Case No.

In the Supreme Court of Nevada

In re 3587 Desatoya Drive Carson City, Case No. 15 0C 0074 1B

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 6 OF 8

RORY T. KAY (NSBN 12416)
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12-08-2022	Video Link	5	PA000858

Dated this 27th day of March 2023.

MCDONALD CARANO, LLP

By: */s/ John A. Fortin*
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JANE SUSSKIND (NSBN 15099)
JOHN A. FORTIN (NSBN 15221)
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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

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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

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.

Office of the District Attorney
Carson City, Nevada
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PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR STAY

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 moves this Honorable Court for an order staying further proceedings in the above-captioned case pending disposition of the *Petition for Writ of Prohibition and Writ of Mandamus* filed by ELVIN FRED with the Nevada Supreme Court on November 2, 2022. This *Motion* is based on the following points and authorities, all papers and

pleadings on file herein, and any evidence and argument presented at any hearing on the *Motion*.

DATED this 15th day of December, 2022.

CARSON CITY DISTRICT ATTORNEY

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual and Procedural Background

The case was initiated as a forfeiture action against a residence located at 3587 Desatoya Drive in Carson City ("Desatoya residence"). *First Am. Compl. for Forfeiture* at ¶2 (Mar. 22, 2022). ELVIN FRED purports to be a "Claimant" to the Desatoya residence as that term is defined by NRS 179.1158. *Id.* at ¶4; *Elvin Fred Verified Answer and Counterclaims* at 1-2, ¶2 (Oct. 6, 2022). SYLVIA FRED alleges she is a "Claimant" to the Desatoya residence as well. *First Am. Compl. for Forfeiture* at ¶6; *Sylvia Fred Verified Answer and Counterclaims* at 2, ¶¶2-6 (June 28, 2022).

Both ELVIN FRED and SYLVIA FRED have alleged counterclaims against TRI NET. SYLVIA FRED's counterclaims allege: (1) Violation of Due Process, (2) Violation of Takings Clauses; (3) Trespass; (4) Conversion; (5) Waste; (6) Violation of other provisions of the Nevada and United States Constitutions; (7) Negligence; and (8) Slander of title. *Sylvia Fred Verified Answer and Counterclaims* at 13-21, ¶¶36-100. ELVIN FRED's counterclaims allege the same eight as SYLVIA FRED as well as: (1) Conversion of personal property within the Desatoya residence; (2) Conversion of a vehicle; and (3) Violation of NRS 179.1205. *Elvin Fred Verified Answer and Counterclaims* at 16-24, ¶61-139.

On November 2, 2022, ELVIN FRED filed a *Petition for Writ of Prohibition and Writ of Mandamus with the Nevada Supreme Court. See Petition for Writ of Prohibition and Writ of Mandamus* (Nov. 2, 2022) (Docket No. 85590) (attached hereto and marked as Exhibit 1) (docket available at: https://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=65201) [hereinafter "*Petition*"]. The *Petition* challenges the Nevada's civil forfeiture process on its face, asserting forfeiture violates Nevada's Double Jeopardy Clause. *Petition* at

3. The *Petition* has yet to be adjudicated by the Nevada Supreme Court and remains pending.

Meanwhile, SYLVIA FRED has propounded significant discovery requests, and both SYLVIA and ELVIN FRED have filed several motions in this matter. *See Declaration of Jason D. Woodbury in Support of Plaintiff/Counterdefendant's Mot. for Stay* at ¶3 (Dec. 15, 2022) (attached hereto as Exhibit 2) [hereinafter "*Woodbury Dec.*"]; *Sylvia Fred's Mot. for Partial Summ. J. Seeking a Dec. that Nev.'s Civil Forfeiture Laws Violate Due Process* (Dec. 8, 2022); *Sylvia Fred's Mot. 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* (Dec. 12, 2022); *Elvin Fred's Joinder under NRCP 42(a) to Sylvia Fred's Mot. for Partial Summ. J. Seeking Dec. that Nev.'s Civil Forfeiture Laws Violate Due Process and Elvin Fred's Mot. for Partial Summ. J. Seeking a Dec. that Nev.'s Civil Forfeiture Laws Violate Due Process* (Dec. 12, 2022). Although ELVIN FRED has not yet propounded discovery requests, his counsel advised that he soon will. *Woodbury Dec.* at ¶4.

II. Discussion

A. A stay of proceedings is necessary because the forfeiture action must be decided as a threshold matter.

The Nevada Supreme Court has recognized,

> "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment which must weigh competing interests and maintain an even balance."

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Maheu v. Eighth Jud. Dist. Court, 89 Nev. 214, 217, 510 P.2d 627, 628 (*quoting Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936)). Generally, a stay is appropriate when there is a pending matter in another court which could impact the proceedings which are requested to be stayed. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 89 P.3d 36 (Nev. 2004). This is the circumstance in this case.

ELVIN FRED has challenged the constitutionality of civil forfeiture in Nevada. Obviously, if that challenge is successful, the forfeiture action which initiated this case would be barred. As such, in regard to that portion of this case, the significance of the pending *Petition* cannot credibly be disputed because the outcome will determine whether that portion of the case may proceed or not.

Moreover, the forfeiture action is inherently intertwined with the counterclaims that are asserted in this case. Each of those claims concern either the legality of the forfeiture action or conduct which is alleged to have harmed the Desatoya residence after the forfeiture action was initiated. In order to prevail on any of these claims, the forfeiture action must be defeated by the counterclaimants. If, alternatively, the forfeiture action is successful, then, by law, "all right, title, and interest" in the Desatoya residence vested in TRI NET as of the time it was utilized to facilitate ELVIN FRED's criminal offenses, which preceded the initiation of the forfeiture action. NRS 179.1169(1) ("All right, title and interest in property subject to forfeiture vests in the plaintiff: (a) In the case of property used or intended for use to facilitate the commission or attempted commission of any felony, when the property is so used or intended for such use. (b) In the case of property otherwise subject to forfeiture, when the event giving rise to the forfeiture occurs.") As such, the legality and merits

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of the forfeiture action must be determined as a threshold matter, because depending on the outcome, the counterclaims may become moot.

For these reasons, the counterclaims cannot be divorced from the forfeiture action. In turn, because the future of the forfeiture action depends on the disposition of ELVIN FRED's *Petition* now pending before the Nevada Supreme Court, this Court should grant a stay of this case until disposition occurs.

