

Case No.

In the Supreme Court of Nevada

Electronically Filed
Nov 02 2022 01:23 PM
Elizabeth A. Brown
Clerk of Supreme Court

In re 3587 Desatoya Drive Carson City

ELVIN FRED,

Petitioner,

v.

THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND
FOR THE COUNTY OF CARSON CITY AND THE HONORABLE JUDGE JAMES
WILSON

Respondent,

and

STATE OF NEVADA *EX REL.* INVESTIGATION DIVISION OF THE DEPARTMENT
OF PUBLIC SAFETY OF THE STATE OF NEVADA (TRI-NET NARCOTICS TASK
FORCE)

Real Party in Interest,

PETITIONER'S APPENDIX

RORY T. KAY (NSBN 12416)
JANE SUSSKIND (NSBN 15099)
JOHN A. FORTIN (NSBN 15221)
McDONALD CARANO LLP
2300 W. Sahara Ave | Suite 1200
Las Vegas, Nevada 89102
(702)-873-4100
Pro Bono Counsel for Petitioner

Chronological Index to Appendix

Date	Document Description	Labeled
03/09/2015	Criminal Complaint	PA000001- PA000004
04/01/2015	Complaint for Forfeiture	PA000005- PA000010
04/28/2015	Notice of Entry of Order Staying Forfeiture	PA000011- PA000017
06/15/2015	Criminal Information	PA000018- PA000020
06/29/2015	Arraignment Transcript	PA000021- PA000032
06/29/2015	Memorandum of Plea Negotiation	PA000033- PA000038
08/21/2015	Sentencing Memorandum	PA000039- PA000057
08/24/2015	Sentencing Transcript	PA000058- PA000072
05/04/2018	Motion to Lift Stay in Forfeiture Proceeding	PA000073- PA000075
05/09/2019	Notice of Entry of Amended Default Judgment	PA000076- PA000078
03/14/2022	Notice of Entry of Order Setting Aside Default Judgment	PA000079- PA000085
03/22/2022	First Amended Complaint for Forfeiture	PA000086- PA000092
05/18/2022	Statement of Legal Aid Representation	PA000093- PA000094
06/23/2022	Substitution of Counsel	PA000095- PA000097
07/15/2022	Claimant Elvin Fred's Motion to Dismiss Tri-Net's Civil Forfeiture Complaint	PA000098- PA000109
07/21/2022	Notice of Withdrawal of Pisanelli Bice PLLC Attorneys	PA000110- PA000111

Date	Document Description	Labeled
07/22/2022	Affidavit of Service	PA000112- PA000113
08/26/2022	Plaintiff's Opposition to Claimant Elvin Fred's Motion to Dismiss Tri-Net's Civil Forfeiture Complaint	PA000114- PA000126
09/02/2022	Claimant Elvin Fred's Reply in Support of His Motion to Dismiss Tri-Net's Civil Forfeiture Complaint	PA000127- PA000142
09/21/2022	Notice of Entry of Order Denying Elvin Fred's Motion to Dismiss Tri-Net's Civil Forfeiture Complaint	PA000143- PA000156

Alphabetical Index to Appendix

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08/24/2015	Sentencing Transcript	PA000058-PA000072
05/18/2022	Statement of Legal Aid Representation	PA000093-PA000094
06/23/2022	Substitution of Counsel	PA000095-PA000097

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that **PETITIONER'S APPENDIX** does not contain the social security number of any person.

Dated this 1st day of November 2022.

McDONALD CARANO LLP

By: /s/ John A. Fortin
Rory T. Kay (NSBN 12416)
Jane Susskind (NSBN 15099)
John A. Fortin (NSBN 15221)
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada, 89102

Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDONALD CARANO LLP, and that on this 1st day of November 2022, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing properly addressed to the following:

The Honorable Judge James Wilson
First Judicial District Court
Department 2
885 East Musser Street,
Carson City, Nevada 89701
Respondent

Jason D. Woodbury, Esq.
Ben R. Johnson, Esq.
Carson City District Attorney
885 East Musser Street, Suite #2030C
Carson City, Nevada 89701
Attorneys for Real Party in Interest

Aaron Ford
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

/s/ CaraMia Gerard
Employee of McDonald Carano LLP

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Case No. 15CR00384 IC 004

Dept. No. I

2015 MAR -9 AM 11:58
JUSTICE OF THE PEACE
BY _____
CLERK

IN THE JUSTICE COURT OF CARSON TOWNSHIP
IN AND FOR CARSON CITY, STATE OF NEVADA

STATE OF NEVADA,
Plaintiff,

v.

ELVIN LEE FRED,
Defendant.

CRIMINAL COMPLAINT

TYSON D. LEAGUE, Deputy District Attorney for Carson City, Nevada, complains and declares, upon information, belief and/or personal knowledge, that ELVIN LEE FRED, the Defendant, above-named, at Carson Township, in Carson City, State of Nevada, has committed the crimes of **TRAFFICKING IN A SCHEDULE I CONTROLLED SUBSTANCE 28 GRAMS OR MORE**, a category A Felony as defined by NRS 453.3385(3) (Count I); **CONSPIRACY TO VIOLATE THE UNIFORM CONTROLLED SUBSTANCE ACT**, a category C Felony as defined by NRS 453.401 (Count II); **TRAFFICKING IN A SCHEDULE I CONTROLLED SUBSTANCE 28 GRAMS OR MORE**, a category A Felony as defined by NRS 453.3385(3) (Count III); **CONSPIRACY TO VIOLATE THE UNIFORM CONTROLLED SUBSTANCE ACT**, a category C Felony as defined by NRS 453.401 (Count IV); and **CONSPIRACY**, a Gross Misdemeanor as defined by NRS 199.480 (Count V), in the manner following:

////
////

Count I

**TRAFFICKING IN A SCHEDULE I CONTROLLED SUBSTANCE 28 GRAMS OR MORE
("A" Felony – NRS 453.3385(3))**

That the Defendant, Elvin Lee Fred, on or about February 13, 2015, at Carson Township, in Carson City, State of Nevada, did knowingly or intentionally, and unlawfully, possess and/or sell a Schedule I controlled substance, except marijuana, or a mixture containing such substance, in a quantity weighing or represented to be twenty-eight (28) grams or more, in the manner following, to-wit: the defendant participated in the sale of what was represented as approximately 32 grams of Methamphetamine to a Confidential Informant in exchange for \$700, said Defendant being responsible under one or more of the following principles of criminal liability; to-wit: (1) by the Defendant directly committing said act; and/or (2) by the Defendant conspiring with AARON RONALD JALBERT, and/or JAMES TITO to commit the offense or crime whereby each party is vicariously liable for the foreseeable acts of the other conspirator when the acts were in furtherance of the conspiracy; and/or (3) Defendant aiding or abetting AARON RONALD JALBERT, and/or JAMES TITO in the commission of the crime; by the parties acting in concert throughout all of which occurred at or near 3587 Desatoya Drive, Carson City, Nevada.

Count II

CONSPIRACY TO VIOLATE THE UNIFORM CONTROLLED SUBSTANCE ACT

("C" Felony – NRS 453.401)

That the Defendant, Elvin Lee Fred, on or about February 13, 2015, at Carson Township, in Carson City, State of Nevada, did, in the manner following, to-wit: unlawfully conspire to commit an offense which is a felony under the Uniform Controlled Substances Act, in the manner following, to-wit: the defendant conspired with one or more persons to commit the crime of trafficking in a schedule I controlled substance, a felony, and in furtherance of that conspiracy provided methamphetamine a schedule I controlled substance to JAMES TITO to complete the sale, all of which occurred at or near 3587 Desatoya Drive, Carson City, Nevada.

Count III

**TRAFFICKING IN A SCHEDULE I CONTROLLED SUBSTANCE 28 GRAMS OR MORE
("A" Felony – NRS 453.3385(3))**

That the Defendant, Elvin Lee Fred, on or about February 19, 2015, at Carson Township, in Carson City, State of Nevada, did knowingly or intentionally, and unlawfully, possess and/or sell a Schedule I controlled substance, except marijuana, or a mixture containing such substance, in a quantity weighing or represented to be twenty-eight (28) grams or more, in the manner following, to-wit: the defendant participated in the sale of approximately 41 grams of methamphetamine a schedule I controlled substance to a confidential informant in exchange for \$1000, all of which occurred at or near 3587 Desatoya Drive, Carson City, Nevada.

Count IV

**CONSPIRACY TO VIOLATE THE UNIFORM CONTROLLED SUBSTANCE ACT
("C" Felony – NRS 453.401)**

That the Defendant, Elvin Lee Fred, on or about February 19, 2015, at Carson Township, in Carson City, State of Nevada, did , in the manner following, to-wit: the defendant conspired with one or more persons to commit the crime of trafficking in a schedule I controlled substance, a felony, and in furtherance of that conspiracy provided methamphetamine a schedule I controlled substance to JAMES TITO to complete the sale, all of which occurred at or near 3587 Desatoya Drive, Carson City, Nevada.

Count V

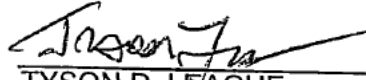
CONSPIRACY

(Gross Misdemeanor – NRS 199.480)

That the Defendant, Elvin Lee Fred, on or about January 3, 2015, at Carson Township, in Carson City, State of Nevada, did conspire with JAMES TITO to commit a crime, in the manner following, to-wit: the defendant conspired with JAMES TITO to traffic in methamphetamine a schedule I controlled substance, all of which occurred at or near , Carson City, Nevada.

1 All of which is contrary to the form of the Statutes in such cases made and provided
2 and against the peace and dignity of the State of Nevada. Said Complainant declares under
3 penalty of perjury under the law of the State of Nevada that the foregoing is true and correct
4 and prays that the warrant(s) of arrest may issue, and that Defendant may be dealt with
5 according to law.

6 DATED this ^{9th} ~~6th~~ day of March, 2015.

7 
8 TYSON D. LEAGUE
9 Deputy District Attorney
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Office of the District Attorney
Carson City, Nevada
885 East Musser St., Suite 2030, Carson City, Nevada 89701
Tel.: (775) 887-2072 Fax: (775) 887-2129

Office of the District Attorney
Carson City, Nevada
885 East Musser St., Suite 2030, Carson City, Nevada 89701
Tel. (775) 887-2070 Fax (775) 887-2128

1 JASON D. WOODBURY
2 DISTRICT ATTORNEY
3 Nevada Bar Number: 6870
4 885 East Musser Street
5 Suite #2030C
6 Carson City, Nevada 89701
7 (775) 887-2070
8 ATTORNEY FOR:
9 INVESTIGATION DIVISION OF THE
10 DEPARTMENT OF PUBLIC SAFETY
11 OF THE STATE OF NEVADA
12 (Tri-Net Narcotics Task Force)

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


17 In re:

18 3587 Desatoya Drive, Carson City, Nevada
19 89701, more particularly described as all
20 that certain parcel of land situate in the City
21 of Carson City, County of Carson City and
22 State of Nevada, being known and
23 designated as follows: Parcel N-33 as
24 shown on Parcel Map No. 1704 for Stanton
25 Park Development, Inc., filed in the office of
26 the Recorder of Carson City, Nevada on
27 August 11, 1989 as File No. 89253, Carson
28 City Assessor's Parcel Number: 010-443-
11.

Case No. 15 00 00074 18
Dept. No. II

COMPLAINT FOR FORFEITURE

29 COMES NOW, Plaintiff, the INVESTIGATION DIVISION OF THE DEPARTMENT OF
30 PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force), by and
31 through its counsel of record, JASON D. WOODBURY, Carson City District Attorney, and for
32 its *Complaint for Forfeiture* in relation to 3587 Desatoya Drive, Carson City, Nevada 89701,
33 more particularly described as all that certain parcel of land situate in the City of Carson City,
34 County of Carson City and State of Nevada, being known and designated as follows: Parcel

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SUSAN MERRIWETHER
CLERK
BY  DEPUTY

1 N-33 as shown on Parcel Map No. 1704 for Stanton Park Development, Inc., filed in the office
2 of the Recorder of Carson City, Nevada on August 11, 1989 as File No. 89253, Carson City
3 Assessor's Parcel Number: 010-443-11, purportedly owned by ELVIN FRED, Claimant,
4 alleges and complains as follows:

5 **GENERAL ALLEGATIONS**

6 **Nature of the Action, Parties and Venue**

- 7
- 8 1. This is a civil action for forfeiture of real property pursuant to the provisions of
- 9 NRS 179.1156 to NRS 179.121, inclusive, and as such is given priority over any
- 10 other civil matters pursuant to NRS 179.1173.
- 11 2. The subject of this *Complaint for Forfeiture* is 3587 Desatoya Drive, Carson City,
- 12 Nevada 89701, more particularly described as all that certain parcel of land
- 13 situate in the City of Carson City, County of Carson City and State of Nevada,
- 14 being known and designated as follows: Parcel N-33 as shown on Parcel Map
- 15 No. 1704 for Stanton Park Development, Inc., filed in the office of the Recorder
- 16 of Carson City, Nevada on August 11, 1989 as File No. 89253, Carson City
- 17 Assessor's Parcel Number: 010-443-11 (hereinafter the "Property").
- 18 3. The INVESTIGATION DIVISION OF THE DEPARTMENT OF PUBLIC SAFETY
- 19 OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force) (hereinafter
- 20 referred to as "TRI-NET") is a law enforcement agency in the State of Nevada
- 21 and the Plaintiff in this action as defined by NRS 179.1159.
- 22 4. Upon information and belief, ELVIN FRED is the owner of the Property and the
- 23 Claimant in this action as defined by NRS 179.1158.
- 24 5. Upon information and belief, Plaintiff has no knowledge and no reason to believe
- 25 that any person or entity other than ELVIN FRED has any ownership interest in
- 26 the Property.
- 27
- 28

- 1 6. The Property is located in Carson City, State of Nevada and venue is
2 appropriate in the First Judicial District Court of the State of Nevada in and for
3 Carson City pursuant to NRS 179.1171.

4 **Allegations of Property's Relationship to Illegal Activity**

- 5 7. On or about and between the dates of February 13, 2015 and March 19, 2015,
6 and at all times relevant hereto, ELVIN FRED occupied the Property.
- 7 8. Upon information and belief, on or about February 13, 2015, an individual
8 (hereinafter referred to as the "Confidential Source") was engaged with TRI-NET
9 officers providing information and participating in undercover investigation
10 operations relating to illegal activity involving controlled substances in the
11 Carson City area. On or about February 13, 2015, in conjunction with an
12 undercover investigation operation coordinated by TRI-NET, the Confidential
13 Source contacted James Tito ("Tito") via cellular telephone. Tito agreed to sell
14 the Confidential Source one ounce of methamphetamine for seven hundred
15 dollars (\$700) during the telephone call. The Confidential Source met with Tito
16 at a location in Carson City where he gave Tito seven hundred dollars (\$700).
17 Tito told the Confidential Source that he needed to go to "LV's house." Upon
18 information and belief, ELVIN FRED is known to some as "LV." Tito left the
19 location and travelled to the Property. Tito entered the residence located on the
20 Property, remained inside for a brief period, and then left the Property. After
21 leaving the Property, Tito met with the Confidential Source and provided the
22 Confidential Source with approximately 27 grams of methamphetamine.
- 23 9. Upon information and belief, the approximately 27 grams of methamphetamine
24 which Tito provided to the Confidential Source on or about February 13, 2015
25 was acquired from the Property.
- 26 10. Upon information and belief, on or about February 19, 2015, the Confidential
27 Source contacted Tito via cellular telephone. Tito agreed to sell the Confidential
28 Source a quantity of methamphetamine for one thousand dollars (\$1,000). Upon

1 information and belief, Tito contacted ELVIN FRED, confirmed that ELVIN FRED
2 was at the Property and made arrangements to meet with ELVIN FRED at the
3 Property. Tito travelled to the Property, went inside the residence on the
4 Property for a brief period and then exited the residence with ELVIN FRED. Tito
5 and ELVIN FRED remained outside the residence for a period of time after
6 which Tito left the Property and travelled to another location where Tito met with
7 the Confidential Source. Tito then provided the Confidential Source with
8 approximately 41.2 grams of methamphetamine.

9 11. Upon information and belief, the approximately 41.2 grams of methamphetamine
10 which Tito provided to the Confidential Source on or about February 19, 2015
11 was acquired from the Property.

12 12. Upon information and belief, on or about March 12, 2015, the Confidential
13 Source contacted Tito via cellular telephone and made arrangements to
14 purchase a quantity of methamphetamine in exchange for nine hundred dollars
15 (\$900). The Confidential Source subsequently met with Tito at a location in
16 Carson City and provided Tito with nine hundred dollars (\$900). Tito contacted
17 ELVIN FRED via telephone and travelled to the Property where he met with
18 ELVIN FRED. Tito subsequently left the Property and returned to a location
19 where he met with the Confidential Source and provided the Confidential Source
20 with approximately 27.5 grams of methamphetamine.

21 13. Upon information and belief, the approximately 27.5 grams of methamphetamine
22 which Tito provided to the Confidential Source on or about March 12, 2015 was
23 acquired from the Property.

24 14. TRI-NET officers provided the Confidential Source the nine hundred dollars
25 (\$900) in currency in advance of the Confidential Source meeting with Tito on or
26 about March 12, 2015, and retained photocopies of the currency provided to the
27 Confidential Source.

28 ///

1 15. On or about March 19, 2015, approximately 150.7 grams of methamphetamine
2 was discovered within the residence on the Property.

3 16. On or about March 19, 2015, approximately five thousand ninety dollars (\$5,090)
4 was discovered within the residence on the Property which included three
5 hundred dollars (\$300) of currency provided to the Confidential Source on March
6 12, 2015 as described in Paragraph 14 of this *Complaint for Forfeiture*.

7 17. On or about March 19, 2015, certain items commonly associated with the
8 possession, use and sale of controlled substances were discovered in the
9 residence on the Property, including, but not limited to: marijuana, digital scales,
10 packaging material, firearms and documents reflecting payments and amounts
11 owed for controlled substance transactions.

12 **FIRST CLAIM FOR RELIEF**

13 **(Forfeiture of Property)**

14 18. ELVIN FRED used or intended to use the Property to facilitate a violation of NRS
15 453.011 to NRS 453.552, including, but not limited to: Trafficking in a Schedule I
16 Controlled Substance (Methamphetamine) Weighing 28 Grams or More, a
17 Category A felony as defined by NRS 453.3385(3); and Conspiracy to Violate
18 the Uniform Controlled Substances Act, a category C felony as defined by NRS
19 453.401.

20 19. The Property is subject to forfeiture pursuant to NRS 453.301.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, the INVESTIGATION DIVISION OF THE DEPARTMENT OF
23 PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force) prays for relief
24 as follows:

- 25 1. For an order that all persons interested in the Property be noticed to appear and
26 show cause, if any, why forfeiture of the Property should not be judicially
27 declared and confirmed;

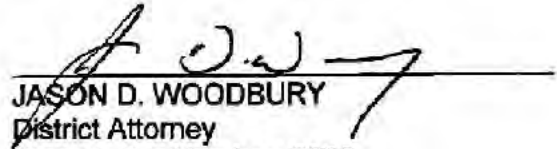
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2. For a judgment of forfeiture vesting all right, title and interest to the Property in Plaintiff to be distributed in the manner set forth in NRS 179.118 to 179.1187, inclusive;
3. For an award of attorneys' fees and costs; and
4. For such other and further relief as deemed appropriate by this Court.

DATED this 1st day of April, 2015.

CARSON CITY DISTRICT ATTORNEY

By:


JASON D. WOODBURY

District Attorney

Nevada Bar Number: 6870

ATTORNEY FOR:

INVESTIGATION DIVISION OF THE
DEPARTMENT OF PUBLIC SAFETY
OF THE STATE OF NEVADA
(Tri-Net Narcotics Task Force)

1 JASON D. WOODBURY
2 DISTRICT ATTORNEY
3 Nevada Bar Number: 6870
4 885 East Musser Street
5 Suite #2030C
6 Carson City, Nevada 89701
7 (775) 887-2070
8 ATTORNEY FOR:
9 INVESTIGATION DIVISION OF THE
10 DEPARTMENT OF PUBLIC SAFETY
11 OF THE STATE OF NEVADA
12 (Tri-Net Narcotics Task Force)

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SUSAN MERRIWETHER
CLERK
BY *[Signature]*
DEPUTY

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

In re:

3587 Desatoya Drive, Carson City, Nevada
89701, more particularly described as all
that certain parcel of land situate in the City
of Carson City, County of Carson City and
State of Nevada, being known and
designated as follows: Parcel N-33 as
shown on Parcel Map No. 1704 for Stanton
Park Development, Inc., filed in the office of
the Recorder of Carson City, Nevada on
August 11, 1989 as File No. 89253, Carson
City Assessor's Parcel Number: 010-443-
11.

Case No. 15 OC 00074 1B

Dept. No. II

NOTICE OF ENTRY OF ORDER

TO: ELVIN FRED, Claimant; and

TO: LOREN GRAHAM, attorney of record for ELVIN FRED, claimant.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a *Stipulation and Order*
to Stay Forfeiture Proceeding ("Order") was entered by the above-named Court on April 27,
2015.

///

1 A true and correct copy of the *Order* is attached hereto and marked as Exhibit 1.

2 DATED this 28th day of April, 2015.

3
4
5 CARSON CITY DISTRICT ATTORNEY

6
7 By: 

JASON D. WOODBURY

District Attorney

Nevada Bar Number: 6870

8 ATTORNEY FOR:

9 **INVESTIGATION DIVISION OF THE**
10 **DEPARTMENT OF PUBLIC SAFETY**
11 **OF THE STATE OF NEVADA**
12 **(Tri-Net Narcotics Task Force)**

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Office of the District Attorney

Carson City, Nevada

885 East Mueser Rd., Suite 2000, Carson City, Nevada 89701
Tel: (775) 687-2070 Fax: (775) 687-2123

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney and that on this 28th day of April, 2015, I caused to be served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by depositing for mailing in the United States Mail at Carson City, Nevada, postage pre-paid a true and correct copy of said document addressed to:

Loren Graham, Esq.
P. O. Box 6329
Stateline, NV 89449

Sylvia Fred
P.O. Box 1150
Red Lake, MN 56671

Beth Anne Rowland

Office of the District Attorney
Carson City, Nevada
835 East Musser St., Suite 2000 Carson City, Nevada 89701
Tel.: (775) 887-2070 Fax: (775) 887-2129

In re:

3587 Desatoya Drive, Carson City, Nevada 89701, more particularly described as all that certain parcel of land situate in the City of Carson City, County of Carson City and State of Nevada, being known and designated as follows: Parcel N-33 as shown on Parcel Map No. 1704 for Stanton Park Development, Inc., filed in the office of the Recorder of Carson City, Nevada on August 11, 1989 as File No. 89253, Carson City Assessor's Parcel Number: 010-443-11.

First Judicial District Court case number: 15 OC 00074 1B

NOTICE OF ENTRY OF ORDER

Exhibit Index

Exhibit No.	Description	Pages
1	<i>Stipulation and Order to Stay Forfeiture Proceeding</i>	2

EXHIBIT 1

EXHIBIT 1

REC'D & FILED

2015 APR 27 PM 3:30

SUSAN MERRIWETHER
CLERK

BY C. COOPER DEPUTY

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

In re:

3587 Desatoya Drive, Carson City, Nevada
89701, more particularly described as all
that certain parcel of land situate in the City
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designated as follows: Parcel N-33 as
shown on Parcel Map No. 1704 for Stanton
Park Development, Inc.; filed in the office of
the Recorder of Carson City, Nevada on
August 11, 1989 as File No. 89253, Carson
City Assessor's Parcel Number: 010-443-
11.

Case No. 15 OC 00074 1B

Dept. No. II

STIPULATION AND ORDER TO STAY FORFEITURE PROCEEDING

COMES NOW, Plaintiff, the INVESTIGATION DIVISION OF THE DEPARTMENT OF
PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force), by and
through its counsel of record, JASON D. WOODBURY, Carson City District Attorney, and
Claimant, ELVIN FRED, by and through his counsel of record, LOREN GRAHAM, Esq., and
hereby stipulate as follows:

This forfeiture proceeding was commenced by the filing of a *Complaint for Forfeiture* on
April 1, 2015;

The criminal actions which are the basis of this forfeiture proceeding are now pending
preliminary hearing before the Justice Court of Carson Township in and for Carson City, State

1 of Nevada, as Case Numbers 15 CR 00384 1C 004 and 15 CR 00457 1C 001, State of
2 Nevada, Plaintiff, v. Elvin Lee Fred, Defendant;

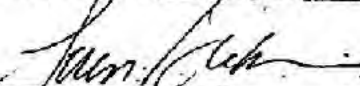
3 NRS 179.1173(2) provides:


4 At a proceeding for forfeiture, the plaintiff or claimant may file a motion for an
5 order staying the proceeding and the court shall grant that motion if a criminal action
6 which is the basis of the proceeding is pending trial....

7 Based on these circumstances and NRS 179.1173(2) Plaintiff and Claimant hereby
8 stipulate to entry of an order by this Court staying this forfeiture proceeding pending further
9 order of the Court; and

10 This Stipulation is brought in good faith and is not made for purposes of delay.

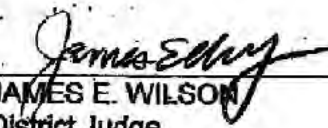
11 DATED this 20th day of APRIL, 2015. DATED this 22nd day of April, 2015.

12
13 
14 LOREN GRAHAM
Attorney for Claimant

15
16 
JASON D. WOODBURY
Attorney for Plaintiff

17 IT IS SO ORDERED.

18 DATED this 27 day of April, 2015.

19
20 
JAMES E. WILSON
District Judge

1 JASON D. WOODBURY
DISTRICT ATTORNEY
2 Nevada Bar No. 6870
885 E. Musser Street, Suite 2030
3 Carson City, NV 89701
(775) 887-2072
4 Attorney for Plaintiff

5
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 STATE OF NEVADA,

10 Plaintiff,

11 v.

12 ELVIN LEE FRED,

13 Defendant.

Case No. 15 CR 00384 1C 004

Dept. No. II

14 CRIMINAL INFORMATION

15 STATE OF NEVADA

16 CARSON CITY

} :ss

17 JASON D. WOODBURY, District Attorney in and for Carson City, State of Nevada, by
18 TYSON D. LEAGUE, Deputy District Attorney, in the name and by the authority of the State of
19 Nevada, informs the Court that ELVIN LEE FRED, the Defendant, above-named, on or
20 between the 3rd day of February, 2015 and the 12th day of March, 2015, and before the filing
21 of this Information, at Carson Township, in Carson City, State of Nevada, has committed the
22 crime of **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 28 GRAMS OR**
23 **MORE**, a category A Felony as defined by NRS 453.3385(3), in the manner following:

24 Count I

25 **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 28 GRAMS OR MORE**
26 **("A" Felony – NRS 453.3385(3))**

27 That the Defendant, Elvin Lee Fred, on or about February 13, 2015, did knowingly or
28 intentionally, sell, manufacture, deliver, or bring into this State, or was knowingly or

1 intentionally in actual or constructive possession of a schedule 1 controlled substance,
2 except marijuana, or any mixture which contains any such controlled substance, in a quantity
3 weighing twenty-eight (28) grams or more, in the manner following, to-wit: the defendant
4 participated in the sale of methamphetamine, a schedule I controlled substance, in an
5 amount greater than 28 grams to a confidential informant, all of which occurred at or near
6 3587 Desatoya Drive, Carson City, Nevada.

7 All of which is contrary to the form of the Statutes in such cases made and provided
8 and against the peace and dignity of the State of Nevada.

