

APR 04 2022

NEVADA GAMING COMMISSION
CARSON CITY, NEVADA

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9 STATE OF NEVADA

10 BEFORE THE NEVADA GAMING COMMISSION

11 NEVADA GAMING CONTROL BOARD

NGC 21-04

12 Complainant,

13 vs.

RESPONDENT'S OPPOSITION TO
STADIUM TECHNOLOGY GROUP,
LLC'S MOTION FOR PROTECTIVE
ORDER

14 STATION CASINOS LLC;
15 NP RED ROCK LLC dba
16 RED ROCK CASINO RESORT SPA;

17 Respondents.

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19
20 Respondents, Station Casinos LLC and NP Red Rock LLC dba Red Rock Casino Resort
21 Spa (together, "Station Casinos" or "Respondents"), by and through their counsel, the law firm of
22 Reid Rubinstein & Bogatz, hereby files this Opposition (the "Opposition") to Stadium Technology
23 Group, LLC's Motion for Protective Order Concerning Respondents' Subpoena Duces Tecum and
24 Deposition Subpoena (the "Motion").

25 This Opposition is made and based upon the pleadings, papers and records on file, the
26 following Memorandum of Points and Authorities, the exhibits attached hereto, and any argument

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28 ///

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1 of counsel that the Commission may permit on this matter.

2 DATED this 4th day of April, 2022.

3
4 REID RUBINSTEIN & BOGATZ

5 By: /s/ Marc H. Rubinstein, Esq.
6 Marc H. Rubinstein, Esq.
7 Nevada Bar No. 2783
8 I. Scott Bogatz, Esq.
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11 Nevada Bar No. 14567
12 300 South 4th Street, Suite 830
13 Las Vegas, Nevada 89101
14 *Attorneys for Respondents*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 The Nevada Gaming Control Board’s claims in their underlying complaint to this action
18 all generally relate to Respondents’ alleged acceptance of past post wagers. As explicitly detailed
19 in those allegations and in Respondents’ response thereto, Respondents’ acceptance of past post
20 wagers occurred as a result of several, ongoing malfunctions of the Stadium Live sports wagering
21 system. While Respondents do not, and have never shirked their responsibilities as a licensee,
22 including the responsibility for those systems Nevada law prescribes them the overseer, it is
23 impossible for Respondents to adequately defend themselves without the information and
24 documentation under the control of the company whose technology is the root cause of
25 Respondents’ alleged improper actions. Given Respondents’ due process rights to defend
26 themselves in this action, the Commission should deny Stadium Technology Group’s motion and
27 provide Respondents the full authority to collect the information sought through the appropriately
28 issued subpoenas herein.

29 **II. RELEVANT BACKGROUND AND FACTUAL HISTORY**

30 At all relevant periods of this action, Respondents implemented and utilized Stadium
31 Technology Group, LLC (“Stadium”)’s licensed sportsbook technologies to assist in the operation
32 of their sportsbook. Specifically, Stadium’s technology included the Stadium Live product, which

1 controlled the presentation and acceptance of mobile wagers for Respondents' Nevada-located
2 patrons. One of the functions built into the Stadium Live product is the program's ability to
3 prohibit the acceptance of wagers upon events whose outcomes had already been determined (a
4 "Past Post Wager"). Similarly, the Stadium Live product contains functions to cease the
5 acceptance of wagers upon an event's commencement. This action is a result of the failure of both
6 these processes.

7 From June 2018 to January 2022, the Stadium Live product failed at least four times,
8 causing betting opportunities to remain open beyond the commencement of the sporting event and
9 causing Respondents to automatically accept Past Post Wagers. Respondents reported each of
10 these incidents to the Nevada Gaming Control Board (the "Board") upon their discovery, and
11 Respondents, the Board, and Stadium sought a solution to avoid future occurrences. Although
12 Respondents believed a temporary solution was possible to resolve the faulty Stadium product,
13 that solution involved non-automatic implementation on an indefinite basis, during which time it
14 appears that Stadium did not attempt to remedy the underlying issue.