B. A stay is appropriate under the factors in NRAP 8(c)

NRAP 8(c) sets forth the factors which generally should be considered in determining whether a stay of proceedings is appropriate. Those factors are (1) whether the object of the petition will be defeated if the stay or injunction is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether the respondent or real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether the petitioner is likely to prevail on the merits of the petition. NRAP 8(c). No one factor is dispositive or necessarily more important than another, and a particularly compelling circumstance regarding a single factor may support a request for stay. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252, 89 P.3d 36, 38 (Nev. 2004) ("We have not indicated that any one factor carries more weight than the others, [and] if one or two factors are especially strong, they may counterbalance other weak factors.")

1. Frustrating the Object of the *Petition*

The object of the *Petition* is to determine whether civil forfeiture proceedings are constitutional in Nevada. As applied specifically to this case, the object is to determine if the forfeiture action will be barred or allowed to proceed. In turn, this provides direction as to the structure of the proceedings which will follow in this case. As explained above, the forfeiture action is inherently intertwined with the

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counterclaims asserted in this case in a way that necessarily prescribes that the validity and merits of the forfeiture action must be decided as a threshold matter before the counterclaims can be evaluated. If, however, the *Petition* is adjudicated in a way that precludes prosecution of the forfeiture action, there is no threshold condition to litigating the counterclaims. Allowing this litigation to proceed prior to receiving the clarity that adjudication of the *Petition* will provide frustrates the object of the *Petition* in regard to how this case must proceed, so this factor weighs in favor of granting the stay.

2. Prejudicial Impact to Parties

Pending adjudication of this case, the Desatoya residence is in the possession SYLVIA FRED. *Order Setting Aside Def. J.* (Mar. 9, 2022). For this reason, SYLVIA and ELVIN FRED suffer no injury or irreparable harm if a temporary stay is granted.

TRI NET, on the contrary, would be substantially affected if this matter is not temporarily stayed. Without knowing the ultimate ruling on the *Petition* or the parameters of that ultimate ruling, TRI NET's ability to make sound procedural and strategic decisions in regard to the litigation is significantly inhibited. For instance, adjudication of the *Petition* could have an impact in evaluating, developing, and eventually presenting certain immunity defenses[1] to the counterclaims. This matter should be stayed until the outcome of the *Petition* is known, and TRI NET is in a position to fully and fairly evaluate its available defenses and prepare its case accordingly.

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[1] *See, e.g.,* NRS 41.032.

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3. Likelihood of Success on the Merits

Turning to the fourth factor under NRAP 8(c), TRI NET certainly does not agree with the arguments presented in the *Petition*, and, as such, does not take the position that it is "likely" to succeed on its merits. However, the *Petition* is not frivolous. As such, at this stage in the proceedings, the final factor under NRAP 8(c) is neutral in regard to the requested stay. *See State v. Robles-Nieves*, 129 Nev. 537, 546-47, 306 P.3d 399, 406 (Nev. 2013).

4. Summary

This matter should not be allowed to proceed on two parallel tracks, one in this Court and one in the Supreme Court. The outcome of the *Petition* has a potential impact on the conduct of this litigation, a stay does not prejudice any party, and rejecting a stay substantially affects TRI NET's ability to fully and fairly defend itself from the asserted counterclaims. Consequently, the factors in NRAP 8(c) weigh in favor of a stay.

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III. Conclusion

For all these reasons, this *Motion* should be granted and a stay of this case should be imposed pending the Nevada Supreme Court's adjudication of the *Petition*.

DATED this 15th day of December, 2022.

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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 15th day of December, 2022, I served a true and correct copy of the foregoing **PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR STAY** together with a proposed **ORDER GRANTING PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR STAY** via electronic mail to the following:

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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

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.

EXHIBIT APPENDIX TO PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR STAY

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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 15th day of December, 2022, I served a true and correct copy of the foregoing **EXHIBIT APPENDIX TO PLAINTIFF/COUNERDEFENDANT'S MOTION FOR STAY** via electronic mail to the following:

John A. Fortin, Esq.
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In re:
3587 Desatoya Drive, Carson City, Nevada 89701

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

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

Exhibit Index for Plaintiff/Counterdefendant Motion for Stay

Exhibit Index

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1	*Petition for Writ of Prohibition and Writ of Mandamus with the Nevada Supreme Court. See Petition for Writ of Prohibition and Writ of Mandamus* (Nov. 2, 2022) (Docket No. 85590)	001 - 067
2	*See Declaration of Jason D. Woodbury in Support of Plaintiff/Counterdefendant's Mot. for Stay* (Dec. 15, 2022)	068 - 071

EXHIBIT 1

EXHIBIT 1

Case No.

In the Supreme Court of Nevada

In re 3587 Desatoya Drive, Case No. 15 0C 00411 1B
Related to Case No. 15 CR 00384 1C 004

ELVIN FRED,

Petitioner,

v.

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

Respondent,

and

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

Real Party in Interest,

PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS

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REC'D & FILED
2022 JUN 27 PM 2:02
AUBREY ROWLATT
CLERK
BY _____ DEPUTY

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

SYLVIA FRED and ELVIN FRED,

Claimants,

vs.

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

Respondent.

In Re:

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

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

STATEMENT OF LEGAL AID REPRESENTATION

(PURSUANT TO NRS 12.015)

Party Filing Statement: ☒ Claimant ☐ Respondent

STATEMENT

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

Dated: June 7, 2022

BARBARA BUCKLEY, ESQ.
Legal Aid Center of Southern Nevada Preparer
Nevada Bar No.: 3918

/s/ Barbara E. Buckley, Esq.
Signature of Legal Aid Center of Southern Nevada Preparer

Submitted by:

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NRAP 26.1 DISCLOSURES

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order so that the judges of this court may evaluate possible disqualification or recusal.

Petitioner Elvin Fred is an individual.

Petitioner Elvin Fred is represented by McDonald Carano LLP and the partners and associates employed therein in this writ proceeding and in the proceedings before the district court.

Dated this 2nd day of November 2022.

McDONALD CARANO LLP

By: */s/ John A. Fortin*
Rory T. Kay (NSBN 12416)
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Pro Bono Counsel for Petitioner

ROUTING STATEMENT

This writ petition is presumptively retained by the Nevada Supreme Court because it raises a principal issue of first impression under Article 1, Section 8(1), Nevada's double jeopardy clause. *See* NRAP 17(a)(11). This petition likewise raises questions of statewide importance and public policy regarding Nevada's civil forfeiture laws. *See* NRAP 17(a)(12).

