

Case No.

In the Supreme Court of Nevada

Electronically Filed
Mar 28 2023 11:36 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 4 OF 8

RORY T. KAY (NSBN 12416)
JANE SUSSKIND (NSBN 15099)
JOHN A. FORTIN (NSBN 15221)
McDONALD CARANO LLP
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(702)-873-4100
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
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Carson City, Nevada 89701

/s/ Kimberly Kirn
Employee of McDONALD CARANO LLP

CARSON CITY DISTRICT ATTORNEY
JASON D. WOODBURY

District Attorney

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bjohnson@carson.org

Representing Plaintiff

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. 2

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that on August 3, 2022, the above-captioned Court entered a
Stipulation and Order Regarding Deadline for Responding to Elvin Fred's Motion to Dismiss
and Page Limit for Opposition and Reply Briefs. A copy of said Order is attached hereto.

DATED this 10th day of August, 2022.

JASON D. WOODBURY
District Attorney

By:


BENJAMIN R. JOHNSON, #10632
Senior 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 10th day of August, 2022, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** via electronic mail and by first class mail to the following:

John A. Fortin, Esq.
McDonald Carano, LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102
E-MAIL: jfortin@mcdonaldcarano.com

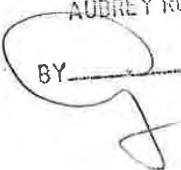
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EXHIBIT 1

1 CARSON CITY DISTRICT ATTORNEY
2 JASON D. WOODBURY
3 District Attorney
4 Bar No. 6870
5 BENJAMIN R. JOHNSON
6 Senior Deputy District Attorney
7 Nevada Bar No. 10632
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13 E-mail: jwoodbury@carson.org
14 bjohnson@carson.org
15 Representing Plaintiff

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AUDREY ROWLATT
CLERK

BY  DEPUTY

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

13 In re:

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

Case No. 15 OC 00074 1B

Dept. No. 2

20 **STIPULATION AND ORDER REGARDING DEADLINE FOR RESPONDING TO ELVIN
21 FRED'S MOTION TO DISMISS AND PAGE LIMIT FOR OPPOSITION AND REPLY BRIEFS**

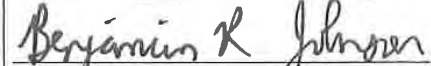
22 Plaintiff, the INVESTIGATION DIVISION OF THE DEPARTMENT OF PUBLIC
23 SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force (TRI NET), by and
24 through its counsel of record, JASON D. WOODBURY, Carson City District Attorney, and
25 BENJAMIN R. JOHNSON, Senior Deputy District Attorney, and Claimant ELVIN FRED, by
26 and through his counsel JOHN A. FORTIN, Esq. of the law firm McDonald Carano LLP,
27 hereby enter this stipulation as follows:

28 Plaintiff's deadline for responding to Elvin Fred's Motion to Dismiss Tri-Net's Civil

1 Forfeiture Complaint is July 29, 2022. The parties stipulate and agree to extend this deadline
2 and Plaintiff shall have until August 19, 2022 to file an opposition.

3 The parties further agree to an enlargement in the page limit for the Opposition and
4 Reply briefs. Plaintiff may file an Opposition brief not to exceed 25 pages, not including
5 exhibits. Defendant Elvin Fred may file a Reply brief not to exceed 15 pages.

6 Dated the 1st day of August, 2022.

7 
8 Jason Woodbury, No. 6870
9 Benjamin R. Johnson, No. 10632
10 Carson City District Attorney
11 885 E. Musser Street, Suite 2030
12 Carson City, Nevada 89701

13 ***Representing Plaintiff***

Dated the 1st day of August, 2022.


John Fortin, Esq. No. 15221
McDonald Carano LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

***Pro Bono Counsel for Claimant Elvin
Fred***

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IT IS SO ORDERED:

☒ Granted

☐ Granted in part:

And Denied in part:

☐ Denied

☐ Declined to consider ex parte

☐ Declined to consider without a hearing

☐ Other:

DATED:

August 3, 2022

DISTRICT COURT JUDGE

James Wilson

CARSON CITY DISTRICT ATTORNEY
JASON D. WOODBURY

District Attorney

Bar No. 6870

BENJAMIN R. JOHNSON

Senior Deputy District Attorney

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bjohnson@carson.org

Representing Plaintiff

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. 2

**STIPULATION AND ORDER REGARDING DEADLINE FOR RESPONDING TO ELVIN
FRED'S MOTION TO DISMISS AND REPLY IN SUPPORT OF MOTION**

Plaintiff, the INVESTIGATION DIVISION OF THE DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force (TRI NET), by and through its counsel of record, JASON D. WOODBURY, Carson City District Attorney, and BENJAMIN R. JOHNSON, Senior Deputy District Attorney, and Claimant ELVIN FRED, by and through his counsel JOHN A. FORTIN, Esq. of the law firm McDonald Carano LLP, hereby enter this stipulation as follows:

The parties previously stipulated to an extension of time to for Plaintiff to file a response

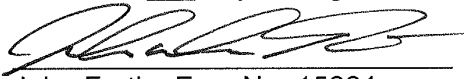
1 to Elvin Fred's Motion to Dismiss Tri-Net's Civil Forfeiture Complaint and the Court granted an
2 order extending the date to August 19, 2022. Counsel for both parties have agreed to further
3 extend the response deadline to August 26, 2022. The parties also desire to extend the
4 deadline for Defendant to file a Reply to September 9, 2022.

5 The parties stipulate and agree to extend the Opposition deadline to **August 26, 2022**
6 and the Reply deadline to **September 9, 2022**. This request is made in good faith and not for
7 the purpose of delaying the proceedings.

8 Dated the ____ day of August, 2022.

Dated the 18 day of August, 2022.

9
10 Jason Woodbury, No. 6870
11 Benjamin R. Johnson, No. 10632
12 Carson City District Attorney
885 E. Musser Street, Suite 2030
Carson City, Nevada 89701


13 John Fortin, Esq. No. 15221
14 McDonald Carano LLP
15 2300 West Sahara Avenue, Suite 1200
16 Las Vegas, Nevada 89102

17 **Representing Plaintiff**

**Pro Bono Counsel for Claimant Elvin
Fred**

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IT IS SO ORDERED:

☐ Granted

☐ Granted in part:

And Denied in part:

☐ Denied

☐ Declined to consider ex parte

☐ Declined to consider without a hearing

☐ Other: _____

DATED: _____

DISTRICT COURT JUDGE

2022 AUG 26 PM 4:41

MAILED
BY **K. PETERSON**

CARSON CITY DISTRICT ATTORNEY
JASON D. WOODBURY

District Attorney

Nevada Bar No. 6870

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bjohnson@carson.org

Representing Plaintiff

FIRST JUDICIAL DISTRICT COURT OF NEVADA
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.: 2

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

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

10 DATED this 26th day of August, 2022.

11 CARSON CITY DISTRICT ATTORNEY

12
13 

14 JASON D. WOODBURY
15 District Attorney
16 Nevada Bar No. 6870
17 BENJAMIN R. JOHNSON
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25 E-mail: jwoodbury@carson.org
bjohnson@carson.org
Representing Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual and Procedural Background

A. Underlying Facts

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

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

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

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

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

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

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

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

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

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

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

18 **II. Discussion**

19 **A. Standard of Review**

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

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

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

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

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

1 601, 291 P.3d at 1276.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

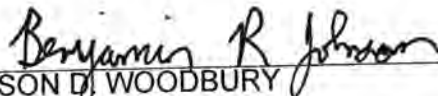
1 public offenses, although the effect is to restrict or regulate the use and enjoyment of
2 private property." *Id.*

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

12 **III. Conclusion**

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

15 CARSON CITY DISTRICT ATTORNEY

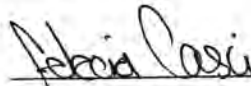
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CERTIFICATE OF SERVICE

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

John A. Fortin, Esq.
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*Pro Bono Counsel for Claimant
Elvin Fred*

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DEPUTY

FIRST JUDICIAL DISTRICT COURT

CARSON CITY, NEVADA

In Re:

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

Case No.: 15 OC 000741 B

Dept: II

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

I. INTRODUCTION.

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

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

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

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

19 IV. LEGAL ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 The Nevada Supreme Court explained, "recent precedents have established that we
11 consider first and foremost the original public understanding of constitutional provisions, not
12 some abstract purpose underlying them." *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. 484, 490,
13 327 P.3d 518, 522 (2014). Thus, "[w]hen interpreting a constitutional provision, our ultimate
14 goal is to determine the public understanding of a legal text leading up to and in the period after
15 its enactment or ratification." *Legislature of State v. Settlemyer*, 137 Nev., Adv. Op. 21, 486
16 P.3d 1276, 1280 (2021) (cleaned up); *see also Pohlbel v. State*, 128 Nev. 1, 9, 268 P.3d 1264,
17 1269 (2012). Therefore, as this Court evaluates Elvin's Motion with its constitutional
18 interpretation lens, 19th Century precedent and law should be its starting point. *See Nev. Const.*
19 *art. 1, § 8(1).*

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

24
25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

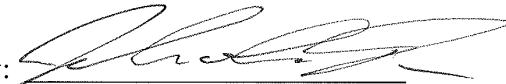
8 In sum, there is no direct abrogation of Article 1, Section 1, and the general police powers
9 permitting **regulations** of liberty and property rights cannot be extended to **alienate** property.
10 NRS 453.301 and NRS 179.1173 violate Nevada’s constitution. Elvin therefore asks this Court
11 to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

12 **V. CONCLUSION**

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

15 DATED this 1st day of September 2022.

16 MCDONALD CARANO LLP

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

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

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

CERTIFICATE OF SERVICE

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

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

Attorneys for Plaintiffs


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Representing Plaintiff

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2022 SEP 16 PM 2:37
AUBREY ROWLATT
CLERK
BY S. BADA IAS

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. 2

PLAINTIFF'S ANSWER TO SYLVIA FRED'S COUNTERCLAIM

COMES NOW, Plaintiff, the INVESTIGATION DIVISION OF THE DEPARTMENT OF
PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force (TRI NET)), by
and through its counsel of record, JASON D. WOODBURY, Carson City District Attorney, and
BENJAMIN R. JOHNSON, Senior Deputy District Attorney, and answers *Claimant Sylvia
Fred's Counterclaims* by admitting, denying and alleging as follows:

NATURE OF THE ACTION

TRI NET denies the allegations in the Nature of the Action paragraph on page 8.

JURISDICTION AND VENUE

1
2 1. The statements in paragraph 1 are legal conclusions or arguments and do not
3 contain factual allegations. To the extent a response is required, TRI NET denies any and all
4 allegations contained therein.

5 2. The statement in paragraph 2 is a legal conclusion or argument and does not
6 contain factual allegations. To the extent a response is required, TRI NET denies any and all
7 allegations contained therein.

8 3. TRI NET denies that Sylvia's counterclaims arise out of the same transactions
9 and events pleaded in the First Amended Complaint. TRI NET admits NRS 170.1171(1) states
10 that the "Nevada Rules of Civil Procedure are applicable to and constitute the rules of practice
11 in a proceeding for forfeiture...." The remaining statement in paragraph 3 is a legal conclusion
12 and does not contain factual allegations. To the extent a response is required, TRI NET
13 denies any and all allegations contained therein.

14 4. TRI NET denies the allegations contained in paragraph 4.

THE PARTIES

15
16 5. TRI NET is without sufficient information and knowledge to form a belief as to
17 the truth or falsity of the allegation in paragraph 5 that Counterclaimant Sylvia Fred is a
18 resident of the State of Minnesota, and therefore denies that allegation. TRI NET denies the
19 allegation in paragraph 5 that Sylvia is an owner of the Home as a joint tenant with her brother
20 Elvin.

21 6. TRI NET admits that is a multi-agency law enforcement drug task force
22 comprised of the Nevada Department of Public Safety, Investigation Division, the Carson City
23 Sheriff's Office and the Douglas County Sheriff's Office.

GENERAL ALLEGATIONS

24
25 7. TRI NET is without sufficient information and knowledge to form a belief as to
26 the truth or falsity of the allegations in paragraph 7, and therefore denies any and all
27 allegations contained therein.

28 8. TRI NET is without sufficient information and knowledge to form a belief as to

1 the truth or falsity of the allegations in paragraph 8, and therefore denies any and all
2 allegations contained therein.

3 9. TRI NET is without sufficient information and knowledge to form a belief as to
4 the truth or falsity of the allegations in paragraph 9, and therefore denies any and all
5 allegations contained therein.

6 10. TRI NET admits the allegation in paragraph 10 that in early 2015, TRI NET
7 investigated Elvin and other co-conspirators suspected of trafficking methamphetamine in
8 Carson City. TRI NET is without sufficient information and knowledge to form a belief as to
9 the truth or falsity of the allegation in paragraph 10 that "Sylvia lived out of state" in early 2015,
10 and therefore denies that allegation. TRI NET admits the allegation in paragraph 10 that in
11 March 2015, TRI NET arrested Elvin and his co-conspirators. TRI NET denies any and all
12 remaining allegations contained in paragraph 10.

13 11. TRI NET admits the allegations in paragraph 11 that Elvin negotiated and
14 entered into a plea agreement whereby he agreed to plead guilty to one count of
15 TRAFFICKING IN A SCHEDULE I CONTROLLED SUBSTANCE 28 GRAMS OR MORE, a
16 category A felony as defined by NRS 453.3385(3). TRI NET denies any and all remaining
17 allegations contained in paragraph 11.

18 12. Deny.

19 13. TRI NET is without sufficient information and knowledge to form a belief as to
20 the truth or falsity of the allegations in paragraph 13, and therefore denies any and all
21 allegations contained therein.

22 14. TRI NET admits it filed a Complaint for Forfeiture and filed and recorded a
23 Notice of Lis Pendens on April 1, 2015. TRI NET denies any and all remaining allegations
24 contained in paragraph 14.

25 15. The statement in paragraph 15 is a legal conclusion and does not contain
26 factual allegations. To the extent a response is required, TRI NET states that the statute
27 speaks for itself and denies any factual allegations.

28 16. TRI NET admits Elvin was served with the Complaint for Forfeiture and that

1 Sylvia was not served with the Complaint for Forfeiture. TRI NET denies any and all
2 remaining allegations contained in paragraph 16.

3 17. TRI NET admits on April 27, 2015, a Stipulation and Order to Stay Forfeiture
4 Proceeding was filed reflecting a stipulation between TRI NET and Elvin to stay forfeiture
5 proceedings pending resolution of Elvin's criminal proceedings and an order of the Court
6 granting the stipulation. TRI NET admits a Notice of Entry of Order which included a copy of
7 the Stipulation and Order to Stay Forfeiture was mailed to Sylvia on April 28, 2015.

8 18. Admit.

9 19. Deny.

10 20. TRI NET admits that an amended default judgment was entered in July 2019.
11 TRI NET is without sufficient information and knowledge to form a belief as to the truth or
12 falsity of the remaining allegations in paragraph 20 and denies on that basis.

13 21. TRI NET is without sufficient information and knowledge to form a belief as to
14 the truth or falsity of the allegations in paragraph 21, and therefore denies any and all
15 allegations contained therein.

16 22. The statements in paragraph 22 are legal conclusions or arguments and do not
17 contain factual allegations. To the extent a response is required, TRI NET denies any and all
18 allegations contained therein.

19 23. Deny.

20 24. Deny.

21 25. Deny.

22 26. TRI NET admits that an amended default judgment was recorded against the
23 Desatoya property and that a 5-day notice was posted on the door. TRI NET denies any and
24 all remaining allegations in paragraph 26.

25 27. TRI NET admits that it took possession of the home. TRI NET denies any and
26 all remaining allegations in paragraph 27.

27 28. Deny.

28 29. Deny.

- 1 30. Deny.
2 31. Deny.
3 32. Admit.
4 33. Deny.
5 34. Deny.
6 35. TRI NET denies that Sylvia is entitled to any relief in this case.

7 **FIRST CLAIM FOR RELIEF**

8 **(Violation of the United States and Nevada Constitution's Due Process Clause)**

9 36. TRI NET repeats and realleges all admissions, denials and responses to the
10 allegations contained in the Counterclaim as thought fully set forth herein.

11 37. The statements in paragraph 37 are legal conclusions or arguments and do not
12 contain factual allegations. To the extent a response is required, TRI NET denies any and all
13 allegations contained therein.

14 38. Admit.

15 39. Admit.

16 40. TRI NET admits that Sylvia was not served with a copy of the complaint for
17 forfeiture and summons. TRI NET denies any and all remaining allegations in paragraph 40.

18 41. TRI NET admits that a default and amended default judgment were entered in
19 this case. TRI NET denies any and all remaining allegations in paragraph 41.

20 42. Deny.

21 43. Deny.

22 44. The statements in paragraph 44 are legal conclusions or arguments and do not
23 contain factual allegations. To the extent a response is required, TRI NET denies any and all
24 allegations contained therein.

25 45. Deny.

26 46. Deny.

27 ///

28 ///

SECOND CLAIM FOR RELIEF

(Violation of the United States and Nevada Constitution's Takings Clauses)

47. TRI NET repeats and realleges all admissions, denials and responses to the allegations contained in the Counterclaim as thought fully set forth herein.

48. The statements in paragraph 48 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET is without sufficient information and knowledge to form a belief as to the truth of the allegations and therefore denies any and all allegations contained therein.

49. Deny.

50. Deny.

51. Deny.

52. Admit.

53. Deny.

54. Deny.

55. Deny.

THIRD CLAIM FOR RELIEF

(Trespass)

56. TRI NET repeats and realleges all admissions, denials and responses to the allegations contained in the Counterclaim as thought fully set forth herein.

57. The statements in paragraph 57 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

58. Deny.

59. Deny.

60. Deny.

61. Deny.

62. Deny.

63. Deny.

FOURTH CLAIM FOR RELIEF

(Conversion)

64. TRI NET repeats and realleges all admissions, denials and responses to the allegations contained in the Counterclaim as thought fully set forth herein.

65. The statements in paragraph 65 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

66. Deny.

67. TRI NET admits that an Amended Default Judgment was recorded against the Desatoya property. TRI NET denies any and all remaining allegations contained in paragraph 67.

68. Deny.

69. Deny.

70. Deny.

71. Deny.

FIFTH CLAIM FOR RELIEF

(Waste)

72. TRI NET repeats and realleges all admissions, denials and responses to the allegations contained in the Counterclaim as thought fully set forth herein.

73. The statements in paragraph 73 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

74. Deny.

75. Deny.

76. Deny.

77. Deny.

78. Deny.

///

SIXTH CLAIM FOR RELIEF

**(Declaration that Instrumentality Forfeitures are Unconstitutional and/or that a
Complete Innocent Property Immunity Exists under Article 1, Section 1)**

79. TRI NET repeats and realleges all admissions, denials and responses to the allegations contained in the Counterclaim as thought fully set forth herein.

80. The statements in paragraph 80 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

81. The statements in paragraph 81 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

82. Deny.

83. Deny.

84. Deny.

85. The statements in paragraph 85 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

86. The statements in paragraph 86 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

87. The statements in paragraph 87 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

88. Deny.

SEVENTH CLAIM FOR RELIEF

(Negligence)

89. TRI NET repeats and realleges all admissions, denials and responses to the allegations contained in the Counterclaim as thought fully set forth herein.

1 90. The statements in paragraph 90 are legal conclusions or arguments and do not
2 contain factual allegations. To the extent a response is required, TRI NET denies any and all
3 allegations contained therein.

4 91. Deny.

5 92. Deny.

6 93. Deny.

7 94. Deny.

8 **SEVENTH CLAIM FOR RELIEF**

9 **(Negligence)**

10 95. TRI NET repeats and realleges all admissions, denials and responses to the
11 allegations contained in the Counterclaim as thought fully set forth herein.

12 96. The statements in paragraph 96 are legal conclusions or arguments and do not
13 contain factual allegations. To the extent a response is required, TRI NET denies any and all
14 allegations contained therein.

15 97. TRI NET admits that an amended default judgment was recorded against the
16 Desatoya property. TRI NET denies any and all remaining allegations contained in paragraph
17 97.

18 98. Deny.

19 99. Deny.

20 100. Deny.

21 **GENERAL DENIAL**

22 101. Any allegations in the First Amended Complaint not expressly responded to by
23 TRI NET in this Answer are hereby denied. As set forth herein, TRI NET generally denies the
24 characterization of the facts and allegations related thereto and proffers that the documents
25 referenced in the First Amended Complaint speak for themselves.

26 **AFFIRMATIVE DEFENSES**

27 **FIRST AFFIRMATIVE DEFENSE**

28 102. Sylvia's suit fails to state a claim upon which relief may be granted in any of the

1 alleged claims for relief.

2 **SECOND AFFIRMATIVE DEFENSE**

3 103. Sylvia's claims are barred by the equitable doctrines of waiver, laches and
4 estoppel.

5 **THIRD AFFIRMATIVE DEFENSE**

6 104. Sylvia's claims are barred, in whole or in part, under the doctrine of unclean
7 hands.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 105. Sylvia failed to undertake any reasonable action to mitigate any and all potential
10 or alleged damages.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 106. Sylvia has suffered no damages as a result of any act or omission by TRI NET.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 107. TRI NET's acts or omissions were not the proximate cause of Sylvia's damages,
15 if any.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 108. Sylvia's damages, if any, were caused by superseding or intervening causes.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 109. NRS Chapter 41 limits the damages that may be collectible against a political
20 subdivision of the State of Nevada.

21 **TENTH AFFIRMATIVE DEFENSE**

22 110. TRI NET acted reasonably and in good faith at all times material hereto.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 111. The damages, if any, suffered by Sylvia, are the result of the actions, conduct or
25 inaction of third parties not under control of TRI NET, and therefore TRI NET has no liability
26 for such actions, conduct or inaction.

27 **TWELFTH AFFIRMATIVE DEFENSE**

28 112. Sylvia's claims are barred for lack of standing.

THIRTEENTH AFFIRMATIVE DEFENSE

113. TRI NET incorporates by reference the affirmative defenses enumerated in Nev. R. Civ. P. 8 for the purposes of avoiding waiver of those defenses.

FOURTEENTH AFFIRMATIVE DEFENSE

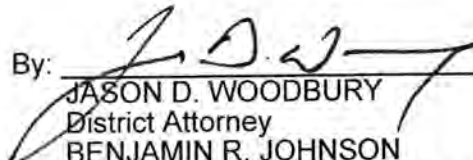
114. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein, in so far as sufficient facts were not available after a reasonable inquiry upon the filing of this Answer to the Counterclaims; therefore, TRI NET, reserves the right to amend its answer to allege additional affirmative defenses if subsequent investigations so warrant.

WHEREFORE, TRI NET prays for judgment as follows:

1. That Sylvia take nothing by virtue of the Counterclaim and that the same be dismissed with prejudice;
2. For an award of reasonable attorney fees and costs of suit incurred in the defense of this action; and
3. For such other and further relief as the Court may deem just and proper.

DATED this 16th day of September, 2022.

