

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CITY OF FERNLEY, NEVADA, a  
Nevada municipal corporation,

Appellant,

vs.

THE STATE OF NEVADA ex rel.  
DEPARTMENT OF TAXATION;  
THE HONORABLE DAN  
SCHWARTZ, in his official capacity  
as TREASURER OF THE STATE OF  
NEVADA; and THE LEGISLATURE  
OF THE STATE OF NEVADA,

Respondents.

Supreme Court No.: 66851

District Court Case No.: 12 OC 00168 1B

**JOINT APPENDIX**

**VOLUME 21 PART 4**

Filed By:

Joshua J. Hicks, Esq.  
Nevada Bar No. 6678  
BROWNSTEIN HYATT  
FARBER SCHRECK, LLP  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
Telephone: (775) 622-9450  
Email: [jhicks@bhfs.com](mailto:jhicks@bhfs.com)

*Attorneys for Appellant City of Fernley,  
Nevada*

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| 12            | Nevada Department of Taxation's Opposition to Plaintiff's Motion for Summary Judgment                  | State of Nevada/Dept Taxation       | 07/11/14 | 2053-2224          |
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| 20                   | Reply in Support of Plaintiff's Motion for Summary Judgment Against Defendants Nevada Department of Taxation and Nevada Treasurer   | City of Fernley                       | 07/25/14    | 3674-3708                 |
| 20                   | Reply in Support of Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order as to Defendant's Nevada Department of Taxation and Nevada Treasurer; Plaintiff's Opposition to Countermotion for Order Dismissing Nevada Department of Taxation | City of Fernley                       | 07/25/14    | 3641-3673                 |
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| 3                    | Reply to Opposition to Motion to Dismiss  | State of Nevada/Dept Tax/ Treasurer   | 08/27/12    | 636-647                   |
| 20                   | Reply to Plaintiff's Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss  | State of Nevada/Dept Taxation         | 07/25/14    | 3583-3605                 |
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7. The Legislature objects to each and every request to the extent they seek information constituting opinions of law that are beyond the scope of permissible discovery.

8. The Legislature objects to each and every request to the extent they are calculated to annoy or harass or otherwise seek information that is unreasonably cumulative, duplicative, vague, ambiguous, overly broad or unduly burdensome.

9. The Legislature objects to each and every request to the extent they seek information that is equally available to Plaintiff, publicly available or obtainable from another source which is more convenient, less burdensome or less expensive. Additionally, the Legislature objects to each and every request to the extent that the requested information is solely in the possession, custody or control of a party other than the Legislature.

10. The Legislature objects to each and every request to the extent they impose duties or obligations beyond any which are properly imposed pursuant to the applicable provisions of NRCP and the Local Rules of this court.

11. The Legislature hereby responds to Plaintiff's First Request without conceding the relevancy or materiality of the subject matter of any of the requests and without prejudice to the Legislature's right to object to further discovery or to the admissibility of any response at the time of hearing or trial.

12. The foregoing general objections are hereby incorporated into each specific response by the Legislature.

Without waiver of any of the general objections, the Legislature responds as follows:

**Without waiver of any of the general objections, the Legislature responds as follows:**

## RESPONSES

**REQUEST FOR ADMISSION NO. 1:** Please admit that, as enacted, SB 254 does not restrict the way in which local governmental entities may utilize C-Tax revenues.

**RESPONSE TO REQUEST FOR ADMISSION NO. 1:** Objection. This request calls for a legal conclusion. Notwithstanding this objection, admit.

1 **REQUEST FOR ADMISSION NO. 2:** Please admit that C-Tax revenues, under Nevada law,  
2 may be used for general operating expenses by local governmental entities.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:** Objection. This request calls for a  
4 legal conclusion. Notwithstanding this objection, admit.

5 **REQUEST FOR ADMISSION NO. 3:** Please admit that the city of Fernley, Nevada was  
6 incorporated in 2001.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:** Admit.

8 **REQUEST FOR ADMISSION NO. 4:** Please admit that Fernley, Nevada is the only  
9 municipality to incorporate in Nevada since the enactment of SB 254.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:** The Department is unable to admit or  
11 deny definitively but is not aware of any municipality, other than Fernley, incorporated in  
12 Nevada since the enactment of SB 254.

13 **REQUEST FOR ADMISSION NO. 5:** Please admit that, since the enactment of SB 254, the  
14 city of Fernley, Nevada has increased in citizen population.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:** Admit, based on the State  
16 demographer's report through July 1, 2012. The Department is unable to admit or deny for  
17 the time period subsequent to July 1, 2012.

18 **REQUEST FOR ADMISSION NO. 6:** Please admit that, since the enactment of SB 254, the  
19 city of Fernley, Nevada has experienced an increase in assessed property values.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:** Admit.

21 **REQUEST FOR ADMISSION NO. 7:** Please admit that in fiscal year 1997, Fernley, Nevada  
22 received \$86,000 in C-Tax distributions.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:** Deny.

24 **REQUEST FOR ADMISSION NO. 8:** Please admit that in fiscal year 2001, Fernley, Nevada  
25 received approximately \$110,685 in C-Tax distributions.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:** Deny.

27 **REQUEST FOR ADMISSION NO. 9:** Please admit that in fiscal year 2011, Fernley, Nevada  
28 received approximately \$143,143 in C-Tax Distributions.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:** Deny.

2 **REQUEST FOR ADMISSION NO. 10:** Please admit that the Nevada Department of Taxation  
3 has no statutory discretion to adjust Tier I distributions upon the request of a local government  
4 entity.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:** Objection. Calls for a legal  
6 conclusion. Notwithstanding this objection, admit.

7 **REQUEST FOR ADMISSION NO. 11:** Please admit that Taxation has no statutory discretion  
8 to adjust Tier 2 distributions upon the request of a local governmental entity unless the  
9 conditions set forth in either NRS 354.598747 or NRS 360.740 are satisfied.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:** Objection. This request calls for a  
11 legal conclusion. Notwithstanding this objection, deny.

12 **REQUEST FOR ADMISSION NO. 12:** Please admit that, under Nevada law, adjustments of  
13 C-Tax distributions pursuant to NRS 360.740 are permanently barred to local governmental  
14 entities that do not request a C-Tax distribution on or before December 31 of the year  
15 immediately preceding the first fiscal year that the local government would receive a C-Tax  
16 distribution.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:** Objection. This request calls for a  
18 legal conclusion. Notwithstanding this objection, admit.

19 **REQUEST FOR ADMISSION NO. 13:** Please admit that adjustments of C-Tax revenue  
20 pursuant to NRS 354.598747 requires at least one local government to consent to accept less  
21 C-Tax revenue.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:** Objection. The request calls for  
23 speculation and seeks a legal conclusion. Notwithstanding these objections, deny.

24 **REQUEST FOR ADMISSION NO. 14:** Please admit that the distribution of C-Tax revenue is  
25 not contingent upon the provision of any particular service by a local governmental entity.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:** Admit.

27 **REQUEST FOR ADMISSION NO. 15:** Please admit that local governments have the  
28 discretion to use C-Tax revenue for Public Safety, but are not obligated to do so.



1 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:** Objection. This request calls for a  
2 legal conclusion. Notwithstanding this objection, deny.

3 **REQUEST FOR ADMISSION NO. 16:** Please admit that prior to the enactment of SB 254,  
4 local governmental service levels were not examined to ensure that the C-Tax revenues  
5 would be adequate for the services provided by a local government entity who would receive  
6 C-Tax revenues.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:** Objection. This request is overly  
8 broad and unduly burdensome. Notwithstanding this objection, the Department is unable to  
9 admit or deny.

10 **REQUEST FOR ADMISSION NO. 17:** Please admit that since the enactment of SB 254,  
11 Taxation has not commissioned a study to determine whether C-Tax revenues distributed to  
12 local government entities are sufficient to fund the governmental services provided by those  
13 entities.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:** Admit.

15 **REQUEST FOR ADMISSION NO. 18:** Please admit that there are local governmental entities  
16 who have received more in C-Tax than those entities have spent in costs for public safety.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:** Admit.

18 **REQUEST FOR ADMISSION NO. 19:** Please admit that there are local governmental entities  
19 receiving C-Tax revenues that have no expenses for public safety.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:** Admit.

21 **REQUEST FOR ADMISSION NO. 20:** Please admit that in fiscal year 2010-2011, the town of  
22 Gardnerville, Nevada received C-Tax revenues of \$233,000.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:** Deny.

24 **REQUEST FOR ADMISSION NO. 21:** Please admit that in fiscal year 2010-2011, the town of  
25 Gardnerville, Nevada did not report any public safety costs to Taxation.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:** Admit.

27 **REQUEST FOR ADMISSION NO. 22:** Please admit that in fiscal year 2010-2011, the town of  
28 Minden, Nevada received C-Tax revenues of \$308,000.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:** Deny.

2 **REQUEST FOR ADMISSION NO. 23:** Please admit that in fiscal year 2010-2011, the town of  
3 Minden, Nevada did not report any public safety costs to Taxation.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:** Admit.

5 **REQUEST FOR ADMISSION NO. 24:** Please admit that in fiscal year 2010-2011, the town of  
6 Battle Mountain, Nevada received C-Tax revenues of \$182,000.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 24:** Deny.

8 **REQUEST FOR ADMISSION NO. 25:** Please admit that in fiscal year 2010-2011, the town of  
9 Battle Mountain did not report any public safety costs to Taxation.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:** Admit.

11 **REQUEST FOR ADMISSION NO. 26:** Please admit that in fiscal year 2010-2011, the city of  
12 Carlin, Nevada received C-Tax revenues of \$1,300,000.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:** Deny.

14 **REQUEST FOR ADMISSION NO. 27:** Please admit that in fiscal year 2010-2011, the city of  
15 Carlin, Nevada reported a projected public safety cost of \$800,000.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:** Deny.

17 **REQUEST FOR ADMISSION NO. 28:** Please admit that in fiscal year 2010-2011, the town of  
18 Tonopah, Nevada received C-Tax revenues of \$210,000.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:** Deny.

20 **REQUEST FOR ADMISSION NO. 29:** Please admit that in fiscal year 2010-2011, the town of  
21 Tonopah, Nevada reported a projected public safety cost of \$87,000.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:** Deny.

23 **REQUEST FOR ADMISSION NO. 30:** Please admit that in fiscal year 2010-2011, the city of  
24 Elko, Nevada received C-Tax revenues of \$9,000,000.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 30:** Deny.

26 **REQUEST FOR ADMISSION NO. 31:** Please admit that in fiscal year 2010-2011, the city of  
27 Elko, Nevada reported a projected public safety cost of \$8,700,000.

28 **RESPONSE TO REQUEST FOR ADMISSION NO. 31:** Deny.

1 **REQUEST FOR ADMISSION NO. 32:** Please admit in fiscal year 2010-2011, that the town of  
2 Jackpot, Nevada received C-Tax revenues of \$1,000,000.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 32:** Deny.

4 **REQUEST FOR ADMISSION NO. 33:** Please admit in fiscal year 2010-2011, that the town of  
5 Jackpot, Nevada reported a projected public safety cost of \$800,000.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 33:** Deny.

7 **REQUEST FOR ADMISSION NO. 34:** Please admit that in fiscal year 2010-2011, the town of  
8 Caliente, Nevada received C-Tax revenues of \$135,000.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 34:** Deny.

10 **REQUEST FOR ADMISSION NO. 35:** Please admit that in fiscal year 2010-2011, the town of  
11 Caliente, Nevada reported a projected public safety cost of \$100,000.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 35:** Objection. Caliente is a city, not a  
13 town. Notwithstanding this objection, deny.

14 **REQUEST FOR ADMISSION NO. 36:** Please admit that in 2001, the city of Henderson,  
15 Nevada received a \$4,000,000 base adjustment in their C-Tax distribution.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 36:** Admit.


17 **REQUEST FOR ADMISSION NO. 37:** Please admit that at the time the city of Henderson,  
18 Nevada received the base adjustment of \$4,000,000 in 2001, the appointed Speaker of the  
19 Nevada State Assembly was a resident, and legislative representative of Henderson, Nevada.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 37:** Admit.

21 DATED this 14<sup>th</sup> day of October, 2013.

22 CATHERINE CORTEZ MASTO  
23 Attorney General

24 By:

  
25 ANDREA NICHOLS  
26 Senior Deputy Attorney General  
27 Nevada Bar No. 6436  
28 5420 Kietzke Lane, Suite 202  
Reno, NV 89511  
(775) 688-1818

Attorneys for Defendants, Nevada Department  
of Taxation and Nevada Treasurer

Case No. 66851  
JA 3880

Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on this 14th day of October, 2013, pursuant to NRCP 5(b) and the parties' stipulation and consent to service by electronic means, I served a true copy of the foregoing, **DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS TO STATE OF NEVADA EX REL NEVADA DEPARTMENT OF TAXATION**, by electronic mail, directed to the following:

Joshua Hicks, Esq.  
Clark Vellis, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
50 W. Liberty Street, Suite 1030  
Reno, NV 89501  
jhicks@bhfs.com  
cvellis@bhfs.com

Brandi Jensen, Fernley City Attorney  
Office of the City Attorney  
595 Silver Lace Blvd.  
Fernley, NV 89408  
bjensen@cityoffernley.org



An Employee of the Office  
of the Attorney General

1 CATHERINE CORTEZ MASTO, Attorney General  
2 GINA C. SESSION, Chief Deputy Attorney General  
3 Nevada Bar No. 5493  
4 Email: gsession@ag.nv.gov  
5 ANDREA NICHOLS, Senior Deputy Attorney General  
6 Nevada Bar No. 6436  
7 5420 Kietzke Lane, Suite 202  
8 Reno, NV 89511  
9 (775) 688-1818  
10 anichols@ag.nv.gov  
11 *Attorneys for Defendants Nevada Department of Taxation*  
12 *and Kate Marshall, State Treasurer.*

13  
14 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
15  
16 **IN AND FOR CARSON CITY**

17 CITY OF FERNLEY, NEVADA, a Nevada  
18 municipal corporation,

19 Plaintiff,

20 v.

21 STATE OF NEVADA, ex rel. THE NEVADA  
22 DEPARTMENT OF TAXATION; THE  
23 HONORABLE KATE MARSHALL, in her  
24 official capacity as TREASURER OF THE  
25 STATE OF NEVADA; and DOES 1-20,  
26 Inclusive,

27 Defendants,

28 NEVADA LEGISLATURE,

Intervener.

Case No.: 12 OC 00168 1B

Dept. No.: I

29  
30 **NEVADA DEPARTMENT OF TAXATION'S RESPONSE TO PLAINTIFF'S**  
31 **FIRST SET OF INTERROGATORIES TO THE STATE OF NEVADA**  
32 **DEPARTMENT OF TAXATION**

33 Defendant, the State of Nevada ex rel. its Department of Taxation, by and through its  
34 attorneys, Catherine Cortez Masto, Attorney General of the State of Nevada, and Senior  
35 Deputy Attorney General, Andrea Nichols, hereby responds to City of Fernley's Request for  
36 Admissions.

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**GENERAL OBJECTIONS**

1  
2 1. By responding to Plaintiff's First Request, the Legislature does not in any way  
3 waive its right to object to the use of the discovery responses at any time or on any ground in  
4 this or any other proceeding. Furthermore, discovery in this action is based upon information  
5 presently in the possession of the Legislature and therefore the Legislature reserves the right  
6 to amend any response in the event new information may become known or available during  
7 the course of discovery.

8 2. By responding to Plaintiff's First Request, the Legislature does not in any way  
9 adopt Plaintiff's definitions of words or phrases set forth in Plaintiff's First Request. The  
10 Legislature objects to those definitions to the extent they are inconsistent with: (1) any  
11 definitions set forth in the Legislature's responses; or (2) the ordinary and customary meaning  
12 of the words or phrases. Additionally, the Legislature objects to Plaintiff's definitions to the  
13 extent they attempt to impose upon the Legislature any duties or obligations broader than, or  
14 inconsistent with, applicable rules of discovery or common law.

15 3. By responding to Plaintiff's First Request, the Legislature does not in any way  
16 admit, adopt or acquiesce in any factual or legal contention, presumption, assertion or  
17 characterization set forth in Plaintiff's First Request.

18 4. The Legislature objects to each and every interrogatory to the extent they seek  
19 information protected by legislative privilege and immunity, deliberative process privilege,  
20 attorney-client privilege, the work product doctrine or any other applicable privilege or  
21 immunity. Any inadvertent disclosure of such information protected by an applicable privilege  
22 or immunity is not intended be, and is not to be construed as, a waiver of any such privilege or  
23 immunity.

24 5. The Legislature objects to each and every interrogatory to the extent they seek  
25 information that is irrelevant and not reasonably calculated to lead to the discovery of  
26 admissible evidence.

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6. The Legislature objects to each and every interrogatory to the extent they seek information constituting the mental impressions, conclusions, opinions or legal theories of the Legal Division of the Legislative Counsel Bureau.

7. The Legislature objects to each and every interrogatory to the extent they seek information or constituting opinions of law that are beyond the scope of permissible discovery.

8. The Legislature objects to each and every interrogatory to the extent they are calculated to annoy or harass or otherwise seek information that is unreasonably cumulative, duplicative, vague, ambiguous, overly broad or unduly burdensome.

9. The Legislature objects to each and every interrogatory to the extent they seek information that is equally available to Plaintiff, publicly available or obtainable from another source which is more convenient, less burdensome or less expensive. Additionally, the Legislature objects to each and every request to the extent that the requested information is solely in the possession, custody or control of a party other than the Legislature.

10. The Legislature objects to each and every interrogatory to the extent they impose duties or obligations beyond any which are properly imposed pursuant to the applicable provisions of NRCP and the Local Rules of this court.

11. The Legislature hereby responds to Plaintiff's First Request without conceding the relevancy or materiality of the subject matter of any of the interrogatories and without prejudice to the Legislature's right to object to further discovery or to the admissibility of any response at the time of hearing or trial.

12. The foregoing general objections are hereby incorporated into each specific response by the Legislature.

**Without waiver of any of the general objections, the Legislature responds as follows:**

## **RESPONSES**

**INTERROGATORY NO. 1:** Please set forth in detail each and every fact which supports your First Affirmative Defense.

**RESPONSE TO INTERROGATORY NO. 1:** Objection. This request calls for a legal conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's

1 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
2 Department of Taxation Response to Request No. 1.

3 **INTERROGATORY NO. 2:** Please set forth in detail each and every fact which supports your  
4 Second Affirmative Defense.

5 **RESPONSE TO INTERROGATORY NO. 2:** Objection. This request calls for a legal  
6 conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's  
7 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
8 Department of Taxation Response to Request No. 2.

9 **INTERROGATORY NO. 3:** Please set forth in detail each and every fact which supports your  
10 Third Affirmative Defense.

11 **RESPONSE TO INTERROGATORY NO. 3:** Objection. This request calls for a legal  
12 conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's  
13 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
14 Department of Taxation Response to Request No. 3.

15 **INTERROGATORY NO. 4:** Please set forth in detail each and every fact which supports your  
16 Fourth Affirmative Defense.

17 **RESPONSE TO INTERROGATORY NO. 4:** Objection. This request calls for a legal  
18 conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's  
19 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
20 Department of Taxation Response to Request No. 4.

21 **INTERROGATORY NO. 5:** Please set forth in detail each and every fact which supports your  
22 Fifth Affirmative Defense.

23 **RESPONSE TO INTERROGATORY NO. 5:** Objection. This request calls for a legal  
24 conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's  
25 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
26 Department of Taxation Response to Request No. 5.

27 **INTERROGATORY NO. 6:** Please set forth in detail each and every fact which supports your  
28 Sixth Affirmative Defense.



1 **RESPONSE TO INTERROGATORY NO. 6:** Objection. This request calls for a legal  
2 conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's  
3 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
4 Department of Taxation Response to Request No. 6.

5 **INTERROGATORY NO. 7:** Please set forth in detail each and every fact which supports your  
6 Seventh Affirmative Defense.

7 **RESPONSE TO INTERROGATORY NO. 7:** Objection. This request calls for a legal  
8 conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's  
9 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
10 Department of Taxation Response to Request No. 7.

11 **INTERROGATORY NO. 8:** Please set forth in detail each and every fact which supports your  
12 Eighth Affirmative Defense.

13 **RESPONSE TO INTERROGATORY NO. 8:** Objection. This request calls for a legal  
14 conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's  
15 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
16 Department of Taxation Response to Request No. 8.

17 **INTERROGATORY NO. 9:** Please set forth in detail each and every fact which supports your  
18 Ninth Affirmative Defense.

19 **RESPONSE TO INTERROGATORY NO. 9:** Objection. This request calls for a legal  
20 conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's  
21 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
22 Department of Taxation Response to Request No. 9.

23 **INTERROGATORY NO. 10:** Please set forth in detail each and every fact which supports  
24 your Tenth Affirmative Defense.

25 **RESPONSE TO INTERROGATORY NO. 10:** Objection. This request calls for a legal  
26 conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's  
27 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
28 Department of Taxation Response to Request No. 10.

1 **INTERROGATORY NO. 11:** Please set forth in detail each and every fact which supports  
2 your Eleventh Affirmative Defense.

3 **RESPONSE TO INTERROGATORY NO. 11:** Objection. This request calls for a legal  
4 conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's  
5 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
6 Department of Taxation Response to Request No. 11.

7 **INTERROGATORY NO. 12:** Please set forth in detail each and every fact which supports  
8 your Twelfth Affirmative Defense.

9 **RESPONSE TO INTERROGATORY NO. 12:** Objection. This request calls for a legal  
10 conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's  
11 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
12 Department of Taxation Response to Request No. 12.

13 **INTERROGATORY NO. 13:** Please set forth in detail each and every fact which supports  
14 your Thirteenth Affirmative Defense.

15 **RESPONSE TO INTERROGATORY NO. 13:** Objection. This request calls for a legal  
16 conclusion. Notwithstanding this objection, please see Nevada Department of Taxation's  
17 Response to Plaintiff's First Request for Production of Documents to the State of Nevada  
18 Department of Taxation Response to Request No. 13.

19 **INTERROGATORY NO. 14:** Please state the name, address and telephone number of any  
20 Expert with whom you have consulted or retained in regard to any issues in this action.

21 **RESPONSE TO INTERROGATORY NO. 14:** The Department has not consulted or retained  
22 any expert in regard to any issues in this action.

23 **INTERROGATORY NO. 15:** As to each and every expert listed under Interrogatory 14,  
24 please state the area of expertise of said expert, the substance of any proposed expert  
25 opinion or testimony from such expert and whether or not such expert will be called as a  
26 witness at any trial in this matter.

27 **RESPONSE TO INTERROGATORY NO. 15:** See Response to Interrogatory No. 14.

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1 **INTERROGATORY NO. 16:** Please state the name, address and telephone number of any  
2 and all persons who have any information regarding any of the claims or defenses raised by  
3 any party in this action.

4 **RESPONSE TO INTERROGATORY NO. 16:** Objection. This request is overly broad, unduly  
5 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.  
6 Notwithstanding this objection, please see witnesses listed in Defendants' Early Case  
7 Conference Disclosures, Plaintiff's Initial Disclosures Pursuant to Nev. R. Civ. P. 16.1,  
8 Defendants Nevada Department of Taxation and Nevada Treasurers' First Supplement to  
9 Early Case Conference Disclosures, and Plaintiff's First Supplemental Disclosures Pursuant  
10 to NRCP 16.1.

11 In addition to Marvin Leavitt, Chairman of the Committee on Local Government  
12 Finance, who was identified in Plaintiff's Initial Disclosures Pursuant to Nev. R. Civ. P. 16.1,  
13 other past and present members of the Committee on Local Government Finance may have  
14 information regarding the claims or defenses raised by the parties in this action.

15 Members of the Fernley Incorporation Committee, Debra Brazell, Chairman, Randy  
16 Ashley, Linda Gregory, Karen Streckfus, Dave Zimmerman, and Michelle Mackler may have  
17 information regarding the claims or defenses raised by the parties in this action. The  
18 Department does not have current addresses and telephone numbers for these persons.

19 Persons serving on the Fernley Town Board and employees of the Town of Fernley  
20 prior to the City of Fernley's incorporation may also have information regarding the claims or  
21 defenses raised by the parties in this action. These persons include, but are not limited to,  
22 Dan Bauer, Boyd Danks, Danny Lunsford, Don Parsons, William "Al" Piper, David Stix, Jr.,  
23 Gary Babcock, Rebecca Harold, Elaine Orr Bowman, Kurt Kramer, and Patricia Norman. The  
24 contact information for these persons may be outdated but was provided in Exhibit 14 to  
25 Defendants Nevada Department of Taxation and Nevada Treasurers' First Supplement to  
26 Early Case Conference Disclosures.

27 **INTERROGATORY NO. 17:** To the extent that any of your responses to the Request for  
28 Admissions, which were served concurrently with these Interrogatories, are anything but an

1 unqualified admission, please set forth the number of the Request for Admission and state for  
2 each such Request for Admission each and every fact which supports your response or  
3 denial.

4 **RESPONSE TO INTERROGATORY NO. 17:**

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:** The Department is unable to  
6 admit or deny definitively but is not aware of any municipality, other than Femley, incorporated  
7 in Nevada since the enactment of SB 254. It is possible but highly unlikely that a city  
8 incorporated without advising the Department.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:** Admit, based on the State  
10 demographer's report through July 1, 2012. The Department is unable to admit or deny for  
11 the time period subsequent to July 1, 2012.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:** There were no C-Tax  
13 distributions in 1997. C-Tax distributions did not begin until fiscal year 1999.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:** Based upon information and  
15 belief, the Department affirmatively alleges that the actual number is \$100,032.03.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:** Based upon information and  
17 belief, the Department affirmatively alleges that the actual number is \$143,143.34.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:** Tier 2 distributions may be  
19 adjusted pursuant to NRS 360.695 and/or 360.730.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:** There have been several  
21 reorganizations of fire protection districts that have not resulted in a local government  
22 consenting to accept less C-Tax revenue. The fire districts that were created assumed the  
23 services of the fire protection district that was dissolved.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:** The request calls for a legal  
25 conclusion. Notwithstanding this objection, an entity requesting an allocation pursuant to NRS  
26 360.740 must provide police protection.

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1       **RESPONSE TO REQUEST FOR ADMISSION NO. 16:** The Department is unable to  
2 admit or deny because the Department is not required to keep records concerning the  
3 examination of local governmental service levels prior to the 1997 enactment of SB 254.

4       **RESPONSE TO REQUEST FOR ADMISSION NO. 20:** Based upon information and  
5 belief, the Department affirmatively alleges that the actual number is \$249,725.29.

6       **RESPONSE TO REQUEST FOR ADMISSION NO. 22:** Based upon information and  
7 belief, the Department affirmatively alleges that the actual number is \$331,204.12.

8       **RESPONSE TO REQUEST FOR ADMISSION NO. 24:** Based upon information and  
9 belief, the Department affirmatively alleges that the actual number is \$204,065.81.

10       **RESPONSE TO REQUEST FOR ADMISSION NO. 26:** Based upon information and  
11 belief, the Department affirmatively alleges that the actual number is \$1,531,324.79.

12       **RESPONSE TO REQUEST FOR ADMISSION NO. 27:** Based upon information and  
13 belief, the Department affirmatively alleges that the actual number is \$721,829.

14       **RESPONSE TO REQUEST FOR ADMISSION NO. 28:** Based upon information and  
15 belief, the Department affirmatively alleges that the actual number is \$298,085.26.

16       **RESPONSE TO REQUEST FOR ADMISSION NO. 29:** Based upon information and  
17 belief, the Department affirmatively alleges that the actual number is \$82,619.

18       **RESPONSE TO REQUEST FOR ADMISSION NO. 30:** Based upon information and  
19 belief, the Department affirmatively alleges that the actual number is \$11,015,988.74.

20       **RESPONSE TO REQUEST FOR ADMISSION NO. 31:** Based upon information and  
21 belief, the Department affirmatively alleges that the actual number is \$8,354,279.

22       **RESPONSE TO REQUEST FOR ADMISSION NO. 32:** Based upon information and  
23 belief, the Department affirmatively alleges that the actual number is \$1,179,403.67.

24       **RESPONSE TO REQUEST FOR ADMISSION NO. 33:** Based upon information and  
25 belief, the Department affirmatively alleges that the actual number is \$796,030.

26       **RESPONSE TO REQUEST FOR ADMISSION NO. 34:** Based upon information and  
27 belief, the Department affirmatively alleges that the actual number is \$143,741.47.

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1       **RESPONSE TO REQUEST FOR ADMISSION NO. 35:** Based upon information and  
2 belief, the Department affirmatively alleges that the actual number is \$75,000.

3       **INTERROGATORY NO. 18:** If you are claiming that C-Tax distributions to a local government  
4 are based in any way on the provision of public safety or other government services by a local  
5 government, please set forth in detail each and every fact which supports such a claim.

6       **RESPONSE TO INTERROGATORY NO. 18:** The initial C-Tax distributions for a newly  
7 created governmental entity are based on the formula set forth in NRS 360.740, which  
8 requires the entity to provide police protection in order to receive a C-Tax distribution. The  
9 distribution may be adjusted pursuant to NRS 360.730 and/or NRS 354.598747 if a local  
10 government opts to provide public safety or other governmental services at a later date.

11       **INTERROGATORY NO. 19:** If you are claiming that C-Tax distributions to Fernley, Nevada  
12 are based in any way on the provision of public safety or other government services, please  
13 set forth in detail each and every fact which supports such a claim.

14       **RESPONSE TO INTERROGATORY NO. 19:** The City of Fernley could seek additional C-Tax  
15 revenue pursuant to NRS 360.730 and/or 354.598747.

16       **INTERROGATORY NO. 20:** Please set forth in detail each and every fact which explains how  
17 Fernley, Nevada may receive an increased C-Tax Revenue distribution.

18       **RESPONSE TO INTERROGATORY NO. 20:** Objection. This request calls for a legal  
19 conclusion, is irrelevant, and not reasonably calculated to lead to the discovery of admissible  
20 evidence. Notwithstanding these objections, the Department makes C-Tax distributions  
21 based upon Chapter 360 of the Nevada Revised Statutes.

22       **INTERROGATORY NO. 21:** Please describe in detail all investigations, studies, reports or  
23 examinations undertaken by Taxation prior to the enactment of SB 254 regarding any prior  
24 formula for revenue distribution.

25       **RESPONSE TO INTERROGATORY NO. 21:** Objection. This request is overly broad, unduly  
26 burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible  
27 evidence. Notwithstanding these objections, the Department is not required to keep records  
28 of investigations, studies, reports or examinations undertaken prior to 1997.

1 **INTERROGATORY NO. 22:** Please describe in detail all investigations, studies, reports or  
2 examinations prepared or undertaken by Taxation from the enactment of SB 254 to the  
3 present regarding C-Tax revenues.

4 **RESPONSE TO INTERROGATORY NO. 22:** Objection. This request is overly broad, unduly  
5 burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible  
6 evidence. Notwithstanding these objections, the Department is not required to conduct  
7 investigations, studies, reports or examinations regarding C-Tax. The Department has  
8 provided statistical information at the request of the legislature which has been incorporated  
9 into legislative studies and reports.

10 **INTERROGATORY NO. 23:** If no investigations, studies, reports or examinations were  
11 prepared or undertaken by Taxation regarding C-Tax revenues from the enactment of SB 254  
12 to the present date, please explain each and every reason why not.

13 **RESPONSE TO INTERROGATORY NO. 23:** Objection. This request is not relevant, nor is it  
14 likely to lead to the discovery of admissible evidence. Notwithstanding these objections, the  
15 Department is not required to conduct investigations, studies, reports or examinations  
16 regarding C-Tax.

17 **INTERROGATORY NO. 24:** Please set forth in detail each and every adjustment to C-Tax  
18 revenue distributions to a local government since the enactment of SB 254 pursuant to either  
19 NRS 360.740 or NRS 354.598747.

20 **RESPONSE TO INTERROGATORY NO. 24:** Objection. This request calls for irrelevant  
21 information and is not reasonably likely to lead to the discovery of admissible information.  
22 Notwithstanding these objections, the Department is not aware of any adjustments to C-Tax  
23 revenue to a local government since the enactment of SB 254 pursuant to either NRS 360.740  
24 or NRS 354.598747.

25 **INTERROGATORY NO. 25:** Please identify, with particularity, each and every document,  
26 writing, publication or other tangible item contained on the Nevada Department of Taxation  
27 website concerning C-Tax distribution and which you believe is relevant to or pertains in any  
28 manner to the issues related to Plaintiff s Complaint.

1 **RESPONSE TO INTERROGATORY NO. 25:** Objection. This request calls for the disclosure  
2 of attorney-client work product, and calls for a legal conclusion. Notwithstanding this  
3 objection, consolidated Tax Distribution reports are available on the Nevada Department of  
4 Taxation's website.

5 **INTERROGATORY NO. 26:** Please set forth in detail each and every request for adjustment  
6 to C-Tax distributions by a local government in Nevada since the enactment of SB 254  
7 pursuant to either NRS 360.740 or NRS 354.598747, regardless of whether any such  
8 requests were granted, denied, withdrawn or otherwise.

9 **RESPONSE TO INTERROGATORY NO. 26:** The Department is not aware of any requests  
10 for adjustment to C-Tax distributions by a local government in Nevada since the enactment of  
11 SB 254 pursuant to either NRS 360.740 or NRS 354.598747.

12 **INTERROGATORY NO. 27:** Please identify any local government or federal governmental  
13 entity other than the City of Fernley that have/has a property tax assessment for fire protection  
14 since the enactment of SB 254.

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1 **RESPONSE TO INTERROGATORY NO. 27:** Objection. This request is overly broad, unduly  
2 burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

3 Notwithstanding these objections:

4 Churchill County – 3 cents for fire equipment, voter approved override passed in  
5 November 4, 2008, expires June 30, 2015;

6 Las Vegas – 9-1/2 cents for fire equipment, facilities and staff, voter approved override  
7 passed November 7, 2000, expires June 30, 2031; and,

8 City of Reno – 7.15 cents for fire facilities and equipment, voter approved override  
9 passed November 5, 1996, expires June 30, 2027.

10 This data comes from the "Redbook" at:

11 [http://tax.state.nv.us/DOAS\\_FORMS/Final%20FY%202013-2014%20Levied%207-15-13.pdf](http://tax.state.nv.us/DOAS_FORMS/Final%20FY%202013-2014%20Levied%207-15-13.pdf)

12 DATED this 14<sup>th</sup> day of October, 2013.

13 CATHERINE CORTEZ MASTO  
14 Attorney General

15 By:

Andrea Nichols

16 ANDREA NICHOLS  
17 Senior Deputy Attorney General  
18 Nevada Bar No. 6436  
19 5420 Kietzke Lane, Suite 202  
20 Reno, NV 89511  
21 (775) 688-1818

22 *Attorneys for Defendants, Nevada Department*  
23 *of Taxation and Nevada Treasurer*  
24  
25  
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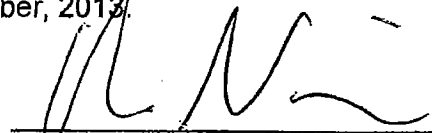
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**VERIFICATION**

I, CHRISTOPHER NIELSEN, have read the foregoing **NEVADA DEPARTMENT OF TAXATION'S RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO THE STATE OF NEVADA DEPARTMENT OF TAXATION** and am familiar with the contents. The matters stated therein are true of my own knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

Executed on this 11 day of October, 2013.

By:



CHRISTOPHER NIELSEN  
Executive Director  
Nevada Department of Taxation

Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on this 14<sup>th</sup> day of October, 2013, pursuant to NRCP 5(b) and the parties' stipulation and consent to service by electronic means, I served a true copy of the foregoing, **NEVADA DEPARTMENT OF TAXATION'S RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO THE STATE OF NEVADA DEPARTMENT OF TAXATION**, by electronic mail, directed to the following:

Joshua Hicks, Esq.  
Clark Vellis, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
50 W. Liberty Street, Suite 1030  
Reno, NV 89501  
jhicks@bhfs.com  
cvellis@bhfs.com

Brandi Jensen, Fernley City Attorney  
Office of the City Attorney  
595 Silver Lace Blvd.  
Fernley, NV 89408  
bjensen@cityoffernley.org



An Employee of the Office  
of the Attorney General

Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

1 CATHERINE CORTEZ MASTO, Attorney General  
2 GINA C. SESSION, Chief Deputy Attorney General  
3 Nevada Bar No. 5493  
4 Email: gsession@ag.nv.gov  
5 ANDREA NICHOLS, Senior Deputy Attorney General  
6 Nevada Bar No. 6436  
7 5420 Kietzke Lane, Suite 202  
8 Reno, NV 89511  
9 (775) 688-1818  
10 anichols@ag.nv.gov  
11 *Attorneys for Defendants Nevada Department of Taxation*  
12 *and Kate Marshall, State Treasurer*

13  
14 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
15  
16 **IN AND FOR CARSON CITY**

17 CITY OF FERNLEY, NEVADA, a Nevada  
18 municipal corporation,

19 Plaintiff,

20 v.

21 STATE OF NEVADA, ex rel. THE NEVADA  
22 DEPARTMENT OF TAXATION; THE  
23 HONORABLE KATE MARSHALL, in her  
24 official capacity as TREASURER OF THE  
25 STATE OF NEVADA; and DOES 1-20,  
26 Inclusive,

27 Defendants,

28 NEVADA LEGISLATURE,

Intervener.

Case No.: 12 OC 00168 1B

Dept. No.: I

29  
30 **NEVADA DEPARTMENT OF TAXATION'S RESPONSE TO**  
31 **PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**  
32 **TO THE STATE OF NEVADA DEPARTMENT OF TAXATION**

33 Defendant, the State of Nevada ex rel. its Department of Taxation, by and through its  
34 attorneys, Catherine Cortez Masto, Attorney General of the State of Nevada, and Senior  
35 Deputy Attorney General, Andrea Nichols, hereby responds to City of Fernley's Request for  
36 Production of Documents.

37 ///

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**GENERAL OBJECTIONS**

1  
2 1. By responding to Plaintiff's First Request, the Legislature does not in any way  
3 waive its right to object to the use of the discovery responses at any time or on any ground in  
4 this or any other proceeding. Furthermore, discovery in this action is based upon information  
5 presently in the possession of the Legislature and therefore the Legislature reserves the right  
6 to amend any response in the event new information may become known or available during  
7 the course of discovery.

8 2. By responding to Plaintiff's First Request, the Legislature does not in any way  
9 adopt Plaintiff's definitions of words or phrases set forth in Plaintiff's First Request. The  
10 Legislature objects to those definitions to the extent they are inconsistent with: (1) any  
11 definitions set forth in the Legislature's responses; or (2) the ordinary and customary meaning  
12 of the words or phrases. Additionally, the Legislature objects to Plaintiff's definitions to the  
13 extent they attempt to impose upon the Legislature any duties or obligations broader than, or  
14 inconsistent with, applicable rules of discovery or common law.

15 3. By responding to Plaintiff's First Request, the Legislature does not in any way  
16 admit, adopt or acquiesce in any factual or legal contention, presumption, assertion or  
17 characterization set forth in Plaintiff's First Request.

18 4. The Legislature objects to each and every request to the extent they seek  
19 information or documents protected by legislative privilege and immunity, deliberative process  
20 privilege, attorney-client privilege, the work product doctrine or any other applicable privilege  
21 or immunity. Any inadvertent disclosure of such information or documents protected by an  
22 applicable privilege or immunity is not intended be, and is not to be construed as, a waiver of  
23 any such privilege or immunity.

24 5. The Legislature objects to each and every request to the extent they seek  
25 information or documents that are irrelevant and not reasonably calculated to lead to the  
26 discovery of admissible evidence.

27 ///

28 ///

1           6.     The Legislature objects to each and every request to the extent they seek  
2 information or documents constituting the mental impressions, conclusions, opinions or legal  
3 theories of the Legal Division of the Legislative Counsel Bureau.

4           7.     The Legislature objects to each and every request to the extent they seek  
5 information or documents constituting opinions of law that are beyond the scope of  
6 permissible discovery.

7           8.     The Legislature objects to each and every request to the extent they are  
8 calculated to annoy or harass or otherwise seek information or documents that are  
9 unreasonably cumulative, duplicative, vague, ambiguous, overly broad or unduly burdensome.

10          9.     The Legislature objects to each and every request to the extent they seek  
11 information that are equally available to Plaintiff, publicly available or obtainable from another  
12 source which is more convenient, less burdensome or less expensive. Additionally, the  
13 Legislature objects to each and every request to the extent that the requested information or  
14 documents are solely in the possession, custody or control of a party other than the  
15 Legislature.

16          10.    The Legislature objects to each and every request to the extent they impose  
17 duties or obligations beyond any which are properly imposed pursuant to the applicable  
18 provisions of NRCP and the Local Rules of this court.

19          11.    The Legislature hereby responds to Plaintiff's First Request without conceding  
20 the relevancy or materiality of the subject matter of any of the requests and without prejudice  
21 to the Legislature's right to object to further discovery or to the admissibility of any answer at  
22 the time of hearing or trial.

23          12.    The foregoing general objections are hereby incorporated into each specific  
24 response by the Legislature.

25                Without waiver of any of the general objections, the Legislature responds as follows:

26                               **RESPONSES**

27           ///

28           ///

1 **REQUEST NO. 1:** Please produce each and every document, writing or other tangible item  
2 which in any way supports your First Affirmative Defense as set forth in your answer to  
3 Plaintiff's Complaint.

4 **RESPONSE TO REQUEST NO. 1:** Objection. This request is overly broad, unduly  
5 burdensome, calls for a legal conclusion, and seeks attorney work product. Notwithstanding  
6 these objections, please see State of Nevada's Motion to Dismiss, filed herein on August 3,  
7 2012, Nevada Legislature's Motion to Dismiss, filed herein on August 16, 2012, State of  
8 Nevada's Reply to Opposition to Motion to Dismiss, filed herein on August 27, 2012, Petition  
9 for Writ of Mandamus filed in Case No. 62050 in the Nevada Supreme Court on November 5,  
10 2012, and all documents related to said appeal.

11 **REQUEST NO. 2:** Please produce each and every document, writing or other tangible item  
12 which in any way supports your Second Affirmative Defense as set forth in your answer to  
13 Plaintiff's Complaint.

14 **RESPONSE TO REQUEST NO. 2:** Objection. This request is overly broad, unduly  
15 burdensome, calls for a legal conclusion, and seeks attorney work product. Notwithstanding  
16 these objections, please see State of Nevada's Motion to Dismiss, filed herein on August 3,  
17 2012, Nevada Legislature's Motion to Dismiss, filed herein on August 16, 2012, State of  
18 Nevada's Reply to Opposition to Motion to Dismiss, filed herein on August 27, 2012, Petition  
19 for Writ of Mandamus filed in Case No. 62050 in the Nevada Supreme Court on November 5,  
20 2012, and all documents related to said appeal. See also Defendants Nevada Department of  
21 Taxation and Nevada Treasurers' First Supplement to Early Case Conference Disclosures  
22 and Plaintiff's Complaint, filed herein on June 6, 2012.

23 **REQUEST NO. 3:** Please produce each and every document, writing or other tangible item  
24 which in any way supports your Third Affirmative Defense as set forth in your answer to  
25 Plaintiff's Complaint.