9 DATED this 16th day of June, 2015.

10 JASON D. WOODBURY
11 District Attorney

12 By: 

13 TYSON D. LEAGUE
14 Deputy District Attorney
15 Nevada Bar No. 13366
16
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28

1 The following are the names of such witnesses for the State of Nevada as are known to
2 me at the time of filing this Information:

3 Dave McNeely
4 Tri Net Narcotics Task Force
5 555 Wright Way
6 Carson City, NV 89701

CS 15-TN-001

6 Mitch Pier
7 Tri Net Narcotics Task Force
8 555 Wright Way
9 Carson City, NV 89701

9 Dan Vidovich
10 Tri Net Narcotics Task Force
11 555 Wright Way
12 Carson City, NV 89701

12 Pete Welker
13 Drug Enforcement Administration
14 8790 Double Diamond Parkway
15 Reno, NV 89521-4844

14 Charles Stetler
15 Tri Net Narcotics Task Force
16 555 Wright Way
17 Carson City, NV 89701

17 Brian Hubkey 0390
18 Tri Net Narcotics Task Force
19 555 Wright Way
20 Carson City, NV 89701

20 Michael Kellerman SA
21 Drug Enforcement Administration
22 8790 Double Diamond Parkway
23 Reno, NV 89521-4844

23 Washoe County Crime Lab
24 911 Parr Boulevard
25 Reno, NV 89512

25 James Franklin Beaver
26 29 Castle Way
27 Carson City, NV 89706

27 Patricia Bigpond
28 1301 Como St #A
1301 Como St #A, NV 89701

Office of the District Attorney
Carson City, Nevada
885 East Musser St., Suite 2030, Carson City, Nevada 89701
Tel.: (775) 887-2072 Fax: (775) 887-2129

1 CASE NO: 15 CR 00143

2 DEPT. NO: 1

3 COPY

4
5
6 IN THE JUSTICE/MUNICIPAL COURT OF THE CARSON TOWNSHIP
7 IN AND FOR CARSON CITY, STATE OF NEVADA
8 BEFORE THE HONORABLE TODD RUSSELL
9

10 STATE OF NEVADA,

Transcript of Proceeding

11 Plaintiff,

12 v.

13 ELVIN LEE FRED,

14 Defendant.
15 _____/

16 ARRAIGNMENT

17 June 29, 2015
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22

23 SUNSHINE LITIGATION SERVICES
24 TRANSCRIBED FROM JAVS CD
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APPEARANCES

FOR THE PLAINTIFF Tyson D. League, Esq.
Carson City District Attorney
885 E. Musser Street, #2030
Carson City, NV 89701

FOR THE DEFENDANT Loren Graham, Esq.
State of Nevada Public Defender's Office
511 E. Robinson Street, #1
Carson City, NV 89701

TRANSCRIPTION Pam Simon

Proceedings recorded by digital sound recording, transcript produced by
certified transcriptionist.

EXAMINATION

CARSON CITY, NEVADA, JUNE 29, 2015

--o0o--

(Court in session at 9:09:33 a.m.)

THE COURT: The next matter before the Court is going to be case number 15CR00148, the State of Nevada versus Elvin Lee Fred. (Inaudible – wrong case at this time).

-o0o-

THE COURT: The next one is case number 15 CR 00143, and also, case number 15 00147.

MR. GRAHAM: Good morning, Your Honor. Loren Graham appearing with Mr. Fred.

THE COURT: Has there been a Plea Agreement? I guess, in one of the cases there has been?

MR. GRAHAM: There is. And I believe the number –

THE COURT: 15 CR 00143. Is that the one there's been a Plea Agreement in? The other two cases are going to be dismissed, is that correct?

MR. LEAGUE: That's accurate, Your Honor.

MR. GRAHAM: That is correct, Your Honor.

THE COURT: Okay. For the record, present on behalf of the State of Nevada, Tyson League, Deputy District Attorney. Present on behalf of Defendant is Loren Graham. Defendant is present in the Courtroom.

1 Mr. Graham, we'll go ahead and take case number 15 CR
2 00143 at this time.

3 Sir, please stand. Your full name is Elvin Lee Fred, is that
4 correct?

5 DEFENDANT: Yes, sir.

6 THE COURT: The Criminal Information in this matter provides
7 as follows – unless there is a waiver of the criminal – reading of the
8 Criminal Information.

9 MR. GRAHAM: Your Honor, we would waive the reading of the
10 Criminal Information. We received a copy of it last week and I had the
11 chance to go over it with Mr. Fred.

12 THE COURT: The Criminal Information in this matter, sir,
13 charges you with the crime of Trafficking in a Schedule I Controlled
14 Substance of 28 grams or more, a Category A Felony, as defined by NRS
15 483.3385(3), alleging that on or about February 13th, 2015, you did
16 knowingly or intentionally sell, manufacture, deliver or bring to the State,
17 with knowingly, intentionally (inaudible) possession of a Scheduled I
18 Controlled Substance in a quantity weighing 28 grams or more.

19 So do you understand the charges against you?

20 DEFENDANT: Yes.

21 THE COURT: If you are found guilty, or you plead guilty to
22 these charges, as a Category A felony, the possible sentence in this particular
23 matter is Life with the possibility for parole with eligibility for parole
24 beginning when a minimum of 10 years has been served, or for a definite
25 term of 25 years with the eligibility of parole beginning when a minimum of

1 10 years has been served, and up to a \$500,000 fine, so do you understand
2 that?

3 DEFENDANT: Yes.

4 THE COURT: Are you a citizen of the United States?

5 DEFENDANT: Yes.

6 THE COURT: Veteran of the military?

7 DEFENDANT: No.

8 THE COURT: Mr. Fred, in respect to the charges against you,
9 Trafficking in a Schedule I Controlled Substance, 28 grams or more, a
10 Category A felony as defined by NRS 453.3385, sub 3, how do you plead,
11 guilty or not guilty?

12 DEFENDANT: Guilty.

13 THE COURT: Please be seated.

14 Before I accept your guilty plea, I must determine whether or
15 not your plea is being voluntarily and knowingly entered, and not the result
16 of any force, threats or promises other than those set forth in the
17 Memorandum of Plea Negotiation.

18 Again, Mr. Fred, here you're charged with the crime of
19 Trafficking in a Scheduled I Controlled Substance, 28 grams or more, a
20 Category A felony.

21 The State must prove these charges against you. Do you
22 understand that?

23 DEFENDANT: Yes.

24 THE COURT: The State must prove that you are guilty of this
25 crime beyond a reasonable doubt. Do you understand that?

1 DEFENDANT: Yes.
2 THE COURT: If they fail to prove any elements of this crime,
3 you'd be found not guilty. Do you understand that?
4 DEFENDANT: Excuse me?
5 THE COURT: If they fail to prove any of the elements of this
6 crime, you'd be found not guilty, so do you understand that?
7 DEFENDANT: Yes.
8 THE COURT: Again, the possible penalty in this particular case
9 as a Category A felony is Life with the possibility of parole with an
10 eligibility for parole beginning when a minimum of 10 years has been
11 served, or for a definite term of 25 years with eligibility for parole beginning
12 when a minimum of 10 years has been served, and up to a \$500,000 fine. So
13 do you understand that?
14 DEFENDANT: Yes.
15 THE COURT: I've been provided with a Memorandum of Plea
16 Negotiation. This is an agreement between you and the State of Nevada by
17 and through the District Attorney's Office that provides as follows:
18 In exchange for my plea of guilty, the State will not pursue any
19 other charges in case number 15 CR 384. The State will not pursue charges
20 in case number 15 CR 478 or 15 CR 457.
21 The State further agrees not to pursue charges for Trafficking
22 in a Schedule I Controlled Substance against Tawny Lynn Johnson, the co-
23 defendant, in case number 15 CR 457.
24 Both parties will be free to argue for any legally appropriate
25 sentence.

1 I'm presuming that those are the Justice Court numbers in
2 respect to those cases, and that we're concerned and talking about case
3 number 15 CR 00148 001 and case number 15 CR 00147 001, is that
4 correct?

5 MR. LEAGUE: That's correct, Your Honor.

6 THE COURT: Mr. Graham, is that also correct?

7 MR. GRAHAM: It is, Your Honor.

8 THE COURT: Thank you, in respect to this matter.

9 So, do you understand that to be the agreement?

10 DEFENDANT: Yes, sir.

11 THE COURT: Did you go through that agreement basically
12 with your attorney?

13 DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions of your attorney in
15 respect to that agreement?

16 DEFENDANT: (Inaudible).

17 THE COURT: Did you understand the terms of the agreement?

18 DEFENDANT: If I plead guilty to this, you guys are going to let
19 Tawny Johnson – you guys are going to drop the Trafficking one on Tawny
20 Johnson?

21 THE COURT: I can't understand a word you're saying.

22 MR. GRAHAM: Yes. He wanted to make sure that the State is
23 going to not pursue the Trafficking charge against Tawny Lynn Johnson.

24 THE COURT: That's what the agreement provides in respect to
25 that. That's clear in the agreement. So do you understand that?

1 DEFENDANT: Yes.
2 THE COURT: So do you understand the terms and conditions
3 of this agreement?
4 DEFENDANT: Yes.
5 THE COURT: Did you sign this agreement?
6 DEFENDANT: Yes.
7 THE COURT: Is that your signature on page 5?
8 DEFENDANT: Yes.
9 THE COURT: Do you understand that irrespective of the terms
10 and conditions of this agreement though it's up to the State – the Court,
11 excuse me, up to the Court to sentence you. Do you understand that?
12 DEFENDANT: Yes.
13 THE COURT: Were you under the influence of any drugs,
14 alcohol or any other medication at the time you signed this agreement?
15 DEFENDANT: No.
16 THE COURT: Did anyone force you to sign this agreement?
17 DEFENDANT: No.
18 THE COURT: Did anyone threaten you in any manner to get
19 you to sign this agreement?
20 DEFENDANT: No.
21 THE COURT: Have any promises been made other than those
22 set forth in the Plea Agreement? In other words, this Plea Agreement –
23 Memorandum of Plea Negotiation, pertains to all the agreements that were
24 made to you. Do you understand that?
25 DEFENDANT: Yes.

1 THE COURT: As to your constitutional rights, you're giving up
2 your right to plead not guilty. Do you understand that?
3 DEFENDANT: Yes.
4 THE COURT: You're giving up your right to a speedy, public
5 jury trial, free of pretrial publicity. Do you understand that?
6 DEFENDANT: Yes.
7 THE COURT: You're giving up your right at trial to confront,
8 cross examine witnesses against you. Do you understand that?
9 DEFENDANT: Yes.
10 THE COURT: You're giving up your right to call witnesses on
11 your own behalf, the right to call their appearance at trial. Do you
12 understand that?
13 DEFENDANT: Yes.
14 THE COURT: You're giving up your right to present evidence
15 at trial, testify or remain silent based upon your 5th Amendment right against
16 self-incrimination. Do you understand that?
17 DEFENDANT: Yes.
18 THE COURT: You're giving up your right to appeal any
19 defects in your case up to this point in time. Do you understand that?
20 DEFENDANT: Yeah. Yes.
21 THE COURT: Keeping all those rights in mind, you still want
22 to go ahead and have the Court accept your guilty plea?
23 DEFENDANT: Yes.
24 THE COURT: You're not waiving your right to have your
25 attorney present at any further proceeding, however. Do you understand

1 that?

2 DEFENDANT: Excuse me?

3 THE COURT: You have a right to have your attorney present at

4 any further proceeding. Do you understand that?

5 DEFENDANT: Yes.

6 THE COURT: Did you get a chance to talk to your attorney?

7 DEFENDANT: Yes.

8 THE COURT: Chance to review your case with your attorney?

9 DEFENDANT: Yes.

10 THE COURT: Satisfied with your legal representation?

11 DEFENDANT: Yes.

12 THE COURT: Are you pleading guilty because, in fact, you are

13 guilty?

14 DEFENDANT: Yes.

15 THE COURT: I find the defendant has voluntarily and

16 knowingly waived his constitutional rights. I find the defendant understands

17 the charges against him, the possible sentence, and has voluntarily and

18 knowingly entered his plea of guilty which is accepted by this Court.

19 Sentencing will be on August 24th at 9:00. The Division of

20 Parole & Probation will prepare a Pre-Sentence Investigation Report and

21 you'll cooperate with them.

22 Anything further, counsel?

23 MR. GRAHAM: Yes, Your Honor. Mr. Fred would like to be

24 able to have contact with Tawny Lynn Johnson who is the mother of his

25 child.

1 MR. LEAGUE: Your Honor, at this time, we have no real
2 objection to that. We're not sure how that's going to work later on with
3 P&P with both of them being under supervision, but we have no objection to
4 that at this time.

5 THE COURT: Well, if there's no objection from the State in
6 respect to that, you can have contact with her in respect to that.

7 Also, case number 15 CR 00148 will be dismissed.

8 Case number 15 CR 00147 will also be dismissed pursuant to
9 the agreement.

10 MR. LEAGUE: Thank you, Your Honor.

11 MR. GRAHAM: Thank you, Your Honor.

12

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14 **(Whereupon Court in recess at 9:19:25 a.m.)**

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STATE OF NEVADA }
COUNTY OF WASHOE } SS:

I, PAMELA D. SIMON, a notary public in and for the County of Washoe, State of Nevada, do hereby certify:

That I was provided a JAVS CD of the hearing above-referenced, and that said transcript, which appears hereinbefore was transcribed verbatim into typewriting as herein appears to the best of my knowledge, skill, and ability and is a true and correct record thereof.

I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

DATED this 26th day of September, 2016.



PAMELA D. SIMON

REC'D & FILED

June 29, 2015

Date

SUSAN MERRIWETHER

CLERK

By

Hazel Corral

Deputy

JASON D. WOODBURY
DISTRICT ATTORNEY
Nevada Bar No. 6870
885 E. Musser Street, Suite 2030
Carson City, NV 89701
(775) 887-2072
Attorney for Plaintiff

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

STATE OF NEVADA,

Plaintiff,

v.

ELVIN LEE FRED,

Defendant.

Case No.

15CR00143B004
~~15CR00384-1G-004~~

Dept. No.

II

MEMORANDUM OF PLEA NEGOTIATION

I, ELVIN LEE FRED, by and through LOREN GRAHAM ESQ. and TYSON D. LEAGUE, Deputy District Attorney in and for Carson City, State of Nevada, hereby agree to plead guilty to **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 28 GRAMS OR MORE**, a category A Felony as defined by NRS 453.3385(3), and as more fully alleged in the charging document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

In exchange for my plea of guilty the State will not pursue any other charges in case 15CR384, further the State will not pursue charges in 15CR478 or 15CR457. The State Further agrees not to pursue charges for Trafficking in a schedule I controlled substance against Tawnee Lynn Johnson the co-defendant in 15CR457. Both parties will be free to argue for any legally appropriate sentence.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements.

1 the offense to which I now plead as set forth in Exhibit "1".

2 I understand that as a consequence of my plea of guilty to the charge of
3 **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 28 GRAMS OR MORE**, I
4 will receive one of two possible sentences: 1) a minimum of 10 years to a maximum of Life in
5 the State of Nevada Department of Corrections; 2) a minimum of 10 years to a maximum of
6 25 years in the State of Nevada Department of Corrections, and in either instance I may be
7 fined not more than \$500,000.00. I understand that restitution may be required. I understand
8 that the law requires me to pay a \$25.00 Administrative Assessment Fee.

9 I understand that, if appropriate, I will be ordered to make restitution to the victim of the
10 offense to which I am pleading guilty and to the victim of any related offense which is being
11 dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse
12 the State of Nevada for any expenses related to my extradition, if any.

13 I further acknowledge that I have been advised that if I am not a United States citizen,
14 pursuant to Federal Immigration Law, conviction of this felony may result in deportation,
15 revocation of resident alien status, visa or work permit, denial of re-admission to the United
16 States, and denial of naturalization should I apply.

17 I understand that I am not eligible for probation for the offense to which I am pleading
18 guilty.

19 I understand that information regarding charges not filed, dismissed charges, or
20 charges to be dismissed pursuant to this agreement may be considered by the judge at
21 sentencing.

22 I understand that if more than one sentence of imprisonment is imposed and I am
23 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
24 the sentences served concurrently or consecutively.

25 I have not been promised or guaranteed any particular sentence by anyone. I know
26 that my sentence is to be determined by the court within the limits prescribed by statute. I
27 understand that if my attorney or the State of Nevada or both recommend any specific
28 punishment to the Court, the Court is not obligated to accept the recommendation.

1 I understand that the Division of Parole and Probation will prepare a report for the
2 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
3 sentencing, including my criminal history. This report may contain hearsay information
4 regarding my background and criminal history. My attorney and I will each have the
5 opportunity to comment on the information contained in the report at the time of sentencing.
6 Unless the District Attorney has specifically agreed otherwise, then the District Attorney may
7 also comment on this report and its contents, including, but not limited to, all facts and
8 circumstances of this offense or offenses.

9 I understand that if the State of Nevada has agreed to recommend a particular
10 sentence or has agreed not to present argument regarding the sentence, or has agreed not to
11 oppose a particular sentence, such agreement is contingent upon my appearance in court on
12 the initial sentencing date and any subsequent date if the sentencing is continued. I
13 understand that if I fail to appear for the scheduled sentencing date or I commit a new
14 criminal offense prior to sentencing, the State of Nevada would regain the full right to argue
15 for any lawful sentence.

16 WAIVER OF RIGHTS

17 By entering my plea of guilty, I understand that I am waiving and giving up the following
18 rights and privileges:

19 1. The constitutional privilege against self-incrimination, including the right to
20 refuse to testify at trial, in which event the prosecution would not be allowed to comment to
21 the jury about my refusal to testify.

22 2. The constitutional right to a speedy and public trial by an impartial jury, free of
23 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
24 assistance of an attorney, either appointed or retained. At the trial the State would bear the
25 burden of proving beyond a reasonable doubt each element of the offense charged.

26 3. The constitutional right to confront and cross-examine any witnesses who would
27 testify against me.

28 4. The constitutional right to subpoena witnesses to testify on my behalf.

Office or the District Attorney
Carson City, Nevada
 885 East Musser St., Suite 2030, Carson City, Nevada 89701
 Tel: (775) 887-2072 Fax: (775) 887-2129

8 | VOLUNTARINESS OF PLEA

11 I understand that the State would have to prove each element of the charge against
12 me at trial.

15 All of the foregoing elements, consequences, rights, and waiver of rights have been
16 thoroughly explained to me by my attorney.

19 I am signing this agreement voluntarily, after consultation with my attorney, and am not
20 acting under duress or coercion or by virtue of any promises of leniency, except for those set
21 forth in this agreement.

28 |||

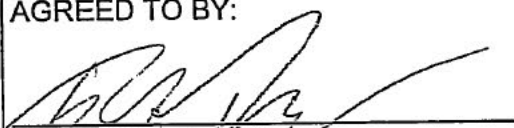
1 I am not now under the influence of any intoxicating liquor, a controlled substance or
2 other drug which would in any manner impair my ability to comprehend or understand this
3 agreement or the proceedings surrounding my entry of this plea.

4 My attorney has answered all my questions regarding this guilty plea and its
5 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

6 DATED this 24th day of JUNE, 2015.

7
8 
9 ELVIN LEE FRED
Defendant

10 AGREED TO BY:

11
12 
13 TYSON D. LEAGUE
14 Deputy District Attorney
15 Nevada Bar No. 13366

16
17 6/16/15
18 Date

Office of the District Attorney
Carson City, Nevada
885 East Musser St., Suite 2030, Carson City, Nevada 89701
Tel: (775) 887-2072 Fax (775) 887-2129

CERTIFICATE OF COUNSEL

I, LOREN GRAHAM ESQ., as the attorney for the Defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the Defendant the allegations contained in the charge to which guilty pleas are being entered.
2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.
3. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant and are in the best interest of the Defendant.
4. To the best of my knowledge and belief, the Defendant:
 - a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement.
 - b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily.
 - c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time of the execution of this agreement.

Dated this 24th day of JUNE, 2015.



LOREN GRAHAM ESQ.
Attorney for Defendant
P. O. Box 6329
Stateline, NV 89449
(775) 588-5138
Nevada Bar No.

Case No. 15 CR 00143 1B004

Dept. No. I

REC'D & FILED

2015 AUG 21 AM 11:57

SUSAN HERRIOWETH

CLERK

BY *[Signature]*
DEPUTY

District
IN THE ~~JUSTICE~~ COURT OF CARSON *City* ~~TOWNSHIP~~
IN AND FOR CARSON CITY, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

SENTENCING MEMORANDUM

vs.

Sentencing Date: August 24, 2015

ELVIN LEE FRED, et al.,

Time: 9:00 a.m.

Defendants.

COMES NOW ELVIN FRED, by and through his attorney, Loren Graham, and submits the following information for the Court's consideration regarding his sentencing:

ELVIN FRED urges the Court to follow the recommendation of Parole and Probation and to sentence him to a definite term of 25 years with eligibility for parole beginning when a minimum of 10 years has been served.

Enclosed for the Court's consideration (see Exhibit 1) is a five-page letter from MR. FRED, which is the most honest, perceptive and insightful letter to the Court that undersigned counsel has ever received in his career. In his letter, MR. FRED reports the history of his life that led him to be sentenced on this very serious crime.

This is MR. FRED's first drug-related offense. His issue that has involved him with the majority of his criminal history has been his battle with alcoholism. Attached for the Court's consideration

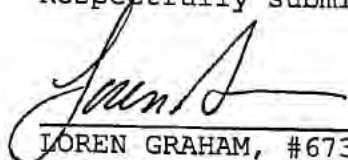
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are substance abuse counselor's reports (see Exhibit 2) that confirm that MR. FRED has been, as he reports in his letter, fighting his battle with alcohol and has taken positive steps over the years to overcome that addiction. MR. FRED's only prior felony conviction arises out of an incident 17 years ago when he was 16 in which he was one of the least culpable persons involved in the incident. He successfully completed his five years of probation.

As MR. FRED expresses in his letter, most important to him in his life is his family. He understands and is willing to accept the punishment that this Court must impose, but asks the Court to impose a sentence that will return him to his family sooner.

DATED: August 21, 2015

Respectfully submitted.



LOREN GRAHAM, #673
P.O. Box 6329
Stateline, NV 89449
(775) 588-5138
Attorney for Defendant
ELVIN LEE FRED

EXHIBIT 1

TO HONORABLE JUDGE JAMES RUSSELL

I am writing to you in a respectable and humble manner. My intentions in this letter is to enlighten you on my history and the crime I committed. As you may know, I am charged with Trafficking in a Schedule I Controlled substance. If I only knew how serious the crime really was, please believe me I would have not commit such an offense.

I am a 33 year old Native American male and an enrolled member of the Jasho Tribe of Nevada and California. As of to date, I am engaged to be married and a proud father of 7 children. I have two beautiful daughters: Ayla age 7 and Taneah age 3. My sons are Jalen 14 and Taylor age 11. I also have three step daughters Destiny age 11, Autumn 9, and Keyonai 8. I LOVE my family and would do anything for their happiness.

Growing up in a poverty stricken environment was no easy task. At times - was difficult. Both my parents were heavy alcoholics along with numerous other family members. Even though my father always had employment my family was considered poor throughout the community. Yes, my father did make decent money but the question always pondered in my head, weren't we financially stable? Within a few days after payday my parents were broke and my siblings and I were hungry again. I can recall multiple times crying out emotionally due to hunger along with other needs. As an adult I now know that it was not my parents intentions to neglect us. They were merely victims in their disease of Alcoholism.

My family moved here to Carson when I was 16 years old. After settling here I later found out that there was an ongoing feud between the hispanic and Native American communities. I was assaulted or jumped on numerous occasions by hispanics, just for being a young Native American.

now that I was a victim of racism or hatred. Shortly after my arrival to Carson City my alcohol consumption began. I don't know if it was the fact that a lot of my family members, peers, or people in the community did. It felt like it was a normal thing to do. So I began to consume alcohol and picked-up other addictive habits.

August 23, 1998. A day that impacted my life emotionally and psychologically throughout the years. I have no reason to lie or beat around the bush. I was charged with Murder in the First degree. If I knew that a person was going to lose their life on this night, I would have never been a part of the events that took place. While getting intoxicated with some friends. We received a phone call that a Native American female was assaulted by a certain group of hispanic males. I don't know if it was the alcohol, anger, peer pressure, or a mixture of all, but I made the decision to attend and help confront the individuals of their wrong doings. I felt enough was enough that I had to stand up for what was right at the time. During the confrontation words escalated to a fight and an individual ended up losing his life. I did not have a weapon or strike anybody, but due to the fact that I was present during the altercation, I was a part of the crime. As a child I was always taught to be a person with honor and take responsibility for my actions. Good or bad. Therefore, I plead guilty for being a part of the crime. For my lack of participation the disposition was Assault Resulting in Substantial Bodily Harm. The punishment was 2-5 years in prison or 5 years on probation. The court and society felt that an appropriate sentence for my actions was 5 years on probation. After 5 years on probation I was released with an honorable discharge. Being a part of this crime made me feel like a horrible person. I would never wish death upon anybody and I pray for the victim of this crime.

on I still can't answer the question. Why did I sell methamphetamine?
I was sober and kicking a life long habit of Alcoholism. I don't know if I just
replaced one addictive habit with another. When I first tried meth. I found
myself liking it immediately. Like every addiction. I started small. Once every
so often. Then one time per week. which ended up becoming a 3-4 times per
week habit. I started buying small portions after a while it led to large
quantities. just to save a few dollars. I was manipulated into helping a few
people out with an incentive in return. A drug habit was building inside me
and I figured instead of paying for the drug I can get it for free. I receive
some money and it made me feel good and important that I was able to help
my family out financially. Even if it was for a short time. As I already stated
I grew up in a home with financial hardship and received great emotional scar
issue resulting from it. I never wanted my children to endure all the hardship
I had to. Like to have an empty stomach and have to cry out for food while
the other kids got new toys and clothes I would get my brothers hand-me-
down the year before. Or not having the experience to have my own bed until
I was a teenager and out of the house. The list can go on. In a way I
was trying to re-live my life through my children. I have only done this for
a couple months but at the time I really thought I was helping out
someone in need. I wasn't out stealing or hurting anyone. That this is a victi-
less crime. I now can see that I justified every reason why it was ok. I
guess I should have taken a step back to look at the big picture.

Your honor I never got to sit down and reflect on my life and the crim-
inals I committed until now. I now recognize my past issues and character defects
every single crime that I committed was resulted from my addiction. I have
come a long way in my fight with alcoholism and addictions. I have been

substance Abuse Counseling and A.A. on a weekly basis. I am an alcoholic. I continue to attend Substance Abuse & Life Skills Counseling and A.A. while incarcerated here in the Carson City Jail. I need the help and I will continue further my sobriety for the years to come. This disease of Alcoholism is leading me down a one way road. I feel that I didn't get arrested. I got rescued. And I believe that. Death was knocking at my door.

As human beings not one single person is perfect. We all make mistakes. What makes us the most intelligent in the animal kingdom is that we learn from our mistakes at a more advanced level. We imply what we've learned and move on. What I'm saying is I definitely learned from my ignorant judgements. I can only speak for myself. It was not worth it. I lost everything. My freedom. Most important I lost my family. I believe that its every mans dream to have a family with children and a nice home to raise them in. To be the protector of his family when one of my daughters are feeling sad. Give them a shoulder to lean on. And insure them that it will be okay. It breaks my heart to come to the realization that I won't be able to experience the joy of being a father or even worse that my children are going to be fatherless in physical form on a daily basis. Its hard to hear my wife cry on the phone stressed from all the difficulties of becoming a single mother. Or when my children ask me, "Daddy when are you coming home"? Also the fact that after court on 8-24 our house is going to be seized and my family is going to be homeless. All because of my mistakes they have to suffer.

Have you ever woke up in the morning and wanted to tell the ones you love that you love them, but they are not there? Its the worst feeling to have. I'm going to have to live with this feeling day by day throughout the years to come. People say that crimes like this is a victimless crime. I

the victims being my soon to be wife, all my children, and family. They all have to suffer because of my poor judgments.

Your honor. I'm not asking you to feel sorry for me. Yes, I did do a crime. I deserve the proper punishment that you see fit. You probably heard it over and over. People say, "I learned my lesson", "I won't do it again." I feel in my heart, soul, and spirit that this is my last chance. I definitely am learning a hard lesson from all this. I LOST EVERYTHING. The only thing I have left is my faith and will. I have faith that one day I will be re-united with my wife and children. The will to overcome this life threatening disease I call Alcoholism and addiction, one thing that I hold dearly. Is that no matter what you do in life or what we want to do. It is NEVER TOO LATE.

