

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

THE M RESORT, LLC d/b/a  
M RESORT SPA CASINO

and

Case Nos. 28-CA-22299  
28-CA-22370

BRUCE ALLEN, an Individual

and

Case No. 28-CA-22309

RUSSELL L. SHOCK, JR., an Individual

and

Case No. 28-CA-22310

MICHAEL DeVITO, an Individual

and

Case No. 28-CA-22319

ROMAN MEDINA, an Individual /

**RESPONDENT’S MOTION FOR SUMMARY JUDGMENT  
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Respondent, The M Resort, LLC (“M Resort”), by and through its undersigned counsel, Fisher & Phillips, LLP, and pursuant to Sections 102.24 and 102.50 of the Board’s Rules and Regulations, as amended, moves for partial summary judgment. Respondent asks the Board to grant partial summary judgment based on the General Counsel’s failure to establish a genuine issue of material fact regarding the terminations of four individuals identified in the Complaint.

**I. INTRODUCTION**

The General Counsel has issued complaint against M Resort alleging, in part, that it violated Section 8(a)(1) of the National Labor Relations Act (“NLRA”) by terminating the employment of Russell Shock (“Shock”), Michael DeVito (“DeVito”), Roman Medina (“Medina”) and Joseph Varner (“Varner”) due to their alleged protected concerted activity. *See*

Complaint at ¶¶ 4(q) through 4(u). However, the General Counsel ignores the overwhelming and undisputed factual evidence demonstrating that the four individuals in question were terminated for actions that are not protected by the NLRA—actions that rendered them unfit to serve as security officers at M Resort’s facility. Accordingly, M Resort has sufficiently established its affirmative burden under *Wright Line*, 251 NLRB 1083 (1980). M Resort therefore, respectfully requests that the Board find there is no genuine issue of material fact on the issue of the subject terminations and grant M Resort partial summary judgment.

## II. FACTUAL BACKGROUND

### A. *General Background*

M Resort recently opened a multi-million dollar resort, casino and spa located at the corner of St. Rose Parkway and Las Vegas Boulevard in Henderson, Nevada. Though the property did not open until March 1, 2009, M Resort has employed a staff of security officers since July 2008. During the pertinent time-frame, security officers were responsible for securing both M Resort’s construction site and temporary Career Center, and monitoring the access of various contractors, subcontractors and M Resort staff to the property. *See* Houtchens Decl., attached hereto as Exhibit 1.

The important and unique nature of a security department’s responsibilities, particularly in a gaming establishment, cannot be overstated. Security officers, by the very nature of their duties, must conduct themselves with a high level of decorum, discretion and professionalism, because they are the “guardians” of M Resort’s facilities and employees. In particular, security officers have access to sensitive areas and they must maintain a level of integrity if they are to monitor M Resort’s operations and deal with local law enforcement agencies. *Id.* To that extent, all security officers are trained in “security ethics” at the commencement of their employment.

*Id.* Accompanying this training is an established code of ethics governing a security officer's performance at M Resort. *See* Exhibit 1 and 1A. Among other things, the code of ethics demands that a security officer "observe the precepts of truth accuracy and discretion" and "respect and protect the confidential information of my employer." Exhibit 1A

***B. Employer's Investigation of Alleged Officer Misconduct***

The events leading to the disputed terminations here began on November 22, 2008. On that date Doug McCombs, M Resort's Director of Human Resources, received an anonymous email outlining what the sender believed to be disparate treatment between male and female security officers. McCombs Decl. attached hereto as Exhibit 2. *See also* Exhibit 2A. The email also included allegations of officer misconduct, including the writer's warning that the employer should conduct a "DMV check" on all officers in order to avoid potential liability "concerning the use of the company vehicle." *Id.* Mr. McCombs forwarded the anonymous email to William Houtchens, M Resort's Vice President of Security and Surveillance, for further investigation and input. *See* Exhibit 2.

On December 8, 2008, Mr. Houtchens approached Charging Party Bruce Allen ("Allen") to ask whether there was any problem with the daily operations of the security department. Allen stated that there were problems, and he voluntarily agreed to speak with Mr. Houtchens away from other security personnel. Exhibit 1. During their discussion, Allen conveyed several allegations that mirrored those contained in the November 22nd email, and he also spoke of rumors that certain graveyard shift officers had been accessing employee and applicant files located in the Career Center. *Id.*

The prospect of security officers accessing files that should otherwise be confidential was, obviously, extremely disconcerting for M Resort management. Therefore, Allen was interviewed by M Resort's Human Resources Department on or about December 10, 2008. Present during this meeting was Mr. McCombs, Laura Martinez (Employee Relations Manager) and Anthony Perez (security department investigator). Exhibits 2 & 3. The participants discussed in detail Allen's allegations that security officers had been reviewing personnel files. Allen stated that there was a general rumor that officers DeVito, Shock, and Varner had all viewed files while on patrol in the Career Center. *Id.* In particular, Allen stated that the individuals had reviewed the personnel file of another security officer that had recently been terminated by M Resort for sleeping on post. *Id.*

***C. Termination of DeVito, Shock, Medina and Varner***

Following the December 10th meeting with Allen, Mr. Perez was tasked with investigating the alleged breach of confidentiality by security personnel. Exhibits 1, 2 & 3. During the month of December 2008, Mr. Perez spoke with a number of security personnel, including the charging parties, who confirmed that security personnel had in fact reviewed confidential personnel files. Exhibit 3. For example:

- Helen "Missy" Ginden divulged that charging party Medina had told her that he had seen the employee file of the officer terminated for sleeping on post, and that he described the contents of the file to her, in detail. Exhibit 4 & 4A.
- Dean Skibickyj informed Mr. Perez that he had heard Medina and Shock talking about seeing and reading the files of security personnel in the Career Center office. Exhibits 3 and 3A.
- Manny Silvas told Mr. Perez that charging party DeVito had approached him and asked if he was the individual that had taken a photo of the security officer that was terminated for sleeping on post. (Mr. Silvas was in fact the individual that photographed the officer in question and reported the incident). When Mr. Silvas denied any knowledge, charging party DeVito specifically said that he had seen the photograph. He also intimated that he knew Silvas was the one who took the photo. Exhibit 5 & 5A.

- Rick Stieglmeyer stated that Joe Varner had told him that both he and DeVito had been going through human resources file cabinets after they had found a key in a plant directly on top of the cabinets. Exhibit 6 & 6A.
- Shock himself admitted that he had reviewed the personnel file of the terminated security officer. He also stated that he, Medina and DeVito had reviewed other employee files. One time, Shock witnessed DeVito and Medina reviewing the application file for Medina's wife. Exhibit 3 and 3B.