JASON D. WOODBURY
District Attorney

By: 
JASON D. WOODBURY
District Attorney
BENJAMIN R. JOHNSON
Senior Deputy District Attorney
Representing Plaintiff

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 16th day of September, 2022, I served a true and correct copy of the foregoing **PLAINTIFF'S ANSWER TO SYLVIA FRED'S COUNTERCLAIMS** via electronic mail to the following:

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

Alicia Casci

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15 Representing Plaintiff

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

18 In re:

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

Case No. 15 OC 00074 1B

Dept. No. 2

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES:

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

DATED this 21st day of September, 2022.

JASON D. WOODBURY
District Attorney

By:

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

CERTIFICATE OF SERVICE

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

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

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

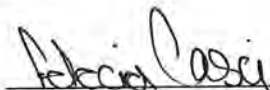
_____

EXHIBIT 1

EXHIBIT 1

2022 SEP 20 PM 3:39

ADJUDICATED BY COURT CLERK

BY D. SHADRON

FIRST JUDICIAL DISTRICT COURT OF NEVADA
CARSON CITY

In re:

Case No.: 15 OC 00074 1B

Dept. No.: 2

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

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

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

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I. Factual and Procedural Background

A. Underlying Facts

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **II. Discussion**

20 **A. Standard of Review**

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

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

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

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

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

1 601, 291 P.3d at 1276.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

13 III. Conclusion

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

17 *September 20, 2022*

18 
19 JAMES E. WILSON
20 District Judge

21 Submitted August 26, 2022 by:

22 
23 BENJAMIN R. JOHNSON
24 Senior Deputy District Attorney
25 885 East Musser Street, Suite 2030
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AUDREY ROWLAND
CLERK
BY K. PETERSON
DEPUTY

*Pro Bono Counsel for
Claimant Elvin Fred*

FIRST JUDICIAL DISTRICT COURT

CARSON CITY, NEVADA

In Re:

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

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

ELVIN FRED VERIFIED ANSWER

ELVIN FRED, an individual,

and

Counterclaimant,

COUNTERCLAIMS

v.

STATE OF NEVADA ex rel.
INVESTIGATION DIVISION OF THE
NEVADA STATE POLICE (TRI-NET
NARCOTICS TASK FORCE),

**(Exempt from Arbitration per NAR 3(A);
Declaratory Relief Requested, Monetary
Damages are in Excess of \$50,000)**

Counterdefendant,

Under FDCR 3.6 this pleading does not contain any personal information as defined by NRS 239B.030(4), and undersigned counsel acknowledges that when any additional documents are placed into the record, an affirmation will be provided only if the document contains personal information.

VERIFIED ANSWER

Claimant Elvin Fred ("Elvin") responds to Plaintiff State of Nevada, *ex rel.* the Investigation Division of the Nevada State Police (Tri-Net Narcotics Task Force), ("Tri-Net") First Amended Complaint for Forfeiture ("FAC") as follows:

1. To the extent Paragraph 1 of the FAC is a legal conclusion, no response is required. To the extent a response is required, Elvin denies.

2. Elvin admits he is an owner, as a joint tenant with Claimant Sylvia Fred ("Sylvia"), of the property located at 3587 Desatoya Drive, Carson City, Nevada 89701, Assessor's Parcel

1 Number 010-443-11 (the "Home"). The remaining allegations in Paragraph 2 of the FAC are legal
2 conclusions and no response is required.

3 3. In responding to Paragraph 3 of the FAC, Elvin is without knowledge or information
4 sufficient to form a belief about Tri-Net and therefore denies the same.

5 4. To the extent Paragraph 4 of the FAC call for a legal conclusion, no response is
6 required. To the extent a response is required, Elvin admits he is a Claimant to these proceedings
7 and is a joint tenant in ownership of the Home with Sylvia.

8 5. Elvin admits that on March 31, 2015, a Quitclaim Deed was created memorializing
9 Sylvia's joint tenancy rights to the Home for Sylvia providing the remaining purchase balance to
10 Elvin in 2012; the Quitclaim Deed was notarized on April 1, 2015, and recorded in the County of
11 Carson City on April 6, 2015. As for the remaining allegations of Paragraph 5, Elvin refers to the
12 Quitclaim Deed recorded on April 6, 2015, for an accurate recitation of its contents, and denies any
13 allegations set forth in Paragraph 5 of the FAC that is inconsistent with its terms.

14 6. To the extent Paragraph 6 of the FAC calls for a legal conclusion, no response is
15 required. Insofar as those allegations are asserted against other Claimants as NRS 179.1158 defines
16 that term, Elvin has no obligation to answer.

17 7. In responding to Paragraph 7 of the FAC, Elvin is without knowledge or information
18 sufficient to form a belief about Plaintiff's knowledge, and therefore denies the same. Insofar as
19 those allegations are asserted against other Claimants as NRS 179.1158 defines that term, Elvin has
20 no obligation to answer.

21 8. Admit.

22 9. Admit.

23 10. In responding to Paragraph 10, Elvin is without sufficient information to form a belief
24 as to the truth or falsity of the allegations and therefore denies the same.

25 11. In responding to Paragraph 11, Elvin is without sufficient information to form a belief
26 as to the truth or falsity of the allegations and therefore denies the same.

27 12. In responding to Paragraph 12, Elvin is without sufficient information to form a belief
28 as to the truth or falsity of the allegations and therefore denies the same.

1 13. In responding to Paragraph 13, Elvin is without sufficient information to form a belief
2 as to the truth or falsity of the allegations and therefore denies the same.

3 14. In responding to Paragraph 14, Elvin is without sufficient information to form a belief
4 as to the truth or falsity of the allegations and therefore denies the same.

5 15. In responding to Paragraph 15, Elvin is without sufficient information to form a belief
6 as to the truth or falsity of the allegations and therefore denies the same.

7 16. In responding to Paragraph 16, Elvin is without sufficient information to form a belief
8 as to the truth or falsity of the allegations and therefore denies the same.

9 17. In responding to Paragraph 17, Elvin is without sufficient information to form a belief
10 as to the truth or falsity of the allegations and therefore denies the same.

11 18. In responding to Paragraph 18, Elvin is without sufficient information to form a belief
12 as to the truth or falsity of the allegations and therefore denies the same.

13 19. In responding to Paragraph 19, Elvin is without sufficient information to form a belief
14 as to the truth or falsity of the allegations and therefore denies the same.

15 20. In responding to Paragraph 20, Elvin refers to the June 6, 2015, Criminal Information
16 filed in the First Judicial District Court for an accurate recitation of its contents, and denies any
17 allegations set forth in Paragraph 20 of the FAC that are inconsistent with its terms.

18 21. In responding to Paragraph 21, Elvin refers to the June 29, 2015, Memorandum of
19 Plea Negotiation filed in the First Judicial District Court for an accurate recitation of its contents,
20 and denies any allegations set forth in Paragraph 21 of the FAC that are inconsistent with its terms.

21 22. In responding to Paragraph 22, Elvin refers to the August 24, 2015, Sentencing
22 Hearing transcript that took place in the First Judicial District Court for an accurate recitation of his
23 sentencing, and denies any allegations set forth in Paragraph 22 of the FAC that are inconsistent
24 with its terms.

25 23. In responding to Paragraph 22, Elvin refers to the August 26, 2015, Judgment of
26 Conviction filed in the First Judicial District Court for an accurate recitation of its contents, and
27 denies any allegations set forth in Paragraph 23 of the FAC that are inconsistent with its terms.
28

FIRST CLAIM FOR RELIEF

(Forfeiture of Property)

24. Denied.

25. Denied.

NRS 179.1171(6) Short and Plain Description of Elvin's Ownership Interest

Elvin is an owner of the Home as a joint tenant with Sylvia.

AFFIRMATIVE DEFENSES

1. Plaintiff's FAC fails to state a claim upon which relief can be granted.

2. Plaintiff's FAC is time barred under NRS 179.1171(2) because a valid complaint for forfeiture was not filed within 120 days after the property was seized and is therefore barred by the applicable statute of limitations.

3. Plaintiff's FAC does not relate back under NRCP 15 due to the doctrine of laches, estoppel, acquiescence, and/or unclean hands.

5. Plaintiff's FAC is barred under the Eighth Amendment of the United States Constitution's Excessive Fines protections because the forfeiture of the Home under these facts are not proportioned to Elvin's conduct.

6. Plaintiff's FAC is barred under Article 1, Section 6 of the Nevada Constitution's Excessive Fines protections because the forfeiture of the Home under these facts are not proportioned to Elvin's conduct.

7. Plaintiff's FAC is barred under Article 1, Section 1 of the Nevada Constitution's Inalienable Rights protections because instrumentality forfeitures are per se unconstitutional.

8. Plaintiff's FAC is barred under Article 1, Section 8 of the Nevada Constitution's Double Jeopardy protections because the history and tradition in Nevada law is consistent in that since the founding, forfeitures have been highly disfavored in the law such that a civil forfeiture of property following a criminal conviction is punishment and violated Nevada's double jeopardy clause.

12. Plaintiff's FAC is barred under Article 4, Section 19 of the Nevada Constitution's bar on the Executive Branch exercising discretion on the receipt and disbursal of funds.

13. Plaintiff's FAC is barred under Article 3, Section 1 of the Nevada Constitution's Separation of Powers protection because only the Legislature is permitted to make budgetary decisions not the Executive branch.

14. Plaintiff's FAC is barred by claim and issue preclusion principles because the district court in Elvin's habeas proceedings, already determined that Elvin should only be punished by a sentence of life in prison as the district court vacated the \$20,000 fine imposed because it was excessive.

15. Plaintiff's FAC is barred because the Home is protected under Nev. Const. art. 4, § 30, and NRS 115.010(1) as a Homestead such that the principles of *Aguirre v. Elko Cnty. Sherriff's Off.*, 138 Nev., Adv. Op. 32, 508 P.3d 886 (2022) bar the Home from being forfeited.

16. Plaintiff's FAC is barred because NRS 179.1173(4) places only a burden of proof for the government of clear and convincing evidence, not proof beyond a reasonable doubt, to establish a property forfeiture. This burden of proof violates the U.S. and Nevada Due Process Clauses.

17. Plaintiff's FAC is barred under the *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 54 (1993), precedent because Tri-Net illegally forfeited Elvin's Home without performing sufficient due diligence so that it could provide Elvin sufficient notice or an opportunity to be heard.

18. Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry to date. Therefore Elvin, reserves the right to amend this Answer to add additional affirmative defenses as additional facts are discovered.

PRAYER FOR RELIEF

WHEREFORE, Counterclaimant Elvin Fred prays for judgment as follows:

1. That Tri-Net taking nothing from its Amended Complaint and all of its claims against Elvin seeking a forfeiture of his Home be dismissed with prejudice;

2. For attorneys' fees and costs of suit herein, as allowed by law, in an amount to be determined; and

3. Any additional relief this court deems just and proper.

DEMAND FOR JURY TRIAL

Claimant Elvin Fred hereby demands a jury trial for all issues so triable.

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VERIFICATION

I, Elvin Fred, have read the foregoing VERIFIED ANSWER, I know the contents thereof, and I declare under penalty of perjury under the laws of the State of Nevada that the same is true of my own knowledge, except for those matters stated therein on information and belief, and as for those matters, I believe them to be true.

DATED this 29TH day of AUGUST, 2022.


ELVIN FRED

COUNTERCLAIMS

NATURE OF THE ACTION

Elvin, his children, and the other members of the Fred Family have been deprived of their Home for 32 months, including during the unsettling time of a global pandemic. This while the State of Nevada already punished Elvin – severely – by sentencing him to life in prison. Now the State of Nevada *ex rel.* the Investigation Division of the Nevada State Police, Tri-Net Narcotics Task Force (“Tri-Net”) seeks to extract an unconstitutional punishment and forfeiture of the Home. But Tri-Net needs to fund its law enforcement operations, pay law enforcement salaries, and do it all without any oversight or input by the Legislature – thus Tri-Net is incentivized to seize and forfeit as much property as it can. Indeed, through this forfeiture proceeding, Tri-Net’s void default judgment, and its illegal and unconstitutional taking of Elvin’s Home, Tri-Net also took possession of, towed, and eventually sold Elvin’s vehicle. This personal property is not included in Elvin’s criminal complaint or criminal information as an instrumentality of crime. It is not included in the original complaint forfeiture commencing these civil forfeiture proceedings as an instrumentality of crime. Tri-Net illegally and impermissibly took Elvin’s personal property, sold it, and kept the proceeds for themselves. Indeed, Tri-Net almost achieved the forfeiture of the Home without ever providing service to Elvin while he is under the State’s care and custody. Fortunately, Sylvia, Elvin’s sister and joint tenant owner of the Home, stood on her rights, challenged the default judgment and prevailed before the Nevada Supreme Court. Despite all of this, Tri-Net continues its unconstitutional pursuit of forfeiting the Fred Family Home.

Because of Tri-Net’s due process violations, Tri-Net’s default judgment is void *ab initio* – it never legally existed. Thus, Tri-Net’s eviction of Elvin’s family and its physical occupation of the Home was without legal authority or privilege and is an unconstitutional Taking in violation of the Fifth Amendment of the United States Constitution and Article 1, Section 8(6) and Section 22 of the Nevada Constitution. Tri-Net’s actions likewise constitute negligence, trespass, conversion, and waste under Nevada law. The damages Elvin suffered are the direct and proximate result of the actions, inactions, and unlawful conduct of Tri-Net. Thus, Elvin seeks monetary damages, punitive damages, treble damages, nominal damages, and declaratory relief.

JURISDICTION AND VENUE

1. This Court has jurisdiction under Article 6, Section 6 of the Nevada Constitution. This Court also has jurisdiction under NRS 30.040 to declare rights, status, and other legal relations whether further relief is or could be claimed by Elvin.

2. Both the Fifth Amendment and Article 1, Section 8(6) are "self-executing" provisions of the United States' Constitution and Nevada's Constitution. *See First Eng. Evangelical Lutheran Church of Glendale v. Los Angeles Cnty, Cal.*, 482 U.S. 304, 315 (1987). Thus, this Court has jurisdiction to adjudicate Elvin's inverse condemnation claim.

3. Tri-Net waived sovereign immunity for the types of claims asserted in this action. NRS 41.031.

4. Elvin's counterclaims arise out of the same transaction and events pleaded in Tri-Net's FAC – the civil forfeiture proceedings. *See* NRCP 13. NRS 170.1171(1) states that the "Nevada Rules of Civil Procedure are applicable to and constitute the rules of practice in a proceeding for forfeiture. . . ." Accordingly, this Court possesses jurisdiction to adjudicate Elvin's counterclaims.

5. Venue is proper in this jurisdiction because the Home is located and the tortious conduct as well as the violations of Elvin's constitutional rights occurred within the jurisdiction of this Court, and this action is brought against the county in which this court is located. NRS 13.010; NRS 13.030. The amount in controversy exceeds \$15,000.00.

THE PARTIES

6. Counterclaimant Elvin Fred is a resident of the State of Nevada. Elvin is an owner of the Home as a joint tenant with his sister Sylvia Fred.

7. Based on information and belief, Counterdefendant Tri-Net is a law enforcement agency for the State of Nevada.

GENERAL ALLEGATIONS

In 2012, Sylvia and Elvin purchase the Home together

8. In 2012, Elvin and Sylvia purchased the property at 3587 Desatoya Drive, Carson City, Nevada 89701, Assessor's Parcel Number 010-443-11 (the "Home") for a purchase price of

1 \$71,099.92, including the real estate agent's commission. Even though Elvin and Sylvia purchased
2 the Home together with the intent to be co-owners, the original deed was recorded in Elvin's name
3 alone.

4 9. The funds used to purchase the Home came from two sources. Elvin received
5 \$60,000 from a settlement of a civil rights case involving the Carson City Nugget, Carson City, and
6 the Sheriff Deputies for their conduct in January 2009. *See Elvin Fred v. Carson City, et al.*, Case
7 No. 3:11-CV-0065-HDM-VPC (ECF No. 1) (D. Nev. Jan. 28, 2011).

8 10. The remaining balance of the purchase price was provided by Elvin's sister, Sylvia.
9 Sylvia had diligently saved her money as she worked and attended college. Sylvia had spent years
10 providing for and assisting other Fred Family members to ensure they had adequate food, housing,
11 necessities. Sylvia's only request to Elvin in 2012 was that the Home would be a Fred Family Home
12 available to all members of the Fred family in need of shelter. Elvin readily agreed.

13 11. Between the purchase in 2012 and 2015, Elvin, his children, and other members of
14 the Fred family enjoyed the refuge of the Home. Even after Elvin's arrest and conviction, Elvin's
15 children and other members of the Fred Family retreated to the Home as their sanctuary until Tri-
16 Net's unceremonious and illegal eviction in 2019.

17 ***Tri-Net Goes Undercover, Arrests Elvin, and Initiates the Civil Forfeiture of the Home***

18 12. In early 2015, Tri-Net investigated Elvin and other co-conspirators suspected of
19 trafficking contraband in Carson City while Sylvia lived out of state. In March 2015, Tri-Net
20 arrested Elvin and his co-conspirators and charged them with conspiracy and intent to traffic a
21 controlled substance.

22 13. Shortly after his arrest, Elvin negotiated and entered into a plea agreement. In the
23 plea bargain Elvin agreed to plead guilty to one count of trafficking in a controlled substance.

24 14. While Elvin negotiated this plea bargain, Elvin and Sylvia got their affairs in order
25 regarding the Home, including correcting the deed to the Home to reflect their previously agreed
26 upon co-ownership arrangement. On March 31, 2015, Sylvia and Elvin created a Quitclaim Deed
27 which was notarized on April 1, 2015, and recorded on April 6, 2015.

28

1 15. This Quitclaim Deed did not transfer the property's ownership from Elvin to Sylvia,
2 but the deed simply memorialized and confirmed Sylvia and Elvin's prior intent to have Sylvia as a
3 joint tenant owner with Elvin since the 2012 purchase.

4 16. Shortly thereafter, Sylvia added her name to the utilities and regularly paid both the
5 utilities and the property taxes on the Home. All of this information – the deeds, the utilities, and
6 the payment of property taxes – are a matter of public record.

7 ***Tri-Net violates Due Process, commits an unconstitutional Taking,***
8 ***and tortuously violates Elvin's property rights***

9 17. Because the State charged Elvin with violations of the Uniform Controlled
10 Substances Act, NRS 453.301, on April 1, 2015, Tri-Net began a civil forfeiture proceeding on the
11 Home and simultaneously filed and recorded a *lis pendens* on the Home.

12 18. On April 28, 2015, Tri-Net and Elvin entered into a stipulation and order (through
13 Elvin's prior and now retired legal counsel, Loren Graham, Esq.) staying the civil forfeiture
14 proceedings pending resolution of Elvin's criminal proceedings. *See* NRS 179.1173(2). On April
15 28, 2015, Tri-Net mailed a notice of the stay to Sylvia in Minnesota. This is the only notice Sylvia
16 ever received.

17 19. Shortly after Elvin was sentenced to life in prison in the criminal proceedings, Elvin
18 terminated Graham as his attorney in both his criminal proceedings and also in these civil forfeiture
19 proceedings. Graham failed to withdraw as counsel in these civil forfeiture proceedings.

20 20. During Elvin's habeas proceedings, through his appointed habeas counsel, Elvin
21 cross-examined Graham regarding the effectiveness of his representation in the criminal
22 proceedings. Tri-Net's counsel is the same District Attorney's office that prosecuted Elvin and that
23 District Attorney's office likewise examined Graham at the habeas proceeding.

24 21. The District Attorney's office never asked about Graham's continued representation
25 of Elvin in the forfeiture proceedings on the record during the habeas proceeding.

26 22. Based on information and belief, Tri-Net never asked about Graham's continued
27 representation of Elvin in the forfeiture proceedings off the record during the habeas proceeding or
28 at any time after the habeas proceeding concluded.

1 23. At the conclusion of the habeas proceeding, the district court denied Elvin's claim
2 that Graham provided ineffective assistance of counsel. The district court further confirmed that
3 Elvin's sentence of life in prison sentence was proper.

4 24. The district court however found that the \$20,000 fine levied under NRS chapter 453
5 and based on Elvin's drug trafficking conviction was "excessive" and the district court vacated the
6 punishment "in the interests of justice." The Nevada Supreme Court later affirmed this decision.
7 *See Fred (Elvin) v. State*, Case No. 72521 (Ord. of Affirmance, Mar. 14, 2018); NRAP 36(c).

8 25. Following the finality of Elvin's criminal proceedings in 2018, Tri-Net, moved to lift
9 the stay to the forfeiture proceedings. (*See* Mot. to Lift Stay, May 14, 2018, on file.) Based on
10 information and belief, rather than investigate whether Graham remained Elvin's counsel in the
11 forfeiture proceeding, Tri-Net kept serving all of its notices, motions, and other pleadings to Graham
12 *only*.

13 26. Since his arrest in 2015, Elvin remained in the custody of the State of Nevada and
14 after being sentenced to life in prison, Elvin resided in High Desert Prison in southern Nevada.

15 27. Thus, even though Elvin was easily accessible to Tri-Net to determine whether
16 Graham still represented Elvin, Tri-Net continued to *only* send its notices, motions, and other
17 pleadings to Graham.

18 28. Graham never appeared in the civil forfeiture proceeding following the stipulation
19 and stay in 2015. Graham never withdrew as counsel until undersigned counsel substituted in for
20 Graham. Based on information and belief, Graham retired from the practice of law in 2021.

21 29. Tri-Net's notice of default does not provide any information about its attempt to
22 communicate with Graham to ensure Graham in fact received Tri-Net's notice of default.

23 30. Elvin never received any notification that Tri-Net resumed the forfeiture proceeding
24 or that Tri-Net sought a default judgment on the Home.

25 31. Worse, and even though Tri-Net knew Sylvia was an interested claimant as defined
26 by NRS 179.1158 and provided her notice of the stay in 2015, Tri-Net did not provide Sylvia with
27 any notice (including the complaint or the summons) that forfeiture proceedings had resumed. Thus,
28

1 neither Sylvia nor Elvin were properly noticed of Tri-Net's resumption of the forfeiture proceedings
2 nor the eventual default Tri-Net obtained in the civil forfeiture proceedings.

3 32. In July 2019, Tri-Net obtained an Amended Default Judgment that purportedly vested
4 title to the Home in Tri-Net. Tri-Net did not provide Sylvia with notice of the Amended Default
5 Judgment until after Tri-Net recorded the Amended Default Judgment in the chain of title.

6 33. Had Elvin been noticed with any of the motions or notices that Tri-Net resumed the
7 forfeiture proceedings or that Tri-Net sought a default judgment in the civil forfeiture proceeding,
8 he would have defended his ownership interest to the Home and he would have advanced his
9 defenses including that Nevada law is constitutionally defective on several grounds.

10 34. Tri-Net's failure to perform its proper due diligence as required under NRS 179.1171,
11 to ensure Graham continued to represent Elvin and to ensure Elvin intended to defend his interests
12 violated his Due Process rights.

13 35. Because Tri-Net was aware of both Elvin's interest in the Home, it knew or should
14 have known the Amended Default Judgment was defective and unlawful.

