

Case No.

In the Supreme Court of Nevada

Electronically Filed
Mar 28 2023 11:35 AM
Elizabeth A. Brown
Clerk of Supreme Court

In re 3587 Desatoya Drive Carson City, Case No. 150C00741B

SYLVIA FRED & ELVIN FRED,

Petitioners,

v.

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

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 – VOLUME 1 OF 8

RORY T. KAY (NSBN 12416)
JANE SUSSKIND (NSBN 15099)
JOHN A. FORTIN (NSBN 15221)
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Pro Bono Counsel for Petitioner

Chronological Index to Appendix

Date	Document Description	Volume	Labeled
03-09-2015	Criminal Complaint	1	PA000001- PA000004
04-01-2015	Complaint for Forfeiture	1	PA000005- PA000010
04-01-2015	Notice of Lis Pendens	1	PA000011- PA000013
04-03-2015	Summons – Elvin Fred	1	PA000014- PA000016
04-28-2015	Notice of Entry of Order to Stay Forfeiture Proceeding	1	PA000017- PA000023
06-15-2015	Criminal Information	1	PA000024- PA000026
06-29-2015	Arraignment	1	PA000027- PA000038
06-29-2015	Memorandum of Plea Negotiation	1	PA000039- PA000043
08-21-2015	Sentencing Memorandum	1	PA000045- PA000063
08-24-2015	Transcript of Sentencing Hearing	1	PA000064- PA000078
05-04-2018	Motion to Lift Stay in Forfeiture Proceeding	1	PA000079- PA000081
06-01-2018	Request to Submit	1	PA000082- PA000083
06-05-2018	Order Lifting Stay	1	PA000084- PA000085
07-26-2018	Notice of Intent to Take Default	1	PA000086- PA000087

Date	Document Description	Volume	Labeled
12-21-2018	Application for Clerk's Entry of Default	1	PA000088-PA000091
01-04-2019	Default Judgment	1	PA000092
05-07-2019	Motion to Amend Default Judgment	1	PA000093-PA000095
05-07-2019	Request for Submission of Motion to Amend Default Judgment	1	PA000096-PA000097
05-09-2019	Notice of Entry of Amended Default Judgment	1	PA000098-PA000100
09-30-2019	Order to Proceed in Forma Pauperis	1	PA000101-PA000102
10-04-2019	Motion to Vacate the Default Judgment	1	PA000103-PA000107
10-18-2019	Motion to Strike	1	PA000110-PA000113
10-23-2019	Response to Motion to Strike	1	PA000114-PA000146
11-01-2019	Motion for Enlargement of Time to File Opposition to Motion to Vacate Default Judgment	1	PA000147-PA000150
11-01-2019	Notice of Withdrawal of Motion to Strike	1	PA000151-PA000152
11-09-2019	Order Denying Motion to Vacate Default Judgment	1	PA000153-PA000154
08-31-2021	Complaint	1	PA000155-PA000188

Date	Document Description	Volume	Labeled
10-14-2021	Nevada Highway Patrol Defendants' Motion to Stay Proceedings Pending the Nevada Supreme Court's Answers to Accepted Certified Questions from the USDC	1	PA000189-PA000205
10-27-2019	Plaintiff's Response to Nevada Highway Patrol Defendants' Motion to Stay Proceedings Pending the Nevada Supreme Court's Answers to Accepted Certified Questions from the USDC	2	PA000206-PA000212
11-04-2021	Reply in Support of Motion to Stay Proceedings	2	PA000213-PA000221
11-15-2021	Order for Joint Statement Re Proceedings	2	PA000222-PA000223
12-09-2021	Joint Status Report Dated December 10, 2021	2	PA000224-PA000227
12-10-2021	Notice of Appearance	2	PA000228-PA000229
12-10-2021	Notice of Appearance	2	PA000230-PA000231
12-10-2021	Notice of Change of Firm Affiliation	2	PA000232-PA000234
12-10-2021	Statement of Legal Aid Representation	2	PA000235-PA000236
12-15-2021	Stipulation and Order Regarding Acceptance of Service Via Email	2	PA000237-PA000238
01-08-2022	Order Granting Nevada Highway Patrol Defendants' Motion to Stay Proceeding Pending the Nevada Supreme Court's Answer to Accepted Certified Questions From the USDC	2	PA000239-PA000243
02-01-2022	First Amended Complaint	2	PA000244-PA000280

Date	Document Description	Volume	Labeled
02-01-2022	Plaintiff's Motion to Lift Stay	2	PA000281-PA000332
02-15-2022	Defendants' Opposition to Plaintiff's Motion to Lift Stay	2	PA000333-PA000340
02-22-2022	Reply in Support of Plaintiff's Motion to Lift Stay	2	PA000341-PA000349
03-14-2022	Notice of Entry of Order Setting Aside Default Judgment	2	PA000350-PA000356
03-14-2022	Recorded Notice of Entry of Order Setting Aside Default Judgment	2	PA000357-PA000364
03-22-2022	Amended Summons – Sylvia Fred	2	PA000365-PA000366
03-22-2022	First Amended Complaint For Forfeiture	2	PA000367-PA000373
04-14-2022	Order Denying Plaintiff's Motion to Lift Stay	2	PA000347-PA000380
05-03-2022	Claimant Sylvia Fred's Motion to Dismiss Under NRCP 12(B)(5) Pursuant to NRS 179.1171(2) and NRS 179.1164(2) and Motion For Good Remedy	3	PA000381-PA000421
05-05-2022	Affidavit of Service	3	PA000422
05-20-2022	Plaintiff's Motion For Leave to Exceed Page Limit in Its Opposition to Motion to Dismiss Under NRCP 12(B)(5) Pursuant to NRS 179.1171(2) and NRS 179.1164(2) and Motion For Good Remedy	3	PA000423-PA000490

Date	Document Description	Volume	Labeled
05-20-2022	Plaintiff's Opposition to Motion to Dismiss Under NRCP 12(B)(5) Pursuant to NRS 179.1171(2) and NRS 179.1164(2) and Motion For Good Remedy	3	PA000491-PA000507
06-01-2022	Claimant Sylvia Fred's Reply to Tri-Net's Opposition to Claimant's Motion to Dismiss Under NRCP 12(B)(5) Pursuant to NRS 179.1171(2) and NRS 179.1164(2) and Motion For Good Remedy	3	PA000508-PA000516
06-09-2022	Order Denying Motion to Dismiss Under NRCP 12(B)(5) Pursuant to NRS 179.1171(2) and NRS 179.1164(2) and Motion For Good Remedy	3	PA000517-PA000532
06-27-2022	Statement of Legal Representation	3	PA000533-PA000534
06-27-2022	Substitution of Counsel	3	PA000536-PA000537
06-28-2022	Sylvia Fred Verified Answer and Counterclaims	3	PA000538-PA000560
06-28-2022	Summons to the Nevada General in Accordance with NRS 30.130	3	PA000561-PA000563
06-28-2022	Sylvia Verification	3	PA000564
06-30-2022	Amended Summons – Elvin Fred	3	PA000565-PA000566
07-15-2022	Claimant Elvin Fred's Motion to Dismiss Tri-Net's Civil Forfeiture Complaint	3	PA000567-PA000578
07-21-2022	Notice of Withdrawal of Pisanelli Bice PLLC Attorneys	3	PA000579-PA000580
07-22-2022	Affidavit of Service	3	PA000581-PA000582

Date	Document Description	Volume	Labeled
08-10-2022	Notice of Entry of Order Regarding Deadline for Responding to Elvin Fred's Motion to Dismiss	4	PA000583-PA000588
08-16-2022	Stipulation and Order Regarding Deadline for Responding to Elvin Fred's Motion to Dismiss and Reply in Support of Motion	4	PA000589-PA000591
08-26-2022	Plaintiff's Opposition to Claimant Elvin Fred's Motion to Dismiss Tri-Net's Civil Forfeiture Complaint	4	PA000592-PA000604
09-02-2022	Claimant Elvin Fred's Reply in Support of His Motion to Dismiss Tri-Net's Civil Forfeiture Complaint	4	PA000605-PA000620
09-16-2022	Plaintiff's Answer to Sylvia Fred's Counterclaim	4	PA000621-PA000632
09-21-2022	Notice of Entry of Order Denying Claimant Elvin Fred's Motion to Dismiss Tri-Net's Civil Forfeiture Complaint	4	PA000633-PA000646
10-07-2022	Elvin Fred's Verified Answer and Counterclaims	4	PA000647-PA000673
10-12-2022	Affidavit of Service	4	PA000674-PA000676
11-18-2022	Stipulation and Order Modifying the Page Limits Under First Judicial District Court Rule 3.23 for Motion Practice	4	PA000677-PA000678
12-02-2022	Plaintiff's Answer to Elvin Fred's Counterclaims	4	PA000679-PA000694
12-05-2022	Joint Case Conference Report	4	PA000695-PA000716
12-08-2022	Sylvia Fred's Motion For Partial Summary Judgment Seeking a Declaration That Nevada's Civil Forfeiture Laws Violate Due Process	4	PA000717-PA000742

Date	Document Description	Volume	Labeled
12-08-2022	Appendix of Exhibits for Sylvia Fred's Motion for Partial Summary Judgment Seeking a Declaration That Nevada's Civil Forfeiture Laws Violate Due Process	5	PA000743-PA000857
12-08-2022	Video Link	5	PA000858
12-12-2022	Elvin's Joinder Under NRCP 42(a) to Sylvia Fred's Motion for Partial Summary Judgment Seeking a Declaration That Nevada's Civil Forfeiture Laws Violate Due Process and Elvin Fred's Motion for Partial Summary Judgment Seeking a Declaration That Nevada's Civil Forfeiture Laws Violate Due Process	5	PA000859-PA000877
12-12-2022	Sylvia Fred's Motion Under NRCP 42(a) to Consolidate the Civil Forfeiture Proceedings Case No 15 OC 0074 1B with the Tax Proceedings Case No 21 RP 00005 1B for Judicial Economy and Efficiency Purposes and Motion to Lift Stay and Order the Tax Proceeding Defendants to File a Responsive Pleading in 45 Days	5	PA000878-PA000936
12-15-2022	Plaintiff/Counterdefendant's Motion For Stay	6	PA000937-PA000947
12-15-2022	Exhibit Appendix to Plaintiff/Counterdefendant's Motion For Stay	6	PA000948-PA001022
12-20-2022	Ex Parte Motion to Extend Deadline to File Opposition to Sylvia Fred's Motion for Partial Summary Judgment Seeking Declaration that Nevada's Civil Forfeiture Laws Violate Due Process	6	PA001023-PA001036

Date	Document Description	Volume	Labeled
12-23-2022	Elvin and Sylvia's Motion to Strike, Opposition and Countermotion to Compel Production of Documents	7	PA001037-PA001149
12-27-2022	Opposition to Sylvia's Motion to Consolidate and Lift Stay	7	PA001150-PA001159
01-04-2023	Notice of Entry of Order Granting Ex Parte Extension	7	PA001160-PA001166
01-06-2023	Tri-Net's Opposition to Sylvia's Countermotion to Compel Production of Documents	7	PA001167-PA001180
01-06-2023	Response to Elvin and Sylvia's Motion to Strike	7	PA001182-PA001193
01-09-2023	First Supplement to Joint Case Conference Report	7	PA001194-PA001233
01-09-2023	Sylvia's Reply in Support of Motion to Consolidate and Lift Stay	8	PA001234-PA001246
01-09-2023	Tri-Net's Opposition to Elvin's Motion for Partial Summary Judgment	8	PA001247-PA001274
01-09-2023	Tri-Net's Opposition to Sylvia's Motion for Partial Summary Judgment	8	PA001275-PA001311
01-12-2023	Tri-Net's Supplement to Motion to Stay	8	PA001312-PA001318
01-19-2023	Elvin's Objection to Tri-Net's Untimely Opposition to His Motion for Partial Summary Judgment	8	PA001319-PA001322
01-19-2023	Sylvia's Reply in Support of Countermotion to Compel	8	PA001323-PA001330
01-19-2023	Sylvia's Reply in Support of Motion for Partial Summary Judgment	8	PA001331-PA001347
01-23-2023	Response to Elvin's Objection to Tri-Nets Untimely Opposition to Motion for Summary Judgment	8	PA001348-PA001352

Date	Document Description	Volume	Labeled
01-27-2023	Notice of Entry of Order	8	PA001353-PA001361
02-01-2023	Disqualification Order	8	PA001362-PA001364
02-09-2023	Elvin Fred and Sylvia Fred's Motion For Leave of This Court Under FJDCR 3.13 and Elvin Fred and Sylvia Fred's Motion Under NRCP 59(e) to Reconsider the District Court's Grant of a Stay in the Forfeiture and Counterclaim Proceeding and Sylvia Fred's Motion Under NRCP 59(e) to Reconsider the District Court's Denial of Consolidation and Lifting of Stay in the Tax Proceeding and Request for Oral Argument Under FJDCR 3.12	8	PA001365-PA001394
03-03-2023	Notice of Withdrawal of Elvin Fred and Sylvia Fred's Motion For Leave of This Court Under FJDCR 3.13 and Notice of Withdrawal of Elvin Fred and Sylvia Fred's Request to Submit	8	PA001395-PA001397

Alphabetical Index to Appendix

Date	Document Description	Volume	Labeled
05-05-2022	Affidavit of Service	3	PA000422
07-22-2022	Affidavit of Service	3	PA000581- PA000582
10-12-2022	Affidavit of Service	4	PA000674- PA000676
06-30-2022	Amended Summons – Elvin Fred	3	PA000565- PA000566
03-22-2022	Amended Summons – Sylvia Fred	2	PA000365- PA000366
12-08-2022	Appendix of Exhibits for Sylvia Fred's Motion for Partial Summary Judgment Seeking a Declaration That Nevada's Civil Forfeiture Laws Violate Due Process	5	PA000743- PA000857
12-21-2018	Application for Clerk's Entry of Default	1	PA000088- PA000091
06-29-2015	Arraignment	1	PA000027- PA000038
07-15-2022	Claimant Elvin Fred's Motion to Dismiss Tri-Net's Civil Forfeiture Complaint	3	PA000567- PA000578
09-02-2022	Claimant Elvin Fred's Reply in Support of His Motion to Dismiss Tri-Net's Civil Forfeiture Complaint	4	PA000605- PA000620
05-03-2022	Claimant Sylvia Fred's Motion to Dismiss Under NRCP 12(B)(5) Pursuant to NRS 179.1171(2) and NRS 179.1164(2) and Motion For Good Remedy	3	PA000381- PA000421

Date	Document Description	Volume	Labeled
06-01-2022	Claimant Sylvia Fred's Reply to Tri-Net's Opposition to Claimant's Motion to Dismiss Under NRCP 12(B)(5) Pursuant to NRS 179.1171(2) and NRS 179.1164(2) and Motion For Good Remedy	3	PA000508-PA000516
08-31-2021	Complaint	1	PA000155-PA000188
04-01-2015	Complaint for Forfeiture	1	PA000005-PA000010
03-09-2015	Criminal Complaint	1	PA000001-PA000004
06-15-2015	Criminal Information	1	PA000024-PA000026
01-04-2019	Default Judgment	1	PA000092
02-15-2022	Defendants' Opposition to Plaintiff's Motion to Lift Stay	2	PA000333-PA000340
02-01-2023	Disqualification Order	8	PA001362-PA001364
12-23-2022	Elvin and Sylvia's Motion to Strike, Opposition and Countermotion to Compel Production of Documents	7	PA001037-PA001149
02-09-2023	Elvin Fred and Sylvia Fred's Motion For Leave of This Court Under FJDCR 3.13 and Elvin Fred and Sylvia Fred's Motion Under NRCP 59(e) to Reconsider the District Court's Grant of a Stay in the Forfeiture and Counterclaim Proceeding and Sylvia Fred's Motion Under NRCP 59(e) to Reconsider the District Court's Denial of Consolidation and Lifting of Stay in the Tax Proceeding and Request for Oral Argument Under FJDCR 3.12	8	PA001365-PA001394

Date	Document Description	Volume	Labeled
10-07-2022	Elvin Fred's Verified Answer and Counterclaims	4	PA000647-PA000673
12-12-2022	Elvin's Joinder Under NRCP 42(a) to Sylvia Fred's Motion for Partial Summary Judgment Seeking a Declaration That Nevada's Civil Forfeiture Laws Violate Due Process and Elvin Fred's Motion for Partial Summary Judgment Seeking a Declaration That Nevada's Civil Forfeiture Laws Violate Due Process	5	PA000859-PA000877
01-19-2023	Elvin's Objection to Tri-Net's Untimely Opposition to His Motion for Partial Summary Judgment	8	PA001319-PA001322
12-20-2022	Ex Parte Motion to Extend Deadline to File Opposition to Sylvia Fred's Motion for Partial Summary Judgment Seeking Declaration that Nevada's Civil Forfeiture Laws Violate Due Process	6	PA001023-PA001036
12-15-2022	Exhibit Appendix to Plaintiff/Counterdefendant's Motion For Stay	6	PA000948-PA001022
02-01-2022	First Amended Complaint	2	PA000244-PA000280
03-22-2022	First Amended Complaint For Forfeiture	2	PA000367-PA000373
01-09-2023	First Supplement to Joint Case Conference Report	7	PA001194-PA001233
12-05-2022	Joint Case Conference Report	4	PA000695-PA000716
12-09-2021	Joint Status Report Dated December 10, 2021	2	PA000224-PA000227
06-29-2015	Memorandum of Plea Negotiation	1	PA000039-PA000043

Date	Document Description	Volume	Labeled
11-01-2019	Motion for Enlargement of Time to File Opposition to Motion to Vacate Default Judgment	1	PA000147-PA000150
05-07-2019	Motion to Amend Default Judgment	1	PA000093-PA000095
05-04-2018	Motion to Lift Stay in Forfeiture Proceeding	1	PA000079-PA000081
10-18-2019	Motion to Strike	1	PA000110-PA000113
10-04-2019	Motion to Vacate the Default Judgment	1	PA000103-PA000107
10-14-2021	Nevada Highway Patrol Defendants' Motion to Stay Proceedings Pending the Nevada Supreme Court's Answers to Accepted Certified Questions from the USDC	1	PA000189-PA000205
12-10-2021	Notice of Appearance	2	PA000228-PA000229
12-10-2021	Notice of Appearance	2	PA000230-PA000231
12-10-2021	Notice of Change of Firm Affiliation	2	PA000232-PA000234
05-09-2019	Notice of Entry of Amended Default Judgment	1	PA000098-PA000100
01-27-2023	Notice of Entry of Order	8	PA001353-PA001361
09-21-2022	Notice of Entry of Order Denying Claimant Elvin Fred's Motion to Dismiss Tri-Net's Civil Forfeiture Complaint	4	PA000633-PA000646
01-04-2023	Notice of Entry of Order Granting Ex Parte Extension	7	PA001160-PA001166

Date	Document Description	Volume	Labeled
08-10-2022	Notice of Entry of Order Regarding Deadline for Responding to Elvin Fred's Motion to Dismiss	4	PA000583-PA000588
03-14-2022	Notice of Entry of Order Setting Aside Default Judgment	2	PA000350-PA000356
04-28-2015	Notice of Entry of Order to Stay Forfeiture Proceeding	1	PA000017-PA000023
07-26-2018	Notice of Intent to Take Default	1	PA000086-PA000087
04-01-2015	Notice of Lis Pendens	1	PA000011-PA000013
03-03-2023	Notice of Withdrawal of Elvin Fred and Sylvia Fred's Motion For Leave of This Court Under FJDCR 3.13 and Notice of Withdrawal of Elvin Fred and Sylvia Fred's Request to Submit	8	PA001395-PA001397
11-01-2019	Notice of Withdrawal of Motion to Strike	1	PA000151-PA000152
07-21-2022	Notice of Withdrawal of Pisanelli Bice PLLC Attorneys	3	PA000579-PA000580
12-27-2022	Opposition to Sylvia's Motion to Consolidate and Lift Stay	7	PA001150-PA001159
06-09-2022	Order Denying Motion to Dismiss Under NRCF 12(B)(5) Pursuant to NRS 179.1171(2) and NRS 179.1164(2) and Motion For Good Remedy	3	PA000517-PA000532
11-09-2019	Order Denying Motion to Vacate Default Judgment	1	PA000153-PA000154
04-14-2022	Order Denying Plaintiff's Motion to Lift Stay	2	PA000347-PA000380
11-15-2021	Order for Joint Statement Re Proceedings	2	PA000222-PA000223

Date	Document Description	Volume	Labeled
01-08-2022	Order Granting Nevada Highway Patrol Defendants' Motion to Stay Proceeding Pending the Nevada Supreme Court's Answer to Accepted Certified Questions From the USDC	2	PA000239-PA000243
06-05-2018	Order Lifting Stay	1	PA000084-PA000085
09-30-2019	Order to Proceed in Forma Pauperis	1	PA000101-PA000102
12-15-2022	Plaintiff/Counterdefendant's Motion For Stay	6	PA000937-PA000947
12-02-2022	Plaintiff's Answer to Elvin Fred's Counterclaims	4	PA000679-PA000694
09-16-2022	Plaintiff's Answer to Sylvia Fred's Counterclaim	4	PA000621-PA000632
05-20-2022	Plaintiff's Motion For Leave to Exceed Page Limit in Its Opposition to Motion to Dismiss Under NRCP 12(B)(5) Pursuant to NRS 179.1171(2) and NRS 179.1164(2) and Motion For Good Remedy	3	PA000423-PA000490
02-01-2022	Plaintiff's Motion to Lift Stay	2	PA000281-PA000332
08-26-2022	Plaintiff's Opposition to Claimant Elvin Fred's Motion to Dismiss Tri-Net's Civil Forfeiture Complaint	4	PA000592-PA000604
05-20-2022	Plaintiff's Opposition to Motion to Dismiss Under NRCP 12(B)(5) Pursuant to NRS 179.1171(2) and NRS 179.1164(2) and Motion For Good Remedy	3	PA000491-PA000507

Date	Document Description	Volume	Labeled
10-27-2019	Plaintiff's Response to Nevada Highway Patrol Defendants' Motion to Stay Proceedings Pending the Nevada Supreme Court's Answers to Accepted Certified Questions from the USDC	2	PA000206-PA000212
03-14-2022	Recorded Notice of Entry of Order Setting Aside Default Judgment	2	PA000357-PA000364
11-04-2021	Reply in Support of Motion to Stay Proceedings	2	PA000213-PA000221
02-22-2022	Reply in Support of Plaintiff's Motion to Lift Stay	2	PA000341-PA000349
05-07-2019	Request for Submission of Motion to Amend Default Judgment	1	PA000096-PA000097
06-01-2018	Request to Submit	1	PA000082-PA000083
01-06-2023	Response to Elvin and Sylvia's Motion to Strike	7	PA001182-PA001193
01-23-2023	Response to Elvin's Objection to Tri-Nets Untimely Opposition to Motion for Summary Judgment	8	PA001348-PA001352
10-23-2019	Response to Motion to Strike	1	PA000114-PA000146
08-21-2015	Sentencing Memorandum	1	PA000045-PA000063
12-10-2021	Statement of Legal Aid Representation	2	PA000235-PA000236
06-27-2022	Statement of Legal Representation	3	PA000533-PA000534
11-18-2022	Stipulation and Order Modifying the Page Limits Under First Judicial District Court Rule 3.23 for Motion Practice	4	PA000677-PA000678

Date	Document Description	Volume	Labeled
12-15-2021	Stipulation and Order Regarding Acceptance of Service Via Email	2	PA000237-PA000238
08-16-2022	Stipulation and Order Regarding Deadline for Responding to Elvin Fred's Motion to Dismiss and Reply in Support of Motion	4	PA000589-PA000591
06-27-2022	Substitution of Counsel	3	PA000536-PA000537
04-03-2015	Summons – Elvin Fred	1	PA000014-PA000016
06-28-2022	Summons to the Nevada General in Accordance with NRS 30.130	3	PA000561-PA000563
06-28-2022	Sylvia Fred Verified Answer and Counterclaims	3	PA000538-PA000560
12-08-2022	Sylvia Fred's Motion For Partial Summary Judgment Seeking a Declaration That Nevada's Civil Forfeiture Laws Violate Due Process	4	PA000717-PA000742
12-12-2022	Sylvia Fred's Motion Under NRCP 42(a) to Consolidate the Civil Forfeiture Proceedings Case No 15 OC 0074 1B with the Tax Proceedings Case No 21 RP 00005 1B for Judicial Economy and Efficiency Purposes and Motion to Lift Stay and Order the Tax Proceeding Defendants to File a Responsive Pleading in 45 Days	5	PA000878-PA000936
06-28-2022	Sylvia Verification	3	PA000564
01-09-2023	Sylvia's Reply in Support of Motion to Consolidate and Lift Stay	8	PA001234-PA001246
01-19-2023	Sylvia's Reply in Support of Countermotion to Compel	8	PA001323-PA001330

Date	Document Description	Volume	Labeled
01-19-2023	Sylvia's Reply in Support of Motion for Partial Summary Judgment	8	PA001331-PA001347
08-24-2015	Transcript of Sentencing Hearing	1	PA000064-PA000078
01-09-2023	Tri-Net's Opposition to Elvin's Motion for Partial Summary Judgment	8	PA001247-PA001274
01-06-2023	Tri-Net's Opposition to Sylvia's Countermotion to Compel Production of Documents	7	PA001167-PA001180
01-09-2023	Tri-Net's Opposition to Sylvia's Motion for Partial Summary Judgment	8	PA001275-PA001311
01-12-2023	Tri-Net's Supplement to Motion to Stay	8	PA001312-PA001318
12-08-2022	Video Link	5	PA000858

Dated this 27th day of March 2023.

