

IN THE SUPREME COURT OF THE STATE OF NEVADA
Nos. 83598, 84971 and 85358

IN RE PARAMETRIC SOUND CORPORATION
SHAREHOLDERS' LITIGATION.

Electronically Filed
Aug 21 2023 06:34 PM
Elizabeth A. Brown
Clerk of Supreme Court

PAMTP, LLC,
Appellant,

v.

KENNETH F. POTASHNER; VTB HOLDINGS, INC.;
STRIPE GROUP, LLC; SG VTB HOLDINGS, LLC;
JUERGEN STARK; and KENNETH FOX,
Respondents.

Consolidated Appeals from Final Judgment and Fees and Costs Awards
Eighth Judicial District Court Case No. A-13-686890-B

**APPELLANT PAMTP, LLC'S OPPOSITION TO RESPONDENT
KENNETH POTASHNER'S MOTION FOR SUBSTITUTION AND
DISMISSAL OF PAMTP'S APPEAL IN CASE NO. 83598**

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I. INTRODUCTION

Respondent Kenneth Potashner's motion is moot, but he has declined to withdraw it. Accordingly, PAMTP is compelled to respond, even though the ultimate outcome—denial of the motion (without prejudice)—is required.

Potashner filed the motion on August 14, 2023. It is premised entirely on Potashner's contention that he purchased PAMTP's substantive chose in action at an execution sale conducted on August 9, 2023. That contention is incorrect—the Sheriff's sale at which Potashner purchased the chose in action occurred in violation of PAMTP's procedural due process rights. Based on PAMTP's prima facie showing of the irregularities involved in the Sheriff's sale, on August 18, 2023, the Honorable District Court Judge Nancy Allf granted PAMTP's request for a Temporary Restraining Order enjoining Potashner from asserting or claiming any ownership interest over the same. *See Exhibit 1.*

PAMTP requested the Temporary Restraining Order because the August 9 Sheriff's Sale occurred in violation of NRS Chapter 21—it was conducted without proper notice; it was conducted without a hearing on the claim of exemption PAMTP filed; and it was conducted after PAMTP's

manager detrimentally relied on a cancellation of the sale by the Las Vegas Metropolitan Police Department Sheriff's Civil Bureau ("Sheriff's Civil Bureau"). Because of that reliance, PAMTP was denied the opportunity to attend the sale and purchase PAMTP's chose in action, which Potashner now claims to own. Thus, the Sheriff's sale was completed in violation of PAMTP's Due Process rights.

On August 21, 2023, PAMTP asked Potashner to withdraw the motion in light of the TRO. Potashner declined, leaving PAMTP to seek denial of the motion on the basis that Potashner is legally prohibited from asserting the sole basis of his motion—that he bought PAMTP's claim—and therefore cannot seek to substitute himself as Appellant and seek to dismiss the claim on the ground that he bought it. This Court should dismiss Potashner's motion without prejudice and instruct him to refile it if, and only if, he obtains the claims and causes of action at a lawfully conducted execution sale.

II. BACKGROUND

This motion arises in the context of an appeal of a judgment (1) dismissing PAMTP's claims against Potashner and the other Respondents, (2) awarding Potashner and the other Respondents costs, and (3) denying Potashner and the other Respondents attorneys' fees. The appeal was fully briefed as of June 21, 2023. Oral argument has not yet been scheduled.

In May 2023, Potashner obtained a writ of execution against PAMTP on the costs award. The property targeted in the writ was PAMTP's substantive chose in action subject to this appeal. A Sheriff's sale was scheduled for August 9, 2023, and Potashner bought the claims for \$40,500.

On August 14, 2023, PAMTP filed a complaint against Potashner and the relevant state actors who conducted the sale—including the Sheriff's Civil Bureau, the General Counsel for Sheriff's Civil Bureau, and the Sheriff for the Las Vegas Metropolitan Police Department—arguing that the sale was invalid because PAMTP was denied due

process prior to the sale. *See, e.g., Exhibit 2* (Complaint).¹ Specifically, PAMTP contends (1) the sale was wrongly conducted after improper notice, (2) the sale was wrongly conducted while its timely Claim of Exemption was pending, denying PAMTP an opportunity to challenge the sale, and (3) the sale was wrongly conducted after having been cancelled, denying PAMTP an opportunity to attend the sale and purchase the claim. *See id.* The complaint seeks damages and declaratory and injunctive relief, including a complete unwinding of the sale. *See id.*

On August 15, PAMTP filed an emergency request for a temporary restraining order and a request to schedule an expedited hearing on a motion for preliminary injunction. *See Exhibit 3* (Emergency TRO Request).

On August 18, the district court held a hearing and granted PAMTP's request for a TRO. *See Exhibit 1.* It issued a minute order, which reflects the court's finding that PAMTP has "at least a reasonable possibility, or likelihood, of success" on the merits and that PAMTP

¹ PAMTP has submitted its complaint and its emergency request for a temporary restraining order. PAMTP does so only to provide the Court with the context of the underlying proceeding.

demonstrated irreparable harm. It therefore granted PAMTP's request for a TRO restraining Potashner from "assert[ing] any ownership rights of the [chose in] action during the time he is restrained." *Id.*

On August 21, PAMTP asked Potashner whether he would withdraw the motion before this Court in light of Judge Allf granting the TRO. Potashner declined.

III. ARGUMENT

PAMTP's motion must be denied for two independent reasons, each equally sufficient. First, the motion is premised entirely on the idea that Potashner bought PAMTP's claims, but Potashner is restrained from asserting that ownership. Second, regardless of the TRO, this Court cannot decide the motion in light of the genuine and unresolved dispute over the validity of the sale.

A. Potashner Cannot Establish That He Owns PAMTP's Claims.

The entire basis for Potashner's motion is that he bought PAMTP's claims. His August 14 motion cites "two reasons" the appeal should be dismissed: "First, because *Potashner acquired PAMTP's interests in the underlying civil action and the subject appeal*, PAMTP has lost standing to pursue and maintain those appeals," and "[s]econd, *because Potashner*

was the party who purchased PAMTP's interests, Potashner . . . desires to exercise those rights voluntarily to dismiss the appeal with prejudice.” Mot. at 8 (emphasis added).

Judge Allf’s ruling prohibits Potashner from asserting these arguments—indeed, if he makes the arguments on Reply, he will *violate* the TRO and subject himself to *sanctions for contempt*. **Exhibit 1.** His motion cites nothing else in support of his request to substitute himself as Appellant and dismiss the claims. Potashner’s motion therefore must fail.

Potashner will point out that the district court declined to “require him to withdraw [this] motion from the [Supreme Court],” but that is irrelevant. The district court made clear at the hearing that, although it was comfortable *restraining* Potashner from taking action, it did not want to require Potashner *to affirmatively take action*. But that does not make the outcome here any less obvious. The necessary consequence of the restraint is that Potashner *cannot satisfy his burden* on this motion—which is why he should have voluntarily withdrawn it instead of insisting that PAMTP respond. Regardless, nothing in the district court’s order prevents this Court from denying the motion, as it should.

B. The Genuine and Unresolved Dispute Over Ownership of PAMTP's Claims Requires Denial.

Even if the TRO had not issued, the motion would still have to be denied. Again, the premise is that Potashner bought PAMTP's claims, but PAMTP vigorously disputes that the sale was lawful for reasons stated in its Complaint and Emergency TRO Request. *See Exhibits 2-3*. Potashner and the state-actor defendants before Judge Allf dispute PAMTP's arguments regarding notice, but they do not dispute that the Sheriff's Civil Bureau cancelled the August 9 Sheriff's Sale on August 8, 2023, but conducted it despite that cancellation. Regardless, unlike the cases Potashner cites, here, there *is* a genuine dispute over whether the claims were sold. *See, e.g., Manko Holdings Ltd. v. Reno Project Mgmt., LLC*, 132 Nev. 1003, 385 P.3d 43 (2016) (unpublished) (dismissing appeal where appellant "[did] not dispute" that its claims were acquired); *First 100, LLC v. Ragan*, 132 Nev. 968, 382 P.3d 499 (2016) (unpublished) (dismissing appeal where it was "undisputed" that claims were sold).

PAMTP (and presumably, Potashner) is *not* asking this Court to resolve the underlying dispute in the context of this motion; the dispute will be resolved in the context of the action pending before Judge Allf following fact discovery and an evidentiary hearing—relative to which

Judge Allf already set a Rule 16 Conference for August 23, 2023. For now, it suffices for this Court to recognize the granting of the TRO to deny the motion and allow the litigation to play out, and allow Potashner to re-file the motion if at a later point he is determined to be the owner of the claim.

IV. CONCLUSION

For the foregoing reasons, Potashner's motion should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP and on August 21, 2023, a true and correct copy of the foregoing was electronically filed and served on all registered parties to the Supreme Court's electronic filing system.

/s/ Jelena Jovanovic
An Employee of McDonald Carano LLP

EXHIBIT “1”

EXHIBIT “1”

A-23-875894-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

August 18, 2023

A-23-875894-B PAMTP, LLC, Plaintiff(s)
vs.
CLARK COUNTY ex rel., SHERIFF S CIVIL
BUREAU, Defendant(s)

**August 18, 2023 1:15 PM Motion for Temporary
Restraining Order**

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES

PRESENT:	Bauhaus, Martina	Defendant
	Fortin, John A	Attorney
	Ogilvie, George F., III	Attorney
	Potashner, Kenneth	Defendant

JOURNAL ENTRIES

- Deputy District Attorney Joel Browning, Esq., specially appearing on behalf of Clark County.

Mr. Browning stated Clark County is improperly named in the case and has requested they amended the complaint. Court noted its preliminary thoughts on the matter. Arguments by Mr. Ogilvie, Mr. Cassity, and Mr. Kalkowski regarding the merits of and opposition to the motion. COURT ORDERED, Plaintiff's Emergency Request for a Temporary Restraining Order And Plaintiff s Request for an Order Shortening Time to Hold an Ex Parte Hearing on Plaintiff s Request and Expediting Briefing and Setting an Expedited Hearing on Plaintiff s Motion for Preliminary Injunction GRANTED as to the Temporary Restraining Order (TRO) in favor of the Plaintiff, Mr. Potashner will not be able to assert any ownership rights of the chosen action during the time he is restrained, Court will not require him to withdraw a motion from the supreme court, he will be restrained from transferring the asset pending the resolution of this case, and the matter will be consolidated on the

PRINT DATE: 08/18/2023

Page 1 of 2

Minutes Date: August 18, 2023

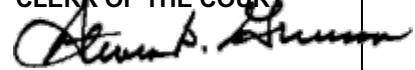
merits; TRO may be renewed one time up to thirty days, and if trial date is not set at that time then Court would consider an order shortening time to extend the TRO again. Court stated the injunction is not being granted at this time. Colloquy regarding the amount of the bond. COURT FURTHER ORDERED, bond SET at \$60,000.00. Court FINDS Plaintiff has at least a reasonable possibility, or likelihood, of success and the overriding factor in granting the restraining order is that the irreparable harm would go to the Plaintiff in the event they lost the ability to bid. COURT FURTHER ORDERED, Mandatory Rule 16 Conference SET, counsel to provide an outline as to a discovery plan. Plaintiff's counsel to prepare the order and submit it to opposing counsel for approval as to form.

8/23/2023 10:00 AM MANDATORY RULE 16 CONFERENCE

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 8/18/2023

EXHIBIT “2”

EXHIBIT “2”



CASE NOA-23-875894B
Department 27

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DISTRICT COURT

CLARK COUNTY, NEVADA

PAMTP, LLC a Delaware limited liability
company,

Plaintiff,

v.

CLARK COUNTY ex rel., SHERIFF'S
CIVIL BUREAU, an entity within the
subdivision of Clark County; KEVIN
McMAHILL in his official capacity as Sheriff
for Las Vegas Metropolitan Police
Department; MARTINA BAUHAUS, in her
official and individual capacity as General
Counsel for Sheriff's Civil Bureau;
KENNETH POTASHNER, an individual;
JOHN DOE PURCHASER, an individual and
DOES 1-10, inclusive,

Defendants.

Case No.:
Dept. No.:

PLAINTIFF'S COMPLAINT – VERIFIED

BUSINESS COURT REQUESTED

**Exempt from Arbitration under NAR 3(a)
(damages greater than \$50,000 and seeks
declaratory relief).**

(JURY TRIAL DEMANDED)

Plaintiff PAMTP, LLC, a Delaware limited liability company ("PAMTP"), as and for its
Complaint against Defendants Clark County *ex rel.* Sheriff's Civil Bureau ("Sheriff's Civil
Bureau"), an entity within the subdivision of Clark County; Las Vegas Metropolitan Police
Department Sheriff Kevin McMahon ("Sheriff McMahon"); Sheriff's Civil Bureau General Counsel,
Martina Bauhaus ("Bauhaus"); Kenneth Potashner, an individual ("Potashner"), and John Doe
Purchaser, an individual or entity that purchased PAMTP's causes of action at an unlawful execution
sale on August 9, 2023 ("Doe Purchaser"), does hereby allege and complain as follows:

...

NATURE OF THE CASE

1
2 1. This action seeks to undo an unlawful and unconstitutional sale of PAMTP's property
3 at an auction administered by Defendant Sheriff's Civil Bureau at the direction of Potashner on
4 August 9, 2023 ("August 9 Sheriff's Sale").

5 2. The property at issue is a chose in action: a claim brought by PAMTP *against*
6 Potashner (and others) seeking damages for fraud committed by Potashner, among others. The claim
7 was on appeal when Sheriff's Civil Bureau, apparently deferring to Potashner's wishes, sold the
8 claim in furtherance of a writ of execution against PAMTP arising out of a post-trial judgment for
9 Potashner's costs.

10 3. Rather than complying with the mandatory procedures for the sale of property
11 pursuant to writs of execution under NRS Chapter 21, Defendant Bauhaus, acting in her individual
12 capacity and as General Counsel for Sheriff's Civil Bureau and on behalf of and in Sheriff
13 McMahill's stead as his agent, and Defendant Sheriff's Civil Bureau, ignored and willfully flouted
14 the mandatory procedures and conducted a totally unlawful sale.

15 4. Worse, Sheriff's Civil Bureau, Bauhaus, and Sheriff McMahill (the "Sheriff
16 Defendants") proceeded with the August 9 Sheriff's Sale after having cancelled it the day before.
17 After PAMTP's counsel repeatedly pointed out that NRS Chapter 21 provided mandatory
18 protections for judgment debtors before a sale may occur, on the afternoon of August 8, 2023,
19 Sheriff's Civil Bureau posted on its public website—the source to which it had directed PAMTP to
20 look to determine the status of the scheduled sale—that the sale was cancelled. PAMTP's counsel
21 confirmed the same in a follow-up phone call. At the very time, PAMTP's representative was on a
22 plane to Las Vegas with the capacity and intent of purchasing the chose in action. Upon learning of
23 the cancellation of the sale, PAMTP's representative rescheduled his travel plans to return home
24 immediately upon arriving in Las Vegas, and arrived home early on the morning of August 9, 2023.
25 Later that morning, PAMTP learned that the Sheriff Defendants inexplicably put the sale back on
26 the calendar for 9:00 am PDT that day. PAMTP's counsel strenuously objected upon learning of
27 this about-face, but the Sheriff Defendants conducted the sale anyway.

28 ...

11. Venue is proper in this jurisdiction because the tortious misconduct as well as the violations of PAMTP's Constitutional rights occurred within the jurisdiction of this Court, and this action is brought against the County in which this Court is located. *See* NRS 13.010; NRS 13.030. The amount in controversy exceeds \$15,000.