GOD BLESS YOU AND THANKS FOR YOUR TIME AND CONSIDERATION

Respectfully,




EXHIBIT 2

**Nevada Urban Indians, Inc.**

745 W. Moana Lane
Suite 300 – Physical Address
Suite 375 – Mailing Address
Reno, NV 89509
Tel: (775) 788-7600
Fax: (775) 788-7611 Secure Fax: (775) 284-8571
Website: www.nevadaurbanindians.org

Substance Abuse Counseling Program Status/Progress

March 14, 2015

Carson City Justice & Municipal Court
885 E. Musser Street Suite 2007
Carson City, Nevada 89701

RE: Elvin Fred
D.O.B.: 07/26/1982
Case #'s: 12 CR 00862 1C & 12 CR 01071 1C

To Whom it May Concern,

Mr. Elvin Fred attended three group counseling sessions (2/27, 3/6, 3/13) and two joint substance abuse counseling sessions (2/27 and 3/6) with his partner since his last progress report dated February 24th, 2015. Mr. Fred continues to consistently attend counseling as recommended while awaiting his court date. He completed his Anger Management Program several months ago.

Mr. Fred informed this counselor of his arrest for driving on a revoked license and probation violations in January. Despite making a poor choice to drive, Mr. Fred was sober which illustrates the significant progress he has made in the last year and a half since he first started his counseling program. He has demonstrated sustained abstinence (abstinent for 8 months prior to his most recent relapse in September, and the 6 months since then). Mr. Fred continues to focus on his family, his sobriety, avoids hanging out with old acquaintances and places that sell/serve alcohol. He understands that alcoholism is a disease and is still learning how to manage it. Mr. Fred acknowledges that he requires additional work related to thinking of possible consequences before making choices. He is working on this and is steadily improving in this area.

As mentioned previously, this counselor would like to continue working with Mr. Fred if given the opportunity to do so. Mr. Fred has demonstrated that he can maintain abstinence at this level of care (outpatient treatment) therefore placement in a residential treatment program is not necessary or recommended. Mr. Fred continues to apply what he is learning and continues to share his successes and challenges during his counseling sessions.

Mr. Fred still requires a solid support system to sustain his recovery efforts after his counseling program and legal requirements have been satisfied however. This counselor again is recommending that he continue his outpatient treatment program – individual, group and/or joint counseling each week until his sentencing hearing. In addition to his counseling sessions, Mr. Fred will continue to attend 1-2 AA Meetings each week and/or participate in Sweat Lodge/ Ceremony and follow any other court recommendations. Mr. Fred is aware that he needs the support of an AA program and has attended AA Meetings since last November. Mr. Fred will obtain an AA Sponsor once his current court proceedings are over.

PA000048

This counselor is recommending Mr. Fred continue to participate in an outpatient treatment program should the court allow Mr. Fred to forego jail/prison time (timeframe to be determined). Mr. Fred can be successful if given the opportunity to do so. He has demonstrated his ability to maintain abstinence with support and has shown that he is capable of making good choices. Mr. Fred is fully aware that he has much to lose if he continues to drink alcohol and acknowledges that alcohol is at the root of all of his problems. He has the desire to remain abstinent and to actively work his counseling/recovery program.

Thank you for your time and consideration. Should you have any questions or require additional information, please feel free to contact me at Nevada Urban Indians (N.U.I.) (775)788-7600 x107 (8:30am - 4:30pm Mondays-Thursdays and Fridays 8:30am - 1:00pm). Thank you!

Respectfully,



Vicki M. Lillegard, M.A., L.A.D.C.

Licensed Alcohol/Substance Abuse Counselor # 1086-L

Nevada Urban Indians, Inc.

1475 Terminal Way, Suite B

Reno, NV 89502

Phone: (775) 788-7600

Fax: (775) 788-7611

Toll Free: (888) 885-8447

Website: www.nevadaurbanindians.org**Anger Management Program Completion**October 9th, 2013

Carson City Justice & Municipal Court
885 E. Musser Street Suite 2007
Carson City, Nevada 89701

RE: Elvin Fred

D.O.B.: 07/26/1982

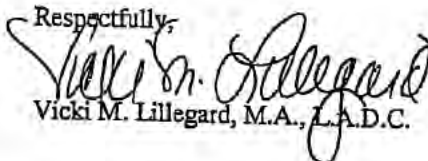
Case #'s: 12 CR 00862 1C & 12 CR 01071 1C

To Whom it May Concern;

Please be advised that Elvin Fred satisfactorily completed his Anger Management Counseling Program (34 group counseling sessions) on October 9th, 2013. Although it was recommended that he attend 14 Anger Management group counseling sessions initially, Mr. Fred chose to attend an additional 20 sessions after he completed the 14 sessions for added support and to continue learning how to manage his behavior.

This counselor is pleased with the effort Mr. Fred put into his anger management program and his willingness to make positive changes for himself, his partner, his children and their future. Mr. Fred was cooperative and was an active participant in the group discussions. Mr. Fred has demonstrated that he has internalized what he has learned in his program and is applying these principles in his everyday experiences. Should you have any questions or require additional information, please feel free to contact me at Nevada Urban Indians (N.U.I.) (775) 788-7600 (8:30am - 4:30pm Mondays-Thursdays and Fridays 8:30am - 1:00pm). Thank you!

Respectfully,


Vicki M. Lillegard, M.A., L.A.D.C.

PA000050

Certificate of Completion

This certificate is awarded to:

Elvin Fred

In recognition of Completing:

Anger Management
Counseling Program (34 Sessions)

At NEVADA URBAN INDIANS INC.

Given this 9th day of October, 2013



Elvin Fred
Signature
Date *October 9th, 2013*



Nevada Urban Indians, Inc.

745 W. Moana Lane
Suite 300 – Physical Address
Suite 375 – Mailing Address
Reno, NV 89509
Tel: (775) 788-7600
Fax: (775) 788-7611 Secure Fax: (775) 284-8571
Website: www.nevadaurbanindians.org

Substance Abuse Counseling Program Status/Progress

February 9, 2015

Carson City Justice & Municipal Court
885 E. Musser Street Suite 2007
Carson City, Nevada 89701

RE: Elvin Fred
D.O.B.: 07/26/1982
Case #'s: 12 CR 00862 1C & 12 CR 01071 1C

To Whom it May Concern,

Mr. Elvin Fred attended two individual counseling sessions (2/3, 2/9), two group counseling sessions (1/30, 2/6) and one joint session (1/30) with his partner since his last progress report dated January 23rd, 2015. Mr. Fred has been attending counseling consistently as recommended while awaiting his court date. He completed his Anger Management Program several months ago.

Mr. Fred was open and forthcoming about being arrested for driving on a revoked license and probation violations in January. Despite making a poor choice to drive, Mr. Fred was sober which illustrates the significant progress he has made in the last year and a half since he first started his counseling program. He has demonstrated sustained abstinence (abstinent for 8 months prior to his most recent relapse in September, and the 5 months since then). Mr. Fred has focused his attention on his family, his sobriety, has avoided hanging out with old acquaintances and places that sell/serve alcohol. He understands that alcoholism is a disease and is still learning how to manage it. Mr. Fred acknowledges that he requires additional work in thinking of possible consequences before making choices. Although this has been problematic for him, he is working on this and is improving.

This counselor would like to continue working with Mr. Fred if given the opportunity to do so. Mr. Fred has demonstrated that he can maintain abstinence at this level of care (outpatient treatment) therefore placement in a residential treatment program is not necessary or recommended. Mr. Fred continues to apply what he is learning and continues to share his successes and challenges during his counseling sessions.

Mr. Fred still requires a solid support system to sustain his recovery efforts after his counseling program and legal requirements have been satisfied however. This counselor again is recommending that he continue his outpatient treatment program until his sentencing hearing. This will include: 1 group session and 1 individual counseling session each week. In addition to his counseling sessions, Mr. Fred will continue to attend 1-2 AA Meetings each week and/or participate in Sweat Lodge/ Ceremony and Follow any other court recommendations. Mr. Fred is aware that he needs the support of an AA program and started attending AA Meetings last November. Although it

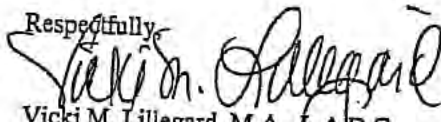
PA000052

was recommended that he obtain an AA Sponsor, he has not done so as yet. He is open to doing so however.

If the court determines that Mr. Fred be allowed to forego jail/prison time, then it is recommended that he continue to participate in an outpatient treatment program (timeframe to be determined at that time). It is this counselor's belief that Mr. Fred can be successful if given the opportunity to do so. He has demonstrated that he can maintain abstinence with support and is capable of making good choices. Mr. Fred is aware that he has much to lose if he continues to drink alcohol and acknowledges that alcohol is at the root of all of his problems. He has the desire to remain abstinent and to actively work his counseling program.

Thank you for your time and consideration. Should you have any questions or require additional information, please feel free to contact me at Nevada Urban Indians (N.U.I.) (775)788-7600 x107 (8:30am - 4:30pm Mondays-Thursdays and Fridays 8:30am - 1:00pm). Thank you!

Respectfully,



Vicki M. Lillegard, M.A., L.A.D.C.

Licensed Alcohol/Substance Abuse Counselor # 1086-L

Nevada Urban Indians, Inc.
745 W. Moana Lane Suite 300/375
Reno, NV 89502
Tel: (775) 788-7600
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Secure Fax: (775) 284-8571
Toll Free: (888) 885-8447
Website: www.nevadaurbanindians.org



Substance Abuse/Anger Management Counseling Status/Progress

February 3, 2014

Carson Justice and Municipal Court
885 E. Musser Street Suite 2007
Carson City, Nevada 89701

Re: Elvin Fred
D.O.B.: 07/26/82

Dear Honorable Judge;

I am writing to you regarding Elvin Fred. He is a client of mine receiving counseling at Nevada Urban Indians (N.U.I.) and has been doing so since November 2012. He has participated in 34 Anger Management Counseling Groups, has participated in 52 Substance Abuse Group Counseling Sessions, and 9 Individual Counseling Sessions to date. Mr. Fred has made great progress while participating in our program. He has maintained abstinence from alcohol and other substances for over a year, has implemented the skills he has learned to avoid confrontation with others and has avoided additional legal involvement up until recently.

Mr. Fred informed me that he recently experienced a relapse with alcohol in January, and was incarcerated as a result. Although I was disappointed, I realize that Mr. Fred has additional work to do before he is ready to be discharged from his counseling program. It is not uncommon for people to relapse when they are close to completing their program out of fear for having to face life as a sober person without their "safety net" in place (legal supervision, U.A. testing, counseling, etc.).

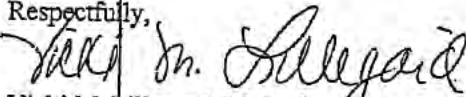
Although the court may choose to sanction Mr. Fred with jail time, it is this counselor's belief that he would benefit much more from continuing his counseling (weekly individual and group counseling). In addition, Mr. Fred is encouraged to obtain an AA Sponsor and attend AA Meetings on a consistent basis something he has not followed through with thus far. Although some would recommend sending Mr. Fred to a Residential Treatment Program, I am not in favor of that at this time since his relapse was a one-time occurrence and not a regular thing.

Yes, Mr. Fred made a bad choice to drink alcohol and to give in to his old temptations. We are currently talking about and processing the behavioral chain of events that led up to his relapse. I would like to think of this as a slip and a great teaching moment. Mr. Fred is a willing participant in his counseling sessions. As mentioned he has progressed and improved over the last year. I have seen growth and changes in his way of thinking that demonstrate he is not the same person as when he started his program over a year ago.

PA000054

I would very much appreciate your consideration in this matter, and would like to continue working with Mr. Fred further if you see fit. Should you have any questions or require additional information, please feel free to contact me at Nevada Urban Indians (N.U.I.) Reno office (775)788-7600 (8:30am - 4:30pm Monday - Thursdays, and Fridays 8:30pm-1:00pm). Thank you!

Respectfully,



Vicki M. Lillegard, M.A., L.A.D.C.
Licensed Alcohol and Drug Counselor (1086-L)

Nevada Urban Indians, Inc.
 745 W. Moana Lane Suite 300/375
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 Secure Fax: (775) 284-8571
 Toll Free: (888) 885-8447
 Website: www.nevadaurbanindians.org



MONTHLY COUNSELING PROGRESS REPORT

Reporting Period: 2/28/2013 to 3/25/2014
 Name: Elvin Fred
 D.O.B.: 07/26/82
 Case #'s: 12 CR 00862 1C, & 12 CR 01071 1C

Offense: DUI 2nd Offense, Disorderly Conduct
 Judges: Judge Armstrong & Judge Tatro
 Officer: Department Of Alternative Sentencing
 Court: Carson City Justice/Municipal Court

MONTH	ALCOHOL/ DRUG USE SPECIFY	INDIVIDUAL SESSIONS ATTENDED	INDIVIDUAL SESSIONS MISSED	GROUP SESSIONS ATTENDED	GROUP SESSIONS MISSED	NO CALL/ NO SHOW	OVERALL PROGRESS	BALANCE OWED
NOV. 2012	NONE	1 (Intake/Eval.)	0	1 (Ang. Man.)	0	0	---	N/A
DEC.	NONE	1 (Intake/Eval.)	0	4 (2 Sub. Ab.; 2 Ang. Man.)	2 Excused	0	GOOD	N/A
JAN. 2013	NONE	0	0	9 (5 Sub. Ab.; 4 Ang. Man.)	1 A.M. Excused	0	GOOD	N/A
FEB.	NONE	0	0	6 (3 Sub. Ab.; 3 Ang. Man.)	0	0	GOOD	N/A
MAR.	NONE	0	0	8 (4 Sub. Ab.; 4 Ang. Man.)	0	0	GOOD	N/A
APRIL	NONE	0	0	5 (2 Sub. Ab.; 3 Ang. Man.)	1 Excused	0	GOOD	N/A
MAY	NONE	0	0	8 (4 Sub. Ab.; 4 Ang. Man.)	0	0	GOOD	N/A
JUNE	NONE	0	0	7 (4 Sub. Ab.; 3 Ang. Man.)	0	0	GOOD	N/A
JULY	NONE	0	0	6 (3 Sub. Ab.; 3 Ang. Man.)	1	0	GOOD	N/A
AUGUST	NONE	2	0	5 (3 Sub. Ab.; 2 Ang. Man.)	0	0	GOOD	N/A
SEPT.	NONE	2	1 Excused	6 (3 Sub. Ab.; 3 Ang. Man.)	1 Excused	0	GOOD	N/A
OCT.	NONE	2	1 Excused	4 (2 Sub. Ab.; 2 Ang. Man.)	2 Excused	0	GOOD	N/A
NOV.	NONE	1	2 Excused	7 (Sub. Ab.)	0	0	GOOD	N/A
DEC.	NONE	1	0	3 (Sub. Ab.)	2 Excused	0	GOOD	N/A
JAN. 2014	ALCOHOL 1x	0	0	3 (Sub. Ab.)	1 Excused	0	---	N/A
FEB.	NONE	2	0	5 (Sub. Ab.)	0	0	---	N/A
MARCH	NONE	0	0	3 (Sub. Ab.)	0	0	GOOD	N/A
TOTALS	--	10	4 Excused	90 (56 S.A.; 34 A.M.)	11 (10 Excused)	0	--	--

MONTHLY COMMENTS ON OVERALL PROGRESS

Attitude
 Cooperative, Meets Basics: Mr. Fred is complying with his counseling program recommendations.
 Positive Attitude - Sincere: Mr. Fred has a positive attitude regarding his counseling program and recovery and has a positive outlook for his future.

Self Growth and Recovery effort, Task Completions, Contributions to Progress, Skills
 Meets Requirements: Mr. Fred continues to take an active role in his recovery. He speaks freely during his counseling sessions.
 Homework Assignments: Mr. Fred was not given any homework assignments this reporting period.

Relapse Potential/ Supporting Signs/ Factors/ Behaviors
 Behavior-No Indications of problems: Mr. Fred reports continued abstinence. He is focusing his energy on his family, non-alcohol-related activities, and his recovery.

Mr. Fred re-enrolled in his Substance Abuse Counseling Program on December 12th, 2012. He attended 3 Substance Abuse Group Counseling Sessions (3/4, 3/14, 3/25), this reporting period; and has attended 56 of 64 Substance Abuse Group Counseling Sessions to date. NOTE: This counselor was on annual leave 3/17-3/21 therefore there was no individual/group counseling that week. Mr. Fred did not attend individual counseling this reporting period. He has attended 10 of 26 Individual sessions thus far. Mr. Fred completed his anger management program several months ago.

As mentioned in last report, this counselor would like to continue working with Mr. Fred. He continues to demonstrate progress, and to internalize what he is learning. He is committed to making a better life for himself, his family and children. Mr. Fred is encouraged to attend weekly AA Meetings, to obtain an AA sponsor, and work the steps.

Counselor:

Steve M. Allegard M.A., LADC

Date: *March 25, 2014*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of LOREN GRAHAM and that on this day I served the SENTENCING MEMORANDUM on the parties in this matter by causing a true copy of same to be hand-delivered to:

Tyson League, Deputy District Attorney
Carson City District Attorney's Office
885 E. Musser, Suite 2030
Carson City, NV 89701

DATED: August 21, 2015


MARGRET PASCUS

1 CASE NO: 15 CR 00143

2 DEPT. NO: 1

3
4 COPY

5
6 IN THE JUSTICE/MUNICIPAL COURT OF THE CARSON TOWNSHIP
7 IN AND FOR CARSON CITY, STATE OF NEVADA
8 BEFORE THE HONORABLE TODD RUSSELL
9

10 STATE OF NEVADA,

Transcript of Proceeding

11 Plaintiff,

12 v.

13 ELVIN LEE FRED,

14 Defendant.
15 _____/

16 SENTENCING

17 August 24, 2015
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23 SUNSHINE LITIGATION SERVICES

24 TRANSCRIBED FROM JAVS CD
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PA000058

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APPEARANCES

FOR THE PLAINTIFF Tyson D. League, Esq.
Carson City District Attorney
885 E. Musser Street, #2030
Carson City, NV 89701

FOR THE DEFENDANT Loren Graham, Esq.
State of Nevada Public Defender's Office
511 E. Robinson Street, #1
Carson City, NV 89701

DEPARTMENT OF PAROLE
AND PROBATION Patricia Cerviglio
State of Nevada DPS Parole & Probation
119 E. Long Street
Carson City, NV 89701

TRANSCRIPTION Pam Simon

Proceedings recorded by digital sound recording. Transcript produced by
certified transcriptionist.

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9	EXHIBITS:	<u>Marked</u>	<u>Admitted</u>		
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1 EXAMINATION

2 CARSON CITY, NEVADA, AUGUST 24, 2015

3
4 --o0o--

5 (Court in session at 9:09:32 a.m.)

6
7 THE COURT: The next matter before the Court is going to be
8 case number 15CR00143, State of Nevada versus Elvin Fred.

9 MR. LEAGUE: Your Honor, this morning, I just received six
10 letters to the Court, and I'd like -- I just gave copies to the District Attorney,
11 and maybe -- do you want to trail this?

12 THE COURT: I can review them fairly quickly.

13 Just for the record, present on behalf of the State of Nevada is
14 Tyson League. Present on behalf of the Defendant is Loren Graham.

15 The Defendant is present in the Courtroom. Present on behalf
16 of the Division of Parole and Probation is Patricia Cerviglio (phonetic).

17 MR. GRAHAM: I apologize for those getting in so late.

18 THE COURT: That's fine. It won't take a minute.

19 (Whereupon Court reviews documents)

20 THE COURT: Mr. League, you've got these?

21 MR. LEAGUE: Yes.

22 THE COURT: The Court has reviewed, in respect to this
23 particular matter -- Mr. Graham, have you had a chance to review the Pre-
24 Sentence Investigation Report in this matter dated August 13th, 2015?

25 MR. GRAHAM: I have, Your Honor.

1 THE COURT: Do you have any changes?
2 MR. GRAHAM: No, there are no changes.
3 THE COURT: Mr. League, do you have any changes?
4 MR. LEAGUE: Your Honor, on page 5 under "Offense
5 Synopsis." The third paragraph, it says, "The first purchase was conducted
6 on January 3rd." That should be February 3rd.
7 THE COURT: Any other changes?
8 MR. LEAGUE: No, Your Honor.
9 THE COURT: Mr. Graham, do you have any mitigation to offer
10 in this case?
11 MR. GRAHAM: Yes, Your Honor. I do have one witness to
12 present, Lisa Fred.
13 THE COURT: Ma'am, please come forward. Stop right there
14 and please raise your right hand to be sworn.
15 (Whereupon witness duly sworn)
16 THE COURT: Go ahead and take the witness stand and please
17 state your full name.
18 THE WITNESS: Lisa LeAnn Fred.
19 THE COURT: And please spell your last name.
20 THE WITNESS: F-R-E-D.
21 THE COURT: Please take a seat.
22 ///
23 ///
24 ///
25 ///

-oOo-

LISA LEANN FRED

called as a witness, having been duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. GRAHAM:

Q Good morning, Ms. Fred.

A Morning.

Q What is your relationship to Elvin Fred?

A Elvin here is my brother, my older brother.

Q And could you briefly tell the Court how important
Elvin Fred has been in your life?

A My brother, Elvin Fred, he has been the biggest factor
in my life this far. He's been the biggest factor in my kids' life. He has
been a factor in my whole family's life.

He is one I look up to. He is a role model for me. He is one
I've turned to for advice. He is one I turn to for strength and he gives me
that motivation and that drive.

Q Did you lose your dad some time ago?

A 7 years ago I had lost my father and 7 years ago, I was
18 years old. I was young. And it was devastating, traumatizing to me.

As of that day, September 17th, 2007, is when I lost my dad, I
turned to my brother for help and any type of way a father would show their
daughter, my brother has been there for me. Been there for me as a person to
show me and to guide me and he's been there to teach me the things that I

1 need to know so I could be a better parent to my kids.

2 Q And what role has be played with your children?

3 A I have five children ranging from 10 to 3 months. My

4 brother has been there for my children as a father figure, as a provider, as an

5 uncle, and as a person to show and teach them what they need to know.

6 My son – my brother has taught my son what a man would

7 teach their son. If it wasn't for my brother, my son wouldn't know because

8 a woman myself couldn't teach my son what a father would teach their son.

9 Q Has he had the same role with other children in the

10 extended family?

11 A My sister's kids and her family. He's been there as one

12 to lean on. You could call on him at any time. He'd give you the best

13 advice he can any time.

14 Q Is your family here to support Elvin Fred today?

15 A I have all my family here and extended family, as well

16 as friends. I have my kids outside the Courtroom, you know, showing him

17 support. But, I mean, my kids look at him as a father figure. He's been

18 there since day one.

19 Q Your kids wanted to be in the Courtroom today, but I

20 told you –

21 A My kids wanted to be here.

22 Q – that probably wouldn't be appropriate for sentencing,

23 right?

24 A Correct.

25

1 MR. GRAHAM: Could the people supporting Elvin Fred just
2 stand up? Thank you.
3 That's all the questions I have. Thank you, Lisa Fred.
4 THE COURT: Mr. League, any questions?
5 MR. LEAGUE: No, Your Honor.
6 THE COURT: Thank you, ma'am. You can step down.
7 THE WITNESS: Thank you.
8 THE COURT: Any further mitigation, Mr. Graham?
9 MR. GRAHAM: Your Honor, attached to my Sentencing
10 Memorandum, which I assume the Court got, as a long –
11 THE COURT: I did get it and I did go through it.
12 MR. GRAHAM: – long insightful letter from Elvin Fred, it's the
13 best letter I've ever seen written to a Court at a sentencing hearing. And he
14 explains to the Court what has lead him to be here today, and most of his
15 problems had been surrounded around his dealing with alcohol, which he
16 has been fighting for many years.
17 I don't really – this is his first drug offense. He has one prior
18 felony. So I do not believe it's appropriate in this case to give him a life
19 sentence. The Court only has two choices; either 10 to 25 or 10 to life.
20 And based upon all the good that he's done and the work that
21 he's done fighting alcoholism, and the support he has from his family, Your
22 Honor, I believe the recommendation from Parole & Probation is an
23 appropriate recommendation and we're asking the Court to follow the
24 recommendation.
25 THE COURT: Thank you. Mr. League, any aggravation in this

1 case?

2 MR. LEAGUE: Your Honor, so the Court is aware, the State
3 does not take lightly what it requests. We are going to be asking for a 10 to
4 life sentence in this case.

5 The fact is, as Mr. Fred has put in his letter, had he known the
6 consequences, he would not have committed the crimes that he committed.
7 He would have not have taken the actions that he took.

8 Deterrence is a major factor in our criminal justice system, and
9 Mr. Fred, himself, has said that he weighed a cost benefit analysis in doing
10 this, and he was not aware of the risk that he was facing.

11 This Court needs to send a message that the safety of the
12 community is paramount.

13 To be able to sell 27 grams of methamphetamine, then turn
14 around and sell another 27.5 grams of methamphetamine, and then sell 41.2
15 grams of methamphetamine, and then have 150.7 grams of
16 methamphetamine recovered in your home when a Search Warrant is
17 executed, is a very serious thing, Your Honor.

18 Further, to find three semi-automatic handguns accompanying
19 that methamphetamine is a very serious matter.

20 Mr. Fred committed these offenses while out on bail for
21 another felony offense that's currently pending in Justice Court.

22 He needs to be supervised. He needs to do his time in prison
23 and be supervised for the rest of his life, Your Honor. He admitted
24 involvement in the murder of Sandy Rescendez (phonetic). Granted, he did
25 not eventually get charged with that murder, but he pled

1 to a very serious felony offense in the death of a human being.

2 He's had numerous battery charges. They were misdemeanor
3 offenses, but they're also violent offenses.

4 This is a very serious safety concern, Your Honor. He was
5 involved in a systematic scheme of drug sales. This was an organization that
6 sold large quantities of methamphetamine and committed very serious
7 offenses that bring great risk to this community.

8 THE COURT: Mr. Graham, any legal cause why Judgment
9 shouldn't be entered in this case?

10 MR. GRAHAM: No, Your Honor.

11 THE COURT: Please stand, sir.

12 The law gives you an opportunity to make any statement and
13 provide me with any information before I sentence you in this particular
14 case.

15 I did read your letters in respect to that, and it also appears to
16 me you have a very caring family, and people that care about you in respect
17 to that.

18 Is there anything else you want to tell the Court?

19 DEFENDANT: Yeah. I wrote a couple other things I'd like to
20 express to you.

21 THE COURT: That's fine.

22 DEFENDANT: Your Honor, people of the Court, and my family,
23 I want to apologize for my actions or wrongdoings. It was never my
24 intentions to disrespect, disregard or hurt anybody.

25 I'm not in denial about what I did. We are all here for one

1 reason. I made poor judgments and I broke the law.
2 I would like to take a few more minutes of your time to
3 reiterate everything pertaining to this charge.
4 As most of you may already know, I'm an alcoholic and I also
5 have an addictive personality. Like most of us, if I like something and it
6 makes me feel good, then I keep doing it. I also have recently come to the
7 conclusion that I have co-dependent issues.
8 Like most, it always makes me feel good to help others. This
9 is where it all started. I found myself starting to become addicted to this
10 drug when I help people out and they give me positive responses like, "I
11 don't know what I would do without you." "You're my hero." "Thanks, I
12 really appreciate it," and the list can go on. It made me feel good to feel like
13 I could help somebody out.
14 If I only knew before what I know now how destructive this
15 drug could be, I would have never let it into my life.
16 I really feel I was blind to the reality and the outcome of my
17 poor decisions. I was caught in the moment.
18 I talked with numerous individuals that make statements,
19 "Well, it's not like you hurt someone." "You didn't invade someone's home
20 or privacy and steal from them," followed by, "It's a victimless crime."
21 This I can agree to in a certain extent. However, I truly
22 believe that there are numerous victims. The last people I would ever want
23 to hurt in this world, sitting right behind us today, is my family. My mom,
24 my siblings, but most of all, my significant other and my children. I did hurt
25 them emotionally.

1 While I'm doing time, they're going to be right beside me
2 doing the time with me. I did steal from my children. I stole the ability and
3 the right for them to have a father when they are in need the most. Their
4 childhood. Every child needs a father.

5 I can recall while growing up, while in school, DARE, Scared
6 Straight and other programs would come in and tell us, "Don't do this," or
7 "Don't do that," because you'll end up in jail or dead. Then they would give
8 us stickers and T-shirts and let us play with their fancy cars and sirens. They
9 never really got into depth on the real outcome of my situation today.