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 600
Las Vegas, Nevada, 89101

Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDONALD CARANO LLP, and that on this 27th day of March 2023, 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 Russell
First Judicial District Court
Department 1
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, NV 89701
Attorneys for Real Party in Interest

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

/s/ Kimberly Kirn
Employee of McDONALD CARANO LLP

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Case No. 15 CR00384 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:

///
///

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

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

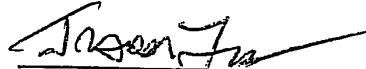
(Gross Misdemeanor – NRS 199.480)

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.

Joint Appendix000004

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
10
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27
28

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) 887-2125

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 DC 00074 18
Dept. No. II

COMPLAINT FOR FORFEITURE

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

REC'D & FILED
2015 APR -1 AM 10:44
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

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

Allegations of Property's Relationship to Illegal Activity

7. On or about and between the dates of February 13, 2015 and March 19, 2015, and at all times relevant hereto, ELVIN FRED occupied the Property.

8. Upon information and belief, on or about February 13, 2015, an individual (hereinafter referred to as the "Confidential Source") was engaged with TRI-NET officers providing information and participating in undercover investigation operations relating to illegal activity involving controlled substances in the Carson City area. On or about February 13, 2015, in conjunction with an undercover investigation operation coordinated by TRI-NET, the Confidential Source contacted James Tito ("Tito") via cellular telephone. Tito agreed to sell the Confidential Source one ounce of methamphetamine for seven hundred dollars (\$700) during the telephone call. The Confidential Source met with Tito at a location in Carson City where he gave Tito seven hundred dollars (\$700). Tito told the Confidential Source that he needed to go to "LV's house." Upon information and belief, ELVIN FRED is known to some as "LV." Tito left the location and travelled to the Property. Tito entered the residence located on the Property, remained inside for a brief period, and then left the Property. After leaving the Property, Tito met with the Confidential Source and provided the Confidential Source with approximately 27 grams of methamphetamine.

9. Upon information and belief, the approximately 27 grams of methamphetamine which Tito provided to the Confidential Source on or about February 13, 2015 was acquired from the Property.

10. Upon information and belief, on or about February 19, 2015, the Confidential Source contacted Tito via cellular telephone. Tito agreed to sell the Confidential Source a quantity of methamphetamine for one thousand dollars (\$1,000). Upon

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

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

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

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

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

////

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

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

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

FIRST CLAIM FOR RELIEF

(Forfeiture of Property)

18. 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.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the INVESTIGATION DIVISION OF THE DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force) 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;

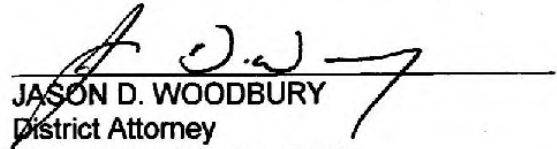
///

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
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)

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

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

APN: 010-443-11
REC'D & FILED

2015 APR -1 AM 10:44

SUSAN HERRIWETHER
CLERK
BY  DEPUTY

8
9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
10 CARSON CITY
11

12 In re:

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

Case No. 15 CC 00074 1B
Dept. No. II

20 NOTICE OF LIS PENDENS

21 (CARSON CITY ASSESSOR'S PARCEL NUMBER: 010-443-11)

22 NOTICE IS HEREBY GIVEN that an action has been commenced in the First Judicial
23 District Court of the State of Nevada in and for Carson City against the above-referenced
24 property which affects title to and/or possession of real property in Carson City, Nevada, that
25 real property being Carson City Assessor's Parcel Number 010-443-11, more fully described
26 as:

27 3587 Desatoya Drive, Carson City, Nevada 89701, more particularly described as all
28 that certain parcel of land situate in the City of Carson City, County of Carson City and
7

Joint Appendix 000014

1 State of Nevada, being known and designated as follows: Parcel N-33 as shown on
2 Parcel Map No. 1704 for Stanton Park Development, Inc., filed in the office of the
3 Recorder of Carson City, Nevada on August 11, 1989 as File No. 89253.

4 Pursuant to NRS 14.010, notice is hereby given of the following:

5 Nature of the action: Forfeiture in accordance with NRS 179.1156 - NRS
6 179.121;

7 Object of the action: A declaration that the real property identified above is
8 forfeited to the INVESTIGATION DIVISION OF THE
9 DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF
10 NEVADA (Tri-Net Narcotics Task Force) pursuant to NRS
11 179.1175;

12 Parties to the action: INVESTIGATION DIVISION OF THE DEPARTMENT OF
13 PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net
14 Narcotics Task Force); and
15 ELVIN FRED.

16 DATED this 1st day of April, 2015.

17 CARSON CITY DISTRICT ATTORNEY

18
19 By:


JASON D. WOODBURY

District Attorney
Nevada Bar Number: 6870

20 ATTORNEY FOR:
21 INVESTIGATION DIVISION OF THE
22 DEPARTMENT OF PUBLIC SAFETY
23 OF THE STATE OF NEVADA
24 (Tri-Net Narcotics Task Force)
25
26
27
28

Office of the District Attorney
Carson City, Nevada
885 East Musser St., Suite 2030, Carson City, Nevada 89701
Tel.: (775) 687-2070 Fax: (775) 687-2129

CERTIFICATE OF SERVICE

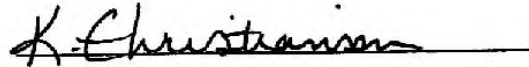
I certify that I am an employee of the Office of the Carson City District Attorney and that on this 1st day of April, 2015, I caused to be served a copy of the foregoing **NOTICE OF LIS PENDENS (CARSON CITY ASSESSOR'S PARCEL NUMBER 010-443-11)** by depositing for mailing in the United States Mail at Carson City, Nevada, postage pre-paid a true and correct copy of said document addressed to:

Elvin Fred
3587 Desatoya Drive
Carson City, NV 89701

Elvin Fred
Inmate ID# P00003100
Carson City Jail
897 East Musser Street
Carson City, NV 89701

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

Loren Graham, Esq.
195 Highway 50
Stateline, NV 89449



Case No. 150000024 B

Dept. No. #

REC'D & FILED

2015 APR -3 PM 4:37

**In The First Judicial District Court of the
State of Nevada in and for
Carson City**

SUSAN NEWETHEN
CLERK
By [Signature]
DEPUTY

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.

SUMMONS

Elvin Fred
3587 Desatoya Drive
Carson City, NV 89701

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR
BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.**

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is served on you, exclusive of the day of service, file with this Court a written pleading* in response to this Complaint.
2. Unless you respond, your default will be entered upon application of the plaintiff, and this Court may enter a judgment against you for the relief demanded in the Complaint**, which could result in the taking of money or property or the relief requested in the Complaint.
3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is: Carson City District Attorney's Office
885 E. Musser Street, Suite 2030
Carson City, Nevada 89701

Susan Newethen
ALAN GLOVER, Clerk of the Court

By: [Signature], Deputy Clerk

Date: April 1, 2015.

*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.

**Note - When service by publication, insert a brief statement of the object of the action. See Rule 4.

RETURN OF SERVICE ON REVERSE SIDE

11

Joint Appendix000020

PA000014

AFFIDAVIT OF SERVICE (For General Use)

STATE OF _____)
) ss.

COUNTY OF _____)

_____, declares under penalty of perjury:

That affiant is, and was on the day when (s)he served the within Summons, over 18 years of age, and not a party to, nor interested in, the within action; that the affiant received the Summons on the _____ day of _____, 20____, and personally served the same upon _____ the within named defendant, on the _____ day of _____, 20____, by delivering to the said defendant, personally, in _____, County of _____, State of _____, a copy of the Summons attached to a copy of the Complaint.

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

Executed this _____ day of _____, 20____.

Signature of person making service

**NEVADA SHERIFF'S RETURN
(for use of Sheriff of Carson City)**

STATE OF NEVADA)
) ss.
CARSON CITY)

I hereby certify and return that I received the within Summons on the _____ day of _____, 20____, and personally served the same upon _____, the within named defendant, on the _____ day of _____, 20____, by delivering to the said defendant, personally, in Carson City, State of Nevada, a copy of the Summons attached to a copy of the Complaint.

KENNY FURLONG, Sheriff of Carson City, Nevada

Date: _____, 20____.

By: _____, Deputy

**AFFIDAVIT OF MAILING
(For use when service is by publication and mailing)**

STATE OF _____)
) ss.
COUNTY OF _____)

_____, declares under penalty of perjury:

That affiant is, and was when the herein described mailing took place, over 18 years of age, and not a party to, nor interested in, the within action; that on the _____ day of _____, 20____, affiant deposited in the Post Office at _____, Nevada, a copy of the within Summons attached to a copy of the Complaint, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to _____ the within named defendant, at _____; that there is a regular communication by mail between the place of mailing and the place so addressed.

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

Executed this _____ day of _____, 20____.

NOTE - If service is made in any manner permitted by Rule 4 other than personally upon the defendant, or is made outside the United States, a special affidavit or return must be made.



PROOF OF SERVICE

Court Date:		File No. 0003044
Court:	FIRST JUDICIAL DISTRICT COURT	Case No. 15OC000741B
Initiator:	STATE OF NEVADA	Company:
Address:	, 0	Address:
Plaintiff:	STATE OF NEVADA	Defendant: FRED, ELVIN
Address:	, 0	IN RE: 3587 DESATOYA DR. CC. NV. 89701
		Address: 897 E. MUSSER ST. (CCSO JAIL)
		CARSON CITY, NV 89701

- Documents Served:
SUMMONS & COMPLAINT
- Service Attempts:

Date	Time	Address	Served
4/01/15	11:40	Address: SAME	<input checked="" type="checkbox"/>
		Notes:	
		Address:	<input type="checkbox"/>
		Notes:	
		Address:	<input type="checkbox"/>
		Notes:	
- Party Served: ELVIN FRED Title: _____
- I served the party named in Item 3: PERSONALLY
- Remarks: SUMMONS & COMPLAINT FOR FORFEITURE.
- At the time of service I was at least 18 years of age and not a party to this action.
- I am an authorized individual with the Carson City Sheriff's Office and certify that the foregoing is true and correct.

Thomas Janas
TOM JANAS
Carson City Sheriff's Office
911 East Musser Street
Carson City, NV 89701
Phone: 775-887-2500

4/01/15
Date

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)

REC'D & FILED

2015 APR 28 PM 1:03

SUSAN MERRIWETHER
CLERK
BY *[Signature]*
DEPUTY

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

12 In re:

13 3587 Desatoya Drive, Carson City, Nevada
14 89701, more particularly described as all
15 that certain parcel of land situate in the City
16 of Carson City, County of Carson City and
17 State of Nevada, being known and
18 designated as follows: Parcel N-33 as
19 shown on Parcel Map No. 1704 for Stanton
20 Park Development, Inc., filed in the office of
21 the Recorder of Carson City, Nevada on
22 August 11, 1989 as File No. 89253, Carson
23 City Assessor's Parcel Number: 010-443-
24 11.

Case No. 15 OC 00074 1B

Dept. No. II

21 NOTICE OF ENTRY OF ORDER

22 TO: ELVIN FRED, Claimant; and

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

24 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a *Stipulation and Order*
25 *to Stay Forfeiture Proceeding ("Order")* was entered by the above-named Court on April 27,
26 2015.

27
28

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

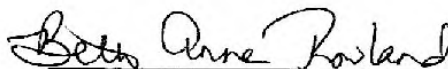
885 East Mueser St., Suite 2030, Carson City, Nevada 89701
Tel.: (775) 887-2070 Fax: (775) 887-2123

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



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

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
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

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;

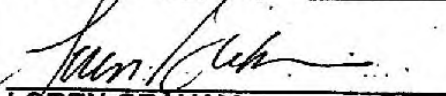
3 NRS 179.1173(2) provides:

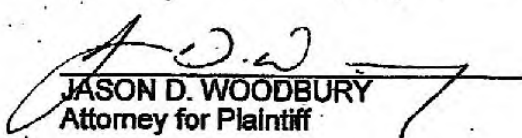
4 At a proceeding for forfeiture, the plaintiff or claimant may file a motion for an
5 order staying the proceeding and the court shall grant that motion if a criminal action
6 which is the basis of the proceeding is pending trial....

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

13 
JASON D. WOODBURY
Attorney for Plaintiff

15 IT IS SO ORDERED.

16 DATED this 27 day of April, 2015.

17
18 
19 JAMES E. WILSON
20 District Judge
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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

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

11	STATE OF NEVADA,	
12	Plaintiff,	Case No. 15 CR 00384 1C 004
13	v.	Dept. No. II
14	ELVIN LEE FRED,	
15	Defendant.	

16 CRIMINAL INFORMATION

17 STATE OF NEVADA }
18 CARSON CITY } ss

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

26 Count I

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

That the Defendant, Elvin Lee Fred, on or about February 13, 2015, did knowingly or
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
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- 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
- 7 Mitch Pier
8 Tri Net Narcotics Task Force
9 555 Wright Way
10 Carson City, NV 89701
- 11 Dan Vidovich
12 Tri Net Narcotics Task Force
13 555 Wright Way
14 Carson City, NV 89701
- 15 Pete Welker
16 Drug Enforcement Administration
17 8790 Double Diamond Parkway
18 Reno, NV 89521-4844
- 19 Charles Stetler
20 Tri Net Narcotics Task Force
21 555 Wright Way
22 Carson City, NV 89701
- 23 Brian Hubkey 0390
24 Tri Net Narcotics Task Force
25 555 Wright Way
26 Carson City, NV 89701
- 27 Michael Kellerman SA
28 Drug Enforcement Administration
8790 Double Diamond Parkway
Reno, NV 89521-4844
- Washoe County Crime Lab
911 Parr Boulevard
Reno, NV 89512
- James Franklin Beaver
29 Castle Way
Carson City, NV 89706
- Patricia Bigpond
1301 Como St #A
1301 Como St #A, NV 89701

CS 15-TN-001

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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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.

1 EXAMINATION

2 CARSON CITY, NEVADA, JUNE 29, 2015

3
4 - -o0o- -

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

6
7 THE COURT: The next matter before the Court is going to be
8 case number 15CR00148, the State of Nevada versus Elvin Lee Fred.
9 (Inaudible – wrong case at this time).

10 -o0o-

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

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

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

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

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

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

22 MR. GRAHAM: That is correct, Your Honor.

23 THE COURT: Okay. For the record, present on behalf of the
24 State of Nevada, Tyson League, Deputy District Attorney. Present on behalf
25 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.
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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
~~15CR00384-1C-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 of

Joint Appendix 000052

PA000039

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.

1 5. The constitutional right to testify in my own defense.

2 6. The right to appeal the conviction, with the assistance of an attorney, either
3 appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional
4 or other grounds that challenge the legality of the proceedings and except as otherwise
5 provided in subsection 3 of NRS 174.035. I understand that if I wish to appeal, I must notify
6 my attorney as soon as possible, and that the Notice of Appeal must be filed within thirty (30)
7 days from the judgment of conviction.

8 VOLUNTARINESS OF PLEA

9 I have discussed the elements of the original charge against me with my attorney and I
10 understand the nature of the charge against me.

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

13 I have discussed with my attorney any possible defenses, defense strategies and
14 circumstances which might be in my favor.

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

17 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
18 that a trial would be contrary to my best interest.

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.

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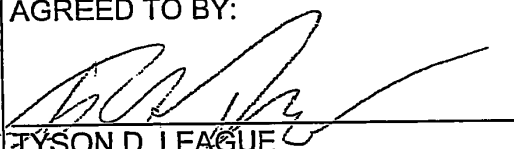
1 I am not now under the influence of any intoxicating liquor, a controlled substance or
2 other drug which would in any manner impair my ability to comprehend or understand this
3 agreement or the proceedings surrounding my entry of this plea.

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 HERRI WETHER

CLERK

BY

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

Joint Appendix 000059

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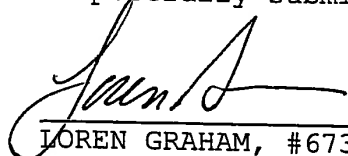
PA000045

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

Joint Appendix000061

28

PA000047

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 1 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 Lasho 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 Taylon 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 thier 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 hispanic and 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. I will pay for the victim of this crime.

on I still can't answer the question. Why did I sell methamphetamine?
- 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 need
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 brother's 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 crimes
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 31

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. The

the victims being my soon to be wife, all my children, and family. They all have to suffer because of my past 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 you want to do. It is NEVER TOO LATE.

GOD BLESS YOU AND THANKS FOR YOUR TIME AND CONSIDERATION

Respectfully,


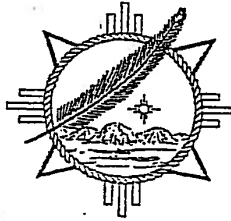


EXHIBIT 2

Joint Appendix000067

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PA000053

**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.

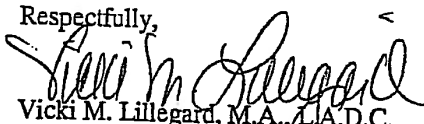
As mentioned previously, this counselor would like to continue working with Mr. Fred if given the opportunity to do so. Mr. Fred has demonstrated that he can maintain abstinence at this level of care (outpatient treatment) therefore placement in a residential treatment program is not necessary or recommended. 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.

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.

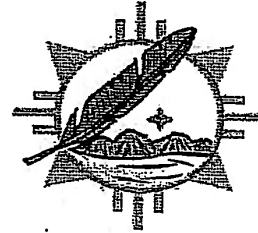
1475 Terminal Way, Suite B

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

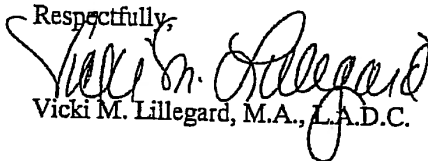
Case #'s: 12 CR 00862 1C & 12 CR 01071 1C

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.

Certificate of Completion

This certificate is awarded to:

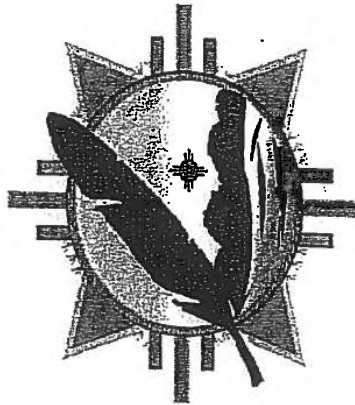
Elvin Fred

In recognition of Completing:

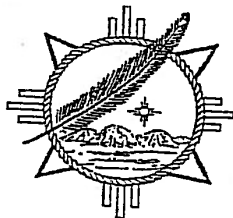
Anger Management
Counseling Program (34 Sessions)

At NEVADA URBAN INDIANS INC.

Given this 9th day of October, 2013



Elvin Fred
Signature
October 9th, 2013
Date



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.

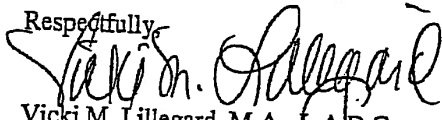
Mr. Fred still requires a solid support system to sustain his recovery efforts after his counseling program and legal requirements have been satisfied however. This counselor again is recommending that he continue his outpatient treatment program until his sentencing hearing. This will include: 1 group 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

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!

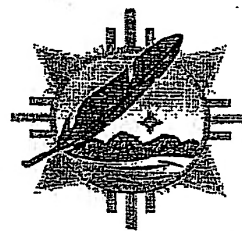
Respectfully,



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
Fax: (775) 788-7611
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.