26 **RESPONSE TO REQUEST NO. 3:** Objection. This request is overly broad, unduly  
27 burdensome, calls for a legal conclusion, and seeks attorney work product. Notwithstanding  
28 these objections, please see State of Nevada's Motion to Dismiss, filed herein on August 3,

1 2012, Nevada Legislature's Motion to Dismiss, filed herein on August 16, 2012, State of  
2 Nevada's Reply to Opposition to Motion to Dismiss, filed herein on August 27, 2012, Petition  
3 for Writ of Mandamus filed in Case No. 62050 in the Nevada Supreme Court on November 5,  
4 2012, and all documents related to said appeal. See also Defendants Nevada Department of  
5 Taxation and Nevada Treasurers' First Supplement to Early Case Conference Disclosures  
6 and Plaintiff's Complaint, filed herein on June 6, 2012.

7 **REQUEST NO. 4:** Please produce each and every document, writing or other tangible item  
8 which in any way supports your Fourth Affirmative Defense as set forth in your answer to  
9 Plaintiff's Complaint.

10 **RESPONSE TO REQUEST NO. 4:** Objection. This request is overly broad, unduly  
11 burdensome, calls for a legal conclusion, and seeks attorney work product. Notwithstanding  
12 these objections, please see State of Nevada's Motion to Dismiss, filed herein on August 3,  
13 2012, Nevada Legislature's Motion to Dismiss, filed herein on August 16, 2012, State of  
14 Nevada's Reply to Opposition to Motion to Dismiss, filed herein on August 27, 2012, Petition  
15 for Writ of Mandamus filed in Case No. 62050 in the Nevada Supreme Court on November 5,  
16 2012, and all documents related to said appeal. See also Defendants Nevada Department of  
17 Taxation and Nevada Treasurers' First Supplement to Early Case Conference Disclosures  
18 and Plaintiff's Complaint, filed herein on June 6, 2012.

19 **REQUEST NO. 5:** Please produce each and every document, writing or other tangible item  
20 which in any way supports your Fifth Affirmative Defense as set forth in your answer to  
21 Plaintiff's Complaint.

22 **RESPONSE TO REQUEST NO. 5:** Objection. This request is overly broad, unduly  
23 burdensome, calls for a legal conclusion, and seeks attorney work product. Notwithstanding  
24 these objections, please see State of Nevada's Motion to Dismiss, filed herein on August 3,  
25 2012, Nevada Legislature's Motion to Dismiss, filed herein on August 16, 2012, State of  
26 Nevada's Reply to Opposition to Motion to Dismiss, filed herein on August 27, 2012, Petition  
27 for Writ of Mandamus filed in Case No. 62050 in the Nevada Supreme Court on November 5,  
28 2012, and all documents related to said appeal. See also Defendants Nevada Department of



1 Taxation and Nevada Treasurers' First Supplement to Early Case Conference Disclosures  
2 and Plaintiff's Complaint, filed herein on June 6, 2012.

3 **REQUEST NO. 6:** Please produce each and every document, writing or other tangible item  
4 which in any way supports your Sixth Affirmative Defense as set forth in your answer to  
5 Plaintiff's Complaint.

6 **RESPONSE TO REQUEST NO. 6:** Objection. This request is overly broad, unduly  
7 burdensome, calls for a legal conclusion, and seeks attorney work product. Notwithstanding  
8 these objections, please see State of Nevada's Motion to Dismiss, filed herein on August 3,  
9 2012, Nevada Legislature's Motion to Dismiss, filed herein on August 16, 2012, State of  
10 Nevada's Reply to Opposition to Motion to Dismiss, filed herein on August 27, 2012, Petition  
11 for Writ of Mandamus filed in Case No. 62050 in the Nevada Supreme Court on November 5,  
12 2012, and all documents related to said appeal. See also Defendants Nevada Department of  
13 Taxation and Nevada Treasurers' First Supplement to Early Case Conference Disclosures  
14 and Plaintiff's Complaint, filed herein on June 6, 2012.

15 **REQUEST NO. 7:** Please produce each and every document, writing or other tangible item  
16 which in any way supports your Seventh Affirmative Defense as set forth in your answer to  
17 Plaintiff's Complaint.

18 **RESPONSE TO REQUEST NO. 7:** Objection. This request is overly broad, unduly  
19 burdensome, calls for a legal conclusion, and seeks attorney work product. Notwithstanding  
20 these objections, please see State of Nevada's Motion to Dismiss, filed herein on August 3,  
21 2012, Nevada Legislature's Motion to Dismiss, filed herein on August 16, 2012, State of  
22 Nevada's Reply to Opposition to Motion to Dismiss, filed herein on August 27, 2012, Petition  
23 for Writ of Mandamus filed in Case No. 62050 in the Nevada Supreme Court on November 5,  
24 2012, and all documents related to said appeal. See also Defendants Nevada Department of  
25 Taxation and Nevada Treasurers' First Supplement to Early Case Conference Disclosures  
26 and Plaintiff's Complaint, filed herein on June 6, 2012. See also NRS 360.740 and  
27 354.598747.

28 ///

1 **REQUEST NO. 8:** Please produce each and every document, writing or other tangible item  
2 which in any way supports your Eighth Affirmative Defense as set forth in your answer to  
3 Plaintiff's Complaint.

4 **RESPONSE TO REQUEST NO. 8:** Objection. This request is overly broad, unduly  
5 burdensome, calls for a legal conclusion, and seeks attorney work product. Notwithstanding  
6 these objections, please see State of Nevada's Motion to Dismiss, filed herein on August 3,  
7 2012, Nevada Legislature's Motion to Dismiss filed herein on August 16, 2012, State of  
8 Nevada's Reply to Opposition to Motion to Dismiss, filed herein on August 27, 2012, Petition  
9 for Writ of Mandamus filed in Case No. 62050 in the Nevada Supreme Court on November 5,  
10 2012, and all documents related to said appeal. See also Defendants Nevada Department of  
11 Taxation and Nevada Treasurers' First Supplement to Early Case Conference Disclosures  
12 and Plaintiff's Complaint, filed herein on June 6, 2012.

13 **REQUEST NO. 9:** Please produce each and every document, writing or other tangible item  
14 which in any way supports your Ninth Affirmative Defense as set forth in your answer to  
15 Plaintiff's Complaint.

16 **RESPONSE TO REQUEST NO. 9:** Objection. This request is overly broad, unduly  
17 burdensome, and calls for a legal conclusion. Notwithstanding this objection, please see  
18 State of Nevada's Motion to Dismiss, filed herein on August 3, 2012, Nevada Legislature's  
19 Motion to Dismiss, filed herein on August 16, 2012, State of Nevada's Reply to Opposition to  
20 Motion to Dismiss, filed herein on August 27, 2012, Petition for Writ of Mandamus filed in  
21 Case No. 62050 in the Nevada Supreme Court on November 5, 2012, and all documents  
22 related to said appeal.

23 **REQUEST NO. 10:** Please produce each and every document, writing or other tangible item  
24 which in any way supports your Tenth Affirmative Defense as set forth in your answer to  
25 Plaintiff's Complaint.

26 **RESPONSE TO REQUEST NO. 10:** Objection. This request is overly broad, unduly  
27 burdensome, and calls for a legal conclusion. Notwithstanding this objection, please see  
28 State of Nevada's Motion to Dismiss, filed herein on August 3, 2012, Nevada Legislature's

1 Motion to Dismiss, filed herein August 16, 2012, State of Nevada's Reply to Opposition to  
2 Motion to Dismiss, filed herein on August 27, 2012, Petition for Writ of Mandamus filed in  
3 Case No. 62050 in the Nevada Supreme Court on November 5, 2012, and all documents  
4 related to said appeal. See in particular Nevada Supreme Court Order Granting in Part and  
5 Denying in Part Petition for Writ of Mandamus filed in Case No. 62050 in the Nevada  
6 Supreme Court on January 25, 2013.

7 **REQUEST NO. 11:** Please produce each and every document, writing or other tangible item  
8 which in any way supports your Eleventh Affirmative Defense as set forth in your answer to  
9 Plaintiff's Complaint.

10 **RESPONSE TO REQUEST NO. 11:** Objection. This request is overly broad, unduly  
11 burdensome, calls for a legal conclusion, and seeks attorney work product. Notwithstanding  
12 these objections, please see State of Nevada's Motion to Dismiss, filed herein on August 3,  
13 2012, Nevada Legislature's Motion to Dismiss, filed herein on August 16, 2012, State of  
14 Nevada's Reply to Opposition to Motion to Dismiss, filed herein on August 27, 2012, Petition  
15 for Writ of Mandamus filed in Case No. 62050 in the Nevada Supreme Court on November 5,  
16 2012, and all documents related to said appeal.

17 **REQUEST NO. 12:** Please produce each and every document, writing or other tangible item  
18 which in any way supports your Twelfth Affirmative Defense as set forth in your answer to  
19 Plaintiff's Complaint.

20 **RESPONSE TO REQUEST NO. 12:** Objection. This request is overly broad, unduly  
21 burdensome, calls for a legal conclusion, and seeks attorney work product. Notwithstanding  
22 these objections, please see State of Nevada's Motion to Dismiss, filed herein on August 3,  
23 2012, Nevada Legislature's Motion to Dismiss, filed herein on August 16, 2012, State of  
24 Nevada's Reply to Opposition to Motion to Dismiss, filed herein on August 27, 2012, Petition  
25 for Writ of Mandamus filed in Case No. 62050 in the Nevada Supreme Court on November 5,  
26 2012, and all documents related to said appeal.

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1 **REQUEST NO. 13:** Please produce each and every document, writing or other tangible item  
2 which in any way supports your Thirteenth Affirmative Defense as set forth in your answer to  
3 Plaintiff's Complaint.

4 **RESPONSE TO REQUEST NO. 13:** Objection. This request is overly broad, unduly  
5 burdensome, calls for a legal conclusion, and seeks attorney work product. Notwithstanding  
6 these objections, please see State of Nevada's Motion to Dismiss, filed herein on August 3,  
7 2012, Nevada Legislature's Motion to Dismiss, filed herein on August 16, 2012, State of  
8 Nevada's Reply to Opposition to Motion to Dismiss, filed herein on August 27, 2012, Petition  
9 for Writ of Mandamus filed in Case No. 62050 in the Nevada Supreme Court on November 5,  
10 2012, and all documents related to said appeal.

11 **REQUEST NO. 14:** Please produce each and every document, writing, or other tangible item  
12 which in any way supports any claim that C-Tax distributions to local governments are linked  
13 to public safety or to any particular category or type of expense.

14 **RESPONSE TO REQUEST NO. 14:** Objection. This request is overly broad, unduly  
15 burdensome, and calls for a legal conclusion. Notwithstanding these objections, please see  
16 NRS 354.598747 and 360.740. See also excel spreadsheets attached hereto showing  
17 revenue and expenditures for Nevada counties.

18 **REQUEST NO. 15:** Please produce each and every document, writing, or other tangible item  
19 which in any way supports a claim that C-Tax distributions to local governments were related  
20 to government service levels as examined in 1997 or anytime thereafter.

21 **RESPONSE TO REQUEST NO. 15:** Objection as to the form of the question as it assumes  
22 facts, is vague, and appears to call for a legal conclusion. Notwithstanding these objections,  
23 any such documents are most likely a matter of public record, and, see excel spreadsheets  
24 produced in response to Request No. 14.

25 **REQUEST NO. 16:** Please produce each and every document, writing, or other tangible item  
26 that in any way demonstrates that C-Tax revenues were adequate for services provided or  
27 needed by local governments dating from the enactment of SB 254 to the present.

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1 **RESPONSE TO REQUEST NO. 16:** Objection as to the form of the question as it assumes  
2 facts, is vague, and appears to call for a legal conclusion. Notwithstanding these objections,  
3 any such documents are most likely a matter of public record. Further, the Department of  
4 Taxation is not aware of any requirement that it maintain documents responsive to this  
5 request. Notwithstanding these objections, see excel spreadsheets produced in response to  
6 Request No. 14.

7 **REQUEST NO. 17:** Please produce each and every document, writing, or other tangible item  
8 which in any way shows or demonstrates the existence of any investigation or examination of  
9 local government service levels at the time SB 254 was enacted.

10 **RESPONSE TO REQUEST NO. 17:** Objection as to the form of the question as it assumes  
11 facts, is vague, and appears to call for a legal conclusion. Such documents are most likely a  
12 matter of public record. Further, the Department of Taxation is not aware of any requirement  
13 that it maintain documents responsive to this request. Notwithstanding these objections, see  
14 Legislative Counsel Bulletin No. 97-5 filed in this matter as Exhibit "1" to Nevada Legislature's  
15 Joinder in Motion to Dismiss.

16 **REQUEST NO. 18:** Please produce each and every document, writing, or other tangible item  
17 which in anyway demonstrates that government service levels of existing governmental  
18 participants were examined in the setting up of the C-Tax system that is the subject of this  
19 litigation.

20 **RESPONSE TO REQUEST NO. 18:** Objection as to the form of the question as it assumes  
21 facts and is vague; the Department of Taxation did not set up the C-Tax system and is not  
22 aware of any requirement that it maintain documents responsive to this request. Such  
23 documents are most likely a matter of public record. Notwithstanding these objections, see  
24 response to Request No. 17.

25 **REQUEST NO. 19:** Please produce each and every document, writing, or other tangible item  
26 which in any way demonstrates the levels of spending by local governments on public safety  
27 dating from the enactment of SB 254 to present.

28 ///

1 **RESPONSE TO REQUEST NO. 19:** Objection. This request is overly broad, unduly  
2 burdensome, and calls for a legal conclusion. Notwithstanding these objections, please see  
3 excel spreadsheets produced in response to Request No. 14 showing revenue and  
4 expenditures for Nevada counties.

5 **REQUEST NO. 20:** Please produce each and every document, writing, or other tangible item  
6 which in any way demonstrates the relationship between C-Tax revenues to local government  
7 entities and the spending on public safety by each and every such governmental entity  
8 receiving C-Tax revenues dating from the enactment of SB 254 to present.

9 **RESPONSE TO REQUEST NO. 20:** The Department is not in possession of documents  
10 responsive to this request.

11 **REQUEST NO. 21:** Please produce each and every document, writing, or other tangible item  
12 which in any way demonstrates any adjustment in C-Tax distributions to a local government  
13 since the enactment of SB 254.

14 **RESPONSE TO REQUEST NO. 21:** Objection. This request is overly broad and unduly  
15 burdensome. Notwithstanding this objection, see Legislative history of Consolidated Tax  
16 Distribution which is a matter of public record, and is available from the Legislative Counsel  
17 Bureau. See also City of Fernley's 16.1 Documents numbered 1-1476.

18 **REQUEST NO. 22:** Please produce each and every document, writing, or other tangible item  
19 which in anyway demonstrates a requirement that C-Tax distributions be linked to public  
20 safety or to any particular category or type of governmental expense.

21 **RESPONSE TO REQUEST NO. 22:** Objection. This request is overly broad, unduly  
22 burdensome, vague, and appears to call for a legal conclusion. The Department is not  
23 required to possess such documents in the ordinary course of business. Notwithstanding  
24 these objections, see response to Request No. 14 above.

25 **REQUEST NO. 23:** Please produce each and every document, writing, or other tangible item  
26 which in anyway demonstrates that local governments utilize C-Tax revenues to support  
27 public safety or any other specific services.

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1 **RESPONSE TO REQUEST NO. 23:** Objection. This request is overly broad and unduly  
2 burdensome. Notwithstanding these objections, see NRS 354.598747 and 360.740. See also  
3 excel spreadsheets produced in response to Request No. 14 showing revenue and  
4 expenditures for Nevada counties.

5 **REQUEST NO. 24:** Please produce each and every document, writing or other tangible item  
6 which demonstrates that the C-Tax has decreased the competition among local governments  
7 for tax revenue.

8 **RESPONSE TO REQUEST NO. 24:** Objection. This request is subjective, assumes facts,  
9 and calls for a legal conclusion. Further, the Department is not aware of any requirement that  
10 it maintain documents responsive to this request in the ordinary course of business.

11 **REQUEST NO. 25:** Please produce the publications available on the Nevada Department of  
12 Taxation website concerning consolidated tax distribution and which were identified but not  
13 produced as part of your NRCP 16.1 initial disclosures.

14 **RESPONSE TO REQUEST NO. 25:** Plaintiff may obtain copies of the consolidated Tax  
15 Distribution reports from the Nevada Department of Taxation's website.

16 **REQUEST NO. 26:** Please produce a complete copy of the "Consolidated Tax Distribution"  
17 power point presentation prepared by the Nevada Department of Taxation and any  
18 documents, writings, or materials used in the preparation of said power point presentation.

19 **RESPONSE TO REQUEST NO. 26:** The Department is providing the most recent version of  
20 this presentation. Nevada Revised Statutes were utilized in the preparation of said power  
21 point presentation.

22 **REQUEST NO. 27:** Please produce any and all annual summaries of C-Tax distributions to  
23 all recipients, showing Tier 1 and Tier 2 (base and excess) distributions for the period dating  
24 from the enactment of SB 254 to the present.

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1 **RESPONSE TO REQUEST NO. 27:** Objection. This request is overly broad and unduly  
2 burdensome. Notwithstanding these objections, see excel spreadsheets produced in  
3 response to Request No. 14.

4 DATED this 14<sup>th</sup> day of October, 2013.

5 CATHERINE CORTEZ MASTO  
6 Attorney General

7 By:



8 ANDREA NICHOLS  
9 Senior Deputy Attorney General  
10 Nevada Bar No. 6436  
11 5420 Kietzke Lane, Suite 202  
12 Reno, NV 89511  
13 (775) 688-1818

14 *Attorneys for Defendants, Nevada Department*  
15 *of Taxation and Nevada Treasurer*

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Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511



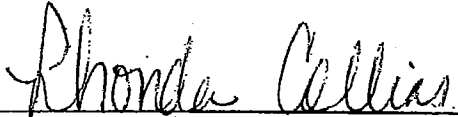
Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on this 14th day of October, 2013, pursuant to NRCP 5(b) and the parties' stipulation and consent to service by electronic means, I served a true copy of the foregoing, **NEVADA DEPARTMENT OF TAXATION'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO THE STATE OF NEVADA DEPARTMENT OF TAXATION**, by electronic mail, directed to the following:

Joshua Hicks, Esq.  
Clark Vellis, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
50 W. Liberty Street, Suite 1030  
Reno, NV 89501  
jhicks@bhfs.com  
cvellis@bhfs.com

Brandi Jensen, Fernley City Attorney  
Office of the City Attorney  
595 Silver Lace Blvd.  
Fernley, NV 89408  
bjensen@cityoffernley.org

  
An Employee of the Office  
of the Attorney General

1 CATHERINE CORTEZ MASTO, Attorney General  
2 GINA C. SESSION, Chief Deputy Attorney General  
3 Nevada Bar No. 5493  
4 E-mail: gsession@ag.nv.gov  
5 ANDREA NICHOLS, Senior Deputy Attorney General  
6 Nevada Bar No. 6436  
7 5420 Kietzke Lane, Suite 202  
8 Reno, Nevada 89511  
9 (775) 688-1818  
10 E-mail: anichols@ag.nv.gov  
11 *Attorneys for Defendants Nevada Department of Taxation  
12 and Kate Marshall, State Treasurer*

13  
14 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
15  
16 **IN AND FOR CARSON CITY**

17 CITY OF FERNLEY, NEVADA, a Nevada  
18 municipal corporation,

19 Plaintiff,

20 v.

21 STATE OF NEVADA, ex rel. THE NEVADA  
22 DEPARTMENT OF TAXATION; THE  
23 HONORABLE KATE MARSHALL, in her  
24 official capacity as TREASURER OF THE  
25 STATE OF NEVADA; and DOES 1-20,  
26 Inclusive,

27 Defendants;

28 NEVADA LEGISLATURE,

Intervener.

Case No.: 12 OC 00168 1B

Dept. No.: I

29  
30 **NEVADA DEPARTMENT OF TAXATION'S SUPPLEMENTAL RESPONSE TO  
31 PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS  
32 TO THE STATE OF NEVADA DEPARTMENT OF TAXATION**

33 In response to correspondence from Plaintiff's attorneys, dated March 6, 2014,  
34 Defendant, the State of Nevada ex rel. its Department of Taxation ("Department"), by and  
35 through its attorneys, Catherine Cortez Masto, Attorney General of the State of Nevada, and  
36 Senior Deputy Attorney General, Andrea Nichols, hereby supplements its previous response  
37 to City of Fernley's First Request for Production of Documents.

38 ///

**GENERAL OBJECTIONS**

The Department objects to each and every request in the City of Fernley's correspondence dated March 6, 2014, regarding Nevada Department of Taxation's Response to Plaintiff's First Request for Production of Documents to the State of Nevada Department of Taxation as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The only remaining issues in Plaintiff's lawsuit concern whether Nevada's C-Tax system violates the Nevada Constitution. These are issues of law, not fact. Plaintiff's requests do not seek evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence, nor are the requests likely to lead to the discovery of admissible evidence. Without waiving this objection or any of its previous objections to Plaintiff's requests for documents, writings or other tangible things, the Department supplements its previous responses as follows.

**SUPPLEMENTAL RESPONSES**

**SUPPLEMENTAL RESPONSE TO REQUESTS 1 THROUGH 13:** In these requests Plaintiff seeks documents which support the Department's Affirmative Defenses. The Department objected on the basis that the requests are overly broad, unduly burdensome, call for a legal conclusion, and seek attorney work product.

The objections are overly broad and unduly burdensome in that Defendants cannot possibly identify each and every document which may support a particular legal theory; the relevant legal authorities are available to Plaintiff's attorneys.

Further, the identification of such documents, writings, or other tangible items which may support an affirmative defense necessitate disclosure of the legal theory which underlies each affirmative defense, and for this reason call for a legal conclusion and seek attorney work product. The attorneys for Defendant, Legislature of the State of Nevada, provided a detailed explanation of the attorney-client privilege and the attorney work product defense in a letter to Plaintiff's attorneys dated March 20, 2014.

///

1       Notwithstanding these objections, the Department identified the State of Nevada's  
2 Motion to Dismiss, filed herein on August 3, 2012, Nevada Legislature's Motion to Dismiss,  
3 filed herein on August 16, 2012, State of Nevada's Reply to Opposition to Motion to Dismiss,  
4 filed herein on August 27, 2012, Petition for Writ of Mandamus filed in Case No. 62050 in the  
5 Nevada Supreme Court on November 5, 2012, and all documents related to said appeal.  
6 These documents contain legal argument and explanation of the Department's affirmative  
7 defenses. The Department is not able to provide a more specific description of the documents  
8 it is referring to.

9       **REQUEST NO. 14:** Please produce each and every document, writing, or other tangible item  
10 which in any way supports any claim that C-Tax distributions to local governments are linked  
11 to public safety or to any particular category or type of expense.

12       **SUPPLEMENTAL RESPONSE TO REQUEST NO. 14:** The Department objected to this  
13 request as overly broad, unduly burdensome, and calling for a legal conclusion.

14       The request is overly broad and unduly burdensome because it seeks information  
15 readily available to Plaintiff and its attorneys. The request calls for a legal conclusion because  
16 the City of Fernley could seek additional C-Tax revenue pursuant to NRS 360.730 and/or  
17 354.598747 via cooperative agreement with other local governments and/or by assuming the  
18 functions of another local government or district. The interpretation and application of these  
19 statutes calls for a legal conclusion.

20       C-Tax distributions to local governments are not linked to public safety or to any  
21 particular category or type of expense. However, in an attempt to comply with the rules of  
22 discovery and identify documents which might lead to the discovery of admissible evidence,  
23 the Department identified NRS 354.598747 and 360.740 and also provided Excel  
24 spreadsheets showing revenue and expenditures for Nevada counties. The Department is not  
25 able to identify any other document, writing, or other tangible item which may be responsive to  
26 this request.

27       ///

28       ///

1 **REQUEST NO. 15:** Please produce each and every document, writing, or other tangible item  
2 which in any way supports a claim that C-Tax distributions to local governments were related  
3 to government service levels as examined in 1997 or anytime thereafter.

4 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 15:** The Department previously objected  
5 to the form of the question as it assumes facts, is vague, and appears to call for a legal  
6 conclusion.

7 The request assumes facts because it assumes that C-Tax distributions to local  
8 governments were related to government service levels as examined in 1997 or sometime  
9 thereafter.

10 The request is vague because as previously stated the request assumes facts;  
11 additionally, it is not clear what Plaintiff is seeking. The Department does not examine  
12 government service levels. The Department makes C-Tax distributions based upon Chapter  
13 360 of the Nevada Revised Statutes.

14 The request appears to call for a legal conclusion because it requires the Department  
15 to determine whether the formula for C-Tax distributions were related to government service  
16 levels as examined over a period of approximately seventeen years. The Department does  
17 not determine the formula for C-Tax distributions; rather, it makes the distributions to local  
18 governments pursuant to a statutory formula.

19 Notwithstanding these objections, the Department stated that any such documents are  
20 most likely a matter of public record. This is because determinations as to the C-Tax  
21 distributions are most likely contained in the legislative history for NRS Chapter 360, which is  
22 a matter of public record. The Department also referred Plaintiff to the Excel spreadsheets  
23 showing revenue and expenditures for Nevada counties produced in response to Request No.  
24 14. The Department is not able to produce or identify any other document, writing, or other  
25 tangible item which may be responsive to this request.

26 **REQUEST NO. 16:** Please produce each and every document, writing, or other tangible item  
27 that in any way demonstrates that C-Tax revenues were adequate for services provided or  
28 needed by local governments dating from the enactment of SB 254 to the present.

1 **RESPONSE TO REQUEST NO. 16:** The Department objected to the form of the question as  
2 it assumes facts, is vague, and appears to call for a legal conclusion.

3 The request assumes facts because it assumes that C-Tax revenues were adequate  
4 for services provided or needed by local governments dating from the enactment of SB 254 to  
5 the present.

6 The request is vague because it is not clear what document, writing, or other tangible  
7 item Plaintiff is seeking that may be in the Department's possession. Determining whether or  
8 not C-Tax revenues were adequate for services provided or needed by local governments  
9 dating from the enactment of SB 254 to the present is not a function of the Nevada  
10 Department of Taxation.

11 The request appears to call for a legal conclusion because it asks the Department to  
12 make a determination as to whether C-Tax revenues were adequate for services provided or  
13 needed by local governments dating from the enactment of SB 254 to the present.

14 Notwithstanding these objections, any such documents are most likely a matter of  
15 public record as part of the legislative history of SB 254. The Department is not required to  
16 provide Plaintiff with documents that are obtainable from some other source that is more  
17 convenient, less burdensome or less expensive.

18 The Department of Taxation is not aware of any requirement that it maintain documents  
19 responsive to this request and because of the form of the request, the Department is not able  
20 to determine whether it is in possession of any document, writing, or other tangible item  
21 responsive to this request.

22 Notwithstanding these objections, the Department again directs Plaintiff to the Excel  
23 spreadsheets produced in response to Request No. 14.

24 **REQUEST NO. 17:** Please produce each and every document, writing, or other tangible item  
25 which in any way shows or demonstrates the existence of any investigation or examination of  
26 local government service levels at the time SB 254 was enacted.

27 **RESPONSE TO REQUEST NO. 17:** The Department objected to the form of the question as it  
28 assumes facts, is vague, and appears to call for a legal conclusion.

1 The request assumes facts because it assumes the existence of an investigation or  
2 examination of local government service levels at the time SB 254 was enacted.

3 The Department noted that such documents are most likely a matter of public record  
4 because the Department is not required to provide Plaintiff with documents that are obtainable  
5 from some other source that is more convenient, less burdensome or less expensive.

6 Notwithstanding these objections, the Department identified Legislative Counsel  
7 Bulletin No. 97-5 filed in this matter as Exhibit "1" to Nevada Legislature's Joinder in Motion to  
8 Dismiss, which is a study of the laws relating to the distribution among local governments of  
9 revenue from state and local taxes.

10 Further, notwithstanding these objections, see Defendants supplemental response to  
11 Plaintiff's Interrogatory No. 21.

12 **REQUEST NO. 18:** Please produce each and every document, writing, or other tangible item  
13 which in anyway demonstrates that government service levels of existing governmental  
14 participants were examined in the setting up of the C-Tax system that is the subject of this  
15 litigation.

16 **RESPONSE TO REQUEST NO. 18:** The Department objected to the form of the question as  
17 it assumes facts and is vague; the Department of Taxation did not set up the C-Tax system  
18 and is not aware of any requirement that it maintain documents responsive to this request.

19 The request assumes facts because it assumes that government service levels of  
20 existing governmental participants were examined in the setting up of the C-Tax system that is  
21 the subject of this litigation.

22 The request is vague because since the Department did not set up the C-Tax system it  
23 is unclear what document, writing, or other tangible item in the Department's possession the  
24 request seeks.

25 The Department noted that such documents are most likely a matter of public record  
26 because the legislative history of the C-Tax is a matter of public record. Notwithstanding  
27 these objections, see response to Request No. 17.

28 ///

1 **REQUEST NO. 23:** Please produce each and every document, writing, or other tangible item  
2 which in anyway demonstrates that local governments utilize C-Tax revenues to support  
3 public safety or any other specific services.

4 **RESPONSE TO REQUEST NO. 23:** The Department previously objected to this request as  
5 overly broad and unduly burdensome.

6 The request is overly broad and unduly burdensome in that it is not limited to any  
7 particular local government or to any particular time period. It asks the Department to  
8 examine how each and every local government utilizes C-Tax distributions and is not limited  
9 to any particular budget cycle.

10 Notwithstanding these objections, the Department directed Plaintiff to NRS 354.598747  
11 and 360.740 and the excel spreadsheets produced in response to Request No. 14 showing  
12 revenue and expenditures for Nevada counties.

13 Plaintiff asks whether or not the responding party is identifying the statute as  
14 documents responsive to the request or if there are other items in those statutes that should  
15 be considered. This request calls for a legal conclusion as it asks the Department to interpret  
16 the statute. This request further demonstrates that the request is vague since Plaintiff is not  
17 able to determine whether or not the statutes are responsive to the request.

18 Notwithstanding these objections, see also Nevada Department of Taxation's  
19 Response to Request No. 28 to Plaintiff's Second Request for Production of Documents to the  
20 State of Nevada Department of Taxation.

21 **REQUEST NO. 24:** Please produce each and every document, writing or other tangible item  
22 which demonstrates that the C-Tax has decreased the competition among local governments  
23 for tax revenue.

24 **RESPONSE TO REQUEST NO. 24:** The Department previously objected to the request as  
25 subjective, assumes facts, and calls for a legal conclusion.

26 The request is subjective in that the phrase "decreased competition among local  
27 governments" is subject to interpretation.

28 ///



1 The request assumes facts because it assumes that the C-Tax has decreased  
2 competition among local governments.

3 The request calls for a legal conclusion because whether local governments compete  
4 for tax revenue is a legal issue.

5 The Department previously responded that it is not aware of any requirement that it  
6 maintain documents responsive to this request in the ordinary course of business.

7 Notwithstanding these objections, in response to Plaintiff's request for clarification, the  
8 Department is unable to discern what documents, writings, or other tangible items the Plaintiff  
9 is seeking in this request.

10 **REQUEST NO. 25:** Please produce the publications available on the Nevada Department of  
11 Taxation website concerning consolidated tax distribution and which were identified but not  
12 produced as part of your NRCP 16.1 initial disclosures.

13 **RESPONSE TO REQUEST NO. 25:** The Department responded that Plaintiff may obtain  
14 copies of the Consolidated Tax Distribution Reports from the Nevada Department of  
15 Taxation's website.

16 Plaintiff claims that the Department identified the entire website and has not identified  
17 individual documents. This is incorrect. The Consolidated Tax Distribution Reports are  
18 individual documents.

19 DATED this 11<sup>th</sup> day of April, 2014.

20 CATHERINE CORTEZ MASTO  
21 Attorney General

22 By:

Andrea Nichols  
23 ANDREA NICHOLS  
24 Senior Deputy Attorney General  
25 Nevada Bar No. 6436  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
(775) 688-1818

26 *Attorneys for Defendants, Nevada Department*  
27 *of Taxation and Nevada Treasurer*  
28

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on this 14<sup>th</sup> day of April, 2014, pursuant to NRCP 5(b) and the parties' stipulation and consent to service by electronic means, I served a true copy of the foregoing, **NEVADA DEPARTMENT OF TAXATION'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO THE STATE OF NEVADA DEPARTMENT OF TAXATION**, by electronic mail, directed to the following:

Joshua Hicks, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
50 W. Liberty Street, Suite 1030  
Reno, NV 89501  
jhicks@bhfs.com

Clark Vellis, Esq.  
Cotton, Driggs, Walch, Holley, Woloson & Thompson  
800 South Meadows Parkway, Suite 800  
Reno, NV 89521  
cvellis@nevadafirm.com

Brandi Jensen, Femley City Attorney  
Office of the City Attorney  
595 Silver Lace Blvd.  
Fernley, NV 89408  
bjensen@cityoffemley.org

Kevin Powers, Esq.  
Dan Yu, Esq.  
Legislative Counsel Bureau  
401 S. Carson Street  
Carson City, NV 89701  
kpowers@lcb.state.nv.us  
dan.yu@lcb.state.nv.us



An Employee of the Office  
of the Attorney General

1 CATHERINE CORTEZ MASTO, Attorney General  
2 GINA C. SESSION, Chief Deputy Attorney General  
Nevada Bar No. 5493  
Email: gsession@ag.nv.gov  
3 ANDREA NICHOLS, Senior Deputy Attorney General  
Nevada Bar No. 6436  
4 5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
5 (775) 688-1818  
E-mail: anichols@ag.nv.gov  
6 *Attorneys for Defendants Nevada Department of Taxation  
and Kate Marshall, State Treasurer*

8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
9 **IN AND FOR CARSON CITY**

10 CITY OF FERNLEY, NEVADA, a Nevada  
municipal corporation,

**Case No.: 12 OC 00168 1B**

11  
12 Plaintiff,

**Dept. No.: I**

13 v.

14 STATE OF NEVADA, ex rel. THE NEVADA  
DEPARTMENT OF TAXATION; THE  
15 HONORABLE KATE MARSHALL, in her  
official capacity as TREASURER OF THE  
16 STATE OF NEVADA; and DOES 1-20,  
Inclusive,

17 Defendants,

18 NEVADA LEGISLATURE,

19 Intervener.

21 **NEVADA DEPARTMENT OF TAXATION'S SUPPLEMENTAL RESPONSE TO**  
22 **PLAINTIFF'S FIRST SET OF INTERROGATORIES TO THE STATE OF NEVADA**  
**DEPARTMENT OF TAXATION**

23 Defendant, the State of Nevada ex rel. its Department of Taxation, by and through its  
24 attorneys, Catherine Cortez Masto, Attorney General of the State of Nevada, and Senior  
25 Deputy Attorney General Andrea Nichols, hereby responds to City of Fernley's Request for  
26 supplemental responses to Plaintiff's First Set of Interrogatories to the State of Nevada  
27 Department of Taxation.

28 ///

**GENERAL OBJECTIONS**

The Department objects to each and every request in the City of Fernley's correspondence dated March 6, 2014, regarding Nevada Department of Taxation's Response to Plaintiff's First Set of Interrogatories to the State of Nevada Department of Taxation as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The only remaining issues in Plaintiff's lawsuit concern whether Nevada's C-Tax system violates the Nevada Constitution. These are issues of law, not fact. Plaintiff's requests do not seek evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence, nor are the requests likely to lead to the discovery of admissible evidence. Without waiving this objection or any of its previous objections to Plaintiff's interrogatories, the Department supplements its previous responses as follows.

**SUPPLEMENTAL RESPONSES**

**INTERROGATORY NO. 19:** If you are claiming that C-Tax distributions to Fernley, Nevada are based in any way on the provision of public safety or other government services, please set forth in detail each and every fact which supports such a claim.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 19:** C-Tax distributions to Fernley, Nevada are not based on the provision of public safety or other government services. However, it is possible that the City of Fernley could seek additional C-Tax revenue pursuant to NRS 360.730 and/or 354.598747 via cooperative agreement with other local governments and/or by assuming the functions of another local government or district.

**INTERROGATORY NO. 20:** Please set forth in detail each and every fact which explains how Fernley, Nevada may receive an increased C-Tax Revenue distribution.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 20:** The Department previously objected to this request because it calls for a legal conclusion, is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

The request calls for a legal conclusion because the City of Fernley could seek additional C-Tax revenue pursuant to NRS 360.730 and/or 354.598747 via cooperative

1 agreement with other local governments and/or by assuming the functions of another local  
2 government or district. The interpretation and application of these statutes calls for a legal  
3 conclusion. Further, the City of Fernley has previously, and may in the future, seek additional  
4 C-Tax revenue through the legislative process. An explanation of the legislative process also  
5 seeks a legal conclusion.

6 The request is irrelevant and not reasonably calculated to lead to the discovery of  
7 admissible evidence because Plaintiff's remaining causes of action are for violations of the  
8 Nevada Constitution. These claims call for the resolution of legal rather than factual issues.  
9 Facts explaining how Fernley, Nevada may receive an increased C-Tax Revenue distribution  
10 are of no consequence to the determination of whether or not the C-Tax system as  
11 administered by Defendants violates the Nevada Constitution.

12 Notwithstanding these objections as previously stated, the Department makes C-Tax  
13 distributions based upon Chapter 360 of the Nevada Revised Statutes. Other than through  
14 statutory means or the enactment of legislation, the Nevada Department of Taxation is not  
15 aware of any fact which explains how Fernley, Nevada may receive an increased C-Tax  
16 Revenue distribution. The Nevada Department of Taxation is charged with the administration  
17 of the C-Tax system; the duties of the Nevada Department of Taxation do not include  
18 possession and/or maintenance of any fact which explains how Fernley, Nevada may receive  
19 an increased C-Tax Revenue distribution.

20 **INTERROGATORY NO. 21:** Please describe in detail all investigations, studies, reports or  
21 examinations undertaken by Taxation prior to the enactment of SB 254 regarding any prior  
22 formula for revenue distribution.

23 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 21:** The Department previously  
24 objected to this request as overly broad, unduly burdensome, irrelevant, and not reasonably  
25 calculated to lead to the discovery of admissible evidence.

26 The request is overly broad and unduly burdensome because investigations, studies,  
27 reports or examinations undertaken by Taxation prior to the enactment of SB 254 were  
28 provided to the Nevada Legislature and became a part of the legislative history for this statute.

1 The legislative history is a matter of public record readily available to Plaintiff and has been  
2 provided to Plaintiff by the Nevada Legislature, an intervenor in this lawsuit. Further, the  
3 request requires the Nevada Department of Taxation to search for records prepared prior to  
4 1997.

5 The request is irrelevant and not reasonably calculated to lead to the discovery of  
6 admissible evidence because Plaintiff's remaining causes of action are for violations of the  
7 Nevada Constitution. These claims call for the resolution of legal rather than factual issues.  
8 Descriptions in detail of all investigations, studies, reports or examinations undertaken by the  
9 Nevada Department of Taxation prior to the enactment of SB 254 regarding any prior formula  
10 for revenue distribution are of no consequence to the determination of whether or not the C-  
11 Tax system as administered by Defendants violates the Nevada Constitution.

12 Notwithstanding these objections, the Department has located the following  
13 investigations, studies, reports or examinations undertaken prior to SB 254 regarding any prior  
14 formula for revenue distribution:

- 15 1. INITIAL BASE - Analysis of the revenues for FY 95-96 and FY 96-97 which was  
16 used to determine initial base distribution under SB 254.
- 17 2. LyonInitialBase - Analysis of the revenues for FY 95-96 and FY 96-97 which was  
18 used to determine Lyon County's (and its local governments) initial base  
19 distribution under SB 254. (extracted from the INITIAL BASE.xls spreadsheet)
- 20 3. Revenue Data - Revenue data for FY 95-96, FY 96-97, FY 97-98, and projected  
21 revenues for FY 98-99 for all local governments expected to receive C-Tax  
22 under SB 254.
- 23 4. FINAL BASE ADJ IMPACT and Base Adj. Request Impact - Analysis of the  
24 revenues for entities which requested a base adjustment prior to implementation  
25 of SB 254.
- 26 5. Dept. Recommendation ltr - Response to the entities which requested a base  
27 adjustment prior to implementation of SB 254.
- 28 6. CTX\_History - Legislative history regarding CTX components up to and including  
SB 254.
7. Annual Reports - contain historical data and legislative history for all revenues  
distributed by the Department.

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1 Copies of these documents are on the disc provided herewith. Documents numbered  
2 one through five were prepared by persons who are no longer employed by the Department;  
3 as such the Department is not able to verify the authenticity or accuracy of these documents.

4 **INTERROGATORY NO. 22:** Please describe in detail all investigations, studies, reports or  
5 examinations prepared or undertaken by Taxation from the enactment of SB 254 to the  
6 present regarding C-Tax revenues.

7 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 22:** The Department previously  
8 objected to this request as overly broad, unduly burdensome, irrelevant, and not reasonably  
9 calculated to lead to the discovery of admissible evidence.

10 The request is overly broad and unduly burdensome because investigations, studies,  
11 reports or examinations undertaken by the Nevada Department of Taxation from the  
12 enactment of SB 254 to the present were provided to the Nevada Legislature and became a  
13 part of the legislative history of the C-Tax legislation. The legislative history is a matter of  
14 public record readily available to Plaintiff and has been provided to Plaintiff by the Nevada  
15 Legislature, an intervenor in this lawsuit. Further, the request requires the Nevada  
16 Department of Taxation to search for records prepared in the last sixteen years.

17 The request is irrelevant and not reasonably calculated to lead to the discovery of  
18 admissible evidence because Plaintiff's remaining causes of action are for violations of the  
19 Nevada Constitution. These claims call for the resolution of legal rather than factual issues.  
20 Descriptions in detail of all investigations, studies, reports or examinations undertaken by the  
21 Nevada Department of Taxation from the enactment of SB 254 to the present C-Tax revenues  
22 are of no consequence to the determination of whether or not the C-Tax system as  
23 administered by Defendants violates the Nevada Constitution.

24 Notwithstanding these objections, the Nevada Department of Taxation has located the  
25 following investigations, studies, reports or examinations prepared or undertaken by Taxation  
26 from the enactment of SB 254 to the present regarding C-Tax revenues:

- 27 1. Consolidated Tax spreadsheets FY 99 to the present – Contain distribution  
28 information for all CTX revenues broken down by component and distribution  
period.

2. Annual Reports – contain historical data and legislative history for all revenues distributed by the Department. (produced in response to Interrogatory No. 21)
3. CTX Collections – Collections by CTX component broken down by county and fiscal year.
4. FY11 CTX Distribution All Cities 080112 – CTX distributions and Public Safety Costs for all Nevada Cities for FY 11.
5. CTX revenue status – Analysis of the projected and actual distributions for the CTX revenue sources for the first few months of what appears to be FY 99. Spreadsheet is not dated and contains no documentation as to the source of the data.
6. BaseVSExcess99to2011 – Documents CTX excess distributions by county for the Fiscal Years 1999-2011.

Copies of these documents are on the disc provided herewith.

The Nevada Department of Taxation also provided data to the Nevada Legislative Counsel Bureau during the 2011-2012 Interim study concerning A.B. 71; the data was used to create documents available at:

<http://leg.state.nv.us/Interim/76th2011/Committee/Studies/AllocationMoney/?ID=13>

**INTERROGATORY NO. 25:** Please identify, with particularity, each and every document, writing, publication or other tangible item contained on the Nevada Department of Taxation website concerning C-Tax distribution and which you believe is relevant to or pertains in any manner to the issues related to Plaintiff's Complaint.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 25:** The Nevada Department of Taxation previously objected to this request as calling for the disclosure of attorney-client work product, and calling for a legal conclusion.