10 They don't teach us – they don't teach us in school, we all
11 make mistakes. I believe every day of life is school.

12 I can definitely say I learned a hard lesson in a hard way and I
13 do regret my actions.

14 Your Honor, prosecutor, I know you have a job to do today,
15 and if you don't choose to be lenient towards me, maybe you can have at
16 least empathy to be lenient towards my family.

17 When I committed this crime, I didn't know how much of a
18 domino effect it could cause, and the impact it would make on my family.

19 I feel one of the worst heartaches is that you can't be there
20 with your family or your children can't be there with you.

21 You know, when Court is all over with today, and it's time to
22 go home to be with your family, most of us will kiss our children, give them
23 a hug and say goodnight. All because of my children – all because of my
24 choices, my girlfriend and children have to cry themselves to sleep.

25 Far more worse, after Court today, the (inaudible) of our

1 residence is going to be filed so my girlfriend and children won't be
2 homeless without a home to go to.

3 Thank you.

4 THE COURT: Well, it's going to be the Judgment of the Court
5 in this particular case, you pled guilty on June 29th, 2015, to Trafficking in a
6 Schedule I Controlled Substance, 28 grams or more, a violation of NRS
7 453.3386, sub 3, a Category A Felony, in respect to this matter.

8 The Court would also note, it appears in reviewing this, that
9 you have been unemployed since 2007, so somehow, you're supporting
10 yourself. I don't know how you're supporting yourself, or how you
11 supported yourself, since 2007, in respect to that.

12 I'm not sure what kind of role model you are to anybody being
13 unemployed since 2007.

14 DEFENDANT: I have been working side jobs.

15 THE COURT: Huh?

16 DEFENDANT: I've been working side jobs and stuff like that
17 throughout the whole time. I just haven't been on a -

18 THE COURT: Again, you've been unemployed and dealing
19 drugs.

20 DEFENDANT: I wasn't dealing drugs that long, sir.

21 THE COURT: In reviewing this particular matter, it appears to
22 the Court that, at least, that you have been unemployed - that's what it
23 indicates, since 2007, in respect to that.

24 And I'm not sure what kind of role model you are to all your
25 family or anybody else doing that in respect to this particular time.

1 So based upon that, the Court is going to sentence you as
2 follows:

- 3 A) Administrative assessment of \$25.00;
4 B) Genetic marker fee of \$3.00;
5 C) Chemical drug analysis of \$60.00;
6 D) Attorney's fees are set at \$500.00.
7 E) The Court is going to sentence you to life with the
8 possibility or parole, with eligibility for parole, beginning when a minimum
9 of 10 years has been served in this particular case.

10 There is no credit for time served allowed in this particular
11 case in respect that.

12 It will run consecutive to case number 12 CR 0061.

13 Fine set at \$20,000.00.

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17 (Whereupon Court in recess at 9:27:40 a.m.)
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STATE OF NEVADA }
COUNTY OF WASHOE } SS:

I, PAMELA D. SIMON, a notary public in and for the County of Washoe, State of Nevada, do hereby certify:

That I was provided a JAVS CD of the hearing above-referenced, and that said transcript, which appears hereinbefore was transcribed verbatim into typewriting as herein appears to the best of my knowledge, skill, and ability and is a true and correct record thereof.

I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

DATED this 26th day of September, 2016.



PAMELA D. SIMON

REC'D & FILED

2018 MAY -4 PM 3:59

SUSAN MORRIWETHER
CLERK

BY

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

In re:

3587 Desatoya Drive, Carson City, Nevada
89701, more particularly described as all
that certain parcel of land situate in the City
of Carson City, County of Carson City and
State of Nevada, being known and
designated as follows: Parcel N-33 as
shown on Parcel Map No. 1704 for Stanton
Park Development, Inc., filed in the office of
the Recorder of Carson City, Nevada on
August 11, 1989 as File No. 89253, Carson
City Assessor's Parcel Number: 010-443-
11.

Case No. 15 OC 00074 1B

Dept. No. II

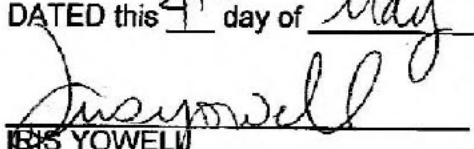
MOTION TO LIFT STAY IN FORFEITURE PROCEEDING

COMES NOW, Plaintiff, the INVESTIGATION DIVISION OF THE DEPARTMENT OF
PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force), by and
through its counsel of record, JASON D. WOODBURY, Carson City District Attorney, and IRIS
YOWELL, Deputy District Attorney, where Claimant, ELVIN FRED, is represented by LOREN
GRAHAM, Esq.

This forfeiture proceeding commenced by the filing of a *Complaint for Forfeiture* on
April 1, 2015. The parties stipulated to enter into a stay and the order granting a stay was
entered on April 27, 2015. The criminal actions which are the basis of this forfeiture
proceeding are now complete in that the appeals have been exhausted and the Nevada

1 Supreme Court issued a Remittitur closing the case after the judgment of the District Court
2 was affirmed in 15 CR 001431B004 (Justice Court Case 15 CR 00384 1C 004) *State of*
3 *Nevada, Plaintiff, v. Elvin Lee Fred, Defendant.* See Nevada Supreme Court Case No. 72521,
4 Entered on April 20, 2018 (attached as Exhibit 1). Therefore, the State is requesting the stay
5 in this case be lifted so that the forfeiture proceeding may resume.
6
7

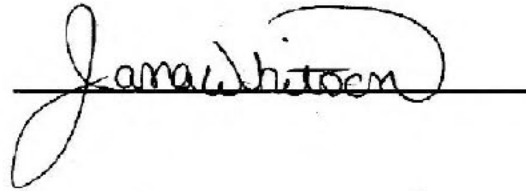
8 DATED this 4th day of May, 2018.

9
10 
11 IRIS YOWELL
12 Attorney for Plaintiff
13
14
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney and that on this 4th day of May 2018, I caused to be served a copy of the foregoing **MOTION TO LIFT STAY**, together with an **ORDER LIFTING STAY** by faxing and delivering via Reno-Carson Messenger said document addressed to:

Loren Graham Esq.
P. O. Box 6329
Stateline, Nevada 89449
Facsimile: (775) 588-1326

A handwritten signature in cursive script, appearing to read "J. Whitcomb", is written over a horizontal line.

1 JASON D. WOODBURY
2 DISTRICT ATTORNEY
3 Nevada Bar No. 6870
4 885 E. Musser Street, Suite 2030
5 Carson City, NV 89701
6 (775) 887-2072
7 Attorney for Plaintiff
8 **INVESTIGATION DIVISION OF THE**
9 **DEPARTMENT OF PUBLIC SAFETY**
10 **OF THE STATE OF NEVADA**
11 **(Tri-Net Narcotics Task Force)**

REC'D & FILED
2019 MAY -9 PM 3:26

AUDREY BOSHLATT
CLERK
BY: *[Signature]* DEPUTY

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

10 In re:

11 3587 Desatoya Drive, Carson City, Nevada
12 89701, more particularly described as all
13 that certain parcel of land situate in the City
14 of Carson City, County of Carson City and
15 State of Nevada, being known and
16 designated as follows: Parcel N-33 as
17 shown on Parcel Map No. 1704 for Stanton
18 Park Development, Inc., filed in the office of
19 the Recorder of Carson City, Nevada on
20 August 11, 1989 as File No. 89253, Carson
21 City Assessor's Parcel Number: 010-443-11.

Case No. 15 OC 00074 1B

Dept. No. II

18 **NOTICE OF ENTRY OF AMENDED DEFAULT JUDGMENT**

19 TO: ALL INTERESTED PARTIES:

20 PLEASE TAKE NOTICE that on May 8, 2019, the above-captioned Court entered an
21 Order for Amended Default Judgment. A copy of said Order is attached hereto.

22 DATED this 9th day of May, 2019.

23 JASON D. WOODBURY
24 District Attorney

25 By:

[Signature]
26 BENJAMIN R. JOHNSON, #10632
27 Deputy District Attorney
28

1 Case No. 15 OC 00074 1B

2 Dept. No. II

REC'D & FILED

2019 MAY -2 PM 1:59

AUBREY ROWLATT
CLERK

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

7 In re:

8 3587 Desatoya Drive, Carson City, Nevada
9 89701, more particularly described as all
10 that certain parcel of land situate in the City
11 of Carson City, County of Carson City and
12 State of Nevada, being known and
13 designated as follows: Parcel N-33 as
14 shown on Parcel Map No. 1704 for Stanton
Park Development, Inc., filed in the office of
the Recorder of Carson City, Nevada on
August 11, 1989 as File No. 89253, Carson
City Assessor's Parcel Number: 010-443-
11.

AMENDED DEFAULT JUDGMENT

15 IT IS HEREBY ORDERED, ADJUDGED and DECREED that the defendant property,
16 consisting of real property located at 3587 Desatoya Drive, Carson City, Nevada 89701, more
17 particularly described as all that certain parcel of land situate in the City of Carson City,
18 County of Carson City and State of Nevada, being known and as described above in the
19 caption, be forfeited to Plaintiff, INVESTIGATION DIVISION OF THE DEPARTMENT OF
20 PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force), free of all
21 claims of all persons, pursuant to the provisions of Nevada Revised Statutes 453.301 et. seq.;

22 IT IS FURTHER ORDERED that the Plaintiff herein receive the Defendant property, as
23 above described and that this Judgment by Default shall be sufficient authority upon which
24 Plaintiff may take possession of Defendant property.

25 DATED this 8 day of May, 2019.

26
27 
28 DISTRICT COURT JUDGE

PA000077

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 9th day of May, 2019, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF AMENDED DEFAULT JUDGMENT** by faxing and delivering via first class mail said documents addressed to:

Loren Graham Esq.
P. O. Box 6329
Stateline, Nevada 89449
Facsimile: (775) 588-1326

Felecia Ricci

Office of the District Attorney

Carson City, Nevada

665 East Musser St., Suite 2030, Carson City, Nevada 89701
Tel. (775) 687-2072 Fax: (775) 687-2129

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

Jordan T. Smith, Esq., Bar No. 12097
JTS@pisanellibice.com
Emily A. Buchwald, Esq., Bar No. 13442
EAB@pisanellibice.com
John A. Fortin, Esq., Bar No. 15221
JAF@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100

*Pro Bono Counsel for
Claimant Sylvia Fred*

REC'D & FILED

2022 MAR 14 AM 10:24

AUDREY ROWLATT
CLERK

BY S. BARAJAS

DEPUTY

FIRST JUDICIAL DISTRICT COURT

CARSON CITY, NEVADA

Case No.: 15 OC 00074 1B
Dept. No.: 2

In re:

3587 Desatoya Drive, Carson City, Nevada
89701, APN: 010-443-11

**NOTICE OF ENTRY OF
ORDER SETTING ASIDE
DEFAULT JUDGMENT**

PLEASE TAKE NOTICE that an Order Setting Aside Default Judgment was entered on
March 9, 2022, a true and correct copy of which is attached hereto.

DATED the 14th day of March 2022.

PISANELLI BICE PLLC

By: 

Jordan T. Smith, Esq., Bar No. 12097
Emily A. Buchwald, Esq., Bar No. 13442
John A. Fortin, Esq., Bar No. 15221
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Pro Bono Counsel for Claimant Sylvia Fred

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 14th day of March 2022, I caused to be served via Hand Delivered true and correct copies of the above and foregoing **NOTICE OF ENTRY OF ORDER SETTING ASIDE**

DEFAULT JUDGMENT to the following:

Jason D. Woodbury, Esq.
Benjamin Johnson, Esq.
Office of the Carson City District Attorney
885 E. Musser Street
Carson City, NV 89701
JWoodbury@carson.org
BJohnson@carson.org



An employee of PISANELLI BICE PLLC

EXHIBIT A

Office of the District Attorney
Carson City, Nevada
685 East Musser St., Suite 2030, Carson City, Nevada 89701
Tel: (775) 887-2070 Fax: (775) 887-2129

1 JASON D. WOODBURY
District Attorney, Bar No. 6870
2 BENJAMIN R. JOHNSON
Senior Deputy District Attorney, Bar No. 10632
3 885 E. Musser Street, Suite 2030
4 Carson City, NV 89701
(775) 887-2072
5 Attorneys for Plaintiff

6
7 IN THE FIRST JUDICIAL DISTRICT COURT OF NEVADA
CARSON CITY

8 In re:

9 3587 Desatoya Drive, Carson City,
10 Nevada 89701, more particularly
described as all that certain parcel of land
11 situate in the City of Carson City, County
of Carson City and State of Nevada,
12 being known and designated as follows:
Parcel N-33 as shown on Parcel Map No.
13 1704 for Stanton Park Development, Inc.,
14 filed in the office of the Recorder of
Carson City, Nevada on August 11, 1989
15 as File No. 89253, Carson City
Assessor's Parcel Number: 010-443-11
16

Case No.: 15 OC 00074 1B

Dept. No.: 2

**[PROPOSED]: ORDER SETTING
ASIDE DEFAULT JUDGMENT**

17
18 This matter comes before the Court on remittitur from an appeal of an
19 Amended Default Judgment entered on May 8, 2019. *See In re 3587 Desatoya Drive*
20 *Carson City, Nevada 89701*, Docket No. 80194, 2021 WL 4847506 (Order Reversing
21 and Remanding, Oct. 15, 2021). Consistent with the Nevada Supreme Court's Order
22 and good cause appearing, the Court finds, and orders as follows:

23 **IT IS HEREBY ORDERED** that the May 8, 2019 Amended Default Judgment is
24 set aside and title to the property, 3587 Desatoya Drive, Carson City, Nevada
25 ("Home"), is returned to Sylvia Fred.

RECEIVED & FILED

2022 MAR -9 PM 12: 30

AUBREY ROWLATT
CLERK
K. PETERSON

BY _____
DEPUTY

PA000082

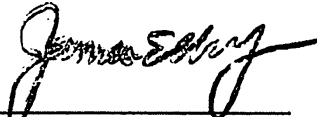
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IT IS FURTHER ORDERED that title to the Home vests to Sylvia Fred and Tri-Net shall return actual possession of the Home to Sylvia Fred on March 14, 2022.

IT IS FURTHER ORDERED that if Tri-Net wishes to continue to seek a civil forfeiture of the Home, it must file a Complaint within 7 (seven) days of entry of this Order that complies with Nevada's civil forfeiture laws and names all interested claimants as that term is defined under NRS 179.1158.

IT IS SO ORDERED.

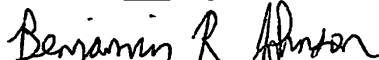
DATED this 9 day of March, 2022.



DISTRICT COURT JUDGE

Respectfully Submitted by:

Dated the 7th day of March, 2022.

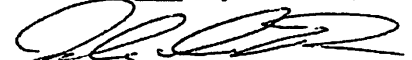


Jason D. Woodbury, No. 6870
Benjamin R. Johnson, No. 10632
885 E. Musser Street, Suite 2030
Carson City, Nevada 89701

Attorneys for Plaintiff

Approved as to form by:

Dated the 4th day of March, 2022.



Jordan T. Smith, No. 12097
Emily A. Buchwald, No. 13442
John A. Fortin, No. 15221
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Attorneys for Claimant Sylvia Fred



PA000084

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

Date: March 14, 2018

Aubrey Rowland, Notary Public and Clerk of the First Judicial District Court of the State of Nevada, in and for Carson City.

By [Signature]

Deputy

Per NRS 239 Sec. 6 the SSN may be may be redacted, but in no way affects the legality of the document.

PA000085

Office of the District Attorney
Carson City, Nevada
885 East Musser St., Suite 2030, Carson City, Nevada 89701
Tel: (775) 887-2070 Fax: (775) 887-2129

JASON D. WOODBURY
DISTRICT ATTORNEY
Nevada Bar Number: 6870
885 East Musser Street
Suite #2030C
Carson City, Nevada 89701
(775) 887-2070
ATTORNEY FOR PLAINTIFF

RECEIVED & FILED
AUG 22 PM 4:39
CLERK
O. COOPER
DEPUTY

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

In re:

3587 Desatoya Drive, Carson City, Nevada
89701, more particularly described as all
that certain parcel of land situate in the City
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August 11, 1989 as File No. 89253, Carson
City Assessor's Parcel Number: 010-443-
11.

Case No. 15 OC 00074 1B

Dept. No. II

FIRST AMENDED COMPLAINT FOR FORFEITURE

COMES NOW, Plaintiff, the INVESTIGATION DIVISION OF THE DEPARTMENT OF
PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force) (TRI-NET), by
and through its counsel of record, JASON D. WOODBURY, Carson City District Attorney, and
for its *Complaint for Forfeiture* in relation to 3587 Desatoya Drive, Carson City, Nevada
89701, more particularly described as all that certain parcel of land situate in the City of
Carson City, County of Carson City and State of Nevada, being known and designated as
follows: Parcel N-33 as shown on Parcel Map No. 1704 for Stanton Park Development, Inc.,
filed in the office of the Recorder of Carson City, Nevada on August 11, 1989 as File No.

1 89253, Carson City Assessor's Parcel Number: 010-443-11, purportedly owned by ELVIN
2 FRED, Claimant, and/or SYLVIA FRED, alleges and complains as follows:

3 **GENERAL ALLEGATIONS**

4 **Nature of the Action, Parties and Venue**

- 5 1. This is a civil action for forfeiture of real property pursuant to the provisions of
6 NRS 179.1156 to NRS 179.121, inclusive, and as such is given priority over any
7 other civil matters pursuant to NRS 179.1173.
- 8 2. The subject of this *First Amended Complaint for Forfeiture* is 3587 Desatoya
9 Drive, Carson City, Nevada 89701, more particularly described as all that certain
10 parcel of land situate in the City of Carson City, County of Carson City and State
11 of Nevada, being known and designated as follows: Parcel N-33 as shown on
12 Parcel Map No. 1704 for Stanton Park Development, Inc., filed in the office of
13 the Recorder of Carson City, Nevada on August 11, 1989 as File No. 89253,
14 Carson City Assessor's Parcel Number: 010-443-11 (hereinafter the "Property").
- 15 3. TRI-NET is a law enforcement agency in the State of Nevada and the Plaintiff in
16 this action as defined by NRS 179.1159.
- 17 4. Upon information and belief, ELVIN FRED was, at all relevant times herein, the
18 owner of the Property and the Claimant in this action as defined by NRS
19 179.1158.
- 20 5. Upon information and belief, a document entitled "QUITCLAIM DEED FOR
21 NEVADA" was recorded as document number 452637 on April 6, 2015 with the
22 office of the Carson City Recorder purporting to quitclaim and assign from
23 EVLIN FRED to SYLVIA FRED all "right, title, interest, and claim, and subject to
24 all easements, encumbrances, protective covenants, rights-of-way, mineral
25 rights, and other conditions and restrictions, if any, in or to" the Property.
- 26 6. Upon information and belief, SYLVIA FRED alleges that she is a Claimant in this
27 action as "Claimant" is defined by NRS 179.1158.
- 28 7. Upon information and belief, Plaintiff has no knowledge and no reason to believe

1 that any person or entity other than ELVIN FRED and SYLVIA FRED claims any
2 ownership interest in the Property or is or alleges himself, herself, or itself to be
3 a Claimant in this action as that that term is defined by NRS 179.1158.

- 4 8. The Property is located in Carson City, State of Nevada and venue is
5 appropriate in the First Judicial District Court of the State of Nevada in and for
6 Carson City pursuant to NRS 179.1171.

7 **Allegations of Property's Relationship to Illegal Activity**

- 8 9. On or about and between the dates of February 13, 2015 and March 19, 2015,
9 and at all times relevant hereto, ELVIN FRED occupied the Property.
- 10 10. Upon information and belief, on or about February 13, 2015, an individual
11 (hereinafter referred to as the "Confidential Source") was engaged with TRI-NET
12 officers providing information and participating in undercover investigation
13 operations relating to illegal activity involving controlled substances in the
14 Carson City area. On or about February 13, 2015, in conjunction with an
15 undercover investigation operation coordinated by TRI-NET, the Confidential
16 Source contacted James Tito ("Tito") via cellular telephone. Tito agreed to sell
17 the Confidential Source one ounce of methamphetamine for seven hundred
18 dollars (\$700) during the telephone call. The Confidential Source met with Tito
19 at a location in Carson City where he gave Tito seven hundred dollars (\$700).
20 Tito told the Confidential Source that he needed to go to "LV's house." Upon
21 information and belief, ELVIN FRED is known to some as "LV." Tito left the
22 location and travelled to the Property. Tito entered the residence located on the
23 Property, remained inside for a brief period, and then left the Property. After
24 leaving the Property, Tito met with the Confidential Source and provided the
25 Confidential Source with approximately 27 grams of methamphetamine.
- 26 11. Upon information and belief, the approximately 27 grams of methamphetamine
27 which Tito provided to the Confidential Source on or about February 13, 2015
28 was acquired from the Property.

- 1 12. Upon information and belief, on or about February 19, 2015, the Confidential
2 Source contacted Tito via cellular telephone. Tito agreed to sell the Confidential
3 Source a quantity of methamphetamine for one thousand dollars (\$1,000). Upon
4 information and belief, Tito contacted ELVIN FRED, confirmed that ELVIN FRED
5 was at the Property and made arrangements to meet with ELVIN FRED at the
6 Property. Tito travelled to the Property, went inside the residence on the
7 Property for a brief period and then exited the residence with ELVIN FRED. Tito
8 and ELVIN FRED remained outside the residence for a period of time after
9 which Tito left the Property and travelled to another location where Tito met with
10 the Confidential Source. Tito then provided the Confidential Source with
11 approximately 41.2 grams of methamphetamine.
- 12 13. Upon information and belief, the approximately 41.2 grams of methamphetamine
13 which Tito provided to the Confidential Source on or about February 19, 2015
14 was acquired from the Property.
- 15 14. Upon information and belief, on or about March 12, 2015, the Confidential
16 Source contacted Tito via cellular telephone and made arrangements to
17 purchase a quantity of methamphetamine in exchange for nine hundred dollars
18 (\$900). The Confidential Source subsequently met with Tito at a location in
19 Carson City and provided Tito with nine hundred dollars (\$900). Tito contacted
20 ELVIN FRED via telephone and travelled to the Property where he met with
21 ELVIN FRED. Tito subsequently left the Property and returned to a location
22 where he met with the Confidential Source and provided the Confidential Source
23 with approximately 27.5 grams of methamphetamine.
- 24 15. Upon information and belief, the approximately 27.5 grams of methamphetamine
25 which Tito provided to the Confidential Source on or about March 12, 2015 was
26 acquired from the Property.
- 27 16. TRI-NET officers provided the Confidential Source the nine hundred dollars
28 (\$900) in currency in advance of the Confidential Source meeting with Tito on or

1 about March 12, 2015, and retained photocopies of the currency provided to the
2 Confidential Source.

3 17. On or about March 19, 2015, approximately 150.7 grams of methamphetamine
4 was discovered within the residence on the Property.

5 18. On or about March 19, 2015, approximately five thousand ninety dollars (\$5,090)
6 was discovered within the residence on the Property which included three
7 hundred dollars (\$300) of currency provided to the Confidential Source on March
8 12, 2015 as described in Paragraph 16 of this *First Amended Complaint for*
9 *Forfeiture*.

10 19. On or about March 19, 2015, certain items commonly associated with the
11 possession, use and sale of controlled substances were discovered in the
12 residence on the Property, including, but not limited to: marijuana, digital scales,
13 packaging material, firearms and documents reflecting payments and amounts
14 owed for controlled substance transactions.

15 20. On June 16, 2015, ELVIN FRED was charged with one count of Trafficking in a
16 Schedule I Controlled Substance Weighing 28 Grams or More, a Category A
17 felony as defined by NRS 453.3385(3), by way of a *Criminal Information* filed in
18 case number 15 CR 00384 1C 004 with the First Judicial District Court of the
19 State of Nevada in and for Carson City.

20 21. On June 29, 2015, ELVIN FRED pled guilty to the offense of Trafficking in a
21 Schedule I Controlled Substance Weighing 28 Grams or More, a Category A
22 felony as defined by NRS 453.3385(3), as alleged in the *Criminal Information*
23 referenced in Paragraph 20 of this *First Amended Complaint for Forfeiture*.

24 22. On August 24, 2015, ELVIN FRED was sentenced on one count of Trafficking in
25 a Schedule I Controlled Substance Weighing 28 Grams or More, a Category A
26 felony as defined by NRS 453.3385(3).

27 23. A Judgment of Conviction reflecting the sentence of ELVIN FRED referenced in
28 Paragraph 22 of this *First Amended Complaint for Forfeiture* was filed in the First

Judicial District Court of the State of Nevada in and for Carson City on August 26, 2015.

FIRST CLAIM FOR RELIEF

(Forfeiture of Property)

24. ELVIN FRED used or intended to use the Property to facilitate a violation of NRS 453.011 to NRS 453.552, including, but not limited to: Trafficking in a Schedule I Controlled Substance (Methamphetamine) Weighing 28 Grams or More, a Category A felony as defined by NRS 453.3385(3); and Conspiracy to Violate the Uniform Controlled Substances Act, a category C felony as defined by NRS 453.401.

25. The Property is subject to forfeiture pursuant to NRS 453.301.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For an order that all persons interested in the Property be noticed to appear and show cause, if any, why forfeiture of the Property should not be judicially declared and confirmed;
2. For a judgment of forfeiture vesting all right, title and interest to the Property in Plaintiff to be distributed in the manner set forth in NRS 179.118 to 179.1187, inclusive;
3. For an award of attorneys' fees and costs; and

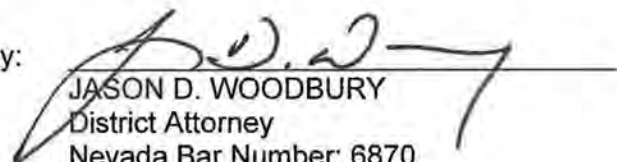
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4. For such other and further relief as deemed appropriate by this Court.

DATED this 22nd day of March, 2022.

CARSON CITY DISTRICT ATTORNEY

By:


JASON D. WOODBURY
District Attorney
Nevada Bar Number: 6870
ATTORNEY FOR PLAINTIFF

SOLA

John A. Fortin, Esq.
Nevada State Bar No. 15221
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Las Vegas, NV 89101
(702) 214-2100
jaf@pisanellibice.com
Attorney for Claimant ELVIN FRED
In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

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

SYLVIA FRED and ELVIN FRED,

Claimants,

vs.

INVESTIGATION DIVISION OF THE DEPARTMENT OF
PUBLIC SAFETY OF THE STATE OF NEVADA (TRI-NET
NARCOTICS TASK FORCE),

Respondent.

In Re:

3587 Desatoya Drive Carson City, Nevada, 89701 more
particularly described as all that certain parcel of land situated
in the City of Carson City, County of Carson City and State of
Nevada, being known and designated as follows: Parcel N-33 as
shown on Parcel Map No. 1704 fpr Stanton Park Development,
Inc., filed in the office for the Recorder of Carson City, Nevada
on August 11, 1989 as File No. 89253, Carson City Assessor's
Parcel Number 010-443-11.

Case No.: 15 OC 00074 1B
Dept No.: 2

**STATEMENT OF LEGAL
AID REPRESENTATION**

**(PURSUANT TO NRS
12.015)**

Party Filing Statement:



Claimant



Respondent

STATEMENT

ELVIN FRED has qualified and been accepted for placement as Pro Bono client or as a direct client of LEGAL AID CENTER OF SOUTHERN NEVADA, INC., a nonprofit organization providing free legal assistance to indigents, and is entitled to pursue or defend this action without costs, including filing fees and fees for service of writ, process, pleading or paper without charge, as set forth in NRS 12.015.

Dated: May 18, 2022

BARBARA BUCKLEY, ESQ.

Legal Aid Center of Southern Nevada Preparer
Nevada Bar No.: 3918

/s/ Barbara E. Buckley, Esq.

Signature of Legal Aid Center of Southern Nevada
Preparer

PA000093

Submitted by:

John A. Fortin, Esq.
Nevada State Bar No. 15221
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Attorney for Claimant SYLVIA FRED

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Las Vegas, Nevada 89101
Telephone: 702.214.2100

*Pro bono counsel
for Elvin Fred*

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

In Re:
3587 Desatoya Drive, Carson City, Nevada
89701, Carson City Assessor's Parcel Number:
010-443-11.