Following his investigation, Mr. Perez shared his notes and witness statements with Mr. McCombs, and the two concluded that DeVito, Shock, Medina and Varner had inappropriately accessed and reviewed confidential personnel and applicant files. Exhibits 3 & 5. As a result, Mr. McCombs agreed with Perez's conclusion that the four individuals had violated several provisions of the security department's code of ethics. Exhibit 5. The matter was referred back to Mr. Houtchens for appropriate action, and it was determined that three of the officers in question (Shock, DeVito and Medina) would be separated from employment prior to the end of their ninety-day probationary period, specifically because they had engaged in misconduct by accessing and reviewing confidential employee files. Exhibits 1 and 2. Varner had already submitted his resignation of employment with M Resort, but his resignation was accepted early due to his misconduct. *Id.*

### **III. LEGAL ARGUMENT**

M Resort is entitled to partial summary judgment with respect to Paragraphs 4(q) through (u) of the Complaint because the four individuals in question were clearly terminated for reasons other than participation in activity protected by the NLRA. To the contrary, the evidence is clear that Shock, DeVito, Medina and Varner were terminated for activity that is **not** protected by the NLRA. Indeed, the evidence is clear that the four individuals in question committed acts that rendered them unfit to serve as security officers, and that is the stated reason for the discharge of each individual. As a matter of law, the General Counsel has no evidence which would create a

genuine issue of material fact as to whether M Resort violated the NLRA as described in Paragraphs 4(q) through (u) of the Complaint.

**A. Standard for Summary Judgment**

A party seeking summary judgment must show “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c); *see also Standby One Associates*, 118 LRRM 1538, 1538, 274 NLRB No. 140 (1985) (Board relying on the federal standard in analyzing a motion for summary judgment). The movant “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

After the movant has met its summary judgment burden, the non-moving party “must do more than simply show that there is some metaphysical doubt as to the material facts” to avoid summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). According to Rule 56(e), the non-moving party “may not rest upon the mere allegations or denials of the adverse party’s pleadings,” but instead must come forward with “specific facts showing that there is a genuine issue for trial.” Fed.R.Civ.P. 56(e). “A mere scintilla of evidence supporting the non-movant’s position is insufficient; there must be evidence on which a jury could reasonably find for the nonmoving party. *Rivera v. Phillip Morris, Inc.*, 395 F.2d 1142, 1146 (9<sup>th</sup> Cir. 2005). If the evidence advanced by the non-moving party “is merely colorable, or is not significantly probative, then summary judgment may be granted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986).

***B. The Terminations Of Russell Shock, Michael DeVito, Roman Medina and Joseph Varner Cannot Constitute A Violation Of Section 8(a)(1) Under A Typical Wright Line Analysis.***

To prove an employee was discharged in violation of Section 8(a)(1) of the NLRA, the General Counsel must first persuade, by a preponderance of the evidence, that an employee's protected conduct was a motivating factor in the employer's decision. If the General Counsel is able to make such a showing, the burden of persuasion shifts "to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." *Wright Line*, 251 NLRB 1083, 1089 (1980), *enf'd* 662 F.2d 899 (1st Cir. 1981). The burden shifts only if the General Counsel establishes that protected conduct was a "substantial or motivating factor in the employer's decision." *Budrovich Contracting Co.*, 331 NLRB 1333 (2000). Put another way, "the General Counsel must establish that the employees' protected conduct was, in fact, a motivating factor in the [employer's] decision." *Webco Indus.*, 334 NLRB 608 n.3 (2001).

**1. The General Counsel Cannot Meet His Initial Burden Of Proving That Alleged Protected Activity Was A Motivating Factor In The Disputed Discharges.**

As this Board has previously held the General Counsel can typically establish an unlawful motivation on the part of an employer by proving three discrete elements: (1.) the existence of protected activity on the part of an employee; (2.) employer knowledge of said activity; and (3.) the employer's intent to discharge an employee because of said activity (*i.e.*, animus). *Farmer Bros. Co.*, 303 NLRB 638, 649 (1991).

In this case, the General Counsel has alleged that Shock, DeVito, Medina and Varner engaged in protected concerted activity by 1.) "concertedly complaining about their working conditions, including, but not limited to, disparate treatment relating to sexual discrimination,

sexual harassment and safety concerns;” and 2.) “by discussing among themselves, among other matters, the issues relating to unsecured employee personnel files.” Complaint at ¶¶ 4(a) & (b). Whether the four employees in question actually ever engaged in the protected activity alleged by the General Counsel is certainly disputed by M Resort. However, there is a noticeable lack of any evidence that a relevant decision-maker with M Resort knew that the four individuals in question had engaged in alleged protected activity.<sup>1</sup>

Indeed, even the allegations as pleaded by the General Counsel call into question whether M Resort management knew or could have had knowledge that the four individuals in question had engaged in any sort of protected activity. For instance, the General Counsel candidly admits that alleged complaints of disparate treatment and safety concerns were memorialized in an *anonymous* email sent to M Resort management by Varner. Complaint at ¶ 4(a). Neither McCombs nor Houtchens—the two individuals primarily involved in the terminations here—knew that Varner was responsible for sending the November 22, 2008 email until Complaint issued. Exhibits 1 and 2. Likewise, none of the individuals involved in the decision to terminate the employment of Shock, DeVito or Medina were aware that they had complained to anyone regarding issues of sexual harassment or safety. *Id.*

Further, the General Counsel alleges that that the four individuals engaged in protected concerted activity when they discussed issues relating to unsecured personnel files *among themselves*. Complaint at ¶ 4(b). Glaringly absent from the General Counsel’s Complaint is any allegation that Shock, DeVito, Medina or Varner raised issues of unsecured personnel files with M Resort management, or that M Resort management was otherwise aware that they were

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<sup>1</sup> To demonstrate employer animus in this case, the General Counsel will likely rely on evidence of alleged statements made by M Resort employees to discourage union organizing activities. It should be noted, however, that there is no evidence any of the four security officers in question have engaged in any activity on behalf of or in support of a union.

“concerned” about the security of personnel files. If anything, it is clear that M Resort was investigating issues of securing employment files raised by Bruce Allen, and not by any of the four employees discussed here.

The evidence in this matter clearly indicates that no pertinent member of M Resort management—be it Houtchens or McCombs—was aware that Shock, DeVito, Medina or Varner had concertedly raised or discussed matters involving their general working conditions. Exhibits 1 & 2. As approved by the Supreme Court in *NLRB v. Transportation Mgmt. Corp.*, 462 U.S. 393 (1983), the *Wright Line* test requires the General Counsel “to make a showing sufficient to support the inference that . . . protected conduct was a motivating factor in the employer’s decision” in issue. Absent a showing that management was aware that a putative discriminatee engaged in protected concerted activity under the NLRA, a complaint or charge must be dismissed. *See, e.g., Enterprise Aggregates Corp.*, 276 NLRB 71,72 (1985) (“The absence of evidence to bridge the causal gap between the employee’s [protected activity] and the Respondent’s conduct convinces us that the General Counsel failed to meet his initial responsibility under *Wright Line*.”).

**2. Partial Summary Judgment Is Appropriate Because Shock, DeVito, Medina And Varner Were Terminated For Reasons Other Than Alleged Protected Concerted Activity.**

Even assuming that the General Counsel can somehow establish the required *prima facie* case under *Wright Line*, partial summary judgment is still appropriate. In this case, there is no question of material fact negating the reality that Shock, DeVito, Medina and Varner were discharged for reasons other than prohibited discrimination. As this Board has held previously, “An employee may be discharged by the employer for a good reason, a poor reason, or no reason at all, so long as the terms of the statute are not violated.” *Meyers Indus., Inc.*, 268 N.L.R.B.

493, 497 (1984) (quoting *NLRB v. Condenser Corp. of America*, 128 F.2d 67, 75 (3d Cir. 1942)). In this case, the employees in question were terminated for a very “good” reason.