The determination of what is relevant or pertains in any manner to the issues related to Plaintiff's Complaint calls for a legal conclusion which may be made by attorneys for the Nevada Department of Taxation.

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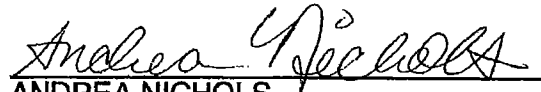


1 Notwithstanding these objections, items on the Nevada Department of Taxation's  
2 website concerning C-Tax distribution may be found in the Monthly Press Release, Annual  
3 Reports and Consolidated Tax Distribution (CTX) reports.

4 DATED this 11<sup>th</sup> day of April, 2014.

5 CATHERINE CORTEZ MASTO  
6 Attorney General

7 By:



8 ANDREA NICHOLS  
9 Senior Deputy Attorney General  
10 Nevada Bar No. 6436  
11 5420 Kietzke Lane, Suite 202  
12 Reno, Nevada 89511  
13 (775) 688-1818

14 *Attorneys for Defendants, Nevada Department*  
15 *of Taxation and Nevada Treasurer*

16 Office of the Attorney General  
17 5420 Kietzke Lane, Suite 202  
18 Reno, NV 89511  
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**VERIFICATION**

I, DEONNE CONTINE, Chief Deputy Director, for CHRISTOPHER NIELSEN, Executive Director, have read the foregoing **NEVADA DEPARTMENT OF TAXATION'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO THE STATE OF NEVADA DEPARTMENT OF TAXATION** and am familiar with the contents. The matters stated therein are true of my own knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

Executed on this 11<sup>th</sup> day of April, 2014.

By: Deonne Contine  
DEONNE CONTINE for  
CHRISTOPHER G. NIELSEN  
Executive Director  
Nevada Department of Taxation

Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

**CERTIFICATE OF SERVICE**

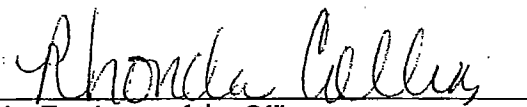
I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on this 11th day of April, 2014, pursuant to NRCP 5(b) and the parties' stipulation and consent to service by electronic means, I served a true copy of the foregoing, **NEVADA DEPARTMENT OF TAXATION'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO THE STATE OF NEVADA DEPARTMENT OF TAXATION**, to the following:

Joshua Hicks, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
50 W. Liberty Street, Suite 1030  
Reno, NV 89501  
jhicks@bhfs.com  
*(via e-mail, and a hard copy with disc via Reno Carson Messenger Service)*

Clark Vellis  
Cotton, Driggs, Walch, Holley, Woloson & Thompson  
800 South Meadows Parkway, Suite 800  
Reno, NV 89521  
cvellis@nevadafirm.com  
*(via e-mail only w/o disc)*

Brandi Jensen, Fernley City Attorney  
Office of the City Attorney  
595 Silver Lace Blvd.  
Fernley, NV 89408  
bjensen@cityoffernley.org  
*(via e-mail only w/o disc)*

Kevin Powers, Esq.  
Dan Yu, Esq.  
Legislative Counsel Bureau  
401 S. Carson Street  
Carson City, NV 89701  
kpowers@lcb.state.nv.us  
dan.yu@lcb.state.nv.us  
*(via e-mail, and a hard copy with disc via Reno Carson Messenger Service)*

  
An Employee of the Office  
of the Attorney General

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CITY OF FERNLEY, NEVADA, a  
Nevada municipal corporation,

Appellant,

vs.

THE STATE OF NEVADA ex rel.  
DEPARTMENT OF TAXATION;  
THE HONORABLE DAN  
SCHWARTZ, in his official capacity  
as TREASURER OF THE STATE OF  
NEVADA; and THE LEGISLATURE  
OF THE STATE OF NEVADA,

Respondents.

Supreme Court No.: 66851

District Court Case No.: 12 OC 00168 1B

**JOINT APPENDIX**

**VOLUME 21 PART 3**

Filed By:

Joshua J. Hicks, Esq.  
Nevada Bar No. 6678  
BROWNSTEIN HYATT  
FARBER SCHRECK, LLP  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
Telephone: (775) 622-9450  
Email: jhicks@bhfs.com

*Attorneys for Appellant City of Fernley,  
Nevada*

Index to Joint Appendix  
City of Fernley v. State of Nevada et al., Case No. 66851

| Volume Number | Document   | Filed By                            | Date     | Bates Stamp Number |
|---------------|--|-------------------------------------|----------|--------------------|
| 1             | Affidavit of Service Taxation  | City of Fernley                     | 07/02/12 | 17                 |
| 1             | Affidavit of Service Treasurer   | City of Fernley                     | 06/20/12 | 13-16              |
| 23            | Amended Memorandum of Costs and Disbursements  | State of Nevada/Dept Taxation       | 10/09/15 | 4058-4177          |
| 7             | Answer   | State of Nevada/Dept Tax/ Treasurer | 02/01/13 | 1384-1389          |
| 7             | Answer to Plaintiff's Complaint  | Nevada Legislature                  | 01/29/13 | 1378-1383          |
| 23            | Case Appeal Statement  | City of Fernley                     | 11/07/14 | 4208-4212          |
| 1             | Complaint  | City of Fernley                     | 06/06/12 | 1-12               |
| 21            | Defendant Nevada Legislature's Reply in Support of its Motion for Summary Judgment                     | Nevada Legislature                  | 07/25/14 | 3747-3768          |
| 21            | Defendant's Opposition to Motion to Retax Costs and Reply to Opposition to Motion for Costs            | State of Nevada/Dept Taxation       | 10/03/14 | 3863-3928          |
| 22            | Defendant's Opposition to Motion to Retax Costs and Reply to Opposition to Motion for Costs (Cont.)    | State of Nevada/Dept Taxation       | 10/03/14 | 3929-3947          |
| 1             | Exhibits to Joinder in Motion to Dismiss   | Nevada Legislature                  | 08/16/12 | 104-220            |
| 2             | Exhibits to Joinder in Motion to Dismiss (Cont.)   | Nevada Legislature                  | 08/16/12 | 221-332            |
| 1             | Joinder in Motion to Dismiss   | Nevada Legislature                  | 08/16/12 | 62-103             |
| 7             | Joinder in Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss           | Nevada Legislature                  | 05/06/14 | 1421-1423          |
| 21            | Memorandum of Costs and Disbursements  | State of Nevada/Dept Taxation       | 09/19/14 | 3788-3793          |
| 21            | Motion for Costs   | State of Nevada/Dept Taxation       | 09/19/14 | 3776-3788          |
| 12            | Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order                     | City of Fernley                     | 06/18/14 | 2005-2045          |
| 7             | Motion for Summary Judgment  | City of Fernley                     | 06/13/14 | 1458-1512          |
| 8             | Motion for Summary Judgment (Cont.)  | City of Fernley                     | 06/13/14 | 1513-1732          |
| 9             | Motion for Summary Judgment (Cont.)  | City of Fernley                     | 06/13/14 | 1733-1916          |
| 10            | Motion for Summary Judgment (Cont.)  | City of Fernley                     | 06/13/14 | 1917-1948          |
| 11            | Motion for Summary Judgment (Cont.)  | City of Fernley                     | 06/13/14 | 1949-2004          |
| 1             | Motion to Dismiss  | State of Nevada/Dept Tax/ Treasurer | 08/03/12 | 41-58              |
| 1             | Motion to Intervene  | Nevada Legislature                  | 08/03/12 | 18-40              |
| 21            | Motion to Retax Costs and Opposition to Motion for Costs   | City of Fernley                     | 09/24/14 | 3794-3845          |
| 7             | Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss                      | State of Nevada/Dept Tax/ Treasurer | 05/05/14 | 1414-1420          |
| 7             | Nevada Department of Taxation and Nevada Treasurer's Reply to Response to Renewal of Motion to Dismiss | State of Nevada/Dept Tax/ Treasurer | 05/23/14 | 1433-1437          |
| 12            | Nevada Department of Taxation's Opposition to Plaintiff's Motion for Summary Judgment                  | State of Nevada/Dept Taxation       | 07/11/14 | 2053-2224          |
| 13            | Nevada Department of Taxation's Opposition to Plaintiff's Motion for Summary Judgment (Cont.)          | State of Nevada/Dept Taxation       | 07/11/14 | 2225-2353          |

Index to Joint Appendix  
City of Fernley v. State of Nevada et al., Case No. 66851

| <b>Volume Number</b> | <b>Document</b>   | <b>Filed By</b>                        | <b>Date</b> | <b>Bates Stamp Number</b> |
|----------------------|---|--|-------------|---------------------------|
| 23                   | Notice of Appeal  | City of Fernley                        | 11/07/14    | 4205-4207                 |
| 22                   | Notice of Entry of Order  | Nevada Legislature                     | 10/08/14    | 4001-4057                 |
| 23                   | Notice of Entry of Order  | State of Nevada/Dept                   | 10/17/14    | 4195-4204                 |
| 7                    | Notice of Entry of Order Denying City of Fernley's Motion for Reconsideration of Order Dated November 13, 2012                  | State of Nevada/Dept Tax/<br>Treasurer | 12/19/12    | 1364-1370                 |
| 7                    | Notice of Entry of Order Granting A Continuance to Complete Discovery   | City of Fernley                        | 10/19/12    | 1344-1350                 |
| 3                    | Notice of Entry of Order Granting Nevada Legislature's Motion to Intervene  | Nevada Legislature                     | 09/04/12    | 651-657                   |
| 7                    | Notice of Entry of Order on Defendant's Motion for Extensions of Time to File Answer  | State of Nevada/Dept Tax/<br>Treasurer | 11/15/12    | 1354-1360                 |
| 1                    | Notice of Non-Opposition to Legislature's Motion to Intervene   | State of Nevada/Dept Tax/<br>Treasurer | 08/06/12    | 59-61                     |
| 2                    | Opposition to Motion to Dismiss and Motion for Continuance Pursuant to NRCP 56(F)   | City of Fernley                        | 08/20/12    | 331-441                   |
| 3                    | Opposition to Motion to Dismiss and Motion for Continuance Pursuant to NRCP 56(F) (Cont.)                                       | City of Fernley                        | 08/20/12    | 442-625                   |
| 2                    | Opposition to Motion to Nevada Legislature's Motion to Intervene  | City of Fernley                        | 08/20/12    | 324-330                   |
| 13                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss                                 | City of Fernley                        | 07/11/14    | 2354-2445                 |
| 14                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)                         | City of Fernley                        | 07/11/14    | 2446-2665                 |
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| 16                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)                         | City of Fernley                        | 07/11/14    | 2820-2851                 |
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| 5                    | Opposition to Nevada Legislature's Joinder in Motion to Dismiss (Cont.)   | City of Fernley                        | 09/28/12    | 882-1101                  |
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| 17            | Opposition to Plaintiff's Motion for Summary Judgment   | Nevada Legislature                  | 07/11/14 | 2942-3071          |
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| 23                   | Transcript of Hearing   | Court Reporter                        | 01/07/15    | 4213-4267                 |
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1 and think?

2 A No.

3 Q All right.

4 (Deposition Exhibit 1 marked for  
5 identification.)

6 BY MR. VELLIS:

7 Q I'm showing you what's been marked as Exhibit 1.  
8 It's the Amended Notice of Deposition of the Person Most  
9 Knowledgeable of the Nevada Department of Taxation. And  
10 you understand that you've been designated as that person,  
11 correct?

12 A Yes.

13 Q All right. Now, I want you to look at the last  
14 page, which is Attachment A, and it has the subject  
15 matter. I want to go through these with you a little bit  
16 to determine your role in this.

17 Number one says "The local government tax  
18 distribution account, or C-Tax system, in the collection  
19 and distribution of taxes created pursuant to and defined  
20 by NRS 360.660." Do you see that?

21 A Yes.

22 Q Are you the person most knowledgeable regarding  
23 that topic?

24 A I'm not sure I agree with the NRS cite but, yes,  
25 I am the person most knowledgeable on the topic.

1 Q And when you say you don't agree with the NRS  
2 cite, what don't you agree with?

3 A I'm not sure that that's the right number. I  
4 know Chapter 360 determines how I make the determination  
5 but I don't know about the sub, the 660.

6 Q Okay. Notwithstanding that, you are the person  
7 from the Department that is the person most knowledgeable  
8 about the C-Tax system?

9 A Yes.

10 Q Okay. And what is your definition of a C-Tax  
11 system when we use it here today? How do you define it?

12 A You're gonna have to be more specific or clarify  
13 that question.

14 Q It says, "Local tax distribution account or  
15 C-Tax system." And you said you're comfortable with that  
16 being the person most knowledgeable and I'm just trying to  
17 get your definition of how you define the C-Tax system.

18 What is the C-Tax system?

19 A It's defined in statute.

20 Q How do you define it? You're speaking on behalf  
21 of the Department of Taxation. I want to know what the  
22 Department of Taxation thinks the C-Tax system is.

23 MS. NICHOLS: Objection. Asked and answered.

24 She testified it's defined by statute.

25 MR. VELLIS: You get to make an objection, not a

1 speech. And asked and answered is not a good objection at  
2 a deposition, by the way. Neither is relevancy.

3 THE WITNESS: I don't know how to answer that.

4 BY MR. VELLIS:

5 Q So on behalf of the Department of Taxation, you  
6 cannot tell me what the C-Tax system is?

7 A I can tell you what it is.

8 Q All right. Tell me what it is.

9 A It's a method of distribution for six different  
10 tax types or "components," we call them.

11 Q Okay. Anything else?

12 A I think that sums it up.

13 Q Okay. Good. And now in order to prepare for  
14 this Category No. 1, did you do anything to help you  
15 prepare to answer questions regarding Category No. 1?

16 A Can you be more specific?

17 Q Did you talk to anybody about Category No. 1 to  
18 prepare for your deposition?

19 A I'm not sure how to answer that. My job is to  
20 do the CTX distribution --

21 Q Right.

22 A I'm sorry. "C-Tax" and "CTX" are  
23 interchangeable for me. I talk about it with everybody  
24 all the time.

25 Q Right. Well, listen to my question. In order

1 to prepare for this deposition and to be the person most  
2 knowledgeable on this Category No. 1, did you do anything  
3 special to prepare today to answer questions about  
4 Category No. 1?

5 A No, I did not.

6 Q Okay. Didn't talk to anybody to get more  
7 information to answer questions about Category 1?

8 A No.

9 Q Didn't look at any documents?

10 A To specially prepare?

11 Q Yes.

12 A No.

13 Q Okay. Category No. 2, "The relationship between  
14 C-Tax distributions and local government service levels,  
15 including any studies or investigations conducted into the  
16 relationship between C-Tax distribution of local  
17 government service levels by the state legislature, the  
18 sufficiency of any distribution for any service level  
19 requirements by local governments, review of service  
20 levels in relation to C-Tax distributions made by the  
21 state legislature and/or the relationship between spending  
22 levels on public safety and receipt of distributions of  
23 C-Tax revenues."

24 You're the person most knowledgeable at the  
25 Department of Taxation regarding that Category No. 2,

1 correct?

2 A No.

3 Q You're not?

4 A I'm not.

5 Q Who would be?

6 A I think Terry Rubald.

7 Q Okay. Anybody else?

8 A I don't think so.

9 Q Okay. Let's go to Category No. 3. Let me ask

10 you this question first: Have you seen Attachment A

11 before?

12 A No.

13 Q You've never seen this?

14 A No, I don't think so.

15 Q Okay. No. 3, "The relationship between C-Tax

16 distributions and government services provided by C-Tax

17 recipients," and your counsel's now writing you a note

18 telling you something, correct?

19 MS. NICHOLS: And you're welcome to see it. I

20 don't -- I know you don't want me to make a speech, so I'm

21 trying not to step on your toes.

22 MR. VELLIS: This has nothing to do with me not

23 wanting you to make a speech. The rules are clear about

24 objections. You're entitled to make an objection and the

25 rule states very clearly you make an objection and that's

1 it and you state the basis for your objection.

2 If you have some need that you want to talk to  
3 your client and if you have some desire at some point in  
4 time to stop the deposition and discuss things with your  
5 attorney, please feel free. Ask me at any time and we'll  
6 take a break. The only proviso in the law is that you  
7 have to answer the existing question and then we'll be  
8 happy to take a break. So if you two want to take a break  
9 right now and discuss something, we'll do it. We'll take  
10 a five-minute break and you can figure it all out.

11 THE WITNESS: What was the question?

12 BY MR. VELLIS:

13 Q I was going to ask you about No. 3. I think my  
14 previous question to you, and I think what the note -- I'm  
15 guessing -- was about was my question to you as to whether  
16 you had ever seen this before and your answer was you had  
17 never seen Attachment A.

18 A Yes. I don't recall seeing the attachment.

19 Q Okay.

20 MR. VELLIS: Do you need to take a break?

21 MS. NICHOLS: No. Do you mind if I ask a point  
22 of clarification?

23 MR. VELLIS: For her?

24 MS. NICHOLS: Yes.

25 MR. VELLIS: Sure, go ahead.

1 MS. NICHOLS: Do you recall seeing this document  
2 (indicating)?

3 THE WITNESS: Yes.

4 MS. NICHOLS: And you just don't recall the last  
5 page of it.

6 THE WITNESS: Right.

7 MS. NICHOLS: Okay.

8 BY MR. VELLIS:

9 Q No. 3, "Relationship between C-Tax distributions  
10 and government services provided by C-Tax recipients."

11 Is that a topic area that you are the person  
12 most knowledgeable at the Department of Taxation on?

13 A I'm not sure how the Question 3 is different  
14 from Question 2.

15 Q Well, that may be true. May be overlapping or  
16 including different things.

17 A Oh, okay. Then I'm not the person most  
18 knowledgeable.

19 Q And are we at Terry Rubald again?

20 A Yes.

21 Q Okay. Anybody else that you can think of at the  
22 Department of Taxation that might be a person most  
23 knowledgeable regarding either Category 2 or Category 3 of  
24 Attachment A?

25 A No.

1 Q Okay. Category 4, "Any adjustment or request  
2 for adjustment to the C-Tax distribution of a C-Tax  
3 recipient and the basis for any such decision."

4 Is that something you would be at the Department  
5 of Taxation the person most knowledgeable about?

6 A Can you clarify what type of adjustments you  
7 mean?

8 Q Any type of adjustment that's requested under  
9 the C-Tax --

10 A Requested by whom?

11 Q By anybody that possibly could request one.  
12 That's why it's a broad category.

13 Is there somebody else again, you think?

14 A I'm just not sure I'm the person most  
15 knowledgeable.

16 Q Okay.

17 A I'm the person who would implement the  
18 adjustments.

19 Q All right. Who would be the person most  
20 knowledgeable about the whole system, about how adjustments  
21 are asked, what their basis is, etc. and things like that?

22 A Well, I'm involved in that process.

23 Q Right. The question is -- I don't want people  
24 that are involved. I'm sure there's a couple people who  
25 are involved. I want the person who is most knowledgeable



1 about the whole system of how these adjustments work  
2 within the C-Tax system.

3 A I would say it's probably myself and Terry  
4 Rubald.

5 Q Okay. And how would you break up who knows what  
6 about what in that discussion of No. 4? What part would  
7 you know about and what part would Terry Rubald be the  
8 person most knowledgeable about?

9 A Well, I'm knowledgeable about the  
10 implementation.

11 Q Okay.

12 A And certain types of requests for adjustments.

13 Q Okay.

14 A Terry Rubald is more knowledgeable about some of  
15 the other types of requests for adjustments. The requests  
16 for adjustments that come under NRS 360 is what I deal  
17 with. Requests for adjustment that come under NRS 354 is  
18 what Terry's more knowledgeable about.

19 Q Okay. Anybody else you can think of that would  
20 be somebody most knowledgeable from the Department of  
21 Taxation for Category No. 4?

22 A No.

23 Q Okay. How about Category No. 5, "The method of  
24 obtaining adjustment by a C-Tax recipient"?

25 Would that be kind of the same thing?

1 A Yes.

2 Q Okay. So it would be you and Terry Rubald?

3 A Yes.

4 Q Okay. And explain to me again your --- I think I  
5 got part of it. You're more ---

6 A I'm more knowledgeable about adjustments that  
7 fall under NRS 360.

8 Q Right.

9 A And she's more knowledgeable about the  
10 adjustments that fall under NRS 354.

11 Q Okay. Category No. 6 under Attachment A of  
12 Exhibit 1 says, "The use of C-Tax distributions for  
13 particular services by any C-Tax recipient."

14 A That's outside the scope of what the Department  
15 of Taxation is responsible for.

16 Q So is there no one, then, at the Department of  
17 Taxation who is knowledgeable about that?

18 A It's not under our jurisdiction.

19 Q So my question is, then, There is nobody at the  
20 Department of Taxation that's knowledgeable about that  
21 particular subject matter?

22 A I would say that Terry Rubald has knowledge of  
23 that.

24 Q Okay. Anybody else besides Terry Rubald?

25 A I don't think so.

1 Q Okay. No. 7, "The criteria utilized to set and  
2 the continual setting of allocations of C-Tax  
3 distributions to C-Tax recipients."

4 A That would be me.

5 Q Okay. No. 8, "History of enactment and  
6 enforcement of C-Tax and SB-254." Are you the person most  
7 knowledgeable about those topics?

8 A I do have a knowledge of this, but I want to say  
9 that our LCB fiscal staff is much more knowledgeable about  
10 this.

11 Q Okay. Here's the thing -- and there's a  
12 confusion a lot of times with these person most  
13 knowledgable depositions because somebody will come in --  
14 I don't want to know personally what you know. What I  
15 want is -- or somebody that knows something about it.  
16 There's probably plenty of people who know something about  
17 it.

18 The purpose of this deposition is to get the  
19 person most knowledgable at the Department of Taxation  
20 about the particular areas.

21 A Then that would be me.

22 Q So you're the one that's most knowledgeable  
23 about the history of the enactment and enforcement of the  
24 C-Tax and SB-254?

25 A Yes.

1 Q And there's no one else over there that would  
2 know more at the Department of Taxation?

3 A Not that I'm aware of.

4 Q Okay. "Legislative oversight of the C-Tax  
5 enactment." Anybody at the Department -- are you the  
6 person most knowledgable at the Department regarding that?

7 A Can you define what you mean by "Legislative  
8 oversight"?

9 Q Yes. Does the legislature oversee this and are  
10 there things that go on with the C-Tax since its initial  
11 enactment and is there participation by the Department of  
12 Taxation?

13 A I'm still not sure what you mean by "oversight."  
14 We're not -- we're governed by the statute so that would  
15 be the legislation.

16 Q I understand. But we served this notice. We  
17 got no objection to it. So if there's a question about  
18 it, somebody should have written that up. Since they  
19 didn't, there's supposedly someone knowledgeable at the  
20 Department of Taxation over the legislative oversight, how  
21 the legislature oversees the C-Tax system since its  
22 enactment.

23 And what I want is the person at the Department  
24 of Taxation that's knowledgeable about the legislature's  
25 oversight of the C-Tax system since its enactment.

1 Are you that person?

2 A I have knowledge of this. I think Terry Rubald  
3 would be the person most knowledgeable.

4 Q Okay. And that's all we can ask for. No. 10  
5 is, "The application and implementation of the C-Tax since  
6 its enactment." Are you the person most knowledgeable at  
7 the Department of Taxation regarding that?

8 A Yes.

9 Q Okay. No. 11, "Any and all cooperative  
10 agreements between C-Tax recipients since the enactment of  
11 said C-Tax." Are you the person most knowledgeable at the  
12 Department of Taxation regarding that category?

13 A Yes, I am.

14 Q No. 12 is, "The review and analysis of local  
15 government budgets in relation to distributions to C-Tax  
16 recipients since the enactment of the C-Tax."

17 Are you the person most knowledgeable regarding  
18 that?

19 A No, I'm not.

20 Q Who would be?

21 A Terry Rubald.

22 Q Okay. Your, meaning the Department of  
23 Taxation's, answers to plaintiff's complaint and the  
24 factual basis for your affirmative defenses 1 through 14?

25 MS. NICHOLS: Objection. Calls for a legal

1 conclusion.

2 MR. VELLIS: I haven't asked a question about it  
3 yet.

4 MS. NICHOLS: Oh. Sorry. I thought you were  
5 done.

6 MR. VELLIS: No.

7 MS. NICHOLS: Go ahead and I'll wait.

8 MR. VELLIS: I understand what you're saying.  
9 What I'm saying is when I get to that thing and I start  
10 asking questions about the affirmative defenses, you may  
11 very well have a good objection there. We'll see,  
12 depending on what my question is. I understand clearly  
13 that we're not asking them to provide legal conclusions.

14 BY MR. VELLIS:

15 Q But are you the person most knowledgeable about  
16 the answer of the Department of Taxation to the  
17 plaintiff's complaint and/or the factual basis for the  
18 affirmative defenses?

19 Let me ask it this way: Have you ever seen the  
20 answer of the Department of Taxation to the complaint  
21 filed by Fernley in this case?

22 A Yes, I have.

23 Q Okay. Have you ever seen the affirmative  
24 defenses that were part of the answer from the Department  
25 of Taxation?

1 A Yes, I have.

2 Q Are you the person most knowledgeable about the  
3 factual basis that supports those affirmative defenses --

4 MS. NICHOLS: Objection.

5 BY MR. VELLIS:

6 Q -- at the Department of Taxation?

7 MS. NICHOLS: Objection. Calls for a legal  
8 conclusion, but you can answer.

9 THE WITNESS: Yes, I believe I am.

10 BY MR. VELLIS:

11 Q Okay. And then the last category is "Any and  
12 all communication between you" -- the Department of  
13 Taxation -- "and the City of Fernley incorporation  
14 committee."

15 A That would be Terry Rubald.

16 Q Okay. And who exactly is Terry Rubald?

17 A She is the Deputy Executive Director of Local  
18 Government Services for the Department of Taxation.

19 Q Okay. Let me ask you: So the categories I've  
20 marked down that you have knowledge about or you're the  
21 person most knowledgeable and can speak for the Department  
22 of Taxation is No. 1, partially No. 4, partially No. 5,  
23 No. 7, No. 10, No. 11 and No. 13 and No. 8.

24 (Witness reviewing document.)

25 BY MR. VELLIS:

1 Q Correct?

2 A Yes.

3 Q Okay. Now, I asked you on the first one and

4 I'll now follow-up on the rest of these. Regarding

5 Category No. 4 for the partial information that you may

6 have on that, did you do anything to prepare for your

7 testimony today to answer questions about Category No. 4?

8 A No.

9 Q Okay. Didn't talk to anybody?

10 A No.

11 Q Didn't look at any documents?

12 A Not -- not specifically to prepare.

13 Q Okay. So what you're testifying from is just

14 your general knowledge that you have?

15 A Yes.

16 Q No. 5, the same thing, did you do anything to

17 prepare for the deposition today in order to answer

18 questions regarding Category No. 5?

19 A No, I did not.

20 Q All right. Didn't talk to anybody, didn't look

21 at documents, didn't do anything special to get

22 information so that you could respond to questions on

23 Category 5?

24 A No.

25 Q Okay. No. 7, the same. Did you do anything to



1 prepare for the deposition today to answer questions  
2 regarding Category 7?

3 A No, I did not.

4 Q Okay. Didn't talk to anybody or didn't look at  
5 any documents, didn't do anything special other than what  
6 you already know. Correct?

7 A I did not.

8 Q Okay. No. 8, "The history of enactment and  
9 enforcement of C-Tax and SB 254." Did you do anything to  
10 prepare to respond on behalf of the Department of Taxation  
11 today regarding questions posed under that category?

12 A No, I did not.

13 Q Didn't talk to anybody?

14 A No.

15 Q Didn't look at any documents?

16 A No.

17 Q Okay. And SB-254, do you know what that is?

18 A Yes, I do.

19 Q What is that?

20 A That's the original bill that created  
21 consolidated tax.

22 Q Okay. No. 10, "The application, implementation  
23 of the C-Tax since its enactment." Did you do anything  
24 special to prepare for your deposition today to answer  
25 questions regarding that?

1 A No, I did not.

2 Q Okay. Didn't talk to anybody about it?

3 A No.

4 Q Okay. Didn't look at any documents?

5 A No.

6 Q Nothing to help you prepare?

7 A No.

8 Q Okay. No. 11, the same question. Do anything  
9 special to help prepare for your deposition so you could  
10 answer questions on behalf of the Department of Taxation  
11 regarding the Category No. 11?

12 A No, I did not.

13 Q All right. Didn't talk to anybody?

14 A No.

15 Q Didn't look at any documents?

16 A No.

17 Q Okay. And No. 13, the last one, did you do  
18 anything to prepare for your testimony today as the  
19 representative of the Department of Taxation to answer  
20 questions regarding the Department of Taxation's answer  
21 and factual basis for affirmative defenses?

22 A No.

23 Q Didn't talk to anybody?

24 A No.

25 Q Did you look at anything?

1 A No.

2 Q Did you look at the answer at all?

3 A I did.

4 Q Okay.

5 A But not since -- not since I originally got it.

6 Q Oh, okay. Let me ask it this way: In order to

7 prepare for your deposition today totally, what did you do

8 to prepare, if anything?

9 A Nothing.

10 Q Okay. And how did you find out that you were

11 going to be the person who was going to be deposed today?

12 A My attorney let me know.

13 Q Okay. And once you found that out, did you ask

14 any questions of anyone other than your attorney about

15 what it is you needed to do or what you needed to know or

16 anything of that nature?

17 A No.

18 Q Did you go looking for any kind of documents or

19 anything to get you a background on the C-Tax system or

20 anything else?

21 A No.

22 Q Did you make any effort to figure out what it

23 was that you were going to be asked questions about?

24 A No.

25 Q Did you ever meet with your attorney to discuss

1 the deposition?

2 A We discussed it on the phone.

3 Q Okay. How long did you discuss --

4 MS. NICHOLS: Objection. I'm sorry. I'll let  
5 you finish.

6 BY MR. VELLIS:

7 Q How long did your conversation with your  
8 attorney last about your deposition?

9 MS. NICHOLS: Objection. Calls for privileged  
10 attorney-client communications and it's also the time he's  
11 seeking attorney work product as well.

12 MR. VELLIS: Okay. And my response would be I  
13 didn't ask her what you said. I didn't ask her what she  
14 said. I just asked her how long the conversation was. I  
15 don't think that invades the attorney-client privilege.

16 MS. NICHOLS: I just want my objection on the  
17 record. And you can answer, if you know.

18 THE WITNESS: I don't recall.

19 BY MR. VELLIS:

20 Q Okay. Was it longer than an hour?

21 A I don't recall.

22 Q You have no recollection whatsoever of the time?

23 A I think that we may have talked about it more  
24 than once on the phone.

25 Q Okay. How many times did you talk to your

1 attorney about your deposition today?

2 A I don't recall.

3 MS. NICHOLS: Objection again. Privileged  
4 attorney-client communication.

5 BY MR. VELLIS:

6 Q You don't recall? Was it more than five times  
7 or less than five?

8 A I don't know.

9 Q Okay. And if you took the total of all the  
10 conversations you had, how long do you think you talked to  
11 your attorney about your deposition today?

12 A I really don't recall.

13 MS. NICHOLS: Same objection.

14 If you'll give me just a moment.

15 MR. VELLIS: Want to take a break?

16 MS. NICHOLS: We don't really have to.

17 MR. VELLIS: Let's take a break so you guys can  
18 talk.

19 (Recess taken.)

20 BY MR. VELLIS:

21 Q Do you understand you're still under oath?

22 A Yes.

23 Q Okay. I think I asked you was there anything  
24 else that you've done to help prepare for your deposition  
25 today, and I think we discussed that you had talked to

1 your counsel, correct?

2 A Yes.

3 Q Anybody else that you talked to?

4 A To prepare?

5 Q Yes.

6 A No.

7 Q Okay. Anything that you've looked at to help  
8 you prepare in any way for this deposition?

9 A Do you mean in addition to the legal documents  
10 that I received?

11 Q Yes.

12 A No, I did not.

13 Q Okay. People do a lot of things to prepare for  
14 depositions. Some of them are for specific categories and  
15 some are just to prepare generally their knowledge about  
16 the area and things of that nature. I just want to know  
17 who you talked to and what you looked at, if anything, to  
18 help you prepare to answer questions today, if anything.

19 A No.

20 Q No?

21 A No.

22 Q Okay. Now, you just had a conference in here.  
23 What was that about?

24 A Just discussing the ground rules.

25 Q Okay. And what were you told?

1 MS. NICHOLS: Objection. Attorney-client  
2 privilege.

3 BY MR. VELLIS:

4 Q Are you represented by the Legislative Counsel  
5 Bureau?

6 A No, I'm not.

7 Q So they're not your attorneys, are they?

8 A I don't think so.

9 Q Okay. I don't think you have a privilege if you  
10 have non-representatives in the room talking to people.

11 MS. NICHOLS: I believe we do, as I'm consulting  
12 with them, so I think the privilege applies.

13 MR. POWERS: The privilege extends to third  
14 parties that are part of the confidential communications.

15 MR. VELLIS: No. The privilege applies to  
16 persons that are necessary to the representation. You  
17 guys are not necessary to the representation. You're  
18 lawyers that represent a separate entity in the lawsuit.  
19 There's no privilege in that situation. Just because you  
20 guys want to work together is one thing, but that doesn't  
21 make this a privileged conversation.

22 MR. POWERS: Except we're all part of the State  
23 and the State is the main defendant.

24 MR. VELLIS: No, it's not.

25 MR. POWERS: We're all sub entities of the State

1 of Nevada.

2 MR. VELLIS: That's great for you, but you go  
3 look at the complaint. The complaint defines the parties.  
4 The parties are the Treasurer --

5 MR. POWERS: And it says --

6 MR. VELLIS: Can I finish what I'm saying?

7 The parties in this case are the Treasurer, the  
8 Department of Taxation. You guys intervened. You're a  
9 separate entity that intervened on your own. It's not the  
10 State of Nevada and so there is no privilege for you guys  
11 to talk to a witness for the Department of Taxation and  
12 say there's an attorney-client relationship. It's not  
13 there.

14 MS. NICHOLS: I beg to differ, sir. If you look  
15 at NRS 41, if you want to bring a complaint against the  
16 State of Nevada or an entity, you have to sue the State on  
17 relation of that particular entity, so this lawsuit has to  
18 be against the State of Nevada on relation of the  
19 Department of Taxation.

20 MR. VELLIS: What relationship does that have to  
21 attorney-client relationships representing parties in this  
22 case?

23 MS. NICHOLS: We are all attorneys that  
24 represent the State of Nevada and the State of Nevada is  
25 the defendant in this case.



1 BY MR. VELLIS:

2 Q Ma'am, I'm going to ask you again. There was a  
3 conversation and we were out of the room. You were  
4 talking with the attorneys for the Legislative Counsel  
5 Bureau and with your counsel.

6 What were the discussions you had?

7 MS. NICHOLS: Objection. Attorney-client  
8 privilege. You don't have to answer that. I'm not going  
9 to instruct you not to answer that. It's up to you. You  
10 don't have to.

11 BY MR. VELLIS:

12 Q Well, if they're not instructing you not to  
13 answer, then yeah, you do have to answer. You don't get  
14 to make the choice. If she wants to instruct you to  
15 protect that privilege, that's her obligation or duty.

16 But if I'm asking you questions, you can't sit  
17 here in a deposition and refuse to answer questions,  
18 especially when you've been designated as the person most  
19 knowledgeable for the Department of Taxation.

20 So my question is, What were the conversations  
21 you guys had in this room when we were outside of it? You  
22 can either accept her advice not to answer the question  
23 based on counsel's recommendation or you can answer.

24 A We were discussing the ground rules.

25 Q Okay. And what was said about the ground rules?

1 A Just clarifying that my answers should be to the  
2 best of my knowledge and that I'm not expected to know  
3 everything and to be succinct.

4 Q Anything else?

5 A Not that I recall.

6 Q The conversation was about five minutes ago.  
7 Have you lost recollection of part of the conversation?

8 A You asked what I discussed?

9 Q I asked you what they discussed, all of you in  
10 this room, when I was outside. And you said the ground  
11 rules and then you told me what that was. And I asked you  
12 was there anything else discussed while we were outside  
13 the room between you and the counsel here.

14 MS. NICHOLS: Objection. Attorney-client  
15 privileged communication. It's also not relevant. I  
16 don't think -- we didn't say anything that I have any  
17 problem Mr. Vellis hearing. In fact, he could have sat in  
18 the room.

19 MR. VELLIS: Well, if that was so, when I came  
20 back in you guys told me to leave so, apparently, that was  
21 true.

22 BY MR. VELLIS:

23 Q Do you recall anything else that was discussed  
24 other than what you've told me?

25 A I asked my attorney's opinion of how my answers

1 have been so far.

2 Q Okay.

3 A Because I'm --

4 Q What did they say?

5 A They said I was fine.

6 Q Okay. Anything else?

7 A I said I felt like I was throwing Terry Rubald  
8 under the bus, but she really is the person most  
9 knowledgeable about a lot of this that has to do with  
10 local government.

11 Q Okay. Would you say in general she would be the  
12 person more knowledgeable than you on the topics that  
13 we're trying to discuss today?

14 A No.

15 Q You think you are the person most knowledgeable?

16 A Yes.

17 Q Okay. And it's for those categories that you  
18 listed, correct?

19 A Which categories?

20 Q Well, we went through the list sitting in front  
21 of you.

22 A Oh, the questions that we noted that we were  
23 going to discuss, yes.

24 Q Okay.

25 MR. VELLIS: Off the record for a second.

1 Joshua J. Hicks, Nevada Bar No. 6679  
2 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
3 50 West Liberty Street, Suite 1030  
4 Reno, Nevada 89501  
5 Telephone: 775-622-9450  
6 Facsimile: 775-622-9554  
7 Email: jhicks@bhfs.com

8 Clark V. Vellis, Nevada Bar No. 5533  
9 COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON  
10 800 South Meadows Parkway, Suite 800  
11 Reno, Nevada 89521  
12 Telephone: 775-851-8700  
13 Facsimile: 775-851-7681  
14 Email: cvellis@nevadafirm.com

15 Brandi L. Jensen, Nevada Bar No. 8509  
16 Fernley City Attorney  
17 OFFICE OF THE CITY ATTORNEY  
18 595 Silver Lace Blvd.  
19 Fernley, Nevada 89408

20 *Attorneys for the City of Fernley, Nevada*

21 **IN THE FIRST JUDICIAL DISTRICT COURT**

22 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

23 CITY OF FERNLEY, NEVADA, a  
24 Nevada municipal corporation,

25 Plaintiff,

26 v.

27 STATE OF NEVADA ex rel. THE NEVADA  
28 DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her  
official capacity as TREASURER OF THE  
STATE OF NEVADA; and DOES 1-20,  
inclusive,

Defendants,

NEVADA LEGISLATURE,

Intervenor.

Case No.: 12 OC 00168 1B

Dept. No.: I

**PLAINTIFF CITY OF FERNLEY'S OBJECTIONS TO NEVADA  
LEGISLATURE'S PROPOSED ORDER AND REQUEST TO SUBMIT  
PROPOSED ORDER AND JUDGMENT**

REC'D & FILED

2014 OCT -2 AM 11:49

ALAN GLOVER

BY ~~C. CRIBBLE~~ CLERK  
DEPUTY

1 Plaintiff City of Fernley ("Fernley"), by and through its undersigned counsel, hereby  
2 objects to the proposed order and judgment submitted by the Nevada Legislature ("Legislature").  
3 Fernley also submits its own proposed order and judgment, which is attached hereto as Exhibit 1.

4 First Judicial District Court Rule 19(4) provides that a proposed order shall "embody the  
5 Court's decision." While the Court undoubtedly granted summary judgment to defendants and  
6 denied summary judgment to the City of Fernley, the 51 page proposed order submitted by the  
7 Nevada Legislature goes well beyond the rationale articulated by this Court at the hearing on  
8 September 2, 2014. The Legislature's proposed order is essentially an endorsement of every  
9 argument and any evidence made or offered by the Defendants and a repudiation of every  
10 argument and all evidence made or offered by Fernley.

11 For example, the Legislature's proposed order sets forth a lengthy overview of the C-Tax  
12 System, including a discussion of areas in which the Department and Legislature disagree such as  
13 time frames for municipalities to seek adjustments, and a suggestion that Lyon County has been  
14 willing to work with Fernley on C-Tax adjustments. There is no indication any of this was  
15 material to the Court's decision. In fact, the Court made several comments at the September 2,  
16 2014 hearing questioning whether Fernley has grounds for a lawsuit against Lyon County. The  
17 proposed Order also includes lengthy statements of law and citations to cases, the vast majority of  
18 which were not discussed at the hearing on September 2, 2014 and therefore it is unclear whether  
19 this Court relied on those citations. Finally, the Legislature's proposed Order ignores undisputed  
20 evidence put on by Fernley such as evidence demonstrating a low level of law enforcement  
21 service provided by Lyon County and the impacts of financial shortfalls on Fernley's  
22 infrastructure.

23 Fernley is certainly cognizant of the fact that the Court granted summary judgment to the  
24 Defendants and denied summary judgment to Fernley, and the obvious conclusion that this Court  
25 found defendants arguments persuasive. However, the order should still be "the Court's  
26 decision" and not the Defendants' preferred decision.

27 Fernley requested and received a recording of the September 2, 2014 hearing. A copy of  
28 the transcript during the period when the Court announced its ruling is attached as Exhibit 2.

1 That transcript is the best way to capture "the Court's decision." Using that transcript Fernley  
2 prepared an alternative order which is attached as Exhibit 1. Fernley endeavored to mirror the  
3 transcript of the hearing as closely as possible in preparing the ruling.

4 On a final note, Fernley's proposed order is silent as to costs. The Court did not address  
5 costs at the hearing and there are currently pending before this Court a request for costs from the  
6 Department of Taxation and a request from Fernley that all parties bear their own costs.  
7 Accordingly, costs should not be addressed in the final order and judgment unless that issue has  
8 been resolved by the Court.

9 For these reasons, Fernley objects to the proposed order submitted by the Legislature and  
10 respectfully requests the Court adopt the attached order prepared by Fernley.

11 DATED this 2nd day of October, 2014.

12  
13 BROWNSTEIN HYATT FARBER SCHRECK, LLP

14  
15 By: 

16 Joshua J. Hicks, Esq., Nevada Bar No. 6679  
17 50 West Liberty Street, Suite 1030  
18 Reno, Nevada 89501  
19 Telephone: 775-622-9450

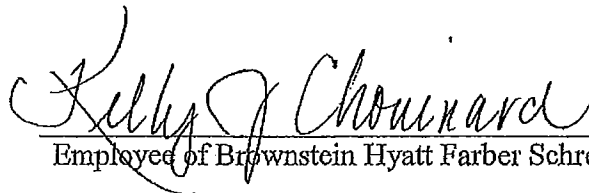
20 *Attorneys for the City of Fernley, Nevada*  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that on this 2nd day of October, 2014, I caused to be served via electronic mail, a true and correct copy of the above foregoing **PLAINTIFF CITY OF FERNLEY'S OBJECTIONS TO NEVADA LEGISLATURE'S PROPOSED ORDER AND REQUEST TO SUBMIT PROPOSED ORDER AND JUDGMENT** properly addressed to the following:

Andrea Nichols, Esq.  
anichols@ag.nv.gov  
Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511

Brenda J. Erdoes, Esq.  
Kevin Powers, Esq.  
kpowers@lcb.state.nv.us  
J. Daniel Yu, Esq.  
dan.yu@lcb.state.nv.us  
Legislative Counsel Bureau  
401 South Carson Street  
Carson City, Nevada 89701

  
Employee of Brownstein Hyatt Farber Schreck, LLP

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation,  
Plaintiff,

v.