Case No.: 15 OC 00074 1B
Dept. No.: 2

SUBSTITUTION OF COUNSEL

Elvin Fred hereby substitutes the law firm of PISANELLI BICE PLLC as his counsel of record in the above-captioned action in the place and stead of Loren Graham, Esq. of the Law Offices of Loren Graham.

DATED this 20 day of April 2022.

ELVIN FRED

By: 

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

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CONSENT TO SUBSTITUTION

The law firm of PISANELLI BICE PLLC hereby consents to its substitution as counsel of record for ELVIN FRED in the above-captioned action in the place and stead of Loren Graham, Esq. of the Law Offices of Loren Graham.

AFFIRMATION

I affirm that this document does not contain the personal information of any person.

DATED this 23 day of ~~April~~^{June} 2022.

PISANELLI BICE PLLC

By: 

Jordan T. Smith, Esq., Bar No. 12097
Emily A. Buchwald, Esq., Bar No. 13442
John A. Fortin, Esq., Bar No. 15221
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Loren Graham, Esq. of the Law Offices of Loren Graham, hereby consents to the substitution of the law firm of PISANELLI BICE PLLC in his place and stead as counsel of record for ELVIN FRED in the above-captioned action.

DATED this 14th day of April 2022.

LAW OFFICES OF LOREN GRAHAM

By: 

Loren Graham, Esq., NV Bar No. 673
grahamcole@aol.com
195 US Highway 50
PO Box 6329
Stateline, Nevada 89449

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this
13th day of ~~April~~ ^{June} 2022, I caused to be served via e-mail, true and correct copies of the above and
foregoing **SUBSTITUTION OF COUNSEL** to the following:

Jason D. Woodbury, Esq.
Benjamin Johnson, Esq.
Office of the Carson City District Attorney
885 E. Musser Street
Carson City, NV 89701


An employee of PISANELLI BICE PLLC

John A. Fortin, Esq. (NSBN 15221)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
jfortin@mcdonaldcarano.com

*Pro Bono Counsel for Claimant
Elvin Fred*

REC'D & FILED

2022 JUL 15 PM 2:29

AUBREY BOWLATT
CLERK

BK. PETERSON
DEPUTY

FIRST JUDICIAL DISTRICT COURT

CARSON CITY, NEVADA

In Re:

3587 Desatoya Drive, Carson City,
Nevada 89701, Carson City, Assessor's
Parcel Number: 010-443-11.

Case No.: 15 OC 000741 B
Dept: II

**CLAIMANT ELVIN FRED'S MOTION
TO DISMISS TRI-NET'S CIVIL
FORFEITURE COMPLAINT**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The State of Nevada ex rel. Investigation Division of the Nevada State Police (Tri-Net Narcotics Task Force) ("Tri-Net") seeks to forfeit the real property located at 3587 Desatoya Drive Carson City, Nevada 89701 (the "Home"). Tri-Net's authority to obtain a forfeiture through this separate civil proceeding is based on Claimant Elvin Fred's ("Elvin") criminal activity that he already pleaded guilty to and for which the district court already punished and incarcerated him for a term of life in prison. Quite simply, this separate proceeding seeking to punish Elvin again for the same criminal activity is barred by Nevada's double jeopardy clause.¹

The United States Supreme Court in *United States v. Ursery*, 518 U.S. 267, 274 (1996), held that the Fifth Amendment's double jeopardy clause was not triggered by a separate civil forfeiture proceeding following a criminal proceeding. The Court reached that result after it reviewed both legislative enactments by Congress and its own precedent from the early years of the Republic. That review – in search of the original public meaning of the word "punishment" – exhibited various examples on the federal level in which both a criminal penalty was imposed along with a forfeiture of property such that the Court reasoned the "punishment" prong of the *Blockburger* double jeopardy test was not implicated. While the Nevada Supreme Court, relying on *Ursery*, concluded that NRS 453.301 (Nevada's property forfeiture provision) did not violate the Fifth Amendment of the U.S. Constitution, it has never addressed the constitutionality of NRS 453.301 under Article 1, Section 8(1), Nevada's double jeopardy protection. *See Livingston v. Washoe Cnty.*, 114 Nev. 306, 956 P.2d 84 (1998).

As shown below, Nevada's early legislative enactments and precedent stand in distinct contrast to that of the federal government. Unlike the federal government's reliance on import and duty taxes for revenue and its positive view towards property forfeitures in separate proceedings – Nevada law disfavored forfeitures, required clear justifications for such punishments to protect the

¹ In compliance with NRS 30.130, Elvin will provide service of this Motion to the Nevada Attorney General.

1 innocent, and imposed a reasonable-doubt burden of proof for the first 123 years of the State's
2 history. Most importantly, the same historical underpinnings on the federal level in which Congress
3 authorized a criminal proceeding followed by an *in rem* civil forfeiture proceeding was wholly
4 lacking in Nevada law until 1937 – 73 years after the enactment of Nevada's double jeopardy clause.
5 With this history and tradition brought into focus, it is clear that the original public meaning of
6 ***punishment*** in Nevada includes property forfeitures. Thus, this separate civil forfeiture proceeding
7 after Elvin's criminal proceeding already imposed a punishment violates Nevada's constitution.

8 Additionally, and based on the plain language of Article 1, Section 1 of Nevada's Constitution
9 – the "inalienable property rights" clause – all Nevadans enjoy robust property protections. Unlike
10 the abrogation of this right through other constitutional provisions such as Nevada's Takings Clauses,
11 Article 1, Sections 8(6), 22, and Nevada's Tax Clause, Article 10, Section 1, Nevada's constitution
12 does not provide any authority to the Legislature to abrogate the plain language of the inalienable-
13 rights clause and enact a legal fiction that permits property forfeitures such as this one. For both of
14 these reasons, Elvin requests this Court dismiss Tri-Net's complaint with prejudice.

15 II. FACTUAL AND PROCEDURAL BACKGROUND

16 This action involves the real property at 3587 Desatoya Drive, Carson City, Nevada 89701.
17 (*See* Am. Compl. ¶ 2, Mar. 21, 2022, on file.) In 2015, the State charged Elvin by Criminal
18 Complaint of several charges related to criminal conduct and Elvin pleaded guilty to the offense of
19 Trafficking in a Schedule I Controlled Substance Weighing 28 Grams or More, a Category A felony
20 on June 29, 2015. (*Id.* ¶ 20.) Shortly after filing its Criminal Complaint, Tri-Net filed its original
21 Complaint for Forfeiture and relied on NRS 453.301 (Nevada's property forfeiture provision) as a
22 basis to forfeit the Home. (Compl., Apr. 1, 2015, on file.) Then, Tri-Net and Elvin entered into a
23 stipulation and order staying the civil forfeiture proceedings pending resolution of the criminal
24 proceedings. (*See* Order, at 1:27, Apr. 28, 2015, on file (explaining that "[t]he criminal actions
25 which are the basis of this forfeiture proceeding" are pending and unresolved).) Several years later,
26 the Nevada Supreme Court affirmed Elvin's conviction and punishment. *See Fred (Elvin) v. State*,
27 Case No. 72521 (Order of Affirmance, Mar 14, 2018); NRAP 36(c). With Elvin's criminal
28 proceedings final, Tri-Net then moved to lift the stay to the forfeiture proceedings, which the district

1 court granted. (See Mot. to Lift to Stay, May 4, 2018, on file; Order, Jun. 5, 2018, on file.) As this
2 Court well knows, Tri-Net eventually obtained a void Amended Default Judgment on the Home,
3 (see Am. Default J., Jul. 10, 2019, on file,) Elvin's sister Claimant Sylvia Fred ("Sylvia") challenged
4 the validity of the default judgment to the Nevada Supreme Court and prevailed, see *In re: 3587*
5 *Desatoya Drive*, Case No. 80194, 2021 WL 4847506 (Order of Reversal and Remand, Oct. 15,
6 2021), and this Court vacated the void default judgment (see Order, Mar. 14, 2022, on file.) Tri-Net
7 then amended its complaint and this Motion followed. (See Am. Compl.)

8 **IV. LEGAL ARGUMENT**

9 NRCP 12(b)(5) permits a party to move to dismiss a cause of action because the plaintiff
10 failed "to state a claim upon which relief can be granted." A district court must "recognize all factual
11 allegations" presented by a plaintiff in the "complaint and draw all inferences in its favor" although
12 Elvin does not concede but in fact contests the facts therein. *Buzz Stew, LLC v. City of N. Las Vegas*,
13 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). The complaint "should be dismissed only if it appears
14 beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Id.* When
15 a party challenges the constitutionality of a statute, the challenger bears the burden of making a
16 "clear showing of invalidity." *Silvar v. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006).

17 **A. NRS 453.301 as Applied to Elvin Violates Nevada's Double Jeopardy Clause.**

18 Elvin has been punished severely for his crimes – he is serving a life sentence. Now, Tri-Net
19 seeks to extract an additional punishment for these same crimes in a separate proceeding in clear
20 violation of Nevada's constitution. This Court should not allow such unconstitutional conduct.

21 The Double Jeopardy Clause in "the Nevada Constitution, 'protects against three abuses: (1)
22 a second prosecution for the same offense after acquittal, (2) a second prosecution for the same
23 offense after conviction, and (3) multiple punishments for the same offense.'" *Sweat v. Eighth Jud.*
24 *Dist. Ct.*, 133 Nev. 602, 604, 403 P.3d 353, 356 (2017) (quoting *Jackson v. State*, 128 Nev. 598,
25 604, 291 P.3d 1274, 1278 (2012)); Nev. Const. art. 1, § 8(1). The third protection is at issue here.
26 "To determine whether two statutes penalize the 'same offense,'" the Nevada Supreme Court "look[s]
27 to *Blockburger v. United States*, 284 U.S. 299, 304 (1932)." *Jackson*, 128 Nev. at 604, 291 P.3d at
28 1279. "The *Blockburger* test 'inquires whether each offense contains an element contained in the

1 other; if not, they are the 'same offence' and double jeopardy bars additional punishment and
2 successive punishment.'" *Id.* (quoting *United States v. Dixon*, 509 U.S. 688, 696 (1993)). The core
3 inquiry here is whether there is (1) punishment (2) for the same offense, (3) in separate proceedings.

4 First the easy part. Based on the plain language of Nevada's civil forfeiture laws, this a
5 separate proceeding based on the same offense. *See, e.g.*, NRS 453.301 ("The following are subject
6 to forfeiture pursuant to NRS 179.1156 to 179.1205. . . ."); NRS 179.1173(2) ("At a proceeding for
7 forfeiture, the court shall issue an order staying the proceeding that remains in effect while the
8 criminal action[,]
9 **which is the basis of** the [forfeiture] proceeding is pending trial. The court shall
10 lift the stay after the [criminal] trial is completed." (emphasis added)). Tri-Net's own motion practice
11 further confirms this conclusion. (*See* Mot. to Lift to Stay ("The criminal actions **which are the**
12 **basis of** this forfeiture proceeding are now complete. . . ." (emphasis added)).) Therefore, only
13 *Blockburger's* "punishment" element is under dispute here.

14 **1. The history and tradition of forfeitures on the federal level.**

15 The United States Supreme Court determined that the Fifth Amendment's double jeopardy
16 protections do not guard against civil forfeitures because the history and tradition of federal law at
17 the founding routinely recognized a criminal sanction followed by a civil forfeiture of property. *See*
18 *Ursery*, 518 U.S. at 274 (concluding that federal law traditionally authorized "parallel *in rem* civil
19 forfeiture actions and criminal prosecutions based upon the same underlying events" such that
20 forfeitures are not punishment under *Blockburger*). But this decision is not fatal to Elvin's arguments
21 because the United States Constitution sets the floor, not the ceiling, for protection of individual
22 liberty in Nevada. *See, e.g., State v. Kincade*, 129 Nev. 953, 956, 317 P.3d 206, 208 (2013) ("[S]tates
23 are permitted to provide broader protections and rights than provided by the U.S. Constitution.");
24 *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 659, 137 P.3d 1110, 1120 (2006) (providing greater
25 constitutional protections to Nevadans because "it is clear that Nevadans' property rights are
26 protected by our State Constitution").

27 Federal history and tradition looked favorably on property forfeitures at the founding in 1789.
28 For example, the *Ursery* Court evaluated the original public meaning of the word "punishment" as
it relates to property forfeitures by analyzing both founding era Congressional legislation and the

1 Court's own precedent in the early 19th century to conclude the Fifth Amendment did not apply to
2 civil forfeitures. *See Ursery*, 518 U.S. at 274-76. "[T]his Court has considered the application of the
3 [of the Fifth Amendment's] Double Jeopardy Clause to civil forfeitures, consistently concluding that
4 the Clause does not apply to such actions because they do not impose punishment."² *Ursery*, 518
5 U.S. at 274; *see* Act of July 31, 1789, ch. 5, § 12, 1 Stat. 39 (goods unloaded at night or without a
6 permit subject to forfeiture and persons unloading subject to criminal prosecution); § 34, *id.* at 46
7 (imposing criminal penalty and *in rem* forfeiture where person convicted of relanding goods entitled
8 to drawback); *see also The Palmyra*, 25 U.S. 1, 14 (1827) ("Many cases exist, where there is both a
9 forfeiture *in rem* and a personal penalty."). Thus, based on this history and tradition, the Fifth
10 Amendment's protections do not guard against a separate civil forfeiture of property. Nevada's
11 history and tradition beginning in 1864 stands in distinct contrast to the federal government's view
12 of forfeitures and our State's original public meaning of the term *punishment*.

13 **2. The history and tradition of civil forfeitures in Nevada.**

14 "The goal of constitutional interpretation is to determine the public understanding of a legal
15 text leading up to and in the period after its enactment or ratification." *Pohlabel v. State*, 128 Nev.
16 1, 9, 268 P.3d 1264, 1269 (2012). To make that determination, the *Ursery* Court looked to two
17 distinct areas to uncover the original public meaning of "punishment" for its Fifth Amendment
18 analysis: (1) its own precedent, and (2) Congressional enactments at the founding. Elvin agrees that
19 these sources help guide the analysis here, but includes a third – the historical burden of "reasonable
20 doubt" required to obtain a property forfeiture in Nevada – for this Court's analysis.

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23 ² As scholars studying the historical backdrop of *in rem* forfeitures under federal law explain,
24 [f]irst and foremost, forfeiture was a tool for enforcing the legislative scheme
25 governing revenue collection – in particular, the customs duties imposed on goods
26 imported into the United States. These duties were the national government's
27 lifeblood. During the period studied here – and well into the nineteenth century –
28 receipts from import duties constituted the lion's share of the federal government's
total revenue.

See Kevin Arlyck, *The Founders' Forfeiture*, 119 COLUM. L. REV. 1449, 166 (2019) (footnotes omitted).

a. For over 100 years Nevada's common law did not favor forfeitures.

Since the founding, Nevada "law d[id] not favor forfeitures" and the Nevada Supreme Court directed lower courts to "strictly construe[]" statutes authorizing forfeitures and only enforce forfeitures "when facts clearly justify" the loss of property rights. *One 1978 Chevrolet Van v. Churchill County ex rel Banovich*, 97 Nev. 510, 512, 634 P.2d 1208, 1209 (1981) (quoting *Ind. Nev. v. Gold Hills*, 35 Nev. 158, 166, 126 P. 965, 967 (1912)). Moreover, unlike the federal government's reliance on import duties and tariffs for tax revenues which in turn permitted such property forfeitures for violations of the revenue laws, *supra* n. 2, Nevada's tax base from the founding through today has relied heavily on revenue from mining operations. Within this important area of law, some of the earliest precedent details that Nevada disfavored forfeitures because the forfeiture of valuable mining rights was considered a harsh punishment. *See, e.g., Golden Fleece Co. v. Cable Con. Co.*, 12 Nev. 312, 326-27 (1877) (construing the forfeiture provision in a mining contract and determining that the forfeiture would not apply to an innocent co-locator); *see also Porter v. Tempa Min. & Mill. Co.*, 59 Nev. 332, 93 P.2d 741, 742 (1939) ("Before forfeiture of a mining claim can be declared for failure to do annual assessment work, it must be clearly established." (quoting *Strattan v Raine*, 45 Nev. 10, 197 P. 694, 696 (1921))).

But even in other contexts outside of mining, forfeitures were not favored in Nevada. *See, e.g., Wilshire Ins. Co. v. State*, 94 Nev. 546, 550, 582 P.2d 372, 375 (1978) (declining to permit forfeiture in surety actions when a party has not designated a more general agent for a bail bondsman); *Worthington Motors v. Crouse*, 80 Nev. 147, 152, 390 P.2d 229, 232 (1964) ("In this connection, when equity permits a forfeiture it is usually the result of a contractual relationship between the parties, but as stated in 3 Story's Equity Jurisprudence, § 1732 (14th ed. 1918), '[i]t is a universal rule in equity never to enforce a penalty or a forfeiture.'"); *State v. Harmon*, 35 Nev. 189, 127 P. 221, 23 (1912) (determining in an election law case that "forfeitures are not favored"). Therefore, Nevada Supreme Court precedent clearly exhibits an original public meaning that forfeitures were **punishment** as that term was understood in the period immediately following the enactment of Article 1, Section 8(1).

b. The Legislature did not codify criminal penalties coupled with property forfeitures for several decades after the Founding.

Tri-Net cannot point to any enactment by the Legislature at the founding that authorized criminal sanctions in one proceeding followed by property forfeitures in a separate civil proceeding. Indeed, when the Legislature finally enacted the first drug control laws, the Legislature *did not* include a property forfeiture provision. *See generally* 1913 Nev. Stat., ch., 207, §§ 6-8, at 286-87 (detailing the authority of a District Attorney to prosecute, outlining penalties, and defining what substances were illegal but never authorizes property forfeitures); *see also* 1921 Nev. Stat., ch. 35, §§ 1, 7, 8, at 66-69 (further amending the law without authorizing property forfeitures). It was not until 1937 when the Legislature adopted the Uniform Controlled Substances Act, that the Legislature finally enacted the legal fiction that sanctioned property forfeitures. *See Sparks v. Nason*, 107 Nev. 202, 203-04, 807 P.2d 1389, 1390 (1991) ("Since a forfeiture proceeding is *in rem*, it makes use of the legal fiction that the [property] committed the crime. Therefore, the proceeding is against the *res* on the theory that the property is tainted."); 1937 Nev. Stat., ch. 23, § 13, at 43 ("Any store, shop, office, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of narcotic drugs or which is used for the illegal keeping or selling of the same shall be deemed a common nuisance. *No person shall keep or maintain such common nuisance.*" (emphasis added)). In 1957 the Legislature transitioned to the Nevada Revised Statutes ("NRS") and codified NRS 453.301 where it remains today. In 1959, the Legislature recognized that forfeitures are punishment and included innocent property owner protections. *See* 1959 Nev. Stat., ch. 425, § 4, at 695.

Accordingly, at the founding and in the immediate years following the enactment of Nevada's double jeopardy clause, criminal penalties coupled with *in rem* civil penalties were never enacted by the Legislature. Even after property forfeitures were codified, the Legislature recognized the highly punitive nature of forfeitures and installed protections for innocent property owners. Thus, in Nevada, the original public meaning of *punishment* encompassed property forfeitures.

c. The common law imposed a reasonable doubt burden of proof.

Even with property forfeitures sanctioned by the Legislature in the middle of the 20th

Century, for decades, Nevada's common law required the exact same high burden of proof – reasonable doubt – as imposed in criminal proceedings for property forfeitures because forfeitures are ***punishment***. See *A 1983 Volkswagen v. Cnty. of Washoe*, 101 Nev. 222, 224, 699 P.2d 108, 109 (1985) (explaining that when "authorizing forfeiture of a vehicle used in violation of the Uniform Controlled Substances Act" Nevada law has "implicitly recognized the quasi-criminal nature of forfeiture actions" and required "proof beyond a reasonable doubt" so that "the innocent may not be permanently deprived of their property").

It was not until 1987, that the Legislature abrogated Nevada's common law disfavoring forfeitures and lowered the burden of proof to a preponderance of evidence. (See 1987 Nev. Stat., ch. 571, § 12 ¶ 4, at 1382 ("In a proceeding for forfeiture, the rule of law that forfeitures are not favored does not apply."); see also *Schoka v. Sheriff, Washoe Cnty.*, 108 Nev. 89, 91, 824 P.2d 290, 291-92 (1992) (applying a preponderance standard to property forfeitures).³ This abrogation of the common law however cannot change the original public meaning of punishment as it relates to forfeitures at the founding in 1864. See *Pohlabel*, 128 Nev. at 9, 268 P.3d at 1269 (explaining that "constitutional interpretation" requires analysis of "the public understanding of a legal text leading up to and in the period after its enactment or ratification").

In sum, by evaluating over 100 years of Nevada history and tradition through a review of Nevada Supreme Court precedent, Legislative enactments, and the burden of proof imposed through common law, Elvin has met his burden showing that NRS 453.301 violates double jeopardy and the "punishment" prong of *Blockburger*. Thus, this forfeiture proceeding as applied to Elvin's Home violates Article 1, Section 8(1) of Nevada's constitution.

B. NRS 453.301 as Applied to Elvin Violates Nevada's "Inalienable Rights" Clause.

The inalienable property rights clause is unique to Nevada and affords all Nevadans robust protections. No provision in Nevada's constitution authorizes the Legislature to abrogate these

³ In 2001, the Legislature raised the standard to clear and convincing. See 2001 Nev. Stat. ch. 176, § 1, at 874. Nothing about this Motion waives Elvin's right to challenge the constitutionality of this burden of proof just as Sylvia has done. (See Sylvia Verified Answer and Countercl., Jun. 28, 2022, on file.)

1 protections – like there is for eminent domain and property tax purposes. The Legislature's
2 enactment of NRS 453.301 and Tri-Net's application of NRS 453.301 to Elvin's Home here is
3 therefore unconstitutional.

4 As explained above, Nevada codified the Uniform Controlled Substances Act in NRS
5 Chapter 453 which permits property forfeitures through a "legal fiction" because "the property is
6 tainted" through its association and adjacency to criminal activity. *Nason*, 107 Nev. at 204, 807 P.2d
7 at 1390. Specifically, NRS 453.301 details that three categories of items are eligible to be forfeited
8 (1) contraband, (2) instrumentalities, and (3) the proceeds and/or profits of crime. Elvin only
9 challenges the second category – instrumentalities – as Tri-Net's complaint does not make any
10 allegations that it seeks a proceeds forfeiture of the Home. (*See generally* Am. Compl.) *See*
11 *Ferguson v. LVMPD*, 131 Nev. 939, 944, 364 P.3d 592, 595 (2015) (explaining that proceeds
12 forfeitures "will not stand in the absence of evidence linking the money" or property purchased with
13 the money associated with "criminal activity"). Elvin grounds his challenge in Article 1, Section 1's
14 plain language, along with the absence of another constitutional provision abrogating its protections
15 and granting the Legislature authority to override this robust constitutional protection by authorizing
16 the enactment of NRS 453.301. *See Nevadans for Nevada v. Beers*, 122 Nev. 930, 942, 142 P.3d
17 339, 347 (2006) ("Unless ambiguous, the language of a constitutional provision is applied in
18 accordance with its plain meaning.").

19 Specifically, Article 1, Section 1 provides Nevadans "certain inalienable rights among which
20 are those of . . . **Acquiring, Possessing and Protecting Property**" from government encroachment.
21 (Emphasis added). As the Nevada Supreme Court explained, this clause makes "clear that Nevadans'
22 property rights are protected by our State Constitution" and its protections are more robust than the
23 United States Constitution as "[t]here is no corollary provision" found in that charter. *Sisolak*, 122
24 Nev. at 659, 669, 137 P.3d at 1120, 1127. Thus, Article 1, Section 1's protections unambiguously
25 protect Nevadans' property rights, and the clause guards against arbitrary encroachments of
26 Nevadans' property rights **whenever** government action is in question.

27 To be sure, this Court can look to other constitutional provisions that properly abrogate
28 Nevadans' inalienable property rights and those clauses in turn appropriately delegate authority to

the Legislature to enact legislation effectuating some other purpose. For example, Article 1, Sections 8(6) and 22 provide authority to the government to take property through eminent domain procedures and the Legislature constitutionally enacted such procedures in NRS Chapter 37. Likewise, Article 10, Section 1 provide tax authority to the government and delegated to the Legislature authority to enact legislation which the Legislature constitutionally enacted such procedures in NRS Chapter 361. But Tri-Net cannot point to any such constitutional abrogation and delegation of the inalienable property rights clause permitting the Legislature to enact property forfeitures based on a legal fiction in NRS 453.301. *Cf. In re Sang Man Shin*, 125 Nev. 100, 102, 206 P.3d 91, 93 (2009) ("In the absence of a specific constitutional limitation to the contrary, the power to enact laws is vested in the Legislature."); *see also* Nev. Const. art. 4, § 1. Indeed, the Nevada Supreme Court recently concluded that "[p]ublic policy does not warrant creating a civil forfeiture exception to" the protections of Article 4, Section 30 and NRS 115.010(1) – Nevada's Homestead property protections. *Aguirre v. Elko Cnty. Sheriff's Office*, 138 Nev., Adv. Op. 32, 508 P.3d 886 (2022). Thus, the Legislature's enactment of property forfeitures under NRS 453.301 violates Article 1, Section 1 of Nevada's constitution and Tri-Net's reliance on this provision to seek a forfeiture of the Home violates Elvin's rights here. Elvin therefore requests this Court dismiss Tri-Net's complaint with prejudice.

V. CONCLUSION

Based on the arguments enunciated above under the double jeopardy clause and the inalienable rights clause, Elvin requests that this Court dismiss Tri-Net's Complaint with prejudice.

DATED this 14th day of July 2022.

McDONALD CARANO LLP

By: 

John Fortin, Esq. (NSBN 15221)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
jfortin@mcdonalddcarano.com

*Pro Bono Counsel for Claimant
Elvin Fred*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on or before the 14th day of July 2022, I caused to be delivered via email true and correct copies of the above **CLAIMANT ELVIN FRED'S MOTION TO DISMISS TRI-NET'S CIVIL FORFEITURE COMPLAINT** to the following:

Investigation Division of the Department of Public Safety
State of Nevada
(Tri-Net Narcotics Task Force)
555 Wright Way
Carson City, Nevada 89711
jwoodbury@carson.org
bjohnson@carson.org

Attorneys for Plaintiffs


An employee of McDonald Carano LLP

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Las Vegas, Nevada 89101
Telephone: 702.214.2100

Counsel for Sylvia Fred and Elvin Fred

**FIRST JUDICIAL DISTRICT COURT
CARSON CITY, NEVADA**

In Re:
3587 Desatoya Drive, Carson City, Nevada
89701, Carson City, Assessor's Parcel Number:
010-443-11.

Case No.: 15 0C 00074 1B
Dept. No.: 2

**NOTICE OF WITHDRAWAL OF
PISANELLI BICE PLLC ATTORNEYS**

PLEASE TAKE NOTICE that Jordan T. Smith, Esq. and Emily A. Buchwald, Esq., of the law firm PISANELLI BICE PLLC, hereby give notice of their withdrawal as counsel for Defendants Sylvia Fred and Elvin Fred. Defendants will continue to be represented by John A. Fortin, Esq. of the law firm McDONALD CARANO LLP.

DATED this 19th day of July 2022.