Following a thorough investigation, M Resort obtained sufficient evidence that DeVito, Shock, Medina and Varner inappropriately accessed human resources filing cabinets and reviewed personnel and applicant files. *See, e.g.*, Exhibits 3 through 6. Even Shock himself admitted that he, DeVito and Medina engaged in such activity. Exhibits 3 and 3A. It was the inappropriate access of confidential files, and no other factor, that led to the terminations in dispute here. Exhibits 1 and 3. It should be axiomatic that security officers, who are entrusted with guarding sensitive areas, should not abuse their power by accessing and reviewing personnel files in the middle of the night.

While the discussion of confidential information among employees may be protected by § 7 of the NLRA, it nonetheless is a common notion that the *improper* access of confidential information is not protected. *The Macomb Daily*, 260 NLRB 983, 985 (1982); *Int'l Bus. Mach. Corp.*, 265 NLRB 638, 638 (1982); *Bullock's*, 247 NLRB 257, 258 (1980). Simply stated, the conduct exhibited here violates almost every precept of the M Resort's code of security ethics, Exhibit 2A, and these four individuals clearly cannot be trusted to continue to serve as security officers at M Resort. *See Ashville School, Inc.*, 347 NLRB No. 84, 2006 WL 2308214, \*1 n.2 (Aug. 8, 2006) (finding that employer could appropriately terminate accountant for discussing confidential information that was entrusted to her custody).

Respondent here is baffled by the General Counsel's absurd attempt to take conduct that would be considered egregious in any rational employment context, and to transform it into conduct that is somehow protected by the NLRA. There can be no logical support for the General Counsel's contention that Shock, DeVito, Medina and Varner were terminated because

they were discussing “issues relating to unsecured employee personnel files.” Complaint at ¶ 4(b). This is a blatant attempt to bootstrap completely lawful terminations of employment into a Section 8(a)(1) violation by shrouding reprehensible actions with subsequent, “protected” conversations. Obviously, the four individuals here did not have any legitimate concerns that personnel records were left unsecure: they were the ones breaching any security that was in place. If the General Counsel’s ridiculous argument were to prevail in this matter, then these same security officers would also be protected from termination if they had broken into a store room, stolen employer property, and then discussed among themselves how poorly the employer protected its assets.

In this matter, the evidence is clear that Shock, DeVito, Medina and Varner engaged in behavior that was prohibited by department policies governing their conduct. There is no evidence that can be set forth by the General Counsel demonstrating that the reasonable justification for discharge presented by M Resort is pretext for unlawful discrimination. Because there is no issue of material fact regarding the reasons for termination, partial summary judgment should be granted.

The General Counsel will no doubt argue that partial summary judgment is not warranted in this matter because numerous claims will still need to be tried at hearing. However, by disposing of the frivolous and unsupported allegations contained in Paragraphs 4(q) through 4(u) of the Complaint, the Board would be ensuring that the hearing and presentation of evidence in this matter will be far less burdensome and expensive for both Respondent and the Government. In short, the foregoing clearly demonstrates that there is no material fact demonstrating that M Resort violated Section 8(a)(1) of the NLRA when it terminated the employment of Shock, DeVito, Medina and Varner. At the very least the Board should issue an Order to Show Cause to

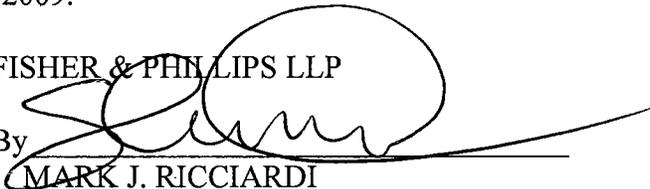
the General Counsel requiring him, under the appropriate standard of summary judgment, to bring forth specific evidence showing a genuine issue for hearing. The General Counsel should not be able to proceed, at least with respect to the four terminations in question, based solely upon mere allegations that a violation of Section 8(a)(1) has occurred. Fed.R.Civ.P. 56(e); *Liberty Lobby, Inc.*, 477 U.S. at 249-50.

#### IV. CONCLUSION

Based on the foregoing, M Resort respectfully requests that the Board grant partial summary judgment in this matter with respect to Paragraphs 4(q) through (u) of the Complaint.

Respectfully submitted this 29<sup>th</sup> day of April, 2009.

FISHER & PHILLIPS LLP

By 

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SHAUN P. HALEY

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*Attorneys for THE M RESORT, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of April, 2009, the original and four copies of the above MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT THEREOF were delivered, by electronic delivery pursuant to Section 102.114(i) of the Board's Rules and Regulations to the following:

Cornele Overstreet – [cornele.overstreet@nlrb.gov](mailto:cornele.overstreet@nlrb.gov)/[joel.schochet@nlrb.gov](mailto:joel.schochet@nlrb.gov)  
National Labor Relations Board  
600 Las Vegas Blvd. South, Suite 400  
Las Vegas, NV 89101

Bruce Allen – [dprotctr@hotmail.com](mailto:dprotctr@hotmail.com)  
4087 Walnut Street, Apt. 1E  
Madville, PA 16335

Michael DeVito – [mdevito18@yahoo.com](mailto:mdevito18@yahoo.com)  
1192 Evergreen Cove Street  
Henderson, NV 89011

Attempt was made to contact the following individual by phone. Due to the lack of success of contacting the individuals and inability to ascertain an email address, a copy was sent via Federal Express addressed as follows:

Russell L. Shock – (702) 587-0636  
936 Coronado Peak Avenue  
Las Vegas, NV 89183

Roman Medina – (702) 883-8428  
8455 W. Sahara Ave., Apt. 217  
Henderson, NV 89117

By:

  
An employee of FISHER & PHILLIPS LLP

# EXHIBIT 1

## **SWORN DECLARATION OF WILLIAM HOUTCHENS**

1. My name is William Houtchens. I am over eighteen (18) years of age and I voluntarily make this declaration based on my personal knowledge. I do not suffer from any disabilities that affect my ability to give and understand this statement, and can competently testify at hearing if so called..
2. Since on or about May, 2008, I have been employed as Vice President—Security and Surveillance for M Resort. In this capacity, I have general supervisory oversight of the Security Department at M Resort, as well as all the Security Officers employed therein.
3. M Resort has employed Security Officers at its facility, located at St. Rose Parkway and Las Vegas Boulevard in Henderson, Nevada, since July 2008.
4. During the construction phase of M Resort's facility, Security Officers were responsible for securing the general construction site and the temporary Career Center established on the property. As such, Security Officers were tasked with monitoring access of various contractors, subcontractor and M Resort staff to the property.
5. Security Officers have access to sensitive areas of M Resort's facility, and they are responsible for maintaining the safety of Mr. Resort's facilities, employees and guests. They must also interact with local law enforcement officials when necessary.
6. Upon employment with M Resort, all Security Officers go through a "training academy" where they are educated on several aspects of the security profession, including "security ethics."
7. Attached to this declaration as Exhibit A is a true and correct copy of materials utilized in the "security ethics" portion of the training academy, including a Security Department Code of Ethics governing the conduct of Security Officers.
8. On or about December 8, 2008, I was investigating allegations of potential Security Officer misconduct outlined in a an anonymous email dated November 22, 2008. During a discussion with Security Officer Bruce Allen on that same date, he informed me of rumors that security personnel had accessed and reviewed confidential files located in the temporary Career Center.