STATE OF NEVADA ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE  
OF NEVADA; and DOES 1-20, inclusive,  
Defendants,

NEVADA LEGISLATURE,  
Intervenor

Case No.: 12 OC 00168 1B  
Dept. No.: I

**INDEX OF EXHIBITS TO PLAINTIFF CITY OF FERNLEY'S OBJECTIONS TO  
NEVADA LEGISLATURE'S PROPOSED ORDER AND REQUEST TO SUBMIT  
PROPOSED ORDER AND JUDGMENT**

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# EXHIBIT 1

# EXHIBIT 1

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IN THE FIRST JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA IN AND FOR CARSON CITY

CITY OF FERNLEY, NEVADA, a  
Nevada municipal corporation,

Plaintiff,

v.

STATE OF NEVADA ex rel. THE NEVADA  
DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her  
official capacity as TREASURER OF THE  
STATE OF NEVADA; and DOES 1-20,  
inclusive,

Defendants,

NEVADA LEGISLATURE,

Intervenor.

Case No.: 12 OC 00168 1B

Dept. No.: I

**ORDER AND JUDGMENT**

**INTRODUCTION**

This action was brought by Plaintiff City of Fernley (Fernley), which is a general-law city incorporated under NRS Chapter 266 and located in Lyon County, Nevada. Fernley seeks money damages and declaratory and injunctive relief against Defendants State of Nevada ex rel. the State Department of Taxation (Department of Taxation) and the Honorable Kate Marshall in her official capacity as the Treasurer of the State of Nevada (State Treasurer). Fernley challenges the constitutionality of Nevada's system of allocating certain statewide tax revenues which are deposited and consolidated in the Local Government Tax Distribution Account and distributed to Nevada's ~~local governmental entities~~ under NRS 360.600-360.740. The system is administered by the Department of Taxation and

1 the State Treasurer, and it is commonly referred to as the consolidated tax system or the C-Tax  
2 system. The Legislature of the State of Nevada (Legislature) was permitted to intervene as  
3 a Defendant under NRCp 24 and NRS 218F.720 to defend the constitutionality of the C-Tax  
4 system.

5 On September 2, 2014, the Court heard oral arguments from the parties regarding  
6 the following motions: (1) Fernley's Motion for Summary Judgment, filed on June 13, 2014;  
7 (2) Fernley's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014  
8 Order, filed on June 18, 2014; (3) the State's Renewal of Motion to Dismiss, filed on May 5,  
9 2014, which the Court converted into a Motion for Summary Judgment in the Court's June  
10 6, 2014 Order; and (4) the Legislature's Joinder in the State's Renewal of Motion to  
11 Dismiss, filed on May 6, 2014, which the Court also converted into a Motion for Summary  
12 Judgment in the Court's June 6, 2014 Order. Therefore, at the hearing, each party presented the  
13 Court with a Motion for Summary Judgment, and each party asked for a final judgment to be  
14 entered in its favor on all remaining claims for relief alleged in Fernley's complaint.

15 In its complaint, Fernley alleged both federal constitutional claims and state  
16 constitutional claims. However, on January 25, 2013, the Nevada Supreme Court issued in  
17 this matter a Writ of Mandamus and Order Granting in Part and Denying in Part Petition  
18 for Writ of Mandamus which directed this Court to dismiss Fernley's federal constitutional  
19 claims because they were time-barred as a matter of law by the 2-year statute of limitations  
20 that applies to such claims. *State Dep't of Taxation v. First Jud. Dist. Ct.*, No. 62050 (Nev.  
21 Jan. 25, 2013). Accordingly, on February 22, 2013, this Court entered an Order Pursuant to  
22 Writ of Mandamus which granted the Defendants' Motions to Dismiss "in respect to the  
23 federal constitutional claims being asserted by Plaintiff." Therefore, before the hearing on  
24 the parties' summary-judgment motions, the Court had already dismissed Fernley's federal  
25 constitutional claims, which were its first claim for relief (denial of equal protection under the  
26 Fourteenth Amendment to the United States Constitution) and its fifth claim for relief (denial of  
27 due process under the Fourteenth Amendment to the United States Constitution).

1 Fernley's remaining claims for relief are its state constitutional claims, which are its  
2 second claim for relief (violation of the separation-of-powers provision of Article 3, Section 1 of  
3 the Nevada Constitution), its third claim for relief (creation of a special or local law in  
4 violation of Article 4, Section 20 of the Nevada Constitution), and its fourth claim for relief  
5 (violation of Article 4, Section 21 of the Nevada Constitution which provides that in all cases  
6 where a general law can be made applicable, all laws shall be general and of uniform  
7 operation throughout the state). Fernley asks for money damages and declaratory and  
8 injunctive relief regarding its state constitutional claims.

9 At the hearing, the following counsel appeared on behalf of the parties: Joshua J. Hicks,  
10 Esq., and Clark V. Vellis, Esq., who appeared on behalf of Plaintiff City of Fernley; Andrea  
11 Nichols, Esq., Senior Deputy Attorney General, who appeared on behalf of Defendants State of  
12 Nevada ex rel. the Department of Taxation and State Treasurer; and Kevin C. Powers, Esq., Chief  
13 Litigation Counsel, and J. Daniel Yu, Esq., Principal Deputy Legislative Counsel, of the Legal  
14 Division of the Legislative Counsel Bureau (LCB), who appeared on behalf of Defendant  
15 Legislature.

16 Having considered the pleadings, documents and exhibits in this case and having  
17 received the arguments of counsel for the parties, the Court denies Fernley's Motion for  
18 Summary Judgment and grants the Defendants' Motions to Dismiss, which were converted into  
19 Motions for Summary Judgment, on all remaining claims for relief alleged in Fernley's  
20 complaint. Because the Court concludes that the Defendants are entitled to judgment as a matter  
21 of law, the Court denies, as moot, Fernley's Motion for Partial Reconsideration and Rehearing of  
22 the Court's June 6, 2014 Order. Therefore, having adjudicated and denied all remaining claims  
23 for relief alleged in Fernley's complaint, the Court enters final judgment in favor of the  
24 Defendants for the following reasons.

#### 25 STATUTE OF LIMITATIONS

26 The Nevada Supreme Court has not determined what period of limitations applies to  
27 claims brought under Article 3, Section 1 and Article 4, Sections 20 and 21 of the Nevada  
28

1 Constitution. Because there is no specific statute of limitations on point, the Court determines  
2 that the 4 year period of limitations set forth in NRS 11.220 applies, and should run from the time  
3 Fernley was incorporated in 2001. Accordingly, Fernley's second, third and fourth Claims for  
4 Relief are denied as a matter of law for failing to bring this action within four years of Fernley's  
5 date of incorporation.

6 Although the state of limitations ruling is dispositive of this case, the Court will also  
7 address Fernley's claims and certain other defenses raised by the Defendants in order to provide a  
8 complete record in the event of an appeal to the Nevada Supreme Court.

### 9 THIRD CLAIM FOR RELIEF

10 As an initial matter, the Court determines that Fernley lacks standing to bring a claim  
11 against the State pursuant to Article 3, Section 1 of the Nevada Constitution. That Section does  
12 not exist to protect a political subdivision of the State, such as Fernley.

13 Furthermore, even if Fernley had standing to bring a claim against the State pursuant to  
14 Article 3, Section 1 of the Nevada Constitution, Fernley's claim is without merit. The  
15 Department of Taxation and the State Treasurer are executing the C-Tax system at the delegation  
16 of the Legislature. Distributions of C-Tax are within statutory formulas codified by the Nevada  
17 Legislature at NRS 360.600 to NRS 360.740. The Court finds that there is legislative  
18 participation, oversight and guidance in the collection and appropriation process. Accordingly,  
19 Fernley's third claim for relief is denied as a matter of law.

### 20 FOURTH CLAIM FOR RELIEF

21 Article 4, Section 20 of the Nevada Constitution prohibits the enactment of local or  
22 special laws in certain enumerated circumstances. As an initial matter, the Court finds that the C-  
23 Tax system is not a local or special law. The C-Tax applies in the same manner to all similarly  
24 situated cities and towns. Although the Court sympathizes with Fernley's situation, the inability  
25 to provide necessary services does not mean that Fernley is treated unfairly by the C-Tax system.  
26 Accordingly, Fernley's Fourth Claim for Relief is denied as a matter of law.

### 27 FIFTH CLAIM FOR RELIEF

---

1 Article 4, Section 21 of the Nevada Constitution provides that all laws shall be general  
2 and of a uniform operation throughout the State. The Court agrees that the C-Tax system could  
3 be structured in a general fashion, such as distributions based on population. However, the  
4 purpose of the C-Tax system is to encourage and incentivize towns and cities to provide  
5 necessary services to their citizens. Distributing C-Tax to cities and towns without any  
6 consideration of whether or not they are providing necessary services would defeat the entire  
7 purpose of the C-Tax system. The C-Tax system best serves the interest of the people of Nevada  
8 as a whole by making sure necessary resources are being provided. Accordingly, a general law  
9 would be insufficient to serve the underlying purpose of the C-Tax system and the existing  
10 system best serves the interests of the people of Nevada. Therefore, the C-Tax system does not  
11 violate Article 4, Section 21 of the Nevada Constitution. See Clean Water Coalition v. The M  
12 Resort, LLC, 127 Nev.Adv.Op. 24, 255 P.3d 247 (2011).

13 **SOVEREIGN IMMUNITY**

14 NRS 41.032(1) provides immunity to the State in certain circumstances. The Court  
15 determines that NRS 41.032(1) applies with respect to any claims for damages against the  
16 Department of Taxation or the State Treasurer.

17 **OTHER DEFENSES**

18 Any other defenses raised by the Defendants are considered moot.

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1. Plaintiff City of Fernley's Motion for Summary Judgment is DENIED.

2. Plaintiff City of Fernley's Motion for Partial Reconsideration and Rehearing of the June 6, 2014 Order is DENIED as moot.

3. The Defendants' Motions to Dismiss, which were converted into Motions for Summary Judgment, are GRANTED and final judgment is entered in favor of the Defendants on all causes of action and claims for relief alleged in Fernley's Complaint.

4. Pursuant to NRCP 58, the Legislature is designated as the party required to: (1) serve written notice of entry of the Court's order and judgment, together with a copy of the order and judgment, upon each party who has appeared in this case; and (2) file such notice of entry with the Clerk of the Court.

DATED: This \_\_\_\_\_ day of \_\_\_\_\_, 2014.

JAMES T. RUSSELL  
DISTRICT COURT JUDGE

Respectfully submitted by:

Joshua J. Hicks, Esq., Nevada Bar No. 6679  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
Telephone: 775-622-9450

*Attorneys for the City of Fernley, Nevada*

# EXHIBIT 2

# EXHIBIT 2



CITY OF FERNLEY, NEVADA, a Nevada municipal corporation,

v.

STATE OF NEVADA ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE  
OF NEVADA; and DOES 1-20, inclusive,

NEVADA LEGISLATURE, Intervenor.  
Case No.: 12 OC 00168 1B

Dept. No.: I

PARTIAL TRANSCRIPT OF ORAL ARGUMENT  
SEPTEMBER 2, 2014

04:26:25 pm

**Judge Russell:** I do think there is an issue in regard to the statute of limitations. Base on the Supreme Court's decision in respect to when they granted in part and denied in part the Writ of Mandamus, they state In regards to Fernley's federal constitutional claims, that the District Court was obligated and under clear authority to dismiss the federal constitutional claims and the City was require to bring its federal constitutional claims within 2 years of incorporation and it failure to do so renders those claims barred by the statute of limitations. It is clear to the Court that the statute of limitations has clocked and based upon that Supreme Court Writ started to run based upon when Fernley was incorporated.

There can't be a different standard. It either ran on the federal constitutional claims as well as the state claims in respect to that.

Fernley is correct that the Nevada Supreme Court has not determined which limitations appear applies to the state constitutional claim. However, the Defendant Legislature is also correct that the legislative limitation period is 4 years unless a different period is provided by specific statute. There is no specific statute on point so the Court is convinced that the applicable statute of limitations with regard to this matter is 4 years. Fernley had 4 years from 2001 when it was incorporated in which to bring this lawsuit; Fernley failed to do so.

In addition the Court is going to go ahead and provide comments in respect to the causes of action because, in case the Supreme Court, I think Mr. Powers is correct, in case they decide I am wrong in regards to the statute of limitations issue. I think that it is important that I at least comment on those additional claims for relief.

### **Claim 1**

Claim one basically was also dealt with in the Order Granting in Part and Denying in Part the Petition for Writ of Mandamus where the Nevada Supreme Court basically dismissed that claim.

### **Claim 2**

Violation of the Separation of Powers Clause of the Nevada Constitution; in respect to that particular claim, in regards to that, the Court is not persuaded by Fernley that it does not have standing to bring a separation of powers claim against the state. The separation of powers clause in the Nevada Constitution does not exist for the protection of a political subdivision and the State. Second, even if Fernley did have standing the Court has determined that Fernley's claim for relief is without merit. The executive branch acting through the Nevada Department of Taxation and the Treasurer is merely executing the C-Tax statutes at the delegation of the Legislature. All distributions under the C-Tax system are done in accordance with specific statutory formulas which the Legislature codified at NRS 360.600 to NRS 360.740. The Department of Taxation and the Treasurer can only apply their findings based on fiscal data to the mathematical equations to arrive at the exact amount to be appropriated which has been indicated except for one little small discretionary amount which does not sound to me like it is being applied, at least from the Court's view, fairly. Therefore contrary to Fernley's assertion, there is Legislative participation, oversight, guidance in the collection and appropriation process. It is the Court's determination that Defendant's Motion for Summary Judgment with regard to Fernley's Second Claim for Relief should be granted and Fernley's Motion for Summary Judgment with regard to the second claim for relief should be denied.

### **Claim 3**

Creation of a special law in violation of Article 4 Section 20 of the Nevada Constitution; According to Article 4, Section 20 of the Nevada Constitution, the Legislature shall not pass local or special laws in any of the follow enumerated cases: that is to say for the assessment and collection of taxes for state, county and township purposes. Here, in their Opposition to Fernley's Motion for Summary Judgment the Defendant Legislature also argues that the C-Tax statutes apply statewide to all similarly situated local governments. So the C-Tax states are general laws, not local laws or special laws. The Court is not persuaded that the C-Tax system is a special or local law. The C-Tax system applies the same to all similarly situated cities and towns. Just because Fernley refuses to supply the necessary services in order to obtain more revenue from the C-Tax system does not mean that Fernley is treated unfairly. The court sympathizes with Fernley's circumstances. And again I think there is no doubt, and I said this earlier, in the Court's mind that the City of Fernley is entitled to additional public services, but it seems to the Court that the answer lies with the Legislature or additionally lies with Lyon County which is receiving those C-Taxes. And unfortunately, Fernley is not receiving that. But that does not mean that the C-Tax system is a special or local law in violation of Article 4 Section 20

of the Nevada Constitution. Therefore, it is this Court's determination that Defendant's Motion for Summary Judgment with regard to Fernley's Third Claim for Relief shall be granted and Fernley's Motion for Summary Judgment with regard to the Third Claim for Relief shall be denied.

#### Claim 4

Violation of Article 4, Section 21 of the Nevada Constitution; according to Article 4, Section 21 of the Nevada Constitution all laws shall be general and of a uniform operation throughout the State. The Court is in agreement with respect to this that basically, I agree with Fernley that a general law could have been implemented instead of the C-Tax system. The six taxes could have been distributed to cities and towns based upon population, for example. However, the purpose of the C-Tax system was to encourage and an incentive to towns and cities to provide necessary services to their citizens. Distributing the six tax funds to cities and towns without any consideration of whether or not they were providing necessary services would have defeated the entire purpose of the legislation in this particular case. The Court agrees with Defendants that the C-Tax system best serves the interest of the people of the State of Nevada as a whole by making sure necessary services are being provided. Therefore under the *Clean Water Coalition* and *M Resort LLC* case because a general law would be insufficient to serve the underlying purpose of the C-Tax system, because the C-Tax system best serves the interests of the people of the State of Nevada, the Court has determined that the C-Tax system does not violate Article 4, Section 21 of the Nevada Constitution. It is this Court's determination that Defendant's Motion for Summary Judgment with regard to Fernley's Fourth Claim for Relief should be granted and that Fernley's Motion for Summary Judgment with regard to the Fourth Claim for Relief should be denied.

#### Claim 5

Additionally, Claim 5 is basically handled, taken care of by the Order Granting In Part and Denying in Part the Writ of Mandamus that was issued by the Nevada Supreme Court on January 30, 2013. The Court also believes that according to NRS 41.0312 that basically it does apply in regard to the individual entities in regards to the application in regards to any damage claims in respect to any matter in regards to that. I am not sure that NRS 41.032(2) is even applicable to this case in regards to this matter in regards to that.

Again, I am not going to address Laches. I am not sure it really applies. But I do believe the statute of limitations is probably the overall basis in denying it, but I did think it was appropriate to address the other issues in case the Nevada Supreme Court could take a look at this matter.

Mr. Powers you will prepare the order for the Court in respect to these two motions.

Any further comment?

**Clark Vellis:** Your honor, that we be allowed to see the order before it is submitted?

**Judge Russell:** Absolutely. Our rule does provide under our local rules that it is provided to the other counsel. They have 5 days to review it and provide it to the Court.

**Kevin Powers:** May I suggest another procedure might be facilitated because we have worked well with counsel. We will draft the order, provide them with a copy and work to come up with a mutually agreed upon proposal and then submit it to you. If we can't come up with a mutually agreed upon proposal we will submit it with their objections.

**Clark Vellis:** That is agreeable your honor.

**Judge Russell:** That is agreeable to the Court.

In addition the Motion for Reconsideration is denied. The Court feels it is moot with respect to the Order by the Court in respect to this matter.

Thank you all again, for the excellent argument. Again, my sympathies go out for the City of Fernley, it really does. Mr. Goodman and the people of Fernley I sympathize with them. But I just don't believe that the answer is holding these statutes unconstitutional. I think the answer is going to Lyon County and maybe bringing an action against Lyon County for not doing the right things in regards to providing Fernley with the necessary funds they should be entitled to. And I am just making that comment for going to the legislature. Again, when you take that same piece of pie and that same piece of pie is going to Lyon County, I am not sure you get anywhere anyway. Because the other counties would have an impact and regard in arguing that now you are taking away our piece of pie and we weren't even noticed on it. So that concerns the Court as well in this case. Court will be in recess.

4:35:46 pm

1 CATHERINE CORTEZ MASTO  
Attorney General  
2 GINA C. SESSION  
Chief Deputy Attorney General  
3 Nevada Bar No. 5493  
gsession@ag.nv.gov  
4 ANDREA NICHOLS  
Senior Deputy Attorney General  
5 Nevada Bar No. 6436  
5420 Kietzke Lane, Suite 202  
6 Reno, NV 89511  
(775) 688-1818  
7 anichols@ag.nv.gov

8 *Attorneys for Defendant Nevada Department of Taxation*

9  
10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
11 **IN AND FOR CARSON CITY**

12 CITY OF FERNLEY, NEVADA, a Nevada  
municipal corporation,

13 Plaintiff,

14 v.

15 STATE OF NEVADA, ex rel. THE NEVADA  
16 DEPARTMENT OF TAXATION; THE  
17 HONORABLE KATE MARSHALL, in her  
official capacity as TREASURER OF THE  
18 STATE OF NEVADA; THE LEGISLATURE  
OF THE STATE OF NEVADA and DOES 1-  
20, Inclusive,

19 Defendants.  
20

Case No.: 12 OC 00168 1B

Dept. No.: I

21 **DEFENDANT'S OPPOSITION TO MOTION TO RETAX COSTS**  
22 **AND REPLY TO OPPOSITION TO MOTION FOR COSTS**

23 Defendant, State of Nevada, ex rel. its Department of Taxation ("Department"), by and  
24 through counsel, Catherine Cortez Masto, Attorney General of the State of Nevada, Gina  
25 Session, Chief Deputy Attorney General, and Andrea Nichols, Senior Deputy Attorney  
26 General, submits its Opposition to Motion to Retax Costs and ~~Reply to Plaintiff's Opposition~~  
27 to Motion for Costs.

28 ///

1 This Opposition and Reply is made and based on the following Memorandum of  
2 Points and Authorities, together with all other papers, pleadings and documents on file  
3 herein.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. NATURE OF THE OPPOSITION AND REPLY**

6 The Department requests an award of costs as a prevailing party in this lawsuit. In  
7 exercising its discretion the Department asks this honorable Court to consider the  
8 extraordinary amount of discovery requested by Fernley in a case with little or no factual  
9 issues. The Department agrees with the City of Fernley ("Fernley") that the Department's  
10 request for costs was premature. The Department will honor Fernley's request for further  
11 documentation and will file an amended memorandum of costs and disbursements within  
12 five days of entry of the judgment in this matter.

13 The Department disagrees with Fernley's argument that it is immune from payment of  
14 costs pursuant to NRS 41.032 and requests this Court to read NRS 41.032 in conjunction  
15 with NRS 41.031, 18.025 and 18.150. When considered together it is clear that NRS 41.032  
16 provides immunity from a lawsuit; it does not preclude an award of costs. A differing  
17 interpretation would lead to an absurd result and would not give effect to legislative intent.

18 **II. FACTS AND PROCEDURAL POSTURE**

19 The Department of Taxation and the Honorable Kate Marshall in her official capacity  
20 as Treasurer of the State of Nevada filed their Motion to Dismiss on August 3, 2012.<sup>1</sup> In its  
21 Opposition, filed August 20, 2012, Fernley requested a continuance to allow for discovery.  
22 In a Stipulation and Order filed April 11, 2014, the parties agreed to extend the final  
23 discovery deadline to May 2, 2014. The Department's responses to the City of Fernley's  
24 numerous discovery requests are attached hereto as Exhibit "A."

25 After conducting discovery for approximately one and a half years, Fernley filed its  
26 Motion for Summary Judgment ("MSJ") on June 13, 2014. ~~Therein Fernley argued that the~~

27  
28 <sup>1</sup> On June 6, 2014, this Court ordered, among other things, that the Treasurer has immunity under NRS  
41.032(1) and dismissed all claims against the Treasurer.

1 only issues presented were issues of constitutional and statutory interpretation, which are  
2 entirely questions of law, and that there was no factual dispute which would preclude the  
3 entry of summary judgment. Plaintiff's MSJ, p. 20, ll. 18-20. Further, at the September 2,  
4 2014, hearing on motions for summary judgment, counsel for the City of Fernley was forced  
5 to admit that the issues to be decided were generally legal rather than factual. Recording of  
6 hearing at 4:21:06 to 4:21:24.<sup>2</sup>

7 At the September 2, 2014, hearing the Court announced its decision in favor of the  
8 Defendants on all of Fernley's causes of action and requested that counsel for the  
9 Legislature draft and submit a proposed order. The Legislature submitted a Proposed Order  
10 and Judgment on October 1, 2014.

11 Prior to the submission of the Proposed Order and Judgment the Department filed its  
12 Motion for Costs and a Memorandum of Costs and Disbursements on September 19, 2014.  
13 Fernley filed its Motion to Retax Costs and Opposition to Motion for Costs on September 24,  
14 2014. Herein, the Department submits its response.

### 15 **III. ARGUMENT**

#### 16 **A. The Department's Request for Costs is Premature.**

17 In its Motion to Retax Costs and Opposition to Motion for Costs Fernley first argues  
18 that the Department's request is premature. The Department agrees. NRS 18:110(1)  
19 provides that the party who claims costs must file and serve a memorandum within five days  
20 after the entry of judgment. In this case judgment has not yet entered. "Entry" involves the  
21 filing of a signed written order with the court clerk." *Division of Child and Family Services v.*  
22 *Eighth judicial District Court*, 120 Nev. 445, 451 92 P.3d 1239, 1243 (2004). An oral  
23 pronouncement of judgment is not valid for any purpose; only a written judgment has any  
24 effect. *Rust v. Clark County School District*, 103 Nev. 686, 689, 747 P.2d 1380,  
25 ///

26  
27 <sup>2</sup> Mr. Hicks represented that whether the State exercised due care and the amount of damages could  
28 be factual issues. But these issues are not relevant to a determination of whether the C-Tax statutes are  
constitutional.

1 1382 (1987). Accordingly, the Department will submit an amended memorandum of costs  
2 and disbursements within five days after entry of judgment.

3 **B. The Court Should Exercise its Discretion and Award Costs to the**  
4 **Department.**

5 "The determination of allowable costs is within the sound discretion of the trial court."  
6 *Bobby Berosini, LTD. v. People for the Ethical treatment of Animals*, 114 Nev. 1348, 971  
7 P.2d 383 (1998). Fernley argues that the Court should exercise its discretion and order each  
8 party to bear their own costs since this was a unique constitutional case. Fernley claims that  
9 the case differs from the type of cases in which costs are routinely awarded. However,  
10 Fernley cites to no case or statute that allows the Court to consider the nature of a case in  
11 determining whether or not to award costs.

12 However, consideration of the nature of the case would actually support an award of  
13 costs to the Department. The majority of the costs the Department is claiming in this action  
14 were incurred by the Department in discovery. The purpose of discovery is to locate  
15 admissible evidence. Yet, after a year and a half of discovery Fernley admitted that the  
16 issues to be decided were legal rather than factual. Plaintiff's MSJ, p. 20, ll. 18-20.  
17 Recording of September 2, 2014, hearing at 4:21:06 to 4:21:24. For this reason the amount  
18 of discovery conducted by Fernley was excessive and the Department should be entitled to  
19 recover costs incurred.

20 **C. The Department Will Provide Supplemental Documentation.**

21 Although the Department believes that its Memorandum of Costs and Disbursements  
22 complied with the statutory requirements, the Department is willing to provide supplemental  
23 documentation. Further, review of the documents submitted corroborates Fernley's  
24 allegation of duplicative billing by the same court reporting agency. However, further review  
25 also shows that some costs incurred were not included in the Memorandum of Costs and  
26 Disbursements filed on September 19, 2014. For this reason ~~also the Department will~~  
27 submit an amended Memorandum of Costs and Disbursements within five days of entry of  
28 the judgment.



Fernley points out that at her deposition, and for the first time, Ms. Henderson claimed she was not in fact the person most knowledgeable for the Department in certain subject areas. It should be noted that Ms. Henderson was in fact the person most knowledgeable in many of the subject areas Fernley identified in its notice of deposition. Plaintiff's Motion to Retax Costs and Opposition to Motion for Costs, Ex. "2," p. 23, l. 19 to p. 24, l. 2. Fernley claims that it incurred additional expense because it was required to depose two other Department witnesses. What Fernley failed to mention is that it had already noticed the depositions of these two witnesses. Exhibit "B" attached hereto. In fact the number of witnesses deposed and volume of discovery requested shows the extraordinary amount of time the Department spent in needless discovery for a case with little or no factual issues.

**D. The Department's Costs are Recoverable.**

NRS 18.005(17) allows for any reasonable and necessary expense incurred in connection with the action. The Department respectfully asserts that all of the requested costs were reasonable and necessary.

**E. Fernley is Not Immune Pursuant to NRS 41.032.**

NRS 41.032 refers to actions brought under 41.031 which is the State's limited waiver of sovereign immunity. NRS 41.031 refers to civil actions which are commenced with the filing and service of a summons and complaint. This is not such an action. NRS 18.150 specifically allows for the payment of costs when the State or county is a party.

Further NRS 18.025 states:

**Court not to refuse to award attorney's fees or costs solely because public officer or agency is prevailing party.**

1. A court shall not:

(a) Refuse to award attorney's fees or costs to the State, a local government, a public officer or a public employee; or

(b) Reduce the amount of the attorney's fees or costs it awards to the State, a local government, a public officer or a public employee, as the prevailing party in a civil action or as a party otherwise entitled to receive attorney's fees or costs, solely because the prevailing party is the State, a local government, a public officer or a public employee.

2. If a court determines that the State, a local government, a public officer or a public employee is entitled to receive attorney's fees or costs pursuant to the Nevada Rules of Civil Procedure,

1 the Nevada Rules of Appellate Procedure, the provisions of this  
2 chapter or another specific statute, it shall award the attorney's  
3 fees and costs at the rates set forth in the rule or statute. If rates  
are not set forth in the rule or statute, the court shall award  
reasonable attorney's fees and costs.

4 3. As used in this section, "local government" means any  
5 county, city, district, agency or other political subdivision of this  
6 state.

7 If a statute is clear on its face, Courts do not look beyond its plain language. *Zohar v*  
8 *Zbiegien*, 130 Nev. Adv. Op 74, -- P.3d -- (September 18, 2014). In addition the Court,  
9 "Interprets provisions within a common statutory scheme harmoniously with one another in  
10 accordance with the general purpose of those statutes to avoid unreasonable or absurd  
11 results and give effect to the Legislature's intent." *Simmons Self-Storage Partners, LLC v.*  
*Rib Roof, Inc.*, 130 Nev. Adv. Op 57, 331 P.3d 850, 854 (2014).

12 Here, NRS 41.032 must be read in conjunction with NRS 18.150 and 18.025. NRS  
13 41.032 provides immunity from a lawsuit; it in no way precludes an award of costs. When  
14 read in conjunction with NRS 18.150 and 18.025, it is clear that costs must be awarded  
15 regardless of whether a political subdivision is required to pay costs or is a prevailing party.  
16 Any other interpretation would lead to absurd results and would fail to give effect to the  
17 Legislature's intent.

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1 **IV. CONCLUSION**

2 In light of the foregoing, the Department respectfully requests that this Court enter an  
3 order allowing for an award of costs to the Department as a prevailing party, and allowing the  
4 Department to file an Amended Memorandum of Costs and Disbursements within five days  
5 of entry of the judgment in this matter.

6 DATED this 2<sup>nd</sup> day of October, 2014.

7 CATHERINE CORTEZ MASTO  
8 Attorney General

9 By: Andrea Nichols  
10 ANDREA NICHOLS  
11 Senior Deputy Attorney General  
12 Nevada Bar No. 6436  
13 5420 Kietzke Lane, Suite 202  
14 Reno, NV 89511  
15 (775) 688-1818

16 *Attorneys for Defendants Nevada*  
17 *Department of Taxation*

Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on this 3<sup>rd</sup> day of October, 2014, pursuant to NRCP 5(b) and the parties' stipulation and consent to service by electronic means, I served a copy of the foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO RETAX COSTS AND REPLY TO OPPOSITION TO MOTION FOR COSTS**, by electronic mail directed to the following:

Joshua Hicks, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
50 West Liberty Street, Suite 1030  
Reno, NV 89501  
*jhicks@bhfs.com*

Clark Vellis  
Cotton, Driggs, Walch, Holley, Woloson & Thompson  
800 South Meadows Parkway, Suite 800  
Reno, NV 89521  
*cvellis@nevadafirm.com*

Brandi Jensen, Fernley City Attorney  
Office of the City Attorney  
595 Silver Lace Blvd.  
Fernley, NV 89408  
*bjensen@cityoffernley.org*

Kevin Powers, Esq.  
Dan Yu, Esq.  
Legislative Counsel Bureau  
401 S. Carson Street  
Carson City, NV 89701  
*kpowers@lcb.state.nv.us*  
*dan.yu@lcb.state.nv.us*



An Employee of the Office  
of the Attorney General

**EXHIBIT INDEX**

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# EXHIBIT A

**EXHIBIT A**

Case No. 66851  
JA 3872

1 CATHERINE CORTEZ MASTO, Attorney General  
2 GINA C. SESSION, Chief Deputy Attorney General  
3 Nevada Bar No. 5493  
4 Email: gsession@ag.nv.gov  
5 ANDREA NICHOLS, Senior Deputy Attorney General  
6 Nevada Bar No. 6436  
7 5420 Kietzke Lane, Suite 202  
8 Reno, NV 89511  
9 (775) 688-1818  
10 anichols@ag.nv.gov  
11 *Attorneys for Defendants Nevada Department of Taxation  
12 and Kate Marshall, State Treasurer*

13 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
14 **IN AND FOR CARSON CITY**

15 CITY OF FERNLEY, NEVADA, a Nevada  
16 municipal corporation,

17 Plaintiff,

18 v.

19 STATE OF NEVADA, ex rel. THE NEVADA  
20 DEPARTMENT OF TAXATION; THE  
21 HONORABLE KATE MARSHALL, in her  
22 official capacity as TREASURER OF THE  
23 STATE OF NEVADA; and DOES 1-20,  
24 Inclusive,

25 Defendants,

26 NEVADA LEGISLATURE,

27 Intervener.

Case No.: 12 OC 00168 1B

Dept. No.: I

28 **DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST REQUEST  
FOR ADMISSIONS TO STATE OF NEVADA EX REL NEVADA  
DEPARTMENT OF TAXATION**

Defendant, the State of Nevada ex rel. its Department of Taxation, by and through its attorneys, Catherine Cortez Masto, Attorney General of the State of Nevada, and Senior Deputy Attorney General, Andrea Nichols, hereby responds to City of Fernley's First Request for Admissions.

///

///

**GENERAL OBJECTIONS**

1  
2       1. By responding to Plaintiff's First Request, the Legislature does not in any way  
3 waive its right to object to the use of the discovery responses at any time or on any ground in  
4 this or any other proceeding. Furthermore, discovery in this action is based upon information  
5 presently in the possession of the Legislature and therefore the Legislature reserves the right  
6 to amend any response in the event new information may become known or available during  
7 the course of discovery.

8       2. By responding to Plaintiff's First Request, the Legislature does not in any way  
9 adopt Plaintiff's definitions of words or phrases set forth in Plaintiff's First Request. The  
10 Legislature objects to those definitions to the extent they are inconsistent with: (1) any  
11 definitions set forth in the Legislature's responses; or (2) the ordinary and customary meaning  
12 of the words or phrases. Additionally, the Legislature objects to Plaintiff's definitions to the  
13 extent they attempt to impose upon the Legislature any duties or obligations broader than, or  
14 inconsistent with, applicable rules of discovery or common law.

15       3. By responding to Plaintiff's First Request, the Legislature does not in any way  
16 admit, adopt or acquiesce in any factual or legal contention, presumption, assertion or  
17 characterization set forth in Plaintiff's First Request.

18       4. The Legislature objects to each and every request to the extent they seek  
19 information protected by legislative privilege and immunity, deliberative process privilege,  
20 attorney-client privilege, the work product doctrine or any other applicable privilege or  
21 immunity. Any inadvertent disclosure of such information protected by an applicable privilege  
22 or immunity is not intended be, and is not to be construed as, a waiver of any such privilege or  
23 immunity.

24       5. The Legislature objects to each and every request to the extent they seek  
25 information that is irrelevant and not reasonably calculated to lead to the discovery of  
26 admissible evidence.

27 ///

28 ///



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CITY OF FERNLEY, NEVADA, a  
Nevada municipal corporation,

Appellant,

vs.

THE STATE OF NEVADA ex rel.  
DEPARTMENT OF TAXATION;  
THE HONORABLE DAN  
SCHWARTZ, in his official capacity  
as TREASURER OF THE STATE OF  
NEVADA; and THE LEGISLATURE  
OF THE STATE OF NEVADA,

Respondents.

Supreme Court No.: 66851

District Court Case No.: 12 OC 00168 1B

**JOINT APPENDIX**

**VOLUME 21 PART 2**

Filed By:

Joshua J. Hicks, Esq.  
Nevada Bar No. 6678  
BROWNSTEIN HYATT  
FARBER SCHRECK, LLP  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
Telephone: (775) 622-9450  
Email: [jhicks@bhfs.com](mailto:jhicks@bhfs.com)

*Attorneys for Appellant City of Fernley,  
Nevada*

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City of Fernley v. State of Nevada et al., Case No. 66851

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| 23            | Amended Memorandum of Costs and Disbursements  | State of Nevada/Dept Taxation       | 10/09/15 | 4058-4177          |
| 7             | Answer   | State of Nevada/Dept Tax/ Treasurer | 02/01/13 | 1384-1389          |
| 7             | Answer to Plaintiff's Complaint  | Nevada Legislature                  | 01/29/13 | 1378-1383          |
| 23            | Case Appeal Statement  | City of Fernley                     | 11/07/14 | 4208-4212          |
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| 1             | Exhibits to Joinder in Motion to Dismiss   | Nevada Legislature                  | 08/16/12 | 104-220            |
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| 1             | Motion to Dismiss  | State of Nevada/Dept Tax/ Treasurer | 08/03/12 | 41-58              |
| 1             | Motion to Intervene  | Nevada Legislature                  | 08/03/12 | 18-40              |
| 21            | Motion to Retax Costs and Opposition to Motion for Costs   | City of Fernley                     | 09/24/14 | 3794-3845          |
| 7             | Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss                      | State of Nevada/Dept Tax/ Treasurer | 05/05/14 | 1414-1420          |
| 7             | Nevada Department of Taxation and Nevada Treasurer's Reply to Response to Renewal of Motion to Dismiss | State of Nevada/Dept Tax/ Treasurer | 05/23/14 | 1433-1437          |
| 12            | Nevada Department of Taxation's Opposition to Plaintiff's Motion for Summary Judgment                  | State of Nevada/Dept Taxation       | 07/11/14 | 2053-2224          |
| 13            | Nevada Department of Taxation's Opposition to Plaintiff's Motion for Summary Judgment (Cont.)          | State of Nevada/Dept Taxation       | 07/11/14 | 2225-2353          |

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City of Fernley v. State of Nevada et al., Case No. 66851

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|----------------------|---|--|-------------|---------------------------|
| 23                   | Notice of Appeal  | City of Fernley                        | 11/07/14    | 4205-4207                 |
| 22                   | Notice of Entry of Order  | Nevada Legislature                     | 10/08/14    | 4001-4057                 |
| 23                   | Notice of Entry of Order  | State of Nevada/Dept                   | 10/17/14    | 4195-4204                 |
| 7                    | Notice of Entry of Order Denying City of Fernley's Motion for Reconsideration of Order Dated November 13, 2012                  | State of Nevada/Dept Tax/<br>Treasurer | 12/19/12    | 1364-1370                 |
| 7                    | Notice of Entry of Order Granting A Continuance to Complete Discovery   | City of Fernley                        | 10/19/12    | 1344-1350                 |
| 3                    | Notice of Entry of Order Granting Nevada Legislature's Motion to Intervene  | Nevada Legislature                     | 09/04/12    | 651-657                   |
| 7                    | Notice of Entry of Order on Defendant's Motion for Extensions of Time to File Answer  | State of Nevada/Dept Tax/<br>Treasurer | 11/15/12    | 1354-1360                 |
| 1                    | Notice of Non-Opposition to Legislature's Motion to Intervene   | State of Nevada/Dept Tax/<br>Treasurer | 08/06/12    | 59-61                     |
| 2                    | Opposition to Motion to Dismiss and Motion for Continuance Pursuant to NRCP 56(F)   | City of Fernley                        | 08/20/12    | 331-441                   |
| 3                    | Opposition to Motion to Dismiss and Motion for Continuance Pursuant to NRCP 56(F) (Cont.)                                       | City of Fernley                        | 08/20/12    | 442-625                   |
| 2                    | Opposition to Motion to Nevada Legislature's Motion to Intervene  | City of Fernley                        | 08/20/12    | 324-330                   |
| 13                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss                                 | City of Fernley                        | 07/11/14    | 2354-2445                 |
| 14                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)                         | City of Fernley                        | 07/11/14    | 2446-2665                 |
| 15                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)                         | City of Fernley                        | 07/11/14    | 2666-2819                 |
| 16                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)                         | City of Fernley                        | 07/11/14    | 2820-2851                 |
| 17                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)                         | City of Fernley                        | 07/11/14    | 2852-2899                 |
| 4                    | Opposition to Nevada Legislature's Joinder in Motion to Dismiss   | City of Fernley                        | 09/28/12    | 662-881                   |
| 5                    | Opposition to Nevada Legislature's Joinder in Motion to Dismiss (Cont.)   | City of Fernley                        | 09/28/12    | 882-1101                  |
| 6                    | Opposition to Nevada Legislature's Joinder in Motion to Dismiss (Cont.)   | City of Fernley                        | 09/28/12    | 1102-1316                 |
| 17                   | Opposition to Nevada Legislature's Joinder in Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss | City of Fernley                        | 07/11/14    | 2900-2941                 |
| 20                   | Opposition to Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order                    | Nevada Legislature                     | 07/11/14    | 3586-3582                 |

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| Volume Number | Document  | Filed By                            | Date     | Bates Stamp Number |
|---------------|---|-------------------------------------|----------|--------------------|
| 12            | Opposition to Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order and Countermotion for Order Dismissing Nevada Department of Taxation | State of Nevada/Dept Tax/ Treasurer | 07/11/14 | 2049-2052          |
| 17            | Opposition to Plaintiff's Motion for Summary Judgment   | Nevada Legislature                  | 07/11/14 | 2942-3071          |
| 18            | Opposition to Plaintiff's Motion for Summary Judgment (Cont.)   | Nevada Legislature                  | 07/11/14 | 3072-3292          |
| 19            | Opposition to Plaintiff's Motion for Summary Judgment (Cont.)   | Nevada Legislature                  | 07/11/14 | 3292-3512          |
| 20            | Opposition to Plaintiff's Motion for Summary Judgment (Cont.)   | Nevada Legislature                  | 07/11/14 | 3515-3567          |
| 7             | Order (Converting Motion to Dismiss to Motion for Summary Judgment, Setting Briefing Schedule and Dismissing Treasurer)   | First Judicial District Court       | 06/06/14 | 1451-1457          |
| 22            | Order and Judgment  | First Judicial District Court       | 10/06/14 | 3948-4000          |
| 7             | Order Denying City of Fernley's Motion for Reconsideration of Order Dated November 13, 2012   | First Judicial District Court       | 12/17/12 | 1361-1363          |
| 7             | Order Granting A Continuance to Complete Discovery  | First Judicial District Court       | 10/15/12 | 1341-1343          |
| 7             | Order Granting in Part and Denying in Part Petition for Writ of Mandamus  | Nevada Supreme Court                | 01/25/13 | 1373-1377          |
| 23            | Order Granting Nevada Department of Taxation's Motion for Costs   | First Judicial District Court       | 10/15/14 | 4190-4194          |
| 3             | Order Granting Nevada Legislature's Motion to Intervene   | First Judicial District Court       | 08/30/12 | 648-650            |
| 7             | Order on Defendant's Motion for Extensions of Time to File Answer   | First Judicial District Court       | 11/13/12 | 1351-1353          |
| 7             | Order Pursuant to Writ of Mandamus  | First Judicial District Court       | 02/22/13 | 1390-1392          |
| 21            | Order Vacating Trial  | First Judicial District Court       | 09/03/14 | 3773-3775          |
| 23            | Plaintiff's Motion to Strike, or Alternatively, Motion to Retax Costs   | City of Fernley                     | 10/14/14 | 4178-4189          |
| 21            | Plaintiff's Objections to Nevada Legislature's Proposed Order and Request to Submit Proposed Order and Judgment   | City of Fernley                     | 10/02/14 | 3846-3862          |
| 7             | Pretrial Order  | First Judicial District Court       | 10/10/13 | 1393-1399          |
| 7             | Reply Concerning Joinder in Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss   | Nevada Legislature                  | 05/27/14 | 1438-1450          |
| 7             | Reply in Support of Joinder in Motion to Dismiss  | Nevada Legislature                  | 10/08/12 | 1317-1340          |
| 3             | Reply in Support of Motion to Intervene   | Nevada Legislature                  | 08/24/12 | 626-635            |
| 21            | Reply in Support of Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order as to Defendant Nevada Legislature                             | City of Fernley                     | 07/25/14 | 3709-3746          |

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| <b>Volume Number</b> | <b>Document</b>   | <b>Filed By</b>                       | <b>Date</b> | <b>Bates Stamp Number</b> |
|----------------------|---|---------------------------------------|-------------|---------------------------|
| 20                   | Reply in Support of Plaintiff's Motion for Summary Judgment Against Defendants Nevada Department of Taxation and Nevada Treasurer   | City of Fernley                       | 07/25/14    | 3674-3708                 |
| 20                   | Reply in Support of Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order as to Defendant's Nevada Department of Taxation and Nevada Treasurer; Plaintiff's Opposition to Countermotion for Order Dismissing Nevada Department of Taxation | City of Fernley                       | 07/25/14    | 3641-3673                 |
| 20                   | Reply in Support of Plaintiff's Motion for Summary Judgment Against Defendant Nevada Legislature  | City of Fernley                       | 07/25/14    | 3606-3640                 |
| 21                   | Reply to Opposition to Countermotion for Order Dismissing Nevada Department of Taxation   | State of Nevada/Dept Taxation         | 08/01/14    | 3769-3772                 |
| 3                    | Reply to Opposition to Motion to Dismiss  | State of Nevada/Dept Tax/ Treasurer   | 08/27/12    | 636-647                   |
| 20                   | Reply to Plaintiff's Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss  | State of Nevada/Dept Taxation         | 07/25/14    | 3583-3605                 |
| 7                    | Response to Nevada Department of Taxation   | City of Fernley                       | 05/16/14    | 1424-1432                 |
| 7                    | Second Stipulation and Order Regarding Change of Briefing Schedule  | Parties/First Judicial District Court | 03/17/14    | 1406-1409                 |
| 7                    | Stipulation and Order for an Extension of Time to File Responses to Discovery Requests; Extend Certain Discovery Deadlines and Extend Time to File Dispositive Motions  | Parties/First Judicial District Court | 04/11/14    | 1410-1413                 |
| 7                    | Stipulation and Order Regarding Change of Briefing Schedule and Plaintiff's Response to Defendant's Motion to Strike Plaintiff's Jury Demand  | Parties/First Judicial District Court | 02/19/14    | 1403-1405                 |
| 12                   | Stipulation and Order Regarding Change of Briefing Schedule and Setting Hearing for Oral Argument   | Parties/First Judicial District Court | 06/25/14    | 2046-2048                 |
| 7                    | Stipulation and Order Regarding Defendant's Motion to Strike Plaintiff's Jury Demand  | Parties/First Judicial District Court | 10/23/13    | 1400-1402                 |
| 3                    | Stipulation and Order Regarding Joinder to Motion to Dismiss  | Parties/First Judicial District Court | 09/18/12    | 658-661                   |
| 23                   | Transcript of Hearing   | Court Reporter                        | 01/07/15    | 4213-4267                 |
| 7                    | Writ of Mandamus  | Nevada Supreme Court                  | 01/25/13    | 1371-1372                 |

1 expenditure, and which fixes the amount and indicates the fund, is sufficient.” State v. Eggers, 29 Nev.  
2 469, 475 (1907). Furthermore, there is no impermissible delegation of legislative authority to an  
3 executive branch agency when the agency must work within sufficiently defined statutory standards in  
4 exercising its power to give effect to a statute.<sup>13</sup>

5 In this case, the C-Tax statutes constitute a lawful ongoing appropriation because: (1) the  
6 Legislature has provided a method whereby the exact amount to be appropriated from the Local  
7 Government Tax Distribution Account may be ascertained under the C-Tax statutes in future years  
8 based on specific statutory formulas; and (2) those specific statutory formulas provide the Department  
9 with sufficiently defined statutory standards for executing the C-Tax statutes. Therefore, even if Fernley  
10 had standing to bring separation-of-powers claims against the State, those claims would have no merit,  
11 and the Defendants would be entitled to judgment as a matter of law.