PISANELLI BICE PLLC

By:

Jordan T. Smith
Jordan T. Smith, Esq., #12097
Emily A. Buchwald, Esq., #13442
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Counsel for Sylvia Fred and Elvin Fred

REC'D & FILED

2022 JUL 21 PM 12:32

AUDREY ROWLATT
S. BARAJAS
CLERK

BY _____ DEPUTY

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on or before the 19th day of July 2022, I caused to be delivered via email true and correct copies of the above **NOTICE OF WITHDRAWAL OF PISANELLI BICE PLLC ATTORNEYS** to the following:

Investigation Division of the Department of Public Safety
State of Nevada
(Tri-Net Narcotics Task Force)
555 Wright Way
Carson City, Nevada 89711
jwoodbury@carson.org
bjohnson@carson.org

Attorneys for Plaintiffs

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Attorneys for Defendants


An employee of PISANELLI BICE PLLC

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Pro Bono Counsel for Claimant
Elvin Fred

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2022 JUL 22 PM 3:18

AUSREY ROBLATT
CLERK
BY **S. BARAJAS**
DEPUTY

FIRST JUDICIAL DISTRICT COURT

CARSON CITY, NEVADA

In Re:

3587 Desatoya Drive, Carson City,
Nevada 89701, Carson City, Assessor's
Parcel Number: 010-443-11.

Case No.: 15 OC 000741 B
Dept: II

AFFIDAVIT OF SERVICE

STATE OF NEVADA)

COUNTY OF WASHOE)


Christian Snooks, being duly sworn, says: that at all times herein, affiant was and is over
18 years of age and not a party to, nor interested in the proceedings in which this affidavit is made.
That affiant received 1 copy of the following:

Summons to Nevada Attorney General in Accordance with NRS 30.130;
Sylvia Fred Verified Answer and Counterclaims;
Acceptance of Service of First Amended Complaint for Forfeiture;
Notice of Change of Law Firm and Address; and
Claimant Elvin Fred's Motion to Dismiss Tri-Net's Civil Forfeiture Complaint;

and served the same on the 18th day of July, 2022 @ 3:30 p.m. by hand delivering true and correct
copies of the same to Connie Salerno, a person authorized to accept service at the Office of the
Attorney General, 100 North Carson Street, Carson City, Nevada.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is
true and correct.

Dated: July 22, 2022


Christian Snooks
100 W. Liberty Street, Tenth Floor
Reno, Nevada 89501

PA000112

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on the 22nd day of July 2022, I caused to be delivered via email true and correct copies of the above

AFFIDAVIT OF MAILING o the following:

Investigation Division of the Department of Public Safety
State of Nevada
(Tri-Net Narcotics Task Force)
555 Wright Way
Carson City, Nevada 89711
jwoodbury@carson.org
bjohnson@carson.org

Attorneys for Plaintiff



An employee of McDonald Carano LLP

4889-4207-1082, v. 1

1 CARSON CITY DISTRICT ATTORNEY
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13 E-mail: jwoodbury@carson.org
14 bjohnson@carson.org
15 Representing Plaintiff

11 FIRST JUDICIAL DISTRICT COURT OF NEVADA
12 CARSON CITY
13

14 In re:

15 3587 Desatoya Drive, Carson City,
16 Nevada 89701, more particularly
17 described as all that certain parcel of land
18 situate in the City of Carson City, County
19 of Carson City and State of Nevada,
20 being known and designated as follows:
21 Parcel N-33 as shown on Parcel Map No.
22 1704 for Stanton Park Development, Inc.,
23 filed in the office of the Recorder of
24 Carson City, Nevada on August 11, 1989
25 as File No. 89253, Carson City
Assessor's Parcel Number: 010-443-11

Case No.: 15 OC 00074 1B

Dept. No.: 2

23 PLAINTIFF'S OPPOSITION TO CLAIMANT ELVIN FRED'S MOTION TO DISMISS
24 TRI-NET'S CIVIL FORFEITURE COMPLAINT
25

REC'D & FILED

2022 AUG 26 PM 4:41

AUDREY ROWLATT
CLERK

BY K. PETERSON
DEPUTY

1 COMES NOW, Plaintiff, the INVESTIGATION DIVISION OF THE
2 DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics
3 Task Force (TRI NET), by and through its counsel of record, JASON D. WOODBURY,
4 Carson City District Attorney, and BENJAMIN R. JOHNSON, Senior Deputy District
5 Attorney, and opposes *Claimant Elvin Fred's Motion to Dismiss Tri-Net's Civil*
6 *Forfeiture Complaint* filed with this Court on July 15, 2022. This *Opposition* is made
7 pursuant to FJDCR 3.8 and is based on the points and authorities set forth below, all
8 pleadings and papers heretofore filed in this case, and the arguments presented at any
9 hearing on this *Motion*.

10 DATED this 26th day of August, 2022.

11 CARSON CITY DISTRICT ATTORNEY

12
13 

14 JASON D. WOODBURY
15 District Attorney
16 Nevada Bar No. 6870
17 BENJAMIN R. JOHNSON
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19 Nevada Bar No. 10632
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bjohnson@carson.org
Representing Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual and Procedural Background

A. Underlying Facts

The subject property in this matter is a residence located at 3587 Desatoya Drive in Carson City ("Desatoya residence"). *First Am. Compl. for Forfeiture* at ¶2 (Mar. 22, 2022). Between February 13 and March 19, 2015, ELVIN FRED owned and occupied the Desatoya residence. *Id.* at ¶9. During that time, an individual named James Tito was a drug seller in Carson City. *Id.* at ¶¶9-21. ELVIN FRED was Mr. Tito's supplier, using the Desatoya residence to store, conceal, and protect the drugs that Mr. Tito sold and to collect a cut of the proceeds resulting from Mr. Tito's sales. *Id.*

On February 13, 2015, Mr. Tito agreed to sell nearly an ounce of methamphetamine to a TRI NET confidential source for \$700. *Id.* at ¶10. The source met with Mr. Tito and gave him \$700. *Id.* Mr. Tito then went to the Desatoya residence and went inside for a brief period. *Id.* He then met again with the source and provided him with 27 grams of methamphetamine. *Id.* These circumstances strongly support the reasonable inference that Mr. Tito acquired the methamphetamine from ELVIN FRED inside the Desatoya residence. *Id.* at ¶11.

On February 19, 2015, Mr. Tito agreed to sell the source nearly an ounce and a half of methamphetamine from ELVIN FRED for \$1,000. *Id.* at ¶12. After agreeing to the transaction, Mr. Tito contacted ELVIN FRED and then went to the Desatoya residence and again went inside for a brief period. *Id.* He and ELVIN FRED emerged from the Desatoya Residence, and Mr. Tito left to meet with the source. *Id.* During that meeting Mr. Tito provided the source with approximately 41.2 grams of methamphetamine. *Id.* These circumstances strongly support the reasonable

1 inference that Mr. Tito acquired the methamphetamine for the February 19 transaction
2 from ELVIN FRED inside the Desatoya residence. *Id.* at ¶13.

3 On March 12, 2015, the source made arrangements with Mr. Tito for a third
4 transaction, this time for the sale of nearly an ounce of methamphetamine for \$900.
5 *Id.* at ¶14. In preparation for the transaction, Mr. Tito again contacted ELVIN FRED
6 and met with him inside the Desatoya Residence. *Id.* Thereafter, Mr. Tito met with the
7 source and provided the source with 27.5 grams of methamphetamine. *Id.* These
8 circumstances strongly support the reasonable inference that Mr. Tito acquired the
9 27.5 grams of methamphetamine from ELVIN FRED inside the Desatoya residence.
10 *Id.* at ¶15. Additionally, a week later, \$300 of the \$900 utilized to purchase the
11 methamphetamine was discovered at the Desatoya residence. *Id.* at ¶¶16, 18.

12 On March 19, 2015, well over a quarter pound of methamphetamine, 150.7
13 grams, was located inside the Desatoya residence. *Id.* at ¶17. \$5,090 in currency was
14 found in the residence as well. *Id.* at ¶18. Also in the residence were numerous items
15 associated with drug activity, including marijuana, digital scales, packaging material,
16 firearms, and documents reflecting payments and amounts owed for drug transactions.
17 *Id.* at ¶19. All the items discovered, together with the circumstances of the three
18 transactions discussed above, strongly support the reasonable inference that ELVIN
19 FRED was substantially and directly involved in significant drug activities in Carson
20 City, using the Desatoya residence as an essential instrumentality in those activities.

21 **B. Associated Criminal Proceedings Against ELVIN FRED**

22 As a result of his conduct, ELVIN FRED was charged with Trafficking in a
23 Schedule I Controlled Substance Weighing 28 Grams or More, a Category A felony
24 under NRS 453.3385(3) at the time. *Id.* at ¶20. He admitted that he was guilty of the
25 charge, and he was later sentenced. *Id.* at ¶¶20-23.

1 **C. Forfeiture Proceedings Against Desatoya Residence**

2 As indicated in the *Motion*, the pending forfeiture proceedings were initiated on
3 April 1, 2015, with the filing of a *Complaint for Forfeiture* and recording of a *Notice of*
4 *Lis Pendens* on the Desatoya residence. *Motion* at 3:4-5; *Complaint for Forfeiture*
5 (Apr. 1, 2015); *Notice of Lis Pendens* (Apr. 1, 2015). The *Complaint* alleged, "ELVIN
6 FRED is the owner of the [Desatoya Residence] and the Claimant in this action as
7 defined by NRS 179.1158." *Complaint for Forfeiture* at ¶4. The *Complaint* further
8 alleged, "Upon information and belief, Plaintiff has no knowledge and no reason to
9 believe that any person or entity other than ELVIN FRED has any ownership interest
10 in the Property." *Id.* at ¶5.

11 ELVIN FRED was served with the *Complaint* and a summons on April 3, 2015.
12 *Summons* (Apr. 3, 2015). No answer or response to the *Complaint* was filed by ELVIN
13 FRED or anyone else purporting to be a claimant to the Desatoya residence. As a
14 result, a default judgment was entered. *Default J.* (Jan. 4, 2019); *Amended Default J.*
15 (May 8, 2019). That default judgment was subsequently set aside. *Order Setting Aside*
16 *Default J.* (Mar. 9, 2022). On March 22, 2022, the *First Amended Complaint* for
17 Forfeiture was filed. *First Am. Compl. for Forfeiture*.

18 **II. Discussion**

19 **A. Standard of Review**

20 A motion to dismiss under NRCP 12(b)(5) "is subject to a rigorous standard of
21 review..." *Buzz Stew, LLC, City of N. Las Vegas*, 124 Nev. 224, 227, 181 P.3d 670,
22 672 (Nev. 2008) (*quoting Seput v. Lacayo*, 122 Nev. 499, 501, 122 Nev. 499, 134 P.3d
23 733, 734 (Nev. 2006)). A reviewing court is required to accept all the plaintiff's factual
24 allegations as true and draw all inferences in favor of the plaintiff's position. *Buzz Stew*,
25 124 Nev. at 228, 181 P.3d at 672 (*citing Blackjack Bonding v. Las Vegas Mun. Ct.*, 116

1 Nev. 1213, 1217, 14 P.3d 1275, 1278 (Nev. 2000)). Dismissal of a complaint is
2 appropriate *only* if the court is satisfied “beyond a doubt” that the plaintiff “could prove
3 no set of facts” which would entitle plaintiff to relief. *Buzz Stew*, 124 Nev. at 228 n.6,
4 181 P.3d at 672 n.6 (“Our prior cases have not been completely consistent in applying
5 the standard of review for failure to state a claim upon which relief can be granted. The
6 appropriate standard requires a showing beyond a doubt. To the extent these cases
7 required a showing of proof beyond a reasonable doubt, they are disavowed.” (*citations*
8 *to disavowed cases omitted*)).

9 **B. Civil Forfeiture of the Desatoya Residence Pursuant to NRS 453.301**
10 **Does Not Violate Nevada’s Double Jeopardy Clause**

11 The *Motion* argues that this Court should dismiss the First Amended Complaint
12 because it constitutes an additional penalty against ELVIN FRED in violation of
13 Nevada’s double jeopardy clause. *Motion* at §IV.A. But the *Motion* is fatally flawed
14 because it applies the incorrect test and disregards Nevada Supreme Court precedent
15 that is directly contrary to the arguments presented.

16 “The Double Jeopardy Clause of the Fifth Amendment to the United States
17 Constitution provides that no person shall ‘be subject for the same offence to be twice
18 put in jeopardy of life or limb.’” *Jackson v. State*, 128 Nev. 598, 604, 291 P.3d 1274,
19 1277-78 (2012). The protection applies to the states through the Fourteenth
20 Amendment to the U.S. Constitution and is additionally guaranteed by article 1, § 8 of
21 the Nevada Constitution. *Id.* Nevada’s double jeopardy clause states: “No person shall
22 be subject to be twice put in jeopardy for the same offense.” NEV. CONST. art. 1, § 8.
23 Because a single act can violate more than one criminal statute, double jeopardy
24 analysis determines whether a defendant can be prosecuted and punished
25 cumulatively when elements of two criminal statutes are met. *Jackson*, 128 Nev. at

1 601, 291 P.3d at 1276.

2 ELVIN FRED asks this Court to apply a test announced in *Blockburger v. United*
3 *States*, 284 U.S. 299 (1932) and find that NRS 453.301 as applied constitutes double
4 jeopardy. *Motion* at 3. The *Motion's* reliance on *Blockburger* and review of the
5 historical understanding of "forfeiture" in Nevada is not applicable in this case because
6 the *Blockburger* test is used to determine whether two criminal statutes penalize the
7 same offense and constitute double jeopardy. *Jackson*, 128 Nev. at 604, 291 P.3d at
8 1278.¹

9 The *Motion* promptly concludes that the first two prongs of *Blockburger* are met
10 because the civil forfeiture of the Desatoya residence was a separate "proceeding"
11 based on the same underlying criminal offense and therefore the only real issue is
12 whether forfeiture constitutes a "punishment". *Motion* at 4. To reach this conclusion,
13 the *Motion* reviews old Nevada Supreme Court decisions regarding mining contracts
14 to demonstrate that forfeitures were historically disfavored. *Motion* at 6. But the
15 forfeitures at issue in those cases were contractual and did not involve civil forfeiture
16 of property used to facilitate a crime as occurred in this case.

17 Furthermore, the Nevada Supreme Court has clarified that the proper analysis
18 for determining whether a civil forfeiture constitutes *punishment* for double jeopardy
19 purposes is the test outlined in *United States v. Ursery*, 518 U.S. 267 (1996). See
20 *Levingston v. Washoe County*, 114 Nev. 306, 956 P.2d 84 (1998) (applying *Ursery*
21 analysis to civil forfeiture cases). In *Ursery*, the U.S. Supreme Court reversed two
22 separate cases from the Sixth Circuit and Ninth Circuit Court of Appeals that held

23 ¹ *Ball v. United States*, 470 U.S. 856, 861 (1985) ("This Court has consistently relied on the test of
24 statutory construction stated in *Blockburger* [] to determine whether Congress intended the same
25 conduct to be punishable under two criminal provisions."); *Estes v. State*, 122 Nev. 1123, 1143, 146
P.3d 1114, 1127 (2006) ("Nevada utilizes the *Blockburger* test to determine whether separate offenses
exist for double jeopardy purposes.").

1 double jeopardy prohibits the government from prosecuting a defendant for a criminal
2 offense and also forfeiting their property in a separate civil proceeding. *Ursery*, 518 at
3 271. The U.S. Supreme Court held that those specific civil forfeitures and *civil*
4 *forfeitures generally* "do not constitute 'punishment' for the purposes of the Double
5 Jeopardy Clause." *Id.*

6 The *Ursery* Court implemented a two-step test for analyzing civil *in rem*
7 forfeitures. First, there must be an examination of legislative intent to ascertain whether
8 the statute was intended to be civil or criminal. *Id.* at 277. "If this examination discloses
9 a legislative intent to create civil *in rem* forfeiture proceedings, a presumption is
10 established that the forfeiture is not subject to double jeopardy." *Levingston v. Washoe*
11 *Cty.*, 114 Nev. 306, 308, 956 P.2d 84, 86 (1998) (citing *Ursery*, 518 U.S. at 289 n.3).
12 The second part of the test analyzes whether the proceedings are "so punitive in fact
13 as to [demonstrate] that the forfeiture proceeding[s] may not legitimately be viewed as
14 civil in nature, despite legislative intent to the contrary." *Levingston*, 114 Nev. at 308-
15 09, 956 P.2d at 86 (citation and internal quotation marks omitted).

16 The *Ursery* Court observed that *in rem* civil forfeiture is a remedial civil action
17 that is distinct from potentially punitive *in personam* penalties such as administrative
18 fines and therefore do not constitute a punishment under double jeopardy. *Ursery*, 518
19 at 278. In one of the cases reviewed by *Ursery*, a civil forfeiture proceeding was
20 brought against a house that had been used for several years to facilitate the
21 processing and distribution of a controlled substance. *Id.* at 271. In upholding the
22 forfeiture, the Court found that it was clear that Congress intended forfeitures to be civil
23 proceedings. *Id.* at 289. Under the second prong, the Court acknowledged that
24 although certain aspects of a forfeiture may appear punitive, they serve important
25 nonpunitive goals of ensuring that property is not used for illegal purposes. *Id.* at 290.

1 This includes preventing a building from being further used to sell narcotics. *Id.*

2 In *Levingston*, a civil forfeiture was filed on a house that had been used to
3 effectuate the sale of drugs. *Levingston v. Washoe Cty. by & Through the Sheriff of*
4 *Washoe Cty.*, 112 Nev. 479, 481, 916 P.2d 163, 165 (1996). The house was seized
5 pursuant to NRS 453.301(8) which makes real property subject to forfeiture if an owner
6 or tenant uses the property to facilitate a crime relating to the possession, sale, and
7 trafficking in controlled substances. *Id.* at 483, 916 P.2d at 166. The Nevada Supreme
8 Court initially held that the forfeiture was punitive. *Id.* at 488, 916 P.2d at 169.

9 But after the *Ursery* opinion was issued, the Nevada Supreme Court reversed
10 its previous decision and held that Nevada's forfeiture statutes are not criminal in
11 nature and that there is no clear proof that the statutory scheme is so punitive in form
12 as to render it invalid. *Levingston v. Washoe Cty.*, 114 Nev. 306, 310-11, 956 P.2d 84,
13 87 (1998) ("*Levingston II*"). In *Levingston II*, the Nevada Supreme Court adopted the
14 *Ursery* analysis and upheld the forfeiture of a house against a double jeopardy claim.
15 *Id.* The Court acknowledged that Chapter 179 applies the rules of civil procedure to
16 forfeiture actions, identifies the parties as plaintiff and claimant, provides that the
17 proceeding is *in rem* and establishes the burden of proof as preponderance of the
18 evidence, not beyond a reasonable doubt. *Id.* at 310, 956 P.2d at 87. Therefore, it is
19 clear the legislature intended Nevada's forfeiture statutes to be civil, not criminal, *in*
20 *rem* proceedings. *Id.*

21 Under the second prong, the Court found no proof that Nevada's statutory
22 forfeiture proceedings are so punitive as to render them criminal in nature. "[F]orfeiture
23 encourages property owners to responsibly manage their property and ensures that
24 owners will not permit illegal activities on or in that property." *Id.* at 311, 956 P.2d at 87
25 ("The forfeiture served non-punitive goals. It prevented the further illicit use of the

1 house, thereby ensuring that the house would not be used again for illegal purposes
2 and that [the defendants] particularly would not profit from illegal conduct."). The Court
3 also pointed out that proceeds from civil forfeiture actions go toward crime prevention
4 and help defray the cost of court proceedings and law enforcement. *Id.*

5 The *Motion* argues that NRS 453.301, as applied to ELVIN FRED, violates
6 Nevada's Double Jeopardy Clause. In doing so, ELVIN FRED attempts to distinguish
7 Nevada's double jeopardy clause found in art. 1, § 8 of the Nevada Constitution from
8 the double jeopardy clause found in the Fifth Amendment to the U.S. Constitution.
9 *Motion* at 3. But the language in both double jeopardy clauses is nearly identical and
10 ELVIN FRED fails to establish how the outcome of the case would be different under
11 art. 1, § 8 of Nevada's constitution.

12 NRS 453.301 authorizes forfeiture of instrumentalities used to commit crimes,
13 but the process utilized is the one outlined in NRS Chapter 179. Claimant ELVIN FRED
14 has failed to demonstrate that *Levingston II* does not apply to NRS 453.301. Therefore,
15 the forfeiture of the Desatoya residence pursuant to NRS 453.301 is not criminal in
16 nature. There is no logical reason to believe that the *Levingston* analysis would change
17 under the Nevada constitution rather than the Fifth Amendment. The facts in this case
18 are nearly indistinguishable from *Levingston* and *Levingston II* in which the Nevada
19 Supreme Court upheld a forfeiture pursuant to NRS 453.301 and concluded there was
20 no double jeopardy. Therefore, the *Motion* must be denied.

21 **C. Nevada's Inalienable Rights Clause Does Not Shield the Property from**
22 **Foreclosure**

23 ELVIN FRED argues that NRS 453.301 and forfeiture of the Desatoya residence
24 violates the inalienable rights clause of the Nevada Constitution and requires dismissal
25 of the First Amended Complaint. *Motion* at 8-10. The *Motion* argues that there is no

1 carve out for in the Nevada Constitution for forfeitures and therefore the inalienable
2 rights clause prohibits the Legislature for enacting any statutes contrary to that right.
3 *Motion* at 9. The argument cites other articles in the Nevada constitution which
4 authorize eminent domain and taxation and the absence of any provision abrogating
5 or delegating the right to forfeitures in NRS 453.301.

6 ELVIN FRED relies in part on a recent decision by the Nevada Supreme Court
7 that to create a public policy exception to allow civil forfeitures of properties protected
8 under a homestead declaration. *Aguirre v. Elko Cnty. Sheriff's Office*, 508 P.3d 886
9 (Nev. 2022). But the homestead exemption clause in Nevada's constitution expressly
10 defines the scope of its protections, stating "a homestead . . . shall be exempt from
11 forced sale under *any* process of law." NEV. CONST. art. 4, § 30. The inalienable rights
12 language in article 1 on the other hand does not spell out such broad protections for
13 property. It does not expressly protect property from all infringement or exempt it from
14 forfeiture. Had that been the intent, the framers could have included broad language
15 similar to the protections afforded to homestead property.

16 Indeed, there are other ways that the legislature has imposed limits on property
17 rights without a specific carve out in the Nevada constitution. For example, Nevada's
18 constitution does not have a specific delegation of authority regarding zoning laws, but
19 the Nevada Supreme Court has repeatedly upheld zoning provisions and restrictions
20 on property use. *See Sustainable Growth Initiative Comm. v. Jumpers, Ltd. Liab. Co.*,
21 122 Nev. 53, 71-72, 128 P.3d 452, 465 (2006). The Court has also recognized that the
22 legislature has inherent police power that may be exercised for the preservation and
23 improvement of public health, safety, morals and general welfare. *State v. Eighth*
24 *Judicial Dist. Court*, 101 Nev. 658, 663, 708 P.2d 1022, 1025 (1985). "In exercising its
25 police powers, the legislature may, where public interest demands, define and declare

1 public offenses, although the effect is to restrict or regulate the use and enjoyment of
2 private property." *Id.*

3 Adopting ELVIN FRED's rationale would require overturning all other statutes
4 that effect property unless there is a specific abrogation of the inalienable rights clause
5 or delegation of authority to the legislature in the Nevada constitution. This would be
6 an absurd result. The inalienable rights language cannot reasonably be interpreted as
7 an unfettered right to property without interference by the government. This is
8 especially true because the Nevada Supreme Court has upheld the constitutionality of
9 Nevada's forfeiture statutes. The *Motion* fails to demonstrate that this Court should
10 ignore settled precedent and impose such a broad application of the inalienable rights
11 clause.

12 **III. Conclusion**

13 For all these reasons, the *Motion* should be denied in its entirety and ELVIN
14 FRED should be ordered to answer the First Amended Complaint for Forfeiture.

15 CARSON CITY DISTRICT ATTORNEY

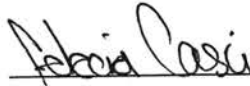
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 26th day of August, 2022, I served a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO CLAIMANT ELVIN FRED'S MOTION TO DISMISS TRI-NET'S CIVIL FORFEITURE COMPLAINT** via electronic mail and by first class mail to the following:

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Elvin Fred*

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BY

DEPUTY

FIRST JUDICIAL DISTRICT COURT

CARSON CITY, NEVADA

In Re:

3587 Desatoya Drive, Carson City,
Nevada 89701, Carson City, Assessor's
Parcel Number: 010-443-11.

Case No.: 15 OC 000741 B

Dept: II

**CLAIMANT ELVIN FRED'S REPLY IN
SUPPORT OF HIS MOTION TO DISMISS
TRI-NET'S CIVIL FORFEITURE
COMPLAINT.**

I. INTRODUCTION.

Nevada courts are the guardians of Article 1, Nevadans' Declaration of Rights and Tri-Net's litigation threatens Elvin's liberty and constitutional rights. A review of Tri-Net's opposition puts on full display its lack of consideration of the text, history, and tradition of Nevada's constitution. At best, Tri-Net asks this Court to apply inapplicable federal cases to support its argument. At worst, Tri-Net asks this Court to enlarge the general police powers of Nevada's government to nullify several provisions Article 1. This Court should not oblige Tri-Net's request. In short, the plain text of Nevada's double jeopardy clause and its inalienable rights clause provide robust protections and this Court should guard against Tri-Net's assault of Elvin's right. Elvin therefore asks this Court to dismiss this forfeiture proceeding with prejudice.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

To briefly recap the relevant facts and procedural history necessary for this Court to conclude Elvin's constitutional rights are under attack, this civil forfeiture action involves the real property at 3587 Desatoya Drive, Carson City, Nevada 89701 ("Home"). (See Am. Compl. ¶ 2, Mar. 21, 2022, on file.) In 2015, the State charged Elvin by Criminal Complaint of several charges related to criminal conduct and Elvin pleaded guilty to, the offense of Trafficking in a

1 Schedule I Controlled Substance Weighing 28 Grams or More, a Category A felony on June 29,
2 2015. (*Id.* ¶ 20.) Shortly after filing its Criminal Complaint, Tri-Net filed its original Complaint
3 for Forfeiture and relied on NRS 453.301 (Nevada’s property forfeiture provision) as a basis to
4 forfeit the Home. (Compl., Apr. 1, 2015, on file.) Then, Tri-Net and Elvin entered into a
5 stipulation and order staying the civil forfeiture proceedings pending resolution of the criminal
6 proceedings. (*See* Order, at 1:27, Apr. 28, 2015, on file (explaining that “[t]he criminal actions
7 which are the basis of this forfeiture proceeding” are pending and unresolved).) Several years
8 later, the Nevada Supreme Court affirmed Elvin’s conviction and punishment – a life sentence in
9 prison. *See Fred (Elvin) v. State*, Case No. 72521 (Ord. of Affirmance, Mar 14, 2018); NRAP
10 36(c). With Elvin’s criminal proceedings final, Tri-Net then moved to lift the stay to the forfeiture
11 proceedings, which the district court granted. (*See* Mot. to Lift to Stay, May 4, 2018, on file;
12 Order, Jun. 5, 2018, on file.) As this Court well knows, Tri-Net eventually obtained a void
13 Amended Default Judgment on the Home, (*see* Am. Default J., Jul. 10, 2019, on file,) Elvin’s
14 sister Claimant Sylvia Fred (“Sylvia”) challenged the validity of the default judgment to the
15 Nevada Supreme Court and prevailed, *see In re: 3587 Desatoya Drive*, Case No. 80194, 2021
16 WL 4847506 (Order of Reversal and Remand, Oct. 15, 2021), and this Court vacated the void
17 default judgment. (*See* Order, Mar. 14, 2022, on file.) Tri-Net then amended its complaint and
18 this Motion followed. (*See* Am. Compl.)¹

19 IV. LEGAL ARGUMENT

20 NRCP 12(b)(5) permits a party to move to dismiss a cause of action because the plaintiff

21
22 ¹ Tri-Net spends an exorbitant amount of time recounting for the Court the minute, factual
23 background of Elvin’s crimes. (*See generally* Pl.’s Opp’n. at 1-5, Aug. 27, 2022, on file.) Once
24 “the judgment of conviction has become final” that conviction is “conclusive evidence of all facts
25 necessary to sustain the conviction.” NRS 179.1173(5). Thus, Tri-Net’s factual recitation is
26 extraneous to resolve the question presented. (*See generally id.*) The only salient fact that Tri-
27 Net recounted that Elvin merely used the Home as an “instrumentality” of his crimes – not to
28 manufacture contraband, nor to use the Home as a drug den. (Pl.’s Opp’n. at 4:20.) *But see*
Levingston v. Washoe Cnty. 112 Nev. 479, 481, 916 P.2d 163, 165 (1996) (hereinafter *Levingston I*)
(recounting that the “home reportedly became a ‘crack’ house”); *Wright v. State*, 112 Nev. 394,
394-95, 916 P.2d 146, 149 (1996) (describing a shed on the property used to manufacture
contraband), *overruling both on Fifth Amendment grounds in Levingston v. Washoe Cnty.*, 114
Nev. 306, 311 956 P.2d 84, 88 (1998) (hereinafter *Levingston II*).