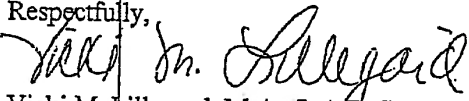
Mr. Fred informed me that he recently experienced a relapse with alcohol in January, and was incarcerated as a result. Although I was disappointed, I realize that Mr. Fred has additional work to do before he is ready to be discharged from his counseling program. It is not uncommon for people to relapse 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.

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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 Tel: (775) 788-7600
 Fax: (775) 788-7611
 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: *Stacy M. Allegard M.A., LADC* Date: *March 25, 2014*

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

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CASE NO: 15 CR 00143

DEPT. NO: 1

COPY

IN THE JUSTICE/MUNICIPAL COURT OF THE CARSON TOWNSHIP
IN AND FOR CARSON CITY, STATE OF NEVADA
BEFORE THE HONORABLE TODD RUSSELL

STATE OF NEVADA,	Transcript of Proceeding
Plaintiff,	
v.	
ELVIN LEE FRED,	
Defendant.	

SENTENCING
August 24, 2015

SUNSHINE LITIGATION SERVICES
TRANSCRIBED FROM JAVS CD

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2		
3	FOR THE PLAINTIFF	Tyson D. League, Esq.
4		Carson City District Attorney
5		885 E. Musser Street, #2030
		Carson City, NV 89701
6	FOR THE DEFENDANT	Loren Graham, Esq.
7		State of Nevada Public Defender's Office
8		511 E. Robinson Street, #1
		Carson City, NV 89701
9	DEPARTMENT OF PAROLE	
10	AND PROBATION	Patricia Cerviglio
11		State of Nevada DPS Parole & Probation
12		119 E. Long Street
		Carson City, NV 89701
13	TRANSCRIPTION	Pam Simon
14	Proceedings recorded by digital sound recording. Transcript produced by	
15	certified transcriptionist.	
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1		INDEX			
2					
3	WITNESSES:	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
4	Lisa LeAnn Fred	6			
5					
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9	EXHIBITS:	<u>Marked</u>	<u>Admitted</u>		
10	None				
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1 EXAMINATION

2 CARSON CITY, NEVADA, AUGUST 24, 2015

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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.

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

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

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

It will run consecutive to case number 12 CR 0061.

Fine set at \$20,000.00.

(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

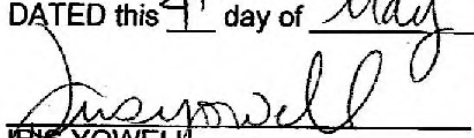
MOTION TO LIFT STAY IN FORFEITURE PROCEEDING

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

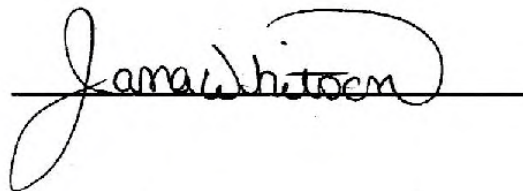
8 DATED this 4th day of May, 2018.

9
10 
11 IRIS YOWELL
12 Attorney for Plaintiff
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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 "Jamar Whitson", is written over a horizontal line.

REC'D & FILED
2018 JUN -1 PM 3:52
SUSAN MERRIWETHER
CLERK
BY CTZ/128
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
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

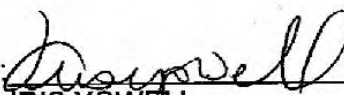
Dept. No. II

REQUEST TO SUBMIT

COMES NOW, the STATE OF NEVADA, by and through its counsel, JASON D.
WOODBURY, District Attorney, and IRIS YOWELL, Deputy District Attorney for Carson City,
Nevada, and hereby requests that the Motion to Lift the Stay in Forfeiture Proceeding and all
related documents in the above-entitled matter be submitted to the Court for decision.

DATED this 1st day of June, 2018.

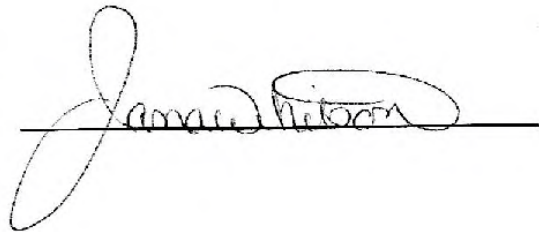
JASON D. WOODBURY
District Attorney

By 
IRIS YOWELL
Deputy District Attorney
Nevada Bar No. 12142

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the Office of the District Attorney of Carson City, Nevada, and that on this 1st day of June, 2018, I caused to be served a copy of the foregoing **REQUEST TO SUBMIT** by faxing and delivering via Acme Messenger Service said document addressed to:

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

A handwritten signature in black ink, appearing to read "J. Michael Peterson", is written over a horizontal line.

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

RECEIVED & FILED
2018 JUN -5 AM 8:45

SUSAN MERRILL
CLERK

BY *[Signature]*

4 In re:

5 3587 Desatoya Drive, Carson City, Nevada
6 89701, more particularly described as all
7 that certain parcel of land situate in the City
8 of Carson City, County of Carson City and
9 State of Nevada, being known and
10 designated as follows: Parcel N-33 as
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13 the Recorder of Carson City, Nevada on
14 August 11, 1989 as File No. 89253, Carson
15 City Assessor's Parcel Number: 010-443-
16 11.

Case No. 15 OC 00074 1B

Dept. No. II

13 ORDER LIFTING STAY

14 UPON MOTION of the Plaintiff, STATE OF NEVADA, by and through counsel, JASON
15 D. WOODBURY, District Attorney and IRIS YOWELL, Deputy District Attorney in and for
16 Carson City, State of Nevada, and good cause appearing therefore,

17 IT IS HEREBY ORDERED that the stay is lifted in this case and the case proceed in
18 due course.

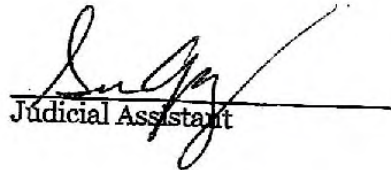
19 DATED this 4 day of June, 2018.

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21 *[Signature]*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The First
Judicial District Court of the State of Nevada, and I certify that on this 5 day
of June, 2018, I deposited in the departmental box located in the
clerk's office or messenger service or deposited for mailing at Carson City,
Nevada a true and correct copy of the foregoing Order and addressed to the
following:

- ☒ District Attorney/Attorney General
- ☐ Public Defender
- ☐ Robert Walker, Esq.
- ☐ Noel Waters, Esq.
- ☐ John Malone, Esq.
- ☒ Loren Graham
P.O. Box 6329
Stateline, NV 89449


Judicial Assistant

Office of the District Attorney
Carson City, Nevada
885 East Musser St., Suite 2030, Carson City, Nevada 89701
Tel.: (775) 887-2072 Fax (775) 887-2126

REC'D & FILED

2018 JUL 26 PM 4:05

SUSAN MERRIWETHER
CLERK

BY CTURLO
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
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City Assessor's Parcel Number: 010-443-
11.

Case No. 15 OC 00074 1B

Dept. No. II

NOTICE OF INTENT TO TAKE DEFAULT

TO: ELVIN FRED AND TO HIS ATTORNEY OF RECORD, LOREN GRAHAM

NOTICE IS HEREBY GIVEN that Plaintiff herein intends to file a request for default of
the above-stated Defendant, for the failure to file an Answer or otherwise respond to the
Complaint on file herein.

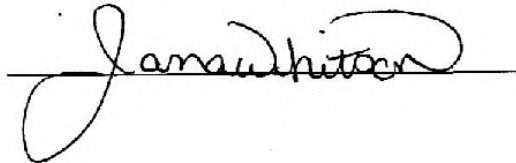
DATED this 26th day of July, 2018.


IRIS YOWELL
Attorney for Plaintiff

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 July 2018, I caused to be served a copy of the foregoing **NOTICE OF INTENT TO TAKE DEFAULT** by faxing a copy of document and by personal delivery by Acme Messenger, said document addressed to:

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



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

REC'D & FILED

2018 DEC 21 PM 3:43

SUSAN MERRIWETHER
CLERK

BY CTOMB
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
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11.

Case No. 15 OC 00074 1B

Dept. No. II

APPLICATION FOR CLERK'S ENTRY OF DEFAULT

TO: SUE MERRIWETHER, Clerk of the Court

Please enter the default of the above-stated Defendant and Claimant, Elvin Fred, for
the failure to plead or otherwise defend in the above-entitled action as provided by the
Nevada Rules of Civil Procedure, as appears from the Affidavit of Iris Yowell, Deputy District
Attorney, attached hereto.

DATED this 21st day of December, 2018.

JASON D. WOODBURY
District Attorney

By: Iris Yowell
IRIS YOWELL
Deputy District Attorney
Nevada Bar No. 12142

AFFIDAVIT OF IRIS YOWELL

STATE OF NEVADA)
CARSON CITY) ss.

I, Iris Yowell, do hereby swear under penalty of perjury that the following assertions are true to the best of my knowledge and belief and as provided to me by my client, the Sheriff's Office of Carson City, Nevada and its law enforcement officers:

1. Affiant is Deputy District Attorney for Carson City, Nevada and has been so employed since February 20, 2013.

3. The Claimant, Elvin Fred, was personally served with a copy of the Summons and Complaint on April 1, 2015 and a Proof of Service was filed on April 3, 2015.

3. The Claimant has failed to answer or otherwise defend the case;

4. The Claimant is not in the military service of the United States nor an infant or incompetent person;

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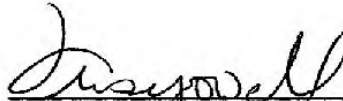
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1 5. Affiant used or intended to use the property to facilitate a violation of NRS
2 453.011 to NRS 453.552, including, but not limited to: Trafficking in a Schedule 1 Controlled
3 Substance (Methamphetamine) Weighing 28 Grams or More, a Category A felony as defined
4 by NRS 453.3385(3); and Conspiracy to Violate the Uniform Controlled Substances Act, a
5 Category C felony as defined by NRS 453.401. Affiant is further informed and believes that
6 there is now due and owing from Claimant to Plaintiff the above-stated Defendant.

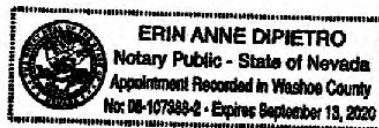
7 FURTHER AFFIANT SAYETH NAUGHT.

8 DATED this 21st day of December, 2018.

9
10 
11 IRIS YOWELL

12
13 SIGNED and SWORN to before me
14 this 21st day of December, 2018,
15 by Iris Yowell.

16 
17 NOTARY PUBLIC



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 December 21, 2018, I served a true and correct copy of the foregoing **APPLICATION FOR CLERK'S ENTRY OF DEFAULT** on the following parties by first class mail, postage prepaid:

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

Beth Anne Leland

Case No. 15 OC 00074 1B

Dept. No. II

REC'D & FILED

2019 JAN -4 PM 1:54

SUSAN MERRIWETHER
CLERK

BY  CLERK

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.

DEFAULT JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the defendant property, consisting of real property located at 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 as described above in the caption, be forfeited to Plaintiff, free of all claims of all persons, pursuant to the provisions of Nevada Revised Statutes 453.301 et. seq.;

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

DATED this 4 day of January ²⁰¹⁹₂₀₁₈.


DISTRICT COURT JUDGE

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 -7 PM 3:50

AUBREY ROWLATT
CLERK

BY Cover DEPUTY

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

11 In re:

12 3587 Desatoya Drive, Carson City, Nevada
13 89701, more particularly described as all
14 that certain parcel of land situate in the City
15 of Carson City, County of Carson City and
16 State of Nevada, being known and
17 designated as follows: Parcel N-33 as
18 shown on Parcel Map No. 1704 for Stanton
19 Park Development, Inc., filed in the office of
20 the Recorder of Carson City, Nevada on
21 August 11, 1989 as File No. 89253, Carson
22 City Assessor's Parcel Number: 010-443-
23 11.

Case No. 15 OC 00074 1B

Dept. No. II

20 **MOTION TO AMEND DEFAULT JUDGMENT**

21 Plaintiff, the INVESTIGATION DIVISION OF THE DEPARTMENT OF PUBLIC
22 SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force), by and through its
23 counsel of record, JASON D. WOODBURY, Carson City District Attorney, and BENJAMIN R.
24 JOHNSON, Deputy District Attorney, hereby moves to amend the Default Judgment entered
25 in the above-captioned case on January 4, 2019. This motion is based on the attached
26 memorandum of points and authorities, the proposed Amended Judgment and all papers and
27 pleadings on file in this case.

28 ///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. DISCUSSION**

3 A Complaint for Forfeiture was filed on April 1, 2015, in relation to real property located
4 at 3587 Desatoya Drive, Carson City, Nevada 89701. A Default Judgment was entered by
5 this Court on January 4, 2019. The Default Judgment directed that the property be forfeited to
6 Plaintiff pursuant to NRCP 453.301 et seq. Although the Complaint for Forfeiture named the
7 Tri-Net Narcotics Task Force as the Plaintiff, the Default Judgment simply stated "Plaintiff"
8 without further specificity.

9 Despite it being clear from the context that the intent was to forfeit the property in favor
10 of the Tri-Net Narcotics Task Force, some individuals or agencies will refuse to retitle property
11 to the Tri-Net Narcotics Task Force because it is not specifically identified as the Plaintiff in
12 the Judgment.

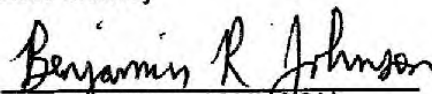
13 Nevada Rule of Civil Procedure 60(a) permits the court to "correct a clerical mistake or
14 a mistake arising from oversight or omission whenever one is found in a judgment, order, or
15 other part of the record. The court may do so on motion or on its own, with or without notice."
16 The misnaming in this case was a typographical error. The clear intent was to have the
17 property forfeited to Tri-Net Narcotics Task Force as Plaintiff and it was a clerical mistake on
18 the part of the District Attorney's office.

19 **II. CONCLUSION**

20 In order to avoid confusion and in order to allow the timely disposition of the subject
21 property, Plaintiff respectfully requests that the Judgment be amended to name Tri-Net
22 Narcotics Task Force as the correct recipient and owner of the property. A proposed
23 Amended Judgment is submitted concurrently herewith.

24 DATED this 7th day of May, 2019.

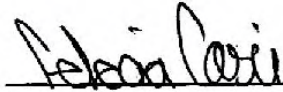
25 JASON D. WOODBURY
26 District Attorney

27 By: 
28 BENJAMIN R. JOHNSON
Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney and that on this 7th day of May, 2019, I caused to be served a copy of the foregoing **MOTION TO AMEND DEFAULT JUDGMENT**, together with an **AMENDED DEFAULT JUDGMENT** by faxing and delivering via courier service said documents addressed to:

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

_____

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 -7 PM 3:50

AUBREY ROWLATT
CLERK

BY CTOROS
DEPUTY

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

11 In re:

Case No. 15 OC 00074 1B

Dept. No. II

12 3587 Desatoya Drive, Carson City, Nevada
13 89701, more particularly described as all
14 that certain parcel of land situate in the City
15 of Carson City, County of Carson City and
16 State of Nevada, being known and
17 designated as follows: Parcel N-33 as
18 shown on Parcel Map No. 1704 for Stanton
19 Park Development, Inc., filed in the office of
20 the Recorder of Carson City, Nevada on
21 August 11, 1989 as File No. 89253, Carson
22 City Assessor's Parcel Number: 010-443-
23 11.

24 **REQUEST FOR SUBMISSION OF MOTION TO AMEND DEFAULT JUDGMENT**

25 Plaintiff, INVESTIGATION DIVISION OF THE DEPARTMENT OF PUBLIC SAFETY
26 OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force), by and through its counsel of
27 record, JASON D. WOODBURY, Carson City District Attorney, and BENJAMIN R. JOHNSON,
28 Deputy District Attorney, hereby requests that the Motion to Amend Default Judgment be
submitted to the Court for decision.

DATED this 7th day of May, 2019.

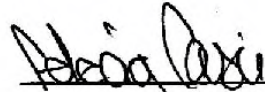
JASON D. WOODBURY
District Attorney

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

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney and that on this 7th day of May, 2019, I caused to be served a copy of the foregoing **REQUEST FOR SUBMISSION OF MOTION TO AMEND DEFAULT JUDGMENT** by faxing and delivering via courier service said documents addressed to:

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

_____

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: Benjamin R. Johnson]
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 -8 PM 1:59

AUDREY 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

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 Davis

Your Name: Sylvia Fred
Address: PO BOX 1150
City, State, Zip: REDAVIA, NV 89301
Telephone: 758-553-0199
Email Address: Sylviafred521@gmail.com
Self-Represented

REC'D & FILED
2019 SEP 30 AM 11:24
AUGREY ROWLATT
CLERK
BY [Signature]
DEPUTY

DISTRICT COURT
CARSON CITY COUNTY, NEVADA

Sylvia Fred
Plaintiff,
vs.

Defendant.

CASE NO.: 150C000741B
DEPT: II

Order to Proceed in Forma Pauperis

Upon consideration of the movant's Application to Proceed in Forma Pauperis (*judge will check one box*),

☒ **Denied.** The Court finds that the applicant is not indigent, therefore, IT IS HEREBY ORDERED that the applicant's request to proceed In Forma Pauperis is DENIED.

☐ **Granted.** The Court finds that there is not sufficient income, property, or resources with which to maintain the action, and good cause appearing therefore,

IT IS HEREBY ORDERED that applicant's request to proceed In Forma Pauperis is GRANTED and (*your name*) _____ shall be permitted to proceed with this action pursuant to the terms of this Order.

IT IS FURTHER ORDERED that if the above-named party prevails in this action, the Court shall enter an order pursuant to NRS 12.015 requiring the opposing party to pay the Court, within five (5) days, the costs which would have been incurred by the prevailing party, and those costs must then be paid as provided by law.


IT IS FURTHER ORDERED that the above-named party shall be permitted to commence or defend the action without costs. The Clerk of Court shall file or issue any necessary writ, process, pleading, or paper without charge.

IT IS FURTHER ORDERED that the Sheriff or other appropriate officer within this State shall make personal service of any necessary writ, pleading, or paper without charge.

IT IS FURTHER ORDERED that this Order shall not apply to costs for transcripts or recordings of court proceedings. A separate application and order shall be required to waive any such fees.

IT IS FURTHER ORDERED that this Order shall expire one year from the date the Order is filed. The party shall be required to reapply for any further waiver after this Order expires.

DATED this 27 day of September, 2019.


DISTRICT COURT JUDGE

Respectfully Submitted:

(Signature) _____

(Printed Name) _____

In Proper Person

Your Name: Sylvia Fred
Mailing Address: PO BOX 1150
City, State, Zip: Red Lake, MN 56571
Telephone: 218.553-0199
In Proper Person

REC'D & FILED

2019 OCT -4 PM 1:05

AUBREY ROWLATT
CLERK

BY [Signature] DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

Sylvia Fred State of MN
Plaintiff/Petitioner,

Case No.: 150C000741B 1B

Dept. No.: II

vs.

MOTION

Sylvia Fred / Elvin Fred
Defendant/Respondent.

To Vacate the Default
Judgement

I Sylvia Fred

(Your Name)

, appearing in Proper Person,

request that the Court enter an Order granting me the following:

State what you want the Court to order. If you have more than one request, clearly list and number each request. Do not explain your requests in detail here, just list them.

plaintiff has never attempted to notify
me about my property, 3587 Desatoya Dr
(Parcel #010-443-11) Carson City, Nevada
89701

I received a wayvise phone call from
my sister on July 6, 2019 about a "5 day
at will eviction" that was placed on the

1 Fully explain why you believe you should be granted your request(s).
2 List and number each request.

3 This Motion is made for the following reasons:

4 door of my property signed and dated by
5 ^{Sgt} ~~Sgt~~ C. McCann

6
7 Immediately after July 6, 2019, I attempted to contact
8 Sgt. C. McCann via phone. After ~~numerous~~ ^{SE} ~~after~~
9 numerous attempts, we made connections and I
10 requested information sent to me.

11
12 Upon contacting and initiating communication with
13 Sgt. C. McCann, he sent me an email on July 18, 2019
14 with an attachment of an "Unlawful Detainer
15 Notice" for my residence 3587 Desatoya Dr. (Parcel #
16 010-443-11), Carson City, Nevada, 89701.

17
18 On July 18, 2019, Sgt. C. McCann sent me another
19 email with an attachment of an "Amended Default
20 Judgment," stamped and dated May 8, 2019.

21
22 I have never received any correspondence from
23 Plaintiff in regards to my property. I was not
24 properly served with the Summons and Complaint.
25

3(a)

Lack of notice renders a default judgement void.

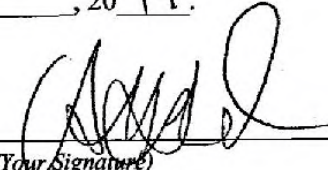
If I was properly notified, I would have been in attendance to the court proceedings

1 (If you need more room, you may attach additional sheets of paper. Be sure you write only on
2 one side of each sheet, number the page or pages 3(a), 3(b), etc. and initial each page at the
3 bottom.)

4 This document does not contain the Social Security number of any person.

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

7 DATED this 23 day of August, 20 19.

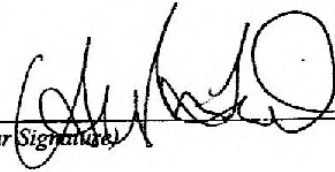
8 
(Your Signature)

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned hereby certifies that on this date, I deposited a true and correct copy of the foregoing Motion in the U.S. Mail with postage pre-paid thereon, addressed to:

Dated this 23 day of August, 20 19.

(Your Signature)



Your Name: Sylvia Fred
Mailing Address: P.O. Box 1150
City, State, Zip: Red Lake, MN 56671
Telephone: 218-553-0199
In Proper Person

REC'D & FILED

2018 OCT -4 PM 1:10

AUBREY ROWLATT
CLERK

BY [Signature] DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

State of NV
Plaintiff,

vs.

Sylvia Fred / Elvin Fred
Defendant.

Case No.: 15000074 1B

Dept. No.: II

AFFIDAVIT OF SERVICE

STATE OF NEVADA)
)ss
CARSON CITY)

Lawanda Jones, being first duly sworn under penalties of
(Name of person making service)

perjury, states as follows:

1. That I am: (check the appropriate blank)

 a party to this action and am appearing in proper person.

X a person not involved in this action and have no interest in this action and
am over the age of 18 years.

2. That on the 4th day of October, I served a true and correct copy
(day) (month) (year)
of the document(s) entitled: To vacate the Default Judgment
(Clearly list all documents you served on the other party)

in the following way: (check the appropriate blank, and fill in the appropriate information)

1 **IF THE DOCUMENTS WERE SERVED BY MAIL ON THE OTHER PARTY, OR THE**
2 **OTHER PARTY'S LAWYER, FILL IN THE FOLLOWING:**

3 _____ by placing a copy enclosed in a sealed envelope upon which first class postage
4 was fully prepaid.