THE PARTIES

12. Plaintiff PAMTP is a Delaware limited liability company and Judgment Debtor. It was formed to pursue litigation of the claims of its members arising out of the merger of Parametric Sound Corporation, a public company whose shareholders included the members of PAMTP, into VTB Holdings, Inc. One of PAMTP's co-managers is Adam Kahn ("Mr. Kahn"), who is responsible for day-to-day oversight of the litigation PAMTP was formed to pursue.

13. Defendant Sheriff's Civil Bureau is an entity within the Clark County municipal government and a subdivision of the State of Nevada. NRS 41.031 represents a waiver of Sheriff's Civil Bureau sovereign immunity such that it is liable for PAMTP's monetary damages.

14. Defendant Sheriff McMahill is sued in his official capacity. *See Ex Parte Young*, 209 U.S. 123 (1908); *see also Hafer v. Melo*, 502 U.S. 21, 25 (1991) (permitting prospective injunctive relief against State actors in their official capacity and retrospective monetary relief against State and local actors in their individual capacity). PAMTP seeks injunctive relief against Sheriff McMahill in his official capacity. NRS 41.031 represents a waiver of Sheriff McMahill's sovereign immunity such that he is liable for monetary damages for the torts he committed as well as under a respondeat superior liability theory for the torts Bauhaus and Sheriff's Civil Bureau committed while serving as the Sheriff's agent.

15. Defendant Bauhaus is sued in her official capacity as the General Counsel of the Sheriff's Civil Bureau insofar as PAMTP seeks injunctive relief. *See Ex Parte Young*, 209 U.S. at 124. Bauhaus is additionally sued in her individual capacity for monetary damages as she is a State actor who violated PAMTP's state and federal Constitutional rights under the color of state law. *See Hafer*, 502 U.S. at 25. Because of the waiver of sovereign immunity contained in NRS 41.031, Bauhaus is similarly liable for PAMTP's monetary damages for the torts she committed.

18. Plaintiffs are ignorant of the true names and capacities of the defendants who are sued as DOES 1 through 10, inclusive (“DOE Defendants”), and therefore sue the DOE Defendants by fictitious names. Plaintiffs will amend this Complaint to allege the true names and capacities of these DOE Defendants when ascertained. Plaintiffs are informed and believe and based thereon allege that each of the fictitiously named DOE Defendants is responsible in some manner for the occurrences alleged, and that Plaintiffs’ damages as alleged were caused by such DOE Defendants.

A. The Judgment Against PAMTP.

21. PAMTP was assigned the rights to pursue claims of certain Parametric shareholders who opted out of the class (“PAMTP litigation”). The PAMTP litigation was filed in May 2020. *See PAMTP LLC v. Potashner*, Case No. A-20-815308-B.

22. The PAMTP litigation proceeded in the ordinary course from inception through trial before the Honorable (Ret.) Judge Elizabeth Gonzalez. On the eve of trial, all the director Defendants except Potashner settled with PAMTP.

23. In the PAMTP litigation, the facts that emerged constituted an overwhelming record of Potashner's fraudulent scheme to mislead Parametric's Board and shareholders into approving a grossly unfair merger, to the benefit of Potashner and the buyers, who were Potashner's allies and also named as defendants in the litigation. There was even misconduct during the litigation, as at one point Judge Gonzalez found that Potashner and others destroyed and concealed evidence from discovery and issued sanctions. Despite this remarkable record, Judge Gonzalez concluded, on the basis of the relatively undeveloped law in Nevada governing direct shareholder fiduciary duty claims, that she was constrained to enter judgment for Potashner under NRCP 52(c).

24. Judge Gonzalez retired soon after, and matter was administratively reassigned to the Honorable Judge Susan Johnson.

25. Potashner moved for both attorney's fees and costs under NRCP 68(f)(1)(b) and NRS 18.020, respectively.

26. Judge Johnson denied Potashner's motion for attorney's fees but granted Potashner's motion for costs. Judge Johnson memorialized this decision in a Second Amended Judgment, which included an award of \$397,147.15 in costs to Potashner as well as prejudgment interest of \$86,694.93. (*See* Second Am. J., Case No. A-20-815308-B, Dec. 18, 2022, on file). The Second Amended Judgment also included an award of costs and pre-judgment interest to the defendants other than Potashner.

27. PAMTP timely appealed the Second Amended Judgment and multiple appeals arising from the PAMTP litigation have since been consolidated before the Nevada Supreme Court. *See* Case Nos. 835908 & 85358. PAMTP argues on appeal that (1) the judgment should be vacated and the case remanded for a new trial (in which case the costs award would be vacated entirely) and, alternatively, (2) the costs award should be substantially reduced.

28. Briefing in the consolidated appeal was completed on July 11, 2023. *See id.*

B. The Writ of Execution and Notice of Sheriff's Sale.

29. Based on Judge Johnson's Second Amended Judgment, Potashner submitted a Writ of Execution to the Sheriff's Civil Bureau in May 2023. Potashner sought to levy \$499,074.08 of PAMPT's property (the \$397,147.15 in principal and \$86,694.93 in pre-judgment interest memorialized in the Second Amended Judgment, plus post-judgment interest).

30. Potashner later submitted a Notice of Execution.

31. The Notice of Execution contains a section entitled "Procedure for Claiming Exempt Property" which states:

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court an executed claim of exemption. A copy of the claim of exemption must be served upon the sheriff, the garnishee and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to NRS 21.076 which identifies the specific property being levied on. The property must be released by the garnishee or the sheriff within 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee and judgment creditor, unless the sheriff or garnishee received a copy of an objection to the claim of exemption and a notice for a hearing determining the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt.

32. This language mirrors the statutory scheme under NRS Chapter 21, which details the procedures that must be followed before property may be taken by the state and forcibly sold in a Sheriff's sale.

33. Potashner likewise submitted a Notice of Sheriff's Sale to the Sheriff's Civil Bureau.

34. The Notice of Sheriff's Sale detailed that Defendant Sheriff's Civil Bureau would conduct a public auction at the Regional Justice Center, 200 Lewis Ave., Las Vegas, Nevada 89155, on August 9, 2023, at 9:00 am.

35. Both the Notice of Execution and Notice of Sheriff's Sale were served on PAMTP on July 31, 2023 via regular mail to PAMTP's counsel. At that point, PAMTP had 10 days—i.e., until August 10, 2023—to serve and file a claim of exemption, which would prohibit the August 9 Sheriff's Sale from proceeding.

36. In accordance with NRS 21.112(1)'s 10-day time exemption requirement, PAMTP timely served and filed a Claim of Exemption from Execution on August 4 and August 7, 2023 respectively.

1 37. Pursuant to NRS 21.112, because PAMTP timely filed a Claim of Exemption, the
2 August 9 Sheriff's Sale should have been cancelled or suspended pending judicial resolution of
3 PAMTP's Claim of Exemption.

4 38. Shortly after filing its Claim of Exemption, PAMTP conferred with Sheriff's Civil
5 Bureau to confirm it would cancel the August 9 Sheriff's Sale as mandated by Nevada law.

6 39. During this communication, Sheriff's Civil Bureau agents explained that the Sheriff's
7 Civil Bureau had emailed Potashner to ask whether Potashner intended to cancel the August 9
8 Sheriff's Sale.

9 40. According to the Sheriff's Civil Bureau, Potashner responded that he intended to
10 proceed with the August 9 Sheriff's Sale.

11 41. When PAMTP asked how the Sheriff's Civil Bureau could permit the sale in light of
12 PAMTP's Claim of Exemption, Sheriff's Civil Bureau explained that the office deferred to the
13 Judgment Creditor on scheduling and canceling the Sheriff's sale and that the Sheriff's Civil Bureau
14 would comply with the Judgment Creditor's direction.

15 42. In other words, the Sheriff's Civil Bureau abdicated its statutory duties and deferred
16 to the very individual (Potashner) who would benefit the most from the sale and a violation of
17 PAMTP's property rights. Potashner, of course, stood to benefit—and, absent court intervention,
18 will benefit—because PAMTP's claims and causes of actions are now possessed by someone else
19 who could simply dismiss the appeals and extinguish millions of dollars in damages that Potashner
20 likely owes.

21 **C. PAMTP Engaged with Bauhaus on August 8, 2023 and Demanded That She**
22 **Comply with Nevada Law and Cancel the August 9 Sheriff's Sale.**

23 43. On August 8, 2023, with the sale still not cancelled, PAMTP's counsel
24 communicated directly with Bauhaus to protest the decision to move forward with the sale despite
25 the late notice and PAMTP's pending Claim of Exemption.

26 44. PAMTP explained in an email that a "Claim of Exemption from Execution," which
27 PAMTP attached, "was served on Sheriff's Civil on Friday and filed yesterday morning," and
28 therefore that, "[p]ursuant to NRS 21.112, the sale should be cancelled pending a judicial

1 determination of the judgment creditor's objection to the exemption (assuming the judgment debtor
2 files an objection); however, Sheriff's Civil has informed my office that tomorrow's sale is going
3 forward."

4 45. PAMTP's counsel requested Bauhaus call him because PAMTP did not "understand
5 why Sheriff's Civil is not complying with the statute."

6 46. Bauhaus did not call PAMTP's counsel.

7 47. Instead of addressing PAMTP's valid criticisms of the Sheriff Civil Bureau's
8 inaction, Bauhaus responded that "[t]he reason the sale is going forward is because the statute
9 requires you to claim an exemption 10 days after you were served with the notice of the execution.
10 [The Claim of Exemption] was received well after the 10 days and as such is untimely."

11 48. Contrary to Bauhaus's position, PAMTP was not served with the Notice of Execution
12 before July 31, 2023. Pursuant to NRS 21.112, the July 31, 2023 service of the Notice of Execution
13 triggered the 10-day time period for PAMTP to file its Claim of Exemption. Until being served with
14 the Notice of Execution on July 31, 2023, PAMTP was not required to take any action to preserve
15 its property rights relative to the August 9 Sheriff's Sale.

16 49. PAMTP's counsel responded, "While my office was served with a Writ of Execution
17 on May 11, 2023, we did not receive either the attached Notice of Execution [or] the Attached Writ
18 of Execution until July 31, 2023, so the exemption was served and timely filed."

19 50. Bauhaus doubled down: "You did receive the Writ of Execution in June. That is
20 when your 10 days started. Notice of Sheriffs Sale is different."

21 51. PAMTP's counsel responded, "I believe you are mistaken. The statutes refer
22 specifically to when the judgment debtor is served with a 'notice of a writ of execution', which is a
23 specific form set forth in NRS 21.075 (attached). The compliant Notice of Execution (also attached)
24 was not served until July 31. Therefore, the exemption was timely filed and served."

25 52. PAMTP's counsel provided Bauhaus with the relevant text of NRS 21.112, NRS
26 21.076 and NRS 21.075 to demonstrate why PAMTP's timely-filed exemption mandated the August
27 9 Sheriff's Sale be cancelled or at least postponed until a neutral judge resolved the validity of
28 PAMTP's Claim of Exemption.

53. PAMTP’s counsel further explained, “[t]he Writ of Execution, by itself, required the judgment debtor to take no action. It is the NRS 21.075(2) Notice of Execution that triggers the claiming of an exemption.”

54. Bauhaus did not respond to PAMTP’s counsel.

55. Instead, a Sheriff’s Civil Bureau officer, agent, and/or employee was evidently instructed to cancel the sale because the sale was cancelled.

56. In particular, shortly after PAMTP’s counsel’s final communication to Bauhaus on August 8, PAMTP’s counsel’s office checked the Sheriff’s Civil Bureau website, which reflected that the August 9 Sheriff’s Sale had been canceled:

08/09/2023	A-13-686890-B CHOSE IN ACTION	Holland & Hart 702-669-4600	CANCELLED
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57. PAMTP’s counsel’s office called the Sheriff’s Civil Bureau to confirm the change to the website and the cancellation of the August 9 Sheriff’s Sale. The Sheriff’s Civil Bureau confirmed that the August 9 Sheriff’s Sale had indeed been canceled.

D. PAMTP Manager Mr. Kahn was on a Flight from Newark to Las Vegas When the Sheriff’s Civil Bureau Cancelled the August 9 Sheriff’s Sale. Mr. Kahn Relied on the Cancellation to Return Immediately to Newark, Thereby Missing the Sale.

58. PAMTP believed that the sale should not go forward on August 9th both because the notice was not served until July 31st *and* because PAMTP had timely filed a Claim of Exemption, which could not and would not be resolved before August 9th.

59. Nevertheless, PAMTP made significant preparations to protect its property rights in the event the sale unlawfully proceeded. Specifically, Mr. Kahn planned to attend the auction and purchase PAMTP’s chose in action.

60. On August 7, 2023, Mr. Kahn purchased an airline ticket from Newark, New Jersey to Las Vegas, Nevada.

61. Mr. Kahn also reviewed the Sheriff’s Civil Bureau website to confirm the location of Sheriff’s Sale in Las Vegas.

62. Mr. Kahn called the Sheriff's Civil Bureau to confirm the sale would occur at 200 Lewis Avenue, Las Vegas, Nevada. Mr. Kahn also inquired of the Sheriff's Civil Bureau how he could know if the auction would be cancelled for any reason.

63. The Sheriff's Civil Bureau officer, agent, and/or employee advised Mr. Kahn in sum and substance that the Sheriff's Civil Bureau's website would be where he would obtain the definitive information on the sale. The Sheriff's Civil Bureau also advised Mr. Kahn that its website is updated in almost real-time. Finally, the Sheriff's Civil Bureau advised Mr. Kahn, if the auction is canceled, he would see the cancellation on the website.

64. Mr. Kahn reviewed the Sheriff's Civil Bureau's website on August 8, 2023, saw that the sale had not been cancelled, withdrew significant sums of money, and brought the same with him to Las Vegas.

65. Mr. Kahn also verified the locations of his banking institution's branches near the Regional Justice Center in Las Vegas so he could withdraw whatever amount of funds needed to ensure he had enough money to be the successful bidder at the August 9 Sheriff's Sale.

66. Mr. Kahn also made a hotel reservation for August 8, 2023, at the Golden Nugget due to its close proximity to the location of the sale.

67. On August 8 at 6:41 pm EDT, while on the flight to Las Vegas, PAMTP's counsel notified Mr. Kahn of the cancellation of the August 9 Sheriff's Sale. Mr. Kahn received the screenshot embedded above from Sheriff's Civil Bureau website that confirmed the August 9 Sheriff Sale had been canceled.

68. A few minutes later, at 6:58 pm EDT, Mr. Kahn learned that PAMTP's counsel's office had spoken directly with Sheriff's Civil Bureau's officers, agents, and/or employees, who confirmed the August 9 Sheriff Sale had been canceled.

69. Based on the Sheriff's Civil Bureau's website and telephonic confirmations that the August 9 Sheriff's Sale was cancelled, at 7:05 PM EST, while still in-flight to Las Vegas, Mr. Kahn booked a return ticket departing Las Vegas at 9:50 pm PDT that evening.

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70. Based on the Sheriff's Civil Bureau's website and telephonic confirmations that the August 9 Sheriff's Sale was cancelled, Mr. Kahn returned to Newark, arriving at his residence around 6:00 am EDT on August 9, 2023.

71. Had the Sheriff's Civil Bureau not made the sale cancellation representations on its website and to PAMTP's counsel's office, Mr. Kahn would have attended the August 9 Sheriff's Sale and bid on the PAMTP's chose in action, intending to win the auction.