15 Stadium's product, despite being tested and approved by the Board's Technology Division
16 before its initial implementation, contained flawed programming and/or other faults that are the
17 direct cause of the violations alleged in the Board's underlying complaint. Given the faulty
18 Stadium product at the heart of the Board's allegations, Respondents sought information regarding
19 Stadium's technology, the testing of that technology, the technology's failures, and Stadium's
20 knowledge of and response to the same. On March 17, 2022, the Executive Secretary issued two
21 subpoenas to achieve these ends, permitting Respondents to compel the production of documents
22 and records associated with Stadium and its technology, and to compel the attendance of Stadium's
23 person most knowledgeable for a deposition (collectively referred to as the "Subpoenas"). On
24 March 22, 2022 at 11:50 AM, Respondents caused a licensed process server registered in Nevada
25 to personally serve both the subpoena duces tecum and the deposition subpoena on Stadium's
26 registered agent.¹ The instant Motion, filed two weeks later, was the first response Respondents'

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28 ¹ See March 22, 2022 Affidavit of Service, attached hereto as **Exhibit A**.

1 received.

2 **III. LEGAL ARGUMENT**

3 Stadium's attempt to avoid providing the relevant information necessary to Respondents'
4 defense is without legal basis and should be denied. *First*, Respondents' appropriately and timely
5 served the Subpoenas under Nevada law on the third-party's registered agent. *Second*, Nevada
6 Gaming Commission ("NGC") Regulation 7.110(2)(b) provides a party's right to compel the
7 production of documents or other tangible things. *Third*, the Subpoenas seek only that information
8 which is relevant to Respondents' defenses in this action, which is necessary for Respondents to
9 receive due process in the forthcoming hearing.

10 **A. The Subpoenas Were Properly Served on Stadium**

11 NGC Regulation 7 does not prescribe the means by which subpoenas must be served on a
12 third-party. Given the lack of authority on the matter, Respondents followed Nevada Rule of Civil
13 Procedure ("NRCP") 45, which governs subpoenas issued through the District Courts, and requires
14 service pursuant to NRCP 4.2, which governs service within Nevada. NRCP 4.2(c) states, in
15 relevant part, that "[a]n entity or association that is formed under the laws of this state, is registered
16 to do business in this state, or has appointed a registered agent in this state, may be served by
17 delivering a copy of the summons and complaint to[] the registered agent of the entity or
18 association" NRCP 4.2(c)(1)(A)(i).

19 On March 22, 2022 at 11:50 AM, Respondents caused a licensed process server registered
20 in Nevada to personally serve both the subpoena duces tecum and the deposition subpoena on
21 Stadium's registered agent.² That Stadium now seeks this Commission's relief on the basis that
22 Respondents had not appropriately served the Subpoenas is either a failure of its registered agent
23 to provide the served documentation to Stadium or a failure of Stadium to advise its counsel of the
24 existence of the Subpoenas. In either event, Stadium's attempt to blame Respondents for the
25 timing of the Subpoenas ultimately reaching its outside counsel in Colorado is misplaced.

26 Additionally, Stadium seeks to improperly impose upon Respondents a duty to provide a
27 _____

28 ² See March 22, 2022 Affidavit of Service, attached hereto as **Exhibit A**.

1 “statutory witness fee,” which exists neither in NGC Regulation 7 governing this disciplinary
2 proceeding nor the Nevada Revised Statutes. *See* Motion at p. 5:14–17 (relying on federal case
3 law applying Federal Rule of Civil Procedure 45, mandating a witness fee for appropriate service
4 of a subpoena issued from the United States district courts). The governing rules of this venue do
5 not require the delivery of a witness fee to effectuate appropriate service, and as such cannot be
6 grounds to quash the deposition subpoena.

7 Respondents are not unreasonable, and certainly understand the necessity of complex
8 scheduling and timing issues related to depositions and subpoenas duces tecum; however, neither
9 Stadium nor its counsel attempted to amicably resolve these matters before approaching this
10 Commission. Following receipt of the Motion, Respondents’ counsel contacted Stadium’s counsel
11 to resolve the timing of Stadium’s deposition but were unable to accomplish that end as a result of
12 the imminent hearing and lingering disagreements regarding deposition scope.