15 36. Tri-Net recorded the void Amended Default Judgment in the Home's chain of title on
16 July 10, 2019. Following Tri-Net obtaining title to the Home, Tri-Net, without valid or legal
17 authorization or privilege, crossed the property line of the Home, entered the curtilage of the Home,
18 and attached a 5-day at will eviction notice to the front door of the Home.

19 37. Later in August 2019, Tri-Net without valid legal authorization or privilege, crossed
20 the property line of the Home, entered the curtilage of the Home, entered the Home, evicted the Fred
21 Family, and took actual possession of the Home. Tri-Net remained in actual or constructive
22 possession and occupation of the Home for 32 months.

23 38. In other words, Tri-Net, as a Nevada Public Agency, directly appropriated and/or
24 physically invaded Elvin's private property without valid legal authorization or privilege and did not
25 provide him just compensation for the complete loss of his property rights. This loss of rights
26 includes items within the Home.

27 39. Elvin's vehicle, a 1994 Cadillac El-Dorado was on the property at the time of the
28 illegal forfeiture and unconstitutional taking of the Home. Shortly after Tri-Net took possession of

the Home, Tri-Net towed the vehicle off the property. Based on information and belief, Tri-Net sold the vehicle for a profit and kept those proceeds. That vehicle was not lawfully forfeited under NRS 453.301, nor was it lawfully seized, forfeited, and sold for a profit under *any* Nevada law. Tri-Net's actions regarding Elvin's personal property and vehicle is oppressive.

Tri-Net violates several other provisions of Nevada's civil forfeiture laws while the Home is seized and forfeited.

40. Under NRS 179.118 and NRS 179.1187, after providing portions of the proceeds and profits from forfeiture proceedings to claimants with a protected interest in the property as well as reimbursing for the costs to obtain legal title over the forfeited property, the rest of the proceeds and profits from forfeitures are retained entirely by law enforcement.

41. These funds are *not* deposited within the Nevada's General fund nor the general fund of the county, city, or town *at any time*. NRS 179.1187(1).

42. Indeed, NRS 179.118(2) specifically prohibits law enforcement from including forfeiture profits "in the preparation of the budget of a law enforcement agency."

43. For most law enforcement entities, Nevada law does not allow the proceeds and profits from forfeitures to be used for operating expenses. NRS 179.1187(2)(a)-(b). But Tri-Net falls within the exception to Nevada law such that any proceeds and profits Tri-Net obtains from forfeitures can be spent on operating expenses including salaries and other monetary rewards for Tri-Net officers. NRS 179.1187(2)(c). The law therefore incentivizes Tri-Net officers to forfeit as much property as possible.

44. All Nevada law enforcement entities engaged in the seizure and forfeiture of property are required to submit annual reports to the Nevada Attorney General. *See* NRS 179.1205. These reports require submission of information about both seizures and forfeitures of property as well as the disposition of that property.

45. The Nevada Attorney General likewise publishes the information annually on its website. *See* Annual Forfeiture Reporting, https://ag.nv.gov/Hot_Topics/Annual_Forfeiture_Reporting/#:~:text=Assets%20are%20considered%20forfeited%20if,or%20agreement%20must%20be%20reported.

1 46. These reporting requirements became mandatory shortly after Tri-Net began the
2 forfeiture proceedings here. But Tri-Net (nor the Nevada State Police, the Carson City Sheriff's
3 Office, nor the Douglas County Sheriff's office – all of the entities constituting Tri-Net) have *ever*
4 accurately reported the seizure and forfeiture of the Home to the Nevada Attorney General. *See id.*

5 47. Accurate reporting and accounting of forfeiture proceeds and profits is similarly
6 important because, under certain conditions, forfeiture proceeds and profits must be provided to the
7 local school district in order "to purchase books and computer hardware and software for the use of
8 the students in that school district." NRS 179.1187(2)(d); NRS 179.1178(4).

9 48. Every two years, "[t]he chief administrative officer of a law enforcement agency that
10 distributes money to a school district pursuant to [NRS 179.1187(2)(d)] shall submit a report to the
11 Director of the Legislative Counsel Bureau before January 1 of each odd-numbered year. The report
12 must contain the amount of money distributed to each school district . . . in the preceding biennium."

13 49. Therefore, and based on information and belief, Tri-Net's inaccurate reporting of the
14 seizure, forfeiture, and sale of Elvin's vehicle (which Tri-Net did so without any legal authority)
15 along with its inaccurate reporting of the seizure and forfeiture of the Home, Tri-Net has adversely
16 affected the local school district budget and inaccurately reported its forfeiture actions to both the
17 Nevada Attorney General and Nevada's Legislative Counsel Bureau.

18 ***The Fred's Obtained Title and Possession of the Home in 2022 and Discover it is Ruined.***

19 50. Between 2019 and 2022 and because Tri-Net's default judgment is void, it means Tri-
20 Net took possession of private property without acquiring valid legal title. By evicting and taking
21 actual possession of the Home, Tri-Net exercised complete dominion over Elvin's Home and denied
22 him any and all of his property rights.

23 51. After learning of the Amended Default Judgment, on October 4, 2019, Sylvia moved
24 in the district court to set aside the default judgment and explained the Due Process violations Tri-
25 Net committed and contended that Graham should have never received any service of process for
26 Elvin in this case.

27 52. The district court denied Sylvia's motion and concluded that Sylvia was not a real
28 party in interest and lacked standing to challenge the default judgment. Tri-Net advanced this

1 standing argument to the Nevada Supreme Court, however, the Supreme Court recognized that
2 Sylvia satisfied the statutory definition of a claimant and ordered the default judgment be set aside.
3 *See In re: 3587 Desatoya Drive*, Case No. 80194, 2021 WL 4847506 (Order of Reversal and
4 Remand, Oct. 15, 2021).

5 53. At oral arguments before the Nevada Supreme Court, when questioned by the Justices
6 as to why Sylvia received service of any kind if she lacked standing, Tri-Net's counsel admitted that
7 in April 2015, it knew Sylvia made a claim as a property owner.

8 54. From July 2019 through March 2022, Tri-Net, as the occupier and guardian of the
9 Home, Tri-Net needed to perform basic property ownership functions like maintaining the property,
10 ensuring the property was not damaged, ensuring the property remained habitable, paying property
11 taxes, and paying the utilities on the Home. Tri-Net performed **none** of these functions.

12 55. After the district court set aside the void default judgment pursuant to the Nevada
13 Supreme Court's ruling, on March 14, 2022, the Fred's obtained both title and actual possession of
14 the property.

15 56. Upon entering the Home, the Fred's were shocked to learn that the Home is
16 completely uninhabitable. The moisture and heat the Home experienced through the broken
17 windows and the back door being left open for an unknown amount of time – left the walls and
18 several ceiling fans covered in black mold. The floors are ruined and will need to be completely
19 replaced.

20 57. The condition of the Home following Tri-Net's occupation is incredibly dangerous to
21 the health of Sylvia, Elvin, Elvin's children and the other Fred family members.

22 58. Based on information and belief, for several long periods of time, Tri-Net failed to
23 perform its ownership obligations and permitted vagrants and/or squatters to live on the property.
24 Tri-Net additionally permitted a broken-down car, with a smashed back window to lay fallow in the
25 driveway and did not remove the vehicle before returning possession of the Home back to the Fred's.

26 59. This failure to perform the basic duties of Home ownership has left permanent and
27 lasting injury on Elvin's property rights because Tri-Net returned ownership of the Home to the
28 Fred's but the Home is uninhabitable.

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60. For all of these reasons, Elvin seeks relief in the courts of the State of Nevada.

FIRST CLAIM FOR RELIEF

(Violation of the United States and Nevada Constitution's Due Process Clauses)

61. Elvin repeats, realleges, and incorporates all of the allegations contained in the preceding and subsequent paragraphs as though fully set forth herein.

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

63. The Fourteenth Amendment of the United States Constitution guarantees that no State shall "deprive any person of life, liberty, or property, without due process of law." Article 1, § 8(5) of Nevada's Constitution likewise guarantees that "[n]o person shall be deprived of life, liberty, or property, without due process of law."

64. In *Maiola v. State*, 120 Nev. 671, 674-76, 99 P.3d 227, 229-31 (2004) the Nevada Supreme Court explained that the government must exercise due diligence prior to entering a default judgment in a civil forfeiture proceeding. When the same district attorney's office that prosecuted a defendant criminally as well as sought to forfeit his property through a civil forfeiture proceeding, the Court concluded that "[o]ne section of the district attorney's office cannot ignore information available in another section and claim not to be able to locate a defendant." *Id.*

65. Tri-Net's counsel (the District Attorney's office that prosecuted Elvin) never inquired of Graham during the habeas proceeding if Graham continued to represent Elvin in the forfeiture proceeding. Tri-Net likewise did not include in its affidavit seeking an application of default, any discussion or communication with Graham as to whether Graham received the notices of default as required by Nevada law. *Cf. Landreth v. Malik*, 127 Nev. 175, 251 P.3d 163 (2011).

66. Tri-Net never inquired to Elvin if he was represented by *any counsel* in the forfeiture proceeding despite Elvin residing in High Desert Prison and within the State of Nevada's control.

67. Tri-Net never provided any notice, motion, documentation, or provided him service of any document in the civil forfeiture proceeding prior to obtaining its void Amended Default Judgment.

1 68. Because of Tri-Net's failure to provide any notice to Elvin, Elvin was deprived of
2 notice and an opportunity to present his defenses, to protect his property rights, and to prevent the
3 unlawful forfeiture of the Home.

4 69. The deprivation of Elvin's Due Process rights directly and proximately led to the
5 dispossession and virtual destruction of his Home. Tri-Net's violation of Due Process has inflicted
6 ruinous financial costs on Elvin for which he is entitled to compensatory and punitive damages. *See*
7 *United States v. James Daniel Good Real Prop.*, 510 U.S. 43 (1993).

8 70. Additionally, NRS 179.1173(4) places only a burden of clear and convincing
9 evidence, not proof beyond reasonable doubt, on the government to establish a property forfeiture.
10 This burden of proof violates State and Federal Due Process. Both Constitutions require the
11 government to prove all predicate facts beyond a reasonable doubt.

12 71. Along with monetary damages, Elvin therefore seeks a declaration from this Court
13 finding that Nevada's civil forfeiture statutory scheme violates the Due Process clauses of Nevada
14 and the United States Constitutions by allowing the government to civilly forfeit property without
15 bearing the burden of proof beyond a reasonable doubt.

16 72. Tri-Net's conduct – unlawfully forfeiting and occupying Elvin's property during a
17 global pandemic – is oppressive. Furthermore, the lack of care, management, or upkeep performed
18 (or omitted) by Tri-Net such that the Home is no longer inhabitable is as oppressive.

19 73. Elvin has been forced to retain counsel to address the conduct complained of herein
20 and is therefore entitled to all of his attorneys' fees and costs associated with bringing this action.

21 **SECOND CLAIM FOR RELIEF**

22 **(Violation of the United States' and Nevada Constitution's Takings Clauses)**

23 74. Elvin repeats, realleges, and incorporates all of the allegations contained in the
24 preceding and subsequent paragraphs as though fully set forth herein.

25 75. The Fifth Amendment of the United States Constitution as incorporated against the
26 States provides that "private property" shall not "be taken for public use without just compensation."
27 Article 1, § 8(6) details "[p]rivate property shall not be taken for public use without just
28

1 compensation have been first made. . . ." *See also* Nev. Const. art. I, § 22. These constitutional
2 provisions are all self-executing.

3 76. Between July 10, 2019 and March 14, 2022, Tri-Net, as a public agency, physically
4 invaded, occupied, and destroyed Elvin's private property without valid or legal authority or
5 privilege and did not provide him just compensation.

6 77. The Amended Default Judgment is void *ab initio* and Tri-Net lacked any valid legal
7 right, authority, privilege, or justification to enter, occupy, and destroy Elvin's Home.

8 78. Tri-Net has unconstitutionally taken Elvin's Home without providing just
9 compensation.

10 79. Indeed, Tri-Net has not provided Elvin any compensation.

11 80. Tri-Net's conduct – unconstitutionally taking Elvin's property without just
12 compensation during a global pandemic – is oppressive. Furthermore, the lack of care, management,
13 or upkeep by Tri-Net such that the Home is no longer inhabitable is equally oppressive.

14 81. As a direct and proximate result of Tri-Net's conduct, Elvin has suffered damages in
15 an amount to be proven at trial but in excess of \$15,000.

16 82. Tri-Net's conduct as a Nevada state actor in receipt of federal funds for its operations,
17 required Elvin to incur attorney fees and costs to bring this action and Elvin is entitled to all of her
18 attorney fees and costs under 42 U.S.C. §§ 4601-4655 and NRS 342.105(1).

19 **THIRD CLAIM FOR RELIEF**

20 **(Trespass)**

21 83. Elvin repeats, realleges, and incorporates all of the allegations contained in the
22 preceding and subsequent paragraphs as though fully set forth herein.

23 84. The Nevada Legislature provided a broad waiver of sovereign immunity under NRS
24 41.031 for the torts committed by State and local government officials.

25 85. The Amended Default Judgment is void *ab initio* and Tri-Net lacked any valid legal
26 right, authority, privilege, or justification to enter and occupy Elvin's Home.
27
28

1 86. In 2019, Tri-Net without permission or privilege, crossed the property line of the
2 Home, entered the curtilage of the Home, and attached a 5-day at will eviction notice to the front
3 door of the Home.

4 87. Tri-Net without permission and without a privilege, crossed the property line of the
5 Home, entered the curtilage of the Home, entered the Home, evicted the Fred Family, and actually
6 or constructively remained on Elvin's property.

7 88. As a direct and proximate result of Tri-Net's conduct, Elvin has suffered damages in
8 an amount to be proven at trial but in excess of \$15,000.

9 89. Elvin has been forced to retain counsel to address the conduct complained of herein
10 and is therefore entitle to all of his attorneys' fees and costs associated with bringing this action.

11 90. Tri-Net's conduct as alleged herein was committed with oppression, fraud, or malice,
12 express or implied, entitling Elvin to punitive and/or exemplary damages.

13 **FOURTH CLAIM FOR RELIEF**

14 **(Conversion of the Home's Personal Property)**

15 91. Elvin repeats, realleges, and incorporates all of the allegations contained in the
16 preceding and subsequent paragraphs as though fully set forth herein.

17 92. In NRS 41.031, the Nevada Legislature provided a broad waiver of sovereign
18 immunity for the torts committed by State and local government officials such that this Nevada law
19 provides Elvin a cause of action.

20 93. The Amended Default Judgment is void *ab initio* and Tri-Net lacked any valid legal
21 right, authority, privilege, or justification to enter and occupy Elvin's Home.

22 94. In 2019, Tri-Net recorded the void Amended Default Judgment in the chain of title
23 and took legal possession of the Home with the intent to deprive Elvin of his property.

24 95. While unlawfully occupying and possessing Elvin's Home, Tri-Net destroyed and
25 ruined the Home and the personal property and effects contained therein.

26 96. As a direct and proximate result of Tri-Net's conduct, Elvin has suffered damages in
27 an amount to be proven at trial but in excess of \$15,000.
28

1 97. Elvin has been forced to retain counsel to address the conduct complained of herein
2 and is therefore entitled to all of his attorneys' fees and costs associated with bringing this action.

3 98. Tri-Net's conduct as alleged herein was committed with oppression, fraud, or malice,
4 express or implied, entitling Elvin to punitive and/or exemplary damages.

5 **FIFTH CLAIM FOR RELIEF**

6 **(Conversion of Elvin's Vehicle)**

7 99. Elvin repeats, realleges, and incorporates all of the allegations contained in the
8 preceding and subsequent paragraphs as though fully set forth herein.

9 100. In NRS 41.031, the Nevada Legislature provided a broad waiver of sovereign
10 immunity for the torts committed by State and local government officials such that this Nevada law
11 provides Elvin a cause of action.

12 101. When Tri-Net unlawfully possessed, trespassed, and converted the personal property
13 of the Home, it likewise took unlawful possession of Elvin's vehicle, a 1994 Cadillac El Dorado that
14 was parked in the driveway of the Home.

15 102. Tri-Net never relied on NRS 453.301 or any other provision of Nevada law to obtain
16 lawful possession of the vehicle. Instead, Tri-Net unlawfully expanded the scope of its void
17 amended default judgment and relied on that judgment to take possession of the vehicle.

18 103. Tri-Net took the vehicle, towed the vehicle off the property, and later sold the vehicle
19 and retained the proceeds and profits with the intent to deprive Elvin of his property.

20 104. As a direct and proximate result of Tri-Net's conduct, Elvin has suffered damages in
21 an amount to be proven at trial but in excess of \$15,000.

22 105. Elvin has been forced to retain counsel to address the conduct complained of herein
23 and is therefore entitled to all of his attorneys' fees and costs associated with bringing this action.

24 **SIXTH CLAIM FOR RELIEF**

25 **(Waste)**

26 106. Elvin repeats, realleges, and incorporates all of the allegations contained in the
27 preceding and subsequent paragraphs as though fully set forth herein.
28

1 107. In NRS 41.031, the Nevada Legislature provided a broad waiver of sovereign
2 immunity for the torts committed by State and local government officials such that this Nevada law
3 provides Elvin a cause of action.

4 108. Between recording the Amended Default Judgment in July 2019 until March 2022
5 when Tri-Net returned the Home to the Fred's, Tri-Net occupied, possessed, and obtained legal title
6 over the property and was a guardian of the property. Both Tri-Net and the Fred's claimed an
7 ownership interest in the Home, while Sylvia appealed to the Nevada Supreme Court the district
8 court's denial of her motion to set aside the default judgment.

9 109. During the time Tri-Net guarded and possessed the Home, Tri-Net owed a duty to
10 Elvin to ensure the Home remained safe and habitable. Instead, Tri-Net inflicted permanent and
11 lasting injury to the property such that it is completely uninhabitable now that Tri-Net gave the
12 property back. Tri-Net's conduct while in possession of the Home was unreasonable as they failed
13 to perform basic property ownership functions.

14 110. Tri-Net's conduct – possessing Elvin's property and inflicting permanent and lasting
15 injury to it while Sylvia's appeal remained pending – was committed with oppression, fraud, or
16 malice, express or implied, entitling Elvin to treble and punitive and/or exemplary damages.

17 111. As a direct and proximate result of Tri-Net's conduct, Elvin has suffered damages in
18 an amount to be proven at trial but in excess of \$15,000.

19 112. Elvin has been forced to retain counsel to address the conduct complained of herein
20 and is therefore entitled to all of his attorneys' fees and costs associated with bringing this action.

21 **SEVENTH CLAIM FOR RELIEF**

22 **(Violation of Article 3, Section 1 and Article 4, Section 19 of Nevada's Constitution)**

23 113. Elvin repeats, realleges, and incorporates all of the allegations contained in the
24 preceding and subsequent paragraphs as though fully set forth herein.

25 114. A justiciable controversy exists that warrants a declaratory judgment pursuant to
26 Nevada's Uniform Declaratory Judgments Act NRS 30.010 to 30.160, inclusive.

27 115. Article 3, Section 1 of Nevada's constitution provides "[t]he powers of the
28 Government of the State of Nevada shall be divided into three separate departments, – the

1 Legislative, the Executive, and the Judicial; and *no persons* charged with the exercise of powers
2 properly belonging to one of these departments shall exercise any functions, appertaining to either
3 of the others, except in the cases *expressly directed* or *permitted* in this constitution.” (Emphasis
4 added).

5 116. Article 4, Section 19 of Nevada’s constitution provides “[n]o money shall be drawn
6 from the treasury but in consequence of appropriations made by law.” *See also* Nev. Const. art. 9,
7 § 3 (requiring that “[e]very such debt shall be authorized by law for some purpose or purposes, to
8 be distinctly specified therein; and every such law shall provide for levying an annual tax sufficient
9 to pay the interest. . . .”)

10 117. Nevada’s civil forfeiture laws as applied to Tri-Net’s exercise of its authority over all
11 forfeiture funds – to include keeping the profits from the unlawful sale of Elvin’s vehicle – violates
12 the separation of powers.

13 118. Elvin therefore seeks a declaration from this Court finding that, as applied here, NRS
14 179.1187 and NRS 179.118 violates Nevada’s constitution.

15 119. Elvin has been forced to retain counsel to address the conduct complained of herein
16 and is entitled to all of his attorneys' fees and costs associated with bringing this action.

17 **EIGHTH CLAIM FOR RELIEF**

18 **(Violation of NRS 179.1205)**

19 120. Elvin repeats, realleges, and incorporates all of the allegations contained in the
20 preceding and subsequent paragraphs as though fully set forth herein.

21 121. A justiciable controversy exists that warrants a declaratory judgment pursuant to
22 Nevada's Uniform Declaratory Judgments Act NRS 30.010 to 30.160, inclusive.

23 122. “On an annual basis, each law enforcement agency shall report the following
24 information about each individual seizure and forfeiture completed by the law enforcement agency
25 under state forfeiture law.” NRS 179.1205(1).

26 123. “Each law enforcement agency shall file with the Office of the Attorney General the
27 report required by subsection 1. A null report must be filed by a law enforcement agency that did
28 not engage in a seizure or forfeiture during the reporting period.” NRS 179.1205(3).

1 124. These reporting requirements became mandatory for all Nevada law enforcement
2 entities in 2015. This civil forfeiture proceeding began in 2015.

3 125. Tri-Net has never reported the seizure or forfeiture of the Home in any of its required
4 annual reports. Tri-Net has never reported the seizure or forfeiture of Elvin's vehicle in any of its
5 required annual reports.

6 126. Elvin therefore requests a declaration from this Court finding that Tri-Net violated
7 NRS 179.1205 by failing to comply with its reporting requirements.

8 127. Elvin has been forced to retain counsel to address the conduct complained of herein
9 and is therefore entitled to all of his attorneys' fees and costs associated with bringing this action.

10 **NINTH CLAIM FOR RELIEF**

11 **(Negligence)**

12 128. Elvin repeats, realleges, and incorporates all of the allegations contained in the
13 preceding and subsequent paragraphs as though fully set forth herein.

14 129. The Nevada Legislature provided a broad waiver of sovereign immunity under NRS
15 41.031 for the torts committed by State and local government officials.

16 130. Under NRS 179.1171(5), Tri-Net owed Elvin a duty of care to ensure he received
17 notice of the civil forfeiture proceedings regarding his property prior to forfeiting the property. Tri-
18 Net breached that duty by not providing notice to Elvin.

19 131. Tri-Net also owed Elvin a duty of care to preserve and safeguard the Home during
20 the pendency of legal proceedings regarding the status of the Home. Tri-Net neglected to do so,
21 leading to the unlawful destruction of the Home.

22 132. As a direct and proximate result of Tri-Net's conduct, Elvin has suffered damages in
23 an amount to be proven at trial but in excess of \$15,000.

24 133. Elvin has been forced to retain counsel to address the unlawful and unconstitutional
25 conduct complained of herein and is therefore entitled to all of his attorneys' fees and costs associated
26 with bringing this action.

TENTH CLAIM FOR RELIEF

(Slander of Title)

134. Elvin repeats, realleges, and incorporates all of the allegations contained in the preceding and subsequent paragraphs as though fully set forth herein.