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Cases

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I. OVERVIEW AND RELIEF SOUGHT

Petitioner/Claimant below Elvin Fred's ("Elvin") individual liberty and constitutional rights are under attack by Real Party in Interest/Plaintiff below the State of Nevada *ex rel.* Investigation Division of the Nevada State Police (Tri-Net Narcotics Task Force) ("Tri-Net"). Tri-Net seeks to forfeit the real property located at 3587 Desatoya Drive Carson City, Nevada 89701 (the "Home") in violation of Nevada's double jeopardy clause. *See* Nev. Const. art. 1, § 8(1). Respondent, the Honorable Judge James Wilson of the First Judicial District Court of the State of Nevada ("district court") failed to protect Elvin's liberty and constitutional rights. Because of this attack on Elvin's liberty, he requires this Court's extraordinary writ authority to guard from further violations of his constitutional rights. *See Massachusetts v. Upton*, 466 U.S. 727, 738-39 (1984) (Stevens, J. concurring) ("The States in our federal system, however, remain the primary guardian of the liberty of the people.").

Elvin and his sister, Claimant (but non-party to this petition) Sylvia Fred ("Sylvia") own in joint tenancy the Home Tri-Net seeks to forfeit. Tri-Net's basis to obtain a forfeiture of the Home through this civil

proceeding is based solely on Elvin's criminal conduct.[1] Criminal conduct that Elvin already pleaded guilty to. Criminal conduct for which the district court already punished Elvin. Criminal conduct for which Elvin is incarcerated for a term of life in prison. Quite simply, this separate proceeding, seeking to punish Elvin *again* for the same criminal conduct he is already incarcerated for, violates Nevada's double jeopardy clause. *See* Nev. Const. art. 1, § 8(6).

Elvin's Petition raises important issues of first impression under Nevada's double jeopardy clause. It likewise raises issues of statewide importance because Nevada law enforcement obtains millions of dollars from Nevadans and the tourists who visit this state every year through civil forfeitures. While the exact number of forfeiture proceedings in Nevada is not known, it is reasonable to assume thousands of these proceedings occur each year. Each violates fundamental procedures and property rights guaranteed under Nevada's Constitution. Protecting those procedures and property rights presents this Court with an important issue of public policy. Because the district court denied Elvin's

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1 Elvin provides an addendum with the relevant statutory provisions that violate his constitutional rights: NRS 453.301; NRS 179.1156 to 179.1205. *See* NRAP 28(f).

motion to dismiss, he seeks a writ of prohibition and a writ of mandamus and asks this Court to issue the writ and instruct the district court to dismiss the civil forfeiture proceeding with prejudice.

II. ISSUE PRESENTED

Whether the district court erred when it concluded that Nevada's double jeopardy clause did not bar this second and successive civil forfeiture proceeding based on the same criminal conduct for which Elvin is already incarcerated.

III. FACTS RELEVANT TO UNDERSTANDING THIS PETITION

This civil forfeiture proceeding involves the real property at 3587 Desatoya Drive, Carson City, Nevada 89701. (Petitioner's Appendix ("PA")86-92.) In March 2015, the State charged Elvin by criminal complaint of several criminal charges. (PA1-4.) Elvin pleaded guilty in June 2015 to trafficking a controlled substance and the district court sentenced him to life in prison. (*See, e.g.*, PA86-92; *see also*; PA 18-72.).

Shortly after filing its criminal complaint, Tri-Net filed its original complaint for forfeiture and relied on NRS 453.301 as a basis to forfeit the Home. (PA5-10.) Then, in accordance with NRS 179.1173(2), Tri-Net and Elvin stipulated, and the district court ordered a stay to the civil

forfeiture proceeding pending resolution of Elvin's criminal proceeding. (PA11-17.)

Several years later, this Court affirmed Elvin's conviction and punishment—life in prison. *See Fred (Elvin) v. State*, Case No. 72521 (Ord. of Affirmance, Mar. 14, 2018); NRAP 36(c). With Elvin's criminal proceedings final, Tri-Net then moved to lift the stay to the forfeiture proceedings, which the district court granted. (PA73-75.). Tri-Net eventually obtained an Amended Default Judgment on the Home, though Elvin's sister Sylvia challenged the validity of the default judgment to this Court and prevailed. *See In re: 3587 Desatoya Drive*, Case No. 80194, 2021 WL 4847506 (Order of Reversal and Remand, Oct. 15, 2021). The district court then vacated the Amended Default Judgment and Tri-Net returned possession of the Home to the Freds. (PA79-85.)

Tri-Net then amended its complaint and Elvin moved to dismiss. (PA 86-92, 98-109, 112-142.) After full briefing, the district court denied Elvin's Motion, rejecting both of Elvin's constitutional arguments.[2]

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2 Because Elvin's double jeopardy argument is dispositive, Elvin does not include the inalienable property rights argument here. If the Court believes that this argument is important to its analysis, Elvin will provide supplemental briefing.

(PA143-56.) This Petition followed.

IV. REASONS WHY THE REQUESTED WRIT SHOULD ISSUE

Article 6, Section 4 of Nevada's Constitution provides this Court authority "to issue writs of mandamus, . . . prohibition, . . . and also all writs necessary or proper to complete the exercise of [its] jurisdiction." The constitutional authority to provide writ relief to Elvin is purely discretionary and "is not a substitute for an appeal." *Archon Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 819, 407 P.3d 702, 706 (2017). But and as shown below, (1) Elvin's individual liberty will be irreparably harmed if this Court does not grant him relief, (2) this writ presents important issues of public policy and statewide importance because the issues presented affect a broad number of individuals and are likely to recur in future cases, and (3) this writ presents an issue of first impression under Nevada's constitutional protection of the right to be free from double jeopardy.

A. A Writ of Prohibition is Proper to Cure a Double Jeopardy Violation.

A writ of prohibition "arrests the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal,

corporation, board or person." NRS 34.320. "A writ of prohibition is an appropriate vehicle to address double jeopardy claims." *Sweat v. Eighth Jud. Dist. Ct.*, 133 Nev. 602, 604, 403 P.3d 353, 356 (2017) (examining double jeopardy claims on a writ of prohibition); *Glover v. Eighth Jud. Dist. Ct.*, 125 Nev. 691, 701, 220 P.3d 684, 692 (2009) (same); *Hylton v. Eighth Jud. Dist. Ct.*, 103 Nev. 418, 421, 743 P.2d 622, 624 (1987) (same).