F. The August 9 Sheriff's Sale Occurs Despite the Sheriff's Civil Bureau's Representations.

72. On the morning of August 9, PAMTP checked the Sheriff's Civil Bureau website again. Inexplicably, the August 9 Sheriff's Sale had been restored to the calendar. Upon learning this, PAMTP's counsel emailed Bauhaus before 9:00 AM PST.

73. PAMTP's counsel protested the proposed sale, contending that "[t]his not only violates the notice provision in NRS 21.130, but it also violates due process. A representative of the judgment debtor traveled from New York to attend the sale this morning, but went back to New York last night because the sale had been canceled. This sale cannot proceed this morning."

74. Despite (1) the Sheriff's Civil Bureau's representations that the August 9 Sheriff's Sale had been cancelled as required by NRS 21.112, and (2) knowing that proceeding with the sale would violate the notice provisions of NRS Chapter 21 and PAMTP's due process rights, the Sheriff Defendants proceeded with the August 9 Sheriff's Sale at or about 9:00 am PDT.

75. By conducting the August 9 Sheriff's Sale despite having confirmed the cancellation thereof, the Sheriff Defendants violated PAMTP's Due Process and Inalienable Property rights.

76. Because of Bauhaus, Sheriff McMahill, and/or the officers, agents, and/or employees of Sheriff's Civil Bureau's refusal to halt the August 9 Sheriff's Sale, Doe Purchaser purchased PAMTP's property.

77. The sale of PAMTP's property is confirmed by Sheriff's Civil Bureau's website.

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78. Notwithstanding numerous requests, Bauhaus and the Sheriff's Civil Bureau have failed and refused to provide any information about the sale, including the name of the purchaser and the purchase price.

G. Defendants are Liable in Tort and the State Actors are Liable Under Nevada's and the Federal Constitution for Damages, Injunctive Relief, and Declaratory Relief.

79. McMahonill and Bauhaus are state actors as that term is defined under 42 U.S.C. § 1983.

80. Additionally, Sheriff McMahonill, Bauhaus, and Sheriff's Civil Bureau are each constitutional actors as that term is understood under Nevada's Constitution.

81. By permitting the August 9 Sheriff's Sale to take place in violation of NRS Chapter 21, Sheriff McMahonill and Bauhaus violated PAMTP's right to notice and an opportunity to be heard prior to the alienation of PAMTP's property in violation of the Due Process Clauses under the Nevada and United States Constitutions. *See* Nev. Const. Art. 1, § 8(2); U.S. Const. Amend. XIV.

82. By permitting the August 9 Sheriff's Sale to take place in violation of Nevada's Constitutional right to Due Process, Sheriff McMahonill and Bauhaus likewise violated PAMTP's inalienable right to acquire, possess, and protect property free from arbitrary government encroachment. *See* Nev. Const. art. 1, § 1.

83. PAMTP relied to its detriment on representations and notice from Bauhaus and Sheriff's Civil Bureau that the sale had been cancelled. The decision to proceed with the sale after notice of cancellation had been given likewise violated PAMTP's rights under the Nevada and the United States' Constitutions. *See* Nev. Const. Art. 1, § 8(2); U.S. Const. Amend. XIV; *see also* Nev. Const. art. 1, § 1.

84. The right to notice and opportunity to be heard are bedrock principles of the Nevada judicial system.

85. The right to property and to guard against arbitrary government encroachments of the right to property is a foundational concept of the history, tradition, and precedent dating back to the early days of the Republic.

86. Bauhaus' misconduct violated clearly established Due Process principles.

1 87. Bauhaus' misconduct violated clearly established rights to property.

2 88. The August 9 Sheriff's Sale represents real, tangible, immediate, and irreparable
3 harm to PAMTP's constitutional rights under both the Nevada and the United States' Constitutions.

4 89. No amount of monetary damages could ever fully restore PAMTP to its rightful
5 position before the sale.

6 90. The unlawful August 9 Sheriff's Sale must be rescinded, abrogated, and/or canceled
7 so that PAMTP can be returned to the position it occupied prior to the violation of its rights.
8 Injunctive relief is necessary to correct these wrongs.

9 91. Plaintiff PAMTP now brings the following causes of action against Defendants.

10 **FIRST CAUSE OF ACTION**

11 **(Declaratory Relief)**

12 **All Defendants**

13 92. PAMPT hereby repeats, realleges and incorporates each of the allegations set forth
14 in paragraphs 1 through 109 above as if set forth herein at length and in full.

15 93. This Court possesses the inherent authority by its very existence and Nevada's
16 Constitution to provide PAMTP with declaratory relief. *See Mack*, 522 P.3d at 447.

17 94. A justiciable controversy exists that warrants a declaratory judgment pursuant to
18 Nevada's Declaratory Judgment Act, NRS 30.010 to NRS 30.160, inclusive, and 42 U.S.C. § 1983.

19 95. NRS 21.075(1) provides "[e]xecutions on the writ of execution by levying on the
20 property of the judgment debtor may occur only if the sheriff serves the judgment debtor with a
21 notice of the writ of execution pursuant to NRS 21.076 and a copy of the writ. The notice must
22 describe the types of property exempt from execution and explain the procedure for claiming those
23 exemptions in the manner required in subsection 2. The clerk of the court shall attach the notice to
24 the writ of execution at the time the writ is issued."

25 96. NRS 21.075(2) details the notice requirements that must be included within a Notice
26 of Execution.

27 97. NRS 21.076 further mandates "[t]he notice required by NRS 21.05 must be served
28 by the sheriff on the judgment debtor by regular mail at the debtor's last known address or, if the

debtor is represented by an attorney, at the attorney's office. The service must be mailed by the next business day after the day the writ of execution was served."

98. NRS 21.112(1) provides "[i]n order to claim exemption of any property levied on pursuant to this section, the judgment debtor must, within 10 days after the notice of a writ of execution or garnishment is served on the judgment debtor by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on, serve on the sheriff, the garnishee, and the judgment creditor and file with the clerk of the court issuing the writ of execution the judgment debtor's claim of exemption which is executed in the manner set forth in NRS 53.045."

99. PAMTP complied with this statute by serving a Claim of Exemption on the Sheriff and Potashner on August 4, 2023 and filing the Claim of Exemption on August 7, 2023.

100. NRS 21.112(3) sets forth what should have happened next: "An objection to the claim of exemption and notice for a hearing must be filed with the court within 8 judicial days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee. The judgment creditor shall also serve notice of the date of the hearing on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing." The hearing contemplated is to be held by a court, as NRS 21.112(6) illustrates. *See* NRS 21.112(6) ("Unless the court continues the hearing for good cause shown, the hearing on an objection to a claim of exemption to determine whether the property or money is exempt must be held within 7 judicial days after the objection to the claim and notice for a hearing is filed.").

101. Neither Bauhaus nor any other employee of Sheriff's Civil Bureau had any legal authority to decide whether PAMTP's Claim for Exemption was timely or valid.

102. Potashner never filed an objection to PAMTP's Claim of Exemption.

103. NRS 21.112(4) addresses what should happen in such a scenario: "If an objection to the claim of exemption and notice for a hearing are not filed within 8 judicial days after the claim of exemption has been served, the property of the judgment debtor must be released by the person who has control or possession over the property in accordance with the instructions set forth on the

1 form for the claim of exemption provided pursuant to subsection 2 within 9 judicial days after the
2 claim of exemption has been served.”

3 104. Here, however, the Sheriff Defendants have not complied with the statutory mandates
4 of NRS Chapter 21, but instead have blatantly violated them by not giving PAMTP the notice
5 required under NRS 21.112, nor any opportunity to be heard at a hearing before a court on its Claim
6 for Exemption as required by NRS 21.112. Bauhaus, McMahon, and Sheriff’s Civil Bureau lacked
7 legal authority to unilaterally decide whether PAMTP’s Claim for Exemption was untimely or
8 invalid.

9 105. Defendants, therefore, violated PAMTP’s due process rights by completing the
10 August 9 Sheriff’s Sale under procedures and in a manner that violated NRS 21.

11 106. Moreover, PAMTP was given no meaningful notice at all, after the cancellation of
12 the August 9 Sheriff’s Sale, that in fact the sale would proceed as originally scheduled. Nor was
13 PAMPT afforded an opportunity to participate in the sale, as it had intended to do and would have
14 done absent the representations of the Sheriff Defendants the previous day that the sale had been
15 cancelled.

16 107. Defendants further violated PAMTP’s due process rights by completing the August
17 9 Sheriff’s Sale after telling PAMTP and the public (via its website) that the sale had been cancelled.

18 108. PAMPT, therefore, seeks a judgment from this Court declaring that (1) Defendants’
19 actions, individually and collectively, violated NRS 21.075, NRS 21.076, and NRS 21.112; (2) the
20 August 9 Sheriff’s Sale was invalid; and therefore (3) the property—PAMTP’s chose in action—
21 was not sold and remains in the possession of PAMTP.

22 109. PAMPT has been forced to bring this civil action to protect its rights and is therefore
23 entitled to its attorney's fees and costs, under 42 U.S.C. § 1988.

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SECOND CAUSE OF ACTION

(Injunctive and Equitable Relief Setting Aside the August 9th Sale to Doe Purchaser)

Sheriff Defendants

110. PAMPT hereby repeats, realleges and incorporates each of the allegations set forth in paragraphs 1 through 109 above as if set forth herein at length and in full.

111. Article 6, § 6 of the Nevada Constitution provides this Court with the inherent authority to award PAMPT equitable relief such as a permanent injunction. *See City of Sparks v. Sparks Mun. Ct.*, 129 Nev. 348, 357, 302 P.3d 1118, 1124 (2013) (detailing that equitable and injunctive relief is available when constitutional rights are at issue).

112. NRCP 65 additionally provides this Court with the explicit authority to award PAMPT equitable relief such as a permanent injunction.

113. 42 U.S.C. § 1983 also provides this Court with the explicit authority to award PAMPT equitable relief such as a permanent injunction.

114. The August 9 Sheriff Sale has caused PAMTP irreparable harm for which damages are an inadequate remedy.

115. Allowing the August 9 Sheriff Sale to stand will cause PAMPT further irreparable harm for which damages are an inadequate remedy.

116. Both the Nevada and the United States' Constitutions mandate "pre-deprivation notice and hearing"; "postponing the hearing until after the event" is justified "only in extraordinary situations" (none of which are present here) "where some valid governmental interest is at stake." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993).

117. "The purpose of an adversary hearing is to ensure the requisite neutrality that must inform all governmental decision-making. That protection is of particular importance here, where the Government has a direct pecuniary interest in the outcome of the proceeding." *Id.* at 55-56.

118. This is because "[f]air procedures are not confined to the innocent." *Id.* at 62. Every American is entitled to notice and an opportunity to be heard regardless of "the strength" or weakness of the legal claims at issue. *Id.*

1 119. The August 9 Sheriff's Sale was unlawful and violated Nevada law such that
2 unwinding the sale is necessary and proper.

3 120. The plain language of NRS Chapter 21 demonstrates that the Sheriff Defendants
4 violated Nevada law when the August 9 Sheriff's Sale took place.

5 121. PAMTP's Nevada and federal constitutional rights to Due Process and property have
6 been violated.

7 122. The Sheriff's Civil Bureau violated PAMTP's inalienable property rights guaranteed
8 under Nevada's Constitution.

9 123. Moreover, Nevada recognizes that violations of Constitutional rights present, per se,
10 irreparable harm because completely remedying such fundamental liberty and property interests is
11 difficult to quantify to a dollar amount such that compensatory damages are inadequate. *See City of*
12 *Sparks*, 129 Nev. at 357, 302 P.3d at 1124.

13 124. The balance of the equities weighs heavily in PAMTP's favor. None of the
14 Defendants were irreparably harmed. Moreover, state actors like Sheriff McMahon, Bauhaus, and
15 Sheriff's Civil Bureau possess no legally cognizable interest in violating the law and allowing a
16 totally unlawful sale to remain in place. And the public has an interest in the just, speedy resolution
17 to civil actions that comply with Nevada law.

18 125. Returning the Parties to the pre-August 9 Sheriff's Sale position is just and equitable.

19 126. PAMPT has been forced to bring this civil action to protect its rights and is therefore
20 entitled to its attorney's fees and costs under 42 U.S.C. § 1988.

21 127. Because a violation of Nevada's Constitution by State actors such as McMahon,
22 Bauhaus, and the Sheriff's Civil Bureau is a natural and proximate consequence of the injurious
23 conduct under a *Mack* Claim, PAMTP must be awarded special damages of attorney's fees and
24 costs. *See* NRCP 9(g).

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THIRD CAUSE OF ACTION

(Mack Damages Claim for Violating PAMTP's Nevada Constitutional Right to Due Process)

Sheriff Defendants

128. PAMPT hereby repeats, realleges and incorporates each of the allegations set forth in paragraphs 1 through 109 above as if set forth herein at length and in full.

129. The Nevada Legislature provided a broad waiver of sovereign immunity under NRS 41.031 for the violations of Nevada law committed by State and local government officials.

130. The Nevada Supreme Court interpreted this broad waiver to include a waiver for constitutional causes of action. *See Mack*, 522 P.3d at 440.

131. Nevada's Constitution guarantees that "[n]o person shall be deprived of life, liberty, or property without due process of law." Nev. Const. art. 1, § 8(5).

132. Nevada's Constitution also guarantees that every Nevadan possesses an "inalienable property right" to "acquire, possess, and protect" their property from arbitrary government encroachment. Nev. Const. art. 1, § 1.

133. NRS 21.112 provides the necessary requirements of notice and an opportunity to be heard to satisfy Article 1, § 8(2)'s requirements.

134. The Sheriff Defendants violated Nevada statutory and constitutional law when each individually and collectively failed to provide PAMPT due process of law prior to depriving PAMPT of its property.

135. Through the misconduct of the Sheriff Defendants, PAMTP has been significantly damaged in an amount of greater than \$15,000 which will be determined at trial.

136. The reprehensibility of the misconduct the Sheriff Defendants committed is stunning. In order to guard against, punish, and deter future culpable misconduct, the Las Vegas Community should express its outrage and distaste for these constitutional actors' oppressive misconduct. Thus, punitive damages should be awarded in an amount determined at trial.

137. Because a violation of Nevada's Constitution by State actors such as the Sheriff Defendants is a natural and proximate consequence of the injurious conduct under a *Mack* Claim, PAMTP must be awarded special damages of attorney's fees and costs. *See* NRCP 9(g).

FOURTH CAUSE OF ACTION

(Mack Damages Claim for Violating PAMTP's Nevada's Constitutional Inalienable Property Rights Clause)
Sheriff Defendants

138. PAMPT hereby repeats, realleges and incorporates each of the allegations set forth in paragraphs 1 through 109 above as if set forth herein at length and in full.

139. The Nevada Legislature provided a broad waiver of sovereign immunity under NRS 41.031 for the violations of Nevada law committed by State and local government officials.

140. The Nevada Supreme Court interpreted this broad waiver to include a waiver for constitutional causes of action. *See Mack*, 522 P.3d at 440.

141. Nevada's Constitution guarantees that every Nevadan possesses an "inalienable property right" to "acquire, possess, and protect" their property from arbitrary government encroachment. Nev. Const. art. 1, § 1.

142. NRS 21.112 provides the necessary requirements to guard against an arbitrary encroachment of Nevadans' inalienable property rights.

143. The Sheriff Defendants violated Nevada statutory and constitutional law when each individually and collectively failed to provide PAMPT due process of law prior depriving PAMPT of its inalienable property rights.