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

136. On July 10, 2019, Tri-Net recorded the Amended Default Judgment in the Home's chain of title even though it knew Sylvia and Elvin were claimants. Tri-Net knew Sylvia and Elvin had not received notice in accordance with NRS 179.1171(5) such that Tri-Net obtained a void default judgment. By recording a void default judgment, Tri-Net acted with reckless disregard of the truth and/or maliciously spoke about the ownership of the Home. Elvin has been damaged by having to bring this Counterclaim to clear the cloud on his title to the Home.

137. Tri-Net's reckless disregard and/or malicious speech regarding Elvin's property rights is oppressive.

138. As a direct and proximate result of Tri-Net's conduct, Elvin has suffered damages in an amount to be proven at trial but in excess of \$15,000.

139. Elvin has been forced to retain counsel to address the unlawful and unconstitutional conduct complained of herein and is therefore entitled to all of his attorneys' fees and costs associated with bringing this action.

PRAYER FOR RELIEF

WHEREFORE, Counterclaimant Elvin Fred prays for judgment as follows:

1. For an award of compensatory and special damages, including attorneys' fees, in an amount in excess of Fifteen Thousand Dollars (\$15,000.00) to be determined at trial;
2. For declaratory relief as described herein;
3. For a remedy set forth in *United States v. James Daniel Good Real Prop.*, 510 U.S. 43 (1993);
4. For treble damages to be provided for Tri-Net's waste;
5. For nominal damages of \$1 to be determined at trial;

6. For punitive damages to be determined at trial;
7. For prejudgment and post-judgment interest at the highest rate permitted by law;
8. For attorneys' fees and costs of suit herein, as allowed by law, in an amount to be determined; and
9. Any additional relief this court deems just and proper.

DEMAND FOR JURY TRIAL

Counterclaimant Elvin Fred hereby demands a jury trial for all issues so triable.

DATED this 5th day of October 2022.

McDONALD CARANO LLP

By: 

Ryan J. Works, Esq., (NSBN 9224)
John A. Fortin, Esq., (NSBN 15221)
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102

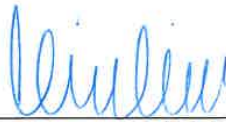
*Pro Bono Counsel for
Claimant Elvin Fred*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of MCDONALD CARANO LLP and that, on this 5th day of October 2022, I caused to be delivered via email true and correct copies of the above

ELVIN FRED'S VERIFIED ANSWER AND COUNTERCLAIMS to the following:

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



An employee of McDonald Carano LLP

Ryan J. Works, Esq. (NSBN 9224)
John A. Fortin, Esq. (NSBN 15221)
rworks@mcdonalddcarano.com
jfortin@mcdonalddcarano.com
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100

*Pro Bono Counsel for
Claimant Elvin Fred*

FILED
2022 OCT 12 PM 3:17
AUDREY ROWLATT
CLERK
BY K. PETERSON
DEPUTY

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

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

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

AFFIDAVIT OF SERVICE

ELVIN FRED, an individual,
Counterclaimant,
v.
STATE OF NEVADA ex rel.
INVESTIGATION DIVISION OF THE
NEVADA STATE POLICE (TRI-NET
NARCOTICS TASK FORCE),
Counterdefendant.

STATE OF NEVADA)
COUNTY OF WASHOE)

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


That affiant received 1 copy of the following:

Elvin Fred Verified Answer and Counterclaims
and served the same on the 7th day of October, 2022 @ 3:16 p.m. by hand delivering a true and correct copy of the same to Sandra Geyer, a person authorized to accept service at the Office of the Attorney General, 100 North Carson Street, Carson City, Nevada.

///

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

3 Dated: October 10, 2022

4
5 

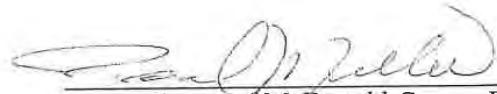
6 Christian Snooks
7 100 W. Liberty Street, Tenth Floor
8 Reno, Nevada 89501
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on the 12th day of October, 2022, I caused to be delivered via email a true and correct copy of the above **AFFIDAVIT OF MAILING** to the following:

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

Attorneys for Plaintiff



An employee of McDonald Carano LLP

Ryan J. Works, Esq. (NSBN 9224)
John A. Fortin, Esq. (NSBN 15221)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
rworks@mcdonaldcarano.com
jfortin@mcdonaldcarano.com

Pro Bono Counsel for
Claimant Sylvia Fred & Elvin Fred

FIRST JUDICIAL DISTRICT COURT
CARSON CITY, NEVADA

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

SYLVIA FRED, an individual,
Counterclaimant,

v.

STATE OF NEVADA ex rel.
INVESTIGATION DIVISION OF THE
NEVADA STATE POLICE (TRI-NET
NARCOTICS TASK FORCE),

Counterdefendant,

ELVIN FRED, an individual,

Counterclaimant,

v.

STATE OF NEVADA ex rel.
INVESTIGATION DIVISION OF THE
NEVADA STATE POLICE (TRI-NET
NARCOTICS TASK FORCE),

Counterdefendant,

REC'D & FILED

2022 NOV 18 PM 2:55

AUDREY ROWLATT
CLERK
BY K. PETERSON
DEPUTY

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

STIPULATION AND ~~PROPOSED~~
ORDER MODIFYING THE PAGE LIMITS
UNDER FIRST JUDICIAL DISTRICT
COURT RULE 3.23 FOR MOTION
PRACTICE


Claimants Sylvia Fred ("Sylvia") and Elvin Fred ("Elvin"), by and through their counsel of record McDonald Carano, LLP and the State of Nevada, *ex rel.* the Investigation Division of the Nevada State Police (Tri-Net Narcotics Task Force), ("Tri-Net"), (collectively the "Parties"), by and through Tri-Net's counsel of record, the Carson City District Attorney's Office hereby enter

1 this Stipulation to modify the page limits under First Judicial District Court Rule ("FJDCR") 3.23
2 (the "Stipulation") for Motion practice in this matter.

3 WHEREAS, For judicial economy and efficiency, the Parties agree that modifying FJDCR
4 2.23(b) for all future Motion practice in this matter before this Court is appropriate. The Parties
5 agree that a moving party's initial points and authorities, and the opposing points and authorities,
6 will not exceed 25 pages. Points and authorities in reply will not exceed 15 pages.

8 DATED this 16th day of November, 2022.

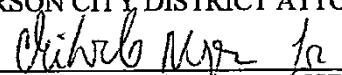
9 McDONALD CARANO LLP

10 By: 
11 Ryan J. Works, Esq. (NSBN 9224)
12 John A. Fortin, Esq. (NSBN 15221)
13 2300 West Sahara Avenue, Suite 1200
14 Las Vegas, Nevada 89102
15 rworks@mcdonaldcarano.com
16 jfortin@mcdonaldcarano.com

17 *Pro Bono Counsel for Claimant*
18 *Sylvia Fred & Elvin Fred*

DATED this 16th day of November, 2022.

CARSON CITY DISTRICT ATTORNEY

By: 
Jason D. Woodbury, Esq. (NSBN 6870)
District Attorney
Benjamin R. Johnson, Esq. (NSBN 10632)
Senior Deputy District Attorney
885 East Musser Street, Suite 2030
Carson City, Nevada 89701
jwoodbury@carson.org
bjohnson@carson.org

Counsel for State of Nevada ex rel.
Investigation Division of The Nevada State
Police (Tri-Net Narcotics Task Force)

19 **IT IS SO ORDERED.**

20 ☒ Granted
21 ☐ Granted in part

22 _____
23 And Denied in part

24 ☐ Denied
25 ☐ Declined to consider ex parte
26 ☐ Declined to consider without a hearing
27 ☐ Other: _____

28 DATED: November 18, 2022

DISTRICT COURT JUDGE 

1 CARSON CITY DISTRICT ATTORNEY
JASON D. WOODBURY

2 District Attorney

Nevada Bar No. 6870

3 BENJAMIN R. JOHNSON

4 Senior Deputy District Attorney

Nevada Bar No. 10632

5 885 East Musser Street

Suite 2030

6 Carson City, Nevada 89701

T: 775.887.2070

7 F: 775.887.2129

8 E-mail: jwoodbury@carson.org

bjohnson@carson.org

9 Representing Plaintiff

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

13 In re:

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

Case No. 15 OC 00074 1B

Dept. No. 2

25 **PLAINTIFF'S ANSWER TO ELVIN FRED'S COUNTERCLAIMS**

26 COMES NOW, Plaintiff, the INVESTIGATION DIVISION OF THE DEPARTMENT OF
27 PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force (TRI NET)), by
28 and through its counsel of record, JASON D. WOODBURY, Carson City District Attorney, and
BENJAMIN R. JOHNSON, Senior Deputy District Attorney, and answers *Elvin Fred's* ("Elvin")
Counterclaims (hereinafter "Counterclaim") by admitting, denying and alleging as follows:

27 ///

28 ///

NATURE OF THE ACTION

TRI NET denies the allegations in the Nature of the Action on page 7 of the Counterclaim.

JURISDICTION AND VENUE

1. The statements in paragraph 1 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

2. The statement in paragraph 2 is a legal conclusion or argument and does not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

3. The statement in paragraph 3 is a legal conclusion or argument and does not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

4. TRI NET denies that Elvin's counterclaims arise out of the same transactions and events pleaded in the First Amended Complaint. TRI NET admits NRS 170.1171(1) states that the "Nevada Rules of Civil Procedure are applicable to and constitute the rules of practice in a proceeding for forfeiture...." The remaining statement in paragraph 4 is a legal conclusion and does not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

5. TRI NET denies the allegations contained in paragraph 5.

THE PARTIES

6. TRI NET is without sufficient information and knowledge to form a belief as to the truth or falsity of the allegation in paragraph 6 that Counterclaimant Elvin Fred is a resident of the State of Nevada, and therefore denies that allegation. TRI NET denies the allegation in paragraph 6 that Sylvia is an owner of the Home as a joint tenant with her brother Elvin.

7. TRI NET admits that is a multi-agency law enforcement drug task force comprised of the Nevada Department of Public Safety, Investigation Division, the Carson City Sheriff's Office and the Douglas County Sheriff's Office.

GENERAL ALLEGATIONS

8. TRI NET is without sufficient information and knowledge to form a belief as to the truth or falsity of the allegations in paragraph 8, and therefore denies any and all allegations contained therein.

9. TRI NET is without sufficient information and knowledge to form a belief as to the truth or falsity of the allegations in paragraph 9, and therefore denies any and all allegations contained therein.

10. TRI NET is without sufficient information and knowledge to form a belief as to the truth or falsity of the allegations in paragraph 10, and therefore denies any and all allegations contained therein.

11. TRI NET is without sufficient information and knowledge to form a belief as to the truth or falsity of the allegations in paragraph 11, and therefore denies any and all allegations contained therein.

12. TRI NET admits the allegation in paragraph 12 that in early 2015, TRI NET investigated Elvin and other co-conspirators suspected of trafficking methamphetamine in Carson City. TRI NET is without sufficient information and knowledge to form a belief as to the truth or falsity of the allegation in paragraph 12 that "Sylvia lived out of state" in early 2015, and therefore denies that allegation. TRI NET admits the allegation in paragraph 12 that in March 2015, TRI NET arrested Elvin and his co-conspirators. TRI NET denies any and all remaining allegations contained in paragraph 12.

13. TRI NET admits the allegations in paragraph 13 that Elvin negotiated and entered into a plea agreement whereby he agreed to plead guilty to one count of TRAFFICKING IN A SCHEDULE I CONTROLLED SUBSTANCE 28 GRAMS OR MORE, a category A felony as defined by NRS 453.3385(3). TRI NET denies any and all remaining allegations contained in paragraph 13.

14. Deny.

15. Deny.

///

1 16. TRI NET is without sufficient information and knowledge to form a belief as to
2 the truth or falsity of the allegations in paragraph 16, and therefore denies any and all
3 allegations contained therein.

4 17. TRI NET admits it filed a Complaint for Forfeiture and filed and recorded a
5 Notice of Lis Pendens on April 1, 2015. TRI NET denies any and all remaining allegations
6 contained in paragraph 17.

7 18. TRI NET admits on April 27, 2015, a Stipulation and Order to Stay Forfeiture
8 Proceeding was filed reflecting a stipulation between TRI NET and Elvin to stay forfeiture
9 proceedings pending resolution of Elvin's criminal proceedings and an order of the Court
10 granting the stipulation. TRI NET admits a Notice of Entry of Order which included a copy of
11 the Stipulation and Order to Stay Forfeiture was mailed to Sylvia on April 28, 2015.

12 19. TRI NET is without sufficient information and knowledge to form a belief as to
13 the truth or falsity of the allegations in paragraph 19, and therefore denies any and all
14 allegations contained therein.

15 20. TRI NET is without sufficient information and knowledge to form a belief as to
16 the truth or falsity of the allegations in paragraph 20, and therefore denies any and all
17 allegations contained therein.

18 21. In response to paragraph 21, TRI NET responds that Mr. Graham never gave
19 notice that he was not representing Elvin in the forfeiture proceeding and therefore had no
20 reason to believe he had withdrawn as counsel. TRI NET denies any and all remaining
21 allegations in paragraph 21.

22 22. In response to paragraph 22, TRI NET responds that Mr. Graham never gave
23 notice that he was not representing Elvin in the forfeiture proceeding and therefore had no
24 reason to believe he had withdrawn as counsel. TRI NET denies any and all remaining
25 allegations in paragraph 21.

26 23. Admit.

27 24. Deny.

28 ///

1 25. TRI NET admits that a Motion to Lift Stay was filed on May 14, 2018. an
2 amended default judgment was entered in July 2019. TRI NET is without sufficient
3 information and knowledge to form a belief as to the truth or falsity of the remaining
4 allegations in paragraph 25 and denies on that basis.

5 26. TRI NET is without sufficient information and knowledge to form a belief as to
6 the truth or falsity of the allegations in paragraph 26, and therefore denies any and all
7 allegations contained therein.

8 27. TRI NET admits that it served legal documents and pleadings on counsel of
9 record Mr. Graham. TRI NET is without sufficient information and knowledge to form a belief
10 as to the truth or falsity of the remaining allegations in paragraph 27 and denies on that basis.

11 28. TRI NET admits that Mr. Graham made an appearance in the civil forfeiture
12 proceeding through the stipulation. TRI NET is without sufficient information and knowledge
13 to form a belief as to the truth or falsity of the remaining allegations in paragraph 28 and
14 denies on that basis.

15 29. In response to paragraph 29, TRI NET responds that Mr. Graham never gave
16 notice that he was not representing Elvin in the forfeiture proceeding and therefore had no
17 reason to believe he had withdrawn as counsel. TRI NET had no reason to believe that Mr.
18 Graham did not receive the notice of default and no returned mail was received. TRI NET is
19 without sufficient information and knowledge to form a belief as to the truth or falsity of the
20 remaining allegations in paragraph 29 and denies on that basis.

21 30. TRI NET is without sufficient information and knowledge to form a belief as to
22 the truth or falsity of the allegations in paragraph 30, and therefore denies any and all
23 allegations contained therein.

24 31. Deny.

25 32. TRI NET admits that an amended default judgment was entered in July 2019.
26 TRI NET is without sufficient information and knowledge to form a belief as to the truth or
27 falsity of the remaining allegations in paragraph 32 and denies on that basis.

28 ///

1 33. TRI NET is without sufficient information and knowledge to form a belief as to
2 the truth or falsity of the allegations in paragraph 33, and therefore denies any and all
3 allegations contained therein.

4 34. Deny.

5 35. Deny.

6 36. TRI NET admits that an amended default judgment was recorded against the
7 Desatoya property and that a 5-day notice was posted on the door. TRI NET denies any and
8 all remaining allegations in paragraph 36.

9 37. TRI NET admits that it took possession of the home. TRI NET denies any and
10 all remaining allegations in paragraph 37.

11 38. Deny.

12 39. Deny.

13 40. The statement in paragraph 40 is a legal conclusion and does not contain
14 factual allegations. To the extent a response is required, TRI NET states that the statutes
15 speak for itself and denies any factual allegations.

16 41. The statement in paragraph 41 is a legal conclusion and does not contain factual
17 allegations. To the extent a response is required, TRI NET states that the statute speaks for
18 itself and denies any factual allegations.

19 42. The statement in paragraph 42 is a legal conclusion and does not contain factual
20 allegations. To the extent a response is required, TRI NET states that the statute speaks for
21 itself and denies any factual allegations.

22 43. The statement in paragraph 43 is a legal conclusion and does not contain factual
23 allegations. To the extent a response is required, TRI NET states that the statute speaks for
24 itself and denies any factual allegations.

25 44. The statement in paragraph 44 is a legal conclusion and does not contain factual
26 allegations. To the extent a response is required, TRI NET states that the statute speaks for
27 itself and denies any factual allegations.

28 ///

1 45. TRI NET is without sufficient information and knowledge to form a belief as to
2 the truth or falsity of the allegations in paragraph 45, and therefore denies any and all
3 allegations contained therein.

4 46. TRI NET is without sufficient information and knowledge to form a belief as to
5 the truth or falsity of the allegations in paragraph 46, and therefore denies any and all
6 allegations contained therein.

7 47. The statement in paragraph 47 is a legal conclusion and does not contain factual
8 allegations. To the extent a response is required, TRI NET states that the statute speaks for
9 itself and denies any factual allegations.

10 48. The statement in paragraph 48 is a legal conclusion and does not contain factual
11 allegations. To the extent a response is required, TRI NET states that the statute speaks for
12 itself and denies any factual allegations.

13 49. Deny.

14 50. Deny.

15 51. TRI NET admits that Sylvia moved to vacate the default judgment in the district
16 court. TRI NET denies any and all remaining allegations in paragraph 51.

17 52. Deny.

18 53. Deny.

19 54. Deny.

20 55. Admit.

21 56. Deny.

22 57. Deny.

23 58. Deny.

24 59. Deny.

25 60. TRI NET denies that Elvin is entitled to any relief in this case.

26 ///

27 ///

28 ///

FIRST CLAIM FOR RELIEF

(Violation of the United States and Nevada Constitution's Due Process Clause)

61. TRI NET repeats and realleges all admissions, denials and responses to the allegations contained in the Counterclaim as thought fully set forth herein.

62. The statements in paragraph 62 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET states that the statutes speak for itself and denies any factual allegations.

63. The statements in paragraph 63 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET states that the statutes speak for itself and denies any factual allegations.

64. The statements in paragraph 64 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

65. The statements in paragraph 65 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

66. The statements in paragraph 66 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

67. The statements in paragraph 67 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

68. The statements in paragraph 68 are legal conclusions or arguments and do not contain factual allegations. To the extent a response is required, TRI NET denies any and all allegations contained therein.

69. Deny.

///

///

1 84. The statements in paragraph 84 are legal conclusions or arguments and do not
2 contain factual allegations. To the extent a response is required, TRI NET denies any and all
3 allegations contained therein.

4	85.	Deny.
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5	86.	Deny.
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6	87.	Deny.
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7	88.	Deny.
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8	89.	Deny.
---	-----	-------

9	90.	Deny.
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FOURTH CLAIM FOR RELIEF

(Conversion of the Home's Personal Property)

12 91. TRI NET repeats and realleges all admissions, denials and responses to the
13 allegations contained in the Counterclaim as thought fully set forth herein.

14 92. The statements in paragraph 92 are legal conclusions or arguments and do not
15 contain factual allegations. To the extent a response is required, TRI NET denies any and all
16 allegations contained therein.

17	93.	Deny.
----	-----	-------

18 94. TRI NET admits that an Amended Default Judgment was recorded against the
19 Desatoya property. TRI NET denies any and all remaining allegations contained in paragraph
20 67.

21	95.	Deny.
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22	96.	Deny.
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23	97.	Deny.
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24	98.	Deny.
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FIFTH CLAIM FOR RELIEF

(Conversion of Elvin's Vehicle)

27 99. TRI NET repeats and realleges all admissions, denials and responses to the
28 allegations contained in the Counterclaim as thought fully set forth herein.

1 100. The statements in paragraph 100 are legal conclusions or arguments and do not
2 contain factual allegations. To the extent a response is required, TRI NET denies any and all
3 allegations contained therein.

4 101. Deny.

5 102. Deny.

6 103. Deny.

7 104. Deny.

8 105. Deny.

9 **SIXTH CLAIM FOR RELIEF**

10 **(Waste)**

11 106. TRI NET repeats and realleges all admissions, denials and responses to the
12 allegations contained in the Counterclaim as thought fully set forth herein.

13 107. The statements in paragraph 107 are legal conclusions or arguments and do
14 not contain factual allegations. To the extent a response is required, TRI NET denies any and
15 all allegations contained therein.

16 108. Deny.

17 109. Deny.

18 110. Deny.

19 111. Deny.

20 112. Deny.

21 **SEVENTH CLAIM FOR RELIEF**

22 **(Violation of Article 3, Section 1 and Article 4, Section 19 of Nevada's Constitution)**

23 113. TRI NET repeats and realleges all admissions, denials and responses to the
24 allegations contained in the Counterclaim as thought fully set forth herein.

25 114. Deny.

26 115. The statements in paragraph 115 are legal conclusions or arguments and do not
27 contain factual allegations. To the extent a response is required, TRI NET denies any and all
28 allegations contained therein.

1 116. The statements in paragraph 116 are legal conclusions or arguments and do not
2 contain factual allegations. To the extent a response is required, TRI NET denies any and all
3 allegations contained therein.

4 117. Deny.

5 118. The statements in paragraph 118 are legal conclusions or arguments and do not
6 contain factual allegations. To the extent a response is required, TRI NET denies any and all
7 allegations contained therein.

8 119. Deny.

9 **EIGHTH CLAIM FOR RELIEF**

10 **(Violation of NRS 179.1205)**

11 120. TRI NET repeats and realleges all admissions, denials and responses to the
12 allegations contained in the Counterclaim as thought fully set forth herein.

13 121. Deny.

14 122. The statements in paragraph 122 are legal conclusions or arguments and do not
15 contain factual allegations. To the extent a response is required, TRI NET denies any and all
16 allegations contained therein.

17 123. The statements in paragraph 123 are legal conclusions or arguments and do not
18 contain factual allegations. To the extent a response is required, TRI NET denies any and all
19 allegations contained therein.

20 124. The statements in paragraph 124 are legal conclusions or arguments and do not
21 contain factual allegations. To the extent a response is required, TRI NET denies any and all
22 allegations contained therein.

23 125. The statements in paragraph 125 are legal conclusions or arguments and do not
24 contain factual allegations. To the extent a response is required, TRI NET denies any and all
25 allegations contained therein.

26 126. The statements in paragraph 126 are legal conclusions or arguments and do not
27 contain factual allegations. To the extent a response is required, TRI NET denies any and all
28 allegations contained therein.

1 127. Deny.

2 **NINTH CLAIM FOR RELIEF**

3 **(Negligence)**

4 128. TRI NET repeats and realleges all admissions, denials and responses to the
5 allegations contained in the Counterclaim as thought fully set forth herein.