Here, Elvin faces the prospect of defending himself *again* and to have a second punishment inflicted on him, for the same criminal conduct to which he already pleaded guilty and is currently incarcerated for life. *See Fred*, Case No. 72521. Thus, a writ of prohibition is proper to arrest the district court's clearly erroneous decision.

B. Mandamus Relief is Likewise Available to Cure the District Court's Clear Legal Errors.

This Court has not confined itself to "policing jurisdictional excesses and refusals" in exercising its writ authority. *Archon*, 133 Nev. at 819. Mandamus relief may be available "where the district court judge has committed clear and indisputable legal error." *Id.* at 820 (internal quotation marks omitted). Relief is also available where the district court commits an "arbitrary or capricious" abuse of discretion. *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 122 Nev. 132, 142, 127 P.3d 1088,

1096 (2006). "In considering petitions for writ relief based on clear error or manifest abuse of discretion . . . [m]andamus requires not only a clear error but one that unless immediately corrected will wreak irreparable harm." *Archon*, 133 Nev. at 820 (cleaned up).

The final avenue for mandamus relief that is available "where a petition presented 'legal issues of statewide importance requiring clarification'" and the Court's writ relief will "'promote judicial economy and administration by assisting other jurists, parties, and lawyers.'" *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 683, 476 P.3d 1194, 1198 (2020) (quoting *MDC Rests., LLC v. Eighth Jud. Dist. Ct.*, 134 Nev. 315, 319, 419 P.3d 148, 152 (2018)). This form of "'advisory' mandamus is appropriate only where it will clarify a 'substantial issue of public policy or precedential value.'" *Id.* at 684 (quoting *Poulos v. Eighth Jud. Dist. Ct.*, 98 Nev. 453, 455-56, 652 P.2d 1177, 1178 (1982)). As shown below, mandamus relief is available to Elvin on all of these grounds.

1. *The district court's error will irreparably harm Elvin's individual liberty and constitutional rights absent writ relief*

The district court manifestly and clearly erred and acted arbitrarily and capriciously when it failed to properly apply the history and tradition

of Nevada law to determine the original meaning of the word "punishment" for double jeopardy purposes.[3] (*See* PA143-56.) This Court directed lower courts to apply *Blockburger v. United States*, 284 U.S. 299, 304 (1932) "[t]o determine whether two statutes penalize the 'same offense.'" *Jackson v. State*, 128 Nev. 598, 604, 291 P.3d 1274, 1278 (2012). The district court refused to apply *Blockburger* and thereby committed clear error.

Alternatively, the test the district court did apply from *United States v. Ursery* required the district court to apply originalism just as the United States Supreme Court did to determine whether a separate civil forfeiture proceeding following the conclusion of a criminal proceeding violates double jeopardy. 518 U.S. 267, 274 (1996). The district court failed to properly evaluate and apply *Ursery*'s two-part test when it refused to examine this Court's founding-era precedent. (*See* PA 143-56.) *See Legislature of State v. Settlemeyer*, 137 Nev., Adv. Op. 21,

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[3] As explained in more detail below, despite being labeled a "civil" forfeiture proceeding, this is a criminal statute seeking to extract an additional punishment, based on the same criminal conduct, in a separate proceeding—*Blockburger* applies. *See Jesseph v. Digital Ally, Inc.*, 136 Nev. 531, 533, 472 P.3d 674, 677 (2020) ("[T]his court has consistently analyzed a claim according to its substance, rather than its label." (cleaned up)).

486 P.3d 1276, 1280 (2021) ("When interpreting a constitutional provision, [this Court's] ultimate goal is to determine the public understanding of a legal text leading up to and in the period after its enactment or ratification."). The district court manifestly and clearly erred in its application of *Ursery*.

These errors will irreparably harm Elvin's double jeopardy rights—as well as his constitutional right to possess property—by forcing Elvin to defend his Home in this second and successive civil forfeiture proceeding. *See City of Sparks v. Sparks Mun. Ct.*, 129 Nev. 348, 357, 302 P.3d 1118, 1124 (2013) (explaining that constitutional violations constitute "irreparable injury"). This Court should therefore issue a writ of mandamus to correct the district court's erroneous decision and prevent the forthcoming irreparable harm.

2. *Elvin's writ raises an issue of statewide importance, resolution of which will assist others.*

In addition to correcting the district court's clear error, this petition will "'address the rare question that is likely of significant repetition prior to effective review" such that this Court's "opinion would assist other

jurists, parties, or lawyers.'"[4] *Lyft Inc. v. Eighth Jud. Dist. Ct.*, 137 Nev., Adv. Op. 86, 501 P.3d 994, 998 (2021) (quoting *Archon*, 133 Nev. at 822-23). Indeed, resolving the question presented will "clarify a substantial issue of public policy or precedential value" as civil forfeitures represent a particularly oppressive form of revenue generation for law enforcement activities.[5] *Walker*, 136 Nev. at 684, 476 P.3d at 1199.

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[4] There is an inherent conflict between this matter representing an issue of first impression while simultaneously presenting an issue of significant statewide importance impacting thousands of Nevadans and our State's visitors every year. This conflict exists because of the oppressive nature of civil forfeitures themselves. Indeed, this Court already opined that "[t]he cost of hiring an attorney" to defend a forfeiture action "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). To be sure, Elvin and Sylvia would not have counsel if not for this Court's analysis of Sylvia's appeal and this Court's request for pro bono representation and undersigned counsel's support. *See In re 3587 Desatoya Dr.*, Case No. 80194 (Aug. 27, 2020, Ord. Regarding Pro Bono Counsel).