9. I have read Paragraph 4(a) of the Complaint issued by the General Counsel of the NLRB in this matter, wherein Joseph Varner is alleged to have sent the November 22, 2008 email to M Resort. At no time was I aware that Mr. Varner was responsible for the contents of said email.

10. Following Mr. Allen's allegations of Security Officer misconduct, both myself and Doug McCombs directed Anthony Perez, and Investigator with the Security Department, to conduct an investigation into allegations of Security Officers improperly accessing and reviewing personnel files in the Career Center.

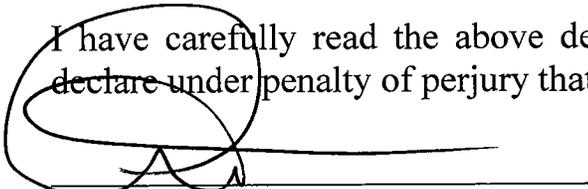
11. On December 11, 2008, I was involved in an interview with Investigator Anthony Perez and Security Officer Russell Shock. During that interview, Shock admitted to me that he and Security Officers Michael DeVito and Roman Medina had accessed Career Center filing cabinets and viewed applicant and personnel files.

12. Following a review of a written report filed by Anthony Perez, and after consultation with Doug McCombs, I determined that I would recommend that Michael DeVito, Russell Shock and Roman Medina would not complete their probationary period of employment. With respect to Joseph Varner, no further action was taken because Varner had already submitted his resignation of employment. Varner's resignation was simply accepted earlier than originally stated by him. My recommendations and determinations were reviewed and approved by others in M Resort management.

13. At no time during the course of their employment was I made aware that Russell Shock, Roman Medina, Michael DeVito or Joseph Varner had raised or discussed concerns regarding sexual discrimination, sexual harassment, safety, or the securing of personnel files.

14. The decision to terminate the employment of the individuals in question was made because they improperly accessed and reviewed personnel files in violation of Security Department policy, and for no other reason.

I have carefully read the above declaration and, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that it is true and accurate to the best of my ability.

  
William Houtchens

4/27/09  
Date

# EXHIBIT 1A

LESSON PLAN  
ETHICS

**TITLE:** ETHICS  
**TIME ALLOWED:** 30 MIN.  
**TARGET GROUP:** SECURITY OFFICERS & SECURITY HOSTS  
**PRESENTATION:** LECTURE, DISCUSSION, OVERHEAD  
TRANSPARENCIES & PRACTICAL  
EXERCISES

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**INSTRUCTIONAL GOAL:**

To provide the security officer with the M Resort Spa Casino's departmental code of ethics.

**OBJECTIVE:**

Upon completion of this block of instruction, the security officer will:

- Know & pledge the M Resort Spa Casino security department's code of ethics.

## ETHICS

### I. Code of Ethics

- A. (SEE HANDOUT)

### II. Definition of Security

- A. Protection from and elimination of anything that jeopardizes welfare and security of person(s) or firm that employs you
  - 1. This entails loss of life, loss by fire, theft, flood, drought, deterioration of property, civil suit, etc.
  - 2. Also entails public relation
- B. Service to guests - they come through front doors and time office doors
- C. Difficulties and complexities of dealing with public - deal in a diplomatic manner
- D. Your performance reflects image of M Resort Spa Casino
- E. Each member of security staff needs to be highly committed
- F. You are an official representative of the company, you are under constant public scrutiny
- G. Be constantly alert for violations and hazards, be discreet
- H. Be firm and capable in making quick, just and intelligent decisions

### III. Courtesy

- A. Be courteous, patient and respectful with public
- B. Avoid short and abrupt manner
- C. No harsh, course, violent, profane, insolent, indecent, suggestive, sarcastic or insulting language
- D. Even when provoked, remain cool and collected
- E. Discourteous treatment of guests lowers social status of M Resort Spa Casino, and Security Department
- F. Practice courtesy - no exceptions
  - 1. cultivate appearance, voice, manner, intelligence, temperament, unselfishness
- G. Friendly without being familiar; dignified without being aloof; interested without being overly concerned
- H. Many opportunities to be of service to customers without lecturing or finding fault.
- I. Uniform makes you a top representative - M Resort Spa Casino may be judged by your actions
- J. Answer questions in a satisfactory and courteous manner - make customer want to seek you out if they need further assistance

## CODE OF ETHICS

In recognition of the significant contribution of private security to loss and crime prevention, as a Security Officer, I pledge:

1. To accept the responsibilities and fulfill the obligation of my role; protecting life and property; preventing and reducing losses and crime against my employer's business or other organization and institution to which I am assigned; upholding the law; and respecting the constitutional rights of all persons.
2. To conduct myself with honesty and to adhere to the highest moral principals in the performance of my security duties.
3. To be diligent and dependable in discharging my duties and to uphold at all times the laws, policies and procedures that protect the rights of others.
4. To observe the precepts of truth, accuracy and discretion without allowing personal feelings, prejudices and animosities or friendship to influence my judgments.
5. To report to my supervisor, without hesitation any violation of the law or of my employer or client's regulations.
6. To respect and protect the confidential and privileged information of my employer or client beyond the term of my employment, except where their interests are contrary to Law or to this Code of Ethics.
7. To cooperate with all recognized and responsible law enforcement and government agencies in matters within their jurisdiction.
8. To accept no compensation, commission, gratuity or other advantage without the knowledge and consent of my employer.
9. To conduct myself professionally at all times and to perform my duties in a manner that reflects credit upon myself, my employer and the security profession.
10. To strive continually to improve my performance by seeking training and educational opportunities that will better prepare me for my security duties.

## DEFINITION OF SECURITY

Security is the protection from and the elimination of any element or agent, which may tend to jeopardize the welfare and security of the person, persons, or firm by whom you may be employed. This not only entails loss of life, but loss by fire, theft, flood, drought, deterioration of property, civil suit, and many other elements by which your employer might suffer embarrassment and financial loss. Security also entails *public relation*, an element very important to the success or failure of the M Resort Spa Casino.

Service to our guests will *always* be our leading priority. Remember that our guests come both through the front doors and doors of the time office. The work of the Security Officer is complex and demanding. The well known difficulties and complexities of dealing with the public are centered in a variety of subtle, yet important, differences in people. It is the responsibilities of the Security Officer to distinguish, understand and deal in a diplomatic manner with those differences. The performance of your duties, together with your demeanor, will reflect on the image of the M Resort Spa Casino.

These standard operating procedures have been prepared to meet the needs for a reference manual as well as a training manual for the Security Department. What is expressed here are company policies, Security Department responsibilities, together with the manner in which they are to be carried out and general rules of conduct.

If each member demonstrates a high degree of commitment to the objectives, the Security Department will reach the goals for which it strives; a genuine unity of purpose, and the most professionally trained staff in the industry.

As a Security Officer, you are an official representative of the company and must make the best possible impression on the people you will be in contact with. You will be under constant public scrutiny and your actions and performance should be governed accordingly. You must be constantly alert for violations and hazards that will affect the efficiency of the operation. You must be discreet, but firm and capable of making quick, just and intelligent decisions.