6 129. The statements in paragraph 129 are legal conclusions or arguments and do
7 not contain factual allegations. To the extent a response is required, TRI NET denies any and
8 all allegations contained therein.

9 130. Deny.

10 131. Deny.

11 132. Deny.

12 133. Deny.

13 **TENTH CLAIM FOR RELIEF**

14 **(Slander of Title)**

15 134. TRI NET repeats and realleges all admissions, denials and responses to the
16 allegations contained in the Counterclaim as thought fully set forth herein.

17 135. The statements in paragraph 135 are legal conclusions or arguments and do
18 not contain factual allegations. To the extent a response is required, TRI NET denies any and
19 all allegations contained therein.

20 136. TRI NET admits that an amended default judgment was recorded against the
21 Desatoya property. TRI NET denies any and all remaining allegations contained in paragraph
22 136.

23 137. Deny.

24 138. Deny.

25 139. Deny.

26 **GENERAL DENIAL**

27 140. Any allegations in the Counterclaim not expressly responded to by TRI NET in
28 this Answer are hereby denied. As set forth herein, TRI NET generally denies the

1 characterization of the facts and allegations related thereto and proffers that the documents
2 referenced in the First Amended Complaint speak for themselves.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**

5 141. Elvin's suit fails to state a claim upon which relief may be granted in any of the
6 alleged claims for relief.

7 **SECOND AFFIRMATIVE DEFENSE**

8 142. Elvin's claims are barred by the equitable doctrines of waiver, laches and
9 estoppel.

10 **THIRD AFFIRMATIVE DEFENSE**

11 143. Elvin's claims are barred, in whole or in part, under the doctrine of unclean
12 hands.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 144. Elvin failed to undertake any reasonable action to mitigate any and all potential
15 or alleged damages.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 145. Elvin has suffered no damages as a result of any act or omission by TRI NET.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 146. TRI NET's acts or omissions were not the proximate cause of Elvin's damages,
20 if any.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 147. Elvin's damages, if any, were caused by superseding or intervening causes.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 148. NRS Chapter 41 limits the damages that may be collectible against a political
25 subdivision of the State of Nevada.

26 **TENTH AFFIRMATIVE DEFENSE**

27 149. TRI NET acted reasonably and in good faith at all times material hereto.

28 **ELEVENTH AFFIRMATIVE DEFENSE**

1 150. The damages, if any, suffered by Elvin, are the result of the actions, conduct or
2 inaction of third parties not under control of TRI NET, and therefore TRI NET has no liability
3 for such actions, conduct or inaction.

4 **TWELFTH AFFIRMATIVE DEFENSE**

5 151. Elvin's claims are barred for lack of standing.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 152. TRI NET incorporates by reference the affirmative defenses enumerated in Nev.
8 R. Civ. P. 8 for the purposes of avoiding waiver of those defenses.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

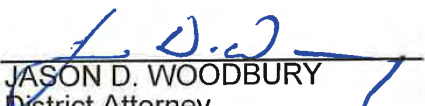
10 153. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible
11 affirmative defenses may not have been alleged herein, in so far as sufficient facts were not
12 available after a reasonable inquiry upon the filing of this Answer to the Counterclaims;
13 therefore, TRI NET, reserves the right to amend its answer to allege additional affirmative
14 defenses if subsequent investigations so warrant.

15 WHEREFORE, TRI NET prays for judgment as follows:

- 16 1. That Elvin take nothing by virtue of the Counterclaim and that the same be
17 dismissed with prejudice;
18 2. For an award of reasonable attorney fees and costs of suit incurred in the
19 defense of this action; and
20 3. For such other and further relief as the Court may deem just and proper.

21 DATED this 2nd day of December, 2022.

22 JASON D. WOODBURY
23 District Attorney

24 By: 
25 JASON D. WOODBURY
26 District Attorney
27 BENJAMIN R. JOHNSON
28 Senior Deputy District Attorney
Representing Plaintiff

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 2nd day of December, 2022, I served a true and correct copy of the foregoing **PLAINTIFF'S ANSWER TO ELVIN FRED'S COUNTERCLAIMS** via electronic mail to the following:

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



Ryan J. Works, Esq., (NSBN 9224)
John A. Fortin, Esq., (NSBN 15221)
McDONALD CARANO LLP
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Telephone: 702.873.4100
rworks@mcdonaldcarano.com
jfortin@mcdonaldcarano.com

*Pro Bono Counsel for
Claimant Sylvia Fred*

FIRST JUDICIAL DISTRICT COURT

CARSON CITY, NEVADA

In Re:

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

SYLVIA FRED, an individual,

Counterclaimant,

v.

STATE OF NEVADA ex rel. INVESTIGATION
DIVISION OF THE NEVADA STATE POLICE
(TRI-NET NARCOTICS TASK FORCE),

Counterdefendant,

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

REC'D & FILED

2022 DEC -5 PM 2: 57

AUDREY NOWLATT
CLERK

~~OS. BARAJAS~~ DEPUTY

JOINT CASE CONFERENCE REPORT

DISPUTE RESOLUTION
CONFERENCE REQUIRED:

YES___ NO X

SETTLEMENT CONFERENCE
REQUESTED:

YES___ NO X

Pursuant to NRCP 16.1(c)(1)(A), the parties, acting through their respective counsel, conducted a telephonic early case conference under NRCP 16.1 on September 23, 2022, and hereby file this joint case conference report in the above-reference matter. John Fortin of McDonald Carano LLP appeared on behalf of Sylvia Fred, ("Sylvia"). Benjamin R. Johnson of the Carson City District Attorney's Office appeared on behalf of the State of Nevada ex rel.

1 Investigation Division of The Nevada State Police (Tri-Net Narcotics Task Force) (“Tri-Net” and
2 together with Sylvia, the “Parties”).

3 **A. A brief description of the nature of the action and each claim for relief or defense.**

4 Tri-Net’s view of this action and Claim for Relief:

5 On March 22, 2022, Tri-Net filed its First Amended Complaint for Forfeiture. This
6 State’s view of this action is that due to Elvin Fred’s criminal conduct and criminal conviction
7 and use of the real property located at 3587 Desatoya Drive, Carson City, Nevada 89107
8 (“Home”) to store, conceal and protect the drugs that Elvin was engaged in selling, the forfeiture
9 of the Home is proper.

10 Accordingly, Tri-Net asserted the following Claim for Relief:

- 11 1. Forfeiture of Property as provided under NRS 453.301.

12 Furthermore, Tri-Net contends that Sylvia Fred has not established that she possessed a
13 valid ownership interest in the Home at the time of the seizure and has not established that she was
14 a good faith purchaser of the Home under NRS 179.1169. Therefore, Sylvia lacks standing to
15 assert counterclaims related to the forfeiture of the Home.

16 Sylvia’s view of this action, Affirmative Defenses and Counterclaim:

17 On June 28, 2022, Sylvia Fred filed her Verified Answer and Counterclaims. Sylvia’s
18 view of this action is that she is an innocent property owner and therefore forfeiture of the Fred
19 Family Home is improper. Due to the void default judgment that led to the eviction of Sylvia and
20 physical occupation of the Home by Tri-Net, Sylvia raises several constitutional challenges under
21 the United States and Nevada Constitutions including violations of Sylvia’s right to Due Process,
22 that Tri-Net committed an unconstitutional Taking, and that Tri-Net violated Sylvia’s Privileges
23 and Immunities. Sylvia additionally claims Tri-Net tortiously damaged her by its negligence,
24 trespass, conversion, waste, and slander of title to the Home.

25 Accordingly, in response to the State of Nevada’s claim, Sylvia asserts the following
26 Affirmative Defenses:

- 27 1. Plaintiffs FAC fails to state a claim upon which relief can be granted.
28 2. Plaintiffs FAC is time barred under NRS 179.1171 (2) because a valid complaint

1 for forfeiture was not filed within 120 days after the property was seized without providing
2 process to Sylvia and is therefore barred by the applicable statute of limitations.

3 3. Plaintiffs FAC is barred by the doctrines of laches, estoppel, acquiescence, and/or
4 unclean hands.

5 4. Plaintiff's FAC is barred because Sylvia's joint tenant interest in the Home is not
6 subject to forfeiture under NRS 179.1163, NRS 179.1164(2), NRS 179.1173(8), and NRS
7 179.118(1) as Sylvia is an innocent property owner with a protected interest in the Home that is
8 not subject to forfeiture.

9 5. Plaintiffs FAC is barred because it violates Article 1, Section 1 of the Nevada
10 Constitution's Inalienable Rights protections because instrumentality forfeitures are per se
11 unconstitutional.

12 6. Plaintiffs FAC is banned because it violates Article 1, Section 1 of the Nevada
13 Constitution's Inalienable Rights protections because Sylvia is an innocent property owner and
14 her joint tenancy right to the Home is "Protect[ed]" and completely immune from forfeiture under
15 the constitution.

16 7. Plaintiffs FAC is barred under the United States v. James Daniel Good Real
17 Property, 510 U.S. 43, 54 (1993), precedent because Tri-Net illegally forfeited Sylvia's Home
18 without any notice or an opportunity to be heard.

19 8. Plaintiff's FAC is barred because NRS 179.118 and NRS 179.1187 violate Article
20 4, Section 19 of the Nevada Constitution's bar on the Executive Branch exercising discretion on
21 the receipt and disbursal of finances.

22 9. Plaintiffs FAC is banned because it violates Article 3, Section 1 of the Nevada
23 Constitution's Separation of Powers protection because only the Legislature is permitted to make
24 budgetary decisions over the Executive branch.

25 10. Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged
26 herein insofar as sufficient facts are not available after reasonable inquiry to date. Therefore,
27 Sylvia reserves the right to amend this Answer to add additional affirmative defenses as additional
28 facts are discovered.

Sylvia asserted the following Counterclaims:

1. Violation of the United States and Nevada Constitution's Due Process Clauses.
2. Violation of the United States' and Nevada Constitution's Takings Clauses.
3. Trespass.
4. Conversion.
5. Waste.
6. Declaration that Instrumentality Forfeitures are Unconstitutional and/or that a Complete Innocent Property Immunity Exists under Article 1, Section 1).
7. Negligence.
8. Slander of Title.

Tri-Net list of Affirmative Defenses in response to Sylvia's Counterclaims.

1. Sylvia's suit fails to state a claim upon which relief may be granted in any of the alleged claims for relief.
2. Sylvia's claims are barred by the equitable doctrines of waiver, laches and estoppel.
3. Sylvia's claims are barred, in whole or in part, under the doctrine of unclean hands.
4. Sylvia failed to undertake any reasonable action to mitigate any and all potential or alleged damages.
5. Sylvia has suffered no damages as a result of any act or omission by TRI NET.
6. TRI NET's acts or omissions were not the proximate cause of Sylvia's damages, if any.
7. Sylvia's damages, if any, were caused by superseding or intervening causes.
8. NRS Chapter 41 limits the damages that may be collectible against a political subdivision of the State of Nevada.
9. TRI NET acted reasonably and in good faith at all times material hereto.
10. The damages, if any, suffered by Sylvia, are the result of the actions, conduct or inaction of third parties not under control of TRI NET, and therefore TRI NET has no liability for such actions, conduct or inaction.

11. Sylvia's claims are barred for lack of standing.

12. TRI NET incorporates by reference the affirmative defenses enumerated in Nev. R. Civ. P. 8 for the purposes of avoiding waiver of those defenses.

13. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein, in so far as sufficient facts were not available after a reasonable inquiry upon the filing of this Answer to the Counterclaims; therefore, TRI NET, reserves the right to amend its answer to allege additional affirmative defenses if subsequent investigations so warrant.

B. Brief Statement Regarding Settlement

1. Tri-Net's view: The Parties have engaged in settlement discussions on several occasions. Tri-Net requested Sylvia provide Tri-Net with terms of settlement that are amenable to her so the agency can review them. Tri-Net does not believe a court-mandated mediation would be useful at this time but reserves the right to ask for one in the future.

2. Sylvia's view: Sylvia is investigating her damages and will provide Tri-Net with a settlement offer in the near future. Sylvia does not believe a court-mandated mediation would be useful at this time but reserves the right to ask for one in the future.

C. Proposed Plan and Schedule of Any Additional Discovery Under Rule 16.1(b)(4)(C)

i. Changes to disclosures under Rule 16.1(a):

1. Tri-Net's view: Under Rule 16.1(a)(1)(B)(v), Tri-Net's claims for the forfeiture of property are exempt from initial disclosures. Tri-Net discussed this with Sylvia and the Parties agree that the Rules do not require initial disclosures related to Tri-Net's Amended Complaint for Forfeiture. Therefore, initial disclosures under Rule 16.1 are only being provided in relation to Sylvia's counterclaims.

2. Sylvia's view: Sylvia agrees with Tri-Net's view of initial disclosures.

When disclosures under Rule 16.1(a)(1) were or will be made:

1. Tri-Net's view: November 9, 2022

2. Sylvia's view: November 9, 2022

1 ii. **Subjects on which discovery may be needed, when discovery should be**
2 **completed, and whether discovery should be conducted in phases or limited**
3 **to or focused upon particular issues:**

4 1. Tri-Net's view: Discovery may be needed on all matters within the scope
5 of NRCP 26 and should not be limited to particular issues. Trial has not been set.

6 2. Sylvia's view: Discovery may be needed on all matters within the scope
7 of NRCP 26 and should not be limited to particular issues. Trial has not been set.

8 iii. **Electronically stored information:**

9 1. Tri-Net's view: To minimize the risk of related discovery disputes and to
10 bring meaningful predictability and efficiency to the discovery process, the parties
11 should exchange a list of key custodians, including those to which preservation
12 notices have been sent. An ESI protocol that provides for the production of
13 documents in native format that captures metadata and includes electronic load
14 files provided with a production set of documents and images used to load that
15 production into a receiving party's document review platform and correlate its data
16 within that platform.

17 2. Sylvia's view: To minimize the risk of related discovery disputes and to
18 bring meaningful predictability and efficiency to the discovery process, the parties
19 should exchange a list of key custodians, including those to which preservation
20 notices have been sent. An ESI protocol that provides for the production of
21 documents in native format that captures metadata and includes electronic load
22 files provided with a production set of documents and images used to load that
23 production into a receiving party's document review platform and correlate its data
24 within that platform.

25 iv. **Privileged materials:**

26 1. Tri-Net's view: Under NRS 179.1173(7), Tri-Net "has an absolute
27 privilege to refuse to disclose the identity of any person, other than a witness, who
28 has furnished to a law enforcement officer information purporting to reveal the

1 commission of a crime. The privilege may be claimed by an appropriate
2 representative of the Plaintiff.” Additionally, Tri-Net serves the local
3 communities of Douglas County and the Consolidated Municipality of Carson
4 City and seeks to eradicate illegal narcotics. The names and positions of its
5 officers are sensitive and must be protected from public disclosure.

6 2. Sylvia’s view: Sylvia agrees with Tri-Net’s confidentiality concerns and
7 the parties are working towards stipulating on the terms of a protective order.
8 Sylvia anticipates that issues may arise with respect to claims of privilege or of
9 protection as trial-preparation materials but have no issues to raise at this time.

10 **v. Changes in the limitations on discovery:**

11 1. Tri-Net’s view: Tri-Net does not seek any changes at this time; however,
12 Tri-Net reserves its respective rights to seek additional depositions under NRCP
13 30 and increase the length of time to take those depositions. Tri-Net reserves its
14 right to increase the number of interrogatories under NRCP 33.

15 2. Sylvia’s view: Sylvia does not seek any changes at this time; however,
16 Sylvia reserves her respective rights to seek additional depositions under NRCP
17 30 and increase the length of time to take those depositions. Sylvia reserves her
18 right to increase the number of interrogatories under NRCP 33.

19 **vi. Other orders:**

20 1. Tri-Net’s view: Tri-Net seeks orders (a) setting a trial date as soon as
21 practicable, on or around October 2023, and (b) allowing for a streamlined process
22 whereby the parties can request more than 10 depositions or to exceed 7 hours per
23 deposition, if necessary.

24 2. Sylvia’s view: Sylvia seeks orders (a) setting a trial date as soon as
25 practicable, on or around October 2023, and (b) allowing for a streamlined process
26 whereby the parties can request more than 10 depositions or to exceed 7 hours per
27 deposition, if necessary.

28 **vii. Estimated Time for Trial:**

1 See Section M, below.

2 **D. List of Names exchanged under Rule 16.1(a)(1)(A)(i)**

3 1. Tri-Net's view: Sylvia granted Tri-Net an extension to produce its 16.1 disclosures
4 on November 18, 2022.

5 2. Sylvia's view: See Exhibit 1

6 **E. List of Documents Disclosed Under Rule 16.1(a)(1)(A)(ii)**

7 1. Tri-Net's view: Sylvia granted Tri-Net an extension to produce its 16.1 disclosures
8 on November 18, 2022.

9 2. Sylvia's view: See Exhibit 1

10 **List of Medical Providers Disclosed Under Rule 16.1(a)(1)(A)(iii)**

11 Not applicable.

12 **F. Statement of Damages Disclosed Under Rule 16.1(a)(1)(A)(iv)**

13 1. Tri-Net's view: Tri-Net does not believe that Sylvia is entitled to any alleged
14 damages.

15 2. Sylvia's view: Sylvia seeks damages described in the Complaint. Those damages
16 are approximated to be at least \$800,000 based on the statutory cap provided under NRS
17 41.035 not including the constitutional damages she is seeking. Expert disclosures have
18 not been made and Sylvia will supplement her disclosures as required under NRCP 16.1.
19 Sylvia also seeks attorneys' fees, costs, and interest. Sylvia reserves her right to amend
20 or supplement this damage calculation.

21 **G. Insurance Agreements Disclosed Under Rule 16.1(a)(1)(A)(v)**

22 1. Tri-Net's view: Tri-Net is not currently aware of any relevant insurance
23 agreements.

24 2. Sylvia's view: Sylvia is not currently aware of any relevant insurance agreements.

25 **H. List of Experts Disclosed Under Rule 16.1(a)(2)**

26 No expert disclosures have been made at this time.

27 **I. Statement of Issues About Preserving Discoverable Information**

28 1. Tri-Net's view: Though Tri-Net has no issues to raise at this time, the Parties

1 should exchange a list of key custodians, to minimize the risk of related discovery disputes
2 and to bring meaningful predictability and efficiency to the discovery process.

3 2. Sylvia's view: Though Sylvia has no issues to raise at this time, the Parties should
4 exchange a list of key custodians, to minimize the risk of related discovery disputes and
5 to bring meaningful predictability and efficiency to the discovery process.

6 **J. Statement of Confidentiality Issues and Need for a Protective Order**

7 1. Tri-Net's view: Tri-Net will stipulate to the entry of a protective order to protect
8 the confidentiality of information disclosed in discovery.

9 2. Sylvia's view: Sylvia will stipulate to the entry of a protective order to protect the
10 confidentiality of information disclosed in discovery.

11 **K. Discovery and Motion Dates**

12 Dates agreed by the Parties:

13 1. Close of fact discovery: 180 days from entry of this Joint Case Conference Report:
14 May 8, 2023

15 2. Amendment of pleadings or addition of parties (without a further court order):
16 90 days before the close of fact discovery: February 7, 2023.

17 3. Initial expert disclosures: 90 days before the close of fact discovery: February 7,
18 2023

19 4. Rebuttal expert disclosures: 30 days after initial expert disclosures: March 9, 2023

20 5. Dispositive motions: 30 days after the discovery cut-off date: June 7, 2023

21 Given the nature of Claimant Elvin Fred's Answer & Counterclaims filed on October 9,
22 2022, and the need for a supplemental JCCR, the Parties reserve their rights to extend this schedule.

23 **L. Estimated Time for Trial**

24 1. Tri-Net's view: 11-14 days

25 2. Sylvia's view: 11-14 days

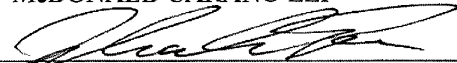
26 **M. Statement as to whether a jury demand has been filed.**

27 1. Tri-Net's view:

28 2. Sylvia's view: Sylvia made a jury demand.

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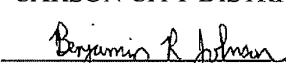
McDONALD CARANO LLP



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*Pro Bono Counsel for
Claimant Elvin Fred*

CARSON CITY DISTRICT ATTORNEY



JASON D. WOODBURY (NSBN 6870)
District Attorney
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bjohnson@carson.org

*Counsel for State of Nevada ex rel.
Investigation Division of The Nevada State
Police (Tri-Net Narcotics Task Force)*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDONALD CARANO LLP and that,
on this 9th day of November 2022, I caused to be delivered via email true and correct copies of
the above **JOINT CASE CONFERENCE REPORT** to the following:

CARSON CITY DISTRICT ATTORNEY
JASON D. WOODBURY (NSBN 6870)
District Attorney
BENJAMIN R. JOHNSON (NSBN 10632)
Senior Deputy District Attorney
885 East Musser Street
Suite 2030
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*Counsel for State of Nevada ex rel.
Investigation Division of The Nevada State Police
(Tri-Net Narcotics Task Force)*



An employee of McDonald Carano LLP

EXHIBIT 1

EXHIBIT 1

Ryan J. Works, Esq., (NSBN 9224)
John A. Fortin, Esq., (NSBN 15221)
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*Pro Bono Counsel for
Claimant Sylvia Fred*

FIRST JUDICIAL DISTRICT COURT

CARSON CITY, NEVADA

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

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

SYLVIA FRED, an individual,

Counterclaimant,

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(TRI-NET NARCOTICS TASK FORCE),

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v.

STATE OF NEVADA ex rel. INVESTIGATION
DIVISION OF THE NEVADA STATE POLICE
(TRI-NET NARCOTICS TASK FORCE),

Counterdefendant.

**COUNTERCLAIMANT SYLVIA
FRED'S INITIAL DISCLOSURES
PURSUANT TO NRCP 16.1**

Pursuant to NRCP 16.1, Counterclaimant Sylvia Fred ("Sylvia"), by and through her counsel of record of the law firm of McDonald Carano LLP, produces these initial disclosures ("Initial Disclosures"). These Initial Disclosures are based on information reasonably available as of this date, recognizing that investigation continues and discovery has just begun. Sylvia will supplement or modify these Initial Disclosures, at any time, and as additional information becomes available during discovery.

1 In making these Initial Disclosures, Sylvia does not purport to identify every individual,
2 document, data compilation, or tangible thing possibly relevant to this lawsuit. Rather, these
3 Initial Disclosures represent a good faith effort to identify discoverable information Sylvia
4 currently and reasonably believes may be used to support its claims and/or defenses as required
5 by NRCP 16.1.

6 Furthermore, Sylvia makes these Initial Disclosures without waiving its right to object to
7 the production of any document, data compilation, or intangible thing disclosed because of any
8 privilege, work product, relevancy, undue burden, or other valid objection. These Initial
9 Disclosures do not preclude Sylvia's production of information that may be used solely for
10 impeachment purposes.