[5] United States Supreme Court Justices on both ends of the spectrum agree that civil forfeitures of property are oppressive and constitutionally troubling. *See, e.g., Timbs v. Indiana*, 586 U.S. ___, ___, 139 S.Ct. 682, 687-89 (2019) (Ginsburg, J.) (explaining that when reviewing civil forfeitures "it makes sense to scrutinize governmental action more closely when the State stands to benefit" (cleaned up)); *Sessions v. Dimaya*, 584 U.S. ___, 138 S.Ct. 1204, 1229 (2018) (Gorsuch, J.) ("Ours is a world filled with more and more civil laws bearing more and more extravagant punishments. Today's civil penalties include . . . forfeiture provisions that allow homes to be taken . . ."); *Leonard v. Texas, cert denied*, 137 S.Ct. 837, 849-50 (2017) (Thomas, J.) (reasoning that property forfeitures "frequently target the poor and other groups least able to defend their

Elvin possesses a fundamental and inalienable right to "acquir[e], possess[], and protect[]" his property from arbitrary government encroachment. Nev. Const. art. 1, § 1; *see also* Inalienable, *Black's Law Dictionary* (11th ed. 2019) (defining "inalienable" based on its 17th Century definition of "[n]ot transferable or assignable."); John Bouvier, *A Law Dictionary Adapted to the Constitution and Laws of the United States of America and of the Several States of the American Union*, 617 (11th ed. 1864) (explaining that the word "[i]nalienable . . . is applied to those things, the property of which cannot be lawfully transferred from one person to another."). The Nevada Attorney General agrees that this is fundamental to liberty in Nevada. *See* Nevada AG Opinion. No. 47-425, Constitutional Law (1947) (explaining that "every citizen" possesses "the inalienable right to protect his or life, property and interest" and "[i]t is a *right not a privilege*, to which *all citizens are entitled*." (emphasis added)).

Coupled with Elvin's liberty and inalienable rights, forfeitures likely affect thousands of Nevadans and tourists every year. The exact

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interests in forfeiture proceedings"); *Krimstock v. Kelly*, 306 F.3d 40, 58 (2d Cir. 2002) (Sotomayor, J.) (concluding that civil forfeitures "raise[] substantial constitutional concerns").

number of forfeiture cases that take place is unknown because of inadequate and incomplete reporting requirements. *See* NRS 179.1205. But since the Legislature imposed mandatory reporting requirements in 2015, Nevada law enforcement agencies have obtained $28.8 million worth of Nevadans' property through forfeitures.[6] Based on this large number, we can extrapolate that there are thousands of forfeitures each year because the median value for all forfeitures between 2016 and 2018 "were worth less than $908." LESLIE KNEPPER, ET AL., POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE, 117 (3d ed. 2020.) Combining this data with the federal equitable sharing program, we can fairly and reasonably estimate that resolution of this writ will affect thousands of Nevadans and tourists visiting our State.[7] *See id.* at 118

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[6] *See* Annual Forfeiture Reporting, https://ag.nv.gov/Hot_Topics/Annual_Forfeiture_Reporting/, (last visited Oct. 27, 2022) (hereinafter "Forfeiture Profits")).

[7] Tri-Net initiated these forfeiture proceedings in 2015 shortly after the Legislature mandated reporting requirements under NRS 179.1205. Between July 2019 through March 2022, Tri-Net unlawfully seized and forfeited the Home under dispute here. A review of the Attorney General's reporting for Tri-Net reveals that Tri-Net *never* (nor did any department of the Nevada State Police, the Carson City Sheriff's Office, nor the Douglas County Sheriff's Office—the entities constituting Tri-Net) reported the Home as seized and/or forfeited as required by law. *See* Forfeiture Profits. Thus, while the actual amount forfeited by Nevada

("Between 2000 and 2019, [Nevada law enforcement agencies] generated an additional $73 million from federal equitable sharing, for a total of at least $85 million in forfeiture revenue.").

3. ***Elvin's writ presents an issue of first impression.***

Though this Court has addressed whether NRS 453.301 is "punishment" under the U.S. Constitution, it has not yet addressed this question under Nevada's Constitution. In *Ursery*, the United States Supreme Court held that federal civil forfeiture laws did not violate the Fifth Amendment of the United States Constitution. *Ursery*, 518 U.S. at 274-76. The Supreme Court reached that result after it reviewed both legislative enactments by Congress and its own precedent from the early years of the Republic. *Id.* In search of the original public meaning of the word "punishment", the Court provided various examples on the federal level in the early years of the United States in which courts imposed both a criminal penalty and a forfeiture of property in a separate proceeding. *Id.* Following this review and application of a two-part test, the United

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law enforcement is likely wildly inaccurate for a number of reasons, Elvin can affirmatively represent that the Attorney General's reporting is *at least* deficient as to the fair market value of the Home because of Tri-Net's non-compliance with NRS 179.1205.

States Supreme Court reasoned that the "punishment" prong of the *Blockburger* double jeopardy test did not bar civil forfeitures under the Fifth Amendment. *Id.*

This Court, relying on *Ursery*, has concluded that NRS 453.301 does not violate the Fifth Amendment of the United States Constitution. *See Levingston v. Washoe Cnty.*, 114 Nev. 306, 956 P.2d 84 (1998). But it has never addressed whether NRS 453.301 violates Article 1, Section 8(1), Nevada's "double jeopardy" clause. The district court therefore erred when it concluded this Court "clarified that the proper analysis for determining whether a civil forfeiture constitutes *punishment* for double jeopardy is the" *Ursery* test. (PA143-56 (citing to *Levingston*, 114 Nev. at 308).) Accordingly, Elvin's writ petition, poses an issue of first impression.

In sum, Elvin's writ petition presents "issues of widespread importance" because resolution will affect thousands of "arrestees;" "deciding these issues would provide guidance to judges;" and the writ "raises legal questions of first impression and statewide importance that are likely to recur in other cases." *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155, 160-61, 460 P.3d 976, 978 (2020). Any one of these

reasons is independently sufficient to warrant this Court's intervention. Accordingly, this Court has ample grounds to exercise its discretion to entertain Elvin's writ petition.