## COURTESY

Security Officers shall at all times be courteous, patient and respectful in dealing with the public. Officers shall avoid answering questions in a short and abrupt manner and shall not use harsh, coarse, violent, profane, insolent, indecent, suggestive, sarcastic or insulting language. Officers shall maintain an even, cheerful temper regardless of the provocation, remaining cool and collected at all times.

Numerous contacts with the public are likely to cause Security Officers to assume a veneer of hardness. If Security Officers resort to discourteous treatment of our guest and employees, it automatically lowers the social status of the M Resort Spa Casino, and the Security Department.

This makes a more difficult job for all those concerned, leaving an unpleasant feeling in the minds of the public towards the M Resort Spa Casino and Security Department.

Security Officers must continually practice courtesy. *No exceptions.* To sincerely and habitually perform acts of courtesy requires cultivation of appearance, voice, manner, intelligence, temperament and unselfishness. Sincere courtesy requires a Security Officer to be friendly without being familiar, dignified without being aloof and earnestly interested without being overly concerned.

The most important offering the M Resort Spa Casino has to make is service, and Security personnel have many opportunities to be of service. A guest with a problem needs help, not a lecture or a cold shoulder. The problem may not have been the fault of the M Resort Spa Casino, but, the guest is not interested in who is a fault. All they want is someone to help them and this is what Security personnel should do. The Security force is by its uniformed appearance, a conspicuous employee and is a top representative of management. The entire M Resort Spa Casino may be judged by your actions.

When asked for information by any person, the Security Officer's answers shall be given in such a manner that, should the person wish more information, they will seek the same Officer, solely because of the satisfactory and courteous manner in which they received it in the first instance.

# EXHIBIT 2

## **SWORN DECLARATION OF DOUGLAS McCOMBS**

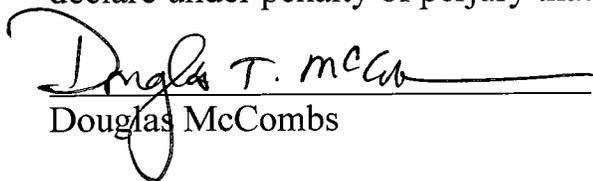
1. My name is Douglas McCombs. I am over eighteen (18) years of age and I voluntarily make this declaration based on my personal knowledge. I do not suffer from any disabilities that affect my ability to give and understand this statement, and can competently testify at hearing if so called.
2. Since about October 8, 2007, I have been employed as Director of Human Resources for M Resort. In this capacity, I have general supervision and management authority for the Human Resources Department at M Resort. As such I am familiar with M Resort employment policies and procedures, am called to investigation allegations of employee misconduct, and play a critical roll in providing recommendations regarding continued employment to appropriate management personnel at M Resort.
3. On or about November 22, 2008, I received an anonymous email that raised allegations of sexual discrimination and other misconduct of security personnel. I forwarded said email to William Houtchens, Vice President—Security and Surveillance for investigation.
4. Attached to this declaration as Exhibit A is a true and correct copy of the email referenced in the preceding paragraph.
5. I have read Paragraph 4(a) of the Complaint issued by the General Counsel of the NLRB in this matter, wherein Joseph Varner is alleged to have sent the November 22, 2008 email to M Resort. At no time was I aware that Mr. Varner was responsible for the contents of said email.
6. On or about December 9, 2008, I met with Security Officer Bruce Allen to discuss issues of potential misconduct by Security Officers at M Resort. Present during this meeting, in addition to myself and Allen, were Investigator Anthony Perez and Employee Relations Coordinator Laura Martinez. During this meeting, Allen talked of rumors that Security Officers on night shift had accessed and viewed personnel files in the Career Center.
7. Following the December 9<sup>th</sup> meeting discussed in the previous paragraph, I am aware that Anthony Perez conducted further interviews into employee misconduct, including the access of confidential personnel files.

8. I worked with Mr. Perez on his investigation and reviewed his notes as well as witness statements gathered by him during the course of his interview. Based on his notes and the pertinent witness states, I determined that Russell Shock, Michael DeVito, Joseph Varner and Roman Medina had violated the Security Department's Code of Ethics. That determination was forwarded to William Houtchens for final action. I am aware that it was decided that Russell Shock, Michael DeVito and Roman Medina would not be employed beyond their probationary period. It is my understanding that Joseph Varner's employment would have been terminated as well, but he had submitted his resignation of employment with M Resort.

9. At no time during the course of their employment was I made aware that Russell Shock, Roman Medina, Michael DeVito or Joseph Varner had raised or discussed concerns regarding sexual discrimination, sexual harassment, safety, or the securing of personnel files.

10. The decision to terminate the employment of the individuals in question was made because they improperly accessed and reviewed personnel files in violation of Security Department policy, and for no other reason.

I have carefully read the above declaration and, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that it is true and accurate to the best of my ability.

  
Douglas McCombs

4.27.09  
Date

# EXHIBIT 2A

## Doug McCombs

**From:** Trojan Fan [uscfan22@gmail.com]  
**Sent:** Saturday, November 22, 2008 7:26 AM  
**To:** Doug McCombs  
**Subject:** SECURITY DEPARTMENT

I would like to take this opportunity to enlighten the HR department, regarding the deplorable state of the security department. There is a bias against the majority of male employees (which I will detail in this correspondence)

1, On 3 occasions the main gate to the career center was left unsecured (prior to its opening for business in Oct). Day shift officers entered the career center building to find 2 female officers playing poker and requesting the day shift officers to join them in playing. (they refused). Later that next week, the director of security gave the 2 female officers a direct order to stop playing cards. These officers did not comply and were caught by Mr. Marnell playing cards days later.

Any of these offenses (unsecured gate, gambling, disobeying a supervisor, and last but not least being caught by the owner himself) are all reasons for termination at any property. Yet nothing was done to these officers. The worst part was the director tried to lay blame on the male officers working the gate on the opposite side of the property.

2. The same officers on at least 2 occasions let non badged vehicles and individuals enter the property through the same gate, failing again to do their job, and again no actions taken against the female officers. In this same time frame 2 male officers were terminated. One for having a negative attitude (which the director herself explained was the reason for his termination), the 2nd for bringing a pellet gun on the grave yard, because of his fear of snakes. Which the safety manager told us in orientation was a valid danger on the site.

Most recently 2 male officers were terminated, one for sleeping and leaving his post early. The other for sleeping on his break, which is common practice.

3. This brings me to the most outrageous example of bias and sex discrimination. There is a female officer on day shift who has broken every rule in the book, all of which have been brought to the attention of the security director, and backed up by several officers. Let me list as many as I have documented.

A. Director was told of this officer's constant vulgar and explicit sexual talk regarding her personal sex life (which if it had been a female officer reporting this about a male officer termination would have been immediate and probable legal action taken)

B. This officer has spread malicious rumors regarding other officers and these statements corroborated by several officers (again brought to the director's attention in a face to face meeting)

C. Compulsively late, was told by the director in front of other officers to be 5 minutes early, has been late routinely after this counseling.

D. Has been soliciting officers and construction workers on the M site, about a business she is involved in, and continues to do so even after the issue and business card were turned over to the director.

E. This officer was not at her post in the IT room, this incident was reported to the director (nothing done) This was the main reason one of the male officers was terminated for leaving this post.

4. I'd like to also address the fact that the security director says she won't put any females on graveyard. If we are all equal, then why is it OK to put all males on the graveyard shift with indifference to how it may impact their personal lives. Every other security department employs females on all shifts.