144. Through the misconduct of the Sheriff Defendants, PAMTP has been significantly damaged in an amount of greater than \$15,000 which will be determined at trial.

145. The reprehensibility of misconduct committed by the Sheriff Defendants is stunning. Their actions, individually and/or jointly and severally represent a reckless and callous disregard to the constitutional rights of others. In order to guard against, punish, and deter future culpable misconduct, the Las Vegas Community should express its outrage and distaste for these constitutional actors' oppressive misconduct. Thus, punitive damages should be awarded in an amount to be determined at trial.

146. Because a violation of Nevada's Constitution by State actors such as McMahill, Bauhaus, and the Sheriff's Civil Bureau is a natural and proximate consequence of the injurious

1 conduct under a *Mack* Claim, PAMTP must be awarded special damages of attorney's fees and
2 costs. *See* NRCP 9(g).

3 **FIFTH CAUSE OF ACTION**

4 **(42 U.S.C. § 1983 Damages—Violations of the Fourteenth Amendment's Due Process Clause)**

5 **Bauhaus**

6 147. PAMPT hereby repeats, realleges and incorporates each of the allegations set forth
7 in paragraphs 1 through 109 above as if set forth herein at length and in full.

8 148. 42 U.S.C. § 1983 provides this Court with jurisdiction to impose individual liability
9 on State actors acting under the color of law who violate fundamental constitutional protections like
10 those of life, liberty, and property without providing notice and an opportunity to be heard.

11 149. The United States Constitution guarantees that "[n]o person shall be deprived of life,
12 liberty, or property without due process of law." U.S. Const. XIV amend.

13 150. NRS 21.112 provides the necessary requirements of notice and an opportunity to be
14 heard to satisfy the Fourteenth Amendment's Due Process requirements.

15 151. Bauhaus violated PAMTP's due process rights when she failed to provide PAMPT
16 due process of law prior to depriving PAMPT of its property.

17 152. Bauhaus did not possess authority to unilaterally resolve PAMTP's Claim of
18 Exemption and proceed with the August 9 Sheriff's Sale while the Claim was still pending. To the
19 contrary, NRS 21 required Potashner to object to the Claim, and that any objection must be resolved
20 by a court.

21 153. NRS 21.112(1)'s text is clear. The court decisions applying this text are clear.
22 Bauhaus was on notice of the statutory requirements, and the Constitution's requirements mandating
23 notice and an opportunity to be heard are bedrock principles.

24 154. Through Bauhaus' misconduct, PAMTP has been significantly damaged in an
25 amount of greater than \$15,000 which will be determined at trial.

26 155. The reprehensibility of Bauhaus's conduct is stunning. In order to guard against,
27 punish, and deter future culpable misconduct, the Las Vegas Community should express its outrage
28

1 and distaste for these constitutional actors' oppressive and fraudulent misconduct. Thus, punitive
2 damages should be awarded.

3 156. PAMPT has been forced to bring this civil action to protect its rights. PAMPT is
4 therefore entitled to its attorney's fees and costs under 42 U.S.C. § 1988.

5 **SIXTH CAUSE OF ACTION**

6 **(NRS 41.031 Damages Action for Civil Conspiracy)**

7 **Potashner and Sheriff Defendants**

8 157. PAMPT hereby repeats, realleges and incorporates each of the allegations set forth
9 in paragraphs 1 through 109 above as if set forth herein at length and in full.

10 158. The Nevada Legislature provided a broad waiver of sovereign immunity under NRS
11 41.031 for the violations of Nevada law committed by State and local government officials.

12 159. Potashner, Sheriff McMahon, Bauhaus, and the Sheriff's Civil Bureau engaged in
13 concerted action to hold the unlawful August 9 Sheriff's Sale.

14 160. After PAMTP timely filed its Claim of Exemption, a representative from Sheriff's
15 Civil Bureau told PAMTP's counsel that the sale would proceed because Potashner intended to go
16 forward notwithstanding the Claim. When PAMTP asked how Sheriff's Civil Bureau could permit
17 the sale in light of PAMTP's duly filed Claim of Exemption, Sheriff's Civil Bureau explained that
18 the office's policy was to defer cancellation decisions to the judgment creditor (here, Potashner) and
19 that the Sheriff's Civil Bureau would follow Potashner's decision.

20 161. Defendants' concerted action intended to accomplish the unlawful objective with the
21 result of harming PAMTP.

22 162. Defendants' actions individually and collectively damaged PAMTP in an amount
23 greater than \$15,000 which will be determined at trial.

24 163. The reprehensibility of Potashner, Sheriff McMahon and Bauhaus' conduct is
25 stunning. In order to guard against, punish, and deter future culpable misconduct, the Las Vegas
26 Community should express its outrage and distaste for these constitutional actors' oppressive and
27 fraudulent misconduct. Thus, punitive damages should be awarded.
28

1 164. PAMPT has been forced to bring this civil action to protect its rights and should
2 therefore be awards its attorney fees and costs.

3 **SEVENTH CAUSE OF ACTION**

4 **(NRS 41.031 Damages Action for Negligent Misrepresentation)**

5 **Sheriff Defendants**

6 165. PAMPT hereby repeats, realleges and incorporates each of the allegations set forth
7 in paragraphs 1 through 109 above as if set forth herein at length and in full.

8 166. The Nevada Legislature provided a broad waiver of sovereign immunity under NRS
9 41.031 for the torts committed by State and local government officials.

10 167. Sheriff McMahon, Bauhaus, and Sheriff's Civil Bureau were under a public duty to
11 provide accurate information to PAMTP and the public related to the forced sale of PAMTP's
12 property.

13 168. On August 8, 2023, Sheriff McMahon, Bauhaus, and Sheriff's Civil Bureau cancelled
14 the August 9 Sheriff's Sale correctly and in accordance with NRS Chapter 21.

15 169. Sheriff's Civil Bureau, Bauhaus, and Sheriff McMahon's knowledge of the law is
16 self-evident by the very enactment of NRS Chapter 21.

17 170. Defendants each individually and jointly knew that PAMTP timely filed a Claim of
18 Exemption which barred the August 9 Sheriff's Sale.

19 171. Because of Defendants' knowledge of NRS Chapter 21 and PAMTP's Claim of
20 Exemption, each had a duty to speak the truth and provide accurate and timely information to
21 PAMTP based on NRS Chapter 21.

22 172. Sheriff's Civil Bureau's August 8, 2023 representations to PAMTP that the sale had
23 been cancelled—through its website and by its agents communications to PAMTP's counsel's
24 office—were false and the Sheriff Defendants knew or should have known, and were negligent in
25 not knowing, that they were false.

26 173. The false representations were the product of Sheriff McMahon's, Bauhaus's, and
27 Sheriff's Civil Bureau's negligence.
28

174. Additionally, the Sheriff Defendants were on notice before the August 9 Sheriff's Sale that, because of their August 8, 2023 representations, PAMTP's representative would not be present for the sale.

175. The Sheriff Defendants possessed additional reasons to suspend the sale and hold it on a different day.

176. Thus, Sheriff McMahon, Bauhaus, and the Sheriff's Civil Bureau's decision to proceed with the August 9 Sheriff's Sale damaged PAMTP in an amount greater than \$15,000 which will be determined at trial.

177. PAMPT has been forced to bring this civil action to protect its rights. PAMPT is therefore entitled to its attorney's fees and costs.

EIGHTH CAUSE OF ACTION

(NRS 41.031 Damages Action for Negligence)

Potashner, Sheriff McMahon, Bauhaus, Sheriff's Civil Bureau

178. PAMPT hereby repeats, realleges and incorporates each of the allegations set forth in paragraphs 1 through 109 above as if set forth herein at length and in full.

179. The Nevada Legislature provided a broad waiver of sovereign immunity under NRS 41.031 for the torts committed by State and local government officials.

180. Potashner, Sheriff McMahon, Bauhaus, and Sheriff's Civil Bureau had a duty of care to enforce and abide by Nevada law as detailed in NRS Chapter 21

181. To meet that duty of care, Potashner, Sheriff McMahon, Bauhaus, and Sheriff's Civil Bureau were required to ensure PAMTP received proper notice and be provided an opportunity to be heard.

182. Potashner, Sheriff McMahon, Bauhaus, and Sheriff's Civil Bureau likewise possessed the duty to ensure the laws of Nevada were complied with prior to alienating PAMTP's property.

183. Potashner, Sheriff McMahon, Bauhaus, and Sheriff's Civil Bureau, breached their duties.

184. Potashner, Sheriff McMahon, Bauhaus, and Sheriff's Civil Bureau, are the proximate cause of PAMTP's harm.

185. Potashner, Sheriff McMahon, Bauhaus, and Sheriff's Civil Bureau, each individually and/or jointly has caused significant damages to PAMTP in an amount of greater than \$15,000 which will be determined at trial.

186. PAMPT has been forced to bring this civil action to protect its rights. PAMPT is therefore entitled to its attorney's fees and costs.

NINTH CAUSE OF ACTION

(NRS 41.031 Damages Action for Conversion)

Potashner, Sheriff McMahon, Bauhaus, Sheriff's Civil Bureau

187. PAMPT hereby repeats, realleges and incorporates each of the allegations set forth in paragraphs 1 through 109 above as if set forth herein at length and in full.

188. The Nevada Legislature provided a broad waiver of sovereign immunity under NRS 41.031 for the torts committed by State and local government officials.

189. By completing the August 9 Sheriff's Sale in violation of NRS 21.112, Potashner, Sheriff McMahon, Bauhaus, and Sheriff's Civil Bureau, individually and/or jointly, unlawfully transferred possession of PAMTP's personal property and interfered with PAMTP's rights to that property, including its rights to notice and an opportunity to be heard before the property was forcibly sold, and its rights to notice of and an opportunity to participate in the sale.

190. The actions by Defendants are inconsistent with Nevada law and PAMTP's property rights.

191. The actions by Defendants derogated, excluded, and defied PAMTP's property rights as defined by NRS Chapter 21.

192. The actions by Defendants were tortious, unlawful, and cannot be justified or excused by any law.

193. Potashner, Sheriff McMahon, Bauhaus and Sheriff's Civil Bureau are the proximate and direct cause of PAMTP's harm.

194. Potashner, Sheriff McMahon, Bauhaus, and Sheriff's Civil Bureau each, individually and/or jointly, has caused significant damages to PAMTP in an amount of greater than \$15,000 which will be determined at trial.

195. The reprehensibility of Defendants' misconduct is stunning. In order to guard against, punish, and deter future culpable misconduct, the Las Vegas Community should express its outrage and distaste for these constitutional actors oppressive and fraudulent misconduct. Thus, punitive damages should be awarded.

196. PAMPT has been forced to bring this civil action to protect its rights. PAMPT is therefore entitled to its attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, PAMPT prays for relief against Defendants as follows:

1. For the equitable relief, including injunctive relief, unwinding the August 9 Sheriff's Sale and placing all of the Parties in their pre-sale, status quo position;
2. For declaratory relief that the government defendants violated NRS Chapter 21;
3. For declaratory relief that the August 9 Sheriff's Sale was invalid.
4. For declaratory relief that PAMTP's property—its chose in action—was not sold and remains in the possession of PAMTP.
5. For an award of compensatory and special damages, including attorneys' fees and costs in an amount in excess of \$15,000, to be determined at trial;
6. For nominal damages of at least \$1;
7. For punitive damages to be the jury determined at trial;
8. For an award of special damages for Plaintiff's *Mack* Claims;
9. For an award of attorney fees and costs as the prevailing plaintiff under 42 U.S.C. §

1988;

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10. For prejudgment and post-judgment interest at the highest rate permitted by law; and

11. Any other relief this Court deems just and proper.

DATED this 14th day of August, 2023.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III
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Attorneys for Plaintiff PAMTP, LLC

VERIFICATION

I, Adam Kahn, manager for PAMTP, LLC have read the foregoing Verified Complaint, I know the contents thereof, and I declare under penalty of perjury under the laws of the State of Nevada that the same is true of my own knowledge, except for those matters stated therein on information and belief, and as for those matters, I believe them to be true.

Dated this 14th day of August 2023



Adam Kahn, Manager for PAMTP, LLC

EXHIBIT “3”

EXHIBIT “3”

MTRO

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Attorneys for Plaintiff PAMTP LLC

ENTETED kl

DISTRICT COURT

CLARK COUNTY, NEVADA

PAMTP, LLC a Delaware limited liability
company, an individual,

Plaintiff,

v.

CLARK COUNTY ex rel., SHERIFF'S
CIVIL BUREAU, an entity within the
subdivision of Clark County, Nevada;
KEVIN McMAHILL in his official capacity
as Sheriff for Las Vegas Metropolitan Police
Department; MARTINA BAUHAUS, in her
official and individual capacity as General
Counsel for Sherriff's Civil Bureau;
KENNETH POTASHNER, an individual;
JOHN DOE PURCHASER, an individual,
and DOES 1-10, inclusive,

Defendants.

Case No.: A-23-875894-B

Dept. No.: 27

**PLAINTIFF'S EMERGENCY REQUEST
FOR A TEMPORARY RESTRAINING
ORDER**

AND

**PLAINTIFF'S REQUEST FOR AN ORDER
SHORTENING TIME TO HOLD AN
EX PARTE HEARING ON PLAINTIFF'S
REQUEST AND EXPEDITING BRIEFING
AND SETTING AN EXPEDITED HEARING
ON PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

(HEARING REQUESTED)

Plaintiff PAMTP, LLC, a Delaware limited liability company and Judgment Debtor ("PAMTP") brings its Emergency Request for Temporary Restraining Order and Motion for Preliminary Injunction with its request for an Order Shortening Time ("Emergency TRO Request") against Defendants Clark County *ex rel.* Las Vegas Metropolitan Police Department Sheriff's Civil Bureau, ("Sheriff's Civil Bureau"); Las Vegas Metropolitan Police Department Sheriff Kevin McMahon ("Sheriff McMahon"); Sheriff's Civil Bureau General Counsel Martina Bauhaus ("Bauhaus"); Kenneth Potashner ("Potashner"), the Judgment Creditor and the purchaser of PAMTP's property at an unlawful execution sale conducted by the Sheriff's Civil Bureau.

1 This Emergency TRO Request is made in an action commenced by PAMTP on August 14,
2 2023 to resolve an ownership dispute over PAMTP's property, a chose in action against Defendant
3 Potashner and others, which is currently on appeal to the Nevada Supreme Court. Separately,
4 Potashner submitted an August 14, 2023 filing with the Nevada Supreme Court, contending he
5 purchased PAMTP's chose in action at an August 9 Sheriff's Sale and seeking to dismiss PAMTP's
6 appeal. However, as demonstrated herein and by the accompanying declarations and exhibits in
7 support, the sale was irrefutably procedurally improper and violated PAMTP's rights to due process
8 under the Nevada and U.S. Constitutions. In conducting this unlawful sale, Sheriff McMahon,
9 Bauhaus, and Sheriff's Civil Bureau (collectively "Sheriff Defendants"), apparently deferred to the
10 wishes of the judgment creditor—Potashner—over the dictates and protections of applicable
11 Nevada law. PAMTP seeks relief in this action declaring that the sale was invalid and unwinding
12 the sale.