1 failed “to state a claim upon which relief can be granted.” A district court must “recognize all
2 factual allegations” presented by a plaintiff in the “complaint and draw all inferences in its favor”
3 although Elvin does not concede but in fact contests the facts in the complaint. *Buzz Stew, LLC*
4 *v. City of N. Las Vegas*, 124 Nev. 224, 228 (2008). The complaint “should be dismissed only if
5 it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to
6 relief.” *Id.*

7 When a party challenges the constitutionality of a statute, the challenger bears the burden
8 of making a “clear showing of invalidity.” *Silvar v. Dist. Ct.*, 122 Nev. 289, 292 (2006). But this
9 Court is the guardian of individual liberty and Elvin asks this Court to enforce the text of the
10 constitution to ensure his liberty and constitutional rights are not violated. *See Massachusetts v.*
11 *Upton*, 466 U.S. 727, 738-39 (1984) (Stevens, J. concurring) (“The States in our federal system,
12 however, remain the primary guardian of the liberty of the people.”).

13 **A. NRS 453.301 as Applied to Elvin Violates Nevada’s Double Jeopardy Clause.**

14 Tri-Net does not dispute – nor discuss – the fact that Elvin has already been punished
15 severely for his crimes. For trafficking contraband and pleading guilty, Elvin will serve the rest
16 of his life in prison. Now, Tri-Net seeks to extract another punishment, in a separate proceeding,
17 for the same conduct he is currently incarcerated for. This Court should not allow Tri-Net’s
18 unconstitutional attack on Elvin’s liberty in this proceeding to continue.

19 **1. Blockburger is the correct double jeopardy analysis.**

20 Tri-Net contends that *Blockburger* is not the correct constitutional framework for this
21 Court to apply. Tri-Net is wrong. As shown in greater detail below, even if this Court applies
22 Tri-Net’s test to Elvin, the result is the same – NRS 453.301 coupled with the application of the
23 plain language of NRS 179.1156 to 179.1205 (Nevada’s civil forfeiture procedures) violates
24 Nevada’s constitution. Simply put, this is a separate proceeding seeking to extract an additional,
25 successive punishment on Elvin for the *exact same* criminal conduct.

26 The Double Jeopardy Clause in “the Nevada Constitution, ‘protects against three abuses:
27 (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the
28 same offense after conviction, and (3) multiple punishments for the same offense.’” *Sweat v.*

1 *Eighth Jud. Dist. Ct.*, 133 Nev. 602, 604, 403 P.3d 353, 356 (2017) (quoting *Jackson v. State*, 128
2 Nev. 598, 604, 291 P.3d 1274, 1278 (2012)); Nev. Const. art. 1, § 8(1). The third protection is at
3 issue. “To determine whether two statutes penalize the ‘same offense,’” the Nevada Supreme
4 Court “‘look[s] to *Blockburger v. United States*, 284 U.S. 299, 304 (1932).” *Jackson*, 128 Nev.
5 at 604, 291 P.3d at 1279. “The *Blockburger* test ‘inquires whether each offense contains an
6 element contained in the other; if not, they are the ‘same offence’ and double jeopardy bars
7 additional punishment and successive punishment.” *Id.* (quoting *United States v. Dixon*, 509
8 U.S. 688, 696 (1993)).

9 Because Tri-Net does not understand why *Blockburger* applies, Elvin further explains his
10 rationale. NRS 453.301 along with NRS 179.1173 provides **a second** statute to permit a separate
11 proceeding that the State may punish Elvin for his crimes through a property forfeiture. (*Cf.* Pl.’s
12 Opp’n at 6:2-8 (claiming that *Blockburger* is inapplicable because that “test is used to determine
13 whether two criminal statutes penalize the same offense”).² *Blockburger* applies here because
14 Tri-Net’s counsel – the Carson City District Attorney’s Office – charged Elvin by criminal
15 information with Trafficking in a Schedule 1 controlled Substance under NRS 453.3385(3). (*See*
16 Am. Compl. ¶ 2.) Through the plea bargain and subsequent habeas review, Elvin was sentenced
17 to life in prison. *See Fred (Elvin) v. State*, Case No. 72521 (Ord. of Affirmance, Mar 14, 2018);
18 NRAP 36(c). Now, through NRS 453.301 and NRS 179.1173, Tri-Net – and the Carson City
19 District Attorney – seek to extract another punishment, in another proceeding, based on the same
20 criminal conduct. (*See* Am. Compl.) Two statutory provisions, two proceedings, one instance of
21 criminal conduct.³ Thus, the only remaining question is whether a civil forfeiture constitutes
22 **punishment** to trigger double jeopardy under Nevada’s constitution.

23
24 _____
25 ² Dispelling any notion that Tri-Net’s contentions have merit, New Mexico relied on
26 *Blockburger* for its double jeopardy analysis. *See State v. Nunez*, 2 P.3d 264, 293 (N.M. 1999)
27 (“We hold that the New Mexico Double Jeopardy Clause forbids bringing criminal charges and
28 civil forfeiture petitions for the same crime in separate proceedings.”).

³ If any doubt remained that *Blockburger* applies here, the plain language of Nevada’s civil
forfeiture laws provides dispositive proof for this conclusion. *See, e.g.*, NRS 179.1173(2)-(4),
(9)-(10).

2. *Nevada's history and tradition disfavored forfeitures such that it is punishment for double jeopardy purposes.*

The history and tradition of Nevada precedent, legislative enactments, and the burden of proof for over 123 years since the State's founding establishes that forfeitures fall within the original public meaning of the word ***punishment***. To be sure, federal precedent and Congressional enactment supports the opposite view under the Fifth Amendment and Elvin does not quarrel with that conclusion.⁴ Tri-Net, however, neglected to engage in any analysis or rebuttal of the history and tradition Elvin provided such that Tri-Net entirely misunderstood the purpose of the analysis.

The Nevada Supreme Court explained, "recent precedents have established that we consider first and foremost the original public understanding of constitutional provisions, not some abstract purpose underlying them." *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. 484, 490, 327 P.3d 518, 522 (2014). Thus, "[w]hen interpreting a constitutional provision, our ultimate goal is to determine the public understanding of a legal text leading up to and in the period after its enactment or ratification." *Legislature of State v. Settlemyer*, 137 Nev., Adv. Op. 21, 486 P.3d 1276, 1280 (2021) (cleaned up); *see also Pohlman v. State*, 128 Nev. 1, 9, 268 P.3d 1264, 1269 (2012). Therefore, as this Court evaluates Elvin's Motion with its constitutional interpretation lens, 19th Century precedent and law should be its starting point. *See Nev. Const. art. 1, § 8(1)*.

Tri-Net cannot – nor did it even try to – point to ***any legislative enactment*** in 1864 or in the following decade following the enactment of Art. 1, Section 8(1) in which the Legislature imposed a criminal sanction followed by a forfeiture of property in a separate proceeding. *Cf. Ursery*, 518 U.S. at 274-76 (recounting several federal laws that permitted both criminal sanctions

⁴ As explained above, the United States Supreme Court's decision in *United States v. Ursery*, 518 U.S. 267 (1997), is not fatal to Elvin's arguments because the United States Constitution sets the floor, not the ceiling for protection of individual liberty in Nevada. *See State v. Kincade*, 129 Nev. 953, 956, 317 P.3d 206, 208 (2013). Indeed, the Nevada Supreme Court provides greater protections to Nevadans' property rights in other areas of Nevada constitutional law. *See McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 659, 137 P.3d 1110, 1120 (2006).

1 and civil forfeitures of property); *see* Kevin Arlyck, *The Founders' Forfeiture*, 119 COLUM. L.
2 REV. 1449, 1466 (2019) (explaining that Congress enacted such civil forfeiture property laws
3 together with criminal penalties because these tariff and duty laws were the Nation's "lifeblood"
4 for revenue generation). This lack of legislative enactment is likely because, unlike the federal
5 government, Nevada relied on (and continues to rely on) mining taxes to generate significant
6 revenue streams such that the Legislature did not need to include such a harsh punishment –
7 forfeiture of property – in its criminal laws to ensure revenue generation. *See Dayton Gold &*
8 *Silver Mining Co. v. Seawell*, 11 Nev. 394, 410 (1876) ("The present prosperity of the State is
9 entirely due to the mining developments already made, and the entire people of the State are
10 directly interested in having the future developments unobstructed. . . .").

11 Within Nevada's pivotal legal field – mining law – grew the history and tradition that
12 disfavored forfeitures. *See One 1978 Chevrolet Van v. Churchill Cnty. ex rel. Banovich*, 97 Nev.
13 510, 512, 634 P.2d 1208, 1209 (1981) (citing to *Wilshire Ins. Co. v. State*, 94 Nev. 546, 550, 582
14 P.2d 372, 375 (1978); *Ind. Nev. v. Gold Hills*, 35 Nev. 158, 166, 126 P. 965, 967 (1912)).⁵ Thus,
15 the Nevada Supreme Court expressly adopted and shaped the common law for instrumentality
16 forfeitures under NRS 453.301 with an understanding and appreciation of Nevada's great history
17 and tradition of mining, which disfavored forfeitures. In 1987, the Legislature abrogated the
18 common law disfavoring forfeitures. *See* 1987 Nev. State., ch. 571, § 12 ¶ 4, at 1382. To be sure,
19 this abrogation does not change the original public meaning of punishment from 1864.

20 When the Legislature finally enacted the Uniform Controlled Substances Act 73 years
21 *after* the founding, this enactment of a legal fiction hardly assists this Court discover the original
22 public meaning of the word punishment in 1864. *See Sparks v. Nason*, 107 Nev. 202, 203-04,
23

24
25 ⁵ Tri-Net claims that none of the "old Nevada Supreme Court decisions" recounted by Elvin
26 involved instrumentality forfeitures like this one. (Pl.'s Opp'n, at 7:13-14.) Tri-Net should re-
27 read Elvin's Motion and shepardize its case law better. *One 1978 Chevrolet* involved an
28 instrumentality forfeiture based on the government's reliance of NRS 453.301 and that decision
cited to *Wilshire* and *Gold Hills*. 97 Nev. at 512, 634 P.2d at 1209. Indeed, the *Wilshire* and *Gold*
Hills decisions likewise cite back to and rely on these early mining cases. *See, e.g., Porter v.*
Tempa Min. & Mill. Co., 59 Nev. 332, 93 P.2d 741, 742 (1939); *Strattan v Raine*, 45 Nev. 10, 197
P. 694, 696 (1921); *Golden Fleece Co. v. Cable Con. Co.*, 12 Nev. 312, 326-27 (1877).

1 807 P.2d 1389, 1390 (1991) (“Since a forfeiture proceeding is *in rem*, it makes use of the legal
2 fiction that the [property] committed the crime.”); 1937 Nev. Stat., ch. 23, § 13, at 43. Indeed, in
3 short order, the Legislature recognized that forfeitures are punishment and included innocent
4 property owner protections. *See* 1959 Nev. Stat., ch. 425, § 4, at 695. But Nevada’s common
5 law required the same high burden of proof – reasonable doubt – for decades after the enactment
6 of NRS 453.301 because forfeitures are ***punishment***. *See A 1983 Volkswagen v. Cnty of Washoe*,
7 101 Nev. 222, 224, 699 P.2d 108, 109 (1985).

8 In sum, by evaluating over 100 years of precedent, history, and tradition, NRS 453.301 is
9 a second statute along with NRS 453.3385(3) that the State is seeking to impose another
10 punishment on Elvin for the exact same criminal conduct Elvin already pleaded guilty for and is
11 currently incarcerated for. Nevada’s constitution does not permit such an assault on Elvin’s
12 liberty and constitutional rights. Therefore, this Court should dismiss Tri-Net’s complaint with
13 prejudice.

14 **3. *Even if this Court applied the Ursery test, the result does not change –***
15 ***NRS 453.301 and NRS 179.1173 violates double jeopardy.***

16 Tri-Net contends that the proper analysis “for determining whether a civil forfeiture
17 constitutes punishment for double jeopardy purposes is the test outlined in” *Ursery* and applied
18 by the Nevada Supreme Court. (Pl.’s Opp’n. at 7:18-20 (emphasis omitted) (citing to *Levingston*
19 *II*, 114 Nev. at 309, 956 P.2d at 86).) Tri-Net misses the mark in its constitutional analysis of
20 *Ursery* and even if this Court applies *Ursery*, that test does not support Tri-Net’s position.

21 Tri-Net incorrectly claimed that “the Nevada Supreme Court ***adopted*** the *Ursery* analysis”
22 in *Levingston II*. (Pl.’s Opp’n. at 9:13-14.) “Consonant with the axiomatic principle that it is
23 emphatically the province and duty of the judicial department to say what the law is, Nevada
24 courts are the ‘ultimate interpreter’ of the Nevada Constitution.” *Settemeyer*, 486 P.3d at 1280
25 (cleaned up). In other words, the United States Supreme Court decides the interpretation of the
26 U.S. Constitution – and the Fifth Amendment – while the Nevada Supreme Court decides the
27 interpretation of the Nevada Constitution – and Article 1, Section 8(1). *See MDC Rests., LLC v.*
28 *Eighth Jud. Dist. Ct.*, 134 Nev. 315, 320-21, 419 P.3d 148, 152-53 (2018) (addressing Nevada

1 courts duty to resolve constitutional questions without deference to others). *Levingston II* only
2 dealt with questions under the Fifth Amendment – not Nevada’s constitution (which provides
3 greater protection of property rights) such that the Court in *Levingston II* merely **applied** the
4 *Ursery* precedent under our ordered scheme of federalism. Elvin’s double jeopardy question
5 under Nevada’s constitution is an issue of first impression and does not require blind application
6 of *Ursery* as Tri-Net requests.

7 But if this Court decides to apply *Ursery* and *Levingston II* to Nevada’s Constitution, that
8 test requires a two-step analysis. First, the *Ursery* test “requires an examination of legislative
9 intent to ascertain whether the forfeiture statutes were intended to be civil or criminal. If this
10 examination discloses a legislative intent to create civil *in rem* forfeiture proceedings, a
11 presumption is established that the forfeiture is not subject to double jeopardy.” *Levingston II*,
12 114 Nev. at 308, 956 P.2d at 86 (citing *Ursery*, 518 U.S. at 289 n.3). Second, the *Ursery* test
13 “requires an analysis of whether the proceedings are so punitive in fact as to demonstrate that the
14 forfeiture proceedings may not legitimately be viewed as civil in nature, despite legislative intent
15 to the contrary.” *Id.* at 308-09, 956 P.2d at 86 (cleaned up). “The ‘clearest proof’ is required to
16 establish that the forfeiture proceedings are so punitive in form and effect as to render them
17 criminal despite legislative intent to the contrary.” *Id.* In other words, rather than applying the
18 very simple, easy to understand *Blockburger* analysis to decide questions of multiple or double
19 punishments in successive proceedings, Tri-Net asks this Court to adopt a very complicated,
20 ambiguous, with a thumb on the scale test favoring the government (rather than favoring
21 Nevadans’ liberty and constitutional rights) to determine whether civil forfeitures are **punishment**
22 in violation of Nevada’s constitution. Again, this Court should decline Tri-Net’s invitation.

23 a. *Ursery’s* first prong is incorrect as a matter of statutory
24 interpretation.

25 In Nevada, “[w]hen interpreting a statutory provision, this court looks first to the plain
26 language of the statute.” *Clay v. Eighth Jud. Dist. Ct.*, 129 Nev. 445, 451, 305 P.3d 898, 902
27 (2013). If the statute is unambiguous, Nevada courts do not “look beyond the statute itself when
28 determining its meaning.” *Westpark Owners’ Ass’n v. Eighth Jud. Dist. Ct.*, 123 Nev. 349, 357,

1 167 P.3d 421, 427 (2007). In other words, Nevada courts do not consider the “intent” of the
2 Legislature unless a statute is ambiguous and there is a need to examine the legislative history.⁶
3 *Cf. Livingston II*, 114 Nev. at 308, 956 P.2d at 86. Tri-Net fails to explain or even apply the
4 *Ursery* text (other than providing a conclusory summary of *Livingston II*) to NRS 453.301, or
5 any other provision of Nevada’s civil forfeiture laws, particularly NRS 179.1173 to show that the
6 text of the law is ambiguous such that it requires an examination of the Legislative history. (*See*
7 *generally* Pl.’s Opp’n at 6-10.) NRS 179.1173 requires (1) a stay “while the criminal action[,]”
8 which is the basis” of the forfeiture is pending; (2) that if the defendant is acquitted in the criminal
9 proceeding, the forfeiture must likewise be dismissed, (3) the burden of proof is clear and
10 convincing – not a preponderance of the evidence, (4) the criminal conviction is “conclusive
11 evidence of all facts necessary to sustain the conviction”; and (5) that a forfeiture can occur either
12 in the criminal proceeding via a plea deal or in a separate civil forfeiture proceeding. NRS
13 179.1173(2)-(4), (6), (9)-(10). The plain language evokes more than sufficient support that the
14 Legislative intent is to create a ***criminal punishment*** without resorting to analyzing the legislative
15 history (in constitutional analysis no less).

16 But even if this Court disregards Nevada’s statutory interpretation precedent and
17 examines the legislative history, that examination further proves this a criminal statute. *See* 2015
18 Nev. Stat. Chapter 436, § 34.6, at 2502-03 (enacting changes to NRS 179.1173). For example,

19 Chair Brower: Is it your understanding that a key point of the bill with
20 respect to the second stage of forfeiture ***changes the law*** to allow for forfeiture
only upon a conviction?

21 Mr. McGrath: ***The key point of the bill*** is this requirement that you have a
22 ***conviction or plea agreement for forfeiture to take place.***

23 Hearing on S.B. 138 Before the Senate Judiciary Comm., 78th Leg. (Nev., Mar. 4, 2015)
24 (emphasis added). Accordingly, there can be no presumption that the Legislature intended to

25
26
27 ⁶ “The words of a governing text are of paramount concern, and what they convey in their
28 context, is what the text means. . . . [T]he purpose must be derived from the text, not from
extrinsic sources such as legislative history or an assumption about the legal drafter’s desires.”
Antonin Scalia & Bryan Gardner, *Reading Law: Interpretation of Legal Texts*, at 56 (2012).

1 create a civil proceeding despite being labeled a civil forfeiture. *See Jesseph v. Digital Ally, Inc.*,
2 136 Nev. 531, 533, 472 P.3d 674, 677 (2020) (“[T]his court has consistently analyzed a claim
3 according to its substance, rather than its label.” (cleaned up)). Indeed, the Legislature intended
4 to ***change Nevada’s forfeiture laws*** to make them a criminal punishment. Thus, *Ursery*’ first
5 prong is not met.

6 b. Nevada law fails *Ursery*’s second prong based on the
7 history and tradition of forfeitures in Nevada.

8 The second prong of *Ursery* requires an examination of the punitive nature of civil
9 forfeiture proceedings. It is under this prong that the *Ursery* Court examined the history and
10 tradition of Congressional enactments and its precedents. *See Ursery*, 518 U.S. at 274-76. In
11 *Levingston II*, the Nevada Supreme Court did not detail the original public meaning of
12 punishment in Nevada – instead it applied the Fifth Amendment history and precedent. 114 Nev.
13 at 308, 956 P.2d at 86. As explained above, forfeitures of property in Nevada are punishment
14 and disfavored since the founding in 1864.⁷ Elvin therefore incorporates all his originalism
15 arguments here to contend that in Nevada, under Article 1, Section 8(1), a criminal sanction
16 followed by a civil forfeiture of property that directly relies on the criminal sanction is
17 ***punishment***.⁸ Thus, NRS 453.301 and NRS 179.1173 fails prong two of *Ursery* because the

18
19 ⁷ Tri-Net claims that forfeitures “serve important nonpunitive goals of ensuring that
20 property is not used for illegal purposes” to include “preventing a building from being further used
21 to sell narcotics.” (Pl.’s Opp’n. at 8:24-25-9:1.) It is difficult to understand how that argument
22 applies here when Elvin is sentenced to a term of life in prison and only his children and family
23 members live in the Home. Furthermore, Tri-Net’s contention that *Levingston*’s facts are “nearly
indistinguishable” is incorrect. (*Id.* at 10:18.) *Levingston I* involved a “crack house” and a
contraband forfeiture. *Levingston I*, 112 Nev. at 481, 916 P.2d at 165. This is merely an
instrumentality forfeiture based on a legal fiction because Elvin trafficked contraband from the
Home.

24 ⁸ Tri-Net’s reliance on the Sixth Circuit decision and the Ninth Circuit decisions underlying
25 the *Ursery* matter likewise involved property being used to manufacture contraband. *See United*
26 *States v. Ursery*, 59 F.3d 568 (6th Cir. 1995); *United States v. \$405,089.23 U.S. Currency*, 33 F.3d
27 1210 (9th Cir. 1994). A drug den and property used to manufacture drugs falls into the category
28 of a contraband forfeiture. *See David Pimentel, Forfeiture Revisited: Bringing Principle to*
Practice in Federal Court, 13 Nev. L.J. 1, 34, 35 (2012) (“Of course, there is no ‘innocent-owner’
problem with contraband because it is illegal to possess the property in the first place.”). Here,
Elvin’s property is only subject to forfeiture because it is an instrumentality of crime. *See id.* at
41 (“The justification for this type of forfeiture is easily the weakest and certainly the most
problematic [because t]here is nothing inherently bad about the automobile (as there is in the case

“clearest proof” provided by Elvin on the history and tradition of Nevada law disfavoring forfeitures was neither rebutted nor discussed in Tri-Net’s opposition such that it waived this argument. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

In sum, regardless of the test this Court applies – *Blockburger* or *Ursery* – the result is the same. Tri-Net’s instrumentality forfeiture is an unconstitutional assault on Elvin’s double jeopardy rights and dismissal with prejudice is proper. *See Nev. Const. art. 1, § 8(1)*.

B. NRS 453.301 as Applied to Elvin Violates Nevada’s Inalienable Rights Clause.

The inalienable property rights clause is unique to Nevada and affords all Nevadans robust protections. Tri-Net asks this Court to expand the amorphous and boundless general police powers of the government to a point in which the Legislature may enact any legislation that dispossesses property owners of their property as long as the Legislature “claims” dispossession is for the public health and safety. To be sure, Tri-Net provided *zero limiting principles* for this supposed roving police power such that the Government is free to abuse Nevadans’ liberty and property rights. This Court should guard against such an aggregation of authority on such tenuous constitutional grounds.

Article 1, Section 1 provides Nevadans “certain inalienable rights among which are those of . . . *Acquiring, Possessing and Protecting Property*.” (Emphasis added). “There is no corollary provision” found in the United States Constitution such that Nevadans’ property rights are more robust than the rights provided in that charter. *Sisolak*, 122 Nev. at 669, 137 P.3d at 1127. Elvin grounds his challenge to instrumentality forfeitures in the plain language of Article 1, Section 1 along with the absence of another constitutional provision abrogating its protections and granting the Legislature authority to enact NRS 453.301. *See Nevadans for Nevada v. Beers*, 122 Nev. 930, 942, 142 P.3d 339, 347 (2006) (“Unless ambiguous, the language of a

of contraband), and there is nothing unseemly about how it was acquired (as there is in the case of proceeds). This is legitimate property acquired in a legitimate way. The forfeiture is allowed only because the property has been misused.”).

1 constitutional provision is applied in accordance with its plain meaning.”).⁹ Nevada law is clear
2 on the authority of the Legislature, “[i]n the absence of *a specific constitutional limitation to the*
3 *contrary*, the power to enact laws is vested in the Legislature.” *In re Sang Man Shin*, 125 Nev.
4 100, 102, 206 P.3d 91, 93 (2009) (emphasis added). In other words, under clearly established
5 limiting principles to the Legislature’s power, because of the Inalienable Rights Clause broad
6 protections of Nevadans’ property rights, for NRS 453.301 and NRS 179.1173 to be
7 constitutional, the Legislature must rely on an abrogation or delegation of authority within the
8 constitution. To be sure, there is no abrogation or delegation providing this authority.

9 Tri-Net claims that if this Court agreed with Elvin it “would require overturning all other
10 statutes that effect property unless there is a specific abrogation of the inalienable rights clause
11 or delegation of authority to the [L]egislature in the Nevada constitution. This would be an absurd
12 result.” (Pl.’s Opp’n, at 12:3-6.) Tri-Net fails to cogently explain how applying the plain
13 language of the Inalienable Rights Clause text meets the very high burden for absurdity. *See*
14 *Home Warranty v. Dep’t Business and Indus.*, 137 Nev. 43, 47, 481 P.3d. 1242, 1247 (2021) (“An
15 absurd result is one so gross as to shock the general moral or common sense.” (cleaned up));
16 *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n. 38 (2006)
17 (explaining that Nevada courts need not consider arguments that are not cogently argued or
18 supported by relevant authority). Recall, that Elvin raised an as applied challenge to
19 instrumentality forfeitures; Elvin does not challenge the use of NRS 453.301 to contraband or
20 proceeds forfeitures of properties – thus Tri-Net’s slippery slope argument is a red herring. *See*
21 *supra* n. 9; *see also Settlemeyer*, 486 P.3d at 1282 (“[I]t is the obligation of the judiciary to uphold
22

23 ⁹ Tri-Net does not contend – because it cannot – that Article 1, Section 1 is ambiguous. (*See*
24 *generally* Pl.’s Opp’n.) Indeed, *Black’s* defines “inalienable” based on its 17th Century definition
25 as “[n]ot transferable or assignable.” Inalienable, *Black’s Law Dictionary* (11th ed. 2019).
26 Contemporary dictionary definitions from 1864 provide even more support. *See* John Bouvier, *A*
27 *Law Dictionary Adapted to the Constitution and Laws of the United States of America and of the*
28 *Several States of the American Union*, 617 (11th ed. 1864) (explaining that the word
“Inalienable . . . is applied to those things, the property of which *cannot be lawfully transferred*
from one person to another.” (emphasis added)). Thus, Nevadans possess unfettered property
rights against government taking their property absent a constitutional abrogation or delegation of
authority.

1 the constitutionality of legislative enactments where it is possible to strike only unconstitutional
2 portions.” (cleaned up)). To be sure, Tri-Net failed to provide any specific abrogation or
3 delegation within Nevada’s constitution.¹⁰ (See Pl.’s Opp’n.)

4 Instead, Tri-Net’s singular attempt to locate actual authority for the Legislature’s power
5 to enact instrumentality forfeitures is grounded in the broad and “general police power” in which
6 the Legislature can enact laws protecting the public health, safety, morals, and general welfare.¹¹
7 (Pl.’s Opp’n. at 11:16-24 (relying on *Sustainable Growth Init. Comm. v. Jumpers, LLC*, 122 Nev.
8 53, 71-72, 128 P.3d 452, 463 (2006); *State v. Eighth Jud. Dist. Ct.*, 101 Nev. 658, 663, 708 P.2d
9 1022, 1025 (1985)). To understand the scope of the general police power *State* provides a helpful
10 explanation:

11 The authority to provide for health, safety and welfare of the citizen is inherent in
12 the police power of the State without any express statutory or constitutional
13 provision. Although the police power **cannot** justify the enactment of
14 unreasonable, unjust or oppressive laws, it may legitimately be exercised for the
15 purpose of preserving, conserving and improving public health, safety, morals and
16 general welfare. In exercising its police powers, the Legislature may, where public
17 interest demands, define and declare public offenses, although the effect is to
18 **restrict** or **regulate** the use and enjoyment of private property.

19 101 Nev. at 663, 708 P.2d at 1025 (cleaned up). *State* involved a challenge to Nevada’s
20 mandatory helmet laws for motorcycles. *Id.* The Nevada Supreme Court – unsurprisingly –

21 ¹⁰ Examples of a proper abrogation and delegations of authority include the Takings clause,
22 Article 1, Sections 8(6) and 22, and the Nevada Tax clause, Article 10, Section 1. In both clauses,
23 the **People** abrogated Article 1, Section 1 and delegated to the Legislature authority to enact
24 appropriate legislation to effect the Takings and Tax clause purposes.