#### 12 **F. Special and local laws.**

13 Fernley contends that the C-Tax statutes are special or local laws because “the C-Tax as applied  
14 does not place Fernley on an equal basis with other participants in the system, but rather imposes on  
15 Fernley a far lesser status.” Opp’n to State’s MSJ at 27. Fernley also contends that the State “has made it  
16 impossible for a city like Fernley to obtain an adjustment to its C-Tax distributions, has demonstrated a  
17 shocking level of indifference to the inequitable situation, and has chosen instead to ignore the plight of  
18 politically isolated communities like Fernley.” Id. at 3. Fernley’s contentions have no merit.

19 First, no political subdivision has a constitutional right to an equal or equitable distribution of *state*  
20 tax dollars because the Legislature may “disburse the proceeds of taxes, fees, and penalties to various  
21 communities inequitably according to need.” Anthony v. State, 94 Nev. 337, 342 (1978); City of Las  
22 Vegas v. Mack, 87 Nev. 105, 110 (1971) (“we are aware of no authority . . . which declares that an

23  
24 <sup>13</sup> State v. Shaughnessy, 47 Nev. 129, 135 (1923); Sheriff v. Luqman, 101 Nev. 149, 151 (1985); Nev.  
Indus. Comm’n v. Reese, 93 Nev. 115, 120 (1977); State v. Bowman, 89 Nev. 330, 334 (1973); Las  
Vegas v. Mack, 87 Nev. 105, 107-09 (1971).

1 inequality in distribution of the tax in and of itself is sufficient to constitute a denial of due process.”).<sup>14</sup>  
2 Thus, the mere fact that Fernley may receive less in C-Tax distributions than other governmental entities  
3 does not constitute a violation of any constitutional right.

4 Second, no political subdivision has a constitutional right to obtain an adjustment to its C-Tax  
5 distributions, and no political subdivision is entitled to any process for review or adjustment of its C-Tax  
6 distributions other than the legislative process. By enacting the C-Tax system, the Legislature used the  
7 legislative process to adjust the distribution of tax revenues to local governmental entities. When the  
8 Legislature uses the legislative process to adjust legal rights through the passage of legislation, the  
9 legislative process “provides all the process that is due.” Logan v. Zimmerman Brush Co., 455 U.S. 422,  
10 433 (1982); Bi-Metallic Inv. Co. v. State Bd. of Equal., 239 U.S. 441, 445-46 (1915). Even if Fernley  
11 has been unsuccessful in its efforts in the legislative process to change the C-Tax system, Fernley does  
12 not have a constitutional right to a favorable result in the Legislature. Since Fernley may continue to  
13 seek redress through the legislative process, it has been provided with all the process that is due.

14 Finally, the Legislature may create valid legislative classifications that are founded upon natural,  
15 intrinsic, rational and constitutional distinctions without violating the special-and-local law provisions of  
16 Article 4, §§20-21. Clean Water Coalition v. M Resort, 255 P.3d 247, 254 (Nev. 2011) (“A law is  
17 general when it applies equally to all persons embraced in a class founded upon some natural, intrinsic,  
18 or constitutional distinction.”). When the Legislature enacted the C-Tax system, it wanted to encourage

19 <sup>14</sup> See also N.Y. Rapid Transit Corp. v. New York, 303 U.S. 573, 578 (1938) (“The power to make  
20 distinctions exists with full vigor in the field of taxation, where no ‘iron rule’ of equality has ever been  
21 enforced upon the states.”); Hess v. Mullaney, 213 F.2d 635, 640 (9th Cir. 1954) (“No requirements  
22 of uniformity or of equal protection of the law limit the power of a legislature in respect to allocation  
23 and distribution of public funds.”); E. Jackson Pub. Schs. v. State, 348 N.W.2d 303, 306  
24 (Mich.Ct.App. 1984) (holding that local school districts could not sue the state to “overturn the  
legislative scheme of [school] financing and to thus compel the Legislature to enact a different system  
that would conform to plaintiffs’ theories of equality.”); Bd. of Comm’rs v. Cooper, 264 S.E.2d 193,  
198 (Ga. 1980); Leonardson v. Moon, 451 P.2d 542, 554-55 (Idaho 1969); McBreairty v. Comm’r  
Admin. & Fin. Servs., 663 A.2d 50, 54-55 (Me. 1995); McKenney v. Byrne, 412 A.2d 1041, 1045-49  
(N.J. 1980); Beech Mtn. v. County of Watauga, 370 S.E.2d 453, 454-55 (N.C.Ct.App. 1988); Douglas  
Indep. Sch. Dist. v. Bell, 272 N.W.2d 825, 827 (S.D. 1978).

1 the formation of new general-purpose local governments that would provide their own traditional  
2 general-purpose governmental services, which the Legislature defined to mean police protection and at  
3 least two of the following services: (1) fire protection; (2) construction, maintenance and repair of roads;  
4 or (3) parks and recreation. NRS 360.740. The Legislature also wanted to discourage the formation of  
5 new local governments that did not provide general-purpose governmental services or did not assume  
6 the functions of another local government. NRS 360.740; NRS 354.598747. These are legitimate  
7 governmental purposes based on natural, intrinsic, rational and constitutional distinctions.<sup>15</sup>

8 The C-Tax statutes apply statewide to all similarly situated local governments. If Fernley provided  
9 the requisite public services, it would be placed in the same class as other similarly situated cities and  
10 towns which provide those public services. But because Fernley does not provide the requisite public  
11 services, it is not similarly situated to those other cities and towns, so there is a rational basis for placing  
12 Fernley in a different class from those other cities and towns. Thus, because the C-Tax statutes apply  
13 uniformly to all similarly situated local governments embraced in classes founded upon natural,  
14 intrinsic, rational and constitutional distinctions, the C-Tax statutes are general laws of uniform  
15 operation throughout the state, and they do not violate Article 4, §§20-21. See McKenney v. Byrne, 412  
16 A.2d 1041, 1049 (N.J. 1980) (holding that a statutory scheme which distributed different amounts of  
17 state tax dollars to different municipalities using statutory formulas "is not a special or local law because  
18 the classification is constitutionally reasonable."). Accordingly, Fernley's special-and-local law claims  
19 have no merit, and the Defendants are entitled to judgment as a matter of law.

### 20 CONCLUSION

21 Based on the foregoing, the Legislature respectfully asks the Court to enter judgment as a matter  
22 of law in favor of all Defendants on all of Fernley's remaining claims.

23 <sup>15</sup> See Ball v. Rapides Parish, 746 F.2d 1049, 1062 (5th Cir. 1984) (holding that denying share of tax  
24 revenue to newly created town is rationally related to a legitimate governmental purpose because the  
legislative body "could have felt that in this parish there was no need for an additional incorporated  
town and denial of sales tax proceeds would be an effective counterforce.").



1 DATED: This 25th day of July, 2014.

2 Respectfully submitted,

3 **BRENDA J. ERDOES**  
4 Legislative Counsel

5 By: 

6 **KEVIN C. POWERS**  
7 Chief Litigation Counsel  
8 Nevada Bar No. 6781  
9 kpowers@lcb.state.nv.us

10 **J. DANIEL YU**  
11 Principal Deputy Legislative Counsel  
12 Nevada Bar No. 10806  
13 Dan.Yu@lcb.state.nv.us  
14 LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION  
15 401 S. Carson Street  
16 Carson City, NV 89701  
17 Tel: (775) 684-6830; Fax: (775) 684-6761  
18 *Attorneys for the Legislature*

1 **CERTIFICATE OF SERVICE**

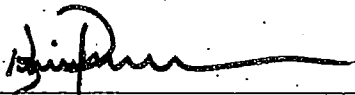
2 I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division,  
3 and that on the 25th day of July, 2014, pursuant to NRCP 5(b) and the parties' stipulation and  
4 consent to service by electronic means, I served a true and correct copy of Defendant Nevada  
5 Legislature's Reply in Support of its Motion for Summary Judgment, by electronic mail, directed to the  
6 following:

7 JOSHUA J. HICKS  
8 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
9 50 W. Liberty St., Suite 1030  
10 Reno, NV 89501  
11 [jhicks@bhfs.com](mailto:jhicks@bhfs.com)

12 CLARK V. VELLIS  
13 [cvellis@nevadafirm.com](mailto:cvellis@nevadafirm.com)  
14 c/o: Joshua J. Hicks

15 *Attorneys for Plaintiff*  
16 *City of Fernley, Nevada*

CATHERINE CORTEZ MASTO  
Attorney General  
GINA C. SESSION  
Chief Deputy Attorney General  
ANDREA NICHOLS  
Senior Deputy Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
5420 Kietzke Ln., Suite 202  
Reno, NV 89511  
[gsession@ag.nv.gov](mailto:gsession@ag.nv.gov); [anichols@ag.nv.gov](mailto:anichols@ag.nv.gov)  
*Attorneys for Defendants Nevada Department*  
*of Taxation and Kate Marshall, State Treasurer*

15   
16 \_\_\_\_\_  
17 An Employee of the Legislative Counsel Bureau

1 CATHERINE CORTEZ MASTO  
Attorney General  
2 GINA C. SESSION  
Chief Deputy Attorney General  
3 Nevada Bar No. 5493  
gsession@ag.nv.gov  
4 ANDREA NICHOLS  
Senior Deputy Attorney General  
5 Nevada Bar No. 6436  
5420 Kietzke Lane, Suite 202  
6 Reno, Nevada 89511  
(775) 688-1818  
7 anichols@ag.nv.gov

8 *Attorneys for Defendant Nevada Department of Taxation*

9  
10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
11 **IN AND FOR CARSON CITY**

12 CITY OF FERNLEY, NEVADA, a Nevada  
municipal corporation,

13 Plaintiff,

14 v.

15 STATE OF NEVADA, *ex rel.*, THE NEVADA  
DEPARTMENT OF TAXATION; THE  
16 HONORABLE KATE MARSHALL, in her  
official capacity as TREASURER OF THE  
17 STATE OF NEVADA; THE LEGISLATURE  
OF THE STATE OF NEVADA and DOES 1-  
18 20, Inclusive,

19 Defendants.

**Case No.: 12 OC 00168 1B**

**Dept. No.: I**

20 **DEFENDANT'S REPLY TO OPPOSITION TO COUNTERMOTION FOR ORDER**  
21 **DISMISSING NEVADA DEPARTMENT OF TAXATION**

22 Defendant, State of Nevada, *ex rel.*, its Department of Taxation ("Department") by and  
23 through counsel, CATHERINE CORTEZ MASTO, Attorney General of the State of Nevada,  
24 GINA SESSION, Chief Deputy Attorney General, and ANDREA NICHOLS, Senior  
25 Deputy Attorney General, submits its Reply to Plaintiff's Opposition to Countermotion for  
26 Order Dismissing Nevada Department of Taxation.

27 ///

28 ///

1 The issue of immunity pursuant to NRS 42.032 has been fully briefed in the parties'  
2 dispositive motions.<sup>2</sup> The only new arguments raised in Fernley's Opposition to the  
3 Department's Countermotion are that the Countermotion is somehow procedurally improper.  
4 Fernley provides no legal authority for its procedural arguments and the arguments have no  
5 merit. Under NRCP 56(b) a Defendant may move for summary judgment at any time. The  
6 Department's Countermotion relates to the subject matter of Fernley's Motion for  
7 Reconsideration because it concerns the applicability of NRS 41.032. The Countermotion is  
8 not unnecessarily repetitive and unduly burdensome on Fernley since Fernley has had  
9 ample opportunity to conduct discovery and present its opposition to the Defendants'  
10 immunity arguments.

11 Even if the Countermotion is procedurally improper, Fernley has not been prejudiced.  
12 The issue of immunity pursuant to NRS 41.032 was first raised in the Legislature's Joinder in  
13 Motion to Dismiss filed August 16, 2012. Fernley has had almost two years to conduct  
14 discovery and to refute the argument.

15 There is no genuine issue of material fact tending to show that the Department failed  
16 to exercise due care in administering the C-Tax statutes. The Department is therefore  
17 immune from liability as a matter of law pursuant to NRS 41.032(1). Even, assuming for the  
18 sake of argument, there were some evidence tending to show that the Department failed to  
19 exercise due care in carrying out the statutory requirements of the C-Tax legislation, the  
20 Department would be entitled to discretionary immunity from liability pursuant to NRS  
21 41.032(2). Accordingly, the Department should be dismissed from this lawsuit.

22 ///

23 ///

24 ///

25 ///

26  
27 <sup>2</sup> See Nevada Department of Taxation's Opposition to Plaintiff's Motion for Summary Judgment, filed  
28 July 11, 2014, Defendant Nevada Legislature's Reply in Support of its Motion for Summary Judgment, filed July  
25, 2014, and Nevada Department of Taxation's Reply to Plaintiff's Opposition to Nevada Department of  
Taxation and Nevada Treasurer's Renewal of Motion to Dismiss filed July 25, 2014.

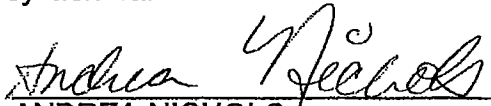
1 **III. CONCLUSION**

2 In light of the foregoing, Defendant, State of Nevada, *ex rel.*, its Department of  
3 Taxation, requests this Court enter its order dismissing the Department of Taxation from this  
4 lawsuit, as it is entitled to immunity under NRS 41.032.

5 DATED this 1st day of August, 2014.

6 CATHERINE CORTEZ MASTO  
7 Attorney General

8 By:

  
9 ANDREA NICHOLS

10 Senior Deputy Attorney General  
11 Nevada Bar No. 6436  
12 5420 Kietzke Lane, Suite 202  
13 Reno, Nevada 89511  
14 (775) 688-1818

15 *Attorneys for Defendants Nevada*  
16 *Department of Taxation and*  
17 *Nevada Treasurer*

**CERTIFICATE OF SERVICE**

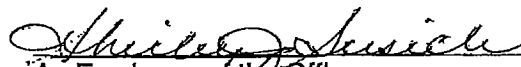
I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on this 1st day of August, 2014, pursuant to NRCP 5(b) and the parties' stipulation and consent to service by electronic means, I served a copy of the foregoing **DEFENDANT'S REPLY TO OPPOSITION TO COUNTERMOTION FOR ORDER DISMISSING NEVADA DEPARTMENT OF TAXATION**, by electronic mail directed to the following:

Joshua Hicks, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
*jhicks@bhfs.com*

Clark Vellis  
Cotton, Driggs, Walch, Holley, Woloson & Thompson  
800 South Meadows Parkway, Suite 800  
Reno, Nevada 89521  
*cvellis@nevadafirm.com*

Brandi Jensen, Fernley City Attorney  
Office of the City Attorney  
595 Silver Lace Blvd.  
Fernley, Nevada 89408  
*bjensen@cityoffernley.org*

Kevin Powers, Esq.  
Dan Yu, Esq.  
Legislative Counsel Bureau  
401 S. Carson Street  
Carson City, Nevada 89701  
*kpowers@lcb.state.nv.us*  
*dan.yu@lcb.state.nv.us*

  
An Employee of the Office  
of the Attorney General

1 Case No.: 12 OC 00168 1B

2 Dept. No.: 1

REC'D & FILED

2014 SEP -3 AM 7:54

ALAN GLOVER

BY  CLERK  
DEPUTY

3  
4  
5  
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR CARSON CITY

8  
9 CITY OF FERNLEY, NEVADA, a Nevada  
municipal corporation,

10 Plaintiff,

11 v.  
12

**ORDER VACATING TRIAL**

13 STATE OF NEVADA ex rel. THE NEVADA  
DEPARTMENT OF TAXATION; THE

14 HONORABLE KATE MARSHALL, in her  
15 official capacity as TREASURER OF THE  
16 STATE OF NEVADA; THE LEGISLATURE  
OF THE STATE OF NEVADA; and DOES 1-  
20, inclusive,

17 Defendants.  
18  
19  
20

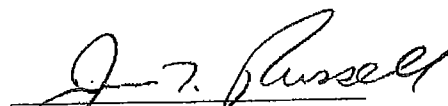
21  
22 This matter comes before the Court on oral arguments that were held in regards to this  
23 matter on September 2, 2014. Joshua J. Hicks, Esq. and Clark V. Vellis, Esq. attended the  
24 hearing on behalf of Fernley; Andrea Nichols, Esq., Senior Deputy Attorney General, attended  
25 the hearing on behalf of Defendant Department of Taxation; and Kevin C. Powers, Esq. and J.  
26 Daniel Yu, Esq. attended the hearing on behalf of Defendant Legislature.  
27  
28

1 Based on the Court's ruling at the oral argument hearing that Fernley's Motion for  
2 Summary Judgment was denied and the Court's ruling that Defendants' Motions to Dismiss,  
3 which were converted into Motions for Summary Judgment, were granted,

4 IT IS HEREBY ORDERED that the jury trial scheduled for November 12, 2014 to  
5 November 25, 2014 shall be VACATED.  
6

7 **IT IS SO ORDERED.**

8 Dated this 2 day of September, 2014.

9   
10 JAMES T. RUSSELL  
11 DISTRICT JUDGE  
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CERTIFICATE OF MAILING

I hereby certify that on the 3 day of September 2014, I served a copy of the foregoing by placing the foregoing in the United States Mail, postage prepaid, addressed as follows:

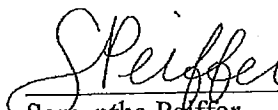
Joshua J. Hicks, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
50 West Liberty Street, Suite 1030  
Reno, NV 89501

Clark V. Vellis, Esq.  
Cotton, Driggs, Walch, Holley, Woloson & Thompson  
800 South Meadows Parkway, Suite 800  
Reno, NV 89521

Brandi L. Jensen, Esq.  
Office of the City Attorney  
595 Silver Lace Blvd.  
Fernley, NV 89408

~~Brenda J. Erdoes, Esq.~~  
Kevin C. Powers, Esq.  
J. Daniel Yu, Esq.  
Legislative Counsel Bureau, Legal Division  
401 S. Carson Street  
Carson City, NV 89701

Gina C. Session, Esq.  
Chief Deputy Attorney General  
Andrea Nichols, Esq.  
Senior Deputy Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

  
Samantha Peiffer  
Law Clerk, Dept. 1

CATHERINE CORTEZ MASTO  
Attorney General  
GINA C. SESSION  
Chief Deputy Attorney General  
Nevada Bar No. 5493  
gsession@ag.nv.gov  
ANDREA NICHOLS  
Senior Deputy Attorney General  
Nevada Bar No. 6436  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511  
(775) 688-1818  
anichols@ag.nv.gov

*Attorneys for Defendant Nevada Department of Taxation*

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

CITY OF FERNLEY, NEVADA, a Nevada  
municipal corporation,

Plaintiff,

v.

STATE OF NEVADA, ex rel. THE NEVADA  
DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her  
official capacity as TREASURER OF THE  
STATE OF NEVADA; THE LEGISLATURE  
OF THE STATE OF NEVADA and DOES 1-  
20, Inclusive,

Defendants.

**Case No.: 12 OC 00168 1B**

**Dept. No.: I**

**MOTION FOR COSTS**

Defendant, State of Nevada, ex rel. its Department of Taxation ("Department"), by and through counsel, Catherine Cortez Masto, Attorney General of the State of Nevada, Gina Session, Chief Deputy Attorney General, and Andrea Nichols, Senior Deputy Attorney General, moves this Court to include costs in the final Judgment entered in this matter.

This Motion is made pursuant to NRS 18.020(3) and is based, on the following Memorandum of Points and Authorities, the exhibit attached hereto, and the Memorandum of

Case No. 66851  
JA 3776

Costs and Disbursements filed contemporaneously herewith, together with all other papers, pleadings and documents on file herein.

### MEMORANDUM OF POINTS AND AUTHORITIES

Following oral argument on September 2, 2014, this Court announced its decision granting summary judgment in favor of Defendants. The written Judgment has not yet been entered.

As a prevailing party, Defendant, Nevada Department of Taxation requests that costs be included in the judgment pursuant to NRS 18.020(3) which provides that costs must be allowed to the prevailing party in an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500. In its Complaint, Plaintiff sought damages in an amount to be determined at trial. However, in Plaintiff's Response to Defendants' Request for Production of Documents, Response to Request No. 1, Plaintiff calculated its damages as approximately \$42,670,000. See Exhibit "1" attached hereto. Accordingly, this is an action where Plaintiff sought to recover more than \$2,500 and the Nevada Department of Taxation as the prevailing party is entitled to have costs included in the judgment.

DATED this 18<sup>th</sup> day of September, 2014.

CATHERINE CORTEZ MASTO  
Attorney General

By: Andrea Nichols  
ANDREA NICHOLS  
Senior Deputy Attorney General  
Nevada Bar No. 6436  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511  
(775) 688-1818

*Attorneys for Defendant  
Nevada Department of Taxation*

**CERTIFICATE OF SERVICE**


I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on this 19th day of September, 2014, pursuant to NRCP 5(b) and the parties' stipulation and consent to service by electronic means, I served a copy of the foregoing **MOTION FOR COSTS**, by electronic mail directed to the following:

Joshua Hicks, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
50 West Liberty Street, Suite 1030  
Reno, NV 89501  
*jhicks@bhfs.com*

Clark Vellis  
Cotton, Driggs, Walch, Holley, Woloson & Thompson  
800 South Meadows Parkway, Suite 800  
Reno, NV 89521  
*cvellis@nevadafirm.com*

Brandi Jensen, Fernley City Attorney  
Office of the City Attorney  
595 Silver Lace Blvd.  
Fernley, NV 89408  
*bjensen@cityoffernley.org*

Kevin Powers, Esq.  
Dan Yu, Esq.  
Legislative Counsel Bureau  
401 S. Carson Street  
Carson City, NV 89701  
*kpowers@lcb.state.nv.us*  
*dan.yu@lcb.state.nv.us*

  
An Employee of the Office  
of the Attorney General

**EXHIBIT INDEX**

| EXHIBIT<br>NO. | DESCRIPTION  | NO. OF PAGES<br>(excluding tabs) |
|----------------|--|----------------------------------|
| 1              | Plaintiffs' Response to Defendants' Request for Production<br>of Documents | 8                                |

Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

Case No. 66851  
JA 3779

# EXHIBIT 1

---

# EXHIBIT 1

Case No. 66851  
JA 3780

Joshua J. Hicks, Nevada Bar No. 6679  
Clark V. Vellis, Nevada Bar No. 5533  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
Telephone: 775-622-9450  
Facsimile: 775-622-9554  
Email: jhicks@bhfs.com  
Email: cvellis@bhfs.com

Brandi L. Jensen, Nevada Bar No. 8509  
Fernley City Attorney  
OFFICE OF THE CITY ATTORNEY  
595 Silver Lace Blvd.  
Fernley, Nevada 89408

*Attorneys for the City of Fernley, Nevada*

IN THE FIRST JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA IN AND FOR CARSON CITY

CITY OF FERNLEY, NEVADA, a  
Nevada municipal corporation,

Plaintiff,

v.

STATE OF NEVADA ex rel. THE NEVADA  
DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her  
official capacity as TREASURER OF THE  
STATE OF NEVADA; and DOES 1-20,  
inclusive,

Defendants,

NEVADA LEGISLATURE,

Intervenor.

Case No.: 12 OC 00168 1B

Dept. No.: I

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' REQUEST FOR  
PRODUCTION OF  
DOCUMENTS**

Plaintiff, City of Fernley through its attorneys of record, pursuant to NRCP 34 submits the following Response to Defendants' Requests for Production of Documents to Plaintiff. These responses are based on information Plaintiff has in its possession at the present time. Plaintiff reserves the right to supplement these responses as new information becomes available during the course of discovery.

///

## DEFINITIONS

The following definitions apply to Plaintiff's objections:

A. "Non-discoverable/Irrelevant" – The request in question concerns a matter that is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

B. "Unduly burdensome" – The request in question seeks discovery which is unduly burdensome or expensive, taking into account the needs of the case, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

C. "Vague" – The request in question contains a word or phrase which is not adequately defined, or the overall request is confusing or ambiguous, and Plaintiff is unable to reasonably ascertain what information or documents Defendants seek in the request.

D. "Overly broad" – The request seeks information or documents beyond the scope of, or beyond the time period relevant to, the subject matter of this litigation and, accordingly, seeks information or documents which are non-discoverable/irrelevant and is unduly burdensome.

## GENERAL OBJECTIONS

Plaintiff objects to Defendants' requests to the extent that the requests seek any information that is protected by any absolute or qualified privilege or exemption, including, but not limited to, the attorney-client privilege, the attorney work-product exemption, and the consulting-expert exemption. Specifically, Plaintiff objects to Defendants requests on the following grounds.

A. Plaintiff objects to Defendants' request to the extent they seek documents or disclosure of information that is protected from disclosure by the attorney-client privilege in accordance with Rule 26 of the Nevada Rules of Civil Procedure and sections 49.035-49.115 of the Nevada Revised Statutes.

B. Plaintiff objects to Defendants' request to the extent they seek documents or disclosure of information that is protected from disclosure by the work-product exemption in accordance with Rule 26 of the Nevada Rules of Civil Procedure and applicable case law.



1 C. Plaintiff objects to Defendants' request to the extent they seek documents or  
2 information protected from disclosure pursuant to the consultant-expert exemption in accordance  
3 with Rule of the Nevada Rules of Civil Procedure and applicable case law.

4 D. Plaintiff objects to Defendants' requests to the extent they seek trade secrets,  
5 commercially sensitive information, or confidential proprietary data entitled to protection under  
6 Rule 26 of the Nevada Rules of Civil Procedure and section 49.325 of the Nevada Revised  
7 Statutes.

8 E. Plaintiff objects to Defendants' request to the extent they are excessively  
9 burdensome and that much of the information requested may be obtained by Defendants from  
10 other sources more conveniently, less expensively, and with less burden.

11 F. This response will be made on the basis of information and writings available to  
12 and located by Plaintiff upon reasonable investigation of its records, and inquiry of its present  
13 officers and/or employees. There may be other and further information respecting the requests  
14 propounded by Defendants of which Plaintiff, despite its reasonable investigation and inquiry, is  
15 currently unaware. Plaintiff reserve the right to modify or enlarge any response with such  
16 pertinent additional information as it may subsequently discover.

17 G. No incidental or implied admissions will be made by the responses to requests.  
18 The fact that Plaintiff may respond or object to any request or part thereof shall not be deemed an  
19 admission that it accepts or admits the existence of any facts set forth or assumed by such request,  
20 or that such response constitutes admissible evidence. That fact that Plaintiff responds to part of  
21 any request is not to be deemed a waiver by Plaintiff of its objections, including privilege, to  
22 other parts of such requests.

23 H. Plaintiff objects to any instruction or request to the extent that it would impose  
24 upon it greater duties than are set forth under the Federal Rules of Civil Procedure. Plaintiffs will  
25 supplement its responses to certain requests as required by Rule 26 of the Nevada Rules of Civil  
26 Procedure.

27 I. Each response will be subject to all objections as to competence, relevance,  
28 materiality, propriety, and admissibility, and to any and all other objections on any ground which

1 would require the exclusion from evidence of any statement herein if any such statements were  
2 made by a witness present and testifying at trial, all of which objections and grounds are  
3 expressly reserved and may be interposed at such hearings.

4 J. Plaintiff adopts by reference the above objections and incorporates each objection  
5 as if it was fully set forth below in each of its responses.

6 **RESPONSES**

7 **REQUEST NO.1:** Produce a calculation of damages as required by NRCP 16.1

8 **RESPONSE TO REQUEST NO. 1:** Objection: This request is not a request for  
9 documents but a request for a calculation which is improper as a request for production of  
10 documents under NRCP 34. The "request" is vague, ambiguous and burdensome in that there is  
11 no active request for any documents.

12 Objection: The request is objected to in as much as it is not a request for production of any  
13 documents but as a request for analysis and calculations based on written materials which would  
14 violate the attorney work product privilege.

15 Objection: To the extent this request is looking for documents and not a mathematical  
16 formula, the request is objected to as the information sought is equally available to the  
17 propounding party.

18 Without waving said objections, Plaintiff responds as follows:

19 Plaintiff has requested both injunctive relief and monetary damages. Monetary damages  
20 are based on an inequitable and unlawful distribution of C-Tax revenues to the City of Fernley  
21 going back to the incorporation of Fernley in 2001. Damages could reasonably be computed in  
22 various ways, including by comparing C-Tax distributions on a statewide per capita basis as  
23 compared to per capita distributions to Fernley. Damages could reasonably also be computed by  
24 comparing C-Tax distributions to Fernley with C-Tax distributions to comparably sized  
25 municipalities.

26 Over the last decade, Fernley has received on average approximately \$4,267,000 less in  
27 C-Tax distributions on an annual basis than comparably sized jurisdictions, equating to  
28 approximately \$42,670,000 over ten years.

1 Over the last decade, Fernley has received on average approximately \$9.53 annually in C-  
2 Tax distributions on a per capita basis, while the statewide annual per capita average for the same  
3 period comes to approximately \$439.59, equating to an approximate difference of \$430.05 over  
4 ten years.

5 The documents supporting the calculations are available to be inspected and/or are already  
6 in the possession of the Department of Taxation including, among other things, the budgets and  
7 C-Tax Distributions for the past 10 years.

8 Discovery is continuing and Plaintiff reserves the right to supplement this answer upon the  
9 discovery of pertinent additional information.

10 **REQUEST NO. 2:** Produce your proposed C-Tax distribution, including first and  
11 second tier distributions for each county, and for each entity within each county.

12 **RESPONSE TO REQUEST NO. 2:** Plaintiff objects to Defendants Request No. 2 on  
13 the grounds that it seeks irrelevant information and is not reasonably calculated to lead to  
14 discoverable information. Plaintiff is challenging the constitutionality of the current C-Tax  
15 system. To do so, Plaintiff is not responsible to produce an alternate proposal for C-Tax  
16 distributions. The constitutionality of the C-Tax system is not contingent on the existence of an  
17 alternative revenue distribution scheme. Plaintiff further objects to Defendants Request No. 2 on  
18 the grounds that it is indefinite as to time and is without a designated time frame and is therefore  
19 overly broad and unduly burdensome. Plaintiff reserves the right to supplement this answer upon  
20 the discovery of pertinent additional information.

21 **REQUEST NO. 3:** Produce your proposed statutory formula for C-Tax distributions.

22 **RESPONSE TO REQUEST NO. 3:** Plaintiff objects to Defendants' Request No 3 on  
23 the grounds that it seeks irrelevant information not reasonably calculated to lead to discoverable  
24 information. As previously stated, Plaintiff is challenging the constitutionality of the current C-  
25 Tax system, and accordingly is not responsible to produce an alternate proposal for C-Tax  
26 distributions. Moreover, the constitutionality of the C-Tax system is not contingent on the  
27 existence of an alternative revenue distribution scheme. Plaintiff further objects to Defendants'

28 ///

1 Request No. 3 on the grounds that the request is not specific as to time and therefore overly  
2 burdensome.

3 Plaintiff further objects that this request violates the attorney work product privilege in  
4 that it requires Plaintiff's counsel to analyze written data or interpret statutory law.

5 **REQUEST NO. 4:** Provide a list of each of the documents produced in Plaintiff's First  
6 Supplemental Disclosures Pursuant to NRCP 16.1, numbered 569 through 1927.

7 **RESPONSE TO REQUEST NO. 4:** Plaintiff objects to Defendants' Request No. 4 on  
8 the basis that the request seeks to invade Plaintiff's counsel's work product privilege in that it  
9 calls for him/her to provide an analysis of written materials. Plaintiff further objects to  
10 Defendants' Request No. 4 on the grounds that this discovery request is so broad and unlimited as  
11 to time and scope as to be an unwarranted annoyance, embarrassment, and is oppressive. To  
12 comply with the request would create an undue burden and expense on the Plaintiff. The request  
13 is calculated to annoy and harass Plaintiff. The rules under NRCP 16.1(a)(1)(B) provides that a  
14 party may produce a copy of, or a description by category and location of, all documents, data  
15 compilations, and tangible things that are in the possession, custody, or control of the party from  
16 which they are discoverable under Rule 26(b). Plaintiff herein has produced a copy of all of the  
17 records. It is not responsible for providing a list of each of the documents. The documents speak  
18 for themselves and can be analyzed as to what they are by the party that has received them.  
19 Plaintiff further objects to this discovery request because the information sought in this discovery  
20 request is equally available to the propounding party. Again, NRCP 16.1 requires either a copy or  
21 description of the documents and Plaintiff has adequately provided copies of all documents which  
22 can be analyzed and listed by Defendants should they wish to do so.

23 ///

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28 ///

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
50 WEST LIBERTY STREET, SUITE 1030  
RENO, NEVADA 89501  
(702) 382-2101

1 Without waving said objections Plaintiff replies as follows: Plaintiff has produced all  
2 documents listed in its initial disclosures pursuant to NRCP 16.1.

3 DATED this 9<sup>th</sup> day of September, 2013.

4 BROWNSTEIN HYATT FARBER SCHRECK, LLP

5 By: 

6 Joshua J. Hicks, Nevada Bar No. 6679

7 Clark V. Vellis, Nevada Bar No. 5533

8 50 West Liberty Street, Suite 1030

9 Reno, Nevada 89501

10 Telephone: 775-622-9450

11 *Attorneys for the City of Fernley, Nevada*

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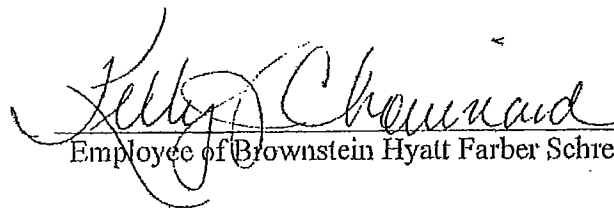
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that on this 9th of September, 2013, I caused to be served via electronic mail and hand delivery, a true and correct copy of the above foregoing **PLAINTIFFS' RESPONSE TO DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS** properly addressed to the following:

Catherine Cortez Masto, Esq.  
Gina C. Session, Esq.  
gsession@ag.nv.gov  
100 North Carson Street  
Carson City, Nevada 89701-4717

Andrea Nichols, Esq.  
Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
anichols@ag.nv.gov

Brenda J. Erdoes, Esq.  
Kevin Powers, Esq.  
kpowers@lcb.state.nv.us  
J. Daniel Yu, Esq.  
dan.yu@lcb.state.nv.us  
Legislative Counsel Bureau  
401 South Carson Street  
Carson City, Nevada 89701

  
Employee of Brownstein Hyatt Farber Schreck, LLP

1 CATHERINE CORTEZ MASTO  
Attorney General  
2 GINA C. SESSION  
Chief Deputy Attorney General  
3 Nevada Bar No. 5493  
gsession@ag.nv.gov  
4 ANDREA NICHOLS  
Senior Deputy Attorney General  
5 Nevada Bar No. 6436  
5420 Kietzke Lane, Suite 202  
6 Reno, NV 89511  
(775) 688-1818  
7 anichols@ag.nv.gov

8 *Attorneys for Defendant Nevada Department of Taxation*

9  
10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR CARSON CITY**

12 CITY OF FERNLEY, NEVADA, a Nevada  
municipal corporation,

13 Plaintiff,

14 v.

15 STATE OF NEVADA, ex rel. THE NEVADA  
16 DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her  
17 official capacity as TREASURER OF THE  
STATE OF NEVADA; THE LEGISLATURE  
18 OF THE STATE OF NEVADA and DOES 1-  
20, Inclusive,

19 Defendants.  
20

**Case No.: 12 OC 00168 1B**

**Dept. No.: I**

21 **MEMORANDUM OF COSTS AND DISBURSEMENTS**

22 Defendant, State of Nevada, ex rel. its Department of Taxation ("Department"), by and  
23 through counsel, Catherine Cortez Masto, Attorney General of the State of Nevada, Gina  
24 Session, Chief Deputy Attorney General, and Andrea Nichols, Senior Deputy Attorney  
25 General, hereby submits its Memorandum of Costs pursuant to NRS 18.110, and respectfully  
26 requests that costs be included in the Judgment entered in this action pursuant to NRS  
27 18.120.

28 ///

Case No. 66851  
JA 3789

|    |  |                   |
|----|--|-------------------|
| 1  | Reporters' fees for depositions, including fees for one copy of each deposition . . . .  | \$3,163.15        |
| 2  | Costs for travel and lodging incurred in attending depositions. . . . .  | \$1,025.74        |
| 3  | Expenses incurred in connection with services of legal researcher. . . . .   | \$29.12           |
| 4  | Expense incurred by the Nevada Department of Taxation to organize<br>and scan documents in response to Plaintiff's discovery requests. . . . . | \$4,480.30        |
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|    | <b>TOTAL:</b>  | <b>\$8,698.31</b> |



AFFIDAVIT OF ANDREA NICHOLS

STATE OF NEVADA )  
COUNTY OF WASHOE ) ss.

Senior Deputy Attorney General, Andrea Nichols, being duly sworn, states: that the affiant is the attorney for the Nevada Department of Taxation and has personal knowledge of the above costs and disbursements expended, that the items contained in the above memorandum are true and correct to the best of this affiant's knowledge and belief, and that the said disbursements have been necessarily incurred and paid in this action. A detailed breakdown of the costs as kept by the Office of the Attorney General is attached hereto.

I am advised that in addition to these costs incurred by the Nevada Attorney General's Office, the Department of Taxation was forced to divert employees from their regular duties and to expend extraordinary amounts of time organizing and scanning documents responsive to Plaintiff's discovery requests. These costs were as follows: 34 man-hours at the rate of \$33.91 per hour for a total of \$1,152.94; 96 man-hours at the rate of \$22.80 per hour for a total of \$2,188.80; 36 man-hours at the rate of \$25.96 per hour for a total of \$934.56; and, four man-hours at the rate of \$51.00 per hour for a total of \$204.00, for a grand total of \$4,480.30.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

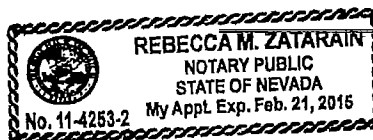
EXECUTED this 18<sup>th</sup> day of September, 2014.

  
ANDREA NICHOLS

SUBSCRIBED and SWORN to before me  
by ANDREA NICHOLS,

this 18<sup>th</sup> day of September, 2014.