11 Sylvia reserves, among other rights, (1) its right to object on the grounds of competency,
12 privilege, work product, relevancy and materiality, admissibility, hearsay, or any other proper
13 ground to the use of any disclosed information, for any purpose in whole or in part in this action
14 or any other action, and (2) its right to object on any and all proper grounds, at any time, to any
15 discovery request or motion relating to the subject matter of this disclosure. In addition, these
16 Initial Disclosures do not identify or otherwise include information regarding expert witnesses, as
17 Rule 16.1 does not require the disclosure of such information at this time.

18 **I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION.**

- 19 1. Sylvia Fred
20 c/o
21 McDonald Carano LLP
22 2300 W. Sahara Ave
23 Las Vegas, NV 89102
24 Telephone: 702-873-4100

25 This witness is expected to have knowledge regarding the facts and circumstances
26 surrounding this litigation, including but not limited to the Counterclaim she filed in this action
27 and other facts and circumstances surrounding the claims and defenses in this litigation, including
28 but not limited to the nature of Tri-Net's violation of her constitutional rights and the several torts
the agency and its agents committed.

1 2. Elvin Fred
2 c/o
3 McDonald Carano LLP
4 2300 W. Sahara Ave
5 Las Vegas, NV 89102
6 Telephone: 702-873-4100

7 This witness is expected to have knowledge regarding the facts and circumstances
8 surrounding this litigation, including but not limited to Tri-Net's complaint in this action as well
9 as other facts and circumstances surrounding the claims and defenses in this litigation, including
10 but not limited to the nature of Tri-Net's violation of Sylvia's constitutional rights and the several
11 torts the agency and its agents committed.

12 3. Coley McCann
13 c/o
14 Carson City District Attorney's Office
15 555 Wright Way
16 Carson City, Nevada 89711
17 Telephone: 775-887-2072

18 This witness is expected to have knowledge regarding the facts and circumstances
19 surrounding this litigation, including but not limited to the facts and circumstances regarding Tri-
20 Net's eviction of the Fred Family from the Home and Tri-Net's actions in taking possession of
21 the Home in 2019.

22 4. A NRCP 30(b)(6) representative of the Nevada Department of Public Safety,
23 Investigation Division, Tri-Net Narcotics Task Force
24 c/o
25 Carson City District Attorney's Office
26 555 Wright Way
27 Carson City, Nevada 89711
28 Telephone: 775-887-2072

 This witness is expected to have knowledge regarding the facts and circumstances
surrounding this litigation, including but not limited to the facts and circumstances regarding Tri-
Net's eviction of the Fred Family from the Home and Tri-Net's possession of the property from
2019 through 2022.

 5. A NRCP 30(b)(6) representative of the Carson City Sheriff's Office
c/o
Carson City District Attorney's Office
555 Wright Way
Carson City, Nevada 89711
Telephone: 775-887-2072

1 This witness is expected to have knowledge regarding the facts and circumstances
2 surrounding this litigation, including but not limited to the facts and circumstances regarding Tri-
3 Net's eviction of the Fred Family from the Home and Tri-Net's possession of the property from
4 2019 through 2022.

- 5 6. A NRCP 30(b)(6) representative of the Douglas County Sheriff's Office
6 c/o
7 Carson City District Attorney's Office
8 555 Wright Way
9 Carson City, Nevada 89711
10 Telephone: 775-887-2072

11 This witness is expected to have knowledge regarding the facts and circumstances
12 surrounding this litigation, including but not limited to the facts and circumstances regarding Tri-
13 Net's eviction of the Fred Family from the Home and Tri-Net's possession of the property in 2019
14 through 2022.

15 Sylvia reserves the right to call any witnesses identified by any party in this matter.

16 Sylvia reserves the right to call any persons and/or entities identified in the course of
17 discovery in this matter.

18 Sylvia reserves the right to amend, supplement, and/or add to this list of witnesses any
19 other persons and/or entities who may have information relevant to the issues of this case,
20 including without limitation expert, impeachment, and/or rebuttal witnesses.

21 **II. DOCUMENTS.**

- 22 1. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0001-
23 FRED0020.
24 2. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0021-
25 FRED0051.
26 3. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0052-
27 FRED0081.
28 4. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0082-
FRED0106.
5. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0107-

- 1 FRED0166.
- 2 6. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0167-
- 3 FRED00197.
- 4 7. 2012 04 09 and 2012 04 17 Cashier's Checks Documents, Bates-Labeled FRED0198-
- 5 FRED0199.
- 6 8. 2012 05 03 Grant Deed Recorded Documents, Bates-Labeled FRED0200-FRED0202.
- 7 9. 2014 08 15 Grant Deed Recorded Documents, Bates-Labeled FRED0203-FRED0206.
- 8 10. 2015 04 01 Lis Pendens Recorded Documents, Bates-Labeled FRED0207-
- 9 FRED0211.
- 10 11. 2015 03 31 Quitclaim Deed Recorded Documents, Bates-Labeled FRED0212-
- 11 FRED0215.
- 12 12. 2019 07 10 Amended Default Judgment Recorded Documents, Bates-Labeled
- 13 FRED0216-FRED0225.
- 14 13. 2021 11 24 Moneygram email Documents, Bates-Labeled FRED0226-FRED0227.
- 15 14. 2021 12 01 Baldwin State Bank Letter Documents, Bates-Labeled FRED0228.
- 16 15. 2022 02 24 Carol Toohey Declaration Documents, Bates-Labeled FRED0229-
- 17 FRED0231.
- 18 16. 2022 03 14 – Video of 3587 Desatoya Drive Documents, Bates-Labeled FRED0232.
- 19 17. 2022 11 08 – Sylvia Fred Declaration Documents, Bates-Labeled FRED0233.
- 20 18. 2019 07 18 – Sylvia Fred Email with C. McCann Documents, Bates-Labeled
- 21 FRED0234-FRED0236.
- 22 19. 2019 08 02 – Sylvia Fred Email with C. McCann Documents, Bates-Labeled
- 23 FRED0237-FRED 0238.
- 24 20. 2019 08 06 – Lockout Order Documents, Bates-Labeled FRED0239.
- 25 21. 2019 08 09 – Sylvia Fred Email with C. McCann Documents, Bates-Labeled
- 26 FRED0240.
- 27 22. 2019 10 09 – Sylvia Fred Email with C. McCann Documents, Bates-Labeled
- 28 FRED0241-FRED0245.

1 23. 2021 07 21 –3587 Desatoya Drive Sewer Bill Documents, Bates-Labeled FRED0246.

2 24. 2022 03 22 – 3587 Desatoya Drive Public Works Bill Documents, Bates-Labeled
3 FRED0247.

4 25. Privilege / Redaction Log dated November 9, 2022.

5 Entries 1-25, above, are being disclosed via the following link which will be active for 180
6 days from November 9, 2022. Please contact this office if you'd prefer a CD or USB drive to be
7 mailed to your office.

8 <https://www.dropbox.com/scl/fo/lcta1ivz0b9b95bxgee7/h?dl=0&rlkey=do4d495vrvejya359cq8rvlo4>

9 26. Sylvia reserves the right to supplement this production.

10 27. Sylvia reserves the right to use all documents and/or other evidence identified by any
11 party in connection with this matter.

12 28. Sylvia reserves the right to use all documents and/or other evidence identified in the
13 court of discovery in this matter.

14 **III. COMPUTATION OF DAMAGES.**

15 Sylvia seeks damages described in the Complaint. Those damages are approximated to
16 be at least \$800,000 based on the statutory cap provided under NRS 41.035 not including the
17 constitutional damages she is seeking. Expert disclosures have not been made and Sylvia will
18 supplement this disclosure as she obtains information regarding the same. In addition, Sylvia also
19 seeks pre- and post-judgment interest, attorneys' fees and costs, and other damages according to
20 proof.

21 **IV. INSURANCE AGREEMENTS.**

22 Sylvia is not aware at this time of any insurance agreements that may be liable to satisfy
23 part or all of a judgment.

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1 Sylvia reserves the right to supplement this disclosure to add additional documents and/or
2 name(s) of person(s) who may have relevant information, as discovery continues.

3 DATED this 9th day of November 2022.

4 McDONALD & CARANO LLP

5 By: 

6 Ryan J. Works, Esq., (NSBN 9224)
7 John A. Fortin, Esq., (NSBN 15221)
8 2300 West Sahara Ave, Suite 1200
9 Las Vegas, Nevada 89102
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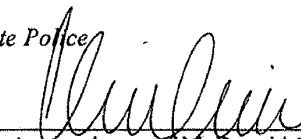
10 *Pro Bono Counsel for*
11 *Claimant Elvin Fred*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDONALD CARANO LLP and that on this 9th day of November 2022, I caused to be delivered via email true and correct copies of the above **COUNTERCLAIMANT SYLVIA FRED'S INITIAL DISCLOSURES PURSUANT TO NRCP 16.1** to the following:

CARSON CITY DISTRICT ATTORNEY
JASON D. WOODBURY (NSBN 6870)
District Attorney
BENJAMIN R. JOHNSON (NSBN 10632)
Senior Deputy District Attorney
885 East Musser Street
Suite 2030
Carson City, Nevada 89701
E-mail: jwoodbury@carson.org
bjohnson@carson.org

*Counsel for State of Nevada ex rel.
Investigation Division of The Nevada State Police
(Tri-Net Narcotics Task Force)*




An employee of McDonald Carano LLP

4887-0596-8957, v. 7

1 Sylvia reserves the right to supplement this disclosure to add additional documents and/or
2 name(s) of person(s) who may have relevant information, as discovery continues.

3 DATED this 9th day of November 2022.

4 ~~McDONALD CARANO LLP~~
5 By: 
6 Ryan J. Works, Esq., (NSBN 9224)
7 John A. Fortin, Esq., (NSBN 15221)
8 2300 West Sahara Ave, Suite 1200
9 Las Vegas, Nevada 89102
10 Telephone: 702.873.4100
11 rworks@mcdonalddcarano.com
12 jfortin@mcdonalddcarano.com

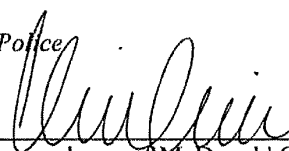
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18 *Pro Bono Counsel for*
19 *Claimant Elvin Fred*
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28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDONALD CARANO LLP and that on this 9th day of November 2022, I caused to be delivered via email true and correct copies of the above **COUNTERCLAIMANT SYLVIA FRED'S INITIAL DISCLOSURES PURSUANT TO NRCP 16.1** to the following:

CARSON CITY DISTRICT ATTORNEY
JASON D. WOODBURY (NSBN 6870)
District Attorney
BENJAMIN R. JOHNSON (NSBN 10632)
Senior Deputy District Attorney
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Carson City, Nevada 89701
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bjohnson@carson.org

*Counsel for State of Nevada ex rel.
Investigation Division of The Nevada State Police
(Tri-Net Narcotics Task Force)*


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4887-0596-8957, v. 7

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jfortin@mcdonalddcarano.com

*Pro Bono Counsel for
Claimant Sylvia Fred*

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

In Re:

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

SYLVIA FRED, an individual,

Counterclaimant,

v.

STATE OF NEVADA ex rel.
INVESTIGATION DIVISION OF THE
NEVADA STATE POLICE (TRI-NET
NARCOTICS TASK FORCE),

Counterdefendant,

ELVIN FRED, an individual,

Counterclaimant,

v.

STATE OF NEVADA ex rel.
INVESTIGATION DIVISION OF THE
NEVADA STATE POLICE (TRI-NET
NARCOTICS TASK FORCE),

Counterdefendant,

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AUBREY ROWLATT
CLERK
BY S. BARAJAS
DEPUTY

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

**SYLVIA FRED'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
SEEKING A DECLARATION THAT
NEVADA'S CIVIL FORFEITURE LAWS
VIOLATE DUE PROCESS**

Under NRCP 56, Claimant Sylvia Fred ("Sylvia") files this Motion for Partial Summary Judgment ("Motion") on one of her Counterclaims against the State of Nevada, *ex rel.* the Investigation Division of the Nevada State Police (Tri-Net Narcotics Task Force), ("Tri-Net"). This Motion is based on NRCP 56, the Due Process Clause of the United States and Nevada

1 Constitutions, Nevada's Civil Forfeiture Laws, the following memorandum of points and
2 authorities, the declarations of John A. Fortin, Esq., Elvin Fred, Sylvia Fred, and Carol Toohey the
3 attached exhibits, the pleadings and papers on file here, and any oral argument requested by the
4 Court and such other matters as the Court may find appropriate.

5 Dated this 8th day of December 2022.

6 McDONALD CARANO LLP

7 By: Zach Norand (NSBN 15075) *on behalf of*

8 Ryan J. Works, Esq. (NSBN 9224)
9 John A. Fortin, Esq. (NSBN 15221)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
10 rworks@mcdonaldcarano.com
11 jfortin@mcdonaldcarano.com

12 *Pro Bono Counsel for*
13 *Claimant Sylvia Fred*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Sylvia's Due Process rights have been assaulted by Tri-Net as that agency deployed NRS 179.1156 to NRS 179.1205 ("Nevada's Civil Forfeiture Laws") over the last 7 years to forfeit the real property located at 3587 Desatoya Drive, Carson City Nevada, 89701 ("Home"). As shown below, Nevada's Civil Forfeiture Laws violate fundamental tenets of Due Process by infringing on Sylvia's right to the presumption of innocence, her inalienable right to protect her property from arbitrary government conduct as well as her right to a prompt hearing and speedy trial. The risk of erroneous deprivation of these fundamental liberties and constitutional guarantees is not only extremely high—the violations have already happened. Tri-Net cannot point to any governmental interest with sufficient weight to overcome the presumption of innocence, the inalienable property rights Sylvia possesses as well as her right to a prompt hearing and speedy trial. Because the *Mathews* three-part balancing test weighs heavily in Sylvia's favor, partial summary judgment on Sylvia's Counterclaim that Nevada's Civil Forfeiture Laws violate her Due Process rights is appropriate.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Elvin and Sylvia Purchase the Home in 2012.

This forfeiture action involves the real property located at 3587 Desatoya Drive, Carson City, Nevada 89701. (Pl.'s First Am. Compl. ("FAC"), March 22, 2022, on file.) In 2012, Sylvia and Elvin purchased the Home in an all-cash sale. (Ex. 20, Elvin Fred Decl. ¶ 10; Ex. 21, Sylvia Fred Decl. ¶ 6; *see also* Ex. 1 (providing Elvin did not obtain a mortgage and the sale was "all cash").) The funds to purchase the Home came from two sources. (Ex. 20, Elvin Fred Decl. ¶¶ 5-9; Ex. 21, Sylvia Fred Decl. ¶¶ 8-10.) Elvin received \$60,000 from a settlement of a civil rights case involving the Carson City Nugget, Carson City, and the Sheriff Deputies for their conduct in January 2009. (Ex. 20, Elvin Fred Decl. ¶¶ 4-5; *see also* Ex. 2-5 Case no. 3:11-CV-0065-HDM-VPC documents.) The remaining balance of the purchase price was provided by Sylvia. (*See, e.g.*, Ex. 20, Elvin Fred Decl. ¶¶ 7-9; Ex. 21, Sylvia Fred Decl. ¶ 8-10; Ex. 6, Carol Toohey Decl. ¶¶ 7-9; *see also* Ex. 7 (Sylvia Fred's Cashier's Checks withdrawing funds for Elvin); Ex. 8 (Moneygram

1 email); Ex. 9 (Baldwin State Bank Letter).)

2 In March or April 2012, Elvin met with and retained Carol Toohey ("Ms. Toohey") as his
3 real estate agent. (Ex. 6, Carol Toohey Decl. ¶ 3; Ex. 20, Elvin Fred Decl. ¶¶ 5-6.) Elvin
4 represented to Ms. Toohey "that he had \$60,000 in funds to purchase a home. The full purchase
5 price of the home was \$71,099.92" and Mr. Toohey understood "that Elvin obtained the additional
6 funds from someone else and purchased the home without any need for a mortgage." (Ex. 6, Carol
7 Toohey Decl. ¶ 8; *see also* Ex. 10 (detailing the full purchase price including commissions).) As
8 Elvin made an offer on the Home, he simultaneously reached out to and negotiated with Sylvia to
9 obtain from her, the remaining funds he needed to complete the purchase in cash.¹ (*See* Ex. 20,
10 Elvin Fred Decl. ¶¶ 7-8; Ex. 21, Sylvia Fred Decl. ¶¶ 6-7.) On April 9, 2012, Sylvia withdrew
11 \$10,000 from her savings and relied on Moneygram to transmit the funds to Elvin. (*See* Ex. 20,
12 Elvin Fred Decl. ¶ 9; Ex. 21, Sylvia Fred Decl. ¶¶ 8-9; *see also* Ex. 7.) Then on April 11, 2012,
13 Elvin accepted the seller's counteroffer. (*See* Ex. 11.) Because Sylvia's first transfer to Elvin did
14 not provide enough funds to pay for the appraisal, inspections, real estate commissions, and moving
15 expenses, she withdrew additional funds on April 17, 2012, and transmitted those funds to Elvin
16 via Moneygram. (*See* Ex. 20, Elvin Fred Decl. ¶ 9; Ex. 21, Sylvia Fred Decl. ¶¶ 10-11; *see also*
17 Ex. 7.) Elvin closed on the Home in early May 2012.

18 Even though Elvin and Sylvia purchased the home together with the intent to be co-owners,
19 the original deed was recorded in Elvin's name alone. (Ex. 20, Elvin Fred Decl. ¶ 10; Ex. 21, Sylvia
20 Fred Decl. ¶ 14; *see also* Ex. 12, Grant Deed, May 3, 2012.) This was done because Sylvia simply
21 wanted to take care of her family but did not want to become entangled with Carson City any further
22 based on her experiences with the government there as a young adult. (*See* Ex. 20, Elvin Fred Decl.
23 ¶ 10; Ex. 21, Sylvia Fred Decl. ¶ 14).

24
25 ¹ Sylvia's only request to Elvin at the time of the purchase was that the Home be a Fred
26 Family Home available to all members of the Fred family needing shelter. (Ex. 20, Elvin Fred
27 Decl. ¶ 8; Ex. 21, Sylvia Fred Decl. ¶ 7; *see also* Ex. 6, Toohey Decl. ¶ 9 ("During all of these
28 interactions both Elvin and the rest of the Fred family explained that the 3587 Desatoya Drive
property would be a family home for the Fred's.")) Elvin readily agreed to this condition. (Ex.
20, Elvin Fred Decl. ¶ 8.)

1 B. In 2015, Sylvia and Elvin got their Affairs in Order Following Elvin's Arrest.

2 Following Elvin's arrest in 2015, and as he negotiated his plea bargain with the State, Elvin
3 and Sylvia got their affairs in order regarding the Home. (See Ex. 20, Elvin Fred Decl. ¶ 11; Ex.
4 21, Sylvia Fred Decl. ¶ 15.) This included correcting the deed to ensure Sylvia could pay the
5 property taxes and the utilities to ensure all other home ownership functions could be performed.
6 (See Ex. 20, Elvin Fred Decl. ¶¶ 11-12; Ex. 21, Sylvia Fred Decl. ¶¶ 14-19.) To that end, on March
7 31, 2015, Sylvia and Elvin created a quitclaim deed which was notarized on April 1, 2015, and
8 recorded on April 6, 2015. (See Ex. 14, Quitclaim deed.) As both Sylvia and Elvin declared, this
9 deed did not transfer the property's ownership from Elvin to Sylvia—the deed simply memorialized
10 and confirmed Sylvia and Elvin's prior intent to have Sylvia as a joint tenant owner with Elvin
11 since each provided funds for the 2012 purchase. (Ex. 20, Elvin Fred Decl. ¶¶ 10-12; Ex. 21, Sylvia
12 Fred Decl. ¶¶ 14-16.) Because of Elvin's incarceration, Sylvia added her name to the utilities and
13 regularly paid both the utilities and the property taxes on the Home between 2015 and 2019.² (Ex.
14 21, Sylvia Fred Decl. ¶ 17; Ex. 17 (detailing that both Sylvia and Elvin are named on the Home's
15 utility bill); Ex. 14, Compl. at Ex. 3 (detailing Sylvia's payment of the property taxes).)

16 C. Tri-Net Begins the Forfeiture Proceedings.

17 On April 1, 2015, Tri-Net began this forfeiture proceeding on the Home and simultaneously
18 filed and recorded a *lis pendens*. (See Compl., Apr. 1, 2015, on file; Not. of Lis Pendens, Apr. 1,
19 2015, on file.) After clouding title to the Home, Tri-Net then served Elvin with a summons and a
20
21

22 ² This stands in distinct contrast to Tri-Net's conduct and complete lack of care for the Home
23 from 2019 to 2022. (See Ex. 14, Compl., *Fred v. Rasor, et al.*, Case No. 21 RP 00005 1B, ¶ 22, May
24 24, 2021, on file ("[D]ue to Tri-Net's failure to pay the property taxes on the property that it was
25 wrongfully awarded while the litigation and appeal was pending, Sylvia would still lose her home
26 through the delinquent tax proceedings by Carson City absent intervention by this Court."); see also
27 Sylvia's Answer & Countercl. ¶ 33, Jun. 26, 2022, on file ("Upon entering the Home, Sylvia was
28 shocked to learn that the Home is completely uninhabitable. The moisture and heat the Home
experienced through the broken windows and the back door being left open for an unknown amount
of time, left the walls and several ceiling fans covered in black mold. The floors are ruined and will
need to be completely replaced. The condition of the Home following Tri-Net's occupation is
incredibly dangerous to the health of Sylvia and her family members."); see also Ex. 15 (video
showing the state of the Home upon entry of Sylvia on March 14, 2022 when Tri-Net returned
possession); Ex. 16 (authenticating the video).)

1 copy of the complaint. (*See* Summons, Apr. 3, 2015, on file.) On April 28, 2015, Tri-Net and Elvin
2 entered into a stipulation and this Court ordered a stay to the proceedings pending resolution of
3 Elvin's criminal proceedings. (*See* Not. of Entry of Ord., Apr. 29, 2015, on file.) Tri-Net mailed
4 Sylvia notice of the stay in Minnesota. (*See id.*) At oral arguments before the Nevada Supreme
5 Court, Tri-Net admitted that in April 2015, it understood that Sylvia was making a claim
6 as a property owner. (*See* https://nvcourts.gov/Supreme/Arguments/Recordings/80194_In_Re_35_87_Destoya_Dr_Carson_City_Nev_89701/. (hereinafter "Oral Arguments").)

8 Importantly, Sylvia was never charged, mentioned, or in any way referenced throughout
9 Elvin's criminal proceedings. *See Fred (Elvin) v. State*, Case No. 72521 (Ord. of Affirmance, Mar.
10 14, 2018); NRAP 36(c). Indeed, Sylvia would not be properly noticed under NRS 179.1171(6) of
11 the civil forfeiture proceedings until 2022—*after* Tri-Net obtained a default judgment without
12 providing notice to anyone and *after* the Home had been seized, forfeited, and Sylvia's family had
13 been evicted from the Home for 32 months.³ (*See* Ex. 20-21, S. Fred email communications with
14 Tri-Net.) Following Sylvia's victory, the Nevada Supreme Court instructed this Court to vacate
15 Tri-Net's default judgment and this Court then instructed Tri-Net to return possession of the Home
16 to Sylvia. *See In re: 3587 Desatoya Drive*, Case No. 80194, 2021 WL 4847506 (Order of Reversal
17 and Remand, Oct. 15, 2021); Not. of Entry of Ord. J., March 14, 2022, on file.) When Sylvia
18 obtained possession of the Home and reentered to assess the damage, she was shocked because her
19 Home is completely uninhabitable. (*See* Ex. 17.)