25 ¹¹ Tri-Net did try to shift this Court’s focus to the Homestead protections found in Article 4,
26 Section 30, to claim that the inalienable rights clause “does not spell out such broad protections
27 of property” and had the founders intended for such broad protection “the framers could have
28 included broad language similar to the protections afforded to homestead property.” (Pl.’s Opp’n.
at 11:11-15.) Hardly. The Homestead protection provides more protections in addition to Article
1, Section 1 and guards against the government **and creditors** from taking a Home. See *First Nat.
Bank v. Meyers*, 40 Nev. 284, 161 P. 929, 930 (1916) (“It is fundamental that the aim of the law
in this respect is to give notice to those who would extend credit or who by any process would
become creditors, that the property described in the notice should not be looked to as security for
the declarant’s future indebtedness.”); Andrew Marsh, *Nevada Constitutional Debates and
Proceedings*, Official Reporter at 281-90 (1866) (detailing the same). Of course, the Founders
were careful to provide specific carve outs for different conditions in which a Homestead could
be disregarded including those found under Article 10, Section 1. See Nev. Const. art. 4, § 30
(“[B]ut no property shall be exempt from sales for taxes. . .”).

1 concluded that “[p]ublic highways are public property. There is no vested right in highways” and
2 thus the Legislature could **regulate** the use of helmets on the highways. *Id.* (emphasis added and
3 citations omitted). *State* relies on *Checker, Inc. v. Public Serv. Comm’n*, 84 Nev 623, 626-28,
4 446 P.2d 981, 983-85 (1968), in which the Court evaluated and confirmed the authority of a
5 government agency **regulating** the use of taxicabs in Nevada. Moreover, Tri-Net’s reliance on
6 *Sustainable Growth* does not provide it support because Elvin does not dispute the government
7 may **regulate** zoning private property. 122 Nev. at 71-72, 128 P.3d at 463. To be sure, the general
8 police powers provides for **regulation** but does not speak about **alienation** of property.

9 What is most troubling with Tri-Net’s argument is that when this Court takes the
10 Legislature’s general police power to its logical conclusion here, the Legislature’s authority to
11 alienate property based on a declaration of public offense is boundless.¹² The idea that the
12 Legislature can rely on power that **regulates** private property to then **alienate** private property in
13 violation of Article 1, Section 1 presents a cavalier attitude towards the text of Nevada’s
14 constitution and Elvin’s liberty interests. *See State v. Second Jud. Dist. Ct.*, 132 Nev. 352, 355,
15 373 P.3d 63, 65 (2016) (concluding that “State deprivation of individual liberty” is “important”
16 and “such a deprivation cannot be taken lightly”). While the “[t]he line of demarcation between
17 police power and constitutional guaranties is not always well defined,” Tri-Net’s arguments –
18 without any limiting principle to contain the police state Tri-Net proposes – would swallow whole
19 Nevada’s Takings law. *City of Reno v. Second Jud. Dist. Ct.*, 59 Nev. 416, 95 P.2d 994, 1003
20 (1939) (cleaned up)). For example, why would any government entity engage in eminent domain
21 if it merely needs to lobby the Legislature to rely on this broad and general police power to
22 **alienate** private property for a proclaimed “health and safety” rationale. This source of power
23 would truly lead to absurd results that “shocks common sense” and would violate founding-era
24 property principles and limits on Legislative power. *Home Warranty*, 137 Nev. at 47, 481 P.3d.

25
26 ¹² It should carry particular weight that the Nevada Attorney General disagreed with Tr-Net’s
27 contention and concluded that under Article 1, Section that “every citizen” possesses “the
28 inalienable right to protect his or her life, property and interest” and “[i]t is a right not a privilege,
to which all citizens are entitled” to be guarded from arbitrary encroachments by the government.
Nevada AG Opinion No. 47-425, Constitutional Law (1947).

1 at 1247; *see also Calder v. Bull*, 3 U.S. 386, 388 (1798) (“An ACT of Legislature (for I cannot
2 call it a law) contrary to the great first principles of the social compact cannot be considered a
3 rightful exercise of legislative authority . . . A few instances will suffice to explain what I
4 mean. . . . [A] law that takes property from A. and gives it to B: It is against all reason and justice,
5 for a people to entrust a Legislature with SUCH powers; and therefore, it cannot be presumed that
6 they have done it.”). This Court should not agree to such an accumulation of power for the
7 government under Tri-Net’s theory.¹³

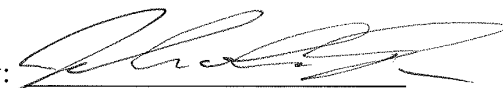
8 In sum, there is no direct abrogation of Article 1, Section 1, and the general police powers
9 permitting *regulations* of liberty and property rights cannot be extended to *alienate* property.
10 NRS 453.301 and NRS 179.1173 violate Nevada’s constitution. Elvin therefore asks this Court
11 to dismiss Tri-Net’s complaint with prejudice.

12 **V. CONCLUSION**

13 Based on the arguments enunciated above under the double jeopardy clause and the
14 inalienable rights clause, Elvin asks this Court to dismiss Tri-Net’s Complaint with prejudice.

15 DATED this 1st day of September 2022.

16 MCDONALD CARANO LLP

17 By: 
18 John A. Fortin, Esq., #15221
2300 W. Sahara Ave., Suite 1200
19 Las Vegas, Nevada 89102

20 *Pro Bono Counsel for*
21 *Elvin Fred*

22
23
24
25
26 ¹³ Indeed, even the United States Supreme Court recently opined under the Takings power
27 that “people still do not expect their property, real or personal to be actually occupied or taken
28 away.” *Horne v. Dep’t of Agriculture*, 576 U.S. 350, 361 (2015). Where there is not even just
compensation provided, the People’s expectations are no different regarding the government’s
power in civil forfeitures of property – especially instrumentality forfeitures.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of MCDONALD CARANO LLP and that, on or before the 1st day of September 2022, I caused to be delivered via email true and correct copies of the above **CLAIMANT ELVIN FRED'S REPLY IN SUPPORT OF HIS MOTION TO DISMISS** to the following:

Investigation Division of the Department of Public Safety
State of Nevada
(Tri-Net Narcotics Task Force)
555 Wright Way
Carson City, Nevada 89711
jwoodbury@carson.org
bjohnson@carson.org

Attorneys for Plaintiffs


An employee of MCDONALD CARANO LLP

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14 bjohnson@carson.org

15 Representing Plaintiff

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

18 In re:

19 3587 Desatoya Drive, Carson City, Nevada
20 89701, more particularly described as all
21 that certain parcel of land situate in the City
22 of Carson City, County of Carson City and
23 State of Nevada, being known and
24 designated as follows: Parcel N-33 as
25 shown on Parcel Map No. 1704 for Stanton
26 Park Development, Inc., filed in the office of
27 the Recorder of Carson City, Nevada on
28 August 11, 1989 as File No. 89253, Carson
City Assessor's Parcel Number: 010-443-11.

Case No. 15 OC 00074 1B

Dept. No. 2

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that on September 20, 2022, the above-captioned Court entered an Order Denying Claimant Elvin Fred's Motion to Dismiss Tri'Net's Civil Forfeiture Complaint. A copy of said Order is attached hereto.

DATED this 21st day of September, 2022.

JASON D. WOODBURY
District Attorney

By:

Benjamin R. Johnson
BENJAMIN R. JOHNSON, #10632
Senior Deputy District Attorney

RECORDED & FILED

2022 SEP 21 PM 2:54

AUDREY ROWLATT
CLERK

B. PETERSON

DEPUTY

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 21st day of September, 2022, I served a true and correct copy of the foregoing

NOTICE OF ENTRY OF ORDER via electronic mail to the following:

John A. Fortin, Esq.
McDonald Carano, LLP
E-MAIL: jfortin@mcdonaldcarano.com

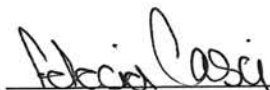
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EXHIBIT 1

EXHIBIT 1

2022 SEP 20 PM 3:39
AUGUST 20 2022
BY **D. SHADRON**
CLERK

FIRST JUDICIAL DISTRICT COURT OF NEVADA
CARSON CITY

In re:

Case No.: 15 OC 00074 1B

Dept. No.: 2

3587 Desatoya Drive, Carson City,
Nevada 89701, more particularly
described as all that certain parcel of land
situate in the City of Carson City, County
of Carson City and State of Nevada,
being known and designated as follows:
Parcel N-33 as shown on Parcel Map No.
1704 for Stanton Park Development, Inc.,
filed in the office of the Recorder of
Carson City, Nevada on August 11, 1989
as File No. 89253, Carson City
Assessor's Parcel Number: 010-443-11

**ORDER DENYING CLAIMANT ELVIN FRED'S MOTION TO DISMISS TRI-NET'S
CIVIL FORFEITURE COMPLAINT**

This matter comes before the Court on *Claimant Elvin Fred's Motion to Dismiss
Tri-Net's Civil Forfeiture Complaint ("Motion")* filed on July 15, 2022. The Plaintiff filed
its *Plaintiff's Opposition to Claimant Elvin Fred's Motion to Dismiss Tri-Net's Civil
Forfeiture Complaint* on August 26, 2022. This Court, having reviewed pleadings the
issues presented and being fully advised on the premises, **HEREBY DENIES** the
Motion.

///

///

1
2
3 I. Factual and Procedural Background

4 A. Underlying Facts

5 Accepting all Plaintiff's allegations and inferences as true, the Court accepts the
6 following factual background in reviewing the *Motion*.

7 The subject property in this matter is a residence located at 3587 Desatoya
8 Drive in Carson City ("Desatoya residence"). *First Am. Compl. for Forfeiture* at ¶2 (Mar.
9 22, 2022). Between February 13 and March 19, 2015, ELVIN FRED owned and
10 occupied the Desatoya residence. *Id.* at ¶9. During that time, an individual named
11 James Tito was a drug seller in Carson City. *Id.* at ¶¶9-21. ELVIN FRED was Mr.
12 Tito's supplier, using the Desatoya residence to store, conceal, and protect the drugs
13 that Mr. Tito sold and to collect a cut of the proceeds resulting from Mr. Tito's sales.
14 *Id.*

15 On February 13, 2015, Mr. Tito agreed to sell nearly an ounce of
16 methamphetamine to a TRI NET confidential source for \$700. *Id.* at ¶10. The source
17 met with Mr. Tito and gave him \$700. *Id.* Mr. Tito then went to the Desatoya residence
18 and went inside for a brief period. *Id.* He then met again with the source and provided
19 him with 27 grams of methamphetamine. *Id.* These circumstances strongly support
20 the reasonable inference that Mr. Tito acquired the methamphetamine from ELVIN
21 FRED inside the Desatoya residence. *Id.* at ¶11.

22 On February 19, 2015, Mr. Tito agreed to sell the source nearly an ounce and
23 a half of methamphetamine from ELVIN FRED for \$1,000. *Id.* at ¶12. After agreeing
24 to the transaction, Mr. Tito contacted ELVIN FRED and then went to the Desatoya
25 residence and again went inside for a brief period. *Id.* He and ELVIN FRED emerged
from the Desatoya Residence, and Mr. Tito left to meet with the source. *Id.* During

1 that meeting Mr. Tito provided the source with approximately 41.2 grams of
2 methamphetamine. *Id.* These circumstances strongly support the reasonable
3 inference that Mr. Tito acquired the methamphetamine for the February 19 transaction
4 from ELVIN FRED inside the Desatoya residence. *Id.* at ¶13.

5 On March 12, 2015, the source made arrangements with Mr. Tito for a third
6 transaction, this time for the sale of nearly an ounce of methamphetamine for \$900.
7 *Id.* at ¶14. In preparation for the transaction, Mr. Tito again contacted ELVIN FRED
8 and met with him inside the Desatoya Residence. *Id.* Thereafter, Mr. Tito met with the
9 source and provided the source with 27.5 grams of methamphetamine. *Id.* These
10 circumstances strongly support the reasonable inference that Mr. Tito acquired the
11 27.5 grams of methamphetamine from ELVIN FRED inside the Desatoya residence.
12 *Id.* at ¶15. Additionally, a week later, \$300 of the \$900 utilized to purchase the
13 methamphetamine was discovered at the Desatoya residence. *Id.* at ¶¶16, 18.

14 On March 19, 2015, well over a quarter pound of methamphetamine, 150.7
15 grams, was located inside the Desatoya residence. *Id.* at ¶17. \$5,090 in currency was
16 found in the residence as well. *Id.* at ¶18. Also in the residence were numerous items
17 associated with drug activity, including marijuana, digital scales, packaging material,
18 firearms, and documents reflecting payments and amounts owed for drug transactions.
19 *Id.* at ¶19. All the items discovered, together with the circumstances of the three
20 transactions discussed above, strongly support the reasonable inference that ELVIN
21 FRED was substantially and directly involved in significant drug activities in Carson
22 City, using the Desatoya residence as an essential instrumentality in those activities.

23 **B. Associated Criminal Proceedings Against ELVIN FRED**

24 As a result of his conduct, ELVIN FRED was charged with Trafficking in a
25 Schedule I Controlled Substance Weighing 28 Grams or More, a Category A felony

1 under NRS 453.3385(3) at the time. *Id.* at ¶20. He admitted that he was guilty of the
2 charge, and he was later sentenced. *Id.* at ¶¶20-23.

3 **C. Forfeiture Proceedings Against Desatoya Residence**

4 The pending forfeiture proceedings were initiated on April 1, 2015, with the filing
5 of a *Complaint for Forfeiture* and recording of a *Notice of Lis Pendens* on the Desatoya
6 residence. *Complaint for Forfeiture* (Apr. 1, 2015); *Notice of Lis Pendens* (Apr. 1,
7 2015). The *Complaint* alleged, "ELVIN FRED is the owner of the [Desatoya Residence]
8 and the Claimant in this action as defined by NRS 179.1158." *Complaint for Forfeiture*
9 at ¶4. The *Complaint* further alleged, "Upon information and belief, Plaintiff has no
10 knowledge and no reason to believe that any person or entity other than ELVIN FRED
11 has any ownership interest in the Property." *Id.* at ¶5.

12 As indicated in the *Motion*, ELVIN FRED was served with the *Complaint* and a
13 summons on April 3. *Summons* (Apr. 3, 2015). No answer or response to the
14 *Complaint* was filed by ELVIN FRED or anyone else purporting to be a claimant to the
15 Desatoya residence. As a result, a default judgment was entered. *Default J.* (Jan. 4,
16 2019); *Amended Default J.* (May 8, 2019). That default judgment was subsequently
17 set aside. *Order Setting Aside Default J.* (Mar. 9, 2022). On March 22, 2022, the *First*
18 *Amended Complaint* for Forfeiture was filed. *First Am. Compl. for Forfeiture*.

19 **II. Discussion**

20 **A. Standard of Review**

21 A motion to dismiss under NRCP 12(b)(5) "is subject to a rigorous standard of
22 review..." *Buzz Stew, LLC, City of N. Las Vegas*, 124 Nev. 224, 227, 181 P.3d 670,
23 672 (Nev. 2008) (quoting *Seput v. Lacayo*, 122 Nev. 499, 501, 122 Nev. 499, 134 P.3d
24 733, 734 (Nev. 2006)). A reviewing court is required to accept all the plaintiff's factual
25 allegations as true and draw all inferences in favor of the plaintiff's position. *Buzz Stew*,

1 124 Nev. at 228, 181 P.3d at 672 (citing *Blackjack Bonding v. Las Vegas Mun. Ct.*, 116
2 Nev. 1213, 1217, 14 P.3d 1275, 1278 (Nev. 2000)). Dismissal of a complaint is
3 appropriate *only* if the court is satisfied "beyond a doubt" that the plaintiff "could prove
4 no set of facts" which would entitle plaintiff to relief. *Buzz Stew*, 124 Nev. at 228 n.6,
5 181 P.3d at 672 n.6 ("Our prior cases have not been completely consistent in applying
6 the standard of review for failure to state a claim upon which relief can be granted. The
7 appropriate standard requires a showing beyond a doubt. To the extent these cases
8 required a showing of proof beyond a reasonable doubt, they are disavowed." (citations
9 to disavowed cases omitted)).

10 **B. Civil Forfeiture of the 3587 Desatoya Residence Does Not Violate**
11 **Nevada's Double Jeopardy Clause**

12 The *Motion* argues that this Court should dismiss the First Amended Complaint
13 because it constitutes an additional penalty against ELVIN FRED in violation of
14 Nevada's double jeopardy clause. *Motion* at §IV.A. But the *Motion* overlooks Nevada
15 Supreme Court precedent that is directly contrary to the arguments presented.

16 "The Double Jeopardy Clause of the Fifth Amendment to the United States
17 Constitution provides that no person shall 'be subject for the same offence to be twice
18 put in jeopardy of life or limb.'" *Jackson v. State*, 128 Nev. 598, 604, 291 P.3d 1274,
19 1277-78 (2012). The protection applies to the states through the Fourteenth
20 Amendment to the U.S. Constitution and is additionally guaranteed by article 1, § 8 of
21 the Nevada Constitution. *Id.* Nevada's double jeopardy clause states: "No person shall
22 be subject to be twice put in jeopardy for the same offense." NEV. CONST. art. 1, § 8.
23 Because a single act can violate more than one criminal statute, double jeopardy
24 analysis determines whether a defendant can be prosecuted and punished
25 cumulatively when elements of two criminal statutes are met. *Jackson*, 128 Nev. at

1 601, 291 P.3d at 1276.

2 ELVIN FRED asks this Court to apply a test announced in *Blockburger v. United*
3 *States*, 284 U.S. 299 (1932) and find that NRS 453.301 as applied constitutes double
4 jeopardy. *Motion* at 3. The *Motion's* reliance on *Blockburger* and review of the
5 historical understanding of "forfeiture" in Nevada is not applicable in this case because
6 the *Blockburger* test is used to determine whether two criminal statutes penalize the
7 same offense and constitute double jeopardy. *Jackson*, 128 Nev. at 604, 291 P.3d at
8 1278.¹

9 The *Motion* concludes that the first two prongs of *Blockburger* are met because
10 the civil forfeiture of the Desatoya property was a separate "proceeding" based on the
11 same underlying criminal offense and therefore the only real issue is whether forfeiture
12 constitutes a "punishment". *Motion* at 4. To reach this conclusion, the *Motion* reviews
13 old Nevada Supreme Court decisions regarding mining contracts to demonstrate that
14 forfeitures were historically disfavored. *Motion* at 6. But the forfeitures at issue in those
15 cases were contractual and did not involve civil forfeiture of property used to facilitate
16 a crime, as occurred in this case.

17 Furthermore, the Nevada Supreme Court has clarified that the proper analysis
18 for determining whether a civil forfeiture constitutes *punishment* for double jeopardy
19 purposes is the test outlined in *United States v. Ursery*, 518 U.S. 267 (1996). See
20 *Levingston v. Washoe County*, 114 Nev. 306, 956 P.2d 84 (1998) (applying *Ursery*
21 analysis to civil forfeiture cases). In *Ursery*, the U.S. Supreme Court reversed two
22 separate cases from the Sixth Circuit and Ninth Circuit Court of Appeals that held

23 ¹ *Ball v. United States*, 470 U.S. 856, 861 (1985) ("This Court has consistently relied on the test of
24 statutory construction stated in *Blockburger* [] to determine whether Congress intended the same
25 conduct to be punishable under two criminal provisions."); *Estes v. State*, 122 Nev. 1123, 1143, 146
P.3d 1114, 1127 (2006) ("Nevada utilizes the *Blockburger* test to determine whether separate offenses
exist for double jeopardy purposes.")).

1 double jeopardy prohibits the government from prosecuting a defendant for a criminal
2 offense and also forfeiting their property in a separate civil proceeding. *Ursery*, 518 at
3 271. The U.S. Supreme Court held that those specific civil forfeitures and civil
4 forfeitures generally "do not constitute 'punishment' for the purposes of the Double
5 Jeopardy Clause." *Id.*

6 The *Ursery* Court implemented a two-step test for analyzing civil *in rem*
7 forfeitures. First, there must be an examination of legislative intent to ascertain whether
8 the statute was intended to be civil or criminal. *Id.* at 277. "If this examination discloses
9 a legislative intent to create civil *in rem* forfeiture proceedings, a presumption is
10 established that the forfeiture is not subject to double jeopardy." *Levingston v. Washoe*
11 *Cty.*, 114 Nev. 306, 308, 956 P.2d 84, 86 (1998) (citing *Ursery*, 518 U.S. at 289 n.3).
12 The second part of the test analyzes whether the proceedings are "so punitive in fact
13 as to [demonstrate] that the forfeiture proceeding[s] may not legitimately be viewed as
14 civil in nature, despite legislative intent to the contrary." *Levingston*, 114 Nev. at 308-
15 09, 956 P.2d at 86 (citation and internal quotation marks omitted).

16 The *Ursery* Court observed that *in rem* civil forfeiture is a remedial civil action
17 that is distinct from potentially punitive *in personam* penalties such as administrative
18 fines and therefore do not constitute a punishment under double jeopardy. *Ursery*, 518
19 at 278. In one of the cases reviewed by *Ursery*, a civil forfeiture proceeding was
20 brought against a house that had been used for several years to facilitate the
21 processing and distribution of a controlled substance. *Id.* at 271. In upholding the
22 forfeiture, the Supreme Court found that it was clear that Congress intended forfeitures
23 to be civil proceedings. *Id.* at 289.

24 Under the second prong, the Court acknowledged that although certain aspects
25 of a forfeiture may appear punitive, they serve important nonpunitive goals of ensuring

1 that property is not used for illegal purposes. *Id.* at 290. This includes preventing a
2 building from being further used to sell narcotics. *Id.* In *Levingston*, a civil forfeiture was
3 filed on a house that had been used to effectuate the sale of drugs. *Levingston v.*
4 *Washoe Cty. by & Through the Sheriff of Washoe Cty.*, 112 Nev. 479, 481, 916 P.2d
5 163, 165 (1996). The house was seized pursuant to NRS 453.301(8) which makes real
6 property subject to forfeiture if an owner or tenant uses the property to facilitate a crime
7 relating to the possession, sale, and trafficking in controlled substances. *Id.* at 483, 916
8 P.2d at 166.

9 The Nevada Supreme Court initially held that the forfeiture was punitive. *Id.* at
10 488, 916 P.2d at 169. After *Ursery* was decided the Nevada Supreme Court reversed
11 its previous decision and held that Nevada's forfeiture statutes are not criminal in
12 nature and that there is no clear proof that the statutory scheme is so punitive in form
13 as to render it invalid. *Levingston v. Washoe Cty.*, 114 Nev. 306, 310-11, 956 P.2d 84,
14 87 (1998) ("*Levingston II*"). In *Levingston II*, the Nevada Supreme Court adopted the
15 *Ursery* analysis and upheld the forfeiture of a house against a double jeopardy claim.
16 *Id.* The Court acknowledged that Chapter 179 applies the rules of civil procedure to
17 forfeiture actions, identifies the parties as plaintiff and claimant, provides that the
18 proceeding is *in rem* and establishes the burden of proof as preponderance of the
19 evidence, not beyond a reasonable doubt. *Id.* at 310, 956 P.2d at 87. It is clear the
20 legislature intended Nevada's forfeiture statutes to be civil, not criminal, *in rem*
21 proceedings. *Id.*

22 Under the second prong, the *Levingston II* Court found no proof that Nevada's
23 statutory forfeiture proceedings are so punitive as to render them criminal in nature.
24 "[F]orfeiture encourages property owners to responsibly manage their property and
25 ensures that owners will not permit illegal activities on or in that property." *Id.* at 311,

1 956 P.2d at 87 ("The forfeiture served non-punitive goals. It prevented the further illicit
2 use of the house, thereby ensuring that the house would not be used again for illegal
3 purposes and that [the defendants] particularly would not profit from illegal conduct.").
4 The Court also pointed out that proceeds from civil forfeiture actions go toward crime
5 prevention and help defray the cost of court proceedings and law enforcement. *Id.*

6 The *Motion* argues that NRS 453.301, as applied to ELVIN FRED, violates
7 Nevada's Double Jeopardy Clause. In doing so, ELVIN FRED attempts to distinguish
8 Nevada's double jeopardy clause found in art. 1, § 8 of the Nevada Constitution from
9 the double jeopardy clause found in the Fifth Amendment to the U.S. Constitution.
10 *Motion* at 3. But the language in both double jeopardy clauses is nearly identical and
11 ELVIN FRED fails to establish how the outcome of the case would be different under
12 art. 1, § 8 of Nevada's constitution.

13 NRS 453.301 authorizes forfeiture of instrumentalities used to commit crimes,
14 but the process utilized is the one outlined in NRS Chapter 179. Claimant ELVIN FRED
15 has failed to demonstrate that *Levingston II* does not apply to NRS 453.301. Therefore,
16 the forfeiture of the Desatoya residence pursuant to NRS 453.301 is not criminal in
17 nature. There is no logical reason to believe that the *Levingston* analysis would change
18 under the Nevada constitution rather than the Fifth Amendment. The facts in this case
19 are nearly indistinguishable from *Levingston* and *Levingston II* in which the Nevada
20 Supreme Court upheld a forfeiture pursuant to NRS 453.301 and concluded there was
21 no double jeopardy. Therefore, the *Motion* must be denied.

22 **C. Nevada's Inalienable Rights Clause Does Not Shield the Property from**
23 **Foreclosure**

24 ELVIN FRED next argues that NRS 453.301 and forfeiture of the Desatoya
25 residence violates the inalienable rights clause of the Nevada Constitution and requires

1 dismissal of the First Amended Complaint. *Motion* at 8-10. The *Motion* argues that
2 there is no carve out for in the Nevada Constitution for forfeitures and therefore the
3 inalienable rights clause prohibits the Legislature for enacting any statutes contrary to
4 that right. *Motion* at 9. The argument cites other articles in the Nevada constitution
5 which authorize eminent domain and taxation and the absence of any provision
6 abrogating or delegating the right to forfeitures in NRS 453.301.

7 ELVIN FRED relies in part on a recent decision by the Nevada Supreme Court
8 that to create a public policy exception to allow civil forfeitures of properties protected
9 under a homestead declaration. *Aguirre v. Elko Cnty. Sheriff's Office*, 508 P.3d 886
10 (Nev. 2022). But the homestead exemption clause in Nevada's constitution expressly
11 defines the scope of its protections, stating "a homestead . . . shall be exempt from
12 forced sale under *any* process of law." NEV. CONST. art. 4, § 30. The inalienable rights
13 language in article 1 on the other hand does not spell out such broad protections for
14 property. It does not expressly protect property from all infringement or exempt it from
15 forfeiture. Had that been the intent, the framers could have included broad language
16 similar to the protections afforded to homestead property.

17 Indeed, there are other ways that the legislature has imposed limits on property
18 rights without a specific carve out in the Nevada constitution. For example, Nevada's
19 constitution does not have a specific delegation of authority regarding zoning laws, but
20 the Nevada Supreme Court has repeatedly upheld zoning provisions and restrictions
21 on property use. See *Sustainable Growth Initiative Comm. v. Jumpers, Ltd. Liab. Co.*,
22 122 Nev. 53, 71-72, 128 P.3d 452, 465 (2006). The Court has also recognized that the
23 legislature has inherent police power that may be exercised for the preservation and
24 improvement of public health, safety, morals and general welfare. *State v. Eighth*
25 *Judicial Dist. Court*, 101 Nev. 658, 663, 708 P.2d 1022, 1025 (1985). "In exercising its


1 police powers, the legislature may, where public interest demands, define and declare
2 public offenses, although the effect is to restrict or regulate the use and enjoyment of
3 private property." *Id.*

4 Adopting ELVIN FRED's rationale would require overturning all other statutes
5 that effect property unless there is a specific abrogation of the inalienable rights clause
6 or delegation of authority to the legislature in the Nevada constitution. This would be
7 an absurd result. The inalienable rights language cannot reasonably be interpreted as
8 an unfettered right to property without interference by the government. This is
9 especially true because the Nevada Supreme Court has upheld the constitutionality of
10 Nevada's forfeiture statutes. The *Motion* fails to demonstrate that this Court should
11 ignore settled precedent and impose such a broad application of the inalienable rights
12 clause.

13 III. Conclusion

14 For all these reasons, IT IS HEREBY ORDERED that the *Motion* is DENIED.
15 ELVIN FRED is ordered to answer or otherwise respond to the *First Amended*
16 *Complaint for Forfeiture* within 20 days of the date of this order.

17 *September 20, 2022*

18 
19 JAMES E. WILSON
20 District Judge

21 Submitted August 26, 2022 by:

22 
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