5 _____ by placing a copy enclosed in a sealed envelope and mailing it certified, return
6 receipt requested.

7 The envelope was addressed to:

8 (Name) _____

9 (Address) _____

10 and that there is regular communication by mail between the place of mailing and the place
11 addressed.

12 **IF THE DOCUMENTS WERE PERSONALLY SERVED ON THE OTHER PARTY, OR**
13 **THE OTHER PARTY'S LAWYER, FILL IN THE FOLLOWING:**

14 X by personally serving:

15 (Name) District Attorney's Office

16 at (address) 885 E. Musser St.

17 Carson City, NV 89701

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

20 Date: 10/4/19

21 Lawanda Jones
22 (Print name)
23 [Signature]
24 (Signature)
25

JASON D. WOODBURY
DISTRICT ATTORNEY
Nevada Bar Number: 6870
885 E. Musser Street, Suite 2030
Carson City, Nevada 89701
(775) 887-2070
Attorney For: Carson City Sheriff's Office

REC'D & FILED
2019 OCT 18 PM 3:28

ALFREY POWELL
BY *[Signature]*
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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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 STRIKE

Plaintiff, 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 BENJAMIN R.
JOHNSON, Deputy District Attorney, hereby submits their Motion to Strike the Motion to
Vacate Default Judgment filed by Sylvia Fred on October 4, 2019. This motion is based on
the attached memorandum of points and authorities and all papers and pleadings on file in
this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. NOTICE OF THE MOTION

No hearing is requested on this matter.

///

1 **II. ARGUMENT**

2 A Complaint for Forfeiture was filed on April 1, 2015, in relation to real property located
3 at 3587 Desatoya Drive, Carson City, Nevada 89701. A Default Judgment was entered by
4 this Court on January 4, 2019. The Default Judgment directed that the property be forfeited
5 to Plaintiff pursuant to NRCP 453.301 et seq. On or about October 4, 2019, Sylvia Fred filed
6 a Motion to Vacate the Default Judgment in the above-referenced case. The motion is signed
7 and dated August 23, 2019 and contains a Certificate of Service page that is also signed and
8 dated the same. But the Certificate of Service is blank and therefore the motion is
9 procedurally defective because it was not properly served upon Plaintiff or counsel.¹

10 Courts have an inherent "traditional power to manage their own affairs so as to achieve
11 the orderly and expeditious disposition of cases." *In re Lavender*, 180 F.3d 1114, 1118 (9th
12 Cir. 1999) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991)). This Court has inherent
13 judicial discretion to take necessary action to correct or sanction improperly filed documents
14 so as to achieve the orderly and expeditious disposition of cases and to avoid congestion of
15 its calendar. Such action can include striking procedurally defective briefs or other papers
16 improperly filed with the court. See e.g., *Lavender*, 180 F.3d at 1118; *Chambers*, 501 U.S. at
17 43. Such improperly-filed briefs have been referred to as "fugitive" documents. See *Craig v.*
18 *Harrah*, 65 Nev. 294, 311, 195 P.2d 688, 695 (1948).

19 Pursuant to NRCP 12(f), a court may "order stricken from any pleading any insufficient
20 defense or any redundant, immaterial, impertinent, or scandalous matter." Although NRCP
21 12(f) references on only "pleadings," courts have shown a willingness to strike improperly filed
22 documents even when such stricken documents are not pleadings. See *Ctr. for Biological*
23 *Diversity v. U.S. Fish & Wildlife Service*, 450 F.3d 930, 944 (9th Cir. 2006)² (district court did
24 not abuse its discretion in striking a plaintiff's extrinsic document because the document was
25

26 ¹ The District Attorney's office received a copy of the motion and date stamped it October 4, 2019, but it is
27 unclear how it was received by the office, whether it be courtesy copy by the clerk's office or other means.
Without a proper certificate of service, it is difficult to determine.

28 ² Although not necessarily binding, Nevada courts consider federal cases interpreting the Federal Rules of Civil
Procedure as "strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part
upon their federal counterparts." See *Ford v. Branch Banking and Trust Co.*, 131 Nev. ___, 353 P.3d 1200, 1202
(2015).

1 offered for an impermissible use); see also *Hambleton Bros. Lumber Co. v. Balkin*
2 *Enterprises, Inc.*, 397 F.3d 1217, 1226 (9th Cir. 2005) (court granted motion to strike an errata
3 notice and witness' declaration where the filing of such papers did not comport with
4 procedural rules).

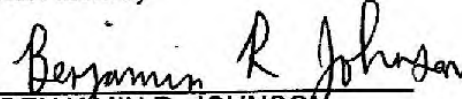
5 Nevada Rule of Civil Procedure 5(a)(1)(D) requires service of a written motion on every
6 party. The rules permit service by hand delivery or by mail, among other methods. Rule
7 5(a)(4) also requires a proof of service by certificate or acknowledgement and should
8 accompany the filing. Ms. Fred failed to comply with the requirements of NRCP 5 regarding
9 service. It is unclear if service was actually made upon the District Attorney's office even
10 though a copy was subsequently received. The motion also fails to include the required
11 certificate of service. Because the motion was not properly served, it is a rogue document and
12 subject to being stricken by the Court.

13 **III. CONCLUSION**

14 For the foregoing reasons, Defendant respectfully requests that this Court strike Sylvia
15 Fred's Motion to Vacate the Default Judgment and order proper service be completed.

16 DATED this 18th day of October, 2019.

17 JASON D. WOODBURY
18 District Attorney

19 By: 
20 BENJAMIN R. JOHNSON
21 Deputy District Attorney
22
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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 18th day of October, 2019, I served a true and correct copy of the foregoing **MOTION TO STRIKE** on the following parties by placing said document for delivery by U.S. Mail, first class postage attached and addressed to:

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

Alecia Casu

Your Name: Sylvia Fred
Mailing Address: P.O. Box 1150
City, State, Zip: Red Lake, MN 56671
Telephone: 218.553.0199
In Proper Person

REC'D & FILED
2019 OCT 23 PM 4:20

AUDNEY DECLAT

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

State of Nevada,
Plaintiff,

Case No.: 150C00074 1B
Dept. No.: II

vs.

**RESPONSE TO MOTION
TO strike**

Sylvia Fred / Elvin Fred
Defendant.

I, Sylvia Fred, respond to the Motion to
(Your Name)

Strike filed by Jason D. Woodbury, District
(Title of Motion to which you are responding to) (Name of other party) Attorney

on October 18, 2019 for the following reasons:
(Date Motion was filed)

State very specifically why you oppose or why you agree with the motion or request. If you agree with a part of the motion or request but disagree with another part, state that also.

For the record, my name is Sylvia Fred. My correct mailing
address is P.O. Box 1150, Red Lake, MN 56671. I do not reside
on said property, however, I am the lawful owner of: 3587
Desertaya Dr., Carson City, NV 89701, Parcel number: 010-443-11.
I was not lawfully notified nor served, and contest the
Default Judgement. I have the right to own private property
and the right to Due Process.

1 Records prove that the plaintiff had my address on file and
2 was aware that I am the lawful owner of said property.
3 I was mailed a document, "A true and correct copy of the
4 Order is attached hereto and marked as Exhibit 1. Dated
5 this 28th day of April, 2015... of Notice of Entry of Order,
6 that a stipulation and Order to Stay Forfeiture Proceeding ("Order")
7 was entered by the First Judicial District Court of the State
8 of Nevada in and for Carson City on April 27, 2015." please
9 see Exhibit 1, which reflects that my address is on file.
10 Records also reflect that I was not lawfully served or
11 notified about any court proceedings regarding my property,
12 thereafter.

13 An Amended Default Judgement was entered on record on
14 May 8, 2019. According to the document, the Certificate of
15 Service was only sent to: Loven Graham, Esq., P.O. Box 6329,
16 Stateline, NV 89449, on May 9, 2019. Loven Graham is not
17 a property party in this proceeding, nor is affiliated with
18 this case. (Please see Exhibit 2). Had due diligence been done,
19 (If more space is needed to explain your position or make your argument, you may attach more
20 sheets, but be sure to write only on one side of the paper.)

21 I do request a hearing on this matter.
22 (do, or do not)

23 If a hearing is requested, please state why you feel a hearing is necessary: I was
24 not lawfully notified
25

the court would be aware of this.

The only reason I found out about the Default Judgement on my property, was after I received a phone call from my sister, Lisa Fred, stating that she was being evicted from my property around July 6, 2019. I immediately corresponded via phone and email, with Sgt. C. McCann, who signed and initiated the, "5 Day Notice to Tenant to Terminate Tenancy At Will," (Please see Exhibit 3.) I responded as the property owner with a letter to the Judge. (Please see Exhibit 4.)

I then filed a "motion to vacate the Default Judgement" on October 4, 2019, with Court Clerk (stamped), in addition to an "Affidavit of Service," (also stamped). This document was served on October 4, 2019, by Lawanda Jones, in person, to the District Attorney's Office, 885 E. Musser St., Carson City, NV, 89701. This document was accepted by the District Attorney's receptionist on behalf of District Attorney, Jason Woodbury. Please see Personal Service of Process, Exhibit 5.

In conclusion, The plaintiff was correctly and lawfully served with, "Motion to vacate the Default Judgement," Complaint on October 4, 2019, by Lawanda Jones, in person, which seems to be the focus of their "motion to Strike."

NRS (Nevada Revised Statute) 179.1171, Proceeding for Forfeiture: The Plaintiff shall cause service of the Summons and Complaint to be made upon each claimant whose identity is known to the Plaintiff or who can be identified through the exercise of reasonable diligence.

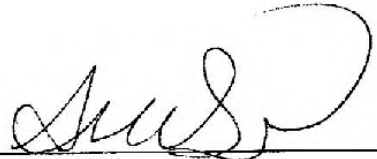
The Civil Asset Forfeiture Reform Act amends the Federal Criminal Code (the Code) to establish general rules relating to civil forfeiture proceedings, (Sec. 2). Sets forth notification requirements with respect to seized property and civil forfeiture proceedings, including:

- 1) a requirement that the notice to Government is required to send to interested parties in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute be sent to achieve proper notice as soon as practicable and within 60 days after the date of the seizure; and
- 2) required conditions for extending the notification period.

This Act also declares that an innocent owner's interest in property shall not be forfeited under any civil forfeiture statute.

1
2
3 I declare, under penalty of perjury under the law of the State of Nevada, that the
4 foregoing is true and correct.

5 Date: Oct. 23, 2019

6
7 
8 (Signature)
9

10
11 **CERTIFICATE OF SERVICE**
12

13 Pursuant to NRCP 5(b), the undersigned hereby certifies that on this date, I deposited a
14 true and correct copy of the foregoing Motion in the U.S. Mail with postage pre-paid thereon,
15 addressed to:

16 _____
17 _____
18 _____

19 Dated this _____ day of _____, 20_____.
20

21
22 _____
23 (Signature)
24
25

EXHIBIT 1

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)

REC'D & FILED

2015 APR 28 PM 1:03

SUSAN MERRIWETHER
CLERK

BY 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 CARSON CITY DISTRICT ATTORNEY

5
6 By: 

7 JASON D. WOODBURY

8 District Attorney

9 Nevada Bar Number: 6870

10 ATTORNEY FOR:

11 INVESTIGATION DIVISION OF THE

12 DEPARTMENT OF PUBLIC SAFETY

13 OF THE STATE OF NEVADA

14 (Tri-Net Narcotics Task Force)

15
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Office of the District Attorney

Carson City, Nevada

805 East Musser St., Suite 2000, Carson City, Nevada 89701

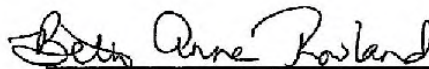
Tel.: (775) 687-2070 Fax: (775) 687-2129

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



Office of the District Attorney
Carson City, Nevada
885 East Main St., Suite 2030, Carson City, Nevada 89701
Tel.: (775) 887-2000 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	Stipulation and Order to Stay Forfeiture Proceeding	2

EXHIBIT 1

EXHIBIT 1

REC'D & FILED

2015 APR 27 PM 3:30

SUGAN 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
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

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;

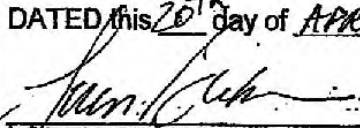
3 NRS 179.1173(2) provides:


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

13 
JASON D. WOODBURY
Attorney for Plaintiff

15 IT IS SO ORDERED.

16 DATED this 27 day of April, 2015.

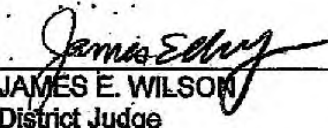
17
18 
19 JAMES E. WILSON
20 District Judge
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EXHIBIT 2

1 Case No. 15 OC 00074 1B

REC'D & FILED

2 Dept. No. II

2019 MAY -8 PM 1:59

AUBREY ROWLANDT
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
15 Park Development, Inc., filed in the office of
16 the Recorder of Carson City, Nevada on
17 August 11, 1989 as File No. 89253, Carson
18 City Assessor's Parcel Number: 010-443-
19 11.

AMENDED DEFAULT JUDGMENT

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

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

DATED this 8 day of May, 2019.


DISTRICT COURT JUDGE

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

Rebecca Davis

Office of the District Attorney
Carson City, Nevada
808 East Musser St., Suite 2030, Carson City, Nevada 89701
Tel.: (775) 887-2072 Fax: (775) 887-3128

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 ROHLATT
CLERK
BY J. HARKLEROAD
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:

Benjamin R. Johnson
26 BENJAMIN R. JOHNSON, #10632
27 Deputy District Attorney
28

EXHIBIT 3

State of the property now held and occupied by you as will on this date

DATE 7/10/75 S. J. McNamee
OWNER OR DECT AUTHORITY S. J. McNamee
PHONE (725) 684-7431
ADDRESS 1000

EXHIBIT 4

Sylvia Fred
PO Box 1150
Red Lake, MN 56671

August 5, 2019

Case # 19EV004801C

Dear Honorable Judge

I am writing this letter in regard to my property 3587 Desaiya Drive (Parcel # 010-443-10) Carson City, Nevada. I am the legal owner of said property.

I received a voice phone call from my sister around July 6, 2019 about a 5 day or will eviction that was placed on the door signed and dated by Sgt. C. McCann.

After communicating via phone and email with Sgt. C. McCann I found out that there was a permit placed on my property May 2, 2019. I was never notified about any court proceedings regarding my property. This court action is very concerning to me.

My Due process rights were violated. According to law I have the right to due process and that no person may be deprived of life, liberty, or property without due process of law.

My sister has my permission to reside on my property 3587 Desaiya Drive (Parcel # 010-443-10) Carson City, Nevada. I am not evicting her from the property.

Thank you. If you have any questions please do not hesitate to contact me.

Sincerely,

Sylvia Fred 8/6/19

Sylvia Fred
218-558-0199

James C. McCann
CLERK
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

EXHIBIT 5

Your Name:
Mailing Address:
City, State, Zip:
Telephone:
In Proper Person

Sylvia Fred
PO BOX 1150
Red Lake, MN 56571
218.553-0199

REC'D & FILED

2019 OCT -4 PM 1:05

AUBREY ROWLATT
CLERK

BY [Signature] DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

Sylvia Fred State of MN
Plaintiff/Petitioner,

Case No.: 150C000741B1B

Dept. No.: II

vs.

Sylvia Fred / Elvin Fred
Defendant/Respondent.

MOTION

TO Vacate the Default
Judgement

I Sylvia Fred, appearing in Proper Person,
(Your Name)

request that the Court enter an Order granting me the following:

State what you want the Court to order. If you have more than one request, clearly list and number each request. Do not explain your requests in detail here, just list them.

plaintiff has never attempted to notify
me about my property, 3587 Disatoya Dr
(Parcel #010-443-11) Carson City, Nevada
89701

I received a worrisome phone call from
my sister on July 6, 2019 about a "5 day
at will eviction" that was placed on the

1 Fully explain why you believe you should be granted your request(s).
2 List and number each request.

3 This Motion is made for the following reasons:

4 ~~copy~~ of my property signed and dated by
5 ~~Sgt~~ ^{Sgt} C. McCann

6
7 Immediately after July 6, 2019, I attempted to contact
8 Sgt C. McCann via phone. After ~~numerous~~ ^{several}
9 numerous attempts, we made connections and I
10 requested information sent to me.

11
12 Upon contacting and initiating communication with
13 Sgt C. McCann, he sent me an email on July 18, 2019
14 with an attachment of an "Unlawful Detainer
15 Notice" for my residence 3587 Desataya Dr. (Parcel #
16 010-443-11), Carson City, Nevada, 89701.

17
18 On July 18, 2019, Sgt. C. McCann sent me another
19 email with an attachment of an "Amended Default
20 Judgment," stamped and dated May 8, 2019.

21
22 I have never received any correspondence from
23 Plaintiff in regards to my property. I was not
24 properly served with the Summons and Complaint.

3(a)

Lack of notice renders a default judgement void.

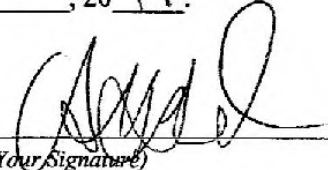
If I was properly notified, I would have been in attendance to the court proceedings

1 (If you need more room, you may attach additional sheets of paper. Be sure you write only on
2 one side of each sheet, number the page or pages 3(a), 3(b), etc. and initial each page at the
3 bottom.)

4 This document does not contain the Social Security number of any person.

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

7 DATED this 23 day of August, 20 19.

8 
(Your Signature)

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned hereby certifies that on this date, I deposited a true and correct copy of the foregoing Motion in the U.S. Mail with postage pre-paid thereon, addressed to:

Dated this 23 day of August, 2019.

(Your Signature)



Your Name: Sylvia Fred
Mailing Address: P.O. Box 1150
City, State, Zip: Red Lake MN 56671
Telephone: 218-553-0199
In Proper Person

REC'D & FILED

2010 OCT -4 PM 1:10

AUBREY ROWLATT
CLERK

BY [Signature] DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

State of NV

Plaintiff,

vs.

Sylvia Fred / Elvin Fred
Defendant.

Case No.: 15000074 1B

Dept. No.: II

AFFIDAVIT OF SERVICE

STATE OF NEVADA)
)ss
CARSON CITY)

Lawanda Jones, being first duly sworn under penalties of
(Name of person making service)

perjury, states as follows:

1. That I am: (check the appropriate blank)

_____ a party to this action and am appearing in proper person.

X a person not involved in this action and have no interest in this action and
am over the age of 18 years.

2. That on the 4th day of October, I served a true and correct copy
(day) (month) (year)
of the document(s) entitled: To vacate the Default Judgment
(Clearly list all documents you served on the other party)

in the following way: (check the appropriate blank, and fill in the appropriate information)

1 **IF THE DOCUMENTS WERE SERVED BY MAIL ON THE OTHER PARTY, OR THE**
2 **OTHER PARTY'S LAWYER, FILL IN THE FOLLOWING:**

3 _____ by placing a copy enclosed in a sealed envelope upon which first class postage
4 was fully prepaid.

5 _____ by placing a copy enclosed in a sealed envelope and mailing it certified, return
6 receipt requested.

7 The envelope was addressed to:

8 (Name) _____

9 (Address) _____

10 and that there is regular communication by mail between the place of mailing and the place
11 addressed.

12 **IF THE DOCUMENTS WERE PERSONALLY SERVED ON THE OTHER PARTY, OR**
13 **THE OTHER PARTY'S LAWYER, FILL IN THE FOLLOWING:**

14 ☒ by personally serving:

15 (Name) District Attorney's Office

16 at (address) 885 E. Musser St.

17 Carson City, NV 89701

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

20 Date: 10/4/19

21 Lawanda Jones
22 (Print name)

23 [Signature]
24 (Signature)

Your Name: Sylvia Fred
Mailing Address: P.O. Box 1150
City, State, Zip: Red Lake, MN 56671
Telephone: 218-553-0199
In Proper Person

REC'D & FILED

2019 OCT 23 PM 4:21

AUDREY ROBERTS

BY [Signature] DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

State of Nevada
Plaintiff,

vs.

Sylvia Fred Lehn Fred
Defendant.

Case No.: 150C00074 1B

Dept. No.: II

AFFIDAVIT OF SERVICE

STATE OF NEVADA)
)ss
CARSON CITY)

Lawanda Jones, being first duly sworn under penalties of
(Name of person making service)

perjury, states as follows:

1. That I am: (check the appropriate blank)

 a party to this action and am appearing in proper person.

 X a person not involved in this action and have no interest in this action and
am over the age of 18 years.

2. That on the 23 day of October, 2019, I served a true and correct copy
(day) (month) (year)
of the document(s) entitled: Response to Motion to Strike and
(Clearly list all documents you served on the other party)
Request for submission

in the following way: (check the appropriate blank, and fill in the appropriate information)

1 **IF THE DOCUMENTS WERE SERVED BY MAIL ON THE OTHER PARTY, OR THE**
2 **OTHER PARTY'S LAWYER, FILL IN THE FOLLOWING:**

3 _____ by placing a copy enclosed in a sealed envelope upon which first class postage
4 was fully prepaid.

5 _____ by placing a copy enclosed in a sealed envelope and mailing it certified, return
6 receipt requested.

7 The envelope was addressed to:

8 (Name) _____

9 (Address) _____

10 and that there is regular communication by mail between the place of mailing and the place
11 addressed.

12 **IF THE DOCUMENTS WERE PERSONALLY SERVED ON THE OTHER PARTY, OR**
13 **THE OTHER PARTY'S LAWYER, FILL IN THE FOLLOWING:**

14 X by personally serving:

15 (Name) JASON D. WOODBURY - Distric Attorney office

16 at (address) 885 E. Musser St.

17 CARSON CITY, NV 89701

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

20 Date: OCT. 23, 2019

21 Lawanda Jones
22 (Print name)

23 [Signature]
24 (Signature)
25

Your name: Sylvia Fred
Mailing Address: P.O. Box 1150
City, State, Zip: Red Lake, MN 56671
Telephone: 218-553-0199
In Proper Person

REC'D & FILED

2019 OCT 23 PM 4:21

AUBREY KOWALSKI

BY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

State of Nevada

Plaintiff,

Case No.: 150C000741B

Dept. No. II

vs.

REQUEST FOR SUBMISSION

Sylvia Fred / Elvin Fred

Defendant.