V. THIS COURT SHOULD ISSUE A WRIT AND INSTRUCT THE DISTRICT COURT TO DISMISS THE FORFEITURE PROCEEDINGS WITH PREJUDICE

A. This Court's Standard of Review.

Elvin must make a "clear showing of invalidity" that Nevada's civil forfeiture laws are unconstitutional.[8] *Silvar v. Eighth Jud. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006). "This Court reviews questions of constitutional interpretation de novo." *Educ. Freedom PAC v. Reid*, 512 P.3d 296, 302 (2022) (cleaned up). "Constitutional interpretation utilizes the same rules and procedures as statutory interpretation." *Id.* "This court will first look to the plain meaning of the constitutional provision, and only if it is ambiguous will this court look to the history, public policy, and reason for the provision." *Id.* "A constitutional

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8 Elvin's writ petition comes before this Court following the district court's denial of his Motion to Dismiss. (PA 143-56.) Under NRCP 12(b)(5) dismissal is proper when a complaint fails "to state a claim upon which relief can be granted" and "should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). A double jeopardy violation satisfies this dismissal requirement.

provision is ambiguous if it is susceptible to two or more reasonable but inconsistent interpretations." *Id.*

B. Adoption and Application of *Blockburger* is Proper Under Nevada's Constitution.

The State of Nevada already punished Elvin severely for the crime he pleaded guilty to—he is serving a life sentence. Now, Tri-Net seeks to extract an additional punishment for the same crime in a separate and successive proceeding clearly violating Nevada's Constitution. To guard Elvin's individual liberty and prohibit Tri-Net's unconstitutional conduct, this Court should embrace New Mexico's approach and adopt its court's application of *Blockburger* to conclude civil forfeitures violate double jeopardy.[9] *See State v. Nunez*, 2 P.3d 264, 293 (N.M. 1999) (applying *Blockburger* adopted via other New Mexico precedent and rejecting *Ursery*); *see also Schwartz v. Kennedy*, 904 P.2d 1044, 1051 (N.M. 1995) (applying *Blockburger* and enunciating a similar three-part test).

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9 Nebraska likewise concluded that its civil forfeiture statutes constitute punishment and violate Nebraska's double jeopardy clause. *See State v. Franco*, 594 N.W.2d 633 (Neb. 1995), *superseded by statute as stated in State v. Eighteen Thousand Dollars in U.S. Currency*, 974 NW. 290, 292-93 (Neb. 2022).

The double jeopardy clause in "the Nevada Constitution, 'protects against three abuses: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense.'" *Sweat*, 133 Nev. at 604 (quoting *Jackson*, 128 Nev. at 604); Nev. Const. art. 1, § 8(1). The third double jeopardy protection is at issue here. "To determine whether two statutes penalize the 'same offense'" this Court applies the *Blockburger* test. *Jackson*, 128 Nev. at 604. "The *Blockburger* test 'inquires whether each offense contains an element contained in the other; if not, they are the 'same of-fence' and double jeopardy bars additional punishment and successive punishment.'" *Id.* (quoting *United States v. Dixon*, 509 U.S. 688, 696 (1993)). The core inquiry here is whether there is (1) punishment, (2) for the same offense, (3) in separate proceedings.

First, based on the plain language of Nevada's civil forfeiture laws, this is a separate proceeding based on the same offense. *See, e.g.*, NRS 453.301; NRS 179.1173. Tri-Net's own motion practice reaffirms this conclusion. (PA73 ("The criminal actions *which are the basis of this forfeiture proceeding* are now complete. . . ." (emphasis added)).)

Second, the State has clearly punished Elvin through the original criminal action and seeks to impose additional punishment through this civil forfeiture proceeding. *See Fred*, Case No. 72521. The district court erred when it found *Blockburger* "is not applicable in this case because the *Blockburger* test is used to determine whether two criminal statutes penalize the same offense and constitute double jeopardy." (PA151.) As detailed below, the plain language (and if this Court chooses to look, the legislative history) of Nevada's civil forfeiture laws exhibits clear intent that despite being labeled a civil proceeding—this is a criminal statute imposing punishment. NRS 179.1173(8).

Finally, because punishment is ambiguous, this Court should "consider first and foremost the original public understanding of constitutional provisions, not some abstract purpose underlying them." *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. 484, 490, 327 P.3d 518, 522 (2014). When it does so, it is inescapable that civil forfeitures are punishment, and so *Blockburger* is the appropriate test to constitutionally scrutinize such property forfeitures.

1. *The federal government's view of forfeitures conflicts with Nevada's.*

When it determined that the Fifth Amendment's double jeopardy protections do not guard against civil forfeitures, the United States Supreme Court looked to early Congressional enactments authorizing "parallel *in rem* civil forfeiture actions and criminal prosecutions based upon the same underlying events." *Ursery*, 518 U.S. at 274. At the founding, forfeiture was a tool for enforcing revenue collection, specifically "the customs duties imposed on goods imported into the United States"—which was a uniquely federal duty. Kevin Arlyck, *The Founders' Forfeiture*, 119 COLUM. L. REV. 1449, 1466 (2019) (explaining that "[t]hese duties were the national government's lifeblood" and that for the period studied, "receipts from import duties constituted the lion's share of the federal government's total revenue"). Thus, the Fifth Amendment's protections do not guard against a separate civil forfeiture of property. *Ursery*, 518 U.S. at 274.

But the federal *Ursery* decision is not fatal to Elvin's arguments in Nevada because "states are permitted to provide broader protections and rights than provided by the U.S. Constitution." *State v. Kincade*, 122 Nev. 953, 956, 317 P.3d 206, 208 (2013). To determine whether *Nevada's*

double jeopardy clause guards against civil forfeitures, this Court must review *Nevada's* history of civil forfeitures (a state-specific analysis that the district court failed to do). (*See, e.g.*, PA143-56.)

2. *Nevada's Constitution provides robust liberty and property protections that exceed those of the United States Constitution.*

In determining the original public meaning of the Fifth Amendment, the *Ursery* Court looked at two distinct areas to uncover the original public meaning of "punishment" for its Fifth Amendment analysis: (1) its own precedent, and (2) Congressional enactments at the founding. Elvin agrees that these sources help guide the Nevada-specific analysis here. Elvin adds a third—the historical burden of proof. Early Nevada common law required the government to satisfy the considerably higher reasonable-doubt burden of proof before obtaining a forfeiture of property. This is because Nevada viewed forfeitures of property as quasi-criminal actions and because forfeitures are punishment.