13 This Emergency TRO Request seeks a temporary restraining order to prevent the Sheriff
14 Defendants from finalizing the sale and, if already finalized, preventing Potashner from taking any
15 action with respect to PAMTP's property—including seeking dismissal of PAMTP's appeal—until
16 the ownership dispute is resolved. If such emergency relief is not granted, PAMTP's claims may
17 be dismissed before the dispute is resolved, the dispute would become moot, and PAMTP would
18 face serious irreparable harm from the permanent loss of its claims. The facts surrounding the sale
19 are egregious and clearly warrant emergency relief.

20 The underlying chose in action consists of claims of certain shareholders that were directly
21 harmed when Potashner, the former CEO of Parametric Sound Corporation, engineered a merger
22 between Parametric and another company in 2013 and 2014 by means of manipulation, coercion,
23 and fraud. A class action was brought against Potashner and other defendants, ultimately settling
24 in 2020. Certain shareholders opted out of the settlement and formed PAMTP to pursue the opt-
25 out litigation. Although PAMTP lost a trial on its breach-of-fiduciary-duty claims, its appeal
26 remains pending before the Nevada Supreme Court. After the trial, the district court ordered
27 PAMTP to pay Potashner's costs, which PAMTP has also challenged in the appeal currently
28 pending before the Nevada Supreme Court. PAMTP's breach-of-fiduciary-duty claims, including

1 the merits appeal now pending, constitute PAMTP's chose in action, which is the property that
2 Potashner purchased at the unlawful Sheriff's sale.

3 In May 2023, Potashner obtained a Writ of Execution on his judgment for costs. He
4 submitted a Notice of Execution to Sheriff's Civil Bureau in June 2023, but the Notice of Execution
5 was not served on PAMTP until July 31, 2023. The service of that Notice triggered a 10-day
6 deadline for PAMTP to file a claim of exemption—i.e., PAMTP had until August 10 to file a Claim
7 of Exemption from the execution. *See* NRS 21.112. However, Sheriff's Civil Bureau had
8 previously scheduled a sale on August 9 ("August 9 Sheriff's Sale")—before the deadline expired.
9 The late service of the Notice should have halted the August 9 Sheriff's Sale. PAMTP served a
10 Claim of Exemption upon the Sheriff Defendants and Potashner and timely filed the Claim of
11 Exemption on August 4 and August 7, 2023, respectively, thereby triggering the Judgment
12 Creditor's 8-judicial-day deadline to file an objection. PAMTP's Claim of Exemption also should
13 have halted the August 9 Sheriff's Sale. Despite these procedural requirements of NRS 21.112, the
14 Sheriff Defendants conducted the sale anyway.

15 Before the sale, PAMTP's counsel contacted the Sheriff's Civil Bureau and communicated
16 directly with Bauhaus, explaining that the sale should be cancelled. As a result, on the afternoon
17 of August 8—the day before the scheduled sale—Sheriff's Civil Bureau unequivocally stated, both
18 on its official website and in a telephone conversation with PAMTP's counsel's office, that the sale
19 had been cancelled. A PAMTP representative, who was on his way to Las Vegas to appear at the
20 sale to purchase PAMTP's chose in action, learned of the cancellation of the sale in-flight and
21 immediately returned home on the night of August 8. By law, that should have been it—the sale
22 should not have proceeded.

23 Unfortunately, the cancellation of the unlawful sale was short-lived. Inexplicably and
24 without any notice to PAMTP, Bauhaus decided to proceed with the sale anyway. PAMTP's
25 counsel vigorously objected when he learned that the sale would go forward; Bauhaus ignored his
26 contentions, and the property—PAMTP's chose in action—was sold.

27 In short, Bauhaus and the other Sheriff Defendants (apparently encouraged by Potashner):
28 (1) proceeded to conduct a sale of PAMTP's chose in action without allowing for judicial

1 determination of PAMPT's timely-filed exemption; and (2) conducted the sale despite having
2 cancelled it the previous day, resulting in PAMTP not having notice and opportunity to appear and
3 bid. This double whammy of procedural violations amounts to a deprivation of Nevada statutory
4 law and PAMTP's constitutional rights to due process and property protection under the federal
5 and Nevada Constitutions.

6 PAMTP now comes to this Court and requests emergency injunctive and equitable relief—
7 specifically, the unwinding of this ultra vires, misbegotten sale. PAMTP asks for this relief today.
8 If the relief is not granted, Potashner may succeed in dismissing the claims before PAMTP has a
9 chance to vindicate its rights in this action, causing permanent loss of PAMTP's property and
10 irreparable harm to PAMTP.

11 DATED this 15th day of August, 2023.

12 McDONALD CARANO LLP

13 By: /s/ George F. Ogilvie III
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20 *Attorneys for Plaintiff PAMTP, LLC*
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DECLARATION OF GEORGE F. OGILVIE III IN SUPPORT OF
APPLICATION FOR ORDERS SHORTENING TIME

I, George F. Ogilvie III, declare as follows:

1. I am an attorney and partner in the law firm of McDonald Carano LLP, co-counsel for Plaintiff PAMTP, LLC, a Delaware limited liability company (“PAMTP”).

2. I submit this declaration as required under EDCR 2.26 and in support of Plaintiff’s Emergency Request for Temporary Restraining Order, Motion for Preliminary Injunction, and Requests for Orders Shortening Time (“Emergency TRO Request”).

3. This Declaration is made of my own personal knowledge, and I am competent to testify thereto if called on to do so.

4. As detailed more fully below in the Emergency TRO Request, PAMTP is an entity whose sole purpose is to advance the legal claims of its members against certain defendants related to a merger between Parametric Sound Corporation and another entity. The PAMTP litigation—which has resulted in a trial decision in favor of the defendants and a judgment for costs in favor of, among others, Potashner—is pending before the Nevada Supreme Court and the briefing was completed in July 2023. *See* Case No. 835908.

5. In May 2023, Potashner submitted his Writ of Execution as he tried to levy on PAMTP’s chose in action. (*See Exhibit 1*, Writ of Execution, May 9, 2023). The Writ of Execution was served on my office on May 11, 2023. On June 1, 2023, Potashner submitted to Sheriff’s Civil Bureau:

(i) a revised Writ of Execution (*see Exhibit 1-A*, Writ of Execution, stamped “Received” by the Sheriff’s Civil Bureau on June 1, 2023 and received in my office on July 31, 2023);

(ii) a Notice of Writ of Execution (*see Exhibit 2*, Notice of Execution, stamped “Received” by the Sheriff’s Civil Bureau on June 1, 2023 and received in my office on July 31, 2023); and

(iii) a Notice of Sheriff's Sale (*see* **Exhibit 3**, Notice of Sheriff's Sale stamped "Received" by the Sheriff's Civil Bureau on June 1, 2023 and received in my office on July 31, 2023).

6. My office did not receive the Notice of Execution until July 31, 2023. In accordance with NRS 21.112, PAMTP served and timely filed its Claim of Exemption from Execution. (*See* **Exhibit 4**, Claim of Exemption, served August 4 and filed August 7, 2023; *see also* **Exhibit 4-A**, Affidavit of Service on Sheriff, August 4, 2023; **Exhibit 4-B**, Affidavit of Service on Potashner, August 4, 2023.)

7. Despite the mandatory requirements found in NRS 21.112 directing to the judiciary the resolution of a disputed Claim of Exemption, Sheriff's Civil Bureau and Bauhaus initially refused to cancel the August 9 Sheriff's Sale. (*See* **Exhibit 5**, emails between G. Ogilvie and M. Bauhaus between August 8-9, 2023).

8. After several emails and because Bauhaus refused to answer my inquiries, my office reviewed the Sheriff's Civil Bureau's website and called Sheriff's Civil Bureau offices and confirmed around 3:30 PM on August 8, 2023 that the August 9 Sheriff's Sale had been canceled. (*See* **Exhibit 6**, Show Decl. ¶¶6-12). The cancellation was later reversed—presumably by Bauhaus—without notice to PAMTP.

9. Because of Bauhaus and Sheriff's Civil Bureau's misconduct, one of PAMTP's Managers Adam Kahn, who was on a flight from Newark, New Jersey to Las Vegas on August 8, returned home on a red-eye flight rather than staying for the August 9 Sheriff's Sale. (*See* **Exhibit 7**, Kahn Decl.). But for Sheriff's Civil Bureau's actions, Mr. Kahn would have attended the August 9 Sheriff Sale with the intention to purchase PAMTP's chose in action. (*See id.*)

10. On the morning of August 9, 2023, I learned that the August 9 Sheriff's Sale would be conducted despite the cancellation of the sale the previous day. I immediately engaged in further communications with Bauhaus to protest Sheriff's Civil Bureau conducting the sale. (*See* **Exhibit 5**, G. Ogilvie email to M. Bauhaus, August 9, 2023, at 8:46 am). Bauhaus rebuffed my contentions regarding statutory and due process violations.

11. The Sheriff's Sale occurred at or about 9:00 am on August 9, 2023, resulting in Potashner purchasing PAMTP's chose in action for \$40,500.

12. The sale violated Nevada law and PAMTP's constitutional rights.

13. My office subsequently attempted to obtain documentation and information about the completed sale from Sheriff's Civil Bureau. On the day of the August 9 Sheriff's Sale, a paralegal from my office made two calls to Sheriff's Civil Bureau, leaving a voice mail message for the Sheriff's Civil Bureau agent with whom she had previously spoken about this execution. The day following the August 9 Sheriff's Sale, my paralegal again called Sheriff's Civil and left a voice mail message to request the documentation/information about the completed sale.

14. Because Sheriff's Civil Bureau did not respond to these requests, I sent an email to Bauhaus at 9:27 am on August 10, 2023, advising of Sheriff's Civil Bureau's failure to respond and requesting a copy of the completed documentation. (*See Exhibit 8*, emails between G. Ogilvie and M. Bauhaus between August 10-14, 2023). Bauhaus did not respond, so I sent a follow-up email to Bauhaus at 5:21 pm that same day, requesting confirmation of whether the sale was conducted and, if it was, requesting a copy of the completed Writ of Execution. (*See id.*)

15. Bauhaus again did not respond, so I sent another follow-up email to Bauhaus the following day, August 11, 2023. (*See id.*) Because Bauhaus again failed to respond, I had a runner from my office go to Sheriff's Civil Bureau about 3:30 pm on August 11 to make an in-person request for the documentation of the completed August 9 Sheriff's Sale. My runner was advised that the documentation was not ready for copy yet and that my runner should call first and come back on Monday (August 14, 2023). Prior to sending my runner back on August 14, my secretary contacted Sheriff's Civil Bureau, which advised that the office had been directed to have us contact the General Counsel (Bauhaus). I therefore sent another email to Bauhaus at 11:51 am on August 14, 2023, advising of Sheriff's Civil Bureau's instruction to contact the General Counsel, again noting Bauhaus' failure to respond to my prior emails, and again requesting the completed sale documentation. (*See id.*) Bauhaus finally responded at 1:35 pm that "the documentation has not been finalized and as such cannot be provided." (*See id.*)

...

ORDER SHORTENING TIME

Good cause appearing, IT IS HEREBY ORDERED that **PLAINTIFF'S EMERGENCY REQUEST FOR A TEMPORARY RESTRAINING ORDER** shall be heard in Department 27 on the 18th day of August, **2023**, at the hour of 1:15 ~~a.m.~~^{xx}**p.m.**, or as soon thereafter as counsel may be heard.

Good cause appearing, IT IS HEREBY ORDERED that **PLAINTIFF'S REQUEST FOR AN ORDER SHORTENING TIME ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION** shall be heard in Department 27 on the 18th day of August, **2023**, at the hour of 1:15 ~~a.m.~~^{xx}**p.m.**, or as soon thereafter as counsel may be heard.

Any Opposition must be filed by _____

Any Reply brief must be filed by _____

This may be a preliminary hearing only. Service should be attempted.

DATED this _____ day of August, 2023.

Dated this 17th day of August, 2023

Nancy L Alif
DISTRICT COURT JUDGE

0D1 1A7 44FA 2440
Nancy Alif
District Court Judge

Respectfully submitted by

MCDONALD CARANO LLP

By: /s/ George F. Ogilvie III
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTS AS PLEADED**

3 **A. PAMTP's Chose In Action.**

4 The property sold at the auction at issue here is PAMTP's chose in action *against* Potashner.
5 Briefly, PAMTP alleges that Potashner, as CEO and board member of Parametric Sound
6 Corporation ("Parametric"), committed fraud and other misconduct in connection with a merger.
7 (Verified Compl. ¶ 19). A class action alleging that and other claims was filed in 2013 and
8 ultimately settled in 2020 for approximately \$10 million. (*Id.* ¶ 20). PAMTP was assigned the
9 rights to pursue claims of certain shareholders who opted out of the class ("PAMTP litigation") (*id.*
10 ¶ 21), and it commenced litigation in May 2020. *See PAMTP LLC v. Potashner*, Case No. A-20-
11 815308-B. The PAMTP litigation proceeded in the ordinary course from inception through trial
12 before the Honorable (Ret.) Judge Elizabeth Gonzalez. (*Id.* ¶ 22.) On the eve of trial, all the
13 Director Defendants except Potashner settled with PAMTP. (*Id.*)

14 In the PAMTP litigation, the facts that emerged constituted an overwhelming record of
15 Potashner's improper scheme to mislead Parametric's Board and shareholders into approving the
16 merger at a value that dramatically diluted Parametric's shareholders and sold their control rights
17 for grossly insufficient consideration. (*Id.* ¶ 23.) There was even misconduct during the litigation,
18 as Judge Gonzalez found that Potashner and others destroyed and concealed evidence from
19 discovery, resulting in Judge Gonzalez issuing sanctions. (*Id.*; *see also Exhibit 4.*) Despite this
20 remarkable record, Judge Gonzalez concluded, on the basis of relatively undeveloped law in
21 Nevada governing direct shareholder fiduciary duty claims, that she was constrained to enter
22 judgment for Potashner under NRCP 52(c). (Verified Compl. ¶ 23.)

23 Judge Gonzalez retired soon after. (*Id.* ¶ 24.) The matter was administratively reassigned
24 to the Honorable Judge Susan Johnson. (*Id.*) Potashner moved for both attorney's fees and costs
25 under NRCP 68(f)(1)(b) and NRS 18.020 respectively. (*Id.* ¶ 25.) Judge Johnson denied
26 Potashner's motion for attorney's fees but granted Potashner's motion for costs. (*Id.* ¶ 26.) Judge
27 Johnson memorialized this decision in a Second Amended Judgment which included an award of
28

1 \$481,842.08 in costs that PAMTP owed Potashner (\$397,147.15 in principal and \$86,694.93 in pre-
2 judgment interest). (See Second Am. Judgment, Case No. A-20-815308-B, Dec. 18, 2022, on file.)

3 PAMTP timely appealed the Second Amended Judgment and multiple appeals arising from
4 the PAMTP litigation were then consolidated before the Nevada Supreme Court. (See Case Nos.
5 835908.) Briefing in the appeal completed on July 11, 2023. (Verified Compl. ¶ 27). PAMTP
6 argues on appeal that (1) the judgment should be vacated and the case remanded for a new trial (in
7 which case the costs award would be vacated entirely) and, (2) in the alternative, the costs award
8 should be substantially reduced.