COMES NOW, Sylvia Fred, in proper person, and hereby
(Your Name)
requests that the Motion to Vacate the Default Judgement previously filed
(Name of Document Previously Filed)
in the above-entitled matter on October 4, 20 19, be submitted to
(Date Document Filed)
the Court for consideration.

DATED this 23 day of October, 20 19.

[Signature]
(Signature)

1 Name: Sylvia Fred
2 Address: P.O. Box 1150
3 City, State, Zip: Red Lake, MN 56671
4 Telephone: 218-553-0199

REC'D & FILED

2019 OCT 24 AM 11:21

AUBREY HOWLATT
CLERK

[Signature]
DEPUTY

5 In The First Judicial District Court of the State of Nevada
6 In and for Carson City

7 State of Nevada

8 Plaintiff,

9 vs.

10 Sylvia Fred / Elvin Fred

11 Defendant.

Case No.: 150C00074.1B

Dept. No.: II

12 CERTIFICATE OF MAILING

13 I, (name of person who mailed the document) LAWANDA JONES
14 declare under penalty of perjury under the law of the State of Nevada that the following is true
15 and correct. That on (date) October 24, 2019, service of the:

16 ☒ (check all that apply)

17 ☐ Motion

☐ Answer

☐ Financial Disclosure Form

18 ☐ Opposition

☐ Reply

☐ Notice of Entry of Judgment/Order/Decree

19 ☒ Other: Request for Submission, and Response to Motion
20 TO STRIKE

21 was made pursuant to NRCF 5(b) by depositing a copy in the U.S. Mail in the State of Nevada,
22 postage prepaid, addressed to:

23 (Print the name and address of the person you mailed the document to)

24 Jason D Woodbury - District Attorney Office

25 885 E. Musser St.


26 Carson City, NV 89701

27 DATED this 24 day of October, 2019.

28 Submitted By: (your signature)

[Signature]

JASON D. WOODBURY
DISTRICT ATTORNEY
Nevada Bar Number: 6870
885 E. Musser Street, Suite 2030
Carson City, Nevada 89701
(775) 887-2070
Attorney For: Plaintiff

REC'D & FILED
2019 NOV -1 PM 3:37
ANDREY ROWLATT
CLERK
BY  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
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 FOR ENLARGEMENT OF TIME TO FILE OPPOSITION TO
MOTION TO VACATE DEFAULT JUDGMENT**

Plaintiff, 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 BENJAMIN R.
JOHNSON, Deputy District Attorney, hereby moves this honorable Court for an enlargement
of time to oppose Claimant Sylvia Fred's (Claimant) Motion to Vacate Default Judgment. This
motion is based on the following memorandum of points and authorities and all papers and
pleadings on file in this case. A hearing on this matter is not requested.

I. LAW AND ARGUMENT

The "plain language" of NRCP 6(b) gives this Court "discretion to enlarge the time
when an act is 'required . . . to be done at or within a specified time' under 'these rules or by a

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1 notice given thereunder or by order of the court.” *In re Estate of Black*, 132 Nev. Adv. Op 7,
2 367 P.3d 416, 418 (2016) (quoting NRCP 6(b)) (alteration in original). The Rule states as
3 follows:

4 When by these rules or by a notice given thereunder or by order of
5 court an act is required or allowed to be done at or within a
6 specified time, the parties, by written stipulation of counsel filed in
7 the action, may enlarge the period, or the court for cause shown
8 may at any time in its discretion (1) with or without motion or notice
9 order the period enlarged if request therefor is made before the
10 expiration of the period originally prescribed or as extended by a
11 previous order, or (2) upon motion made after the expiration of the
specified period permit the act to be done where the failure to act
was the result of excusable neglect; but it may not extend the time
for taking any action under Rules 50(b), 50(c)(2), 52(b), 59(b), (d)
and (e) and 60(b), except to the extent and under the conditions
stated in them.

12 In applying NRCP 6(b), the Nevada Supreme Court has explained that the rule
13 “provides that the district court may exercise its discretion to grant an enlargement of time to
14 take an action that is otherwise required to be done within a specified time.” *Moseley v.*
15 *Eighth Judicial Dist. Court*, 124 Nev. 654, 662, 188 P.3d 1136, 1142 (2008).

16 Claimant filed a Motion to Vacate Default Judgment on October 4, 2019. The
17 certificate of service was blank, leading counsel to believe that it had not been properly
18 served. As a result, Plaintiff filed a Motion to Strike requesting that Claimant follow the rules
19 of civil procedure. It was not until Claimant filed her Opposition was it evident that she had
20 previously filed an Affidavit of Service. Plaintiff has separately filed a Notice of Withdrawal of
21 Motion to Strike but additional time is needed to respond to Claimant’s Motion to Vacate due
22 to counsel’s large workload.

23 Additionally, Plaintiff has been trying to contact Claimant to resolve the case outside of
24 court. Plaintiff hereby request an enlargement of time of 21 days, up to and including
25 November 22, 2019, to file an Opposition to Claimant’s Motion to Vacate. This time will allow
26 the parties to attempt informal settlement negotiations and if that is not successful, to allow
27 Plaintiff time to file an Opposition. This is the first request for an enlargement of time and is
28 not made for the purposes of undue delay and will not prejudice the Claimant.

1 **II. CONCLUSION**

2 Because Plaintiff needs additional time to prepare an opposition to the Motion to
3 Vacate and to allow the parties an opportunity to resolve the case, Plaintiff respectfully
4 requests that this Court grant their motion and allow an additional 21 days, up to and
5 including November 22, 2019 to file their opposition.

6 DATED this 1st day of November, 2019.

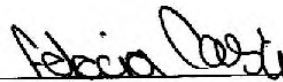
7 JASON D. WOODBURY
8 District Attorney

9 By: Benjamin R. Johnson
10 BENJAMIN R. JOHNSON
11 Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 1st day of November, 2019, I served a true and correct copy of the foregoing **MOTION FOR ENLARGEMENT OF TIME TO FILE OPPOSITION TO MOTION TO VACATE DEFAULT JUDGMENT** on the following parties by placing said document for delivery by U.S. Mail, first class postage attached and addressed to:

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



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

1 JASON D. WOODBURY
2 DISTRICT ATTORNEY
3 Nevada Bar Number: 6870
4 885 E. Musser Street, Suite 2030
5 Carson City, Nevada 89701
6 (775) 887-2070
7 Attorney For: Plaintiff

REC'D & FILED
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AUBREY ROWLATT
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 WITHDRAWAL OF MOTION TO STRIKE

Plaintiff, 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 BENJAMIN R.
JOHNSON, Deputy District Attorney, hereby moves to voluntarily withdraw its Motion to
Strike. Counsel for Plaintiff was unaware that an Affidavit of Service was filed separately from
the Motion to Vacate Default Judgment.

DATED this 1st day of November, 2019.

JASON D. WOODBURY
District Attorney

By: [Signature]

BENJAMIN R. JOHNSON
Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 1st day of November, 2019, I served a true and correct copy of the foregoing **NOTICE OF WITHDRAWAL OF MOTION TO STRIKE** on the following parties by placing said document for delivery by U.S. Mail, first class postage attached and addressed to:

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

Adelia Casia

REC'D & FILED

2019 NOV -8 AM 9:26

AUDREY E. WILSON
CLERK

BY

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

In Re: CASE NO. 15 OC 00074 1B

3587 Desatoya Drive, Carson City, Nevada DEPT. 2
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 for 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 MOTION TO VACATE DEFAULT JUDGMENT

Sylvia Fred filed a motion to vacate the default judgment in this case. Ms. Fred is not a named party in this case. She alleges she owns the real property that is the subject of this action but offered no documentary proof that she owns the property. Ms. Fred has not shown that she is a real party in interest or that she has standing, and should be allowed to participate in this case.

THE COURT ORDERS:

The motion to vacate the default judgment is denied.

November 7, 2019.

James E. Wilson Jr.
James E. Wilson Jr.
District Judge

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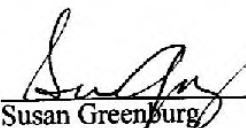
CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on November 8 2019, I served a copy of this document by placing a true copy in an envelope addressed to

Benjamin Johnson, Esq.
885 E. Musser St.
Carson City, NV 89701
(via DA mailbox)

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

the envelope sealed and then deposited in the Court's central mailing basket in the Court Clerk's Office for delivery to the United States Post Office at 1111 South Roop Street, Carson City, Nevada for mailing.


Susan Greenburg
Judicial Employee

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

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11 INSTITUTE FOR JUSTICE
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13 *Attorneys for Plaintiff*

14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
15 **IN AND FOR THE COUNTY OF WASHOE**

16 STEPHEN LARA,
17 Plaintiff,
18 v.

19 STATE OF NEVADA ex rel. Department of
20 Public Safety, Highway Patrol Division;
21 COLONEL ANNE CARPENTER, in her
22 official capacity as Chief of the Nevada
23 Highway Patrol; and SERGEANT GLENN
24 RIGDON, in his official capacity as an officer
25 of the Nevada Highway Patrol; and JOHN
26 DOES I-X,
27 Defendants.

Case No.

Dept. No.

COMPLAINT

JURY TRIAL DEMANDED

**(Exempt from Arbitration per NAR 3(A)
Declaratory Relief Requested)**

25 ///

1 Plaintiff Stephen Lara makes the following Complaint against Defendants the State of
2 Nevada ex rel. Department of Public Safety, Highway Patrol Division; Colonel Anne Carpenter, in
3 her official capacity as Chief of the Nevada Highway Patrol; Sergeant Glenn Rigdon, in his official
4 capacity as an officer of the Nevada Highway Patrol; and JOHN DOES I-X (collectively
5 “Defendants”). Plaintiff alleges the following:

6 **INTRODUCTION**

7 1. Stephen Lara files this lawsuit to establish that officers of the Nevada Highway
8 Patrol (“NHP”) unconstitutionally seized his life savings—\$86,900—without probable cause, and
9 did so for the purpose of turning his money over to the U.S. Drug Enforcement Administration
10 (“DEA”) for federal “adoption” and “equitable sharing” of the proceeds for the benefit of NHP and
11 DEA.

12 2. Under the U.S. Department of Justice’s (“DOJ’s”) “equitable sharing” program,
13 federal law enforcement agencies can “adopt” property seized by state and local agencies. An
14 adoption occurs after state officers seize property, under state law, and a federal agency handles the
15 investigation and prosecution, under federal law. The federal agency keeps 20 percent of the
16 resulting proceeds and returns 80 percent to the state agency, assuming the government forfeits the
17 property by one of several means—for example, the owner defaults by missing a deadline, the
18 government wins a civil forfeiture case (in rare cases) or wins administrative forfeiture with zero
19 judicial involvement (in most cases). In 2019, more than 85 percent of federal seizures were
20 disposed of through the administrative process.

21 3. In this case, Lara’s money is no longer subject to federal forfeiture. All
22 administrative and judicial forfeiture routes are now closed. Under the Civil Asset Forfeiture
23 Reform Act of 2000 (“CAFRA”), the government had to do one of three things before, at the latest,
24 July 26, 2021: (1) obtain a criminal indictment, (2) obtain an extension, or (3) begin civil forfeiture
25 proceedings. Having done none of these things, DEA was required to “promptly” return Lara’s
26 money 36 days ago.

27 4. Lara still does not have his money. He has filed a motion in the U.S. District Court
28 for the District of Nevada seeking its immediate return based on CAFRA. *See Lara v. U.S. Drug*

5. Based on Nevada law, Lara urges this Court to (1) declare that state law does not authorize NHP's participation in federal adoption and equitable sharing; and, regardless, (2) declare that the due process protections of the Nevada Constitution prohibit NHP's participation because it creates a substantial financial incentive to seize property without probable cause; (3) enjoin NHP's continued participation; (4) award compensatory and nominal damages to Lara; (5) declare that he was entitled to an interim probable-cause hearing before a neutral magistrate; and (6) enjoin the state and require interim hearings, in all cases, within 30 days of seizure.

PLAINTIFF

6. Stephen Patrick Lara is a 39-year-old retired Marine sergeant from Lubbock, Texas. He was honorably discharged after 17 years of active-duty service, including tours in Iraq and Afghanistan as a data and cyber security specialist.

7. Lara married a fellow Marine. They had two children and later divorced.

8. The current custody arrangement requires Lara to travel regularly between his home in Lubbock, Texas, and Portola, California, where his children and ex-wife live.

9. For this reason, Lara drives through Reno at least once a month, sometimes while headed west toward California, sometimes east toward Texas, sometimes once in both directions over just four days.

10. He is a United States citizen and resident of the State of Texas.

11. He can be served through the undersigned attorneys.

DEFENDANTS

12. The State of Nevada ex rel. Department of Public Safety, Highway Patrol Division, is a governmental agency created under the laws of the State of Nevada. NHP is charged with patrolling the state's highways and enforcing its laws.

13. Colonel Anne Carpenter is Chief of NHP. Her duties include ultimate command over NHP's training of officers and its compliance with legal obligations. She is sued in her official capacity.

JURISDICTION & VENUE

17. This Court has jurisdiction to award injunctive relief under Nev. Const. art. VI, § 6, cl. 1, and NRCp 65; award declaratory relief, injunctive relief, and attorneys' fees and costs under NRS 30.030, 30.040, and 30.120; and award monetary damages under NRS 41.010 and NRS 41.031.

18. Venue is proper in this Court under NRS 13.020 and NRS 41.031 because the seizure of Plaintiff's money occurred in Washoe County and Defendants' illegal and unconstitutional actions occurred, in part, in Washoe County. The amount in controversy exceeds \$15,000.00

GENERAL FACTUAL ALLEGATIONS

Unconstitutional Stop

19. The warrantless seizure of Stephen Lara's money was unreasonable and lacked probable cause.

20. On February 19, 2021, Lara was on the last leg of a drive from Lubbock, Texas, to Portola, California to visit his two children, when he was pulled over on Interstate 80 just outside of Sparks, Nevada.

1 21. Trooper Chris Brown of the Nevada Highway Patrol (badge no. 250) conducted the
2 traffic stop.¹

3 22. Lara—who is Hispanic—was driving a rental car with Texas plates.

4 23. The day before—during an unprecedented cold snap in Texas—Lara discovered he
5 had a flat tire. Thinking he had a slow leak, he took the car to a tire shop, where he learned that the
6 wheel was cracked. Needing to get on the road early that morning to make it to California by Friday,
7 Lara rented a car from the airport with his father’s help and placed the cracked wheel and flat tire
8 in the trunk.

9 24. Under NRS Chapter 239, *et seq.*, Nevada’s Open Records Act, Lara obtained dash
10 and bodycam recordings of the encounter from the perspective of four NHP officers, including
11 Trooper Brown. Plaintiff bases many of his allegations below on those recordings. All quotations
12 are based on counsel’s true and correct transcription of the recordings.

13 25. From his time living just west of Reno, Lara knew a reliable shop in Sparks where
14 he could drop off the wheel and pick it up on his return trip.

15 26. As Lara approached Sparks, Trooper Brown was parked in the median along a two-
16 lane stretch of westbound I-80. Trooper Brown began following in a marked NHP patrol vehicle.
17 With Lara traveling in the right lane, Trooper Brown shadowed him from the left lane. Trooper
18 Brown matched Lara’s speed so that the two vehicles were driving below the speed limit in
19 formation.

20 27. As they approached a tractor-trailer in the right lane, Lara waited for Trooper
21 Brown’s patrol car to pass by in the left lane. Instead, Trooper Brown waited several moments for
22 Lara to make the first move. Lara eventually signaled and moved into the left lane, in front of the
23 patrol vehicle. “There you go,” Trooper Brown was recording saying as Lara changed lanes.

24 28. Maintaining his speed, Lara went around the tractor-trailer, signaled again, and
25 returned to the right lane.

26 29. Trooper Brown followed, explaining (seemingly to himself), “the driver of this
27 vehicle is following that red and blue semi-truck too closely, less than a second following distance.

28

¹ Plaintiff does not know the precise spelling of Brown’s first name.

1 Also driving under the speed limit which is really odd.” Deciding he would “make sure everything
2 is okay,” Trooper Brown called in the plates on Lara’s car, turned on his emergency lights and
3 pulled him over, directing him to a safe turnout.

4 30. Trooper Brown approached Lara’s vehicle and initially praised his driving, saying
5 “first, applaud you on your driving. You drive great Appears that you’re driving, trying to
6 drive safely under the speed limit. I appreciate that.” But, “the reason I am stopping you [is] we
7 have a special enforcement campaign going on. We’re trying to educate drivers about violations
8 they may not realize they’re committing”

9 31. Trooper Brown continued: “I just want to talk to you about your following distance,
10 especially around commercial vehicles. You came up behind a red and blue tanker truck a little bit
11 too close behind him before you made that lane change to go around him . . . I was waiting for you
12 to—trying to give you room to get over there.”

13 32. Trooper Brown took Lara’s driver’s license and rental agreement (in lieu of the
14 vehicle’s registration). He confirmed that Lara had no weapons and ordered him out of the vehicle.
15 Directing Lara to stand beside his patrol vehicle, Trooper Brown reassured him that “as long as
16 everything is valid, my intention is to get you on down the road.”

17 ***Unconstitutional Seizure***

18 33. Instead, Lara was detained for more than 90 minutes, as Trooper Brown, three
19 officers from an NHP highway-interdiction unit, a police dog, and a Washoe County Sheriff’s
20 deputy investigated.

21 34. Lara cooperated with the investigation. He answered all of Trooper Brown’s
22 questions about his travels, background, family, bank accounts, monthly expenses, sources of
23 income, and other topics. Lara readily answered questions from the other officers, invariably calling
24 them “sir” and trying to clear up what appeared to him to be a misunderstanding.

25 35. Lara volunteered that he had a large amount of cash in a backpack in his truck, telling
26 officers it was “about 100,000.” He gave consent to search the vehicle and directed Trooper Brown
27 to the money. Lara explained its legitimate sources—including military retirement benefits and
28

1 income from a hospital job that ended during the COVID-19 pandemic. He told officers the money
2 represented his “life savings,” cobbled together over 20 years.

3 36. Lara gave officers contact information for relatives he said could confirm his story
4 and he showed them receipts for every bank withdrawal over a three-year period.

5 37. After inspecting the receipts, Trooper Brown called his superior, Sergeant Glenn
6 Rigdon. Over the phone, Trooper Brown told Sergeant Rigdon: “I’m looking at the receipts. I mean,
7 it’s not a vacuum seal, but it’s a big bundle of money, in a Ziploc baggy, in a backpack in the trunk
8 in a two-day rental from Texas to Portola, returning on Monday. Nervous behavior, et cetera, et
9 cetera. So, I mean, the elements are all there.”

10 38. Roughly 30 minutes later, Sergeant Rigdon arrived at the scene. After finishing a
11 phone conversation in his patrol car, *see infra* ¶¶ 55–58, Sergeant Rigdon asked Trooper Brown
12 what he thought about Lara. The two officers privately agreed that “as odd as it is, everything lines
13 up” and that Lara’s banking information “jives with his story.”

14 39. At this point, roughly an hour into the stop, Trooper Brown appeared ready to let
15 Lara go with his money.

16 ***Dog Alert***

17 40. Sergeant Rigdon instructed Trooper Brown to “put the dog on the currency.”

18 41. While Trooper Brown went back to his patrol vehicle to fetch the dog, Sergeant
19 Rigdon placed Lara’s money in an open Ziploc bag (apparently the same one Lara had used) and
20 threw the open package to the ground on the side of the road less than 40 yards from Lara’s car.

21 42. Trooper Brown came back with the dog and asked Sergeant Rigdon where the
22 money was located. Rigdon gave him a ballpark (“from about 10 yards in front of his car to probably
23 about 10 yards behind that sign post right there.”).

24 43. Trooper Brown ran with the dog around the area once and, when the dog found the
25 money, Trooper Brown gave her a toy, called her a “good girl,” and, returning to his patrol vehicle,
26 said to Sergeant Rigdon simply, “positive alert.”

27 44. Sergeant Rigdon replied: “We’ll go forward with it.”

28 45. The entire process involving the dog lasted just two minutes.

Unconstitutional Incentive to Seize for Federal Adoption

46. The decision to seize Lara's life savings on a freeway outside of Reno was motivated by the prospect of federal adoption and payment to NHP through the DOJ's equitable sharing program.

47. The program distributes the proceeds of seizures and forfeitures to cooperating state and local law enforcement agencies. There are several ways to qualify for equitable sharing. The method used in this case was adoption—a process by which a federal agency takes control of property seized by state authorities, based on state law, and then investigates and prosecutes the case under federal law.

48. State and local law enforcement agencies collect hundreds of millions of dollars in this way each year. In 2019 alone, the federal government made \$333.8 million in equitable sharing payments to state and local law enforcement. From 2000 to 2019, that figure was \$8.8 billion nationwide.

49. In this case, NHP stood to gain \$69,520 from adoption and equitable sharing.

50. Trooper Brown called his counterpart at DEA within the first 25 minutes of the 90-minute traffic stop.

51. On information and belief, Trooper Brown called DEA Agent Shane Murray.

52. Trooper Brown can be heard on his bodycam calling someone named Shane and asking, "can you head out to a traffic stop or are you busy on that other stuff?" After a brief pause (presumably for Agent Murray to speak), Trooper Brown responded: "so far, I'm still searching the car but, a big bundle of money. He says probably at least 100,000." As the call ended, Trooper Brown asked: "will you just let me know ASAP? Okay. All right. Bye."

53. Eight minutes later, Trooper Brown called his supervisor (Sergeant Rigdon) on the phone and described the circumstances of the stop and his investigation.

54. While Trooper Brown was on the phone with Sergeant Rigdon, Agent Murray called back. Trooper Brown put his sergeant on hold and clicked over to speak with the other man. He listened for several seconds, said goodbye, and clicked back, saying: "You still there, Sarge? Yeah, Shane's not coming out."

1 55. Half an hour later, as Sergeant Rigdon arrived on the scene, he received a call from
2 Agent Murray. Sergeant Rigdon put the call on speaker and his bodycam recorded both men.

3 56. Sergeant Rigdon began the call: “What’s up, Shane?”

4 57. Agent Murray apologized for not being able to make it to the scene personally.
5 Sergeant Rigdon reassured him there would be “no issues” because “it’s too easy to do an adoption”
6 and “I think everything’s going to be okay.” He told Agent Murray he would “text you the money
7 count after we get it.” Agent Murray responded he would “look for the adoption.”

8 58. That is, Sergeant Rigdon arrived at the scene and, even before getting out of his car,
9 he had assured a DEA Agent there would be “no issues” because “it’s too easy to do an adoption”
10 and he would “text you the money count after we get it.”