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

Since the founding in 1864, Nevada "law d[id] not favor forfeitures" and this Court directed lower courts to "strictly construe[]" statutes authorizing forfeitures and only enforce a forfeiture "'when facts clearly

justify'" the loss of property rights. *One 1978 Chevrolet Van v. Churchill Cnty.*, 97 Nev. 510, 512, 634 P.2d 1208, 1209 (1981) (quoting *Ind. Nev. v. Gold Hills*, 35 Nev. 158, 166, 126 P. 965, 967 (1912)). The federal government's budgetary reliance on import duties and tariffs provided the reason for Congress to permit property forfeitures for violating revenue laws. *See Ursery*, 518 U.S. at 274; *see also* Arlyck, *The Founders' Forfeiture*, 119 COLUM. L. REV. at 1466. But this is markedly different from Nevada's taxation structure. From the founding to today, Nevada's tax base has relied heavily on revenue from mining operations.[10] *See Dayton Gold & Silver Mining Co. v. Seawell*, 11 Nev. 394, 410 (1876).

Thus, it is no surprise that within the paramount area of law that funds Nevada—mining law—some of the earliest precedent details that Nevada disfavored forfeitures of property rights because forfeitures are harsh punishments. *See, e.g., Golden Fleece Co. v. Cable Con. Co.*, 12 Nev. 312, 326-27 (1877) (construing the forfeiture provision in a mining contract and determining that the forfeiture would not apply to an

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10 *See, e.g.*, April Corbin Girnus, *New Mining Tax Approved, Revenue Will Fund Schools*, NevadaCurrent.com (Jun 1. 2021, 5:51 AM), https://www.nevadacurrent.com/2021/06/01/new-mining-tax-approved-revenue-will-fund-schools/.

innocent co-locator); *see also Porter v. Tempa Min. & Mill. Co.*, 59 Nev. 332, 93 P.2d 741, 742 (1939) ("'Before forfeiture of a mining claim can be declared for failure to do annual assessment work, it must be clearly established.'" (quoting *Strattan v. Raine*, 45 Nev. 10, 197 P. 694, 696 (1921)).

Even in other legal specialties outside of mining law, Nevada law disfavored forfeitures. *See, e.g., Wilshire Ins. Co. v. State*, 94 Nev. 546, 550, 582 P.2d 372, 375 (1978) (declining to permit forfeiture in surety actions when a party has not designated a more general agent for a bail bondsman); *Worthington Motors v. Crouse*, 80 Nev. 147, 152, 390 P.2d 229, 232 (1964) ("In this connection, when equity permits a forfeiture it is usually the result of a contractual relationship between the parties, but as stated in 3 Story's Equity Jurisprudence, § 1732 (14th ed. 1918), '[i]t is a universal rule in equity to never enforce a penalty or a forfeiture.'"); *State v. Harmon*, 35 Nev. 189, 127 P. 221, 223 (1912) (determining in an election law case that "forfeitures are not favored").

Because of this robust history, the district court erred when it disregarded this Court's prior caselaw holding that Nevada disfavors forfeitures. *See Settlemeyer*, 486 P.3d at 1280. The district court

concluded that Elvin's Motion reviewed "old Nevada Supreme Court decisions regarding mining contracts to demonstrate that forfeitures were historically disfavored. But the forfeitures at issue in those cases were contractual and did not involve civil forfeiture of property used to facilitate a crime." (PA151 (citation omitted)). This is incorrect. As shown above, *One 1978 Chevrolet* involved an instrumentality forfeiture which was susceptible to forfeiture under NRS 453.301.[11] 97 Nev. at 512. *One 1978 Chevrolet* reviewed and adopted these early mining law cases and incorporated them into Nevada's civil forfeiture jurisprudence under NRS 453.301. *Id.* As a result, the district court was not free to cast aside this Court's prior caselaw by falsely distinguishing it. The district court erred in doing so, and this irretrievably distorted its analysis of Elvin's constitutional arguments.

In short, the common law from Nevada's founding through the 1980s exhibits an original public meaning that forfeitures were *punishment*.

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11 For a detailed description of the three types of property forfeitures: (1) contraband, (2) proceeds, and (3) instrumentalities, *see Nunes*, 2 P.3d at 275-76. The forfeiture at issue here is an instrumentality forfeiture. *See Sparks v. Nason*, 107 Nev. 202, 203-04, 807 P.2d 1389, 1390 (1991).

b. At the founding, the Legislature did not codify criminal penalties coupled with property forfeitures.

The district court did not rely on any enactment by the Legislature at the founding that authorized criminal sanctions in one proceeding, followed by property forfeitures in a separate civil proceeding. None exists because Nevada has historically disfavored property forfeitures and viewed them as *punishment*.

Indeed, when the Legislature enacted the first drug control laws, the Legislature did not include a property forfeiture provision. *See generally* 1913 Nev. Stat., ch., 207, §§ 6-8, at 286-87 (detailing the authority of district attorneys to prosecute, outlining the penalties, and defining what substances were illegal but never authorizing a property forfeiture; *see also* 1921 Nev. Stat., ch., 35, §§ 1, 7, 8, at 66-69 (further amending the law without authorizing property forfeitures).

It was not until the Legislature adopted the Uniform Controlled Substances Act in 1937 that the Legislature authorized instrumentality property forfeitures. 1937 Nev. Stat., ch. 23, § 13, at 43 (providing that "any place" that "drug addicts" congregate or the sale of contraband occurs "shall be deemed a common nuisance. *No person shall keep or*

maintain such common nuisance." (emphasis added)). The Legislature later codified this as NRS 453.301, where it remains today. In 1959, the Legislature recognized that such forfeitures are punishment and thus included innocent property owner protections in the law. *See* 1959 Nev. Stat., ch. 425, § 4, at 695.

Accordingly, at the founding and in the immediate years following the enactment of Nevada's double jeopardy clause in 1864, the Legislature did not enact criminal penalties coupled with *in rem* civil penalties. Even after the Legislature codified property forfeitures, it quickly recognized the highly punitive nature of forfeitures and installed protections for innocent property owners. Thus, in Nevada, the Legislature's view of the original public meaning of *punishment* encompassed property forfeitures.

c. The common law imposed the highest burden of proof—beyond a reasonable doubt—for forfeitures of property.