  
NOTARY PUBLIC



Case No. 66851  
JA 3791

# Transactions Case Fees and Costs

matter id =ask user ('Please enter Matter ID number') and (component contains 'cc' or 'hc')

City of Fernley - 1st JD 12 OC 00168 1B; NSC 62050

| Date  | Professional    | Cost Description  | Units | Price  | Value    |
|---|-----------------|---|-------|--------|----------|
| <b>Client Sort: Department of Taxation (130-2361)</b> |                 |   |       |        |          |
| 10/28/2013  | Lesley Volkov   | Travel reimbursement for Andrea Nichols for per diem and parking to Las Vegas, Nevada for deposition. | 1.00  | 195.14 | 195.14   |
| 11/21/2013  | Lesley Volkov   | Southwest Airlines airfare for Andrea Nichols to Las Vegas, Nevada for deposition.                    | 1.00  | 397.80 | 397.80   |
| 11/22/2013  | Lesley Volkov   | Oasis Reporting Services certified copy of transcript of deposition. PO 5232-Martin Leavitt           | 1.00  | 374.75 | 374.75   |
| 12/5/2013   | Lesley Volkov   | Southwest Airlines airfare for Andrea Nichols to Las Vegas, Nevada for deposition.                    | 1.00  | 397.80 | 397.80   |
| 12/12/2013  | Jennifer Wilson | Molezzo Court Reporters for copy of transcript of deposition of Mary Walker, purchase order # 5230    | 1.00  | 407.00 | 407.00   |
| 12/12/2013  | Lesley Volkov   | Molezzo Reporters purchase of transcript deposition. PO 5165-Terry Rubald                             | 1.00  | 373.90 | 373.90   |
| 12/17/2013  | Lesley Volkov   | Travel reimbursement for Andrea Nichols for per diem to Las Vegas, Nevada for deposition.             | 1.00  | 35.00  | 35.00    |
| 1/10/2014   | Lesley Volkov   | Sunshine Litigation Services original and certified copy of transcript of Leroy Goodman. PO 5324      | 1.00  | 604.00 | 604.00   |
| 2/17/2014   | Lesley Volkov   | Oasis Reporting Services copy of transcript for Guy Hobbs. PO 5231.                                   | 1.00  | 399.50 | 399.50   |
| 3/13/2014   | Lesley Volkov   | Molezzo Reporters, Inc. deposition of Allen Veil. PO 5166A  | 1.00  | 188.80 | 188.80   |
| 4/28/2014   | Lesley Volkov   | Travel reimbursement for Molly Collins for mileage to Reno, Nevada for Special Project.               | 1.00  | 29.12  | 29.12    |
| 7/1/2014  | Lesley Volkov   | Molezzo Reporters transcript deposition for Terry Rubald. PO 5165                                     | 1.00  | 202.50 | 202.50   |
| 7/1/2014  | Lesley Volkov   | Molezzo Reporters transcript deposition for Warner Ambrose. PO 5164.                                  | 1.00  | 150.75 | 150.75   |
| 7/1/2014  | Lesley Volkov   | Molezzo Reporters copy of transcript of deposition for Marian Henderson. PO 5166.                     | 1.00  | 365.70 | 365.70   |
| 7/1/2014  | Lesley Volkov   | Molezzo Reporters transcript of deposition for Tara Hagan. PO 5166.                                   | 1.00  | 96.25  | 96.25    |
| Client Sort: Department of Taxation (130-2361)        |                 |   | 15.00 |        | 4,218.01 |
| Grand Total   |                 |   | 15.00 |        | 4,218.01 |

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on this 19th day of September, 2014, pursuant to NRCP 5(b) and the parties' stipulation and consent to service by electronic means, I served a copy of the foregoing **MEMORANDUM OF COSTS AND DISBURSEMENTS**, by electronic mail directed to the following:

Joshua Hicks, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
50 West Liberty Street, Suite 1030  
Reno, NV 89501  
*jhicks@bhfs.com*

Clark Vellis  
Cotton, Driggs, Walch, Holley, Woloson & Thompson  
800 South Meadows Parkway, Suite 800  
Reno, NV 89521  
*cvellis@nevadafirm.com*

Brandi Jensen, Fernley City Attorney  
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595 Silver Lace Blvd.  
Fernley, NV 89408  
*bjensen@cityoffernley.org*

Kevin Powers, Esq.  
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401 S. Carson Street  
Carson City, NV 89701  
*kpowers@lcb.state.nv.us*  
*dan.yu@lcb.state.nv.us*



An Employee of the Office  
of the Attorney General

1 Joshua J. Hicks, Nevada Bar No. 6679  
2 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
3 50 West Liberty Street, Suite 1030  
4 Reno, Nevada 89501  
5 Telephone: 775-622-9450  
6 Facsimile: 775-622-9554  
7 Email: jhicks@bhfs.com

8 Clark V. Vellis, Nevada Bar No. 5533  
9 COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON  
10 800 South Meadows Parkway, Suite 800  
11 Reno, Nevada 89521  
12 Telephone: 775-851-8700  
13 Facsimile: 775-851-7681  
14 Email: cvellis@nevadafirm.com

15 Brandi L. Jensen, Nevada Bar No. 8509  
16 Fernley City Attorney  
17 OFFICE OF THE CITY ATTORNEY  
18 595 Silver Lace Blvd.  
19 Fernley, Nevada 89408

20 *Attorneys for the City of Fernley, Nevada*

21  
22 **IN THE FIRST JUDICIAL DISTRICT COURT**  
23 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

24 CITY OF FERNLEY, NEVADA, a  
25 Nevada municipal corporation,

26 Plaintiff,

27 v.

28 STATE OF NEVADA ex rel. THE NEVADA  
DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her  
official capacity as TREASURER OF THE  
STATE OF NEVADA; and DOES 1-20,  
inclusive,

Defendants,

NEVADA LEGISLATURE,

Intervenor.

Case No.: 12 OC 00168 1B

Dept. No.: I

**PLAINTIFF'S MOTION TO RETAX COSTS AND**  
**OPPOSITION TO MOTION FOR COSTS**

REC'D & FILED

2014 SEP 24 PM 4:05

ALAN GLOVER

C. ORRIS CLERK  
DEPUTY

COMES NOW Plaintiff CITY OF FERNLEY, NEVADA (hereinafter "Fernley"), by and through its attorneys of record the law firm Brownstein Hyatt Farber Schreck, LLP and hereby moves pursuant to NRS 18.110(4) to retax and settle the costs claimed by the State of Nevada *ex rel.* its Department of Taxation (the "Department"), and contemporaneously opposes the Department's Motion for Costs. This motion and opposition is based on the following memorandum of points and authorities, all other pleadings, papers, and documents on file with the Court in this action, such further documentary evidence as the Court deems appropriate, and the arguments of counsel at any hearing on this motion and opposition.

### MEMORANDUM OF POINTS AND AUTHORITIES

#### I. INTRODUCTION AND RELEVANT FACTS<sup>1</sup>

On September 2, 2014, at the conclusion of a hearing, the Court ruled from the bench granting summary judgment in favor of the Department and the Nevada Legislature. On September 19, 2014, the Department—as a prevailing party—submitted a Motion for Costs and a Memorandum of Costs and Disbursements, seeking \$8,698.31 in costs from Fernley. Neither the Nevada Legislature nor the Nevada Treasurer have requested costs.

Each of the Department's claimed costs fail for a number of reasons. First, as a matter of law, the Department's request for costs is premature as the Court has yet to enter judgment in this matter. Second, costs should be denied based upon the unique nature of this case. Third, the Department failed to provide documentation sufficient to support its claim that the costs incurred were reasonable, and failed to mitigate costs. Fourth, a significant portion of the costs claimed fall outside those costs permitted by NRS 18.005. Finally, the City of Fernley is immune from any monetary judgment the Department seeks against Fernley pursuant to NRS 41.032.

Thus, Fernley respectfully requests that the Court deny the Department's request for costs and order that all parties should bear their own costs.

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<sup>1</sup> The parties and their claims are well-established in the Court record. Thus, the following will address the procedural history relevant to the Department's instant request for costs.

1     **II.     ARGUMENT**

2             **A.     Standard for Claiming Costs.**

3             NRS 18.020(3) provides that costs are allowed to a prevailing party and against an adverse  
4     party in any action for damages where the plaintiff seeks to recover more than \$2,500. Although  
5     this case has always been more about prospective constitutional relief for Fernley than for money  
6     damages, Fernley did seek money damages in excess of \$2,500.

7             "The party in whose favor judgment is rendered, and who claims costs, *must file with the*  
8     *clerk*, and serve a copy upon the adverse party, *within 5 days after the entry of judgment*, or such  
9     further time as the court or judge may grant, a memorandum of the items of the costs in the action  
10    or proceeding...." NRS 18.110(1) (emphasis added).

11            The amount of costs claimed must be "reasonable." *Waddell v. L. VR. V, Inc.*, 122 Nev.  
12    15, 25, 125 P.3d 1160, 1166 (2006) (citing NRS 18.005). "The determination of which expenses  
13    are allowable as costs is within the sound discretion of the trial court." *Bergmann v. Boyce*, 109  
14    Nev. 670, 679, 856 P.2d 560, 565-66 (1993). District courts narrowly construe statutes allowing  
15    the recovery of costs "because they are in derogation of the common law." *Bobby Berosini, Ltd.*  
16    *v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998).

17            Finally, a party claiming costs is required to provide sufficient documentation and other  
18    material to show that the costs claimed were reasonably or necessarily incurred. *See id.* at 1352-  
19    53, 971 P.2d at 386 (reversing a district court award for investigative fees, photocopy fees, long  
20    distance phone costs, and jurors' fees because the party failed to show "how such fees were  
21    necessary to and incurred in the present action" and failed to provide supporting documentation to  
22    show that the fees "were accurately assessed" and reasonably incurred); *see also Waddell*, 122  
23    Nev. at 25-26, 125 P.3d at 1166-67 (refusing to allow a party to recover costs for computerized  
24    legal research "because those costs were not sufficiently itemized"); *see also Gibellini v. Klindt*,  
25    110 Nev. 1201, 1206, 885 P.2d 540, 543 (1994) (the phrase "reasonable costs" as noted in the  
26    statute is "interpreted to mean actual costs that are also reasonable, rather than a reasonable  
27    estimate or calculation of such costs based upon administrative convenience").  
28

1           **B. The Department's Request for Costs is Premature.**

2           Per NRS 18.020(3), the Department is to file and submit its memorandum of costs "within  
3   5 days after the entry of judgment." As of the filing of this brief, and although the Court  
4   announced its ruling from the bench, the Court has not yet entered judgment.<sup>2</sup> In fact, Fernley  
5   only received a first draft of a proposed Order and Judgment drafted by the Nevada Legislature at  
6   approximately 5:30 p.m. on Tuesday September 23, 2014. Because the draft came in at 51 pages,  
7   longer than any of the summary judgment motions filed by the Department or the Nevada  
8   Legislature, Fernley has not yet had a chance to thoroughly review and provide comment to  
9   opposing counsel. Regardless, judgment has not yet been entered and therefore the Department's  
10   request for costs is clearly premature and should be denied for this reason alone.

11           **C. The Court Should Require All Parties to Bear Their Own Costs Due to the**  
12           **Unique Nature of this Case.**

13           Notwithstanding the Department's premature request for its costs in this matter and the  
14   other deficiencies noted below, the Court should exercise its discretion to deny the Department's  
15   request for costs and instead order each party to bear their own costs. As the Court is aware, this  
16   case was a unique constitutional challenge to a tax collection and distribution system in Nevada.  
17   It is significantly different from the type of cases in which costs are routinely awarded – cases  
18   such as personal injury, breach of contract, and similar cases.

19           As Fernley pointed out in briefs and at argument, it filed suit only as a last resort after  
20   efforts to reach an administrative and legislative resolution were unsuccessful. At oral argument  
21   on September 2, 2014, the Court, despite ruling against Fernley, expressed sympathy for  
22   Fernley's situation, which has indisputably resulted in financial inequities for Fernley as  
23   compared to other Nevada municipalities, leaving Fernley facing tremendous difficulties in  
24   providing basic levels of service to its citizens. That situation should not be further exacerbated

25  
26           <sup>2</sup> Alternatively, if the Department claims that the Court already entered judgment from the  
27   bench on September 2, 2014, the Department's request is untimely as it came thirteen days after  
28   the Court ruled from the bench. Thus, the Department waited ~~too long to claim costs~~, and  
because Nevada courts "narrowly construe" statutes authorizing the recovery of costs, the  
Department is barred from recovering costs from Fernley. See *Bobby Berosini, Ltd.*, 114 Nev. at  
1352, 971 P.2d at 385.

1 by the Department's attempt to extract even more money from Fernley for attempting to protect  
2 the best interests of its community and its citizens.

3 As noted above, the determination of whether to award costs is within the discretion of the  
4 Court. Fernley asks that the Court exercise that discretion in this unique constitutional case and  
5 order that all parties bear their own costs.

6 **D. The Department Failed to Provide Sufficient Documentation to Support its**  
7 **Request for Costs.**

8 The Department failed to provide sufficient documentation to show that the costs claimed  
9 were actually and reasonably incurred. Under Nevada law, their failure to do so bars them from  
10 recovering costs. *See Bobby Berosini, Ltd.*, 114 Nev. at 1352-53, 971 P.2d at 386.

11 Notwithstanding, assuming the Court allows the Department to recover costs (even though  
12 its request is premature and should be denied pursuant to the Court's discretion), certain items are  
13 plainly unreasonable and should be reduced as more fully described below.

14 **1. *The Department's document for "Reporters' Fees for Deposition" and "Costs***  
15 ***for Travel and Lodging" does not satisfy the requirements of Nevada law.***

16 The Department claims \$3,163.15 for reporter's fees for depositions, including fees for  
17 one copy of each deposition transcript. However, the Department only provides a self-serving  
18 printout of the claimed reporters' fees and deposition transcript costs. On review of the printout,  
19 some costs from the same reporter agency are double. Absent sufficient documentation, neither  
20 Fernley nor the Court can determine if the Department is seeking to recover fees for multiple  
21 copies of a deposition transcript or if deposition transcripts were requested on an expedited basis.  
22 The Department's failure to provide any back-up documentation related to its request for fees  
23 associated with reporters' fees and deposition transcripts is fatal to the Department's request for  
24 costs. Thus, the request should be denied.

25 Similarly, the Department's claim for \$1,025.74 in travel and lodging costs is only  
26 supported by the self-serving printout. The printout fails to identify the *per diem* rate used to  
27 calculate the claimed travel reimbursements and for what time period the travel reimbursement  
28 covered. Moreover, the printout fails to explain the need for the Department to send counsel to



1 Las Vegas when the Attorney General maintains offices in Las Vegas with competent counsel. It  
2 should be noted that the Department was not taking the depositions that occurred in Las Vegas, so  
3 surely the Department could have utilized one of the other Deputy Attorney Generals based in  
4 Las Vegas and assigned to represent the Department to appear at those depositions. Moreover,  
5 since the Department was not taking the depositions, and indeed the depositions in Las Vegas  
6 were not even depositions of Department personnel, there was no obligation to even appear at  
7 those depositions – the Department's choice to do so was purely voluntary.

8 Finally, it should also be noted that when Fernley noticed a deposition for the Department,  
9 it did not name any one individual, instead asking that the Department produce the "person most  
10 knowledgeable" for a deposition, and providing a specific list of topics to be covered at the  
11 deposition, and leaving it to the sole discretion of the Department to produce that person. **Exhibit**  
12 **1.** The Department, without objection to Fernley's request, produced Marian Henderson as the  
13 person most knowledgeable. At her deposition, and for the first time, Mrs. Henderson claimed  
14 she was not in fact the "personal most knowledgeable" for the Department on multiple subject  
15 areas and moreover, acknowledged that she had done little to prepare for her deposition. **Exhibit**  
16 **2.** Accordingly, Fernley was required to subsequently depose two other Department witnesses,  
17 incurring additional expenses for all parties which was solely caused by the Department's failure  
18 to produce and prepare the appropriate witnesses in the first place.<sup>3</sup>

19 For all of these reasons, the Court should deny the Department's request due to its failure  
20 to provide back-up documentation and otherwise mitigate costs.

21 **2. *The Department provides no documentation for its requests for discovery***  
22 ***expenses and legal researcher expenses.***

23 The Department claims \$4,480.30 for expenses incurred by the Department to "organize  
24 and scan documents in response to Plaintiff's discovery requests." (See Memorandum of Costs  
25 and Disbursements, on file herein, at 2:4.). The Department attempts to support its request by  
26 affidavit that summarily claims 170 "man-hours" were used to respond to Fernley's discovery

27 <sup>3</sup> Fernley considered requesting fees and costs for the additional expenses incurred by the  
28 Department's failure to comply with the deposition notice but decided not to do so.

1 requests. The affidavit is void of any explanation of the tasks completed, the persons who  
2 completed the tasks, the amount of time taken to complete the tasks and the discovery requests  
3 that required the 170 "man-hours" for the Department to respond, or how the hourly rate for such  
4 work is appropriate, including whether the work required the Department to pay employees above  
5 and beyond their normal rates of pay. The State is generally not allowed to request  
6 reimbursement for the production of documents that is undertaken within the ordinary overhead  
7 expenses of a state agency. *See Nevada Attorney General Opinion 2000-12 (April 6, 2000) ("Not*  
8 *every customized request will require the extraordinary use of personnel or technological*  
9 *resources but if it does, and if a fee is charged, the fee must be both reasonable and based on the*  
10 *cost the governmental entity actually incurs for the extraordinary use of personnel or*  
11 *technological resources . . . The governmental entity's ordinary overhead is not contemplated in*  
12 *the cost for reproduction of the public record whether for existing records or for creation or*  
13 *reproduction of a customized record. ") (emphasis added).<sup>4</sup> The Department has made no*  
14 *showing whatsoever as to whether the cost request is based on expenses incurred outside the*  
15 *ordinary overhead of the Department.*

16 Furthermore, the Department failed to identify when and how the expenses were incurred.  
17 The Department's failure to provide any documentation prevents Fernley from challenging the  
18 claimed expenses and further prevents the Court from determining whether the expenses were  
19 reasonable and necessarily incurred. Accordingly, the Department's request for discovery  
20 expenses should be denied for this reason as well.

21 Finally, the Department failed to provide any documentation to support its "legal  
22 researcher" expenses of \$29.12. Without any documentation, Fernley cannot determine if the  
23 Department is seeking to recover fees for research its counsel conducted or for research  
24 conducted by a third party. The information is necessary in order to determine whether the  
25 expenses were reasonable and necessarily incurred. Thus, the request should be denied.

26 ///

27 <sup>4</sup> Although the opinion is in the context of Nevada's public records law, the documents  
28 provided by the Department in this case pertain to tax reports or public hearings on tax matters;  
which are public records.

1           **E.    The Department's Claimed Costs are not Recoverable Under NRS 18.005.**

2           Although the Department's claimed costs for travel and lodging, reporters' fees, deposition  
3 transcript costs and legal research facially appear to qualify as recoverable costs pursuant to NRS  
4 18.005, the Department's failure to provide any documentation (as noted above) precludes  
5 Fernley and the Court from determining whether the Department's claimed costs are in fact  
6 recoverable. Thus, absent sufficient documentation, the Department's claimed costs are not  
7 recoverable.

8           **1.    Requests for discovery expense are not recoverable under NRS 18.005.**

9           Costs that can be awarded pursuant to NRS 18.020(3) are defined as follows:

10           [T]he term "costs" means:

- 11           1. Clerks' fees.
- 12           2. Reporters' fees for depositions, including a reporter's fee for  
13           one copy of each deposition.
- 14           3. Jurors' fees and expenses, together with reasonable  
15           compensation of an officer appointed to act in accordance with  
16           NRS 16.120.
- 17           4. Fees for witnesses at trial, pretrial hearings and deposing  
18           witnesses, unless the court finds that the witness was called at the  
19           instance of the prevailing party without reason or necessity.
- 20           5. Reasonable fees of not more than five expert witnesses in an  
21           amount of not more than \$1,500 for each witness, unless the court  
22           allows a larger fee after determining that the circumstances  
23           surrounding the expert's testimony were of such necessity as to  
24           require the larger fee.
- 25           6. Reasonable fees of necessary interpreters.
- 26           7. The fee of any sheriff or licensed process server for the  
27           delivery or service of any summons or subpoena used in the action,  
28           unless the court determines that the service was not necessary.
8. Compensation for the official reporter or reporter pro tempore.
9. Reasonable costs for any bond or undertaking required as part  
          of the action.
10. Fees of a court bailiff or deputy marshal who was required to  
          work overtime.
11. Reasonable costs for telecopies.

12. Reasonable costs for photocopies.
  13. Reasonable costs for long distance telephone calls.
  14. Reasonable costs for postage.
  15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery.
  16. Fees charged pursuant to NRS 19.0335.
  17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.
- NRS 18.005.

The Department's claimed expenses of \$4,480.30 for the 170 "man-hours" related to the organizing and scanning of documents in response to Plaintiff's discovery requests do not fall within any of the categories listed above. Therefore, the Department's request to recover these expenses should be denied.

F. Pursuant to NRS 41.032, Fernley—as a Political Subdivision of the State—is Immune from the Court Awarding Costs Against it.

NRS 41.032(1) provides that "no action may be brought under NRS 41.031 or against an immune contractor or an officer or employee of the State or any of its agencies or political subdivisions which is . . . [b]ased upon an act or omission of an officer, employee or immune contractor, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, if the statute or regulation has not been declared invalid by a court of competent jurisdiction . . . " NRS 41.032(2) provides that "no action may be brought under NRS 41.031 or against an immune contractor or an officer or employee of the State or any of its agencies or political subdivisions which is . . . [b]ased upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the State or any of its agencies or political subdivisions or of any officer, employee or immune contractor of any of these, whether or not the discretion involved is abused. " Fernley is entitled to immunity from the Department's claimed costs under both NRS 41.032(1) and NRS 41.032(2).

As an initial matter, Fernley is a political subdivision of the State of Nevada. NRS 41.0305. As noted in the briefing and argument in this case, Fernley brought this action as a last resort, and with a good faith belief that the C-Tax system in Nevada suffers from fatal constitutional deficiencies. Fernley therefore has alleged that the C-Tax system is not being administered in a constitutional manner, and also exercised its discretion to undertake a good faith legal challenge to the C-Tax system. Moreover, the phrase "action" is not defined in NRS 41.032 and should therefore be construed to include any action in which monetary compensation is sought against a political subdivision of the State, including a request for costs against a political subdivision. Accordingly, Fernley is immune from the imposition of costs and the Department's request for costs should be denied for this reason as well.

### III. CONCLUSION

For the foregoing reasons, Fernley respectfully requests that the Court deny the Department's request for costs in its entirety and order that all parties bear their own costs in this matter.

DATED this 24<sup>th</sup> day of September, 2014.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 

Joshua J. Hicks, Esq., Nevada Bar No. 6679  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
Telephone: 775-622-9450

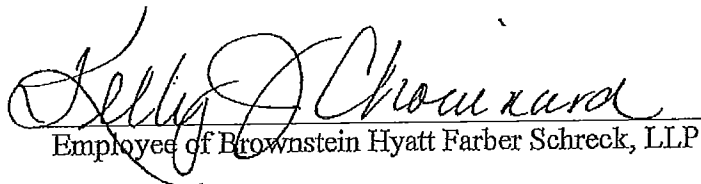
*Attorneys for the City of Fernley, Nevada*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that on this 24<sup>th</sup> day of September, 2014, I caused to be served via electronic mail, a true and correct copy of the above foregoing **PLAINTIFF'S MOTION TO RETAX COSTS AND OPPOSITION TO MOTION FOR COSTS** properly addressed to the following:

Andrea Nichols, Esq.  
anichols@ag.nv.gov  
Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511

Brenda J. Erdoes, Esq.  
Kevin Powers, Esq.  
kpowers@lcb.state.nv.us  
J. Daniel Yu, Esq.  
dan.yu@lcb.state.nv.us  
Legislative Counsel Bureau  
401 South Carson Street  
Carson City, Nevada 89701

  
Employee of Brownstein Hyatt Farber Schreck, LLP

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation,  
Plaintiff,

v.

STATE OF NEVADA ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE  
OF NEVADA; and DOES 1-20, inclusive,  
Defendants,

NEVADA LEGISLATURE,  
Intervenor

Case No.: 12 OC 00168 1B  
Dept. No.: I

**INDEX OF EXHIBITS TO THE PLAINTIFF'S MOTION TO RETAX COSTS AND  
OPPOSITION TO MOTION FOR COSTS**

| Exhibit No. | Description  | Pages |
|-------------|--|-------|
| 1           | City of Fernley's Notice of the Deposition of the Person Most Knowledgeable of the Nevada Department of Taxation | 4     |
| 2           | Excerpts from the Deposition of Marian Henderson taken November 12, 2013   | 35    |
|             |  |       |
|             |  |       |
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|             |  |       |
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# EXHIBIT 1

# EXHIBIT 1

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Joshua J. Hicks, Nevada Bar No. 6679  
Clark V. Vellis, Nevada Bar No. 5533  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
Telephone: 775-622-9450  
Facsimile: 775-622-9554  
Email: jhicks@bhfs.com  
Email: cvellis@bhfs.com

Brandi L. Jensen, Nevada Bar No. 8509  
Fernley City Attorney  
OFFICE OF THE CITY ATTORNEY  
595 Silver Lace Blvd.  
Fernley, Nevada 89408

*Attorneys for the City of Fernley, Nevada*

**IN THE FIRST JUDICIAL DISTRICT COURT**

**OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

CITY OF FERNLEY, NEVADA, a  
Nevada municipal corporation,

Plaintiff,

v.

STATE OF NEVADA ex rel. THE NEVADA  
DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her  
official capacity as TREASURER OF THE  
STATE OF NEVADA; and DOES 1-20,  
inclusive,

Defendants,

NEVADA LEGISLATURE,

Intervenor.

Case No.: 12 OC 00168 1B

Dept. No.: I

**NOTICE OF DEPOSITION OF THE PERSON MOST KNOWLEDGEABLE OF  
THE NEVADA DEPARTMENT OF TAXATION**

**TO: The Person Most Knowledgeable of the Nevada Department of Taxation;**

**and,**

**TO: Andrea Nichols, Esq., of the Office of the Attorney General, Attorney for**

**Defendant Nevada Department of Taxation.**

**///**

PLEASE TAKE NOTICE that at 9:30 a.m. on Monday, November 4, 2013, at the law offices of Smith & Harmer, Ltd., 502 North Division Street, Carson City, Nevada 89703, Plaintiff City of Fernley, Nevada will take the oral deposition of the Person Most Knowledgeable of the Nevada Department of Taxation regarding the subject(s) set forth below, upon oral examination, pursuant to Rule 26 and Rule 30 of the Nevada Rules of Civil Procedure, before a Notary Public or before some other officer authorized by the law to administer oaths.

Oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

**SUBJECT MATTER: See Attachment "A".**

DATED this 14<sup>th</sup> day of October, 2013.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 

Joshua J. Hicks, Nevada Bar No. 6679  
Clark V. Vellis, Nevada Bar No. 5533  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
Telephone: 775-622-9450

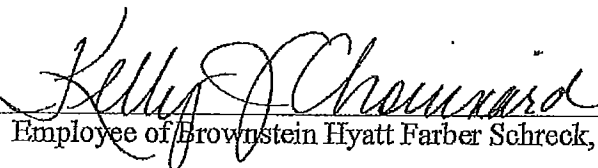
*Attorneys for the City of Fernley, Nevada*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that on this 14th of October, 2013, I caused to be served via electronic mail and U.S. Mail, a true and correct copy of the above foregoing **Notice of Deposition of the Person Most Knowledgeable of the Nevada Department of Taxation** properly addressed to the following:

Andrea Nichols, Esq.,  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
anichols@ag.nv.gov

Brenda J. Erdoes, Esq.  
Kevin Powers, Esq.  
kpowers@lcb.state.nv.us  
J. Daniel Yu, Esq.  
dan.yu@lcb.state.nv.us  
Legislative Counsel Bureau  
401 South Carson Street  
Carson City, Nevada 89701

  
Employee of Brownstein Hyatt Farber Schreck, LLP

# EXHIBIT 2

# EXHIBIT 2

1 IN THE FIRST JUDICIAL DISTRICT COURT  
2 OF THE STATE OF NEVADA  
3 IN AND FOR THE COUNTY OF CARSON CITY

4 -oOo-

5  
6 CITY OF FERNLEY, NEVADA,  
7 a Nevada municipal corporation,

**CERTIFIED COPY**

8 Plaintiff,  
9 vs.

Case No. 12 OC 00168 1B  
Dept. No. I

10 STATE OF NEVADA ex rel. THE  
11 NEVADA DEPARTMENT OF TAXATION;  
12 THE HONORABLE KATE MARSHALL,  
in her official capacity as  
TREASURER of the STATE OF  
NEVADA; and DOES 1-20,  
inclusive,

13 Defendants.

14 \_\_\_\_\_/  
15 Pages 1 to 153, inclusive.

16  
17  
18 DEPOSITION OF MARIAN HENDERSON

19 \_\_\_\_\_  
20 Wednesday, November 13, 2013  
21 Carson City, Nevada

22  
23 REPORTED BY:

CHRISTINA AMUNDSON  
CCR #641 (Nevada)  
CSR #11883 (California)

A P P E A R A N C E S

FOR PLAINTIFF:

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
BY: CLARK V. VELLIS, ATTORNEY AT LAW  
JOSHUA HICKS, ATTORNEY AT LAW  
50 West Liberty Street, Suite 1030  
Reno, NV 89501

FOR THE LEGISLATIVE COUNSEL BUREAU:

STATE OF NEVADA LEGISLATIVE COUNSEL BUREAU  
BY: KEVIN C. POWERS, ATTORNEY AT LAW  
J. DANIEL YU, ATTORNEY AT LAW  
401 South Carson Street  
Carson City, NV 89701

FOR STATE OF NEVADA DEPARTMENT OF TAXATION:

STATE OF NEVADA OFFICE OF THE ATTORNEY GENERAL  
BY: ANDREA NICHOLS, ATTORNEY AT LAW  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

-o0o-

I N D E X

Deposition of MARIAN HENDERSON

EXAMINATION BY

PAGE

Mr. Vellis

4

E X H I B I T S

EXH.  
NO.

DESCRIPTION

PAGE

1 Amended Notice of Deposition of PMK

9

2 Answer

133

-oOo-

1 BE IT REMEMBERED that on Wednesday, November 13,  
2 2013, commencing at 9:30 a.m. of said day, at SMITH &  
3 HARMER, 502 North Division Street, Carson City, NV 89703,  
4 before me, CHRISTINA M. AMUNDSON, a Certified Shorthand  
5 Reporter, personally appeared MARIAN HENDERSON.

6  
7 MARIAN HENDERSON,  
8 called as a witness in the matter herein,  
9 who, having been first duly sworn, was examined  
10 and testified as follows:

11 EX A M I N A T I O N

12 BY MR. VELLIS:

13 Q Ma'am, could you please state your full name and  
14 spell it for the record.

15 A Marian Henderson. M-a-r-i-a-n,  
16 H-e-n-d-e-r-s-o-n.

17 Q And where do you currently reside?

18 A Minden, Nevada.

19 Q Okay. Do you have an address there?

20 A Yes.

21 MS. NICHOLS: I don't think that's relevant.  
22 You can -- I'm just going to object on the basis of  
23 relevance. You can answer it if you want, if you feel  
24 comfortable. If you don't, then he'll have to get a court  
25 order to get you to answer it.



1 MR. VELLIS: I don't think that's a fair  
2 analysis of the law. You're here to answer questions. If  
3 she's instructing you not to answer a question, then she  
4 can do that on privilege, but I'm entitled to ask  
5 questions that I think I need information on.

6 If it's a relevancy objection, those objections  
7 are saved until the time of trial. I'm asking the  
8 information because you're a witness in the case, people  
9 move, we have to serve subpoenas. So the better I know  
10 where you are, I can get a subpoena served to you. That's  
11 the only reason. We won't have anyone come visit you.  
12 There won't be anything of that nature.

13 THE WITNESS: Wow, you're not even the church.

14 MS. NICHOLS: Can we go off the record for a  
15 second?

16 (Discussion off the record.)

17 THE WITNESS: I don't mind.

18 BY MR. VELLIS:

19 Q Okay.

20 A 1591 County Road.

21 Q Okay. How long have you lived there?

22 A 15, 16 years.

23 Q Okay. Any plans of moving in the future?

24 A No.

25 Q Okay. Have you ever been deposed before?

1 A No.

2 Q Okay. You've been designated as the person most  
3 knowledgeable for the Department of Taxation and we'll go  
4 through the list of areas that we're here to cover.

5 But having never had your deposition taken  
6 before, we're going to go over a few ground rules. I  
7 assume you've had an attorney to talk to your lawyer prior  
8 to the deposition, correct?

9 A Yes.

10 Q Okay. The testimony that is being taken today  
11 is just like testimony you'd give in court.

12 Do you understand that?

13 A Yes.

14 Q You understand you just took an oath to tell the  
15 truth under the penalty of perjury, correct?

16 A Yes.

17 Q You understand that that oath that you took and  
18 the penalty is just like the oath and the penalty that  
19 would be applied to you if you were testifying before a  
20 judge in a court?

21 A Yes.

22 Q Okay. In order to make this go efficiently,  
23 there's a few ground rules that we usually try to follow.  
24 The first one is it's usually good to have only one of us  
25 speaking at a time because this is being taken down by the

1 court reporter and she can't get both of us at once. So I  
2 will make a deal with you. If you wait for me to finish  
3 my question before you start your answer, I'll wait for  
4 you to finish your answer before I start my next question.

5 Fair enough?

6 A Yes.

7 Q The deposition testimony that's being taken  
8 today will come out in a booklet form at a later date.  
9 You'll have the opportunity to review that and to make any  
10 changes that you feel necessary. You understand that?

11 A Yes.

12 Q All right. However, if you make a change that  
13 someone on either side considers substantive, they can  
14 comment on the fact that you have changed that testimony  
15 and may comment on the fact that it affects your  
16 credibility. You understand that?

17 A Yes.

18 Q So it's important today to give your best  
19 testimony. All right?

20 A Okay.

21 Q If you, acting on behalf of the Department, have  
22 information that you don't recall or don't know, then I  
23 need to have you tell me that and we'll explore that.

24 Okay?

25 A Uh-huh.

1 Q Yes?

2 A Yes.

3 Q All right. One of the other things we have to  
4 have happen -- and it's not usual in normal conversations  
5 -- is a lot of times the "uh-huhs" and the "uh-uhs" that  
6 we do don't show up in the court record, so it has to be  
7 clear. So from time to time I may say to you, Is that a  
8 yes or a no? I'm not trying to be rude. I just want to  
9 make sure it's clear what you're saying. Okay?

10 A Okay.

11 Q All right. Real important -- and this is one of  
12 the most important ones. If for any reason I ask you a  
13 question at any time that you do not understand, please  
14 stop me and have me rephrase the question until the time  
15 that you do understand it. Will you do that?

16 A Yes.

17 Q All right. If you answer the questions, I'm  
18 going to assume you understood them and answered  
19 accordingly. Fair enough?

20 A Yes.

21 Q Any reason you can't go forward today with your  
22 deposition?

23 A No.

24 Q Are you on my medications or anything that would  
25 affect your ability to listen to questions, answer them

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CITY OF FERNLEY, NEVADA, a  
Nevada municipal corporation,

Appellant,

vs.

THE STATE OF NEVADA ex rel.  
DEPARTMENT OF TAXATION;  
THE HONORABLE DAN  
SCHWARTZ, in his official capacity  
as TREASURER OF THE STATE OF  
NEVADA; and THE LEGISLATURE  
OF THE STATE OF NEVADA,

Respondents.

Electronically Filed  
May 20 2015 10:35 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Supreme Court No.: 66851

District Court Case No.: 12 OC 00168 1B

**JOINT APPENDIX**

**VOLUME 21 PART 1**

Filed By:

Joshua J. Hicks, Esq.  
Nevada Bar No. 6678  
BROWNSTEIN HYATT  
FARBER SCHRECK, LLP  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
Telephone: (775) 622-9450  
Email: [jhicks@bhfs.com](mailto:jhicks@bhfs.com)

*Attorneys for Appellant City of Fernley,  
Nevada*

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|---------------|--|-------------------------------------|----------|--------------------|
| 1             | Affidavit of Service Taxation  | City of Fernley                     | 07/02/12 | 17                 |
| 1             | Affidavit of Service Treasurer   | City of Fernley                     | 06/20/12 | 13-16              |
| 23            | Amended Memorandum of Costs and Disbursements  | State of Nevada/Dept Taxation       | 10/09/15 | 4058-4177          |
| 7             | Answer   | State of Nevada/Dept Tax/ Treasurer | 02/01/13 | 1384-1389          |
| 7             | Answer to Plaintiff's Complaint  | Nevada Legislature                  | 01/29/13 | 1378-1383          |
| 23            | Case Appeal Statement  | City of Fernley                     | 11/07/14 | 4208-4212          |
| 1             | Complaint  | City of Fernley                     | 06/06/12 | 1-12               |
| 21            | Defendant Nevada Legislature's Reply in Support of its Motion for Summary Judgment                     | Nevada Legislature                  | 07/25/14 | 3747-3768          |
| 21            | Defendant's Opposition to Motion to Retax Costs and Reply to Opposition to Motion for Costs            | State of Nevada/Dept Taxation       | 10/03/14 | 3863-3928          |
| 22            | Defendant's Opposition to Motion to Retax Costs and Reply to Opposition to Motion for Costs (Cont.)    | State of Nevada/Dept Taxation       | 10/03/14 | 3929-3947          |
| 1             | Exhibits to Joinder in Motion to Dismiss   | Nevada Legislature                  | 08/16/12 | 104-220            |
| 2             | Exhibits to Joinder in Motion to Dismiss (Cont.)   | Nevada Legislature                  | 08/16/12 | 221-332            |
| 1             | Joinder in Motion to Dismiss   | Nevada Legislature                  | 08/16/12 | 62-103             |
| 7             | Joinder in Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss           | Nevada Legislature                  | 05/06/14 | 1421-1423          |
| 21            | Memorandum of Costs and Disbursements  | State of Nevada/Dept Taxation       | 09/19/14 | 3788-3793          |
| 21            | Motion for Costs   | State of Nevada/Dept Taxation       | 09/19/14 | 3776-3788          |
| 12            | Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order                     | City of Fernley                     | 06/18/14 | 2005-2045          |
| 7             | Motion for Summary Judgment  | City of Fernley                     | 06/13/14 | 1458-1512          |
| 8             | Motion for Summary Judgment (Cont.)  | City of Fernley                     | 06/13/14 | 1513-1732          |
| 9             | Motion for Summary Judgment (Cont.)  | City of Fernley                     | 06/13/14 | 1733-1916          |
| 10            | Motion for Summary Judgment (Cont.)  | City of Fernley                     | 06/13/14 | 1917-1948          |
| 11            | Motion for Summary Judgment (Cont.)  | City of Fernley                     | 06/13/14 | 1949-2004          |
| 1             | Motion to Dismiss  | State of Nevada/Dept Tax/ Treasurer | 08/03/12 | 41-58              |
| 1             | Motion to Intervene  | Nevada Legislature                  | 08/03/12 | 18-40              |
| 21            | Motion to Retax Costs and Opposition to Motion for Costs   | City of Fernley                     | 09/24/14 | 3794-3845          |
| 7             | Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss                      | State of Nevada/Dept Tax/ Treasurer | 05/05/14 | 1414-1420          |
| 7             | Nevada Department of Taxation and Nevada Treasurer's Reply to Response to Renewal of Motion to Dismiss | State of Nevada/Dept Tax/ Treasurer | 05/23/14 | 1433-1437          |
| 12            | Nevada Department of Taxation's Opposition to Plaintiff's Motion for Summary Judgment                  | State of Nevada/Dept Taxation       | 07/11/14 | 2053-2224          |
| 13            | Nevada Department of Taxation's Opposition to Plaintiff's Motion for Summary Judgment (Cont.)          | State of Nevada/Dept Taxation       | 07/11/14 | 2225-2353          |

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| 23                   | Notice of Appeal  | City of Fernley                        | 11/07/14    | 4205-4207                 |
| 22                   | Notice of Entry of Order  | Nevada Legislature                     | 10/08/14    | 4001-4057                 |
| 23                   | Notice of Entry of Order  | State of Nevada/Dept                   | 10/17/14    | 4195-4204                 |
| 7                    | Notice of Entry of Order Denying City of Fernley's Motion for Reconsideration of Order Dated November 13, 2012                  | State of Nevada/Dept Tax/<br>Treasurer | 12/19/12    | 1364-1370                 |
| 7                    | Notice of Entry of Order Granting A Continuance to Complete Discovery   | City of Fernley                        | 10/19/12    | 1344-1350                 |
| 3                    | Notice of Entry of Order Granting Nevada Legislature's Motion to Intervene  | Nevada Legislature                     | 09/04/12    | 651-657                   |
| 7                    | Notice of Entry of Order on Defendant's Motion for Extensions of Time to File Answer  | State of Nevada/Dept Tax/<br>Treasurer | 11/15/12    | 1354-1360                 |
| 1                    | Notice of Non-Opposition to Legislature's Motion to Intervene   | State of Nevada/Dept Tax/<br>Treasurer | 08/06/12    | 59-61                     |
| 2                    | Opposition to Motion to Dismiss and Motion for Continuance Pursuant to NRCP 56(F)   | City of Fernley                        | 08/20/12    | 331-441                   |
| 3                    | Opposition to Motion to Dismiss and Motion for Continuance Pursuant to NRCP 56(F) (Cont.)                                       | City of Fernley                        | 08/20/12    | 442-625                   |
| 2                    | Opposition to Motion to Nevada Legislature's Motion to Intervene  | City of Fernley                        | 08/20/12    | 324-330                   |
| 13                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss                                 | City of Fernley                        | 07/11/14    | 2354-2445                 |
| 14                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)                         | City of Fernley                        | 07/11/14    | 2446-2665                 |
| 15                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)                         | City of Fernley                        | 07/11/14    | 2666-2819                 |
| 16                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)                         | City of Fernley                        | 07/11/14    | 2820-2851                 |
| 17                   | Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)                         | City of Fernley                        | 07/11/14    | 2852-2899                 |
| 4                    | Opposition to Nevada Legislature's Joinder in Motion to Dismiss   | City of Fernley                        | 09/28/12    | 662-881                   |
| 5                    | Opposition to Nevada Legislature's Joinder in Motion to Dismiss (Cont.)   | City of Fernley                        | 09/28/12    | 882-1101                  |
| 6                    | Opposition to Nevada Legislature's Joinder in Motion to Dismiss (Cont.)   | City of Fernley                        | 09/28/12    | 1102-1316                 |
| 17                   | Opposition to Nevada Legislature's Joinder in Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss | City of Fernley                        | 07/11/14    | 2900-2941                 |
| 20                   | Opposition to Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order                    | Nevada Legislature                     | 07/11/14    | 3586-3582                 |

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| 12            | Opposition to Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order and Countermotion for Order Dismissing Nevada Department of Taxation | State of Nevada/Dept Tax/ Treasurer | 07/11/14 | 2049-2052          |
| 17            | Opposition to Plaintiff's Motion for Summary Judgment   | Nevada Legislature                  | 07/11/14 | 2942-3071          |
| 18            | Opposition to Plaintiff's Motion for Summary Judgment (Cont.)   | Nevada Legislature                  | 07/11/14 | 3072-3292          |
| 19            | Opposition to Plaintiff's Motion for Summary Judgment (Cont.)   | Nevada Legislature                  | 07/11/14 | 3292-3512          |
| 20            | Opposition to Plaintiff's Motion for Summary Judgment (Cont.)   | Nevada Legislature                  | 07/11/14 | 3515-3567          |
| 7             | Order (Converting Motion to Dismiss to Motion for Summary Judgment, Setting Briefing Schedule and Dismissing Treasurer)   | First Judicial District Court       | 06/06/14 | 1451-1457          |
| 22            | Order and Judgment  | First Judicial District Court       | 10/06/14 | 3948-4000          |
| 7             | Order Denying City of Fernley's Motion for Reconsideration of Order Dated November 13, 2012   | First Judicial District Court       | 12/17/12 | 1361-1363          |
| 7             | Order Granting A Continuance to Complete Discovery  | First Judicial District Court       | 10/15/12 | 1341-1343          |
| 7             | Order Granting in Part and Denying in Part Petition for Writ of Mandamus  | Nevada Supreme Court                | 01/25/13 | 1373-1377          |
| 23            | Order Granting Nevada Department of Taxation's Motion for Costs   | First Judicial District Court       | 10/15/14 | 4190-4194          |
| 3             | Order Granting Nevada Legislature's Motion to Intervene   | First Judicial District Court       | 08/30/12 | 648-650            |
| 7             | Order on Defendant's Motion for Extensions of Time to File Answer   | First Judicial District Court       | 11/13/12 | 1351-1353          |
| 7             | Order Pursuant to Writ of Mandamus  | First Judicial District Court       | 02/22/13 | 1390-1392          |
| 21            | Order Vacating Trial  | First Judicial District Court       | 09/03/14 | 3773-3775          |
| 23            | Plaintiff's Motion to Strike, or Alternatively, Motion to Retax Costs   | City of Fernley                     | 10/14/14 | 4178-4189          |
| 21            | Plaintiff's Objections to Nevada Legislature's Proposed Order and Request to Submit Proposed Order and Judgment   | City of Fernley                     | 10/02/14 | 3846-3862          |
| 7             | Pretrial Order  | First Judicial District Court       | 10/10/13 | 1393-1399          |
| 7             | Reply Concerning Joinder in Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss   | Nevada Legislature                  | 05/27/14 | 1438-1450          |
| 7             | Reply in Support of Joinder in Motion to Dismiss  | Nevada Legislature                  | 10/08/12 | 1317-1340          |
| 3             | Reply in Support of Motion to Intervene   | Nevada Legislature                  | 08/24/12 | 626-635            |
| 21            | Reply in Support of Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order as to Defendant Nevada Legislature                             | City of Fernley                     | 07/25/14 | 3709-3746          |



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| 20                   | Reply in Support of Plaintiff's Motion for Summary Judgment Against Defendants Nevada Department of Taxation and Nevada Treasurer   | City of Fernley                       | 07/25/14    | 3674-3708                 |
| 20                   | Reply in Support of Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order as to Defendant's Nevada Department of Taxation and Nevada Treasurer; Plaintiff's Opposition to Countermotion for Order Dismissing Nevada Department of Taxation | City of Fernley                       | 07/25/14    | 3641-3673                 |
| 20                   | Reply in Support of Plaintiff's Motion for Summary Judgment Against Defendant Nevada Legislature  | City of Fernley                       | 07/25/14    | 3606-3640                 |
| 21                   | Reply to Opposition to Countermotion for Order Dismissing Nevada Department of Taxation   | State of Nevada/Dept Taxation         | 08/01/14    | 3769-3772                 |
| 3                    | Reply to Opposition to Motion to Dismiss  | State of Nevada/Dept Tax/ Treasurer   | 08/27/12    | 636-647                   |
| 20                   | Reply to Plaintiff's Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss  | State of Nevada/Dept Taxation         | 07/25/14    | 3583-3605                 |
| 7                    | Response to Nevada Department of Taxation   | City of Fernley                       | 05/16/14    | 1424-1432                 |
| 7                    | Second Stipulation and Order Regarding Change of Briefing Schedule  | Parties/First Judicial District Court | 03/17/14    | 1406-1409                 |
| 7                    | Stipulation and Order for an Extension of Time to File Responses to Discovery Requests; Extend Certain Discovery Deadlines and Extend Time to File Dispositive Motions  | Parties/First Judicial District Court | 04/11/14    | 1410-1413                 |
| 7                    | Stipulation and Order Regarding Change of Briefing Schedule and Plaintiff's Response to Defendant's Motion to Strike Plaintiff's Jury Demand  | Parties/First Judicial District Court | 02/19/14    | 1403-1405                 |
| 12                   | Stipulation and Order Regarding Change of Briefing Schedule and Setting Hearing for Oral Argument   | Parties/First Judicial District Court | 06/25/14    | 2046-2048                 |
| 7                    | Stipulation and Order Regarding Defendant's Motion to Strike Plaintiff's Jury Demand  | Parties/First Judicial District Court | 10/23/13    | 1400-1402                 |
| 3                    | Stipulation and Order Regarding Joinder to Motion to Dismiss  | Parties/First Judicial District Court | 09/18/12    | 658-661                   |
| 23                   | Transcript of Hearing   | Court Reporter                        | 01/07/15    | 4213-4267                 |
| 7                    | Writ of Mandamus  | Nevada Supreme Court                  | 01/25/13    | 1371-1372                 |

1 Joshua J. Hicks, Nevada Bar No. 6679  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
2 50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
3 Telephone: 775-622-9450  
Facsimile: 775-622-9554  
4 Email: jhicks@bhfs.com

5 Clark V. Vellis, Nevada Bar No. 5533  
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON  
6 800 South Meadows Parkway, Suite 800  
Reno, Nevada 89521  
7 Telephone: 775-851-8700  
Facsimile: 775-851-7681  
8 Email: cvellis@nevadafirm.com

9 Brandi L. Jensen, Nevada Bar No. 8509  
Fernley City Attorney  
10 OFFICE OF THE CITY ATTORNEY  
595 Silver Lace Blvd.  
11 Fernley, Nevada 89408

12 *Attorneys for the City of Fernley, Nevada*

13 **IN THE FIRST JUDICIAL DISTRICT COURT**

14 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

15 CITY OF FERNLEY, NEVADA, a  
Nevada municipal corporation,

16 Plaintiff,

17 v.