Another serious issue is safety. Although it does not affect those of us as much who worked on the later shifts it does directly impact day shift officers. The security director was told by the M site supervisor on at least 2

separate occasions, that security officers were not to be roaming inside the construction zone during peak hours. That it was a safety issue with all the equipment, and also that security would get in the way. Yet the security director tells the day shift officers to constantly patrol these dangerous areas. By OSHA regulations officers were to be given hearing protection, and ventilators to protect from the inhalation of fumes and dust (this option was never provided). There are a few officers who have a noticeable difference in their hearing, since being on the M site.

Another point of contention is the constant manipulation of policy to fit the directors agendas. It was hard to know what was really policy or not, since there are several officers who have been on site for nearly 4 months and have never been given an employee handbook.

One major point is, how the terminations have come about. During the orientation it was explained in detail that no one just gets terminated from the M resort. There was to be a jury of your peers and a system set in place to promote fairness (what happened to this policy?) There is also a 7 point system leading to termination, again never brought into play.

There is also a double standard for some officers male and female.  
. A male officer felt sick just days ago, and left the job to go home. This officer never contacted any supervisor or management. The officer just walked off his post. (yet he is still employed) How can the director justify this, in light of the other terminations?

There are many more examples of this which breeds a hostile work environment. Also you may want to do DMV checks on all your officers, as there is a situation that may exist where the company is risking serious liability, concerning the use of the company vehicle.

I'm well aware that human resources exists to protect the company (not the individual) but in talking with outside agencies about filing a complaint, I was told to first bring it to your HR's attention. I do wish the M resort well, But this is just so out of hand at this early stage it has to be dealt with.

Best of Luck.

# EXHIBIT 3

## **SWORN DECLARATION OF ANTHONY PEREZ**

1. My name is Anthony “Tony” Perez. I am over eighteen (18) years of age and I voluntarily make this declaration based on my personal knowledge. I do not suffer from any disabilities that affect my ability to give and understand this statement, and can competently testify at hearing if so called..
2. Since on or about October 7, 2008, I have been employed as an Investigator in the Security Department for M Resort.
3. On or about December 8, 2008, I was requested by William Houtchens, Vice President—Security and Surveillance, to investigate allegations of potential misconduct by security personnel. As part of this investigation I was instructed to meet with the individual raising these allegations and with Doug McCombs, Director of Human Resources.
3. On or about December 9, 2008, I was present during a meeting in the Human Resources Department with Security Officer Bruce Allen. Also present during this meeting was Doug McCombs, Directory of Human Resources, and Laura Martinez, Employee Relations Manager.
4. During this meeting Allen talked of rumors that three Security Officers, Michael DeVito, Russell Shock and Joseph Varner, had been accessing and reviewing personnel files while on night patrol in the temporary Career Center.
5. Following the December 9<sup>th</sup> meeting described above, I continued my investigation regarding security personnel misconduct, and Allens’ allegations that Shock, DeVito and Varner had accessed personnel files. During the course of my investigation, I interviewed several Security Officers, including, but not limited to, Helen Lindsey-Ginden, Danielle Malone, Dean Skibickyj, Manuel Silvas, Enrique Stieglmeyer, Michael DeVito, Joseph Varner, Russell Shock, and Roman Medina.
6. During an interview with Dean Skibickyj occurring on or about December 9, 2008, Skibickyj informed me that he had overheard Roman Medina and Russell Shock discussing the fact that they had seen and read personnel files in the Human Resources Career Center.
7. Attached to this Declaration as Exhibit A is a true and correct copy of a Voluntary Statement written and provided by Dean Skibickyj on December 12,

2008. The statement was obtained as part of the normal course of my investigation into Security Officer misconduct.

8. During an interview with Russell Shock occurring on or about December 11, 2009, Shock admitted that he and Joseph Varner had viewed the personnel file for another Security Officer, Lisa Taylor. William Houtchens was also involved in this interview.

9. Shock also admitted that on at least one other occasion he, Michael DeVito and Roman Medina access Human Resources filing cabinets and reviewed personnel files. Shock also stated that on another occasion he had witnessed DeVito and Medina reviewing personnel files after Medina stated that he wanted to see his wife's application.

10. Attached to this Declaration as Exhibit B is a true and correct copy of a Voluntary Statement written and provided by Russell Shock on December 12, 2008. This statement was obtained as part of the normal course of my investigation into Security Officer misconduct.

11. Following my investigation, I reviewed my notes and all witness statements with Doug McCombs. It was my personal opinion that Michael DeVito, Russell Shock, Joseph Varner and Roman Medina had violated provisions of the Security Department's code of ethics policy by improperly accessing and reviewing confidential personnel files.

12. I conveyed my findings to Doug McCombs and William Houtchens for further determination on the continued employment of the four individuals.

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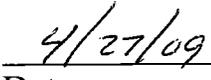
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13. In giving this Declaration, I understand that one of the purposes of providing this Declaration is to investigate facts relating to a complaint filed by the National Labor Relations Board against M Resort. My decision to provide this declaration is entirely voluntary. I understand that I am free to answer or not answer any questions. I understand that there will be no reprisals against me whether I choose to provide this Declaration or not. In addition, I understand that there will be no reprisals against me based on what I state in this Declaration, whether it be deemed favorable to the company's position of the unfair labor practice proceeding or not.

I have carefully read the above declaration and, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that it is true and accurate to the best of my ability.

  
\_\_\_\_\_  
Anthony Perez

  
\_\_\_\_\_  
Date

# EXHIBIT 3A

# VOLUNTARY STATEMENT



Assigned DR#

Type of Incident: \_\_\_\_\_  
 Location of Occurrence: Const. Site  
 Occurred: Date 1/1/ Time    :     to Date 1/1/ Time    :    

I, (print name) Dean Skibicki, am 39 years of age,  
 and my address is 4735 Decker Rd City Las Vegas State NV Zip 89109  
 Home Phone: (702) 467-2193 Business Phone: ( )

In Reference to the discussion that occurred with Tony the investigator on 12/11/08 the following was discussed. In regards to who I heard talk about looking at files of personal (security) persons in the Human Resource Center I stated Roman & Russ were talking about seeing the files & reading them (date unknown). In regard to the condition of the vehicles I stated I have fixed flat tires numerous times and cleaned them abt inside & out. By hand and by car washed. (Date unknown) There was food (Pie) that I had to wash off the windshield one time. There were many times the vehicle was clean at the end of Day shift & by the next Day it would be covered in mud so bad that I would wash it again and clean out garbage from the inside (food, papers, ect). As to seeing officers sleeping on Post. Once Russ on guard had to be woken up in the vehicle by myself after coming back from a property check and also when coming early for OT on guard 2 officers (John & Patrick) appeared to be sleeping when I arrived (Date not specified). I was at the gate for 5 to 10 minutes before I went to the vehicle and flashed my flash light on them (then they responded and left the vehicle)

The information set forth on the above statement fully and accurately reflects the information I have provided to M Resort Security personnel regarding the incident I have reported. M Resort Security personnel have advised me M Resort is not authorized to tender a crime report to law enforcement authorities on my behalf and if I consider such a report to be warranted, I should contact the Henderson Police Department at 223 Lead Street, Henderson, NV 89015, telephone number (702) 267-5000.