11 59. As Sergeant Rigdon began his investigation, he asked Trooper Brown, “what are
12 your thoughts, Chris?” Trooper Brown responded: “I’m leaning more towards . . . it’s odd but”
13 Sergeant Rigdon interjected: “It’s odd but it’s not packed like normal,” seeming to refer to how
14 drug proceeds are normally packaged. Trooper Brown replied: “no and he’s answering the
15 questions, there’s receipts here.”

16 60. In response, Sergeant Rigdon told Trooper Brown to “put the dog on the currency.”
17 *See supra* ¶ 40.

18 61. In the next breath, Sergeant Rigdon observed that Lara’s bank receipts “are all
19 zeroed out [and] it jives with his story.” Trooper Brown replied: “Yes . . . as odd as it is, everything
20 lines up.”

21 62. Sergeant Rigdon asked Lara a few questions, including how long he had been saving
22 the money. Lara responded that he “started saving since I was in the Marine Corps, 20 years.”

23 63. Sergeant Rigdon and Trooper Brown conferred again, agreeing that they found the
24 age of the bills suspicious. Sergeant Rigdon: “Not old bills. Claims that he’s been saving it up over
25 20 years.” Trooper Brown: “That’s not 20-year-old bills.” Sergeant Rigdon: “All current bills,
26 so . . . consistent with what we see with drug traffickers.”

27 64. Neither officer seemed to consider that a person might “save” money over a 20-year-
28 period, at various points deposit money in a bank, and at various points take money out as cash. In

1 other words, saving money over a 20-year period does not necessarily mean stockpiling currency
2 for 20 years. And Lara's banking receipts showed that was not what he did.

3 65. After Trooper Brown "put the dog on the currency," *see supra* ¶ 40, Sergeant Rigdon
4 responded, "we'll go forward with it." Trooper Brown responded, "okay," and that ended the
5 discussion.

6 66. As Sergeant Rigdon explained to Lara, "we're going to seize it today, but that
7 doesn't mean we're going to make a final judgment on it. It's going to go through the DEA. So the
8 DEA is going to contact you, and the DEA will provide you with a means to fighting. You're going
9 to have to provide your pay stubs, you're going to have to provide your other receipts and stuff like
10 that, and we'll give you all the information for contacting them as well."

11 67. Sergeant Rigdon continued: "If it is legitimately earned income, you're going to be
12 able to provide those paystubs, and they will give you all your money back, but I believe it's drug
13 proceeds."

14 68. As Trooper Brown and Sergeant Rigdon prepared paperwork, another officer asked
15 "no Shane?" And Sergeant Rigdon replied, "no, Shane said he couldn't come out today, so we'll
16 do an adoption."

17 69. Lara was given an NHP receipt for an "unknown amount of U.S. Currency" with
18 instructions to "contact Agent Murray DEA Reno." (*See* Ex. 2, NHP Receipt, dated Feb. 19, 2021.)
19 Exhibit 3 is a true and correct copy.

20 70. DEA formally adopted NHP's seizure and initiated administrative forfeiture
21 proceedings just two weeks later. (*See* Ex. 3, Adoption Notice, dated Apr. 5, 2021 (providing notice
22 that the seizure of Lara's money was "adopted by the DEA on Marc[h] 4, 2021.")). Exhibit 3 is a
23 true and correct copy.

24 ***Unconstitutional Detention***

25 71. As of today, Lara's \$86,900 has been in custody for 193 days.

26 72. Even if NHP had probable cause (which it did not) to seize Lara's money, the
27 continued detention of his money is unreasonable and lacks probable cause.
28

1 73. To the best of Lara’s knowledge, no judicial officer (federal or state) has been
2 involved at any point to determine the constitutionality of the government’s actions. Rather, NHP
3 and DEA have determined, on their own authority, that there is probable cause to hold Lara’s money
4 for so long.

5 74. In response to DEA’s notice of seizure, Lara mailed a verified claim invoking his
6 right to federal court proceedings. (*See* Ex. 4, Verified Claim, dated Apr. 21, 2021.) Exhibit 4 is a
7 true and correct copy.

8 75. DEA received Lara’s claim no later than July 26, 2021, and deemed it filed the same
9 day.

10 76. DEA responded that his “claim ha[d] been accepted and this matter has been referred
11 to the [District of Nevada].” (*See* Ex. 5, DEA Response to Lara’s Verified Claim, dated May 21,
12 2021.) Exhibit 5 is a true and correct copy.

13 77. Based on the dates of these exchanges, the federal government had until July 26,
14 2021, at the latest, to decide whether to return Lara’s money, obtain a criminal indictment, obtain
15 an extension, or initiate federal civil forfeiture proceedings. *See* 18 U.S.C. § 983(a)(3) (requiring
16 the government to do one of those things within 90 days of the date on which the property owner
17 files a valid claim to the property).

18 78. DEA satisfied none of these requirements. It has not returned Lara’s money. It has
19 not obtained a criminal indictment. It has not obtained an extension. And it has not filed a federal
20 civil forfeiture case.

21 79. That is why, earlier today, Lara filed a motion in federal court seeking the immediate
22 return of his \$86,900 from DEA. . *See Lara v. U.S. Drug Enf’t Admin.*, Case No. 3:21-ms-00002
23 (ECF No. 1) (D. Nev. Aug. 31, 2021).

24 80. But regardless of the federal government’s decisions in the federal matter, NHP’s
25 primary—if not its sole—purpose for seizing Lara’s money was turning it over to DEA for federal
26 adoption and equitable sharing. Thus, NHP’s actions constitute an unconstitutional perversion of
27 probable cause under which all that mattered was that Lara had a lot of money which DEA was
28 willing to adopt.

1 81. As Sergeant Rigdon put it in explaining DEA's process to Lara, "if it is legitimately
2 earned income, you're going to be able to provide those paystubs, and they'll give you all your
3 money back, but I believe it's drug proceeds."

4 82. Sergeant Rigdon was explaining DEA's administrative forfeiture process, which
5 operates at the discretion of the agency. The federal administrative process is more favorable to the
6 government than the judicial forfeiture process, which requires a preponderance of evidence linking
7 property to crime. *See* 18 U.S.C. § 983(c).

8 83. But both federal avenues are more favorable than Nevada's forfeiture procedures.
9 Nevada law mandates that property may not be forfeited without a criminal conviction. *See*
10 NRS 179.1173(2). Nevada also requires the government to satisfy a burden of clear and convincing
11 evidence connecting the property to a crime. *See* NRS 179.1173.

12 84. Another reason why NHP might prefer federal adoption to state proceedings: At the
13 close of each fiscal year, if the state government's forfeiture account contains more than \$100,000,
14 70 percent of the excess must be given to the school district in the judicial district where the property
15 was seized. *See* NRS 179.1187. By contrast, there is no limit in Nevada law for what state agencies
16 can make through equitable sharing.

17 85. Further incentivizing adoption and equitable sharing with the federal government,
18 forfeitures under Nevada law generally "must not be used to pay the ordinary operating expenses
19 of the agency." NRS 179.1187(2)(a). (While there is an exception for proceeds seized through a
20 "task force on narcotics operated by the Department of Public Safety in conjunction with other local
21 or federal law enforcement agencies," NRS 179.1187(3), this exception does not apply where, as
22 here, the federal government instead adopts a state seizure.)

23 ***Unconstitutional Deprivation of Interim Hearing***

24 86. NHP has never identified what crime it believes Lara committed and to which his
25 money is traceable.

26 87. DEA has identified a laundry list of possible statutes, including the general drug
27 forfeiture statute and a collection of customs laws. But, like NHP, DEA has never articulated what
28 specific crime it believes Lara committed and to which his money is traceable.

1 88. No officer—state or federal—has made any sworn statements to the effect that Lara
2 and his money can be connected to a forfeitable crime under Nevada or federal law.

3 89. At no point was Lara given an opportunity to contest the seizure before a neutral
4 magistrate.

5 90. Lara was detained for an unreasonable period—more than 90 minutes—for a traffic
6 stop that began with Trooper Brown wanting to “make sure everything is okay” and “talk to [Lara]
7 about [his] following distance.”

8 91. Lara was not ticketed nor issued a warning.

9 92. He was not arrested.

10 93. He has not been charged with any crime.

11 94. On information and belief, no indictment has been requested or returned against him.

12 95. To the best of his knowledge, Lara has not been so much as investigated by NHP,
13 DEA, or any other law enforcement agency based on a suspicion that he committed a crime.

14 96. On information and belief, the government’s investigation into Lara ended with the
15 seizure of his money. Neither the state nor federal government has opened an investigation against
16 him for anything beyond the roadside seizure of his life savings.

17 97. Nevertheless, Lara has not gotten his money back. All \$86,900 remains in the
18 custody of DEA at least 36 days after federal law required DEA to promptly return it.

19 98. The risk of erroneous deprivation under these circumstances is extremely high. At
20 this point, it is not only unlikely—it is legally impossible—that Lara’s money will be forfeited as
21 the proceeds or instrumentality of a crime because federal proceedings are now time barred. *See* 18
22 U.S.C. § 983(a)(3)(A)-(B).

23 99. The burden of providing property owners a means of holding an interim hearing
24 before a neutral magistrate is acceptable. Not everyone will want or need an interim hearing. But,
25 as this case illustrates, without some neutral procedure, property owners can be made to wait more
26 than six months for federal procedures to run their course—a potentially catastrophic burden for
27 the financially insecure.

101. In cases of federal adoption, at a minimum, it would not be unduly burdensome for Nevada to provide some means of contesting the probable-cause determination of state officers, in state court, before a neutral state magistrate, within 30 days of seizure.

6 102. A seizure of 193 days, without any means of contesting probable cause, carries with
7 it an unacceptable risk of erroneous deprivation of a person's property rights without notice and an
8 opportunity to be heard.

INJURIES TO LARA

10 103. Lara incorporates the factual allegations in ¶¶ 1–102 above as though they were fully
11 set forth here.

12 104. Lara has suffered several redressable injuries because of the unconstitutional and
13 unauthorized seizure, adoption, and detention of his property. Some of those injuries are in the past
14 and some continue to this day.

15 105. For more than six months, Lara has been deprived of the total use and enjoyment of
16 his lawfully earned life savings.

17 106. He was unreasonably detained on the side of the road for more than 90 minutes. At
18 the time, Lara was traveling to visit with his two daughters for the weekend and he was only entitled
19 to one weekend per month with them.

107. Officers seized 100 percent of his money, leaving Lara with only a few dollars in his wallet and a debit card. (Lara has no credit cards.)

108. Because he keeps very little money in the bank, Lara contacted his brother and persuaded him to wire \$1,000. Picking up this money took Lara out of his way, took additional time away from his weekend with his daughters, and required Plaintiff to burden a family member with the inconvenience and expense of wiring money unexpectedly.

109. In the more than six months since seizure, Lara has continued to shop for a home appropriate for him and his two daughters in either Lubbock or California. His search has been

1 impeded by the fact that his life savings is in legal limbo. Additionally, he has had to take valuable
2 time away from his homebuying search to address the seizure of his money.

3 110. Lara has been at times anxious, ashamed, and depressed over the seizure of his
4 money. He has lost sleep and struggled to process what had happened to him. He did not believe
5 that anything like this could happen in America. He had no idea that his money could be taken from
6 him based on such flimsy a justification and held, without charge or hearing, for the better part of
7 a year. Nor did he believe that an innocent person could go through such an ordeal and, when the
8 deadline to return his property arrived, still not get his money back.

9 111. Lara had to find and retain lawyers to assist him in getting his money back. He had
10 to work with those lawyers to prepare a federal motion and this complaint. To enforce his legal
11 rights in this way, Lara had to take time away from his children, his home search, and his job search.

12 112. No one from NHP has contacted Lara in the six months since his money was seized
13 or the last 36 days since the federal government lost the right to pursue any form of forfeiture.
14 Despite DEA's obligation now to return his money "promptly," NHP has done nothing to ensure
15 that happens.

16 113. Although NHP officers seized Lara's money while carrying out their duties under
17 Nevada law, Lara has been forced to communicate with DEA and contend with the bureaucracy of
18 the federal government.

19 114. By turning Lara's property over to federal authorities, NHP deprived Lara of the
20 comparatively robust protections of Nevada civil forfeiture law, including the government being
21 required to obtain a criminal conviction prior to forfeiture (something that is a legal impossibility
22 because Lara was not even charged with a crime), as well as a higher burden of proof under Nevada
23 law (clear and convincing evidence) than under federal law (preponderance of evidence).

24 115. Based on the four claims for relief that follow, this Court can and should remedy
25 each of the injuries above (and any others Lara may later show).

26 ///

FIRST CLAIM FOR RELIEF

**NHP has No Statutory Authority to Participate in Federal Equitable Sharing
(Declaratory & Injunctive Relief)**

116. Plaintiff incorporates the factual allegations in ¶¶ 1–115 above as though they were fully set forth here.

117. NHP’s participation in federal adoption and equitable sharing is ultra vires because it is not authorized by state law.

118. The power to seize and forfeit property in Nevada arises from Title 14, Chapter 179 of the Nevada Revised Statutes.

119. Specifically, “property is subject to seizure and forfeiture” when it is believed to be “proceeds attributable to the commission or attempted commission of any felony” related to drugs or several other state offenses. NRS 179.1164(1).

120. Chapter 179 lays out a detailed process for how law enforcement must handle seized property.

121. No provision adopted by Nevada’s Legislature under Chapter 179 or any other provision in Nevada’s Revised Statutes authorizes law enforcement to simply turn seized property over to federal law enforcement for adoption and equitable sharing.

122. On information and belief, no other provision of Nevada law specifically authorizes state law enforcement to turn seized property over to federal law enforcement for adoption and equitable sharing.

123. As a result, each time Nevada law enforcement acts as NHP did here—seize a person’s property for the purpose of federal adoption—it acts ultra vires and unlawfully.

124. As a direct and proximate result of NHP’s ultra vires acts, Lara’s property was unlawfully seized and he has been injured by the following constitutional violations.

///

SECOND CLAIM FOR RELIEF

**Nevada's Due Process Clause Prohibits Seizures Motivated by Financial Self-Interest
(Declaratory & Injunctive Relief)**

125. Plaintiff incorporates the factual allegations in ¶¶ 1–124 above as though they were fully set forth here.

126. Even if NHP were statutorily authorized to participate in federal adoption and equitable sharing—which it is not—the Due Process protections of Nevada's Constitution prohibit participation.

127. Nevada's Constitution guarantees that “[n]o person shall be deprived of . . . property, without due process of law.” Nev. Const. art. I, § 8, cl. 2

128. On information and belief, NHP's policy and practice is to retain, for its own use, all proceeds generated by seizing property under state law and turning it over for federal adoption and equitable sharing.

129. This policy and practice creates a personal and institutional interest, financial and otherwise, into the decision to seize property that brings irrelevant and impermissible factors into the investigative process and thereby creates actual bias, the potential for bias, and/or the appearance of bias.

130. The NHP officers who investigate cases and seize property for adoption also benefit from equitable sharing proceeds, which are used to pay police salaries and to pay for equipment and facilities used by NHP.

131. As a direct and proximate result of NHP's policy and practice of seizing property for adoption and retaining equitable sharing proceeds, Plaintiff has suffered injury to his constitutional rights, including but not limited to the unjust taking of his property.

132. Even if NHP has no wider policy and practice, the seizure in this case was motivated by constitutionally impermissible self-interest on the part of NHP.

133. As a direct and proximate result of NHP's policy and practice of seizing property for the purpose of federal adoption and equitable sharing (or the decision to seize Lara's property for that purpose), Lara has been denied due process in violation of Nevada's Constitution by having

1 his property seized, without probable cause, by persons with a direct financial incentive in the
2 forfeiture of his money.

3 **THIRD CLAIM FOR RELIEF**

4 **The Seizure of Lara's Money Lacked Probable Cause**
5 **(Monetary & Declaratory Relief)**

6 134. Plaintiff incorporates the factual allegations in ¶¶ 1–133 above as though they were
7 fully set forth here.

8 135. The Nevada Constitution guarantees that: “[t]he right of the people to be secure in
9 their . . . effects against unreasonable seizures and searches shall not be violated; and no warrant
10 shall issue but on probable cause . . .” Nev. Const. art. I, § 18.

11 136. Nevada law enforcement officers unreasonably seized Lara's money, without a
12 warrant or probable cause to believe there was a real connection between the money and criminal
13 activity.

14 137. Carrying cash is not a crime.

15 138. Distrusting banks is not a crime.

16 139. None of what officers repeatedly called Lara's “odd” behavior—for example,
17 driving below the speed limit and carrying a large amount of cash—amounts to a crime.

18 140. At the time of seizure, Nevada law enforcement officers had no evidence connecting
19 Lara's money to criminal behavior other than a manufactured dog alert.

20 141. Lara questions the reliability of the dog alert, given how the procedure was carried
21 out by Sergeant Rigdon and Trooper Brown.

22 142. In any event, the financial incentive to seize Lara's money factored in even before
23 the sergeant-in-charge performed any investigation. Well before the dog alert, Sergeant Rigdon
24 discussed with DEA Agent Shane Murray how adoption would be “no issue” because “it's too easy
25 to do an adoption.” Sergeant Rigdon told Murray: “I'll text you the money count after we get it.”
26 Agent Murray responded that he would “look for the adoption.”

27 143. Nevada's forfeiture procedures are generally more protective of property rights than
28 federal procedures. If NHP had seized Lara's property and turned it over to state prosecutors, they

1 would have had the burden to obtain a criminal conviction, *see* NRS 179.1173(2), and only after
2 obtaining a criminal conviction, prosecutors would have been made to show by clear and
3 convincing evidence that the money was connected to the criminal conviction, *see* NRS
4 179.1173(4). By contrast, federal law only requires a preponderance of the evidence. *See* 18 U.S.C.
5 § 983(c).

6 144. On information and belief there are no limits of any kind on the money NHP can
7 take in through federal adoption and equitable sharing or what NHP can spend that money on. the
8 proceeds for. *Compare* NRS 179.1187(2)(a) *with* NRS 179.1187(3).

9 145. Had this forfeiture been conducted under state procedures, Nevada law requires that
10 at the close of each fiscal year, 70 percent of any forfeiture account balance greater than \$100,000
11 must be turned over to public schools.

12 146. The seizure in this case would not have taken place but for the prospect of federal
13 adoption and equitable sharing of the proceeds.

14 147. Under these circumstances, NHP has every incentive to turn roadside seizures
15 (especially marginal ones such as this) over to DEA. The federal procedures are comparatively
16 advantageous to law enforcement. DEA would do 100 percent of the investigative work. DOJ would
17 do 100 percent of the legal work. And NHP would get 80 percent of the proceeds.

18 148. The decision to seize Lara's money was designed to take advantage of the
19 comparatively government-friendly procedures available under federal law.

20 149. As a direct and proximate cause of NHP's unreasonable seizure lacking probable
21 cause, Lara has been deprived of his money for the last six months and suffered the other injuries
22 outlined above.

23 **FOURTH CLAIM FOR RELIEF**

24 **Due Process Requires a Prompt, Post-Seizure Hearing Before a Neutral Magistrate** 25 **(Monetary, Declaratory, & Injunctive Relief)**

26 150. Plaintiff incorporates the factual allegations in ¶¶ 1–149 above as though they were
27 fully set forth here.
28

- 1 d. That the due process guarantee of Article I, § 8, cl. 2 requires the state to
2 provide a means of contesting probable cause to seize property, before a
3 neutral magistrate, within 30 days of a seizure; and
4 e. That Plaintiff was denied due process of law under Article I, § 8, cl. 2 of the
5 Nevada Constitution because he was not given a means of contesting
6 probable cause to seize his property, before a neutral magistrate, for over six
7 months;

8 2. For a temporary restraining order and preliminary and permanent injunctive relief
9 prohibiting Defendants from participating in federal equitable sharing and requiring an interim
10 hearing to determine probable cause within 30 days of the date of seizure;

11 3. For an award of compensatory damages (to be measured in discovery) for the
12 economic injuries Plaintiff has suffered due to Defendants' above-described violations of the
13 Nevada Constitution;

14 4. For an award of \$1 in nominal damages based on Defendants' above-described
15 violations of the Nevada Constitution;

16 5. For an award of reasonable attorneys' fees and costs as provided by law; and

17 6. Such further relief as this Court deems just and proper.

18 DATED this 31st day of August 2021

19 PISANELLI BICE PLLC

20 By: /s/ Jordan T. Smith
21 Jordan T. Smith, Esq., NV Bar No. 12097
22 John A. Fortin, Esq., NV Bar No. 15221
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

23 Wesley Hottot, Esq., (*pro hac vice forthcoming*)
24 INSTITUTE FOR JUSTICE
600 University Street, Suite 1730
25 Seattle, Washington 98101

26 Benjamin A. Field, Esq., (*pro hac vice forthcoming*)
27 INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, Virginia 22203

28 *Attorneys for Plaintiff*

INDEX OF EXHIBITS

<u>Ex. No.</u>	<u>Description</u>	<u>Document Date</u>	<u>No. of Pages</u>
1.	Seizure Receipt	02/19/21	1
2.	DEA Notice of Seizure	04/05/21	2
3.	Lara Claim Letter	04/21/21	4
4.	Confirmation of Forfeiture Claim	05/21/21	2

FILED
Electronically
CV21-01595
2021-08-31 09:49:37 AM
Alicia L. Lerud
Clerk of the Court
Transaction # 8622499 : csulezic

EXHIBIT 1

EXHIBIT 1

PROPERTY RECEIPT



Nevada Department of
Public Safety
DEDICATION PRIDE SERVICE

Case # 210201209 Date 2-19-2021

Agency: ☐ Capitol Police ☐ Highway Patrol ☐ Investigation Division ☐ Parole & Probation ☐ Other _____

Collected By TROOPER BROWN Badge # 250

Submitted At:

☐ Elko Property Room 775-753-1258 3920 Idaho St. • Elko, NV 89801
☐ Las Vegas Property Room 702-432-5140 or 702-432-5141 4615 W. Sunset Rd. • Las Vegas, NV 89118
☒ Reno Property Room 775-448-9532 or 775-448-9549 357 Hammill Ln. • Reno, NV 89511

Owner Information:

Last Name LARA First Name STEPHEN

Mailing Address _____

Phone Number(s) _____

Property Type	Property Description
<input type="checkbox"/> Safekeeping <input type="checkbox"/> Evidence <input checked="" type="checkbox"/> Contraband	<u>UNKNOWN AMOUNT OF US CURRENCY</u>
<input type="checkbox"/> Safekeeping <input type="checkbox"/> Evidence <input type="checkbox"/> Contraband	
<input type="checkbox"/> Safekeeping <input type="checkbox"/> Evidence <input type="checkbox"/> Contraband	<u>NOTHING ELSE</u>
<input type="checkbox"/> Safekeeping <input type="checkbox"/> Evidence <input type="checkbox"/> Contraband	<u>CONTACT AGENT MURRAY</u>
<input type="checkbox"/> Safekeeping <input type="checkbox"/> Evidence <input type="checkbox"/> Contraband	<u>DCA RENO</u> [REDACTED]
<input type="checkbox"/> Safekeeping <input type="checkbox"/> Evidence <input type="checkbox"/> Contraband	

If your item is listed as:

SAFEKEEPING- Item(s) must be claimed within **30 DAYS** of the Department taking possession. Failure to contact the Property Room indicated above to make arrangements to retrieve property, will result in the property being disposed of per department policy.