18 STATE OF NEVADA ex rel. THE NEVADA  
19 DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her  
20 official capacity as TREASURER OF THE  
STATE OF NEVADA; and DOES 1-20,  
21 inclusive,

22 Defendants,

23 NEVADA LEGISLATURE,

24 Intervenor.

Case No.: 12 OC 00168 1B

Dept. No.: I

25  
26 **REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL**  
27 **RECONSIDERATION AND REHEARING OF THE COURT'S JUNE 6, 2014 ORDER**  
28 **AS TO DEFENDANT NEVADA LEGISLATURE**

REC'D & FILED  
2014 JUL 25 PM 2:50  
ALAN GLOVER  
BY **C. GRIBBLE** CLERK

1 Plaintiff CITY OF FERNLEY, NEVADA (hereinafter "Fernley"), by and through its  
2 attorneys of record, Brownstein Hyatt Farber Schreck, LLP, hereby submits this reply in support  
3 of its motion for the partial reconsideration of the Court's Order entered on June 6, 2014 (the  
4 "June 6th Order"), and the rehearing of Defendants Nevada Department of Taxation and Nevada  
5 Treasurer's (collectively the "State") Renewal of Motion to Dismiss, which Defendant Nevada  
6 Legislature joined, with respect to the dismissal of Fernley's claims against the Honorable Kate  
7 Marshall, in her official capacity as Treasurer of the State of Nevada (the "State Treasurer").

8 This reply is based on the following memorandum of points and authorities, the attached  
9 exhibits, all other pleadings, papers, and documents on file with the Court in this action, such  
10 further documentary evidence as the Court deems appropriate, and the arguments of counsel at  
11 the hearing on this motion. For the Court's convenience, all of Fernley's exhibits are numbered  
12 consecutively, with Exhibits 1 through 5 attached to its motion and Exhibits 6 through 10  
13 attached to this reply.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION.**

16 The Court should reconsider and rehear its June 6th Order on each of the three separate  
17 and independent grounds set forth in Fernley's motion. The Legislature's premise that the  
18 dismissal of the Nevada Treasurer was proper under the immunity provisions of NRS 41.032(1)  
19 has no legal merit. In advancing this unfounded notion, the Legislature overlooks that it, not  
20 Fernley, has the burden to prove the applicability of NRS 41.032(1). Like the State, however, the  
21 Legislature has not even attempted to satisfy this burden, which is understandable because the  
22 Nevada Treasurer is not entitled to immunity under NRS 41.032(1) as a matter of law. For these  
23 reasons, and the reasons set forth in Fernley's motion, the reconsideration and rehearing of the  
24 dismissal of the Nevada Treasurer is crucial to the fair administration of justice.

25 **II. ARGUMENT.**

26 **A. The Legislature's Notion That Fernley Previously Had A Full And**  
27 **Fair Opportunity To Brief The Issue Of Sovereign Immunity Is**  
28 **Spurious.**

///

1 The Legislature erroneously suggests that, before the Court dismissed the State Treasurer  
2 pursuant to NRS 41.032(1) in the June 6th Order, Fernley had voluntarily neglected to brief the  
3 issue. For this mistaken proposition, the Legislature cites the briefing conducted by the parties  
4 two years ago regarding the State's original motion to dismiss and the Legislature's related  
5 joinder. The parties' briefing at that time is irrelevant because the Court denied both the State's  
6 motion and the Legislature's joinder in order to allow the parties to conduct the discovery  
7 necessary to prepare and submit for the Court's consideration fully informed legal arguments on  
8 all issues. *See* Exhibit 6. By the time discovery concluded and the State and the Legislature  
9 renewed their respective motions to dismiss in May 2014, the Court had already approved the  
10 parties' agreement to a briefing schedule for dispositive motions, which Fernley understood  
11 would be decided under a summary judgment standard. *See* Exhibit 7, at 4:3-5:11. Although the  
12 Court granted Fernley the right to file written oppositions to the renewed motions to dismiss in  
13 the June 6th Order, it concurrently dismissed the State Treasurer before Fernley could file those  
14 oppositions and explain why sovereign immunity does not bar its claims against the State  
15 Treasurer. *See* Exhibit 1, at 3:8-4:2. As a result, no matter how stridently the Legislature may  
16 assert otherwise, it is indisputable that the Court dismissed the State Treasurer before Fernley had  
17 the opportunity to brief the issue of sovereign immunity. On this basis, Fernley respectfully  
18 submits that, in the interests of justice, the Court should grant its motion for reconsideration of the  
19 June 6th Order and the rehearing of Defendants' renewed motions to dismiss to allow it to submit  
20 written arguments in opposition to the dismissal of its claims against the State Treasurer.<sup>1</sup>

21 B. The Court Should Reconsider And Rehear The June 6th Order  
22 Because The Legislature Has Not Proven That Sovereign Immunity  
23 Precludes Fernley's Claims Against The State Treasurer As A Matter  
24 Of Law.

24 <sup>1</sup> Even if Fernley somehow could have fully briefed the immunity issue by an earlier date (which it could not), NRC  
25 56(e) still precluded the dismissal of the State Treasurer. The Court held in the June 6th Order that it would decide  
26 Defendants' renewed motions to dismiss under the legal principles that govern motions for summary judgment. *See*  
27 Exhibit 1, at 5:3-8. A court may grant a motion for summary judgment, even when the adverse parties do not  
28 properly respond, only when "appropriate." *See* NRC 56(e); *see also* *Ardmore Leasing Corp. v. State Farm Mut.*  
*Auto. Ins. Co.*, 106 Nev. 513, 515, 796 P.2d 232, 233 (1990) ("the district court is not relieved of its responsibility to  
ascertain if genuine issues of material fact remain even though both parties move for summary judgment"). Here, the  
granting of Defendants' motions on immunity grounds was not "appropriate" under any circumstances because  
Defendants did not satisfy their burden of proof on the issue. *See infra* Section III(B).

1 The Legislature exceeds the scope of Fernley's motion by erroneously arguing the merits  
2 of the Court's dismissal of the State Treasurer under NRS 41.032(1). Contrary to the Legislature's  
3 notion otherwise, Fernley has no duty to plead and prove that its claims are not barred by  
4 sovereign immunity. *See* Legislature's Opposition, at 10:1-2. Precisely the opposite is true. The  
5 Legislature has the burden to prove the applicability of each and every one of its defenses, and it  
6 has failed to establish that sovereign immunity shields the State Treasurer from liability as a  
7 matter of law. The Court therefore should reject the Legislature's sovereign immunity defense in  
8 its entirety, and grant reconsideration and rehearing of the June 6th Order dismissing the State  
9 Treasurer pursuant to NRS 41.032(1).

10 The Legislature overlooks that immunity is available under NRS 41.032(1) *only* if the  
11 government officer, employee, or contractor is "exercising *due care*, in the execution of a statute  
12 or regulation," and consequently makes no attempt to establish that any government officer,  
13 employee, or contractor acted with "due care" in the execution of the C-Tax. *See* NRS 41.032(1)  
14 (emphasis added). This omission is fatal to the Legislature's immunity defense because "the  
15 official seeking absolute immunity bears the burden of showing that such immunity is justified  
16 for the function in question." *See State v. Second Judicial Dist. Court*, 118 Nev. 609, 617, 55  
17 P.3d 420, 425 (2002); *see also Pope v. Motel 6*, 121 Nev. 307, 318-19, 114 P.3d 277, 284-85  
18 (2005) (defendant has "the burden of alleging and proving the existence of the privilege"). In  
19 other words, Fernley has no duty to allege or prove that the State Treasurer acted without "due  
20 care" in the execution of the C-Tax, but rather it is solely the burden of the State and Legislature  
21 to plead and prove that the statutorily required "due care" has been exercised by the State  
22 Treasurer. Given the State's failure to produce *any* evidence to support its claim of immunity  
23 based on NRS 41.032(1), let alone evidence that the State Treasurer acted with due care in the  
24 execution of the C-Tax, the Court should summarily reject that defense, and grant reconsideration  
25 and rehearing of its dismissal of the State Treasurer.

26 It is for this reason that the Legislature's substantial reliance on *Hagblom v. State Director*  
27 *of Motor Vehicles*, 93 Nev. 599, 571 P.2d 1172 (1977), is misplaced. ~~At issue in *Hagblom* was~~  
28 whether a state highway patrol officer was entitled to immunity under NRS 41.032(1) for his

1 conduct relating to the issuance of a speeding citation. *See id.* at 603-04, 571 P.2d at 1175. The  
2 Court concluded that the immunity conferred by NRS 41.032(1) shielded the officer from liability  
3 because "[h]e was exercising *due care* in the enforcement of the speed limit law." *See id.* at 603,  
4 571 P.2d at 1175 (emphasis added). Stated otherwise, the key prerequisite to immunity under  
5 NRS 41.032(1) – the exercise of *due care* – had been established. Here, by contrast, neither the  
6 State nor the Legislature made any effort to prove that the State Treasurer exercised due care in  
7 the execution of the C-Tax. Because the State and the Legislature failed to satisfy this statutory  
8 prerequisite, the State Treasurer is not entitled to immunity under NRS 41.032(1) as a matter of  
9 law.

10 Further undermining the Legislature's notion that the State Treasurer is entitled to  
11 immunity under NRS 41.032(1) is the undisputed evidence which establishes that the State has  
12 not acted with "due care" in the execution of the C-Tax. Nowhere in the C-Tax did the  
13 Legislature mandate a reduction in the revenue base of a recipient that has experienced both a  
14 drop in population and a decline in the assessed value of taxable property. The Legislature  
15 instead provided in the C-Tax that the Department's Executive Director, the Committee on Local  
16 Government Finance, and the Nevada Tax Commission may decide whether to cut the revenue  
17 base of a recipient whose population and assessed value of taxable property have decreased in the  
18 immediately preceding three fiscal years. *See* NRS 360.695; Exhibit 8, at 59:24-63:15; Exhibit 9,  
19 at 109:3-10, 122:22-123:2; Exhibit 10, at 91:23-94:20. In exercising this authority, the  
20 Department's Executive Director has decided not to change the C-Tax bases of several local  
21 governments that have met the criteria for a reduction, including Mesquite and Boulder City. *See*  
22 Exhibit 8, at 59:24-63:15; *see also* Exhibit 9, at 139:12-140:20. When a city like Fernley has  
23 repeatedly been denied a needed increase in its C-Tax base, decisions like these confirm that the  
24 State has not exercised "due care" in the execution of the C-Tax. As a result, the State's assertion  
25 of immunity under NRS 41.032(1) is unsustainable as a matter of law. Under these  
26 circumstances, the Court should reconsider its dismissal of the State Treasurer in the June 6th  
27 Order and rehear the Legislature's joinder in the State's renewed motion to dismiss Fernley's  
28 claims against the State Treasurer.

C. The Court Should Reconsider And Rehear The June 6th Order Because Neither The State Nor The Legislature Moved, On Sovereign Immunity Grounds, For An Order Dismissing Fernley's Declaratory And Injunctive Relief Claims Against The State Treasurer.

The Legislature does not dispute that Fernley's claims against the State Treasurer for declaratory and injunctive relief remain viable because Defendants only moved to dismiss Fernley's claims against the State Treasurer for money damages on sovereign immunity grounds. Claims for declaratory and injunctive relief are commonly asserted by individual and government plaintiffs to challenge the constitutionality of legislative enactments. *See Clean Water Coal. v. The M Resort, LLC*, 127 Nev.Adv.Op. 24, 255 P.3d 247 (2011) (declaratory and injunctive relief claims challenging the constitutionality of an assembly bill enacted by the state legislature); *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 217 P.3d 546 (2009) (declaratory and injunctive relief claims challenging the constitutional validity of a statute); *Clark Cnty. v. City of Las Vegas*, 97 Nev. 260, 628 P.2d 1120 (1981) (declaratory relief claim challenging the constitutionality of a chapter of the Nevada Revised Statutes, including a statutory funding formula). The Legislature essentially acknowledges this point, which is self-evident because a constitutional challenge otherwise could and would never be possible. Because neither the State nor the Legislature challenged Fernley's declaratory and injunctive relief claims under NRS 41.032(1), the Court should reconsider and rehear the June 6th Order dismissing the State Treasurer on this basis.

While recognizing that the scope of the immunity available to the State Treasurer under NRS 41.032(1) extends only to claims for money damages, the Legislature attempts to obscure that the reconsideration and rehearing of the June 6th Order is necessary and appropriate by suggesting that the State Treasurer and all other Defendants are otherwise entitled to judgment as a matter of law on Fernley's declaratory and injunctive relief claims. *See* Legislature's Opposition, at 11:1-8, 13:1-20. It is irrelevant whether the Legislature is correct, which it is not, that the State Treasurer and all other Defendants would be entitled to judgment as a matter of law on Fernley's declaratory and injunctive relief claims on one or more other grounds. *See, e.g.*, Fernley's Motion for Summary Judgment (filed June 13, 2014) (establishing that Fernley is

entitled to summary judgment on its claims). The pertinent inquiry is whether the June 6th Order properly dismissed Fernley's declaratory and injunctive relief claims against the State Treasurer pursuant to NRS 41.032(1) given that: (1) Defendants did not seek such relief in their respective motions to dismiss; and (2) NRS 41.032(1) does not apply to claims for declaratory and injunctive relief. Because Defendants never moved for dismissal of these two claims pursuant to NRS 41.032(1), the Court should promote the interests of justice by reconsidering and rehearing the dismissal of the State Treasurer.

D. Fernley May Sue The State To Obtain Redress, In The Form Of Money Damages, For The Injuries It Has Sustained As A Result Of The Legislature's Enactment Of The Unconstitutional C-Tax.

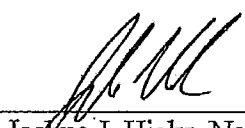
The Legislature erroneously suggests, for the first time in opposing the reconsideration and rehearing of the June 6th Order, that the State may not have authorized the types of claims for money damages that Fernley has alleged in this action. The Court has to look no further than the plain language of NRS 41.031(1), which must be enforced, to find that the State has waived its sovereign immunity for such a purpose. *See We the People Nevada ex rel. Angle v. Miller*, 124 Nev. 874, 880-81, 192 P.3d 1166, 1170-71 (2008) (courts enforce plain statutory language). The Court therefore should reject the Legislature's notion to the contrary.

III. CONCLUSION.

For the foregoing reasons, and the reasons set forth in its moving papers, Fernley respectfully requests that the Court reconsider its dismissal of the State Treasurer in the June 6th Order and rehear the Legislature's joinder in the State's renewed motion to dismiss regarding Fernley's claims against the State Treasurer.

DATED this 28<sup>th</sup> day of July, 2014.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By:   
Joshua J. Hicks, Nevada Bar No. 6679  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501

Telephone: 775-622-9450  
*Attorneys for the City of Fernley, Nevada*



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that on this 25<sup>th</sup> day of July, 2014, I caused to be served via electronic mail, a true and correct copy of the above foregoing **REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL RECONSIDERATION AND REHEARING OF THE COURT'S JUNE 6, 2014 ORDER AS TO DEFENDANT NEVADA LEGISLATURE** properly addressed to the following:

Andrea Nichols, Esq.  
anichols@ag.nv.gov  
Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511

Brenda J. Erdoes, Esq.  
Kevin Powers, Esq.  
kpowers@lcb.state.nv.us  
J. Daniel Yu, Esq.  
dan.yu@lcb.state.nv.us  
Legislative Counsel Bureau  
401 South Carson Street  
Carson City, Nevada 89701

  
Employee of Brownstein Hyatt Farber Schreck, LLP

DECLARATION OF JOSHUA J. HICKS, ESQ.

I, Joshua J. Hicks, Esq., hereby declare as follows:

1. I am an attorney at the law firm of Brownstein Hyatt Farber Schreck, LLP, counsel of record for Plaintiff City of Fernley, Nevada in Case No. 12 OC 00168 1B, currently pending before the First Judicial District Court, Carson City, Nevada. I submit this declaration in support of the Reply In Support Of Plaintiff's Motion For Partial Reconsideration And Rehearing Of The Court's June 6, 2014 Order As To Defendant Nevada Legislature. I have personal knowledge of the facts set forth herein, and if called upon to do so, am competent to testify thereto.

2. A true and correct copy of the Order Granting A Continuance to Complete Discovery dated October 15, 2014, is attached hereto as Exhibit "6."

3. A true and correct copy of the Stipulation And Order For An Extension Of Time To File Responses To Discovery Requests; Extend Certain Discovery Deadlines And Extend Time To File Dispositive Motions dated April 11, 2014, is attached hereto as Exhibit "7."


4. A true and correct copy of excerpts of the deposition transcript of Terry Rubald taken December 12, 2013, is attached hereto as Exhibit "8."

5. A true and correct copy of excerpts of the deposition transcript of Marian Henderson taken November 13, 2013, is attached hereto as Exhibit "9."

6. A true and correct copy of excerpts of the deposition transcript of Guy Hobbs taken January 13, 2014, is attached hereto as Exhibit "10."

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 25<sup>th</sup> day of July, 2014, in Reno, Nevada.

  
JOSHUA J. HICKS, ESQ.

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation,  
Plaintiff,

v.

STATE OF NEVADA ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE  
OF NEVADA; and DOES 1-20, inclusive,  
Defendants,

NEVADA LEGISLATURE,  
Intervenor

Case No.: 12 OC 00168 1B

Dept. No.: I

**INDEX OF EXHIBITS TO THE REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR  
PARTIAL RECONSIDERATION AND REHEARING OF THE COURT'S JUNE 6, 2014  
ORDER AS TO DEFENDANT NEVADA LEGISLATURE**

| Exhibit No. | Description   | Pages |
|-------------|---|-------|
| 6           | Order Granting A Continuance to Complete Discovery Dated October 15, 2012   | 3     |
| 7           | Stipulation And Order For An Extension Of Time To File Responses To Discovery Requests; Extend Certain Discovery Deadlines And Extend Time To File Dispositive Motions Dated April 11, 2014 | 4     |
| 8           | Excerpts of the deposition transcript of Terry Rubald taken December 12, 2013   | 5     |
| 9           | Excerpts of the deposition transcript of Marian Henderson taken November 13, 2013   | 6     |
| 10          | Excerpts of the deposition transcript of Guy Hobbs taken January 13, 2014   | 5     |

# EXHIBIT 6

# EXHIBIT 6

1 CASE NO. 12 OC 000168 1B

2 DEPT. NO. I

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ALAN GLOVER

BY Alan Glover CLERK  
DEPUTY

3  
4  
5  
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR CARSON CITY  
8

9 CITY OF FERNLEY, NEVADA, a Nevada  
municipal corporation,

10 Plaintiff,

11 STATE OF NEVADA, ex rel. THE  
12 NEVADA DEPARTMENT OF  
13 TAXATION; THE HONORABLE KATE  
MARSHALL, in her official capacity as  
14 TREASURER OF THE STATE OF  
NEVADA; and DOES 1-20, inclusive.

15 Defendants.  
16 \_\_\_\_\_/

**ORDER GRANTING A  
CONTINUANCE TO COMPLETE  
DISCOVERY**

17 This matter is before this Court on Plaintiff's Motion for Continuance Pursuant to NRCP  
18 56(f) and Notice of Non-Opposition filed on August 20, 2012, as part of an Opposition to  
19 Motion to Dismiss.

20 Initially, it should be pointed out that there was an Opposition filed against the Motion as  
21 set forth in the Nevada Legislature's Reply in Support of Joinder in Motion to Dismiss filed on  
22 October 8, 2012, on page 5, lines 5-8.

23 The Plaintiff submits that the Court's consideration of the Motions to Dismiss filed in  
24 this matter should be considered as Motion for Summary Judgment; and, as such, that it should  
25 be given a reasonable opportunity to complete discovery, and therefore have a chance to  
26 demonstrate a genuine issue of material fact. Citing to *Aviation Ventures, Inc. v. Joan Morris,*  
27 *Inc.*, 121 Nev. 113, 118-119, 110 P. 3rd 59 (2005).

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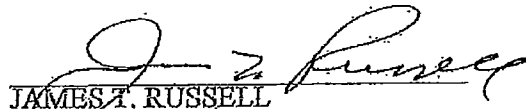
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Therefore, good cause appearing,

IT IS HEREBY ORDERED that the Motions to Dismiss are DENIED at this time in order to allow the Plaintiff a period of time to complete discovery; and

IT IS HEREBY FURTHER ORDERED that the Defendants, upon completion of a reasonable discovery period, may renew their Motions to Dismiss which will then be duly considered by the Court.

DATED this 12 day of October, 2012.

  
JAMES T. RUSSELL  
District Judge


CERTIFICATE OF SERVICE

The undersigned, an employee of the District Judge, hereby certifies that on the 15<sup>th</sup> day of October, 2012, I served the foregoing by depositing a copy thereof in the U.S. Mail at Carson City, Nevada, postage paid, addressed as follows:

Brenda J. Erdoes, Esq.  
Kevin C. Powers, Esq.  
J. Daniel Yu, Esq.  
Legislative Counsel Bureau, Legal Division  
401 S. Carson Street  
Carson City NV 89701

Joshua J. Hicks, Esq.  
Clark V. Vellis, Esq.  
Sean D. Lyttle, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
9210 Prototype Drive #250  
Reno NV 89521

Catherine Cortez Masto, Esq.  
Gina C. Session, Esq.  
Andrea Nichols, Esq.  
Office of the Attorney General  
5420 Kietzke Lane #202  
Reno NV 89511

  
Christine Erven  
Judicial Assistant, Department I

# EXHIBIT 7

# EXHIBIT 7



Joshua J. Hicks, Nevada Bar No. 6679  
Clark V. Vellis, Nevada Bar No. 5533  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
Telephone: 775-622-9450  
Facsimile: 775-622-9554  
Email: jhicks@bhfs.com  
Email: cvellis@bhfs.com

Brandi L. Jensen, Nevada Bar No. 8509  
Fernley City Attorney  
OFFICE OF THE CITY ATTORNEY  
595 Silver Lace Blvd.  
Fernley, Nevada 89408

*Attorneys for the City of Fernley, Nevada*

**IN THE FIRST JUDICIAL DISTRICT COURT**

**OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

CITY OF FERNLEY, NEVADA, a  
Nevada municipal corporation,

Plaintiff,

v.

STATE OF NEVADA ex rel. THE NEVADA  
DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her  
official capacity as TREASURER OF THE  
STATE OF NEVADA; and DOES 1-20,  
inclusive,

Defendants,

NEVADA LEGISLATURE,

Intervenor.

Case No.: 12 OC 00168 1B

Dept. No.: I

**STIPULATION AND [PROPOSED]  
ORDER FOR AN EXTENSION OF  
TIME TO FILE RESPONSES TO  
DISCOVERY REQUESTS; EXTEND  
CERTAIN DISCOVERY DEADLINES  
AND EXTEND TIME TO FILE  
DISPOSITIVE MOTIONS**

On March 6, 2014, Plaintiff, City of Fernley, Nevada (hereinafter "Plaintiff"), served its objections to Defendants, State of Nevada Department of Taxation (hereinafter "Department") and Nevada Legislature (hereinafter "Legislature"), with regard to the Legislature's responses to Plaintiff's First Requests for Admissions, Interrogatories and Production of Documents and the Department's responses to Plaintiff's First Set of Interrogatories and First Request for Production of Documents.

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ALAN GLOVER

DEPUTY

The Legislature responded to the objections and participated in a "meet and confer" with the Plaintiff on March 20, 2014, and the Department responded to the objections and participated in a "meet and confer" with the Plaintiff on March 27, 2014.

In addition, on March 11, 2014, Plaintiff served its Second Request for the Production of Documents to the Department and the Legislature. Responses to these requests are due on or before April 11, 2014. The close of discovery in this matter is set for April 11, 2014.

The Department and the Legislature have requested an extension of time to and including May 2, 2014, to produce and serve supplemental responses and documents to Plaintiff's First Requests for Admissions, Interrogatories and Production of Documents and to respond to Plaintiff's Second Request for the Production of Documents.

All parties will need time to review the responses and documents that are produced by May 2, 2014, and supplemental discovery may be needed thereafter by all parties, limited to those responses and documents.

Further, the date for filing of dispositive motions, oppositions and replies will need to be extended to accommodate the additional time to respond.

As such, Plaintiff, and Defendants, State of Nevada ex rel. the Nevada Department of Taxation; the Honorable Kate Marshall, in her official capacity as Treasurer of the State of Nevada; and the Nevada Legislature (hereinafter "Defendants") agree and stipulate as follows:

1. The deadline for Defendants to produce and serve their supplemental responses and documents to Plaintiff's First Requests for Admissions, Interrogatories and Production of Documents and to produce and serve their responses and documents to Plaintiff's Second Request for the Production of Documents is extended from April 11, 2014, to May 2, 2014.

2. If any party needs to conduct supplemental discovery based on the responses and documents that are produced and served by the Department or the Legislature on or before May 2, 2014, the party may conduct such supplemental discovery for this limited purpose only, but the party must serve its request for such supplemental discovery not later than May 23, 2014.

///

///

3. Each party reserves its rights to file motions to compel based on the responses and documents that are produced and served on the party on or before May 2, 2014, and also based on the responses and documents that are produced and served on the party in response to any supplemental discovery requests that are made by the party after May 2, 2014, but on or before May 23, 2014.

4. The parties further stipulate that each party must file and serve any such motions to compel not later than June 6, 2014.

5. The parties further stipulate that if any such motions to compel are filed and served on or before June 6, 2014, the parties waive any objections as to the timeliness of the motions, but the parties do not waive any other objections to any such motions to compel.

6. The parties further stipulate that the due date for dispositive motions is moved from May 23, 2014, to June 13, 2014; the due date for oppositions is moved from June 13, 2014, to July 11, 2014; and the due date for replies is moved from June 27, 2014 to July 25, 2014.

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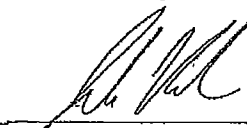
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
50 West Liberty Street, Suite 1030  
Reno, NV 89501  
775-622-9450

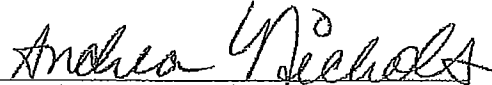
7. All other dates remain as previously set by the Court or by signed stipulation.

DATED this 9<sup>th</sup> day of April, 2014.

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

OFFICE OF THE ATTORNEY GENERAL

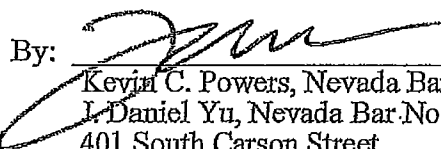
By:   
Joshua J. Hicks, Nevada Bar No. 6679  
Clark V. Vellis, Nevada Bar No. 5533  
50 West Liberty Street, Suite 1030  
Reno, Nevada 89501  
Telephone: 775-622-9450

By:   
Gina Session, Nevada Bar No. 5493  
Andrea Nichols, Nevada Bar No. 6436  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
Telephone: 775-688-1818

*Attorneys for Plaintiff City of Fernley, Nevada*

*Attorneys for Defendants Nevada Department of  
Taxation and Kate Marshall, State Treasurer*

LEGISLATIVE COUNSEL BUREAU,  
LEGAL DIVISION

By:   
Kevin C. Powers, Nevada Bar No. 6781  
J. Daniel Yu, Nevada Bar No. 10806  
401 South Carson Street  
Carson City, Nevada 89701  
Telephone: 775-684-6830

*Attorneys for Defendant Legislature of the  
State of Nevada*

IT IS SO ORDERED.

DATE: April 7<sup>th</sup>

  
DISTRICT COURT JUDGE

# EXHIBIT 8

# EXHIBIT 8

1 IN THE FIRST JUDICIAL DISTRICT COURT  
2 OF THE STATE OF NEVADA, IN AND FOR CARSON CITY

3 --oOo--

4  
5 CITY OF FERNLEY, NEVADA, a  
6 Nevada municipal corporation

7 Plaintiff,

8 vs.

9 STATE OF NEVADA ex rel. THE  
10 NEVADA DEPARTMENT OF TAXATION;  
11 THE HONORABLE KATE MARSHALL,  
12 in her official capacity as  
13 TREASURER OF THE STATE OF NEVADA;  
14 and DOES 1-20, inclusive,

15 Defendants.

16 NEVADA LEGISLATURE,

17 Intervenor.  
18

19 Pages 1 to 90, inclusive.  
20

21 DEPOSITION OF TERRY RUBALD

22 Thursday, December 12, 2013

23 Carson City, Nevada

24 REPORTED BY:

25 Romona Malnerich  
Nevada CCR #269  
California CSR #7526

**CERTIFIED COPY**

Case No. 12 OC 00168 1B

Dept. No. 1

Case No. 66851

JA 3729

1 statute, you have some oversight responsibilities in  
2 relation to budgets of local governments.

3 A Yes.

4 Q But as to the C-Tax and how that's working,  
5 you don't have any oversight responsibilities to make  
6 sure that it's working correctly.

7 A Correct.

8 Q We were talking before about -- when you look  
9 at the budgets, the Department of Taxation is concerned  
10 with making sure that the local governments live within  
11 their budgetary constraints. Correct?

12 A Yes.

13 Q In doing that, do you look at a particular  
14 local government to determine that there's enough money  
15 for the service needs of that county or local government?

16 A No.

17 Q So all you're worried about is, whatever  
18 they're doing, do they have enough money?

19 A Yes.

20 Q So if they're not providing enough services  
21 or if the services are inadequate within the county, does  
22 the Department of Taxation do anything about that?

23 A No.

24 Q We talked earlier about trying to get an  
25 increase and there's not a particular statute, but there

1 is a statute to decrease. Correct?

2 A Yes.

3 Q What's your understanding of that statute?

4 A My understanding is that if a local  
5 government, for three years in a row, has a decline in  
6 assessed value, in population, that the executive  
7 director will consider redistributing the C-Tax.

8 Q And how would you go about doing that? How  
9 would the executive director go about doing that?

10 A I believe it's formula-based, and I really  
11 can't speak to that.

12 Q And has the executive director, since the  
13 inception of the C-Tax up until today, ever made any such  
14 recommendation for a decrease?

15 A I recall about a decade ago that -- after the  
16 statute, of course -- that there may have been some local  
17 governments that might have met that criteria, but I  
18 believe the Department declined to make the change.

19 Q Does the Department just unilaterally make  
20 the change, or does it make a recommendation and then the  
21 change is made somewhere else?

22 A Well, I believe it goes to the tax  
23 commission.

24 Q And in this situation approximately 10 years  
25 ago, do you know why the Department of Taxation declined



1 to make a recommendation --

2 A I don't recall.

3 Q Do you know if they've done anything recently  
4 to look at any local government to see if a decrease in  
5 allocation would be required?

6 A I believe that the Department, in the  
7 statistics section, routinely looks at those figures.

8 Q And do you know if they've made any such  
9 recommendations in the last five years?

10 A I'm not aware of any recommendations.

11 Q Who makes the decision as to whether or not  
12 they're going to make a recommendation for a decrease?

13 A I believe the executive director.

14 Q And who's the executive director now?

15 A Chris Nielson.

16 Q How long has he been the executive director?

17 A About a year and a half, two years.

18 Q Who was it before that?

19 A Before that, it was Bill Chisel.

20 Q And how long was he the executive director?

21 A About six months.

22 Q Just only six months?

23 A Six to nine months.

24 Q And who was it before that?

25 A Before that, it was Dino DiCianno.

1           A     Probably Marian Henderson and the executive  
2 director.

3           Q     And the same situation exists in Boulder  
4 City. So if I asked you the same questions, why you've  
5 had increases in C-Tax revenues --

6           A     I don't know.

7           Q     -- when you've had three years of assessed  
8 value loss and population loss, that's not something you  
9 could testify to on behalf of the Department of Taxation?

10          A     That's correct.

11                MS. NICHOLS: Can you clarify, when you're  
12 saying "that's correct," that that's not something you  
13 could testify to?

14                THE WITNESS: That's not something I could  
15 testify to.

16 BY MR. VELLIS:

17          Q     In your position, are you aware of what taxes  
18 local governments use to finance their services?

19          A     Yes.

20          Q     What are the sources of financing the  
21 services for a local government?

22          A     Property tax and the C-Tax are the two major  
23 sources.

24          Q     Anything else?

25          A     In the nature of taxes, those are the two

# EXHIBIT 9

# EXHIBIT 9

IN THE FIRST JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CARSON CITY

-o0o-

CITY OF FERNLEY, NEVADA,  
a Nevada municipal corporation,

**CERTIFIED COPY**

Plaintiff,  
vs.

Case No. 12 OC 00168 1B  
Dept. No. I

STATE OF NEVADA ex rel. THE  
NEVADA DEPARTMENT OF TAXATION;  
THE HONORABLE KATE MARSHALL,  
in her official capacity as  
TREASURER of the STATE OF  
NEVADA; and DOES 1-20,  
inclusive,

Defendants.

\_\_\_\_\_  
Pages 1 to 153, inclusive.

DEPOSITION OF MARIAN HENDERSON

\_\_\_\_\_  
Wednesday, November 13, 2013  
Carson City, Nevada

REPORTED BY:

CHRISTINA AMUNDSON  
CCR #641 (Nevada)  
CSR #11883 (California)

1 Q Okay. But he did at that time?

2 A Yes.

3 Q Okay. And tell me what the discussions were.

4 A I believe the first meeting was just more  
5 informational. They made a lot of inquiries about how can  
6 we get this done. There was an assumption on their part  
7 that the Department of Taxation had the authority -- had  
8 discretion in how the base amounts were determined and so,  
9 therefore, they wanted the director to change their base  
10 because they assumed he had authority to do that.

11 Q Okay. Anything else you recall?

12 A I recall that they -- they brought some -- I  
13 don't remember if it was handouts, but they had  
14 information. They had per capita distributions of C-Tax  
15 for different cities in Nevada.

16 Q Okay.

17 A They had a list of cities in Nevada by  
18 population and compared Fernley's distribution with  
19 similar-sized cities.

20 Q The information they provided you about the  
21 C-Tax distribution to Fernley and cities with similar  
22 populations, do you recall any of that information?

23 A Just that it was presented.

24 Q Do you remember any of the numbers?

25 A No.

1 A I don't know.

2 Q Okay. And the Fernley matter, you talked about  
3 the first meeting sometime in 2009, 2010 and you said  
4 there was, from what you recall, three or more.

5 Do you remember the second one, when it was?

6 A No. But it was only a few months after the  
7 first one.

8 Q Okay. Who was in attendance at that meeting?

9 A I think that it was the same people. I think it  
10 was Mayor Goodman, Brandy Jensen. I don't think Greg  
11 Evangelatos was there. Mel Drown -- like a drowning  
12 man -- Mel Drown.

13 Q Who is Mel Drown?

14 A He's for Fernley.

15 Q Okay.

16 A And then myself, Tom Gransbery, Penny Hampton.  
17 I don't remember whether Terry Rubald attended that one.

18 Q Okay.

19 A I think she did. And there was somebody else  
20 there -- oh, my supervisor at the time, Carolyn Misumi,  
21 M-i-s-u-m-i.

22 Q And you all were the representatives of the  
23 Department of Taxation. What was it or why was it, to  
24 your understanding, that Fernley was meeting with you, the  
25 Department of Taxation?

1 A They still thought that we had some  
2 discretionary power to change their CTX distribution.

3 Q Okay.

4 A And we had taken some numbers that they had  
5 provided at the previous meeting and we crunched them a  
6 few different ways, did some different scenarios. I don't  
7 remember all what it was but we did some scenarios with  
8 those numbers and then we discussed it.

9 Q Okay. And what was the purpose of doing the  
10 crunching of the numbers and the different scenarios?

11 A I'm not positive. I think that we ran -- that I  
12 ran CTX scenarios with different -- their different base  
13 amounts to see what the distribution -- how the  
14 distribution would change within the county. I recall  
15 doing that but I don't remember if it was before or after  
16 that second meeting.

17 Q Okay. And did anybody else in the Department of  
18 Taxation do anything in relation to that first or second  
19 meeting with Fernley other than what you've discussed?

20 A Well, Tom Gransbery and Penny Hampton and Terry  
21 Rubald may have been dealing with other local government  
22 issues.

23 Q Okay.

24 A I think they did. But I don't know what they  
25 did.

1 discontinue some service, how would that affect their  
2 base, if at all?

3 A It doesn't.

4 Q Not at all?

5 A No.

6 Q Okay. So if I'm a local town and I have a  
7 police department and I decide not to do that anymore and  
8 I'm not contracting with the county because I think the  
9 county has to be out there anyway, does that affect my  
10 baseline?

11 A No, it does not.

12 Q Okay. Are you familiar with the 366.90 that  
13 provides for the decrease in C-Tax allocations?

14 A I'm familiar with it. Would you mind reading it  
15 to me?

16 Q I don't know if I'm reading it off your thing,  
17 just your -- somebody's presentation. I think this is  
18 actually the state legislature's presentation, the fiscal  
19 analysis division.

20 It says, "The population and assessed value for  
21 a local government or special district in a county is  
22 decreased each of the three fiscal years preceding the  
23 current fiscal year. The Department of Taxation is  
24 required to review the base annual allocation amount,  
25 calculate it under 360.680 to determine whether to adjust



1 the amount."

2 A Yes, I'm familiar with that.

3 Q Okay. And has that ever happened?

4 A I do those calculations yearly at February 15th  
5 with the revenue projections. I send a memo to our  
6 director. I'm not aware that it has happened for three  
7 consecutive years. I don't remember ever putting an  
8 entity name's in that memo. I can certainly, you know,  
9 refer to my materials back at the office, if you want to  
10 request that, but my recollection is that that hasn't  
11 happened.

12 Q What materials are you talking about back at  
13 your office?

14 A The review that I do every year, the memo that I  
15 send to the director.

16 Q But as you sit here today on behalf of the  
17 Department of Taxation, you do not recall a situation  
18 where there was a decrease in the revenue to a C-Tax  
19 participant based on that statute?