9 **B. Notice of the Sheriff's Sale.**

10 In May 2023, Potashner obtained a Writ of Execution on the Second Amended Judgment.
11 (See **Exhibit 1**, Writ of Execution, May 9, 2023.) Potashner sought to levy \$499,074.08 of
12 PAMTP's property (the \$481,842.08 in the Second Amended Judgment plus post-judgment
13 interest). (*Id.*) Potashner later submitted a Notice of Execution. (See **Exhibit 1-A**, Writ of
14 Execution, stamped "Received" by the Sheriff's Civil Bureau on June 1, 2023, and received in
15 PAMTP's counsel's office on July 31, 2023; see also **Exhibit 2**, Notice of Execution stamped June
16 1, 2023.) The Notice of Execution contains a section entitled "Procedure for Claiming Exempt
17 Property" which states:

18 If you believe that the money or property taken from you is exempt, you must
19 complete and file with the clerk of the court an executed claim of exemption. A
20 copy of the claim of exemption must be served upon the sheriff, the garnishee and
21 the judgment creditor within 10 days after the notice of execution or garnishment is
22 served on you by mail pursuant to NRS 21.076 which identifies the specific property
23 being levied on. The property must be released by the garnishee or the sheriff within
24 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee
25 and judgment creditor, unless the sheriff or garnishee received a copy of an objection
26 to the claim of exemption and a notice for a hearing determining the issue of
27 exemption. If this happens, a hearing will be held to determine whether the property
28 or money is exempt.

24 (**Exhibit 2**, at 8:1-10.) This language mirrors NRS 21.112, NRS 21.076, and NRS 21.075, which
25 detail the procedures that must be followed before property may be taken by the state and forcibly
26 sold in a Sheriff's sale. Potashner likewise submitted a Notice of Sheriff's Sale. (See **Exhibit 3**,
27 Notice of Sheriff's Sale stamped June 1, 2023.) The Notice of Sheriff's Sale detailed that Sheriff's

Civil Bureau would conduct a public auction at the Regional Justice Center, 200 Lewis Ave., Las Vegas, Nevada 89155, on August 9, 2023, at 9:00 am. (*Id.* at 4.)

PAMTP first received both the Notice of Execution and Notice of Sheriff's Sale on July 31, 2023, via regular mail to PAMTP's counsel. (*See* Ogilvie Decl. ¶ 6; **Exhibit 7**, Kahn Decl. ¶ 3.) At that point, PAMTP had 10 days—i.e., until August 10, 2023—to file a claim of exemption. That meant the August 9 Sheriff's Sale could not go forward.

On August 4 and August 7, 2023, respectively, and in accordance with NRS 21.112(1)'s 10-day deadline, PAMTP timely served and filed its Claim of Exemption. (*See* **Exhibit 4**, Claim of Exemption from Execution, served on August 4, 2023 and filed August 7, 2023.) Again, because PAMTP timely filed a Claim of Exemption, Sheriff's Civil Bureau should have cancelled or suspended the August 9 Sheriff's Sale pending judicial resolution of PAMTP's Claim. *See* NRS 21.112(1).

Shortly after filing its Claim of Exemption, PAMTP contacted the Sheriff's Civil Bureau to confirm it would cancel the August 9 Sheriff's Sale as mandated by Nevada law. (**Exhibit 6**, Show Decl. ¶¶ 7-8.) During this communication, Sheriff's Civil Bureau agents explained that Sheriff Civil Bureau had emailed Potashner and asked if Potashner intended to cancel the August 9 Sheriff's Sale. (*Id.* ¶ 9.) When PAMTP asked how Sheriff's Civil Bureau could permit the sale given PAMTP's duly filed Claim of Exemption, Sheriff's Civil Bureau explained that the office's policy is to defer cancellation decisions to the judgment creditor (Potashner) and that the Sheriff's Civil Bureau would follow the judgment creditor's (here, Potashner's) decision. (*Id.* ¶¶ 11-12.)

C. PAMTP Engaged Directly with Bauhaus on August 8, 2023 and Demanded That the Sheriff's Civil Bureau Cancel the August 9 Sheriff's Sale.

It was deeply concerning that Sheriff's Civil Bureau would, in violation of clear statutory requirements, defer to Potashner—who obviously stood to gain by seizing PAMTP's claim against him out from under it—on whether to postpone the sale. Therefore, on August 8, the day before the scheduled sale, PAMTP's counsel initiated communication directly with Bauhaus to protest the scheduled sale. (*See* **Exhibit 5**, August 8-9, 2023 emails between G. Ogilvie and M. Bauhaus.) PAMTP's counsel attached the "Claim of Exemption from Execution that was served on Sheriff's

1 Civil on Friday and filed yesterday morning.” (*Id.*, G. Ogilvie email to M. Bauhaus, August 8,
2 2023, at 10:01 am). The email further explained that, “pursuant to NRS 21.112, the sale should be
3 canceled pending a judicial determination of the judgment creditor’s objection to the exemption
4 (assuming the judgment debtor files an objection); however, Sheriff’s Civil has informed my office
5 that tomorrow’s sale is going forward.” (*Id.*) PAMTP’s counsel requested Bauhaus call him
6 because he did not “understand why Sheriff’s Civil is not complying with the statute.” (*Id.*).
7 Bauhaus failed to call PAMTP’s counsel.

8 Rather than address PAMTP’s valid criticisms of the Sheriff Civil Bureau’s inaction,
9 Bauhaus responded that “[t]he reason the sale is going forward is because the statute requires you
10 to claim an exemption 10 days after you were served with the notice of the execution. [The Claim
11 of Exemption] was received well after the 10 days and as such is untimely.” (**Exhibit 5**, M. Bauhaus
12 email to G. Ogilvie, August 8, 2023, at 1:35 pm.)

13 PAMTP’s counsel responded, “[w]hile my office was served with a Writ of Execution on
14 May 11, 2023, we did not receive either the attached Notice of Execution [or] the Attached Writ of
15 Execution until July 31, 2023, so the exemption was served and timely filed.” (**Exhibit 5**, G.
16 Ogilvie email to M. Bauhaus, August 8, 2023, at 2:46 pm.) Bauhaus doubled down, insisting, “You
17 did receive the Writ of Execution in June. That is when your 10 days started. Notice of Sheriffs
18 Sale is different.” (*Id.*, M. Bauhaus email to G. Ogilvie, August 8, 2023, at 1:35 pm.) Bauhaus
19 failed to provide any documentation or proof supporting her assertion that service occurred or
20 disputing PAMTP’s claim that service had not occurred before July 31, 2023. (*See id.*)

21 PAMTP’s counsel responded, “I believe you are mistaken. The statutes refer specifically
22 to when the judgment debtor is served with a ‘notice of a writ of execution’, which is a specific
23 form set forth in NRS 21.075 (attached). The compliant Notice of Execution (also attached) was
24 not served until July 31. Therefore, the exemption was timely filed and served.” (*Id.*, G. Ogilvie
25 email to M. Bauhaus, August 8, 2023, at 3:18 pm.) PAMTP’s counsel also provided the statutory
26 text of NRS 21.112, NRS 21.076, NRS 21.075 to demonstrate why PAMTP’s timely-filed
27 exemption mandated the August 9 Sheriff’s Sale be cancelled or at least postponed until a neutral
28 judge resolved the validity of PAMTP’s Claim. (*Id.*) As PAMTP’s counsel explained, “[t]he Writ

of Execution, by itself, required the judgment debtor to take no action. It is the NRS 21.075(2) Notice of Execution that triggers the claiming of an exemption.” (*Id.*) Bauhaus did not respond to PAMTP’s email.

Instead, a Sheriff’s Civil Bureau officer, agent, and/or employee was evidently instructed to cancel the sale, and the sale was accordingly cancelled. (Verified Compl. ¶ 55.) Shortly after PAMTP’s final communication to Bauhaus on August 8, PAMTP checked Sheriff’s Civil Bureau’s website, which reflected that the August 9 Sheriff’s Sale had been canceled:

08/09/2023	A-13-686890-B CHOSE IN ACTION	Holland & Hart 702-669-4600	CANCELLED
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(**Exhibit 6**, Show Decl. ¶ 13.) PAMTP’s counsel’s office additionally called Sheriff’s Civil Bureau to confirm the website’s change noting the August 9 Sheriff Sale had been cancelled. (*Id.* ¶ 14.) Sheriff’s Civil Bureau confirmed that the Sale had indeed been cancelled. (*Id.* ¶ 15.)

D. PAMTP Co-Manager Kahn was on a Flight to Las Vegas When the Sheriff’s Civil Bureau Cancelled the August 9 Sheriff’s Sale, Which Induced Mr. Kahn to Return Home and Caused PAMTP to Miss the Sheriff’s Sale.

PAMTP believed the sale should not go forward on August 9, 2023, both because the notice was not served until July 31, 2023 *and* because PAMTP had timely filed a Claim of Exemption, which could not and would not be resolved before August 9. Nevertheless, PAMTP made significant preparations to protect its property rights in the event the sale unlawfully proceeded. (See **Exhibit 7**, Kahn Decl. ¶¶ 2-16.) Specifically, PAMTP planned to attend the auction and purchase its chose in action. PAMTP co-manager Adam Kahn worked with bankers to secure funding for the purchase. (*Id.* ¶ 5.) On August 7, 2023, Mr. Kahn bought an airline ticket from Newark, New Jersey to Las Vegas, Nevada. (*Id.* ¶ 6; *see also* **Exhibit 7-A** (receipts for original flight).) Mr. Kahn likewise reviewed Sheriff’s Civil Bureau website to confirm the location of the Sheriff’s Sale in Las Vegas. (**Exhibit 7**, Kahn Decl. ¶ 7.) Mr. Kahn also inquired about how he could learn if the auction would be cancelled for any reason. (*Id.* ¶ 8.) Mr. Kahn recalls that Sheriff’s Civil Bureau explained, in substance, that the website would be “where you get definitive information and it’s updated in almost real-time. If the auction is canceled, you will see it there.” (*Id.* ¶ 9; *see also id.* ¶ 10 (detailing that Mr. Kahn researched Nevada law to determine whether the

1 Sheriff's Civil Bureau had an affirmative notification requirement for a cancelled sale).) Mr. Kahn
2 reviewed Sheriff's Civil Bureau's website on August 8, 2023, saw that the sale had not been
3 cancelled, withdrew significant sums of money, and took it with him to Las Vegas to be present for
4 the sale to purchase the chose in action. (*Id.* ¶ 10). Mr. Kahn also verified the locations of his
5 banking institution in Las Vegas so that he could withdraw even more funds to ensure he had over
6 \$500,000 on hand for the Sheriff's Sale to ensure PAMTP's rights were protected. (*Id.*) Mr. Kahn
7 also made a hotel reservation for August 8, 2023 at the Golden Nugget due to its close proximity
8 to the Sheriff's Sale. (*Id.* ¶ 11; *see also* **Exhibit 7-B** (receipt for Golden Nugget at 6:31 pm EDT).)

9 At 6:41 pm EDT on August 8, while on the flight to Las Vegas, PAMTP's counsel notified
10 Mr. Kahn of the back-and-forth communications with Bauhaus and that, ultimately, the sale had
11 been cancelled. (**Exhibit 7**, ¶ 12.) Mr. Kahn received the screenshot provided above from the
12 Sheriff's Civil Bureau website that confirmed the August 9 Sheriff Sale had been canceled. (*Id.*)
13 At 6:58 pm EDT, Mr. Kahn received additional communication confirming that undersigned
14 counsel's office had spoken directly with Sheriff's Civil Bureau's officers, agents, and/or
15 employees who confirmed the August 9 Sheriff Sale had been cancelled. (*Id.* ¶ 14.)

16 Based on the website and the telephonic confirmation, at 7:05 pm EDT, while still in-flight
17 to Las Vegas, Mr. Kahn booked a return ticket departing Las Vegas at 9:50 pm PDT that evening.
18 (*Id.* ¶ 15; *see also* **Exhibit 7-C** (redeye ticket).) Mr. Kahn flew back to Newark and arrived at his
19 residence around 6:00 am EDT on August 9, 2023. (**Exhibit 7**, ¶ 17.) Had the Sheriff's Civil
20 Bureau not made representations on its website and to PAMTP's counsel's office when it called,
21 Mr. Kahn would have appeared at the August 9 Sheriff's Sale with the intention to purchase
22 PAMTP's chose in action. (**Exhibit 7** ¶ 18.)

23 **E. The August 9 Sheriff's Sale Occurs Despite the Sheriff's Civil Bureau's**
24 **Representations Otherwise on August 8, 2023.**

25 If the sale had remained cancelled, PAMTP would have retained its claim while the proper
26 procedures necessary to complete a Sheriff's sale were followed. But that is not what happened.
27 The next morning, August 9, 2023, PAMTP learned that, despite the August 8 confirmations and
28 representations of cancellation, the sale was going forward that day at 9:00 am. Immediately upon

learning this information, PAMTP’s counsel emailed Bauhaus before the 9:00 am sale. (**Exhibit 5**, G. Ogilvie email to M. Bauhaus, August 9, 2023, at 8:46 am.) He stated, “[t]his not only violates the notice provision in NRS 21.130, but it also violates due process. A representative of the judgment debtor traveled from New York to attend the sale this morning but went back to New York last night because the sale had been canceled. This sale cannot proceed this morning.” (*Id.*) Bauhaus responded “[i]t does not violate the notice required. It has been properly noticed and no official notice of cancellation was ever done. ***Honestly all this has been caused by your office.***” (*Id.* M. Bauhaus email to G. Ogilvie, August 9, 2023, at 8:59 am (emphasis added).)

The sale was unlawfully conducted and PAMTP’s property was sold. (*See* Ogilvie Decl. ¶ 11; *see also* **Exhibit 9**, Certificate of Sheriff’s Sale, Aug. 14, 2023, filed.) The sale of PAMTP’s property is likewise confirmed by the Sheriff’s Civil Bureau’s website:

08/09/2023	A-13-686890-B CHOSE IN ACTION	Holland & Hart 702-669-4600	COMPLETED
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(*See* **Exhibit 6**, Show Decl. ¶ 16.)

F. Sheriff’s Civil Bureau Denies PAMTP Information Regarding the Sale and Potashner Seeks to Dismiss PAMTP’s Claim.

Following the sale, PAMTP’s counsel repeatedly contacted Sheriff’s Civil Bureau and reached out to Bauhaus to learn who purchased the chose in action and obtain a copy of the sale documentation. (*See* **Exhibit 8**, August 10-14, 2023 emails between G. Ogilvie and M. Bauhaus.) Bauhaus instructed Sheriff’s Civil Bureau to not provide PAMTP with any information or documentation about the sale and to direct such inquiries to her. (*See id.*; *see also* Ogilvie Decl. ¶ 13.) PAMTP’s counsel sent several direct inquiries to Bauhaus on August 10 and 11, but Bauhaus did not respond. (*See id.*; *see also* Ogilvie Decl. ¶ 13.) On Friday August 11, a representative for PAMTP’s counsel went to Sheriff’s Civil Bureau to make an in-person request for a copy of the documentation, but she was told it was not ready. (*See* Ogilvie Decl. ¶¶ 14-17.) The following Monday (August 14, 2023), PAMTP’s counsel emailed Bauhaus again seeking a response to the prior inquiries. (*See* **Exhibit 8**, G. Ogilvie to M. Bauhaus, Aug. 14, 2023, 11:15 am.) Bauhaus finally responded at 1:35 pm that “the documentation ha[d] not been finalized and as such cannot

1 be provided to you and also will be provided when it is filed by the other party as part of their writ.”
2 (*Id.*, M. Bauhaus email to G. Ogilvie, August 14, 2023, at 1:35 pm.) PAMTP’s counsel asked
3 Bauhaus if she could at least “advise me of the identify of the purchaser and the amount of the
4 successful bid,” but Bauhaus refused. (*See id.* G. Ogilvie to M. Bauhaus email, August 14, 2023,
5 at 1:51 pm.) Bauhaus responded “[w]e do not provide this type of information.” (*Id.*, M. Bauhaus
6 email to G. Ogilvie, August 14, 2023, at 1:55 pm.) Hours later, PAMTP commenced this litigation.
7 Because Bauhaus and Sheriff’s Civil Bureau refused to provide the requested information about the
8 sale, including the identity of the purchaser, PAMTP named “John Doe Purchaser” as a defendant
9 for certain of its claims. (*See Verified Compl.*)

10 Shortly after filing the complaint, PAMTP learned the identity of John Doe Purchaser: it
11 was **Potashner**. At 4:54 pm on August 14, almost simultaneously with PAMTP’s commencement
12 of this action, Potashner filed a motion for substitution of the real party in interest and dismissal of
13 PAMTP’s appeal of its affirmative claims. (*See Exhibit 10.*) In that motion, Potashner represents
14 he purchased the claim for \$40,500 at the August 9 Sheriff’s Sale. (*Id.*) Potashner attached as an
15 exhibit the “Certificate of Sheriff’s Sale,” which reflects that the Certificate was signed and
16 notarized on August 10—four days before Bauhaus told PAMTP’s counsel on August 14 that the
17 documentation had not been finalized. (*See id.*; *see also Exhibit 9.*)

18 If the unlawful Sheriff’s sale stands, PAMTP will permanently lose the rights to its claims
19 against Potashner and his cohorts. And, if temporary injunctive relief is not entered, Potashner may
20 succeed in having PAMTP’s appeal immediately dismissed before the validity of the sale and, thus,
21 ownership of the claim, is determined. Because of Bauhaus and Sheriff’s Civil Bureau’s
22 misconduct, PAMTP, therefore, requires this Court’s equitable and injunctive power to protect its
23 property interests and return PAMTP and Potashner to their pre-August 9 Sheriff’s Sale positions.