20 D. Sylvia Moves to Dismiss Tri-Net's First Amended Complaint Because she is an
21 Innocent Property Owner.

22 Tri-Net amended its Complaint and finally provided Sylvia notice of the proceedings as
23 required by Nevada law. (*See* Pl.'s FAC, Mar. 22, 2022, on file; Affidavit of Service of FAC, Mar.

25 ³ As Sylvia explained, she came to and sat in the Carson City Courthouse for Elvin's sentencing
26 in August 2015. (Ex. 21, Sylvia Fred Decl. ¶ 18.) As she stated in her first filing before this Court,
27 had Sylvia been served with the Complaint and summons she would have stood on her rights and
28 contested Tri-Net's claims. (*See* Mot. to Vacate Default J., Oct. 4, 2019, on file.) In other words,
Sylvia was readily accessible to Tri-Net to be noticed of these proceedings in 2015 and would have
stood on her rights had Tri-Net complied with the law.

24, 2022, on file.) Sylvia then moved to dismiss Tri-Net’s complaint on multiple grounds including that Tri-Net’s amendment was untimely and that she is an innocent property owner. (*See, e.g.*, Sylvia Mot. to Dismiss, May 3, 2022, on file; Tri-Net Opp’n, May 20, 2022, on file; Sylvia Reply, May 31, 2022, on file.) After full briefing, this Court denied Sylvia’s motion. (Order, Jun. 9, 2022, on file). Sylvia then answered and counterclaimed. (*See* Sylvia Verified Answer & Countercl., Jun. 28, 2022, on file.) Among other counterclaims, Sylvia requested declaratory relief that her Due Process Rights are violated by Nevada’s Civil Forfeiture Laws. (*See id.* ¶¶ 36-47.) Relevant here, Sylvia pleaded that

Nevada law requires claimants—not the government—to establish a “protected interest” in the property the government seeks to forfeit. NRS 179.1173(8); *see also* NRS 179.1164(2) (barring forfeiture of property to the extent a claimant established a protected interest in the property). The current statutory scheme violates State and Federal Due Process by placing the burden on claimants to prove a negative—that they were not involved in crime—rather requiring the government to prove a claimant’s involvement in the underlying criminal act.

(*Id.* ¶ 42; *see also id.* ¶ 43 (seeking a declaration that Sylvia’s Due Process rights have been violated).) Sylvia now moves for partial summary judgment and a declaration from this Court that Nevada’s Civil Forfeiture Laws violate her Due Process Rights.

III. LEGAL ARGUMENT

A. Legal Standard for Summary Judgment

A party seeking to recover upon a claim may move for summary judgment in her favor upon all or any part of that claim. NRCP 56(a); *see also* NRS 30.040(1) (providing that “[a]ny person . . . whose rights, status, or legal relations are affected by a statute . . . may have determined any question of construction or validity under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.”).

“Summary judgment is appropriate and shall be rendered forth-with when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled judgment as a matter of law.” *Wood v. Safeway*, 121 Nev. 724, 729 (2005) (cleaned up). “The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.” *Id.* at 731. When reviewing a motion for summary judgment, this Court must review the arguments, “the evidence, and any

1 reasonable inferences drawn from it” in the “light most favorable to the nonmoving party.” *Id.* at
2 729. “While the pleadings and other proof must be construed in a light most favorable to the
3 nonmoving party, that party bears the burden to do more than simply show that there is some
4 metaphysical doubt as to the operative facts” and the nonmoving party “is not entitled to build a
5 case on the gossamer threads of whimsy, speculation, and conjecture.” *Id.* at 732 (cleaned up).

6 Because Sylvia seeks a declaration that Nevada’s civil forfeiture laws are unconstitutional,
7 Sylvia must make a “clear showing of invalidity” of the law’s infirmity. *Silvar v. Eighth Jud. Dist.*
8 *Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006). “Constitutional interpretation utilizes the same
9 rules and procedures as statutory interpretation. *Educ. Freedom PAC v. Reid*, 512 P.3d 296, 302
10 (2022) (cleaned up). “This court will first look to the plain meaning of the constitutional provision,
11 and only if it is ambiguous will this court look to the history, public policy, and reason for the
12 provision.” *Id.*

13 B. Nevada’s Unconstitutional Forfeiture Laws

14 “All right, title, and interest in property subject to forfeiture vests in the plaintiff: (a) In the
15 case of property used or intended for use to facilitate the commission or attempted commission of
16 any felony, when the property is so used or intended for such use; (b) In the case of property
17 otherwise subject to forfeiture, when the event giving rise to the forfeiture occurs.”⁴ NRS
18 179.1169(1). In other words, the statutory scheme transferred title of the Home to Tri-Net in
19 February 2015—before any legal process had been served on Elvin or Sylvia.

20 Because the Legislature recognized that forfeitures of property are harsh punishments, it
21 installed statutory affirmative defenses for innocent property owners. For example, “[p]roperty
22 may not, to the extent of the interest of any claimant, be declared forfeited by reason of an act or
23 omission shown to have been committed or omitted without the knowledge, consent or willful
24

25
26 ⁴ See NRS 179.1158 (“‘Claimant’ means any person who claims to have: (1) Any right, title
27 or interest of record in the property or proceeds subject to forfeiture; (2) Any community property
28 interest in the property or proceeds; or (3) Had possession of the property or proceeds at the time of
the seizure thereof by the Plaintiff.”); NRS 179.1159 (“‘Plaintiff’ means the law enforcement
agency which has commenced a proceeding for forfeiture.”).

blindness of the claimant.” NRS 179.1164(2); *see also* NRS 179.1163 (“‘Protected interest’ means the enforceable interest of a claimant in property, which interest is shown not to be subject to forfeiture.”); NRS 179.11635 (“‘Willful blindness’ means the intentional disregard of objective facts which would lead to a reasonable person to conclude that the property was derived from unlawful activity or would be used for an unlawful purpose.”). “The property . . . must be forfeited to the plaintiff, subject to the right of any claimant who establishes a protected interest.” NRS 179.1173(8). “If the court determines that the property is not subject to forfeiture, the court shall order the property . . . returned to the claimant found to be entitled to the property within 7 business days after the order is issued.” *Id.* In sum, an innocent property owner bears the burden to prove they possess a protected interest which may be rebutted by the law enforcement agency claiming the innocent property owner was willfully blind to the criminal acts providing the basis for the forfeiture.

Together with the innocent property analysis, Tri-Net claims that Sylvia fails to satisfy the requirements of NRS 179.1169(2).⁵ *See* Oral Arguments. That provision provides:

Any transfer of property which occurs after title to the property has become vested in the plaintiff, and before the termination of the proceeding for forfeiture, is void as against the plaintiff, unless the person to whom the transfer is made is a good faith purchaser for value. If such a transfer is made, the purchaser must, in the proceeding for forfeiture, establish by a preponderance of the evidence that the purchaser has:

- (a) An interest of record in the property;
- (b) Given fair value for the interest; and
- (c) Acquired the interest without notice of the proceeding or the facts giving rise to the proceeding.

If the purchaser acquires the interest after the seizure of the property by the plaintiff, it is conclusively presumed that the interest has been acquired with notice of the proceeding.

Id. Again, the burden rests with Sylvia to prove all of these facts—not Tri-Net.

⁵ Sylvia and Elvin confirmed that the 2015 Quitclaim deed did not transfer ownership of the Home to Sylvia. (*See* Ex. 20, Elvin Fred Decl. ¶ 10-12; Ex. 21, Sylvia Fred Decl. ¶¶ 14-16.) Instead, the deed merely corrected the property records and memorialized Sylvia’s status as a joint tenant because she provided funds for the purchase in 2012. (*See id.*) Thus, Sylvia contends that Tri-Net’s attempt to apply NRS 179.1169(2) is erroneous because there was not a “transfer” but simply a correction to the property ownership records.

Put another way, *after* the property rights of Sylvia's Home vested to Tri-Net in February 2015. *After* Elvin pleaded guilty seven years ago and Sylvia sat in the gallery as he was sentenced. *After* this Court stayed the civil forfeiture proceedings for over 3 years. *After* Tri-Net failed to provide Sylvia notice in 2018 that it resumed the forfeiture proceedings. *After* Tri-Net obtained a default judgment and evicted Sylvia's family for 32 months. *After* Sylvia challenged the default judgment to the Nevada Supreme Court and prevailed. *After* Tri-Net returned the Home that was completely destroyed because of Tri-Net's gross negligence—Nevada's Civil Forfeiture Laws *place the burden on Sylvia* to now demonstrate that she is an innocent property owner by showing that she is a good-faith purchaser for value and possesses a protected interest in the entire Home. Nevada's Civil Forfeiture Laws clearly violate Sylvia's Due Process rights.

C. The Three-Part Mathews Test Controls the Due Process Question Here.

Challenges to Nevada law under the Due Process Clauses under the Fourteenth Amendment of the United States Constitution and Article 1, Section 8 of Nevada's Constitution require an examination of a three-part balancing test. *See Livingston v. Washoe Cnty.*, 112 Nev. 479, 484-85, 916 P.2d 163, 166-68 (1996) (applying *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)), *overturned on other grounds in* 114 Nev. 306, 956 P.2d 84 (1998). "Under the *Mathews* balancing test, a court evaluates (A) the private interest affected; (B) the risk of erroneous deprivation of that interest through the procedures used; and (C) the governmental interest at stake." *Nelson v. Colorado*, 581 U.S. ___, ___, 137 S.Ct. 1249, 1255 (2017).

1. *Sylvia possesses several fundamental rights that are triggered by Nevada's Civil Forfeiture Laws.*

Although Nevada's forfeiture process is characterized as civil, some early United States Supreme Court precedents recognized property forfeitures are punishments that required the "beyond a reasonable doubt" burden of proof. *See, e.g., Boyd v. United States*, 116 U.S. 616, 633-34 (1886) ("[P]roceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal"); *United States v. Brig Burdett*, 34 U.S. 682, 690 (1835) ("The object of this prosecution was to enforce a forfeiture of the vessel and all that pertains to her, for a violation of a revenue law.

1 The prosecution was a highly penal one, and the penalty should not be inflicted unless the
2 infractions of the law shall be established beyond a reasonable doubt.”). The Nevada Supreme
3 Court agreed when it confronted the forfeiture of a vehicle under NRS 453.3031. *See, e.g., A 1983*
4 *Volkswagen v. Cnty. Of Washoe*, 101 Nev. 222, 224, 699 P.2d 108, 109 (1985) (explaining that
5 Nevada law has “implicitly recognized the quasi-criminal nature of forfeiture actions” and required
6 “proof beyond a reasonable doubt” so that “the innocent may not be permanently deprived of their
7 property”); *One 1978 Chevrolet Van v. Churchill Cnty.* 97 Nev. 510, 512, 634 P.2d 1208, 1209
8 (1981) (Nevada “law does not favor forfeitures” and district courts must “strictly construe[]”
9 statutes authorizing forfeitures and only enforce them “when facts clearly justify” the loss of
10 property rights (quoting *Ind. Nev. v. Gold Hills*, 35 Nev. 158, 166, 126 P. 965, 967 (1912)).

11 Indeed, commentary from the academy condemns the dichotomy of civil versus criminal
12 when a court reviews forfeitures under the Due Process Clause. *See* David Benjamin Ross,
13 Comment and Note, *Civil Forfeiture: A Fiction That Offends Due Process*, 13 Regent U.L. Rev.
14 259, 264 (2001) (explaining that the convenience of the fiction of in rem proceedings to reduce
15 drug offenses “does not justify allowing law enforcement officials to circumvent fundamental
16 constitutional due process rights.”). “Continuing to base jurisdiction on the legal fiction of
17 personification, while perhaps convenient, is merely the perpetuation of an ancient form that
18 ignores present reality—depriving individuals of cars, houses, and bank accounts is a significant
19 punishment, more than can be inflicted in many criminal proceedings.” *Id.* Indeed, Justices on the
20 United States Supreme Court likewise agree that property forfeitures inflict harsh punishments. *See*
21 *Sessions v. Dimaya*, 138 S.Ct. 1204, 1229 (2018) (Gorsuch J., concurring in part and concurring in
22 the judgment) (“Ours is a world filled with more and more civil laws bearing more and more
23 extravagant punishments. Today’s ‘civil’ penalties include . . . forfeiture provisions that allow
24 homes to be taken. . . .”); *Leonard v. Texas*, 137 S.Ct. 847, 848 (2017) (Thomas, J. concurring in
25 denial of certiorari) (“This system—where police can seize property with limited judicial oversight
26 and retain it for their own use—has led to egregious and well-chronicled abuses.”). Nevada’s Civil
27 Forfeiture Laws are statutes that inflict severe punishment and therefore the procedures to obtain
28 such punishment must be constitutionally sound.

1 “[A] criminal procedure violates due process if ‘it offends some principle of justice so
2 rooted in the traditions and conscience of our people as to be ranked as fundamental.’” *Nelson* 137
3 S.Ct. 1256 n.9 (quoting *Medina v. Calif.*, 505 U.S. 437, 445 (1992)). As shown below, Nevada’s
4 civil forfeiture laws implicate (1) Sylvia’s right to be presumed innocent, (2) Sylvia’s inalienable
5 property rights, and (3) Sylvia’s right to a prompt hearing and a speedy trial. *See Nelson*, 137 S.Ct.
6 at 1256 n.9 (“Absent a conviction of a crime, one is presumed innocent.”); *Levingston*, 112 Nev. at
7 484, 916 P.2d at 167 (explaining that the “purpose of due process is to protect the fundamental
8 right” of property ownership “from arbitrary encroachments by minimizing unfair or mistaken
9 deprivations of property”); *State v. Inzunza*, 454 P.3d 727, 730 (2019) (“The Sixth Amendment to
10 the United States Constitution guarantees that ‘[i]n all criminal prosecutions, the accused shall
11 enjoy the right to a speedy . . . trial.’” (quoting U.S. Const. amend. VI.)). The Constitution’s
12 protection of fundamental rights “is of particular importance here, where the Government has a
13 direct pecuniary interest in the outcome of the proceeding.” *James Daniel Good Real Prop.*, 510
14 U.S. at 55-56; *see also Harmelin v. Michigan*, 501 U.S. 957, 979, n. 9 (1991) (“[I]t makes sense to
15 scrutinize governmental action more closely when the State stands to benefit.”).

16 “Certain wrongs affect more than a single right and, accordingly, can implicate more than
17 one of the Constitution’s commands. Where such multiple violations are alleged, we are not in the
18 habit of identifying as a preliminary matter the claim’s ‘dominant’ character. Rather we examine
19 each constitutional provision in turn.” *Soldal v. Cook Cnty.*, 506 U.S. 56, 70 (1992); *see also United*
20 *States v. James Daniel Good Real Prop.*, 510 U.S. 43, 50 (1993) (“The proper question is not which
21 Amendment controls, but whether either Amendment is violated.” (cleaned up)). In other words,
22 and while Sylvia maintains that all of these fundamental liberty interests have been violated—to
23 prevail on summary judgment Sylvia must only show that one of her fundamental rights and the
24 procedures relied upon in Nevada’s Civil Forfeiture Laws pose a risk of erroneous deprivation such
25 that Sylvia’s fundamental rights outweigh the State’s interest in forfeiting her Home while it relies
26 on Nevada’s Civil Forfeiture Laws.

27 ///

28 ///

a. *Sylvia possesses a fundamental right to the presumption of innocence.*

“The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our criminal justice system.” *Estelle v. Williams*, 425 U.S. 501, 503 (1976) (citation omitted). “‘The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of our criminal law.’” *Bell v. Wolfish*, 441 U.S. 520, 533 (1979) (quoting *Coffin v. United States*, 156 U.S. 432, 453 (1895) (tracing the history of the presumption of innocence from Deuteronomy through Roman law, English common law, and the common law of the United States)); *see also Nelson*, 137 S.Ct. at 13 n. 9 (explaining that *Wolfish* “recognized that ‘under the Due Process Clause,’ a detainee who ‘has not been adjudged guilty of any crime’ may not be punished” (quoting 441 U.S. at 535-36)).

As the United States Supreme Court explained, the presumption of innocence “is an inaccurate shorthand description of the right of the accused to remain inactive and secure, until the prosecution has taken up its burden and produced evidence and effectuated persuasion.” *Taylor v. Kentucky*, 436 U.S. 478, 484 n.12 (1978) (internal quotation marks omitted). “The principal inaccuracy is the fact that it is not technically a ‘presumption’—a mandatory inference drawn from a fact in evidence. Instead, it is better characterized as an ‘assumption’ that is indulged in the absence of contrary evidence.” *Id.* “This Court has declared that one accused of a crime is entitled to have his guilt or innocence determined *solely on the basis of the evidence introduced at trial*, and not on grounds of official suspicion, indictment, continued custody, or other circumstances, *not adduced as proof at trial.*” *Id.* at 485 (emphasis added).

Nevada’s Civil Forfeiture laws divest ownership of the property at the time of the crime, permits the government to file a *lis pendens* prior to serving any claimant, and then an owner must prove their innocence to get complete ownership of their property back. *See James Daniel Good Real Prop.*, 510 U.S. at 55 (reasoning that even the federal government’s “ex parte pre-seizure proceeding affords little or no protection to the innocent owner”). “The Government is not required

1 to offer any evidence on the question of innocent ownership or other potential defenses a claimant
2 might have.” *Id.*; see also Order, Jun. 9, 2022, on file. (“[I]nnocent ownership is an affirmative
3 defense in a forfeiture action, and the plaintiff is not required to plead that the affirmative defense
4 does not exist.”).

5 Sylvia was never charged, mentioned, or in any way referenced throughout Elvin’s criminal
6 proceedings. See *Fred*, Case No. 72521. This is because Sylvia is an innocent property owner.⁶
7 Despite this fact, this Court held, “[t]o establish such a protected interest, [Sylvia] bears the burden
8 to show that the acts or omissions supporting forfeiture were committed without the knowledge,
9 consent, or willful blindness of the claimant.” (Order at 12:7-9., Jun. 9, 2022, on file). Nevada’s
10 statutory structure confirmed by this Court’s order violates Sylvia’s fundamental liberty interest to
11 be presumed innocent.

12 Under the Fourteenth Amendment, Sylvia should not have to prove a negative—that she did
13 not commit any crime—in order to end these civil forfeiture proceedings and obtain her property
14 back. See *Nelson*, 137 S.Ct. at 1256 (“Colorado may not retain funds taken from [criminal
15 defendants] solely because of their now-invalidated convictions . . . for Colorado may not presume
16 a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary execution.”
17 (emphasis in original)); see also *id.* 1252 (“This scheme we hold, offends the Fourteenth
18 Amendment’s guarantee of due process.”).

19 Under Nevada’s Due Process clause, the burden of proof must rest with the government.
20 See *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155, 166, 460 P.3d 976, 987 (2020)
21 (recognizing it is the State’s burden of proof at bail proceedings); *In re Wheeler*, 81 Nev. 495, 500,
22 406 P.2d 713, 716 (1965) (same). Indeed, to detain a criminal defendant in violation of parole, the
23 State must offer at least probable cause that the defendant committed a crime. See *Johnston v.*

24
25 ⁶ “[W]e use the phrase ‘innocent owner’ as a term of art denoting a person who has an
26 ownership interest in property threatened with civil forfeiture but who neither participated in nor
27 permitted nor suffered the alleged illegal use of the property, and persons who claim that status. Our
28 use of the term is not intended to suggest that . . . person initially charged with a . . . crime are not
presumed innocent until proven guilty in a criminal proceeding or are presumptively unlikely to
prevail in a civil forfeiture proceeding.” *Krimstock v. Kelly*, 306 F.3d 40, 47 n.8 (2d Cir. 2002)
(Sotomayor, J.).

1 *Eighth Jud. Dist. Ct.*, 138 Nev., Adv. Op. 67, 518 P.3d 94, 102 (2022) (“At the hearing, the State
2 must show probable cause that a violation of a condition occurred.”); *Sheriff, Washoe Cnty. v.*
3 *Steward*, 109 Nev. 831, 835, 858 P.2d 48, 51 (1993) (establishing that probable cause requires a
4 showing by at least slight or marginal evidence of a reasonable inference that the accused
5 committed the offense). For forfeitures of property, the State is not required to prove *anything*
6 under Nevada’s Civil Forfeiture Laws for an innocent property owner to be dragged into years of
7 litigation.

8 Thus, under the United States and Nevada Constitutions’ Due Process clauses, Sylvia
9 possesses a fundamental right to the presumption of innocence and Nevada’s Civil Forfeiture Laws
10 violate her rights.

11 b. *Sylvia possesses a fundamental and inalienable right to innocent*
12 *property owner “protect[ions].”*

13 “The seizure of real property affects the fundamental interest of our citizenry in maintaining
14 control over their residence and remaining free from government interference.” *Levingston*, 112
15 Nev. at 484, 916 P.2d at 167 (citing *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972)); *see also* Nev.
16 Const. Art. 1, § 1 (detailing that all Nevadans possess a fundamental and “inalienable right” to
17 “acquir[e], possess[], and protect[] property” from arbitrary government encroachment).

18 As the United States Supreme Court explained,

19 the seizure of real property deprives an individual of valuable rights of ownership,
20 including the right of sale, the right of occupancy, the right to unrestricted use and
21 enjoyment, and the right to receive rents. All that the seizure left him, by the
Government’s own submission, was the right to bring a claim for the return of title at
some unscheduled future hearing.

22 *James Daniel Good Real Prop.*, 510 U.S. at 54. Indeed, “[t]he seizure of a home produces a far
23 greater deprivation than the loss of furniture, or even attachment. It gives the Government not only
24 the right to prohibit sale, but also the right to evict occupants, to modify the property, to condition
25 occupancy, to receive rents, and to supersede the owner in all rights pertaining to the use,
26 possession, and enjoyment of property.” *Id.* Furthermore, Sylvia’s inalienable rights are at its
27 greatest because “[r]espect for the sanctity of the home . . . has been embedded in our traditions
28 since the origins of the Republic.” *Payton v. New York*, 445 U.S. 573, 601 (1980); Nev. Const. art.

1 1, § 1. As the Nevada Supreme Court explained, “it is clear that Nevadans’ property rights are
2 protected by our State Constitution” and “[t]here is no corollary provision” similar to the inalienable
3 rights clause found in the U.S. Constitution. *McCarran Int’l Airport v. Sisolak*, 122 Nev. 645, 659,
4 669, 137 P.3d 1110, 1120, 1127 (2006). The plain language of Nevada’s Constitution entitles
5 Sylvia to innocent “property” owner “protect[ions]” which must guard against arbitrary government
6 encroachment—including the right to be presumed innocent. Nev. Const. art. 1, § 1.