This statement consisting of: 1 page(s) was completed at (location) in site  
 on the 10<sup>th</sup> day of December at 6:00 (AM/PM) 2008

Signature of person giving voluntary statement

Witness Printed Name: Anthony Piro Department: Security  
 Witness Signature:  Date: 12/12/08

# VOLUNTARY STATEMENT



Assigned DR#

Type of Incident: \_\_\_\_\_  
Location of Occurrence: \_\_\_\_\_  
Occurred: Date \_\_\_/\_\_\_/\_\_\_ Time \_\_\_:\_\_\_ to Date \_\_\_/\_\_\_/\_\_\_ Time \_\_\_:\_\_\_

I, (print name) Russell L. Stock, Jr., am \_\_\_\_\_ years of age,  
and my address is \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Home Phone: (\_\_\_\_) \_\_\_\_\_ Business Phone: (\_\_\_\_) \_\_\_\_\_

I Russell around Thanksgiving while using the restrooms at the Career Center I opened and observed another fellow officers file. Inside the file was Officer Taylors photo sleeping. I was with Joe Varner. I am aware of a set of keys in the flower pot, because another officer (Mike Devito) got them out. About 3 weeks ago myself, Roman, & Mike were in the Career Center and Roman wanted to check the status of his wifes application.

The information set forth on the above statement fully and accurately reflects the information I have provided to M Resort Security personnel regarding the incident I have reported. M Resort Security personnel have advised me M Resort is not authorized to tender a crime report to law enforcement authorities on my behalf and if I consider such a report to be warranted, I should contact the Henderson Police Department at 223 Lead Street, Henderson, NV 89015, telephone number (702) 267-5000.

This statement consisting of: \_\_\_\_\_ page(s) was completed at (location) \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_:\_\_\_\_ (AM/PM) 20\_\_\_\_

Signature of person giving voluntary statement  12.11.08

Witness Printed Name: \_\_\_\_\_ Department: \_\_\_\_\_  
Witness Signature: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

# EXHIBIT 4

**SWORN DECLARATION OF HELEN M. LINDSEY-GINDEN**

1. My name is Helen Lindsey-Ginden. I am over eighteen (18) years of age and I voluntarily make this declaration based on my personal knowledge. I do not suffer from any disabilities that affect my ability to give and understand this statement, and can competently testify at hearing if so called..
  
2. I have been employed by M Resort as a Security Officer since October 1, 2008.
  
3. During the early part of December, 2008, I had a conversation with a fellow security officer, Roman Medina. The conversation took place at Construction Entrance 3. During this conversation, Roman Medina stated that he had seen the personnel file of Security Officer Lisa Taylor, and that the file contained a photo of her sleeping on post.
  
4. Attached to this Declaration as Exhibit A is a true and correct copy of a witness statement that I provided to Mr. Anthony Perez on December 16, 2008.
  
5. In giving this Declaration, I understand that one of the purposes of providing this Declaration is to investigate facts relating to a complaint filed by the National Labor Relations Board against M Resort. My decision to provide this declaration is entirely voluntary. I understand that I am free to answer or not answer any questions. I understand that there will be no reprisals against me whether I choose to provide this Declaration or not. In addition, I understand that there will be no reprisals against me based on what I state in this Declaration, whether it be deemed favorable to the company's position of the unfair labor practice proceeding or not.

I have carefully read the above declaration and, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that it is true and accurate to the best of my ability.

  
\_\_\_\_\_  
Helen M. Lindsey-Ginden

4/29/09  
\_\_\_\_\_  
Date

# EXHIBIT 4A

# VOLUNTARY STATEMENT



Assigned DR#

Type of Incident: \_\_\_\_\_  
 Location of Occurrence: \_\_\_\_\_  
 Occurred: Date 1/1/   Time   :   to Date 1/1/   Time   :  

I, (print name) Helen M. Lindsey-Ginden, am \_\_\_\_\_ years of age,  
 and my address is \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Home Phone: (\_\_\_\_) \_\_\_\_\_ Business Phone: (\_\_\_\_) \_\_\_\_\_

The morning that Roman told me about the file on Lisa Taylor, Dean S. Walked up on the conversation. Then Roman repeated the statement that "They saw a picture of Lisa sleeping with her hand ~~to~~ hat on what appeared to be the E.I. Room. I then was relaying Dani Malone out of E.I. when Dean came in and told Dani that Roman said "That "they" saw a file of a photo of Lisa Taylor. I never mentioned it to anyone.

On Friday December 12, 08 after shift I ran Dean to his bus stop. That's when he stated that there was going to be something big that was going to be done or said at the Saturday mandatory meeting. I didn't want to know so I didn't have him explain himself to me. I dropped him off at the bus stop.

You need to know that I never believed Dean, I called him "bullshit" he was always joking around. I never knew what he was saying had any truth to it. So I paid no attention to the statement.

The information set forth on the above statement fully and accurately reflects the information I have provided to M Resort Security personnel regarding the incident I have reported. M Resort Security personnel have advised me M Resort is not authorized to tender a crime report to law enforcement authorities on my behalf and if I consider such a report to be warranted, I should contact the Henderson Police Department at 223 Lead Street, Henderson, NV 89015, telephone number (702) 267-5000.

This statement consisting of: \_\_\_\_\_ page(s) was completed at (location) \_\_\_\_\_  
 on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_: \_\_\_\_\_ (AM/PM) 20\_\_\_\_\_

Signature of person giving voluntary statement \_\_\_\_\_

Witness Printed Name: Helen M. Lindsey-Ginden Department: Security

Witness Signature: Jade M. Lindsey-Ginden Date: 12-16-08

# EXHIBIT 5

**SWORN DECLARATION OF MANUEL SILVAS**

1. My name is Manuel “Manny” Silvas. I am over eighteen (18) years of age and I voluntarily make this declaration based on my personal knowledge. I do not suffer from any disabilities that affect my ability to give and understand this statement, and can competently testify at hearing if so called..
  
2. I have been employed by M Resort as a Security Officer since October 1, 2008.
  
3. During early December, 2008, I had a conversation with a fellow security officer, Michael DeVito. This conversation took place at Construction Gate 3. During this conversation, Michael DeVito stated that he had seen photos of Lisa Taylor, another Security Officer, sleeping on post. DeVito also stated that he knew it was I that took the photographs in question.
  
4. Attached to this Declaration as Exhibit A is a true and correct copy of a witness statement that I provided to Mr. Anthony Perez on December 12, 2008.
  
5. In giving this Declaration, I understand that one of the purposes of providing this Declaration is to investigate facts relating to a complaint filed by the National Labor Relations Board against M Resort. My decision to provide this declaration is entirely voluntary. I understand that I am free to answer or not answer any questions. I understand that there will be no reprisals against me whether I choose to provide this Declaration or not. In addition, I understand that there will be no reprisals against me based on what I state in this Declaration, whether it be deemed favorable to the company’s position of the unfair labor practice proceeding or not.

I have carefully read the above declaration and, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that it is true and accurate to the best of my ability.