20 A No, I don't recall.

21 Q Okay. Do you know as the person most  
22 knowledgeable if the Department of Taxation, since the time  
23 of the enactment of the C-Tax up until today, has provided  
24 any kind of investigative materials or studies or reports  
25 or information to the legislature about C-Tax and the

# EXHIBIT 10

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1 IN THE FIRST JUDICIAL DISTRICT COURT  
2 OF THE STATE OF NEVADA IN AND FOR CARSON CITY

3 CITY OF FERNLEY, NEVADA, a )  
4 Nevada municipal )  
corporation, )

**Certified Copy**

5 Plaintiff, )

6 vs. )

Case No.  
12 OC 00168 1B

7 STATE OF NEVADA ex rel. THE )  
8 NEVADA DEPARTMENT OF )  
TAXATION; THE HONORABLE )  
9 KATE MARSHALL, in her )  
official capacity as )  
TREASURER OF THE STATE OF )  
10 NEVADA; and DOES 1-20, )  
inclusive, )

11 Defendants, )

12 NEVADA LEGISLATURE, )

13 Intervenor. )

14

15

16

DEPOSITION OF GUY HOBBS

17

Taken on Tuesday, December 17, 2013

18

At 9:35 a.m.

19

At 100 North City Parkway

20

Suite 1600

21

Las Vegas, Nevada

22

23

24 Reported by: Marilyn Speciale, CRR, RPR, CCR #749

25 Job No. 8315

1 then for the subsequent budget year, the Department of  
2 Taxation would undertake a review of the circumstances  
3 to determine whether an adjustment in the base was  
4 warranted. He explained if the Department of Taxation  
5 believed this to be the case, a recommendation would be  
6 submitted for additional review to the Committee on  
7 Local Government Finance." I won't read the rest of it.

8 You were not ever a member of the Committee on  
9 Local Government Finance, were you?

10 A. No.

11 Q. What were you talking about here when you were  
12 talking about this decline in the course of the three  
13 fiscal years?

14 A. Do you mind if I take a moment to read some of  
15 the rest of this?

16 Q. Please do, and I think I read the wrong  
17 paragraph. I think I wanted to read the one above it,  
18 which I can do if you want me to.

19 A. That's okay. I can read it.

20 (Witness examined document.)

21 Q. Okay. Did you get a chance to read it?

22 A. Yes. Could you just restate your question?

23 Q. Yes. Here is the reason I was asking. We  
24 were discussing earlier ways that an entity that was in  
25 the C-Tax pool could get an increase, and we discussed

1 how that could happen.

2 There is apparently an actual statutory  
3 provision for a decrease in your base, and is that what  
4 you were referring to in this testimony?

5 A. It would appear that it was, not recalling the  
6 statutory provision that you're referring to.

7 Q. Okay. And that was my next question. Do you  
8 recall what the statute was, what the recommendations  
9 were?

10 A. Not off the top of my head, I don't.

11 Q. Okay. But at least you understand that there  
12 was or there is some statutory provision that allows for  
13 a decrease in the base amount to a C-Tax recipient if  
14 certain criteria are met?

15 A. Yes.

16 Q. But there is no specific statutory criteria in  
17 the C-Tax that allows for an increase if certain  
18 criteria are met?

19 A. Not to my knowledge.

20 Q. And the only increase we know to the base was  
21 Henderson, and that's when their state assemblyman was  
22 the speaker of the assembly?

23 A. There's certainly that one. I believe there  
24 might have been one other, and there may have been more  
25 than that, but by my recollection, I think one of the

1 Clark County entities, the fire service district, I  
2 recall there being some issue about its base that had to  
3 do with that's a special district that overlaps  
4 unincorporated towns, and I believe there was some  
5 additions of unincorporated towns, and I believe they  
6 needed to make some adjustment there.

7 So the notion of adjustments being made to  
8 base, there is at least one, if not two, precedents for  
9 that.

10 Q. Okay. Other than those two, do you know of  
11 any others?

12 A. The only other ones I'm aware of were requests  
13 and not necessarily approvals.

14 Q. And the two you do know of went through the  
15 state legislature, correct?

16 A. Yes.

17 Q. Okay. Just a couple of general questions. I  
18 don't have copies of this. So I'm just going to kind of  
19 read these to you, but we kind of discussed this a  
20 little bit earlier.

21 During the period of 2000 to 2010, Fernley's  
22 population went from 8,543 to 19,368, which was a  
23 gain -- my mathematical skills which are in question --  
24 of 10,825 people over a ten-year period or 126.71  
25 percent increase.

1           During the same period of time, Boulder  
2   City's, for example, population went from 14,966 to  
3   15,023 which was a gain over a ten-year period of 57  
4   people or a .38 percent growth.

5           During that same ten-year period, Fernley's  
6   C-Tax distribution went from \$91,454.19 to \$170,625.04  
7   which was an increase of \$79,170.85, whereas Boulder  
8   City's increase went from \$5,952,931.77 to  
9   \$7,630,395.99, which was an increase of \$1,677,464 and  
10   change.

11           And the reason I'm asking you is in relation  
12   to the fact that the C-Tax is supposed to follow growth  
13   and we just talked about the growth in population of  
14   126.71 percent as opposed to .38 percent between Fernley  
15   and Boulder City, is the formula working correctly where  
16   Fernley has a C-Tax distribution of \$170,000 over --  
17   after whatever, 13 years or whatever it is, and Boulder  
18   City has 7 million dollars, and during that period of  
19   time when Fernley grew by 126 percent, their increase is  
20   only 79,000 and Boulder City's is \$1,600,000?

21           A. This answer may sound odd to you, but the  
22   mathematics of the formula, I think, are working  
23   correctly. Now, whether the mechanics of the formula  
24   itself match up to one's perception of logic could be  
25   something different. You know, the formula is probably

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BRENDA J. ERDOES, Legislative Counsel  
KEVIN C. POWERS, Chief Litigation Counsel  
Nevada Bar No. 6781  
J. DANIEL YU, Principal Deputy Legislative Counsel  
Nevada Bar No. 10806  
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION  
401 S. Carson Street  
Carson City, NV 89701  
Tel: (775) 684-6830; Fax: (775) 684-6761  
[kpowers@lcb.state.nv.us](mailto:kpowers@lcb.state.nv.us); [Dan.Yu@lcb.state.nv.us](mailto:Dan.Yu@lcb.state.nv.us)  
*Attorneys for Defendant Legislature of the State of Nevada*

ALAN GLOVER  
BY: C. OGDEN CLERK  
DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY**

CITY OF FERNLEY, NEVADA, a  
Nevada municipal corporation,

Plaintiff,

vs.

STATE OF NEVADA ex rel. THE NEVADA  
DEPARTMENT OF TAXATION; THE  
HONORABLE KATE MARSHALL, in her  
official capacity as TREASURER OF THE  
STATE OF NEVADA; THE LEGISLATURE OF  
THE STATE OF NEVADA; and DOES 1-20,  
inclusive,

Defendants.

Case No. 12 OC 00168 1B  
Dept. No. 1

**DEFENDANT NEVADA LEGISLATURE'S REPLY  
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant, the Legislature of the State of Nevada (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby files this Reply in Support of its Motion for Summary Judgment. This Reply is made and based upon the following Memorandum of Points and Authorities, all pleadings, documents and exhibits on file in this case and any oral arguments that the Court may allow.

**MEMORANDUM OF POINTS AND AUTHORITIES**



1       **I. Introduction.**

2       When the Legislature enacted the C-Tax system, it wanted to encourage the formation of new  
3 general-purpose local governments that would provide their own traditional general-purpose  
4 governmental services, which the Legislature defined to mean police protection and at least two of the  
5 following services: (1) fire protection; (2) construction, maintenance and repair of roads; or (3) parks  
6 and recreation. NRS 360.740. The Legislature also wanted to discourage the formation of new local  
7 governments that did not provide general-purpose governmental services or did not assume the functions  
8 of another local government. NRS 360.740; NRS 354.598747. Finally, the Legislature wanted to  
9 encourage cooperation among local governments by permitting them to enter into cooperative  
10 agreements to establish alternative formulas for C-Tax distributions. NRS 360.730. To accomplish these  
11 legitimate purposes, the Legislature created valid legislative classifications that are founded upon  
12 natural, intrinsic, rational and constitutional distinctions. First, if a new local government is created after  
13 July 1, 1998, and it elects to provide the requisite general-purpose governmental services, it is eligible  
14 for increased C-Tax distributions. NRS 360.740. Second, if such a new local government assumes the  
15 functions of another local government, it is entitled to increased C-Tax distributions. NRS 354.598747.  
16 Third, such a new local government may enter into a cooperative agreement with another local  
17 government to increase its C-Tax distributions, such as when the new local government agrees to take  
18 over services provided by the other local government. NRS 360.730.

19       Fernley wants to receive increased C-Tax distributions without doing anything required or  
20 authorized by the C-Tax statutes to receive the increased distribution. Fernley is attempting to do exactly  
21 what the Legislature intended to discourage—the formation of a new local government that wants  
22 increased C-Tax distributions without providing the necessary general-purpose governmental services or  
23 assuming the functions of another local government as required by the C-Tax statutes. In addition, even  
24 though Fernley does not provide the traditional general-purpose governmental services of police

1 protection and fire protection, it wants to compare itself to the Cities of Elko, Mesquite and Boulder  
2 City, all of which are general-purpose governments that provide the traditional general-purpose  
3 governmental services of police protection and fire protection. Thus, Fernley wants the same C-Tax  
4 distributions as those general-purpose governments, but Fernley does not want to provide the same  
5 services as those general-purpose governments. This is the textbook money grab that the Legislature  
6 intended to discourage by enacting the C-Tax system. Simply put, Fernley wants more C-Tax money  
7 without providing the necessary general-purpose governmental services or assuming the functions of  
8 another local government as required by the C-Tax statutes.

9 To justify its money grab, Fernley claims the C-Tax system is unfair and inequitable and that there  
10 is no process to obtain an adjustment to its C-Tax distributions. These statements are simply untrue  
11 given the various statutory avenues for adjusting C-Tax distributions. Moreover, based on long-settled  
12 law, no political subdivision has a constitutional right to an equal or equitable distribution of *state tax*  
13 dollars, no political subdivision has a constitutional right to obtain an adjustment to its C-Tax  
14 distributions, and no political subdivision is entitled to any process for review or adjustment of its C-Tax  
15 distributions other than the legislative process. In reality, Fernley is asking the Court to substitute  
16 Fernley's judgment of "fairness" for the judgment made by the Legislature after 20 years of regularly,  
17 repeatedly and comprehensively examining all aspects of the C-Tax system. That is not a proper role for  
18 the judiciary because "it is not within either the disposition or power of this court to revise the  
19 necessarily complicated taxing systems of the States for the purpose of attempting to produce what  
20 might be thought to be a more just distribution of the burdens of taxation than that arrived at by the state  
21 legislatures." Dane v. Jackson, 256 U.S. 589, 598-99 (1921).

## 22 II. Argument.

### 23 A. The Legislature's motion is supported by admissible evidence in the record.

24 Fernley contends that "the Legislature made no effort to supplement its joinder in the State's

1 motion to dismiss with any evidence after the Court converted them to motions for summary judgment,”  
2 and that “the Legislature has submitted no affidavit or document which establishes that it is entitled to  
3 summary judgment as a matter of law.” Opp’n at 4. Fernley’s contentions have no merit because the  
4 Legislature submitted admissible evidence with its Joinder—the official legislative history regarding the  
5 enactment of the C-Tax system—and that admissible evidence, along with all other evidence in the  
6 record, clearly establishes that the Defendants are entitled to judgment as a matter of law.

7 Under Nevada’s civil rules, a defendant is not required to submit supporting affidavits in order to  
8 move for summary judgment because the rules expressly provide that a defendant “may, at any time,  
9 move *with or without supporting affidavits* for a summary judgment in the party’s favor.” NRCP 56(b)  
10 (emphasis added). Furthermore, a defendant may support a motion for summary judgment with evidence  
11 that is subject to judicial notice. Pine v. Leavitt, 84 Nev. 507, 514 (1968); 11-56 Moore’s Federal  
12 Practice-Civil §56.95 (LexisNexis 2014) (“[m]atters subject to judicial notice are properly considered on  
13 a summary judgment motion.”). And it is well established that statutes and their official legislative  
14 histories are matters that are subject to judicial notice. Martinez v. Johnson, 61 Nev. 125, 129 (1941);  
15 Fierle v. Perez, 125 Nev. 728, 737-38 n.6 (2009). Finally, because Fernley’s state constitutional claims  
16 present only issues of law which are matters purely for the Court to decide, the only evidence the Court  
17 needs to consider in deciding the merits of those claims is: (1) the plain language of the C-Tax statutes;  
18 and (2) the official legislative history for the C-Tax statutes if the Court finds it necessary to consult  
19 such legislative history after examining the plain language of the statutes.

20 On August 16, 2012, when the Legislature filed its Joinder, it submitted supporting exhibits which  
21 included the official legislative history regarding the enactment of the C-Tax statutes.<sup>1</sup> Because the  
22 exhibits submitted with the Legislature’s Joinder constitute admissible evidence in the record, the  
23

24 <sup>1</sup> LCB Bulletin No. 97-5: Laws Relating to the Distribution Among Local Governments of Revenue  
from State and Local Taxes (Nev. LCB Research Library, Jan. 1997) (Leg.Ex.1 to Joinder);  
Legislative History of SB254, 69th Leg. (Nev. LCB Research Library 1997) (Leg.Ex.2 to Joinder).

1 Legislature was not required to supplement the record with additional admissible evidence even after the  
2 Court converted the motions to dismiss into motions for summary judgment on June 6, 2014. In  
3 addition, when the Legislature filed its Opposition to Fernley's Motion for Summary Judgment on  
4 July 11, 2014, the Legislature submitted additional admissible evidence into the record which provides  
5 further support for the Legislature's Motion for Summary Judgment. See Clinkscales v. Chevron U.S.A.,  
6 831 F.2d 1565, 1570 (11th Cir. 1987) ("In ruling on the merits of a motion for summary judgment, the  
7 district court must consider *all* evidence in the record.") (emphasis added)). Therefore, contrary to  
8 Fernley's contentions, the Legislature's motion is supported by ample admissible evidence in the record  
9 which clearly establishes that the Defendants are entitled to judgment as a matter of law.

10 **B. Sovereign immunity.**

11 Fernley contends that the Legislature has not established that its claims for money damages are  
12 barred by sovereign immunity under either NRS 41.032(1) or NRS 41.032(2). Opp'n at 5-8. However,  
13 contrary to Fernley's contentions, its claims for money damages are the exact types of claims that  
14 NRS 41.032(1) and NRS 41.032(2) are intended to prohibit.

15 In Nevada, the State and its agencies, officers and employees cannot be sued in state court for any  
16 type of legal or equitable relief unless the lawsuit and the type of relief being sought are *both* authorized  
17 by Nevada state law. See Arnesano v. State, 113 Nev. 815, 820-24 (1997). In addition, it is well  
18 established that a political subdivision cannot bring a lawsuit to recover money damages against the  
19 State unless it has been given specific statutory authorization for such a lawsuit.<sup>2</sup> Fernley has not  
20 identified any Nevada statute which gives it specific statutory authorization to bring a lawsuit against the  
21 State to recover money damages. Furthermore, the only Nevada statute which arguably could authorize

22  
23 <sup>2</sup> See Clark County v. State, 65 Nev. 490, 501 (1948); State v. Bd. of County Comm'rs, 642 P.2d 456,  
24 458 (Wyo. 1982) ("the County cannot sue the State, its creator, in the absence of a specific  
constitutional or statutory provision authorizing such an action."); Sch. Dist. No. 55 v. Musselshell  
County, 802 P.2d 1252, 1255 (Mont. 1990) ("in the absence of a specific statutory or constitutional  
provision, one governmental subdivision may not sue another for damages.").

1 Fernley to bring a lawsuit against the State to recover money damages is NRS 41.031(1), which is the  
2 State's conditional waiver of sovereign immunity for certain actions for money damages. However, at  
3 least one court has held that the enactment of a general law waiving a state's sovereign immunity for  
4 certain actions for money damages does not provide the type of specific statutory authorization that is  
5 necessary for a political subdivision to bring a lawsuit against the State to recover money damages.  
6 Carbon County Sch. Dist. v. Wyo. State Hosp., 680 P.2d 773, 775 (Wyo. 1984). Therefore, it is  
7 questionable whether the State's conditional waiver of sovereign immunity in NRS 41.031(1) constitutes  
8 the type of specific statutory authorization that would allow Fernley to bring a lawsuit against the State  
9 to recover money damages. In any event, even assuming that the State's conditional waiver of sovereign  
10 immunity provides Fernley with statutory authority to bring a lawsuit against the State, Fernley still  
11 cannot recover money damages against the State even if all the facts alleged in its complaint are true,  
12 because the Defendants are protected by the statutory exceptions in NRS 41.032(1) and NRS 41.032(2).<sup>3</sup>

13 Under the statutory exception in NRS 41.032(1), the State is immune from liability for damages in  
14 any civil action challenging the constitutionality or validity of any statute or regulation. Hagblom, 93  
15 Nev. at 603-04. In interpreting the analogous statutory exception in the FTCA, the U.S. Supreme Court  
16 has stated that the exception "bars tests by tort action of the legality of statutes and regulations."  
17 Dalehite, 346 U.S. at 33; 2 Jayson & Longstreth, Handling Federal Tort Claims §12.03 (LexisNexis  
18 2014) (collecting federal cases and stating that the exception "bars the use of a FTCA suit to challenge  
19 the constitutionality or validity of statutes or regulations."). The Supreme Court's interpretation of the  
20

21 <sup>3</sup> NRS 41.032(1) and NRS 41.032(2) each provide a separate and independent basis for applying  
22 sovereign immunity, and each subsection requires a separate and independent legal analysis regarding  
23 its application. See Hagblom v. State Dir. Mtr. Vehs., 93 Nev. 599, 603-05 (1977); Dalehite v. United  
24 States, 346 U.S. 15, 32-33 (1953) (discussing analogous provisions under the Federal Tort Claims Act  
(FTCA), 28 U.S.C. §2680(a), which served as the model for NRS 41.032(1) and NRS 41.032(2)).  
Because the FTCA served as the model for each subsection of Nevada's statute, the Nevada Supreme  
Court has found that federal cases interpreting the FTCA are relevant in interpreting Nevada's  
provisions. Hagblom, 93 Nev. at 602; Martinez v. Maruszczak, 123 Nev. 433, 444 (2007); Frank  
Briscoe Co. v. County of Clark, 643 F.Supp. 93, 97 (D.Nev. 1986).

1 exception is supported by its legislative history where Congress stated that it was not “desirable or  
2 intended that the constitutionality of legislation, or the legality of a rule or regulation, should be tested  
3 through the medium of a damage suit for tort.” Dalehite, 346 U.S. at 29 n.21; Handling Fed. Tort Claims  
4 §12.02 (explaining that the exception’s “objective was to ensure that certain governmental activities  
5 would not be disrupted by the threat of damage suits.”). Consequently, by enacting the exception,  
6 Congress made clear that a claim for damages against the government cannot be premised on the  
7 unconstitutionality or invalidity of a statute or regulation. Handling Fed. Tort Claims §12.03.

8 The Nevada Supreme Court has taken a similar view of the statutory exception in NRS 41.032(1).  
9 Hagblom, 93 Nev. at 603-04. In Hagblom, the plaintiff brought claims for declaratory relief regarding  
10 the validity of a state agency’s regulation and also claims for money damages based on the state  
11 agency’s implementation of the regulation. The Supreme Court upheld dismissal of the claims for  
12 money damages based on NRS 41.032(1), which the court stated “provides immunity to all individuals  
13 implementing the new regulation since that policy, applied with due care and without discrimination,  
14 had not been declared invalid by a court of competent jurisdiction.” Id. at 603.

15 Despite this authority, Fernley contends that summary judgment is not appropriate because the  
16 Legislature does not “even attempt to establish . . . that any government officer, employee, or contractor  
17 acted with ‘due care’ in the execution of the C-Tax.” Opp’n at 6. Fernley’s contention is wrong as a  
18 matter of law because it has the burden to prove that the State “in any way deviated from the statute’s  
19 requirements,” and “[a]bsent any allegation of such a deviation it cannot be said that the officers acted  
20 with anything other than due care.” Welch v. United States, 409 F.3d 646, 652 (4th Cir. 2005). Fernley  
21 fails to meet its burden because it does not allege that the State and its agencies, officers and employees  
22 have deviated from the statutory requirements in executing the C-Tax statutes. Quite the contrary,  
23 Fernley repeatedly alleges that the Department has mechanically followed the statutory requirements  
24 and has distributed “C-Tax revenues based solely on the outcome of its mechanical application of a

1 designated mathematical formula.” Opp’n to State’s MSJ at 24. Because Fernley does not allege that  
2 there has been a deviation from the statutory requirements, Fernley has not met its burden to prove that  
3 the Defendants acted with anything other than due care in their execution of the C-Tax statutes.  
4 Therefore, the Defendants are entitled to sovereign immunity under NRS 41.032(1) as a matter of law.

5 Under the statutory exception in NRS 41.032(2), the State is immune from liability for damages in  
6 any civil action challenging the performance of official duties that involve an element of discretion or  
7 judgment and are grounded in the creation or *execution* of social, economic or political policies.  
8 Martinez, 123 Nev. at 445-47. This test is met when governmental actors are performing official duties  
9 to *execute or carry out* the policies enacted in a statutory scheme. Boulder City v. Boulder Excavating,  
10 124 Nev. 749, 757-60 (2008) (finding sovereign immunity under NRS 41.032(2) where the  
11 governmental actor “was acting pursuant to his statutory authority.”). Thus, sovereign immunity protects  
12 governmental actors from liability for damages whenever “the injury-producing conduct is an integral  
13 part of governmental policy-making or planning.” Martinez, 123 Nev. at 446.

14 Contrary to Fernley’s contentions, the Legislature has not conceded that the administration and  
15 execution of the C-Tax system involves no exercise of discretion by stating that the Defendants are  
16 clothed with “*ministerial or administrative powers* in carrying out their duties under the C-Tax system”  
17 and “[a]ll distributions under the C-Tax system are done in accordance with specific statutory formulas.”  
18 Opp’n at 7. It is the very fact that the Defendants must exercise ministerial and administrative powers in  
19 order to *execute and carry out* the social, economic and political policies codified in the C-Tax statutes  
20 which entitles them to sovereign immunity under NRS 41.032(2). When governmental actors are acting  
21 pursuant to their statutory authority in order to *execute and carry out* the social, economic and political  
22 policies enacted by the Legislature in statutes, the governmental actors are entitled to sovereign  
23 immunity under NRS 41.032(2) because they play an integral part in the furtherance of the policies  
24

1 which led to the enactment of the statutes.<sup>4</sup>

2 Fernley does not contest that the Defendants were acting pursuant to their statutory authority in  
3 executing and carrying out the social, economic and political policies enacted by the Legislature in the  
4 C-Tax statutes. Even though the Defendants must stay within clearly defined statutory parameters when  
5 they are acting pursuant to their statutory authority, they still are acting in furtherance of the policies  
6 which led to the enactment of the C-Tax statutes. Under such circumstances, the Defendants are entitled  
7 to sovereign immunity under NRS 41.032(2) as a matter of law.<sup>5</sup>

8 **C. Statute of limitations.**

9 Fernley contends that a statute of limitations for its state constitutional claims "has neither been  
10 legislatively nor judicially determined." Opp'n at 8. Fernley's contention is wrong as a matter of law  
11 because since the founding of Nevada, there has been a legislatively determined statute of limitations for  
12 all causes of action, and the legislatively determined limitations period is 4 years unless a different  
13 period is provided by a specific statute.<sup>6</sup> As early as 1868, Nevada's judiciary determined "it is clear that  
14 our Statute of Limitations embraces all characters of actions, legal and equitable, and is as obligatory  
15 upon the Courts in a suit in equity as in actions at law." White v. Sheldon, 4 Nev. 280, 288-89 (1868).

16  
17 <sup>4</sup> See Boulder Excavating, 124 Nev. at 757-60; United States v. Gaubert, 499 U.S. 315, 324 (1991) ("if  
18 a regulation mandates particular conduct, and the employee obeys the direction, the Government will  
19 be protected because the action will be deemed in furtherance of the policies which led to the  
20 promulgation of the regulation."); Dalehite, 346 U.S. at 36 ("acts of subordinates in carrying out the  
21 operations of government in accordance with official directions cannot be actionable.").

22 <sup>5</sup> Fernley also incorrectly contends that all questions of sovereign immunity under NRS Chapter 41  
23 present mixed questions of law and fact which preclude summary judgment. Opp'n at 7. However, the  
24 question of sovereign immunity under NRS Chapter 41 may be decided as a pure matter of law when  
it is apparent from the face of the complaint that the defendants are entitled to sovereign immunity  
even if all the facts alleged in the complaint are true. See Hagblom, 93 Nev. at 599-605; Foster v.  
Washoe County, 114 Nev. 936, 941-43 (1998).

<sup>6</sup> 1861 Nev. Laws, ch.12, §§1, 18, at 26, 29 (presently codified in NRS 11.010, 11.220); State v. Yellow  
Jacket Mining, 14 Nev. 220, 230 (1879) (holding that the statute of limitations "embraces every civil  
action, both legal and equitable, whether brought by an individual or the state; and if the cause of  
action is not particularly specified elsewhere in the statute, it is embraced in section 1033. [presently,  
codified in NRS 11.220], and the action must be commenced within four years after the cause of  
action accrued. Such is the plain reading of the statute and the evident intention of the legislature.").



1 Given this long-standing Nevada law, it is untenable for Fernley to contend that its state constitutional  
2 claims "are not subject to a statute of limitations of any kind" (Opp'n at 8), especially since it is well  
3 settled that "[a] constitutional claim can become time-barred just as any other claim can." Block v. N.D.  
4 ex rel. Bd. of Univ. & School Lands, 461 U.S. 273, 292 (1983): Thus, when a defendant raises the  
5 statute of limitations as a defense in Nevada, the only questions for the Court are: "First—The precise  
6 time when the statute begins to run in each particular case; and, Second—Which clause of the statute  
7 covers the case?" White, 4 Nev. at 289. As a result, this Court must determine as a matter of law which  
8 statutory limitations period applies to Fernley's state constitutional claims.

9 Based on well-established caselaw, there are two potential limitations periods that apply to  
10 Fernley's state constitutional claims—the 2-year period in NRS 11.190(4)(e) or the 4-year period in  
11 NRS 11.220.<sup>7</sup> Because Fernley incorrectly contends that no limitations period applies to its claims, it  
12 declines to identify any limitations period. However, relying on White Pine Lumber v. City of Reno, 106  
13 Nev. 778, 779-80 (1990), Fernley's suggests that a longer period may apply to its claims. Fernley's  
14 reliance on White Pine Lumber is misplaced because the court held that a *specific statute* provided a 15-  
15 year limitations period for the plaintiff's constitutional takings claim which meant that the general 4-  
16 year period did not apply. Id. If anything, White Pine Lumber substantiates that: (1) Nevada's statute of  
17 limitations applies to constitutional claims; and (2) unless there is a different period in a specific statute,  
18 the general 4-year period is the applicable statute of limitations. Because the events that form the basis  
19 of Fernley's state constitutional claims occurred more than a decade before Fernley commenced this  
20 action in 2012, its claims are time-barred as a matter of law whether the Court applies the 2-year or 4-  
21 year statute of limitations to those claims.

22 <sup>7</sup> Because the 2-year statute of limitations in NRS 11.190(4)(e) applies to federal constitutional claims  
23 arising in Nevada, it would be reasonable for the Court to apply the same 2-year period to state  
24 constitutional claims. See Wilson v. Garcia, 471 U.S. 261, 279-80 (1985); Owens v. Okure, 488 U.S.  
235, 236 (1989); Day v. Zube, 112 Nev. 972, 977 (1996). However, if the Court finds that the 2-year  
period is not the applicable statute of limitations, then the Court must apply the 4-year period in  
NRS 11.220. White, 4 Nev. at 288-89; Yellow Jacket Mining, 14 Nev. at 230.

1 In Nevada, the statute of limitations begins to run "from the day the cause of action accrued."  
2 State v. PERS, 120 Nev. 19, 21-22 (2004). In the typical case, "a cause of action does not accrue, and  
3 the statute does not begin to run until a litigant discovers, or reasonably should have discovered, facts  
4 giving rise to the action." Beazer Homes v. Dist. Ct., 120 Nev. 575, 585 (2004). However, when the  
5 facts giving rise to the cause of action are a matter of public record, the general rule is that the  
6 limitations period begins to run immediately because courts will presume that "[t]he public record gave  
7 notice sufficient to start the statute of limitations running." Cumming v. San Bernardino Redev. Agency,  
8 125 Cal.Rptr.2d 42, 46 (Cal.Ct.App. 2002). Under this rule, the public record provides constructive or  
9 presumed notice or knowledge that is considered to be equivalent to actual notice or knowledge. Id.

10 Beginning in 1998, the public record conclusively establishes that Fernley had notice or  
11 knowledge of how the C-Tax system would apply to it in future years as an incorporated city when its  
12 Incorporation Committee corresponded with the Department regarding application of the C-Tax.  
13 Leg.Ex.12.<sup>8</sup> On June 25, 1998, using several different population growth rates submitted by the  
14 Incorporation Committee, the Department advised the committee that Fernley would realize little to no  
15 increase in C-Tax revenue as the result of its incorporation, and the Department directed the committee  
16 to examine NRS 354.598747 to determine the impact on C-Tax revenue if Fernley were to assume any  
17 services provided by Lyon County.<sup>9</sup> Id. On July 17, 1998, the Department again stated that Fernley  
18 would not experience any significant increase in C-Tax revenue if it incorporated within its existing  
19 boundaries unchanged. Leg.Ex.13. On March 3, 1999, the Department advised the committee of the  
20 requirements of NRS 360.740 concerning the provision of required services for a newly incorporated  
21 city to receive increased C-Tax revenue. Leg.Ex.14. Thus, when Fernley incorporated on July 1, 2001, it

22 <sup>8</sup> Citations to "Leg.Ex." refer to the exhibits filed by the Legislature in this case on July 11, 2014, with  
23 its Opposition to Fernley's Motion for Summary Judgment.

24 <sup>9</sup> For example, the Department explained that based on the projected C-Tax distribution to Fernley with  
a population of 6,510 for that fiscal year at \$83,824.89 and based on a hypothetical population growth  
rate of 9.09% with a resulting population of 12,000, there would be a projected C-Tax distribution of  
\$84,075.91, a net increase of only \$251.02.

1 already knew that it would be receiving little to no increase in C-Tax revenue regardless of any  
2 projected population growth, unless it began to provide the requisite services or assumed the functions  
3 of another local governmental entity. NRS 360.740; NRS 354.598747. Accordingly, the operative  
4 governmental action which allegedly harmed Fernley occurred on July 1, 2001, when Fernley did not  
5 receive an increase in its C-Tax revenue as a result of its incorporation, and Fernley's cause of action  
6 accrued on that date. Because Fernley did not commence this action until June 6, 2012, Fernley's state  
7 constitutional claims are time-barred by the statute of limitations as a matter of law.

8 To avoid this result, Fernley contends that its state constitutional claims are not time-barred based  
9 on the continuing violations doctrine. Opp'n at 9-10. The Nevada Supreme Court has not recognized a  
10 continuing violations doctrine for state constitutional claims. Although some federal courts recognized  
11 such a doctrine for federal constitutional claims, it was strictly limited in Nat'l Ry. Passenger Corp. v.  
12 Morgan, 536 U.S. 101 (2002). See Cherosky v. Henderson, 330 F.3d 1243, 1246 n.3 (9th Cir. 2003); RK  
13 Ventures v. Seattle, 307 F.3d 1045, 1058, 1061 (9th Cir. 2002). After Morgan, federal courts must look  
14 solely to when the operative governmental action occurred to trigger the statute of limitations, and they  
15 must disregard any continuing harmful effects or consequences produced by the operative action  
16 because those continuing harmful effects or consequences are not separately actionable. RK Ventures,  
17 307 F.3d at 1058. Because Morgan changed the law, Fernley's reliance on the Ninth Circuit's pre-  
18 Morgan cases is misplaced, especially since Morgan reversed a Ninth Circuit decision.<sup>10</sup>

19 Fernley's reliance on Chachas v. City of Ely, 615 F.Supp.2d 1193, 1203 (D.Nev. 2009), is also  
20 misplaced. In Chachas, the federal court applied the continuing violations doctrine to federal equal-  
21 protection claims. However, in this case, the Nevada Supreme Court ordered the dismissal of Fernley's  
22 federal equal-protection claims based on the statute of limitations even though Fernley argued for  
23 application of the continuing violations doctrine under federal law. In other words, by ordering dismissal

24 <sup>10</sup> Opp'n at 9 (improperly relying on pre-Morgan cases O'Loughlin v. County of Orange, 229 F.3d 871  
(9th Cir. 2000), and Douglas v. Cal. Dep't of Youth Auth., 271 F.3d 812 (9th Cir. 2001)).

1 of Fernley's federal constitutional claims based on the statute of limitations, the Nevada Supreme Court  
2 by necessary implication also rejected Fernley's reliance on the continuing violations doctrine under  
3 federal law, and that is now the law of this case. See Dictor v. Creative Mgmt. Servs., 223 P.3d 332, 334  
4 (Nev. 2010) ("In order for the law-of-the-case doctrine to apply, the appellate court must actually  
5 address and decide the issue explicitly or by necessary implication."). Thus, because the Supreme Court  
6 has already rejected Fernley's reliance on federal law to apply the continuing violations doctrine to its  
7 federal constitutional claims, it follows by necessary implication that it also rejected Fernley's reliance  
8 on that same federal law to apply the continuing violations doctrine to its state constitutional claims.  
9 Accordingly, this Court must reject Fernley's reliance on the continuing violations doctrine under  
10 federal law because that is now the law of the case. Id. at 334 ("The law-of-the-case doctrine provides  
11 that when an appellate court decides a principle or rule of law, that decision governs the same issues in  
12 subsequent proceedings in that case.").

13 Finally, it is well established that continuing impact from past violations does not extend the  
14 statute of limitations. McDougal v. County of Imperial, 942 F.2d 668, 674-75 (9th Cir. 1991); McCoy v.  
15 San Francisco, 14 F.3d 28, 30 (9th Cir. 1994) ("statute of limitations period is triggered by the decision  
16 constituting the discriminatory act and not by the consequences of that act."). Instead, "the proper focus  
17 is upon the time of the [alleged] discriminatory acts, not upon the time at which the consequences of the  
18 acts became most painful." Abramson v. Univ. of Hawaii, 594 F.2d 202, 209 (9th Cir. 1979). Despite  
19 this authority, Fernley contends that its constitutional rights are violated "each and every time the State  
20 has collected and distributed C-Tax revenue since Fernley incorporated in 2001 (and even since the  
21 1997 enactment date of the C-Tax)." Opp'n at 10. Although the Nevada Supreme Court has not  
22 addressed an argument similar to Fernley's, other courts have considered and rejected such arguments  
23 where the alleged "wrong" is the government's use of an unlawful formula and where alleged  
24 deficiencies in future monetary distributions are simply continued ill effects resulting from the

1 government's continued use of that allegedly unlawful formula.<sup>11</sup>

2 Even though Fernley alleges that a separate "wrong" has occurred with each C-Tax distribution  
3 since 2001, any "wrong" occurred, if at all, when the State used an allegedly unlawful formula to  
4 calculate Fernley's C-Tax distribution as a result of its incorporation in 2001. Even if the amount of each  
5 C-Tax distribution to Fernley since 2001 has been deficient, the deficiencies are simply continued ill  
6 effects resulting from use of the allegedly unlawful formula in 2001. Therefore, because the alleged  
7 "wrong" to Fernley occurred in 2001 and because Fernley did not commence this action until 2012,  
8 Fernley's state constitutional claims are time-barred by the statute of limitations as a matter of law.

9 **D. Laches.**

10 Fernley contends that laches is inapplicable because it did not inexcusably delay bringing its  
11 claims, it has not acquiesced in the alleged inequities of the C-Tax system, and any delay in bringing its  
12 claims has not prejudiced the State or any participant in the C-Tax system. Opp'n at 10-12. Fernley's  
13 contentions fail as a matter of law. First, when Fernley incorporated on July 1, 2001, it already knew that  
14 it would be receiving little to no increase in C-Tax revenue regardless of any projected population  
15 growth, unless it began to provide the requisite services or assumed the functions of another local  
16 governmental entity as required by the C-Tax statutes. Leg.Exs.12, 13, 14. But despite having  
17 knowledge of the operation of the C-Tax system and its alleged inequities since at least 2001, Fernley  
18 waited nearly 11 years to bring its claims. Fernley contends that its delay is excusable because during  
19 that period, it "unsuccessfully lobbied for relief from the Legislature, requested assistance from the  
20 Department, and pursued adjustments from Lyon County before commencing this action." Opp'n at 11.

21  
22 <sup>11</sup> See Brown Park Estates-Fairfield Dev. v. United States, 127 F.3d 1449, 1456 (Fed.Cir. 1997) (where  
23 HUD allegedly used unlawful formula to calculate government rent subsidies, "wrong" occurred when  
24 HUD first used formula to calculate subsidies, and alleged deficiencies in future subsidies are not  
separate "wrongs" for limitations purposes); Davidson v. United States, 66 Fed.Cl. 206, 207-10  
(Fed.Cl. 2005) (where Defense Department allegedly used unlawful formula to recalculate survivor  
benefit payments, "wrong" occurred when Department first recalculated the payments, and alleged  
deficiencies in future payments are not separate "wrongs" for limitations purposes).

1        However, for purposes of laches, the fact that Fernley may have sought redress in the political  
2 branches does not excuse its failure to promptly commence a judicial action. See Batiste v. New Haven,  
3 239 F.Supp.2d 213, 225 (D.Conn. 2002); Mussington v. St. Luke's-Roosevelt Hosp., 824 F.Supp. 427,  
4 434 (S.D.N.Y. 1993). In Batiste and Mussington, the plaintiffs argued that laches did not bar their  
5 untimely constitutional claims because they had engaged in "vociferous public opposition" to the  
6 defendants' construction projects at the local agency level before they commenced their judicial actions.  
7 The courts rejected the plaintiffs' arguments and found that their claims were barred by laches because  
8 "despite the plaintiffs' 'vociferous public opposition' to the defendants' construction plans, the plaintiffs  
9 were required to address their grievance in court, not in the political arena, in order to preserve their  
10 claims." Batiste, 239 F.Supp. at 225; Mussington, 824 F.Supp. at 434. Thus, even assuming Fernley  
11 diligently endeavored to find a remedy to the alleged inequities of the C-Tax system before the political  
12 branches, Fernley's efforts do not excuse its *11-year delay* in commencing this judicial action. Indeed,  
13 nothing stopped Fernley during the past decade from timely pursuing judicial remedies while  
14 concurrently pursuing other remedies in the political branches.

15        Next, since at least 1998, the public record conclusively establishes that Fernley had notice or  
16 knowledge of how the C-Tax system would apply to it in future years as an incorporated city, but it  
17 incorporated anyway and thereby publicly acquiesced in any alleged inequities of the C-Tax system  
18 through its official act of incorporation. Indeed, before Fernley incorporated, the Chair of its  
19 Incorporation Committee informed the Committee on Local Government Finance (CLGF) in a public  
20 meeting that "the change in [C-Tax] law is really equitable and really, really works nicely." Leg.Ex.17.  
21 Thereafter, if Fernley believed the C-Tax system was not so equitable, it had a legal duty to pursue  
22 judicial relief in a diligent and timely manner instead of waiting 11 years. By failing to act diligently and  
23 timely within that 11-year period, Fernley acquiesced in any alleged inequities of the C-Tax system.

1 Finally, Fernley's inexcusable delay has prejudiced the State and the participants in the C-Tax  
2 system because since 1997, the State has reasonably relied on the validity of the C-Tax system to  
3 provide supplemental funding to augment the operations of local governments, and those local  
4 governments and their citizens have reasonably relied on the validity of the C-Tax system for purposes  
5 of local budgeting and fiscal planning and they have a reasonable expectation in continuing to receive  
6 their allotted distributions under that system. If the C-Tax system is declared invalid now after such a  
7 long period of operation, such a declaration would bring chaos to Nevada's tax distribution system, and  
8 it would prejudice the State and those local governments and their citizens who have reasonably relied  
9 on the validity of the C-Tax system for nearly two decades. Because consideration of Fernley's state  
10 constitutional claims after such an unreasonable and inexcusable delay would upset settled expectations,  
11 would work to the disadvantage and prejudice of others, and would make the granting of relief  
12 inequitable, Fernley's state constitutional claims are time-barred by the equitable doctrine of laches, and  
13 the Defendants are entitled to judgment as a matter of law.

14 **E. Separation of powers.**

15 Fernley contends that in two other jurisdictions (Alaska and Texas), political subdivisions have  
16 standing to challenge the constitutionality of a statute on separation-of-powers grounds. Opp'n at 12.  
17 However, the rule in Nevada is that political subdivisions have standing to challenge a statute on state  
18 constitutional grounds *only if* the state constitutional provision at issue exists for the protection of those  
19 political subdivisions. City of Reno v. County of Washoe, 94 Nev. 327, 329-32 (1978) (holding that  
20 political subdivisions only have standing to challenge legislation under the special-or-local law  
21 provisions of Article 4, §§20-21 of the Nevada Constitution because those provisions exist for their  
22 protection, but they *do not* have standing to challenge legislation under the due process clause of  
23 Article 1, §8 of the Nevada Constitution because that constitutional provision does not exist for their  
24

1 protection).<sup>12</sup> In this case, the reason Nevada's political subdivisions *do not* have standing to assert a  
2 separation-of-powers claim against the State is because Nevada's separation-of-powers clause does not  
3 exist for their protection. It exists for the protection of *state government* by prohibiting one branch of  
4 state government from impinging on the functions of another branch. Nev.Const. art.3, §1(1). Because  
5 Nevada's separation-of-powers clause does not exist for the protection of political subdivisions, Fernley  
6 lacks standing to bring separation-of-powers claims against the State as a matter of law.

7 Even if Fernley had standing to bring separation-of-powers claims against the State, those claims  
8 would have no merit. Fernley contends that the C-Tax system is an unlawful delegation of the  
9 Legislature's power over appropriations because "it authorizes the Executive Branch, acting through the  
10 Department, to collect and appropriate C-Tax revenues without any legislative participation or  
11 oversight." Opp'n to State's MSJ at 24. Fernley's contention fails as a matter of law because the C-Tax  
12 system is a lawfully enacted ongoing appropriation which operates prospectively on a recurrent basis in  
13 future years and which the Department must administer under clearly defined statutory standards.

14 Under long-standing Nevada law, the Legislature may enact an appropriation that operates  
15 prospectively on a recurrent basis in future years so long as the Legislature has provided a method  
16 whereby the exact amount to be appropriated may be ascertained under the law in future years. Norcross  
17 v. Cole, 44 Nev. 88, 93 (1920); State v. LaGrave, 23 Nev. 25, 26-27 (1895) ("an appropriation may be  
18 prospective, that is, it may be made in one year of the revenues to accrue in another or future years, the  
19 law being so framed as to address itself to such future revenues." (quoting Ristine v. State, 20 Ind. 328,  
20 339 (1863))). Therefore, "[i]t is not necessary that all expenditures be authorized by the general  
21 appropriation bill. The language in any act which shows that the legislature intended to authorize the  
22

23 <sup>12</sup> See also City of New York v. State, 655 N.E.2d 649, 651-52 (N.Y. 1995) ("the traditional principle  
24 throughout the United States has been that municipalities . . . lack capacity to mount constitutional  
challenges to acts of the State and State legislation. . . . Moreover, our Court has extended the doctrine  
of no capacity to sue by municipal corporate bodies to a wide variety of challenges based as well upon  
claimed violations of the State Constitution.").