EVIDENCE- Item(s) will be available for return upon receipt of an evidence release from one of the following: District Attorney; Court of Jurisdiction; City Attorney; Attorney General; or an Administrative Authorization. Any item(s) considered illegal, contaminated or used in the commission of a crime will not be returned.

CONTRABAND- Item(s) will be destroyed per department policy.

FIREARMS- You will be required to pass a background check before the firearm may be returned. Proof of ownership and a valid government issued ID are required to claim your weapon.

PROPERTY RETURN- Property is released by **APPOINTMENT ONLY**. Please contact the Property Room indicated on this form to make an appointment. Proof of identity is required to pick up property. Additional documentation may be required.

I have read, and I understand the above information regarding the property listed.

Owner Signature _____ Date 2/19/2021

White copy- Owner

Yellow copy- Property Room

Pink copy-Officer

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FILED
Electronically
CV21-01595
2021-08-31 09:49:37 AM
Alicia L. Lerud
Clerk of the Court
Transaction # 8622499 : csulezic

EXHIBIT 2

EXHIBIT 2



U.S. Department of Justice

Drug Enforcement Administration

Stephen Patrick Lara

**NOTICE OF SEIZURE OF PROPERTY AND INITIATION OF
ADMINISTRATIVE FORFEITURE PROCEEDINGS**

SEIZED PROPERTY IDENTIFYING INFORMATION

Notice Date: April 5, 2021	Asset ID Number: 21-DEA-675103
Notice Letter ID: 250521 (use ID when searching for assets during online filing)	
Description of Seized Property: \$86,900.00 U.S. Currency	
Seizure Date and Location: The asset(s) referenced in this notice letter were seized on February 19, 2021 by the Nv Dept Of Public Safety, Highway Patrol at Sparks, Nevada and adopted by the DEA on Marc 4, 2021.	
Forfeiture Authority: The forfeiture of this property has been initiated pursuant to 21 USC 881 and the following additional federal laws: 19 U.S.C. §§ 1602-1619, 18 U.S.C. § 983 and 28 C.F.R. Parts 8 and 9.	

I. THE GOVERNMENT MAY CONSIDER GRANTING PETITIONS FOR REMISSION OR MITIGATION, WHICH PARDONS ALL OR PART OF THE PROPERTY FROM THE FORFEITURE.

TO REQUEST A PARDON OF THE PROPERTY YOU MUST FILE A PETITION FOR REMISSION OR MITIGATION

- A. **What to File:** You may file both a claim (see section II below) and a Petition for Remission or Mitigation (Petition). If you file only a petition and no one else files a claim, your petition will be decided by the seizing agency.
- B. **To File a Petition:** A petition should be filed online or by mailing it via the U.S. Postal Service or a Commercial Delivery Service to the Drug Enforcement Administration (DEA), Forfeiture Counsel, Asset Forfeiture Section 8701 Morrisette Drive, Springfield, VA 22152. It must be received no later than 11:59 PM EST thirty (30) days of your receipt of this Notice. See 28 C.F.R. Parts 8 and 9.
- C. **Requirements for Petition:** The petition must include a description of your interest in the property supported by documentation and any facts you believe justify the return of the property and be **signed under oath**, subject to the penalty of perjury or meet the requirements of an unsworn statement under penalty of perjury. See 28 U.S.C. § 1746.
- D. **Petition Forms:** A petition need not be made in any particular form but a standard petition form and the link to file the petition online are available at <https://www.forfeiture.gov/FilingPetition.htm>. If you wish to file a petition online for the assets referenced in the asset list of this letter, please use the Notice Letter ID referenced above.
- E. **Supporting Evidence:** Although not required, you may submit supporting evidence (for example, title paperwork or bank records showing your interest in the seized property) to substantiate your petition.
- F. **No Attorney Required:** You do not need an attorney to file a petition. You may, however, hire an attorney to represent you in filing a petition.
- G. **Petition Granting Authority:** The ruling official in administrative forfeiture cases is the Forfeiture Counsel. The ruling official in judicial forfeiture cases is the Chief, Money Laundering and Asset Recovery Section, Criminal Division, Department of Justice. See 28 C.F.R. § 9.1.
- H. **Regulations for Petition:** The Regulations governing the petition process are set forth in 28 C.F.R. Part 9, and are available at www.forfeiture.gov.
- I. **Penalties for Filing False or Frivolous Petitions:** A petition containing false information may subject the petitioner to criminal prosecution under 18 U.S.C. § 1001 and 18 U.S.C. § 1621.

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- J. **Online Petition Exclusions:** If you cannot find the desired assets online, you must file your petition in writing at the address listed above. For more details regarding what assets can be petitioned online, please see the Frequently Asked Questions at <https://www.forfeiture.gov/FilingPetitionFAQs.htm>.

II. TO CONTEST THE FORFEITURE OF THIS PROPERTY IN UNITED STATES DISTRICT COURT YOU MUST FILE A CLAIM. *If you do not file a claim, you will waive your right to contest the forfeiture of the asset. Additionally, if no other claims are filed, you may not be able to contest the forfeiture of this asset in any other proceeding, criminal or civil.*

- A. **To File a Claim:** A claim must be filed to contest the forfeiture. A claim should be filed online or by mailing it via the U.S. Postal Service or a Commercial Delivery Service to the DEA, Forfeiture Counsel, Asset Forfeiture Section 8701 Morrisette Drive, Springfield, VA 22152.
- B. **Time Limits:** A claim must be filed within 35 days of the date of this letter; therefore, you must file your claim by **11:59 PM EST on May 10, 2021**. See 18 U.S.C. § 983(a)(2). A claim is deemed filed on the date received by the agency at the address listed above.
- C. **Requirements for Claim:** A claim must be filed online or in writing, describe the seized property, state your ownership or other interest in the property and be **made under oath**, subject to penalty of perjury or meet the requirements of an unsworn statement under penalty of perjury. See 18 U.S.C. § 983(a)(2)(C) and 28 U.S.C. § 1746.
- D. **Claim Forms:** A claim need not be made in any particular form, but a standard claim form and the link to file the claim online are available at <https://www.forfeiture.gov/FilingClaim.htm>. See 18 U.S.C. § 983(a)(2)(D). If you wish to file a claim online for the assets referenced in the asset list of this letter, please use the Notice Letter ID referenced above.
- E. **Supporting Evidence:** Although not required, you may submit supporting evidence (for example, title paperwork or bank records showing your interest in the seized property) to substantiate your claim.
- F. **No Attorney Required:** You do not need an attorney to file a claim. You may, however, hire an attorney to represent you in filing a claim.
- G. **When You File a Claim:** A timely claim stops the administrative forfeiture proceeding. The seizing agency forwards the timely claim to the U.S. Attorney's Office for further proceedings. You may also file a petition for remission or mitigation.
- H. **Penalties for Filing False or Frivolous Claims:** If you intentionally file a frivolous claim you may be subject to a civil fine. See 18 U.S.C. § 983(h). If you intentionally file a claim containing false information, you may be subject to criminal prosecution. See 18 U.S.C. § 1001.
- I. **If No Claim is Filed:** Failure to file a claim by **11:59 PM EST on May 10, 2021** may result in the property being forfeited to the United States.
- J. **Online Claim Exclusions:** If you cannot find the desired assets online, you must file your claim in writing and send to the address listed above. For more details regarding what assets can be claimed online, please see the Frequently Asked Questions at <https://www.forfeiture.gov/FilingClaimFAQs.htm>.

III. TO REQUEST RELEASE OF PROPERTY BASED ON HARDSHIP

- A. **Hardship Release:** Upon the filing of a proper claim, a claimant may request release of the seized property during the pendency of the forfeiture proceeding due to hardship if the claimant is able to meet specific conditions. See 18 U.S.C. 983(f); 28 C.F.R. § 8.15.
- B. **To File Hardship Release:** The hardship request cannot be filed online and must be in writing. The claimant must establish the following:
- Claimant has a possessory interest in the property;
 - Claimant has sufficient ties to the community to assure that the property will be available at the time of trial; and
 - Government's continued possession will cause a substantial hardship to the claimant.
- C. **Regulations for Hardship:** A complete list of the hardship provisions can be reviewed at 18 U.S.C. § 983(f) and 28 C.F.R. § 8.15. Some assets are not eligible for release.

FILED
Electronically
CV21-01595
2021-08-31 09:49:37 AM
Alicia L. Lerud
Clerk of the Court
Transaction # 8622499 : csulezic

EXHIBIT 3

EXHIBIT 3

Drug Enforcement Administration
Attn: Forfeiture Counsel
Asset Forfeiture Section
8701 Morrisette Drive
Springfield, VA 22152

April 21, 2021

RE: VERIFIED CLAIM OF STEPHEN PATRICK LARA TO \$86,900 IN U.S. CURRENCY, ASSET ID 21-DEA-675103,
NOTICE LETTER ID 250521

To Whom It May Concern:

I am the rightful owner of the \$86,900.00 in U.S. currency seized from me on February 19, 2021 by the Nevada Department of Public Safety, Highway Patrol at Sparks, Nevada. According to the Notice of Seizure mailed to me by the DEA on April 5, 2021, my money was "adopted by the DEA on March 4, 2021." A copy of the notice is included with this letter.

This letter is my verified claim to the seized property. The identity of the property is Eighty-Six Thousand Nine Hundred Dollars and No Cents (\$86,900.00) in U.S. Currency seized from me on February 19, 2021 by the Nevada Department of Public Safety, Highway Patrol at Sparks, Nevada. My interest in the property is that I am its sole legal owner. I assert my right to contest the forfeiture of the property in U.S. District Court.

I can be reached at [REDACTED] or at the following email address:

[REDACTED]

VERIFICATION

I declare, under penalty of perjury, that the information provided in support of the above verified claim is true and correct.

Dated April 21, 2021



Stephen Patrick Lara



U.S. Department of Justice

Drug Enforcement Administration

Stephen Patrick Lara

**NOTICE OF SEIZURE OF PROPERTY AND INITIATION OF
ADMINISTRATIVE FORFEITURE PROCEEDINGS**

SEIZED PROPERTY IDENTIFYING INFORMATION

Notice Date: April 5, 2021	Asset ID Number: 21-DEA-675103
Notice Letter ID: 250521 (use ID when searching for assets during online filing)	
Description of Seized Property: \$86,900.00 U.S. Currency	
Seizure Date and Location: The asset(s) referenced in this notice letter were seized on February 19, 2021 by the Nv Dept Of Public Safety, Highway Patrol at Sparks, Nevada and adopted by the DEA on Marc 4, 2021.	
Forfeiture Authority: The forfeiture of this property has been initiated pursuant to 21 USC 881 and the following additional federal laws: 19 U.S.C. §§ 1602-1619, 18 U.S.C. § 983 and 28 C.F.R. Parts 8 and 9.	

I. THE GOVERNMENT MAY CONSIDER GRANTING PETITIONS FOR REMISSION OR MITIGATION, WHICH PARDONS ALL OR PART OF THE PROPERTY FROM THE FORFEITURE.

TO REQUEST A PARDON OF THE PROPERTY YOU MUST FILE A PETITION FOR REMISSION OR MITIGATION

- A. **What to File:** You may file both a claim (see section II below) and a Petition for Remission or Mitigation (Petition). If you file only a petition and no one else files a claim, your petition will be decided by the seizing agency.
- B. **To File a Petition:** A petition should be filed online or by mailing it via the U.S. Postal Service or a Commercial Delivery Service to the Drug Enforcement Administration (DEA), Forfeiture Counsel, Asset Forfeiture Section 8701 Morrisette Drive, Springfield, VA 22152. It must be received no later than 11:59 PM EST thirty (30) days of your receipt of this Notice. See 28 C.F.R. Parts 8 and 9.
- C. **Requirements for Petition:** The petition must include a description of your interest in the property supported by documentation and any facts you believe justify the return of the property and be **signed under oath**, subject to the penalty of perjury or meet the requirements of an unsworn statement under penalty of perjury. See 28 U.S.C. § 1746.
- D. **Petition Forms:** A petition need not be made in any particular form but a standard petition form and the link to file the petition online are available at <https://www.forfeiture.gov/FilingPetition.htm>. If you wish to file a petition online for the assets referenced in the asset list of this letter, please use the Notice Letter ID referenced above.
- E. **Supporting Evidence:** Although not required, you may submit supporting evidence (for example, title paperwork or bank records showing your interest in the seized property) to substantiate your petition.
- F. **No Attorney Required:** You do not need an attorney to file a petition. You may, however, hire an attorney to represent you in filing a petition.
- G. **Petition Granting Authority:** The ruling official in administrative forfeiture cases is the Forfeiture Counsel. The ruling official in judicial forfeiture cases is the Chief, Money Laundering and Asset Recovery Section, Criminal Division, Department of Justice. See 28 C.F.R. § 9.1.
- H. **Regulations for Petition:** The Regulations governing the petition process are set forth in 28 C.F.R. Part 9, and are available at www.forfeiture.gov.
- I. **Penalties for Filing False or Frivolous Petitions:** A petition containing false information may subject the petitioner to criminal prosecution under 18 U.S.C. § 1001 and 18 U.S.C. § 1621.

PA000184

- J. **Online Petition Exclusions:** If you cannot find the desired assets online, you must file your petition in writing at the address listed above. For more details regarding what assets can be petitioned online, please see the Frequently Asked Questions at <https://www.forfeiture.gov/FilingPetitionFAQs.htm>.

II. TO CONTEST THE FORFEITURE OF THIS PROPERTY IN UNITED STATES DISTRICT COURT YOU MUST FILE A CLAIM. *If you do not file a claim, you will waive your right to contest the forfeiture of the asset. Additionally, if no other claims are filed, you may not be able to contest the forfeiture of this asset in any other proceeding, criminal or civil.*

- A. **To File a Claim:** A claim must be filed to contest the forfeiture. A claim should be filed online or by mailing it via the U.S. Postal Service or a Commercial Delivery Service to the DEA, Forfeiture Counsel, Asset Forfeiture Section 8701 Morrisette Drive, Springfield, VA 22152.
- B. **Time Limits:** A claim must be filed within 35 days of the date of this letter; therefore, you must file your claim by **11:59 PM EST on May 10, 2021**. See 18 U.S.C. § 983(a)(2). A claim is deemed filed on the date received by the agency at the address listed above.
- C. **Requirements for Claim:** A claim must be filed online or in writing, describe the seized property, state your ownership or other interest in the property and be **made under oath**, subject to penalty of perjury or meet the requirements of an unsworn statement under penalty of perjury. See 18 U.S.C. § 983(a)(2)(C) and 28 U.S.C. § 1746.
- D. **Claim Forms:** A claim need not be made in any particular form, but a standard claim form and the link to file the claim online are available at <https://www.forfeiture.gov/FilingClaim.htm>. See 18 U.S.C. § 983(a)(2)(D). If you wish to file a claim online for the assets referenced in the asset list of this letter, please use the Notice Letter ID referenced above.
- E. **Supporting Evidence:** Although not required, you may submit supporting evidence (for example, title paperwork or bank records showing your interest in the seized property) to substantiate your claim.
- F. **No Attorney Required:** You do not need an attorney to file a claim. You may, however, hire an attorney to represent you in filing a claim.
- G. **When You File a Claim:** A timely claim stops the administrative forfeiture proceeding. The seizing agency forwards the timely claim to the U.S. Attorney's Office for further proceedings. You may also file a petition for remission or mitigation.
- H. **Penalties for Filing False or Frivolous Claims:** If you intentionally file a frivolous claim you may be subject to a civil fine. See 18 U.S.C. § 983(h). If you intentionally file a claim containing false information, you may be subject to criminal prosecution. See 18 U.S.C. § 1001.
- I. **If No Claim is Filed:** Failure to file a claim by **11:59 PM EST on May 10, 2021** may result in the property being forfeited to the United States.
- J. **Online Claim Exclusions:** If you cannot find the desired assets online, you must file your claim in writing and send to the address listed above. For more details regarding what assets can be claimed online, please see the Frequently Asked Questions at <https://www.forfeiture.gov/FilingClaimFAQs.htm>.

III. TO REQUEST RELEASE OF PROPERTY BASED ON HARDSHIP

- A. **Hardship Release:** Upon the filing of a proper claim, a claimant may request release of the seized property during the pendency of the forfeiture proceeding due to hardship if the claimant is able to meet specific conditions. See 18 U.S.C. 983(f); 28 C.F.R. § 8.15.
- B. **To File Hardship Release:** The hardship request cannot be filed online and must be in writing. The claimant must establish the following:
- Claimant has a possessory interest in the property;
 - Claimant has sufficient ties to the community to assure that the property will be available at the time of trial; and
 - Government's continued possession will cause a substantial hardship to the claimant.
- C. **Regulations for Hardship:** A complete list of the hardship provisions can be reviewed at 18 U.S.C. § 983(f) and 28 C.F.R. § 8.15. Some assets are not eligible for release.

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Alicia L. Lerud
Clerk of the Court
Transaction # 8622499 : csulezic

EXHIBIT 4

EXHIBIT 4



U. S. Department of Justice
Drug Enforcement Administration

www.dea.gov

May 21, 2021

Stephen Patrick Lara

[REDACTED]t
[REDACTED]k, [REDACTED]K [REDACTED]

RE: Asset I.D. No.: 21-DEA-675103
Property: \$86,900.00 U.S. Currency
Judicial District: District of Nevada

Dear Mr. Lara:

The Drug Enforcement Administration (DEA) has received the submission regarding the above-referenced asset(s). The following information is provided:

The claim has been accepted and this matter has been referred to the judicial district noted above. Please direct all inquiries regarding this matter to that office.

Further correspondence to DEA regarding this matter must reference the DEA asset identification number(s) noted above and must be addressed to the Forfeiture Counsel, Drug Enforcement Administration, Asset Forfeiture Section, 8701 Morrisette Drive, Springfield, Virginia 22152. Correspondence will be deemed *filed (or submitted)* on the **business** date it is actually received by the Forfeiture Counsel at the address listed above. Correspondence **will not be accepted nor considered filed on weekends or federal holidays**, or when it is received by any other office or official, such as a court, United States Attorney's Office, or local DEA office. In addition, a Claim or Petition is not considered filed or submitted if received facsimile transmission. Finally, correspondence is not considered filed or submitted on the date it is mailed or delivered to any person for delivery to the Forfeiture Counsel.

Sincerely,

5/21/2021

X Rick Green

Rick Green
Supervisory Program Analyst
Signed by: DEA

Asset Forfeiture Section
Office of Operations Management

PA000187

CLAIM.ACK (July 2020)

BY: AD CODE #: DEA1649

2195
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Carson City, NV 89711
(775) 684-4601 (fax)

Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEPHEN LARA,

Plaintiff,

vs.

STATE OF NEVADA ex rel. Department of
Public Safety, Highway Patrol Division;
COLONEL ANNE CARPENTER, in her
official capacity as Chief of the Nevada
Highway Patrol; and SERGEANT GLENN
RIGDON, in his official capacity as an officer
of the Nevada Highway Patrol, and JOHN
DOES I-X,

Defendants.

Case No. CV21-01595

Dept. No. 4

**NEVADA HIGHWAY PATROL DEFENDANTS' MOTION TO STAY PROCEEDINGS
PENDING THE NEVADA SUPREME COURT'S ANSWERS TO ACCEPTED CERTIFIED
QUESTIONS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
NEVADA**

Defendants Nevada Department of Public Safety Highway Patrol Division, Col. Anne
Carpenter, and Sgt. Glenn Rigdon (collectively, NHP), by and through counsel, Aaron D. Ford, Nevada
Attorney General, and Nathan Hastings, Senior Deputy Attorney General, and Kathleen Brady, Deputy

1 Attorney General, now move this Court to stay proceedings in this matter, including any deadline for
2 NHP's response to Stephen Lara's Complaint (Lara), pending necessary answers from the Nevada
3 Supreme Court to questions certified by the United States District Court. This motion is based on the
4 following memorandum of points and authorities, all papers and pleadings on file, and any other
5 evidence the Court deems appropriate to consider.

6 **Memorandum of Points and Authorities**

7 **A. Lara's Nevada Constitutional Claims.**

8 In this action, Lara has identified his requested relief in four claims for declaratory, injunctive
9 and/or monetary relief. (Complaint at 16 – 21). Lara characterizes all four of these claims as being
10 premised solely on alleged violations of the Nevada Constitution, Article 1, §§ 8 and 18; specifically,
11 asserting violations of Nevada Constitutional due process and probable cause-related rights. (*See id.* at
12 16, ¶ 124; at 17, ¶¶ 127-28, 131-33; at 18-19, ¶¶ 135-36, 149; at 20, ¶¶ 152-56).

13 **B. Factual Background.¹**

14 On February 19, 2021, at approximately 11:03 am, Nevada Highway Patrol (NHP) Trooper
15 Chris Brown was parked in the center median on IR80 near Derby Dam in Washoe County, Nevada.
16 He observed a silver Toyota Camry sedan travelling westbound, slow down to below the speed limit
17 after passing his vehicle. Trooper Brown began to follow the vehicle and noticed the vehicle following
18 a commercial vehicle too closely, then driving around the commercial vehicle and pulling back in front
19 of the commercial vehicle too closely, only leaving up to one second of following distance at highway
20 speed.

21 Trooper Brown then initiated a traffic stop. Trooper Brown began a discussion with Lara to
22 educate him about the dangers of following too closely. Trooper Brown noticed that the car had a lived-

23 ¹ In his Complaint, Lara includes a 'General Factual Allegations' section. (Complaint at 4 – 14, ¶¶ 19 –
24 102). He states that prior to filing his Complaint, he obtained dash and bodycam recordings of the
25 underlying incident, and that his factual allegations are based on having obtained true and correct
26 transcriptions of those recordings. (*Id.* at 5, ¶ 24).

27 NHP has also reviewed the recordings and considers it is appropriate to fill in certain missing facts
28 from Lara's Complaint at this stage. This additional description is based on the dashcam and bodycam
recordings. As described in this motion, the pending Nevada Supreme Court certified questions
preclude an answer or other responsive pleading at this stage; and NHP submits this brief factual
summary to present a fair description of the facts.