  
\_\_\_\_\_  
Manuel Silvas

4/27/09  
\_\_\_\_\_  
Date

# EXHIBIT 5A

# VOLUNTARY STATEMENT



Assigned DR#

Type of Incident: \_\_\_\_\_  
Location of Occurrence: \_\_\_\_\_  
Occurred: Date \_\_\_/\_\_\_/\_\_\_ Time \_\_\_:\_\_\_ to Date \_\_\_/\_\_\_/\_\_\_ Time \_\_\_:\_\_\_

I, (print name) Manny Silvas, am \_\_\_\_\_ years of age,  
and my address is \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Home Phone: (\_\_\_\_) \_\_\_\_\_ Business Phone: (\_\_\_\_) \_\_\_\_\_

*ON FILE*

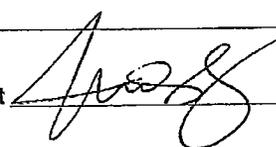
App. 2 to 3 weeks ago was approached by % Varner asking me if he could talk to me. I said yeah. He then asked <sup>told me</sup> ~~me~~ that the word on the street was that I found Lisa Taylor sleeping in the IT room. I then told him who told him that he then he said he was just asking I then told him who had told him that, and that I wanted to know he then said again "so did you find her sleeping" I told him I didn't do it and for him to tell who ever said that to come to me and ask me. And that was that.

The next day or two % DeVito asked me "so is it true you found Lisa Taylor sleeping" Again I told him who told you that. He then said come on Manny I saw the pictures. I then told him pictures what pictures. You know the pictures of her sleeping he even made a hand gesture of 5x7 photo. I then told him who told him all that and he said come on you forget I use to be a cop. And I have my connections. At that point I told him you better get your shit straight and walked away.

I Manny S. has never seen or heard of anybody going through any files.

The information set forth on the above statement fully and accurately reflects the information I have provided to M Resort Security personnel regarding the incident I have reported. M Resort Security personnel have advised me M Resort is not authorized to tender a crime report to law enforcement authorities on my behalf and if I consider such a report to be warranted, I should contact the Henderson Police Department at 223 Lead Street, Henderson, NV 89015, telephone number (702) 267-5000.

This statement consisting of: 1 page(s) was completed at (location) Career Center  
on the 12 day of Dec at 7:38 (AM/PM) 20 08

Signature of person giving voluntary statement 

Witness Printed Name: \_\_\_\_\_ Department: \_\_\_\_\_  
Witness Signature: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

# EXHIBIT 6

## **SWORN DECLARATION OF ENRIQUE STIEGELMEYER**

1. My name is Enrique “Rick” Stieglmeyer. I am over eighteen (18) years of age and I voluntarily make this declaration based on my personal knowledge. I do not suffer from any disabilities that affect my ability to give and understand this statement, and can competently testify at hearing if so called..

2. I originally hired by M Resort as a Security Officer since November 17, 2008. I am currently employed by M Resort as Assistant Shift Manager in the Security Department, and have been serving in that capacity since March, 2009

3. On or about December 4 or 5, 2008, I had a conversation with a fellow security officer, Joseph Varner, in the Human Resources temporary Career Center. During this conversation, Varner stated that he knew the location for the key to unlock Human Resources’ filing cabinets. Varner then showed me where the key was located – in a fake planter above the filing cabinets. Varner also stated that the key was originally found by another Security Officer, Michael DeVito.

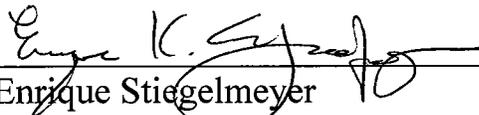
4. Also during this December 4<sup>th</sup> or 5<sup>th</sup> conversation, Varner stated that he and DeVito had looked through personnel files of security officers. He then opened the filing cabinets and showed me the files for the Security Department, at which time I immediately left the area without reviewing file contents.

5. Attached to this Declaration as Exhibit A is a true and correct copy of a witness statement I provided to Anthony Perez on or about December 17, 2008. the contents of the witness statement accurately reflect statements I made during an interview with Mr. Perez on or about December 11, 2008.

5. In giving this Declaration, I understand that one of the purposes of providing this Declaration is to investigate facts relating to a complaint filed by the National Labor Relations Board against M Resort. My decision to provide this declaration is entirely voluntary. I understand that I am free to answer or not answer any questions. I understand that there will be no reprisals against me whether I choose to provide this Declaration or not. In addition, I understand that there will be no reprisals against me based on what I state in this Declaration, whether it be deemed favorable to the company’s position of the unfair labor practice proceeding or not.

///

I have carefully read the above declaration and, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that it is true and accurate to the best of my ability.

  
Enrique Stieglmeyer

04.27.2009  
Date

# EXHIBIT 6A

# VOLUNTARY STATEMENT

M RESORT • SPA • CASINO  
LAS VEGAS

Assigned DR#

Type of Incident: \_\_\_\_\_

Location of Occurrence: \_\_\_\_\_

Occurred: Date 12/05/08 Time 03:00 to Date 12/05/08 Time 05:00

I, (print name) Ricky Stieglmeyer, am 33 years of age,

and my address is ON FIVE City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Home Phone: (\_\_\_\_) \_\_\_\_\_ Business Phone: (702) 797-1000

ON DECEMBER 4/5, 2008 AT APPROXIMATELY, 0300 TO 0500 HOURS, I SECURITY OFFICER RICKY STIEGLMEYER WAS TOLD BY SECURITY OFFICER JOE VARNER WHEN WE WERE IN THE HUMAN RESOURCES OFFICE WARMEN UP MY KITCHEN AND USING THE REST ROOM, OFFICER VARNER SAID HE OBTAINED A KEY FOR THE FILE CABINETS. HE SHOWED ME WHERE THE KEY WAS LOCATED, (INSIDE A FAKE PLANTER ON TOP OF SEVERAL FILE CABINETS.) HE MENTIONED THAT ANOTHER SECURITY OFFICER, MIKE DEVITO HAD ORIGINALLY FOUND THE KEY BEFORE AND INFORMED OFFICER VARNER OF HIS FINDINGS AND HOW THEY LOOKED THROUGH PERSONAL FILES OF FUTURE SECURITY OFFICERS.

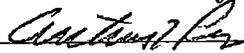
AFTER OFFICER VARNER HAD SHOWED ME THE LOCATION OF THE KEY, HE OPENED ONE OF THE DRAWERS AND BEGAN TO SHOW ME FILES FOR THE SECURITY DEPARTMENT. WHEN HE SHOWED THEM TO ME, I IMMEDIATELY TURNED AROUND AND PROCEEDED TO GET MY FOOD AND LEAVE THE OFFICE. OFFICER VARNER FOLLOWED AND HE SECURED THE DOOR TO THE OFFICE AND RETURNED TO THE RESTROOM ENTRANCE.

The information set forth on the above statement fully and accurately reflects the information I have provided to M Resort Security personnel regarding the incident I have reported. M Resort Security personnel have advised me M Resort is not authorized to tender a crime report to law enforcement authorities on my behalf and if I consider such a report to be warranted, I should contact the Henderson Police Department at 223 Lead Street, Henderson, NV 89015, telephone number (702) 267-5000.

This statement consisting of: 1 page(s) was completed at (location) \_\_\_\_\_ on the 17<sup>TH</sup> day of DECEMBER at 16:40 (AM/PM) 2008

Signature of person giving voluntary statement  80074

Witness Printed Name: ANTHONY PEREZ Department: SECURITY

Witness Signature:  Date: 12/20/08