13 **B. NGC Regulation 7.110(2)(b) Provides a Party’s Right to Compel a Third-**
14 **Party’s Production of Documents or Other Tangible Things**

15 Stadium seeks to mislead this Commission by misconstruing the unequivocal provisions
16 set forth under NGC Regulation 7.110. NGC Regulation 7.110(2) provides, in relevant part, that
17 “[s]ubpoenas may be issued . . . [t]o compel any person to appear at the hearing on the merits of
18 the case, to give oral testimony alone, or to produce documents or other tangible things.”
19 Stadium’s desire to avoid its obligation to produce documents or other tangible things pursuant to
20 the subpoena duces tecum intentionally overlooks the operative language of NGC Regulation
21 7.110, including the disjunctive nature of the items that may be compelled by subpoena thereunder.
22 Given the independent relationship between (i) appearing at the hearing on the merits of the case;
23 (ii) giving oral testimony alone; or (iii) producing documents or other tangible things; it is plainly
24 clear on the face of the Regulation that a subpoena duces tecum may issue to compel the production
25 of documents at issue herein. That is precisely the reason the Commission issued the Subpoenas
26 without hesitation in the first instance. Stadium’s Motion should be denied and Respondents
27 should be permitted to rely on the subpoena duces tecum issued by this Commission.
28

1 **C. The Subpoenas Seek Only Information Which is Relevant to Respondents’**
2 **Defense**

3 Respondents have asserted several defenses in their response to the Board’s complaint,
4 including but not limited to (i) “the differences between each of the prior incidents and the 2021
5 Incident”; (ii) “the factors that contributed to each of the incidents, including not only
6 Respondents’ share of responsibility but also the defect(s) in the Stadium software”; (iii) “the
7 failure of the Board’s Technology Division to hold Stadium accountable for same”; and (iv) the
8 “lack of foundation and no fair basis on which the Commission can justify taking disciplinary
9 action against Station” without having named the other parties, including Stadium, that materially
10 contributed to the 2021 Incident. *See* Respondents’ Response to Complaint at p. 2:10–20.
11 Respondents have also asserted several affirmative defenses which require the information sought
12 by the Subpoenas, including but not limited to (i) dismissal for failure to join Stadium, who is an
13 indispensable party; (ii) Respondents having acted in conformity with the law and with
14 reasonableness in discharging its duties, if any; (iii) Respondents having acted reasonable and in
15 good faith in discharging its obligations and duties, if any; (iv) that Respondents’ violations, if
16 any, were caused by the bad acts of third parties, over whom Respondents have no control; that
17 the Board’s claims are barred by the doctrine of unclean hands; (v) that the Board’s claims are
18 barred by the doctrine of detrimental reliance; and (vi) that the Complaint seeks damages and
19 disciplinary actions that would be inequitable, arbitrary, and unjust. *See* Respondents’ Response
20 to Complaint at p. 8, ¶¶ 3–5 and 7–9.

21 The information that Stadium seeks to protect through its Motion is the very information
22 that would help prove the defenses Respondents have asserted in this action. Stadium bases its
23 Motion for protective order in large part on the definition of “Technology”, which it asserts should
24 be limited to the version of Stadium Live that Stadium licenses to Respondents. This type of
25 limitation would exclude other relevant information including Stadium’s ability, desire, or actual
26 implementation of a remedy for the precise software fault that is the basis of this action, whether
27 through modification or other versions of its product that it withheld from Respondents and/or the
28 Board. This type of limitation would also potentially exclude the various programs outside the

1 generic “Stadium Live” description, including the programs and processes designed to prevent the
2 acceptance of Past Post Wagers, which arguable operate outside that scope.

3 What remains true is that Respondents, as licensees rather than applicants, are entitled to
4 due process, including the discovery of information to support their defenses herein. That
5 necessarily includes information regarding Stadium’s knowledge of and response to the software
6 fault that is a direct cause of Respondents’ alleged violations herein. Should this discovery include
7 Stadium’s proprietary and confidential information, the remedy for the Commission is to require
8 Respondents to maintain confidentiality as permitted under NGC Regulation 7.120(5), not to limit
9 Respondents’ ability to defend themselves.