1 in look, and Lara indicated that he was travelling from Lubbock, Texas to Portola, California to see his
2 daughters for the weekend. Trooper Brown asked Lara to speak with him while he went over the
3 paperwork. Trooper Brown conducted a records check and began a written warning. Lara indicated to
4 Trooper Brown that he was currently unemployed and getting ready to move his daughters to Texas.
5 Trooper Brown noticed that Lara was nervous and overly polite, noted the short turn around trip in a
6 third-party rental vehicle to a source drug area, and became suspicious of criminal activity. Trooper
7 Brown asked Mr. Lara if he had any firearms, drugs, or large amounts of currency in the vehicle, and
8 Lara stated that there was a large amount of currency in the vehicle but that there were no drugs or
9 firearms and that he does not use drugs.

10 After a short discussion, Trooper Brown asked Lara for consent to search the vehicle, and Lara
11 consented. After Lara signed a consent form, the search occurred. Prior to searching the interior of the
12 vehicle, Trooper Tumanuvao, who had arrived on scene to assist Trooper Brown, deployed his drug
13 detection canine around the exterior of the vehicle and advised of a positive alert as to the odor of drugs
14 coming from the vehicle.²

15 Inside a backpack in the trunk of the vehicle, Trooper Brown located a large plastic baggie
16 containing a large amount of newer \$100 bills in a plastic baggie along with bank receipts. Trooper
17 Brown questioned Lara as to the amount, and Lara indicated that there was approximately \$100,000 in
18 the baggie. Trooper Brown then called the DEA seeking that they come to the scene. Trooper Brown
19 then questioned Lara as to why he had such a large amount of cash in the vehicle and about the receipts.
20 After the DEA agent called back, indicating that he would not be able to come to the site, Trooper
21 Brown discussed the situation with his chain of command, indicating that the vehicle was being rented
22 for 2 days for a trip from Lubbock Texas to Portola California and back, that Lara was nervous, and
23 that they had located a large amount of money in the vehicle.

24 ² Lara's Complaint makes no mention of this earlier and important canine deployment and controlled
25 substance alert on the vehicle. Instead, in its section titled 'Dog Alert,' the Complaint only mentions a
26 later dog deployment on a bag of money that had been placed "on the ground on the side road" some
27 distance from Lara's vehicle. (Complaint at 7, ¶ 41). Lara describes this alert as coming after the arrival
28 of Sgt. Rigdon, "Roughly 30 minutes" following Trooper Brown's inspection of money and receipts.
(*Id.* at ¶ 38). But the early positive canine alert to the vehicle for controlled substances, omitted from
the Complaint, as well as the later alert on the money, is an important factor supporting probable cause
for the seizure of money in this matter.

1 Trooper Brown then told Lara he was not under arrest and that he did not have to answer any
2 questions, but Lara consented to further questions regarding the currency. Trooper Brown then went
3 through the Currency Questionnaire form with Lara. In filling out the form, Lara stated that the money
4 was his life savings from working and from his military retirement, that he did not trust banks, and he
5 kept it on his person to secure and spend the money. Trooper Brown asked when Lara had last paid
6 taxes, and Lara indicated that it was approximately two years ago. Lara further provided that he had
7 direct deposit into Bank of America and USAA and had credit and debit cards, but that he did not keep
8 a balance in his bank accounts and had receipts to show where the money came from. Upon reviewing
9 receipts, it was determined that Lara had transactions with Wells Fargo Bank, Bank of America,
10 Plumas Bank, Bank of the West, US Bank, First Financial Bank, and Lubbock National Bank. When
11 asked about the dog alert on the vehicle, Lara indicated that he wasn't sure why that happened and
12 provided that the car was a rental. When asked about the rental, Lara indicated that the rim of his wheel
13 cracked and he had to rent a car. When Officers determined that his father had rented the vehicle for
14 him, Lara provided that his father had rented it for him as a nice gesture.

15 Trooper Tumanuvao also engaged Lara in conversation, and Lara indicated that he had last gone
16 to Portola in December. However, Trooper Tumanuvao located a toll bill during the search that
17 indicated that Lara had been in Portola earlier in February.

18 After conducting the interview, a canine sniff was conducted of the currency, and the dog
19 alerted to the odor of drugs. It was then determined that the currency would be seized and provided to
20 the Reno Drug Enforcement Agency (DEA). Lara was provided with the DEA's contact information.

21 Sergeant Rigdon then asked Lara questions concerning the amount of the currency, but Lara
22 could not identify how much was in the bag. Lara indicated that he had saved the money for 20 years.
23 However, Sergeant Rigdon pointed out that the currency did not contain any older bills, it was all new
24 currency. Sergeant Rigdon weighed the money and determined that there was approximately \$86,000 in
25 cash in the baggie. The currency was later counted and it was determined there was \$86,900 in U.S.
26 Currency The money was seized and provided to the US Marshalls Service for the purpose of potential
27 civil asset forfeiture.

28 ///

1 **C. Background – Potentially Dispositive Certified Questions Accepted by the Nevada**
2 **Supreme Court.**

3 On July 21, 2021, in connection with a separate federal court action,³ and under NRAP 5, the
4 Nevada Supreme Court accepted the following certified questions from the United States District Court
5 for the District of Nevada:

- 6 1. Is there a private right of action under the Nevada Constitution, Article 1, § 8?
- 7 2. Is there a private right of action under the Nevada Constitution, Article 1, § 18?
- 8 3. If there is a private right of action, what immunities, if any, can a state actor
9 defendant raise as a defense?
- 10 4. If there is a private right of action, what remedies are available to a plaintiff for these
11 claims?

12 (Exhibit 1, Order Accepting Certified Questions, *Mack v. Williams*, Nevada Supreme Court Case No.
13 81513). In its Order, the Nevada Supreme Court stated that its acceptance of these questions for
14 determination is based on the fact that “no clearly controlling Nevada precedent exists with regard to
15 these legal questions” (*Id.* at 1).

16 As described above, Lara brings his claims in this case pursuant to the Nevada Constitution,
17 Article 1, §§ 8 and 18. But, as the Nevada Supreme Court has recently confirmed, Nevada law is
18 currently unclear as to whether a private right of action exists to allow such claims to even be brought.
19 (*Id.*) Therefore, the Nevada Supreme Court’s answers to these pending certified questions are a
20 necessary prerequisite for this case to proceed on Lara’s claims as pleaded.

21 **D. Need for Stay of Proceedings**

22 Generally, it is proper to stay litigation temporarily if the litigation could be impacted by other
23 pending matters. (*See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248 (2004)). Much of the authority
24 regarding seeking stay appears to arise in the context of stay pending an anticipated dispositive decision
25 on appeal or writ petition to the Nevada Supreme Court. (*See Hansen v. Eighth Judicial Dist. Court*,
26 116 Nev. 650, 6 P.3d 982 (2000) (referencing NRAP 8(a)). While the factors described in NRAP 8(c)
27 concern appellate proceedings and there is no existing case on point, this case law is clearly analogous

28

³ Case No.: 2:18-cv-00799-APG-VCF

1 to the Nevada Supreme Court's certification of the questions identified above and is dispositive as to
2 whether Lara's claims can proceed, and whether NHP has certain available defenses to suit. (*See* Secs.
3 E and F of this motion below). Indeed, the instant motion for stay is akin to the 'Initial Motion in the
4 District Court' referenced in NRAP 8(a)(1).

5 Moreover, as described further in this motion, interests of judicial economy and fairness to
6 NHP's ability to meaningfully present affirmative defenses, strongly urge that proceedings in this case
7 be stayed pending the Supreme Court's answers to the certified questions. As explained in Sections E
8 and F of this motion below, NHP will be greatly prejudiced if it is required to respond at this stage and
9 potentially be subjected to suit and discovery in this matter without the Supreme Court's answers to the
10 certified questions of whether Lara's claims are justiciable and/or whether NHP can plead immunity
11 defenses.

12 In contrast to the prejudice to NHP if the case is not stayed, Lara will not be prejudiced by a
13 stay. Indeed, Lara points out that he has filed a separate action in federal court to compel the return of
14 the money that was seized in this case. (*See Lara v. U.S. Drug Enf't Admin.*, Case No. 3:21-ms-00002,
15 Complaint at 11, ¶ 79). It is clear that the instant action is not about the return of his money. A stay in
16 this case will have no impact on Lara's interest in the seized money. Lara primarily seeks prospective
17 declaratory and injunctive relief about what NHP may or not be allowed to do in relation to future
18 unrelated seizures and/or forfeitures. Even if he enjoyed a likelihood of success in obtaining that relief,
19 it seems highly unlikely that Lara will be prejudiced by any delay in obtaining it resultant from a stay in
20 this case. Even if there is any prejudice to Lara in delaying such relief, it is minor in comparison with
21 the prejudice to NHP in proceeding in this case without the benefit of the necessary but absent legal
22 authority concerning justiciability and defenses set to be determined by the Nevada Supreme Court
23 through its answers to the certified questions.

24 **E. The Justiciability of Lara's Claims Depends on the Outcome of the Pending**
25 **Certification Questions before the Nevada Supreme Court.**

26 Even if alleging violation of federal constitutional rights, a litigant may not directly pursue a
27 cause of action under the United States Constitution. (*See Azul-Pacifico v. City of Los Angeles*, 973
28 F.2d 704, 705 (9th Cir. 1992)). A right of action to bring, and jurisdiction to hear claims for such

1 alleged violations only exists pursuant to federal statute, 42 U.S.C. § 1983. (*See, e.g., id.*). There is no
2 parallel Nevada statute providing a private right of action for alleged violations of Nevada state
3 constitutional rights.

4 As described above, Lara's claims in this case are for monetary, declaratory and injunctive
5 relief stemming from alleged violations of the Nevada Constitution. In accepting the United States
6 District Court's certified questions, the Nevada Supreme Court acknowledges that the question of
7 whether such claims may be brought has not been decided.

8 Implicit in and underlying the Nevada Supreme Court's acceptance of the certified questions is
9 the absolute legal reality that a right of action must be provided for in the law. Several broad principles
10 apply to Lara's claims in light of the pending certified questions: "No constitutional restriction has been
11 placed upon the legislature's right to limit a cause of action or a right of action." (*Derouen v. City of*
12 *Reno*, 87 Nev. 606, 608, 491 P.2d 989, 990 (1971)). "Declaratory relief is available only if: (1) a
13 justiciable controversy exists between persons with adverse interests; (2) the party seeking declaratory
14 relief has a legally protectable interest in the controversy; and (3) the issue is ripe for judicial
15 determination." (*County of Clark, ex rel. Univ. Medical Center v. Upchurch*, 961 P.2d 754, 114 Nev.
16 749 (1998) (citations omitted, emphasis added). "The Uniform Declaratory Judgments Act does not
17 establish a new cause of action or grant jurisdiction to the court when it would not otherwise
18 exist; instead, the Act merely authorizes new form of relief, which in some cases will provide fuller and
19 more adequate remedy than that which existed under common law." (N.R.S. 30.010 et seq.; *Builders*
20 *Ass'n of N. Nev. v. City of Reno*, 776 P.2d 1234, 105 Nev. 368, 369 (1989) (citations omitted, emphasis
21 added.) Nevada courts have held that a declaratory relief action is appropriate when a party merely
22 seeks a ruling on the meaning of a statute but is inappropriate when an agency's discretionary decisions
23 are required. (*See Prudential Ins. Co. v. Ins. Comm'r*, 82 Nev. 1, 4-5, 409 P.2d 248, 250 (1966)).

24 The Nevada Supreme Court must decide the certified questions so the parties to this matter can
25 determine what legal positions they may appropriately put forward in applying the Supreme Court's
26 forthcoming answers and existing authorities and principles, including those cited here, to the claims
27 asserted by Lara.

28 ///

1 **a. There are no established elements to Lara’s purported Nevada constitutional**
2 **claims.**

3 Without the Nevada Supreme Court’s answers to the certified questions, even if that Court
4 ultimately determines that a private right of action exists for Lara’s Nevada constitutional claims, the
5 parties do not know what the claims’ elements are or might be. Pursuant to 42 U.S.C. § 1983, to prevail
6 on a federal constitutional claim, a plaintiff must prove that the defendant was (1) acting under color of
7 law and (2) that the defendant’s conduct deprived the plaintiff of a federal statutory or constitutional
8 right. 42 U.S.C. § 1983. Those elements come from the statute. Without an equivalent state statute,
9 there are no established elements for a private right of action under the Nevada Constitution.

10 Section F below describes how NHP is unable to argue whether Lara’s claims are justiciable or
11 plead their defenses in this case without answers to the certified questions. But as just explained,
12 without those answers, and without knowing the elements for Lara’s proffered claims, neither can they
13 or the Court determine whether Lara has sufficiently pleaded the claims consistent with governing
14 elements. The parties cannot litigate the sufficiency of a Complaint without clear authority as to the
15 elements of pleaded claims.

16 **F. NHP Cannot Respond to Lara’s Complaint pursuant to NRCP 12 without the Nevada**
17 **Supreme Court’s Answers to the Certified Questions.**

18 **a. NRCP 12 provision for defenses by motion in this case.**

19 NRCP 12(b) provides for the assertion of defenses in a responsive pleading or motion. Defenses
20 that may be asserted by motion include lack of subject-matter jurisdiction and failure to state a claim
21 upon which relief can be granted. (NRCP 12(b)(1), (5)).

22 Because Nevada law, this Court, and the parties lack guiding authority for citation and analysis
23 to establish the viability of Lara’s claims, NHP is unable to proceed or respond consistent with the
24 rights provided them under NRCP 12. Until the Nevada Supreme Court answers the certified questions
25 referenced herein, proceedings in this matter are untenable: the Nevada Supreme Court has
26 acknowledged that it must determine whether plaintiffs in Nevada may bring and whether the district
27 courts of the state have jurisdiction to hear private state constitutional claims.

28 ///

1 Consider the following hypothetical: if this matter is not stayed, and if NHP is required to
2 answer or otherwise respond at this time – if it asserts as a defense that Lara’s claims are not justiciable
3 and argue that there is no private right of action for damages or injunctive/declaratory relief on Nevada
4 constitutional claims, this Court will presumably either be unable to rule on that defense (consistent
5 with the Supreme Court’s finding that there is no clear authority on that question at this time), or the
6 Court would likely determine at that time that a stay is necessary to await the Supreme Court’s answers
7 to the certified questions. Either of those outcomes is offensive to judicial economy as NHP requests
8 the stay now, and waste of time and resources for the court and the parties can be avoided proactively.

9 **b. Immunities**

10 One of the specific pending certified questions before the Nevada Supreme Court is what
11 immunities may exist if there is a private right of action to bring Nevada Constitutional claims. (*See*
12 question 3, at Sec. C, *infra*, also Exhibit 1). The importance of this question cannot be overstated. For
13 example, in connection with 42 U.S.C. § 1983 claims for alleged federal constitutional rights
14 violations, certain defendants may claim immunity from suit pursuant to the doctrine of qualified
15 immunity.⁴

16 “One of the purposes of immunity, absolute or qualified, is to spare a defendant not only
17 unwarranted liability, but unwarranted demands customarily imposed upon those defending a long
18 drawn-out lawsuit.” (*Siegert v. Gilley*, 500 U.S. 226, 232 (1991) (emphasis added). Qualified immunity
19 is recognized by the Supreme Court as a right, not merely to avoid standing trial, but also, “to avoid the
20 burdens of such pretrial matters as discovery.” *Behrens v. Pelletier*, 516 U.S. 299, 308 (1996) (citations
21 omitted). “Once a defendant pleads a defense of qualified immunity, . . . , the judge appropriately may

22 _____
23 ⁴ Qualified Immunity attaches when an official’s conduct does not violate a clearly established statutory
24 or constitutional rights of which a reasonable person would have known.” *White v. Pauly*, 580 U.S.
25 ____, ____, 137 S.Ct. 548, 51 (2017) (per curiam) (alterations and internal quotation marks omitted).
26 “Because the focus is on whether the officer had fair notice that her conduct was unlawful,
27 reasonableness is judged against the backdrop of the law at the time of the conduct.” *Brosseau v.*
28 *Haugen*, 543 U.S. 194, 198 (2004) (per curiam). “‘Qualified immunity gives government officials
breathing room to make reasonable but mistaken judgments,’ and ‘protects all but the plainly
incompetent or those who knowingly violate the law.’” *Stanton v. Sims*, 571 U.S. 3, 6 (2013) (quoting
Ashcroft v. al-Kidd, 563 U.S. 731, 735, 131 S.Ct. 2074, 2085 (2011))). “The privilege is ‘an immunity
from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a
case is erroneously permitted to go to trial.’” *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

1 [perform governing immunity analysis].... Until this threshold immunity question is resolved, **discovery**
2 **should not be allowed.**” (*Siebert*, 500 U.S. at 231 (emphasis added, citations omitted); *see also*
3 *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

4 Nevada statute provides for certain additional immunity defenses. (*See* NRS 41.032-41.038
5 (statutory provision of immunity from suit for causes of action that are predicated upon the exercise or
6 performance of, or the failure thereof, a discretionary function or duty on the part of the State of
7 Nevada, its agencies, or its political subdivisions, its officers, employees, or immune contractors). As
8 just described above regarding NRCP 12 response implications of the certified questions, NHP’s ability
9 to properly apply and plead these and potentially other immunity defenses is precluded at this time.
10 Until the Nevada Supreme Court answers Certified Question 3 regarding immunities, NHP cannot
11 meaningfully prepare a responsive pleading. Pursuant to the authorities herein cited, these proceedings
12 must be stayed because it is likely that allowing discovery at early stages of this case will be improper.
13 Should NHP plead a qualified immunity defense, discovery should not be permitted to proceed. Until
14 the certified questions are answered, the parties and the court cannot know whether such a defense will
15 be available in this case.

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1 **G. Conclusion**

2 Consistent with the foregoing, NHP respectfully requests that the Court acknowledge the impact
3 on this action of the questions described herein which have been certified to and accepted by the
4 Nevada Supreme Court. Judicial economy and fairness to NHP's ability to defend their interests in this
5 case require that proceedings be stayed pending the Nevada Supreme Court's answers to these
6 questions.

7 Dated this 14th day of October, 2021.

8 AARON D. FORD
9 Attorney General

10 By: /s/ Nathan L. Hastings
 Nathan L. Hastings (Bar. No. 11593)
 Senior Deputy Attorney General

11
12 By: /s/ Kathleen Brady
13 Kathleen Brady (Bar. No. 11525)
 Deputy Attorney General

14 *Attorneys for Defendants*
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AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document, NEVADA HIGHWAY PATROL DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING THE NEVADA SUPREME COURT'S ANSWERS TO ACCEPTED CERTIFIED QUESTIONS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, does not contain the social security number of any person.

DATED this 14th day of October, 2021.

AARON D. FORD
Attorney General

By: /s/ Nathan L. Hastings
Nathan L. Hastings (Bar. No. 11593)
Senior Deputy Attorney General

By: /s/ Kathleen Brady
Kathleen Brady (Bar. No. 11525)
Deputy Attorney General

Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that
3 on October 14, 2021, I filed the foregoing document via this Court's electronic filing system. Parties
4 that are registered with this Court's EFS will be served electronically. For those parties not registered,
5 service was made by depositing a copy of the above-referenced document for mailing in the United
6 States Mail, first-class postage prepaid, at Carson City, Nevada to the following:

7 Jordan T. Smith, Esq.
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12 Arlington, VA 22203
13 Attorneys for Plaintiff

14 /s/ M. Neumann

15 M. Neumann, an employee of
16 the office of the Nevada Attorney General
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INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	Order Accepting Certified Questions, Directing Briefing, and Directing Submission of Filing Fee	2

Exhibit 1

Exhibit 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

SONJIA MACK,
Appellant,
vs.
BRIAN WILLIAMS; JAMES
DZURENDA; ARTHUR EMLING, JR.;
AND MYRA LAURIAN,
Respondents.

No. 81513

FILED

JUL 21 2021

ELIZABETH A. ORR
CLERK OF SUPREME COURT
BY: *afreese*
DEPUTY CLERK

***ORDER ACCEPTING CERTIFIED QUESTIONS, DIRECTING
BRIEFING, AND DIRECTING SUBMISSION OF FILING FEE***

This matter involves legal questions certified to this court, under NRAP 5, by the United States District Court for the District of Nevada. Specifically, the U.S. District Court has certified the following questions to this court:

1. Is there a private right of action under the Nevada Constitution, Article 1, § 8?
2. Is there a private right of action under the Nevada Constitution, Article 1, § 18?
3. If there is a private right of action, what immunities, if any, can a state actor defendant raise as a defense?
4. If there is a private right of action, what remedies are available to a plaintiff for these claims?

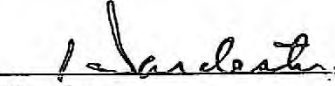
As no clearly controlling Nevada precedent exists with regard to these legal questions and the answers may determine part of the federal case, we accept these certified questions. *See* NRAP 5(a); *Volvo Cars of N. Am., Inc. v. Ricci*, 122 Nev. 746, 749-51, 137 P.3d 1161, 1163-64 (2006) (discussing the factors this court considers when determining whether to accept a certified question).

Appellant shall have 30 days from the date of this order to file and serve an opening brief. Respondents shall have 30 days from the date the opening brief is served to file and serve an answering brief. Appellant


shall then have 21 days from the date the answering brief is served to file and serve any reply brief. The parties' briefs shall comply with NRAP 28, 28.2, 31(c), and 32. See NRAP 5(g)(2). The parties may file a joint appendix containing any portions of the record before the U.S. District Court that are necessary to this court's resolution of the certified questions. See NRAP 5(d), (g)(2).

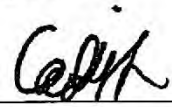
Lastly, in any proceeding under NRAP 5, fees "shall be the same as in civil appeals . . . and shall be equally divided between the parties unless otherwise ordered by the certifying court." NRAP 5(e). The U.S. District Court's order does not address the payment of this court's fees. Accordingly, appellant and respondents shall each tender to the clerk of this court, within 14 days from the date of this order, the sum of \$125, representing half of the filing fee. See NRAP 3(e); NRAP 5(e).

It is so ORDERED.


Hardesty, C.J.



Parraguirre, J.


Stiglich, J.


Cadish, J.


Silver, J.


Pickering, J.


Herndon, J.

cc: Gallian Welker & Beckstrom, LC/Las Vegas
Attorney General/Carson City
Attorney General/Las Vegas
Clerk, United States District Court for the District of Nevada
Hon. Andrew P. Gordon, Judge, United States District Court
for the District of Nevada