24 **II. LEGAL ARGUMENT**

25 **A. PAMTP Satisfies All of the Requirements under NRCP 65(b) to Obtain a** 26 **Temporary Restraining Order Today.**

27 This Court possesses the inherent authority to grant PAMTP the equitable and injunctive
28 relief PAMTP requires to protect its rights. *See Nev. Const. art. 6, § 6; see also Mack v. Williams,*

1 138 Nev., Adv. Op. 86, 522 P.3d 434, 447 (2022) (“It would be ironic indeed if the enforcement of
2 individual rights and liberties in [Nevada’s] Constitution, designed to ensure that basic rights and
3 liberties were immune from majoritarian impulses, were dependent on legislative action for
4 enforcement. It is the state judiciary that has the responsibility to protect the state constitutional
5 rights of the citizens.” (cleaned up)). The Nevada Constitution is “self-executing” and Nevada
6 district courts possess the power to enjoin unconstitutional conduct. *Mack*, 522 P.3d at 447; *see also*
7 *id.* (citing *City of Sparks v. Sparks Mun. Ct.*, 129 Nev. 348, 357, 302 P.3d 1118, 1124 (2013)
8 (discussing the availability of preliminary injunctive relief in a constitutional challenge).¹

9 NRCP 65(b) authorizes this Court to issue a temporary restraining order without notice to
10 the adverse party or its attorney.² In Nevada, a temporary restraining order may issue if the
11 requesting party demonstrates that immediate and irreparable injury, loss, or damage will result to
12 the movant before the adverse party can be heard in opposition. *See* NRCP 65(b)(1)(A). The
13 movant’s attorney must certify in writing the efforts made to give notice and the reasons why it
14 should not be required. *See* NRCP 65(b)(1)(B).

15 PAMTP has submitted both a verified complaint and several sworn declarations
16 demonstrating the factual predicate for the relief sought and the immediate and irreparable injury
17 PAMTP will suffer absent a temporary restraining order. (*See* Verified Compl.; Ogilvie Decl.;
18 **Exhibit 6**, Show Decl.; **Exhibit 7**, Kahn Decl.). Undersigned counsel explained PAMTP’s outreach
19 and notice efforts such that the opposing parties will not be prejudiced by scheduling a hearing on
20 PAMTP’s request for a temporary restraining order, expediting briefing on PAMTP’s motion for a
21 preliminary injunction, and scheduling an evidentiary hearing as soon as possible. (*See supra* n. 2).
22 Thus, this Court has ample grounds to provide PAMTP immediate relief.

23 ...

24 _____
25 ¹ Nevada courts also possess the power to grant “injunctive relief against state officials acting within
26 their official capacities” under federal statutory law. *Northern Nevada Ass’n of Injured Workers v.*
27 *Nevada State Indus. Ins. Sys.*, 107 Nev. 108, 116, 807 P.2d 728, 733 (1991) (citing 42 U.S.C. §
1983).

28 ² To be sure, PAMTP is simultaneously providing a copy of this Motion to the known counsel of
each Defendant, with all deliberate speed, to ensure they are provided notice and an opportunity to
be heard. (*See* Ogilvie Decl. ¶ 21).

B. PAMTP Satisfies All Requirements To Warrant Injunctive and Equitable Relief Today

PAMTP must “show a likelihood of success on the merits” along with a “a reasonable probability that” Defendants’ “conduct, if allowed to continue, will cause” PAMTP “irreparable harm for which compensatory damages is an inadequate remedy.” *Dangberg Holdings, Nevada, LLC v. Douglas Cnty*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999); *see also* NRS 33.010. In considering the need for injunctive relief, courts must also weigh the relative hardships of the parties and the public interest. *Univ. & Cnty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). PAMTP bears the burden of proof.³ *See id.*

1. Because PAMTP seeks to preserve the status quo, its injunctive relief should be characterized as prohibitory not mandatory.

“Injunctive relief can be classified into two categories: mandatory or prohibitory. A mandatory injunction commands a party to do some positive act, while a prohibitory injunction restrains a party from engaging in further acts.”⁴ *Balzarini v. Diaz*, No. 5:18-cv-01962-RGK-MAA, 2020 WL 4343153, at *1 (C.D. Cal. May 18, 2020). “Mandatory injunctions, for which the heightened standard is appropriate, are those that *disturb the status quo* by ordering affirmative relief, while prohibitory injunctions preserve the status quo.” *BionPharma Inc. v. CoreRx, Inc.*, 582 F. Supp. 3d 167, 173-74 (S.D.N.Y. 2022) (cleaned up and emphasis in original). Mandatory injunctions are “subject to heightened scrutiny and should not be issued unless the facts and law clearly favor the moving party.” *Dahl v. HEM Pharm. Corp.*, 7 F.3d 1399, 1043 (9th Cir. 1993). “The status quo is not the current state of affairs but the last actual, peaceable uncontested status

³ For judicial economy and efficiency purposes, PAMTP asks this Court to advance Claim One (declaratory relief) and Claim Two (injunctive relief) of PAMTP’s Complaint, (*see* Verified Compl. ¶¶ 92-127) and asks to be heard on the merits for a final judgment at the same time the Court entertains PAMTP’s motion for a preliminary injunction. *See, e.g.*, NRCP 65(a)(2). PAMTP reserves its rights to have its other claims decided after the jury hears the evidence presented on the substantial damages PAMTP has incurred because of Defendants’ misconduct. *See id.*

⁴ *See Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (explaining that when the Nevada Rules of Civil Procedure parallel the Federal Rules of Civil Procedure, rulings from federal courts interpreting and applying the federal rules are persuasive authority for this Court in applying the Nevada Rules).

which preceded the pending controversy.” *BionPharma*, 582 F. Supp. 3d at 174.

Here, PAMTP seeks prohibitory injunctive relief because it seeks to “preserve the status quo” by preventing anyone from taking any action that would affect the status of PAMTP’s property (its chose in action) as it existed immediately prior to the sale. Indeed, Potashner has illustrated his determination to use his unlawful purported purchase of PAMTP’s chose in action to alter the status quo, as Potashner moved on August 14, 2023 to dismiss PAMTP’s appeal, thus insulating his record of misconduct from ever seeing appellate review. Because PAMTP seeks prohibitory relief, PAMTP “need only make the less burdensome showing required of” such relief. *Bionpharma*, 582 F. Supp. 3d at 174. In any event, even if PAMTP were seeking mandatory injunctive relief, it would easily withstand “heightened scrutiny” because the facts and the law—the clear and indisputable violation of PAMTP’s due process rights—“clearly favor” PAMTP. *Dahl*, 7 F.3d at 1043.

2. *PAMTP is likely to prevail on the merits because Defendants violated Nevada law and PAMTP’s Constitutional right to procedural due process.*

The party moving for injunctive relief “need not establish certain victory on the merits.” *Shores Glob. Experience Specialists, Inc.*, 134 Nev. 503, 607, 422 P.3d 1238, 1242 (2018). Instead, that party need only “make a prima facie showing through substantial evidence that it is entitled to the preliminary relief requested.” *Id.* (quoting *Finkel v. Cashman Prof’l, Inc.*, 128 Nev. 68, 72, 720 P.3d 1259, 1262 (2012)).

The hallmarks of procedural due process are notice and an opportunity to be heard.⁵ *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). “A procedural due process claim requires a two-fold analysis. First, we must determine whether the plaintiff was deprived of

⁵ Although, the Nevada Supreme Court has not resolved whether Nevada’s procedural due process protections mirror the federal constitution—and PAMTP does not ask this Court to make such a conclusion today—as the analysis under *Mack* is likely identical to the analysis under the federal due process clause. *See Levingston v. Washoe Cnty.*, 112 Nev. 479, 916 P.2d 163 (1996) (“*Levingston I*”) (applying *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)), *overturned on other grounds by* 114 Nev. 306, 956 P.2d 84 (1998) (“*Levingston II*”). However, and as explained in greater detail below, because Nevadans possess greater property protections under Nevada’s Constitution, this Court should ensure PAMTP’s property rights are guaranteed. *See United States v. James Daniel Good*, 510 U.S. 43, 49 (1993) (“We have rejected the view that the applicability of one constitutional amendment pre-empts the guarantees of another.”).

1 a protected interest; second, we must determine what process is due.” *Pugel v. Bd. Of Trustees of*
2 *Univ. of Ill.*, 378 F.3d 659, 662 (7th Cir. 2004). PAMTP easily clears both Due Process hurdles.

3 **First**, PAMTP possesses a protected interest in its property—the chose in action—and it
4 has been deprived of that interest. *See Bd. Of Regents of State Colleges v. Roth*, 408 U.S. 564, 578
5 (1972) (“Property interests, of course, are not created by the Constitution. Rather they are created,
6 and their dimensions are defined by existing rules or understandings that stem from an independent
7 source such as state law—rules or understandings that secure certain benefits and that support
8 claims of entitlement to those benefits.”). PAMTP’s property interest in its chose in action is
9 grounded in Nevada law and Nevada law affords PAMTP protections of that property. *See NRS*
10 *21.112*. Indeed, under the Nevada constitution, PAMTP’s right to that property is “inalienable.”
11 Nev. Const. art. I § 1 (“All men are by nature free and equal and have certain inalienable rights
12 among which are those of . . . Acquiring, Possessing, and Protecting Property. . . .”); *see also*
13 *Nevadans for Nevada v. Beers*, 122 Nev. 930, 942 (2006) (“Unless ambiguous, the language of a
14 constitutional provision is applied in accordance with its plain meaning.”).

15 NRS 21.112 is designed to protect judgment debtors like PAMTP against an arbitrary and
16 capricious deprivation of their property interests absent notice and an opportunity to be heard. *See*
17 *Daniels v. Williams*, 474 U.S. 327, 331 (1986) (“By requiring the government to follow appropriate
18 procedures when its agents decide to ‘deprive any person of life, liberty, or property,’ the Due
19 Process Clause promotes fairness in such decisions.”). Without this Court’s strict enforcement of
20 NRS Chapter 21’s mandates, PAMTP’s property rights (and every judgment debtor’s property
21 rights) can be forfeited and rendered meaningless by a government bureaucrat’s arbitrary choices.
22 *See One 1978 Chevrolet Van v. Churchill Cnty.*, 97 Nev. 510, 512, 634 P.2d 1208, 1209 (1981)
23 (recounting that since its Founding in 1864, Nevada “does not favor forfeitures” of property and
24 district courts must “strictly construe[]” statutes authorizing forfeitures and only enforce them
25 “when facts clearly justify” the loss of property rights (quoting *Ind. Nev. V. Gold Hills*, 35 Nev.
26 158, 166, 126 P. 965, 967 (1912)). Moreover, it is indisputable that PAMTP was deprived of that
27 property when the Sheriff Defendants sold it at the August 9 Sheriff’s Sale. PAMTP, therefore,
28 satisfies prong one of the procedural due process analysis.

1 **Second**, PAMTP did not receive the process was due—indeed, it received arbitrariness in
2 place of process. To determine the second prong of a procedural due process claim, this Court must
3 look to the three-part *Mathews* test. *See Gilbert v. Homar*, 520 U.S. 924, 930 (1997) (Due Process
4 is a flexible concept that “calls for such procedural protections as the particular situation
5 demands.”). “Under the *Mathews* balancing test, a court evaluates (A) the private interest affected;
6 (B) the risk of erroneous deprivation of that interest through the procedures used; and (C) the
7 governmental interest at stake.” *Nelson v. Colorado*, 137 S.Ct. 1249, 1255 (2017). The thrust of
8 the inquiry is whether PAMTP had appropriate notice and an opportunity to be heard prior to being
9 deprived of its fundamental property rights. *See Livingston I*, 112 Nev. at 485, 916 P.2d at 167
10 (“When such fundamental interests ‘are at stake no better instrument has been devised for arriving
11 at truth than to give a person in jeopardy of serious loss notice of the case against him and
12 opportunity to meet it.’” (quoting *Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 171-72 (1951)
13 (Frankfurter, J. concurring) (footnotes omitted)).

14 Here, PAMTP was deprived of the process it was due in at least two respects: First, the
15 Sheriff Defendants, apparently acting at Potashner’s behest, ignored the requirement of NRS 21.112
16 for a judicial determination of PAMTP’s Claim of Exemption *before* any sale takes place. Second,
17 PAMTP was deprived its opportunity to participate in the sale itself because the Sheriff Defendants
18 cancelled the sale on August 8, 2023, inducing PAMTP’s representative Mr. Kahn not to appear at
19 the sale to bid, and then conducted the sale anyway on August 9, 2023 without warning or rational
20 explanation and in knowing violation of the statutory scheme and in violate of due process.

21 a) **PAMTP satisfied Matthews’ first prong as its property interest is a**
22 **fundamental and an inalienable one.**

23 The private interest at stake is a fundamental and inalienable constitutional right—
24 PAMTP’s right to possess property. *See Livingston I*, 112 Nev. at 485, 916 P.3d at 167 (“The
25 purpose of due process is to protect that fundamental right from arbitrary encroachments by
26 minimizing unfair or mistaken deprivations of property.”). That property, PAMTP’s chose in
27 action, is a classic form of personal property. *See, e.g., Black’s Law Dictionary* 275 (9th Ed. 2009)
28

1 (defining “chose in action” as, among others, “[a] proprietary right *in personam*, such as . . . a claim
2 for damages in tort.”).

