 confidential; and
17
- 18 4. to grant it all such other and further relief to which it may be entitled at law or equity.

19 Respectfully submitted by,

20 /s/ Brandon L. Phillips

21 BRANDON L. PHILLIPS, ESQ.
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