10 **1. Stadium misstates Respondents’ requests to mislead this Commission**

11 Lastly, Stadium misleads this Commission in alleging that the documents and information
12 Respondents seek are overly broad and unduly burdensome by truncating the recital of
13 Respondents’ actual requests. Specifically, Stadium alleges that Respondents’ subpoena duces
14 tecum is overly broad because it seeks “communication with any regulators governing a
15 jurisdiction *outside the state of Nevada* regarding Your Technology.” Importantly, Stadium omits
16 the remainder of that sentence, which in full requests “All Documents Concerning any
17 communication with any regulators governing a jurisdiction outside the State of Nevada regarding
18 Your Technology and its involvement in the acceptance and/or ability for the placement of
19 Past Post Wagers.” *Compare* Motion at p. 8:12–13 and Motion’s Exhibit 2-6, ¶3 (emphasis
20 added).

21 Moreover, Stadium seeks protection on the grounds that it is a non-party to this action;
22 however, the precedent it relies on involves a civil action pending before a United States District
23 Court, where the parties have the right to counterclaim, crossclaim, or otherwise add indispensable
24 parties—none of which are present in this venue. *See Edwards v. Las Vegas Metro. Police Dep’t*,
25 No. 2:13-cv-01316-JAD-CWH, 2014 U.S. Dist. LEXIS 172376, (D. Nev. Dec. 12, 2014). Simply
26 put, Stadium cannot rely solely on typical protection of third-parties in this venue where the party
27 commanding production has no agency over who the parties are. If Respondents had any such
28 authority, Stadium would be a party.

1 Regardless, Respondents' Subpoenas seek only that information which is relevant to its
2 defenses in this action. As such, Stadium's Motion should be denied and this Commission should
3 order the production of the requested documents and information, and the attendance for
4 deposition of Stadium's witness.

5 **IV. CONCLUSION**

6 For the foregoing reasons, Stadium's Motion for Protective Order Concerning
7 Respondents' Subpoena Duces Tecum and Deposition Subpoena should be denied in full. The
8 Subpoena Duces Tecum should be responded to in time for Respondents to utilize the requested
9 documents at the Deposition of Stadium's representative(s). To the extent that this Commission
10 deems it appropriate to protect Stadium's information on the basis of confidentiality, it should
11 order such acquired information be maintained as confidential.

12 DATED this 4th day of April, 2022.

REID RUBINSTEIN & BOGATZ

By: /s/ Marc H. Rubinstein, Esq.
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Nevada Bar No. 3367
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300 South 4th Street, Suite 830
Las Vegas, Nevada 89101
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of April, 2022 our office served a copy of the foregoing
RESPONDENT'S OPPOSITION TO STADIUM TECHNOLOGY GROUP, LLC'S
MOTION FOR PROTECTIVE ORDER upon each of the following:

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Technology Group, LLC*

/s/ Brad Lipman, Esq.
An employee of REID RUBINSTEIN & BOGATZ

EXHIBIT A

EXHIBIT A

1 **AFFIDAVIT OF SERVICE**
2 **STATE OF NEVADA**
3 **BEFORE THE NEVADA GAMING COMMISSION**

4 NEVADA GAMING CONTROL BOARD,

5 Complainant

6 v.

7 STATION CASINOS, LLC; NP RED ROCK LLC dba
RED ROCK CASINO RESORT SPA,

8 Respondent

Case No.:NGC 21-04
Brad Lipman, Esq., Bar No.014567
REID RUBINSTEIN BOGATZ
300 South 4th Street Suite 830
Las Vegas, NV 89101
(702) 776-7000
Attorneys for the Respondent
Client File# 2295-005

9 I, Daniel LaMotte, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy
of the Deposition Subpoena; Subpoena Duces Tecum, from REID RUBINSTEIN BOGATZ


10 That on 3/22/2022 at 11:50 AM I served the above listed documents to Stadium Technology Group, LLC - c/o CT
11 Corporation System, Registered Agent by personally delivering and leaving a copy at 701 S. Carson Street, Suite 200,
Carson City, NV 89701 with Carlie Fecteau - Admin., a person of suitable age and discretion, authorized by Registered
12 Agent to accept service of process at the above address shown on the current certificate of designation filed with the
Secretary of State.

13 That the description of the person actually served is as follows:

14 Gender: Female, Race: Caucasian, Age: 26 - 30 yrs., Height: Seated, Weight: 121 - 140 lbs., Hair: Brown, Eyes:Brown

15
16
17
18
19 I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in
the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

20 Date: 3-24-2022

21
22 
23 Daniel LaMotte
Registered Work Card# R-2020-01425
24 State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656



Control #:NV255460
Reference: 2295-005