3 Classic property rights like PAMTP’s chose in action are entitled to the highest protection.
4 Indeed, the Nevada Supreme Court has held it “clear that Nevadans’ property rights are ***protected***
5 by our State Constitution” more broadly than the federal constitution as “[t]here is no corollary
6 provision” similar to the inalienable property rights clause found in the United States Constitution.
7 *McCarran Int’l Airport v. Sisolak*, 122 Nev. 645, 659, 669, 137 P.3d 1110, 1120, 1127 (2006)
8 (emphasis added); *see also* Nev. Const. art. 1, § 1 (“***Protecting*** Property” rights (emphasis added)).
9 The Ninth Circuit similarly recognized Nevadans’ heightened property protections detailed within
10 our Constitution and guaranteed by Nevada Supreme Court precedent. *See Vacation Village, Inc.*
11 *v. Clark Cnty, Nev.*, 497 F.3d 902, 916 (9th Cir. 2007) (recounting that “the Nevada Supreme Court
12 clearly found that the Nevada Constitution” provides property protections “more broadly than the
13 United States Constitution. . . .” (relying on *Sisolak*, 122 Nev. at 661, 137 P.3d at 1121)). Thus,
14 when property rights violations are combined with procedural due process rights violations in
15 Nevada, the heightened considerations under *Mack* should apply to ensure Nevadans’ property
16 rights are ***protected*** and guaranteed as mandated by Nevada’s Constitution.

17 **b) The sale of PAMTP’s property in violation of clearly established**
18 **statutory procedures unlawfully deprived PAMTP of its property.**

19 Had NRS Chapter 21’s mandates been followed as PAMTP explained to Bauhaus and the
20 Sheriff’s Civil Bureau on August 7, 8, and 9, 2023, PAMTP would not be moving on an emergency
21 basis requesting an *ex parte* temporary restraining order. *See Livingston I*, 112 Nev. at 485, 916
22 P.3d at 167 (“The right to a fair and open hearing is one of the rudiments of fair play assured to
23 every litigant by the Federal Constitution as a minimal requirement.”). The record does not support
24 Bauhaus’ position that PAMTP’s Claim of Exemption was untimely (*see Exhibit 5*).⁶ Regardless,

25 _____
26 ⁶ In moving the Nevada Supreme Court to dismiss PAMTP’s merits appeal, Potashner claimed the
27 Notice of Execution was served on PAMTP on May 11, 2023, attaching in support an affidavit of
28 service from a Deputy Sheriff. (*See Exhibit 10.*) But the Deputy Sheriff’s affidavit expressly
references only *the Writ of Execution* being served on PAMTP on May 11, 2023. (*Id.*). As
explained to Bauhaus (**Exhibit 5**), service of the Writ of Execution is not what triggers the 10-day

that determination was not for Bauhaus or Sheriff Civil Bureau to make; only a court of law could make that determination based on an objection to the Claim of Exemption—which Potashner never filed. In any case, instead of letting that factual dispute and PAMTP’s Claim of Exemption be resolved in the proper forum (i.e., the judicial system), the Sheriff Defendants effectively arrogated to themselves the power to resolve the dispute by precipitously proceeding with the sale.

The Ninth Circuit’s analysis of Arizona’s unlawful and arbitrary forfeiture scheme is instructive here. *See Platt v. Moore*, 15 F. 4th 895, 906 (9th Cir. 2021). “This regime on its face permitted the state’s attorney” to “unilaterally” make the choice “to deny to those who contest forfeiture” by “abstain[ing] from issuing the required declaration of forfeiture” and “by silently deeming a petition that called for one incorrectly filed.” *Id.* at 906. Arizona’s scheme then permitted the government bureaucrat to “wait out the limitations period for filing a claim in court without notifying the property owner that the petition was inoperative, and then maintain that no petition that no petition or claim was timely filed—thereby availing the state of the favorable standards that apply in ‘uncontested’ proceedings.” *Id.* That arbitrary exercise of power, the Ninth Circuit held, violated Due Process. *See id.*

That same kind of executive misconduct—an executive official arrogating authority to resolve disputes committed to the judiciary—occurred here. Bauhaus assumed the power vested in the judiciary under NRS 21.112 and then concluded that PAMTP’s Claim was untimely—despite PAMTP’s demonstration to the contrary. (*See Exhibit 8*, G. Ogilvie email to M. Bauhas, August 9, 2023, at 8:46 am). (“This not only violates the notice provision in NRS 21.130, but it also violates due process.”). By favoring Potashner’s rights over PAMTP’s—even after PAMTP demanded the sale not proceed—the Sheriff Defendants wrongly deprived PAMTP of its property. *See James*

clock under NRS 21.112. Moreover, the copy of the Writ of Execution Potashner attached to his motion is not what was served on PAMTP in May. (*Compare Exhibit 1, with Exhibit 1-A*). The copy Potashner provided to the Supreme Court includes a Notice of Execution curiously accompanying and at the back of the Writ of Execution, but the Writ of Execution served on PAMTP on May 11, 2023 did not include a Notice of Execution. (*Id.*) Moreover, the Notice of Execution that was ultimately served on PAMTP—i.e. the one PAMTP received on July 31, 2023—is stamped June 1, 2023. (*See Exhibit 2*). That document obviously could not have been served in May 2023, as Potashner claims. Thus, Defendants have not complied with the mandates of NRS 21.112.

1 *Daniel Good*, 510 U.S. at 54 (“We tolerate some exceptions to the general rule requiring pre-
2 deprivation notice and hearing, but only in *extraordinary situations* where some valid
3 governmental interest is at stake that justifies postponing the hearing until after the event.” (cleaned
4 up and emphasis added)). There is no valid governmental interest here that permitted a bureaucrat
5 like Bauhaus to unilaterally alter the Legislature’s statutory scheme, effectively assume judicial
6 power in an executive branch official, and violate PAMTP’s Due Process rights. This much, by
7 itself, satisfies *Matthews*’ second prong.

8 Separately and independently, the Sheriff Defendants failed to provide adequate process by
9 proceeding with the sale even after it told PAMTP—both via Sheriff Civil Bureau’s website and
10 via a phone call with PAMPT’s counsel’s office—that the sale had been cancelled. *See James*
11 *Daniel Good*, 510 U.S. at 54 (detailing that “fair proceedings” are mandated through the Due
12 Process Clause). To then pull an about-face and conduct the sale with no notice to PAMTP and
13 after PAMTP had relied to its detriment on Sheriff Civil Bureau’s representations that the sale had
14 been cancelled, is the definition of an arbitrary process. (*See Exhibits 5-7*). For this independent
15 reason, *Matthews*’ second prong is satisfied.

16 All of this misconduct demonstrates that the Sheriff’s Civil Bureau’s policies and practices
17 present a clear risk of erroneous property deprivation—a risk that in this case was realized when
18 PAMTP was actually deprived of its property. (*See Exhibit 9*).

19 c) **There is no government interest and there cannot be any added**
20 **burdens by this Court mandating Sheriff’s Defendants comply with**
NRS Chapter 21.

21 The plain language of NRS 21.112 mandated that the Sheriff Defendants allow the judiciary
22 to decide whether PAMTP’s Exemption Claim was valid pursuant to established procedures. And
23 basic fairness insists that the government not deprive a citizen of its property after having told that
24 citizen that the auction of that property would *not* occur at the previously scheduled time and place.
25 Sheriff McMahon, Bauhaus, and Sheriff’s Civil Bureau possess *zero* lawful interest in whatever
26 policy they were pursuing.

27 On the contrary, it is well settled that the government possesses no cognizable interest in
28 violating the law. *See, e.g., Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (“[E]nforcement

of an unconstitutional law is always contrary to the public interest. . . . The Constitution does not permit Congress to prioritize any policy goal over the Due Process Clause.”); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”); *Tyson Foods, Inc. v. McReynolds*, 865 F.2d 99, 103 (6th Cir. 1989) (“[I]t is not in the public interest to perpetuate the unconstitutional application of a statute.”). Moreover, there can be no cognizable interest in eliminating PAMTP’s notice and opportunity to be heard at the Sheriff’s Sale because the bait-and-switch of cancelling and later holding the sale removed PAMTP’s final opportunity to be heard. *Cf. Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 611 (1974) (explaining that when “only property rights are involved, mere postponement of the judicial inquiry is not a denial of due process, if the opportunity is given for ultimate judicial determination of liability is adequate”).

To permit a state actor such as Bauhaus to supersede the Legislature’s mandates and effectively assume judicial power, determining the validity of PAMTP’s objections to the Notice and its Claim of Exemption so that Bauhaus could then violate PAMTP’s rights, would eviscerate our Constitutional order. *See City of Sparks*, 129 Nev. at 362-63, 302 P.3d at 1128 (“Each of the three branches of government is vested with the authority to exercise its own functions, and no branch may exercise the functions of another unless expressly permitted to do so by the Nevada Constitution.”); *see also Galloway v. Truesdell*, 83 Nev. 13, 19, 422 P.2d 237, 241-42 (1967) (detailing the separation of powers clause Nev. Const. art. 3, § 1). “Thus, the courts, whose judicial functions involve hearing and resolving legal controversies, possess the authority to take any action that are inherent or incidental to that function. Furthermore, any statutory scheme that would allow the executive or legislative branches of a municipal government to control or exercise the inherent powers of the [Judiciary] would violate the separation of powers doctrine.” *City of Sparks*, 129 Nev. at 362-63, 302 P.3d at 1128. PAMTP satisfies *Mathews*’ third prong.

Because PAMTP satisfies the first part of the procedural due process test by presenting this Court with a fundamental and inalienable property right, and easily satisfies all three prongs of the *Mathews* test, this Court should conclude that PAMTP is likely to establish that Defendants violated PAMTP’s procedural due process rights, and unwind the unlawful Sheriff’s Sale.

3. ***PAMTP will suffer irreparable harm absent this Court unwinding the unlawful August 9 Sheriff's Sale.***

“Irreparable harm is an injury ‘for which compensatory damage is an inadequate remedy.’” *Excellence Cmty.*, 131 Nev. at 353, 351 P.3d at 723-24; *see also Reuters Ltd. v. United Press Int’l, Inc.*, 903 F.2d 904, 907 (2d Cir. 1990) (“[A] showing of probable irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction.”). “Irreparable harm must be shown by the moving party to be imminent, not remote or speculative, and the alleged injury must be one incapable of being fully remedied by monetary damages.” *Id.*

Because “constitutional violation may be difficult or impossible to remedy through money damages, such a violation, may, by itself, be sufficient to constitute irreparable harm.” *City of Sparks*, 129 Nev. at 357, 302 P.3d 1118. Here, there is no way to remedy the egregious constitutional violations PAMTP faces today other than for this Court to provide injunctive and equitable relief by unwinding the sale because damages will never truly place PAMTP in the position it held on August 9, 2023, at 8:59 am before the sale took place—when it still had the right to have its Claim of Exemption heard and the ability to attend the sale should one ever take place.

As a court sitting in equity, this Court possesses the power to provide PAMTP equitable relief. *See Mack*, 522 P.3d at 447; *Nevada State Indus. Ins. Sys.*, 107 Nev. at 116, 807 P.2d at 733 (citing 42 U.S.C. § 1983). As demonstrated more fully below, by unwinding the August 9 Sale and placing every party back to its pre-sale position, while also permitting the NRS 21.112(1) process to occur—this Court will ensure an equitable result. *See Rondeau v. Mosinee Paper Corp.*, 422 U.S. 49, 64 (1975) (“Considering further remedies which might be ordered, we observed that ‘the merger should be set aside only if a court of equity concludes, from all the circumstances, that it would be equitable to do so,’ and that ‘damages should be recoverable only to the extent that they can be shown.’” (quoting *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 388 (1970))); *Grymes v. Sanders*, 93 U.S. 55, 62 (1876) (“A court of equity is always reluctant to rescind, unless the parties can be put back in status quo.”).

But for providing the equitable relief PAMTP seeks, the status quo cannot be maintained and PAMTP will be immediately, permanently, and irreparably harmed. *See BionPharma*, 582 F. Supp.

3d at 174 (“The status quo is not the current state of affairs but the last actual, peaceable uncontested status which preceded the pending controversy.”). Indeed Potashner, only yesterday, moved before the Nevada Supreme Court to dismiss PAMTP’s merits appeal, thus seeking to exploit the unlawful sale to achieve a result he likely would not have been able to achieve had Nevada’s statutory requirements and constitutional due process been respected. (See **Exhibit 10**). If emergency relief is not granted, preventing any action with respect to PAMTP’s claims until this case is resolved, Potashner may succeed in permanently dismissing the claims, rendering this action moot and causing the permanent and irreparable loss of PAMTP’s protected property and its constitutional rights. This Court should thus conclude that PAMTP satisfied the irreparable harm prong under NRCP 65.

4. ***The balance of the equities and the public interest favor providing PAMTP injunctive and equitable relief because none of the Defendants can be harmed by placing the Parties in their pre-sale position.***

“In determining whether the balance of the equities tips in the plaintiff’s favor and whether granting the preliminary injunction would be in the public interest, the Court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief, as well as the public consequences in employing the extraordinary remedy of injunction.” *Bionpharma*, 582 F. Supp. 3d at 178. Quite simply, it **cannot** be equitable to permit state actors to ignore and willfully flout clear, legislatively established procedures for conducting forced sales of property, as the Sheriff Defendants did here. And it **cannot** be equitable to permit private parties—to gain an advantage in their own private litigation—to encourage, cajole, or pressure state actors to do so, as Potashner apparently did here. Without this Court’s equitable power to correct this unconstitutional conduct, the guarantees embedded in the Constitution will be rendered meaningless. Thus, equitable relief is proper as the balance of the equities tips sharply in PAMTP’s favor.

Finally, the public is interested in the swift resolution of justice. See *Aspen Fin. Services v. Eighth Jud. Dist. Ct.*, 128 Nev. 635, 650, 289 P.3d 201, 211 (2012) (“There is a ‘presumption that the public has an interest in prompt resolution of civil cases.’” (quoting *Microfinancial Inc. v. Premier Holidays Intern.*, 385 F.3d 72, 79 n.4 (1st Cir. 2004) (citing FRCP 1, the federal counterpart

1 to NRCP 1))). Judicial economy and efficiency will be served by unwinding this sale, allowing the
2 NRS 21.112 process to be resolved properly, and, allowing PAMTP to attend the Sheriff's Sale
3 rather than being misled into not attending to protect its own property. Because the public interest
4 and the balance of the equities all favor providing PAMTP equitable and injunctive relief, this Court
5 should enter the temporary restraining order today.

6 **III. CONCLUSION**

7 PAMTP has exhaustively detailed how it meets the requirements for equitable and injunctive
8 relief. PAMTP requires this Court's relief as soon as possible, indeed today, particularly given
9 Potashner's August 14, 2023 filing with the Nevada Supreme Court, seeking to have Potashner
10 substituted in for PAMTP as the real party in interest in the consolidated appeal and seeking to
11 foreclose PAMTP's claims by dismissing PAMTP's appeal. Because PAMTP's rights are
12 irreparably harmed unless its rights are returned to its pre-Sheriff's sale position, this Court should
13 issue a temporary restraining order immediately, particularly since PAMTP's response to
14 Potashner's motion before the Nevada Supreme Court is due on August 21, 2023. Thereafter,
15 PAMTP requests the Court direct expedited briefing on PAMTP's preliminary injunction and set
16 the hearing for a preliminary injunction as soon as possible.

17 DATED this 15th day of August, 2023.

18 McDONALD CARANO LLP

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 PAMTP, LLC, Plaintiff(s)

CASE NO: A-23-875894-B

7 vs.

DEPT. NO. Department 27

8 CLARK COUNTY ex rel.,
9 SHERIFF S CIVIL BUREAU,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Temporary Restraining Order was served via the court's electronic
eFile system to all recipients registered for e-Service on the above entitled case as listed
below:

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