7 Under the statute, Tri-Net obtained title to the Home in February 2015—before Elvin had
8 been arrested or any forfeiture process began. *See* NRS 179.1169(1). Nevada law further permitted
9 Tri-Net to encumber the Home with a *lis pendens* prior to actually satisfying its notice requirements
10 under NRS 179.1171(6). Under the law, Sylvia must prove her innocence and she must wait until
11 trial to vindicate her property rights. This statutory scheme is unconstitutional when confronted
12 with the robust protections provided under Article 1, Section 1.

13 c. *Sylvia possesses a fundamental right to a prompt hearing and a*
14 *speedy trial*

15 ““The right to a fair and open hearing is one of the rudiments of fair play assured to every
16 litigant by the Federal Constitution as a minimal requirement.”” *Levingston*, 112 Nev. at 484, 916
17 P.2d at 167 (quoting *Railroad Comm’n of Cal. v. Pacific Gas Co.*, 302 U.S. 388, 393 (1938)). “The
18 Court’s opinion in *Klopper v. North Carolina*, 386 U.S. 213 (1967), established that the right to a
19 speedy trial is ‘fundamental’ and is imposed by the Due Process Clause of the Fourteenth
20 Amendment on the States.” *Barker v. Wingo*, 407 U.S. 514, 517 (1972).

21 A baseline Due Process requirement under Nevada’s Constitution is that the State must
22 provide a prompt hearing. *See Johnston*, 518 P.3d at 102 (“Consistent with the principles of due
23 process and in accordance with other decisions requiring individualized hearings where an
24 individual is subject to restraint by the State, we clarify that one detained for allegedly violating a
25 condition of pretrial release has a due process right to a prompt hearing after arrest. of pretrial
26 release has occurred, and the defendant may contest the evidence put forward.”). Indeed, under the
27 United States Constitution, Due Process likewise requires a prompt hearing. *See Krimstock*, 306
28 F.3d at 53 (“In sum, just as in the attachment and seizure cases cited above, the purpose of require

1 due process in the present circumstances is not only to ensure abstract fair play to the individual,
2 but more particularly, . . . to minimize substantively unfair or mistaken deprivations of property.
3 We conclude that Plaintiffs have a right under the Fourteenth Amendment to ask what justification'
4 the City has for retention of their vehicles during the pendency of proceedings and to put that
5 question to the City *at an early point* after seizure in order to minimize any arbitrary or mistaken
6 encroachment upon plaintiffs' use and possession of their property." (cleaned up and emphasis
7 added)). Nevada's Civil Forfeiture Laws provide no such prompt hearing protections for an
8 innocent property owner like Sylvia.

9 In addition to a prompt hearing, Sylvia possesses a speedy trial right. *See Krimstock*, 306
10 F.3d at 53 ("The issues of a speedy trial and a prompt retention hearing are not parallel in this
11 context, particularly when less restrictive methods for protecting the City's interest in the allegedly
12 offending *res* are available."). Indeed, Nevada "evaluates a claim alleging a violation of the Sixth
13 Amendment speedy trial right by" analyzing "four factors: [l]ength of delay, the reason for the
14 delay, the defendant's assertion of his right, and prejudice to the defendant." *Inzunza*, 454 P.3d at
15 731; *see also Barker*, 407 U.S. at 530-33; *Doggett v. United States*, 505 U.S. 647, 651-54 (1992).
16 All four of the *Barker-Doggett* factors weigh in Sylvia's favor.

17 "The first factor, length of delay, is a 'double [i]nquiry.'" *Inzunza*, 454 P.3d at 731 (quoting
18 *Doggett*, 505 U.S. at 651). The first prong of this length of delay inquiry requires a determination
19 that the delay is "presumptively prejudicial" in which "[a] post-accusation delay meets this standard
20 'as it approaches one year.'" *Inzunza*, 454 P.3d at 731 (quoting *Doggett*, 505 U.S. at 652 n.1); *see*
21 *also United States v. Coronaa-Verbera*, 509 F.3d 1105, 1114 (9th Cir. 2007) (recognizing that
22 "[m]ost courts have found a delay that approaches one year is presumptively prejudicial"). If the
23 presumptively prejudicial element is met, "[t]he district court must consider, 'as one factor among
24 several, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial
25 examination of the claim.'" *Inzunza*, 454 P.3d at 731 (quoting *Doggett*, 505 U.S. at 652).

26 Sylvia satisfies the first *Barker-Doggett* prong. From a statutory perspective, Nevada law
27 requires a stay to be implemented until the criminal proceedings reach finality. *See NRS*
28 *179.1173(2)*. Here, that stay lasted for over three years. (*Compare* Not. of Entry of Ord., Apr. 29,

2015, on file, *with* Order, Jun. 1, 2019, on file.) At oral arguments before the Nevada Supreme Court, Tri-Net admitted that in April 2015, it understood that Sylvia was making a claim as a property owner—but never provided her the statutory and constitutionally required notice.⁷ (*See* Oral Arguments.) But and importantly for the delay analysis, even if Sylvia had been properly noticed in 2015—it would not have altered the mandatory statutory delay in exonerating her right to be presumed innocent. (*See* Order, Jun. 9, 2022, on file.); NRS 179.1173(2).

On March 22, 2022, 2519 days or 82 months and 3 weeks after recognizing Sylvia was a claimant on April 29, 2015, Tri-Net finally served Sylvia with the summons and FAC and provided her the opportunity to vindicate her constitutional rights. (*See* First Am. Compl. (“FAC”), Mar. 22, 2022, on file; Affidavit of Service of FAC, Mar. 24, 2022, on file.) This extreme delay is presumptively prejudicial under Nevada law. *See Inzunza*, 454 P.3d at 731 (“A 26-month delay from charge to arrest is well over a year and, therefore, is long enough for the district court to classify as presumptively prejudicial so as to trigger the speedy-trial analysis.”). But and as explained above, Sylvia possesses no procedural mechanism to vindicate her innocent property owner rights absent taking this matter to trial. (*See* Order, Jun. 9, 2022, on file.) Thus, the delay in vindicating her innocence continues to this day and until trial in violation of Sylvia’s Due Process Rights. Therefore, the first *Barker-Doggett* factor is satisfied under these facts.

“The second factor, the reason for the delay, focuses on whether the government is responsible for the delay and is the ‘focal inquiry’ in a speedy trial challenge. *Inzunza*, 454 P.3d at 731 (quoting *United States v. Alexander*, 817 F.3d 1178, 1182 (9th Cir. 2016)).

A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness should serve to justify the appropriate delay.

⁷ Tri-Net had the opportunity to cure its deficient pleading in 2019 and refused to do so. For example, after Sylvia moved to set aside the default judgment Tri-Net could have noticed Sylvia under NRS 179.1171(6) because it knew she was a property owner. (*See* Mot. to Vacate Default J., Oct. 4, 2019, on file.) Instead, Tri-Net chose to maintain an appeal to the Nevada Supreme Court and claimed she lacked standing despite Tri-Net’s knowledge of her ownership of the Home. (*See In re 3587 Desatoya Dr.*, Case No. 80194; *see also* Oral Arguments.)

1 *Barker*, 407 U.S. at 531; *see also Inzunza*, 454 P.3d at 732 (“Furthermore, and applicable to these
2 facts, ‘[o]ur tolerance of negligence varies inversely with the length of delay that the negligence
3 causes.’”) (quoting *United States v. Oliva*, 909 F.3d 1292, 1302 (11th Cir. 2018)).

4 Sylvia satisfies the second *Barker-Doggett* factor. As explained above, the structure of
5 Nevada’s Civil Forfeiture Laws unnecessarily delays the resolution of Sylvia’s innocent property
6 owner claim. *See* NRS 179.1173(2). The law provides no procedure for an innocent property
7 owner like Sylvia to challenge the forfeiture proceeding promptly at a hearing nor does it require
8 the government to establish Sylvia’s guilt through evidence meeting the burden of probable cause,
9 clear and convincing, or reasonable doubt. To be clear, the State has no burden of proof to show
10 Sylvia did anything wrong. (*See* Order, Jun. 9, 2022, on file (explaining that innocent property
11 ownership is an affirmative defense).) The Courts are required to implement a stay further
12 elongating vindication of innocent property owner rights.

13 But the facts specific to this case confirm that Sylvia satisfies the second *Barker-Doggett*
14 factor. At this early stage of discovery, Sylvia has not uncovered a “deliberate attempt” to hamper
15 Sylvia’s defense. *Barker*, 407 U.S. at 531. But what could have been only a three-year delay (2015-
16 2018 while Elvin’s criminal proceedings reached finality) turned into a seven-year delay (2015-
17 2022) because of Tri-Net’s gross negligence. In 2015, Tri-Net knew Sylvia was an interested
18 claimant and mailed her a copy of this Court’s stay order. (*See* Not. of Entry of Stay, April 29,
19 2015.) Sylvia never received any further notice from Tri-Net until her family was evicted from the
20 Home. (*See* Ex. 18-19, S. Fred Emails with Tri-Net.) Despite possessing knowledge that Sylvia
21 was an interested claimant in 2019 even after Sylvia moved to set aside the default judgment, Tri-
22 Net maintained an appeal to the Nevada Supreme Court claiming that Sylvia lacked standing. *See*
23 *In re 3587 Desatoya Drive*, Case No. 80194. Indeed, Tri-Net admitted at oral arguments to the
24 Nevada Supreme Court that in 2015, it understood Sylvia was a claimant. *See* Oral Arguments.
25 Tri-Net’s conduct demonstrates that it has been grossly negligent and is the cause of the extreme
26 delay (2519 days or 82 months and 3 weeks) to these proceedings—not Sylvia. *See Inzunza*, 454
27 P.3d at 732 (“We conclude the district court did not abuse its discretion under factor two when it
28 found the 26-month delay was caused entirely by the State’s ‘gross negligence.’”). The second

1 *Barker-Doggett* factor weighs in Sylvia's favor.

2 The third factor—assertion of the right—weighs in Sylvia's favor. *See Barker*, 407 U.S. at
3 531-32 (explaining that "[t]he defendant's assertion of his speedy trial right . . . is entitled to strong
4 evidentiary weight in determining whether the defendant is being deprived of the right. To be sure,
5 a defendant must know that the State had filed charges against him to have it weighed against
6 him."); *Inzunza*, 454 P.3d at 732; *see also Doggett*, 505 U.S. at 653-54 (stating a defendant who is
7 ignorant as to the formal charges against him "is not to be taxed for invoking his speedy trial right
8 only after his arrest"). Sylvia anxiously waited to receive any notification that the civil forfeiture
9 proceedings would continue. Tri-Net did not provide any to her. Thus, she intervened in these
10 proceedings the moment she became aware that Tri-Net obtained a default judgment without
11 providing her any notice. (*See Ex. 19-20*;) *see also In re 3587 Desatoya Dr.*, Case No. 80194, 2021
12 WL 4847506 at *1 ("Sylvia learned of the default judgment and, after contacting the Sheriff's office
13 to protest the notice to no avail, moved pro se to set aside the judgment, alleging that the State failed
14 to serve her with a summons and complaint seeking forfeiture of her home."). Once the Nevada
15 Supreme Court concluded Sylvia possessed standing, and Tri-Net served Sylvia, she immediately
16 challenged the delay to these proceedings on a statutory basis and asked for dismissal. (*See, e.g.*,
17 Sylvia Mot. to Dismiss, May 3, 2022, on file; Tri-Net Opp'n, May 20, 2022, on file; Sylvia Reply,
18 May 31, 2022, on file.) After this Court denied Sylvia's motion to dismiss Sylvia then answered
19 and counterclaimed and made a Due Process challenge seeking affirmative relief for the violations
20 of her rights. (*See Sylvia Verified Answer & Countercl.*, Jun. 28, 2022, on file.) Sylvia now raises
21 the speedy trial right as part of her Due Process claim within weeks of discovery opening. The
22 third *Barker-Doggett* factor therefore weighs in Sylvia's favor.

23 The last factor examines several different questions but only one is important to Sylvia's
24 Due Process challenge—"the possibility that the defense will be impaired." *Barker*, 407 U.S. at
25 532. "Of these, the most serious is the last, because the inability of a defendant to adequately
26 prepare his case skews the fairness of the entire system." *Id.* "[I]mpairment of one's defense is the
27 most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory
28 evidence and testimony 'can rarely be shown.'" *Doggett*, 505 U.S. at 655 (quoting *Barker*, 407

1 U.S. at 532). “Thus, courts should not be overly demanding with respect to proof of such prejudice.
2 As *Doggett* makes clear, the prejudice factor of *Barker* may weigh in favor of the defendant even
3 though he failed to make any affirmative showing that the delay weakened his ability to raise
4 specific defenses, elicit specific testimony, or produce specific items of evidence.” *Inzunza*, 484
5 P.3d at 732 (cleaned up); *see also Doggett*, 505 U.S. at 655 (concluding that the delay between the
6 defendant’s indictment and arrest, of which six years was solely attributable to the government’s
7 negligence was egregious enough to presume prejudice).

8 Because of Tri-Net’s delay in meeting Nevada Civil Forfeiture Laws notice requirements—
9 2519 days or 82 months and 3 weeks—this Court should presume prejudice to Sylvia. But even
10 without the presumption, Sylvia can present some evidence that her transfer of funds to Elvin in
11 2012 can no longer be obtained from Moneygram or the bank she relied on at the time. (Ex. 21,
12 Sylvia Fred Decl. ¶¶ 8-13; *see also* Ex. 7-9.) Thus, Sylvia will be left with these documents, her
13 words, Elvin’s words, and Ms. Toohey’s words to make her showing of a protected interest and
14 that she is a good-faith purchaser for value under Nevada’s Civil Forfeiture laws. (*See, e.g.*, Ex.
15 20, Elvin Fred Decl.; Ex. 21, Sylvia Fred Decl.; Ex. 6, Carol Toohey Decl.) The loss of her property
16 and family home are simply too great to allow Tri-Net’s prejudicial conduct to stand in light of Tri-
17 Net’s gross negligence. The fourth *Barker-Doggett* factor weighs in Sylvia’s favor.

18 Accordingly, because all of the *Barker-Doggett* factors weigh in Sylvia’s favor, her Sixth
19 Amendment Right to a speedy trial right is implicated and Sylvia’s rights have been violated. In
20 sum and as shown above, the application of Nevada’s Civil Forfeiture Laws violates Sylvia’s
21 fundamental right to: be presumed innocent, a prompt and speedy trial, and her inalienable right to
22 protect her property from arbitrary government action.

23 2. *Sylvia’s rights have already been violated.*

24 When such fundamental interests “are at stake, ‘[n]o better instrument has been devised for
25 arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and
26 opportunity to meet it.’” *Levingston*, 112 Nev. at 485, 916 P.2d at 167 (quoting *Anti-Fascist Comm.*
27 *v. McGrath*, 341 U.S. 123, 171-72 (1951) (Frankfurter, J. concurring) (footnotes omitted)). As
28 shown below, Nevada’s Civil Forfeiture Laws pose an extreme risk to an erroneous deprivation of

1 these important liberty interests—Sylvia’s rights have already been violated.

2 a. *Sylvia’s right to be presumed innocent has been violated.*

3 “To implement the presumption [of innocence], a court must be alert to factors that may
4 undermine the fairness of the factfinding process.” *Estelle*, 425 U.S. at 503. “Courts must do the
5 best they can to evaluate the likely effects of a particular procedure, based on reason, principle, and
6 common human experience.” *Id.* at 504. Indeed, it is the “duty of the court to safeguard petitioner’s
7 rights.” *Id.*

8 This Court has already reviewed this Due Process issue and demonstrated the
9 unconstitutional structure of the law. (*See* Order, Jun. 9, 2022, on file.).

10 In other words, the chronological analysis for a court is to determine, first, whether
11 the plaintiff has established that the property is subject to forfeiture, after which the
12 court must determine whether any claimant has established ‘a protected interest.’ To
13 establish such a protected interest, the claimant bears the burden to show that the acts
14 or omissions supporting forfeiture were committed without the knowledge, consent,
15 or willful blindness of the claimant.

14 (*Id.* at 12:4-9.)

15 Nevada’s Civil Forfeiture Laws turns the presumption of innocence on its head. Sylvia
16 must somehow muster the evidence to prove a negative—that she did not know about, was willfully
17 blind to, or in fact partake in any of Elvin’s criminal conduct. The law provides no standards of
18 proof (what Sylvia must actually show to prove this negative). Coupled with the extreme delay,
19 this burden poses a potentially insurmountable burden. Put another way, Sylvia must somehow
20 prove that she is a good-faith purchaser for value—more than a decade after the sale occurred. This
21 requires Sylvia to go through the extraordinary effort of tracking down information that many
22 businesses and banks are not required to retain a decade after Sylvia and Elvin purchased the Home.
23 *See Taylor*, 436 U.S. at 489 (explaining that an individual’s “right to have the jury deliberate solely
24 on the basis of the evidence cannot be permitted to hinge upon a hope that defense counsel will be
25 a more effective advocate for that proposition than the prosecutor implying that extraneous
26 circumstances may be considered.”). The law imposes more burdens on Sylvia to maintain perfect
27 record keeping to defend her property interests than the burden of record company for companies
28 and banks.

But setting aside Sylvia's matter for a second, across the board, Nevada's Civil Forfeiture Laws place an extremely high burden on innocent property owners because in many forfeiture actions "[t]he cost of hiring an attorney" to defend a claimant "is often more than the value of the property to be recovered." *Maiola v. State*, 120 Nev. 671, 676, 99 P.3d 227, 230 (2004); *see also Nelson*, 137 S.Ct. at 1256 ("And when amounts a defendant seeks to recoup are not large . . . the cost of mounting a claim . . . and retaining a lawyer to pursue it would be prohibitive."). The United States Supreme Court already determined this question in another context—"defendants should not be saddled with any proof burden. Instead . . . they are entitled to be presumed innocent." *Nelson*, 137 S.Ct. at 1256 (emphasis added). Thus, Sylvia's right to the presumed innocent has already been violated by Nevada's Civil Forfeiture Laws.

b. *Sylvia's inalienable property rights have already been violated.*

"The right to prior notice and a hearing is central to the Constitution's command of due process. 'The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose more particularly, is to protect his use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property. . . .'" *James Daniel Good Real Prop.*, 510 U.S. at 53 (quoting *Fuentes*, 407 U.S. at 80-81.) "Requiring the Government to postpone seizure until after an adversary hearing creates no significant administrative burden. A claimant is already entitled to an adversary hearing before a final judgment of forfeiture." *Id.* at 59. This is because, "[i]n the event a district court refuses to grant a requested forfeiture after months of property deprivation, that determination does not cure the temporary deprivation of the property that could have been prevented by an earlier hearing." *Levingston*, 112 Nev. at 485, 916 P.2d at 167.

As exhaustively explained above, the risk of erroneous deprivation of Sylvia's property already occurred. This likewise implicates and demonstrates that her inalienable property right has been violated. To conform with Sylvia's fundamental rights, the burden of proof must rest with the government, there must be a prompt and speedy hearing establishing that Sylvia is involved in the crime. Nevada's Civil Forfeiture Laws provide none of these protections. Sylvia's inalienable property rights are not sufficiently protected by Nevada's Civil Forfeiture Laws.

c. *Sylvia's right to a prompt and speedy trial has already been violated.*

"In addition to the general concern that all accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial which exists separate from, and at times, in opposition to, the interests of the accused." *Barker*, 407 U.S. at 519.

As explained above, the structure of Nevada's Civil Forfeiture Laws unnecessarily delayed the resolution of Sylvia's innocent property owner claim. *See* NRS 179.1173(2). The law provides no procedure for an innocent property owner like Sylvia to challenge the forfeiture proceeding at the outset before any stay is implemented (or warranted). (*See* Order, Jun. 9, 2022, on file.). Indeed, the facts here demonstrate that even when a claimant performs several functions as an owner intending to maintain the property by recording a deed into the chain of title, (Ex. 13,) placing her name on the utilities and paying them, (Ex. 19,) paying property taxes on the Home (Ex. 15,) and enters the very courthouse where the civil forfeiture dispute occurs (Ex. 23 ¶ 18,) that the government *will still fail* in its "exercise of reasonable diligence" to provide the statutorily required notice to claimants. NRS 179.1171(5). Thus, there is an extremely high risk of erroneous deprivation of the speedy trial right under Nevada's Civil Forfeiture Laws—Sylvia's right to a prompt hearing and speedy trial has already been violated.

3. *The governmental interest at stake is practically non-existent.*

"The government's interest in seizing real property before a forfeiture hearing rests in the need to ensure the subject property is not sold, destroyed, or used for illegal activity before forfeiture can become final." *Levingston*, 112 Nev. at 485, 916 P.2d at 167. But the type of property vesting contemplated here is much more than just preservation of evidence—"All right, title, and interest in property subject to forfeiture vests in the plaintiff. . . when the event giving rise to the forfeiture occurs." NRS 179.1169(1) (emphasis added). Title vested to Tri-Net before any legal proceeding began. To clear title to the Home, the burden rests with Sylvia to prove her innocence. In this regard, the United States Supreme Court explained that the government "has no interest in" possessing an innocent person's property "to which the State currently has zero claim of right." *Nelson*, 137 S.Ct. at 1257. Nevada's Civil Forfeiture Laws are clearly unconstitutional for several reasons.

First, there can be no governmental interest at stake in turning the presumption of innocence on its head and requiring Sylvia to prove a negative. *Foucha v. Louisiana*, 504 U.S. 71, 94 (1992) (Kennedy J., dissenting) (“We would not allow a State to evade its burden of proof by replacing its criminal law with a civil system in which there is no presumption of innocence.”). Second, there can be no governmental interest in violating the fundamental and inalienable right to protect property. *See Nevada AG Opinion, No. 47-425, Constitutional Law (1947)* (explaining that “every citizen” possesses “the inalienable right to protect his or her life, property and interest” and “[i]t is a right not a privilege, to which all citizens are entitled” (emphasis added)). Finally, there can be no governmental interest in not providing a hearing, not providing any evidence of guilt, and inflicting years of delays in resolving this action. *See Barker*, 407 at 527 (“A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of ensuring that the trial is consistent with due process. Moreover, . . . society has a particular interest in bringing swift prosecutions, and society’s representatives are the one whose should protect that interest.”).

Thus, as this Court weighs the three-factor *Mathews* balancing test, it is clear that Sylvia met her burden demonstrating that Nevada’s Civil Forfeiture Laws violate Due Process. *See Silvar*, 122 Nev. at 292, 129 P.3d at 684. Summary judgment is therefore proper, and this Court should declare that Nevada’s Civil Forfeiture Laws violate Sylvia’s Due Process rights.

IV. CONCLUSION

For all the reasons detailed above, Sylvia asks this Court to grant her partial summary judgment and declare that Nevada’s Civil Forfeiture Laws violate the United States and Nevada Constitution’s Due Process clauses.

Dated this 8th day of December 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on this 8th day of December 2022, I caused to be delivered via email, and hand delivery, true and correct copies of the above **SYLVIA FRED'S MOTION FOR PARTIAL SUMMARY JUDGMENT SEEKING A DECLARATION THAT NEVADA'S CIVIL FORFEITURE LAWS VIOLATE DUE PROCESS** to the following:

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