For 50 years, this Court imposed the highest burden of proof to obtain a forfeiture of property because forfeitures under NRS 453.301 are punitive. *See A 1983 Volkswagen v. Cnty. of Washoe*, 101 Nev. 222, 224, 699 P.2d 108, 109 (1985) (explaining that Nevada law has "implicitly

recognized the quasi-criminal nature of forfeiture actions" and required "proof beyond a reasonable doubt" so that "the innocent may not be permanently deprived of their property"). Only recently in 1987 did the Legislature abrogate this Court's jurisprudence and Nevada's common law disfavoring forfeitures—disregarding this Court's long constitutional history and tradition. *See* 1987 Nev. Stat., ch. 571, § 12 ¶ 4, at 1382 ("In a proceeding for forfeiture, the rule of law that forfeitures are not favored does not apply."). But when the Legislature debated fundamentally altering Nevada forfeiture law, the Legislature failed to engage in any historical analysis of forfeitures at Nevada's founding.[12]

When Senators raised the *1983 Volkswagen* case and this Court's explanation that "forfeitures are abhorred in the law . . . [and] are disfavored", the drafter of SB 270 (incorrectly) averred "this is not a correct statement when speaking of the type of forfeiture addressed in

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[12] *See, e.g.*, Hearing on S.B. 270 Before the Senate Judiciary Comm., at 10-14, 64th Leg. (Nev., Mar. 31, 1987); Hearing on S.B. 270 Before the Senate Judiciary Comm., at 8-9, 64th Leg. (Nev., Apr. 15, 1987); Hearing on S.B. 270 Before the Senate Judiciary Comm., at 8, 64th Leg. (Nev., May 13, 1987); Hearing on S.B. 270 Before the Assembly Judiciary Comm., at 1-5, 64th Leg. (Nev., Jun. 1, 1987); Hearing on S.B. 270 Before the Assembly Judiciary Comm., at 10-11, 64th Leg. (Nev., Jun. 11, 1987).

the bill."[13] Hearing on S.B. 270 Before the Senate Judiciary Comm., at 13, 64th Leg. (Nev., Mar. 31, 1987). SB 270's drafters instead "examined federal case law" and adopted federal standards for "Nevada's forfeiture statute." *Id.*

In other words, the Legislature glossed over Nevada's rich constitutional history and tradition of protecting property rights and disfavoring forfeitures, and fundamentally altered Nevada law to make it easier for the Executive branch to forfeit property—despite over 100 years of this Court's precedent clearly pointing in the other direction. *Id.* at 12. Importantly for double jeopardy purposes, this recent (and incorrect) abrogation of the common law does not change the original public meaning of punishment as it relates to forfeitures at the founding in 1864—which is the relevant analysis here.

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[13] The Legislative Council Bureau additionally undercut this Court's *1983 Volkswagen* decision by (incorrectly) advising the Legislature that "[t]he provisions of SB 270 which provides a lesser burden of proof of the element necessary to forfeit the property would be unconstitutional only if the court held that the requirement of proof beyond a reasonable doubt was: 1) applicable to the elements necessary to forfeit the property; and 2) constitutionally mandated as to these elements." Linda S. Jessen & Lorne J. Malkiewich, LCB Ltr. to Senator Joe Neal (Apr. 6, 1987).

d. Applying *Blockburger* to NRS 453.301 and NRS 179.1173 demonstrates Nevada law violates Elvin's Double Jeopardy rights.

In sum, for over 100 years, this Court's precedents, legislative enactments, and the burden of proof imposed through common law all disfavored civil forfeitures because it was punishment. As a result, the *Blockburger* case applies to this Court's analysis of civil forfeitures. And because of this, it was error for the district court to disregard *Blockburger*. Instead, Elvin has met his burden of showing that NRS 453.301 and NRS 179.1173 are "clearly invalid" and violate double jeopardy and the "punishment" prong of *Blockburger*. *Silvar*, 122 Nev. at 292. Elvin therefore requests this Court issue a writ of prohibition and/or a writ of mandamus and instruct the district court to dismiss this civil forfeiture proceeding with prejudice.

C. The District Court Erred by Applying *Ursery*, but even so, it Erred in its Application of *Ursery* Because Nevada's Civil Forfeiture Laws Violates Double Jeopardy.

The district court agreed with Tri-Net's argument and applied the *Ursery* two-part double jeopardy test when reviewing the issue under Nevada's Constitution. The district court erred (1) by applying that test; and (2) reaching the wrong conclusion even under the incorrect *Ursery*

test. As shown below, this Court should issue a writ to correct these errors.

Ursery requires a two-part analysis. First, the test "requires an examination of legislative intent to ascertain whether the forfeiture statutes were intended to be civil or criminal. If this examination discloses a legislative intent to create civil *in rem* forfeiture proceedings, a presumption is established that the forfeiture is not subject to double jeopardy." *Levingston*, 114 Nev. at 308. Second, the test "requires an analysis of whether the proceedings are so punitive in fact as to demonstrate that the forfeiture proceedings may not legitimately be viewed as civil in nature, despite legislative intent to the contrary." *Id.* at 308-09 (cleaned up). "The 'clearest proof' is required to established that the forfeiture proceedings may not legitimately be viewed as civil in nature, despite legislative intent to the contrary." *Id.*

1. The *Ursery* test is inconsistent with Nevada precedent and thus cannot apply to Nevada's constitution.

a. *Ursery's* first prong is incorrect as a matter of Nevada's statutory interpretation.

As a threshold matter, the *Ursery* test violates Nevada precedent on statutory interpretation. In Nevada, "[w]hen interpreting a statutory

provision, this court looks first to the plain language of the statute." *Clay v. Eighth Jud. Dist. Ct.*, 129 Nev. 445, 451, 305 P.3d 898, 902 (2013). If the statute is unambiguous, Nevada courts do not "look beyond the statute itself when determining its meaning." *Westpark Owners' Ass'n v. Eighth Jud. Dist. Ct.*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007). In other words, this Court should not consider the "intent" of the Legislature unless a statute is ambiguous and there is a need to examine the legislative history.[14] *Cf. Levingston*, 114 Nev. at 308.

In clear contravention of these well-established rules of statutory construction, *Ursery* demands that courts bypass the statutory language and rely solely on legislative intent. *Compare Ursery*, 518 U.S. at 289 n.3 *with Clay*, 129 Nev. at 451, 305 P.3d at 902. The district court nonetheless relied on *Ursery*, and in doing so, disregarded Nevada's rules of statutory construction. Even then, the district court failed to explain or even apply the *Ursery* test (other than providing a conclusory

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

summary of *Levingston*) to NRS 453.301, or any other provision of Nevada's civil forfeiture laws. (PA143-56.)

b. The district court failed to evaluate the plain language of NRS 179.1173 which is a criminal statute imposing a punishment.

The district court failed to evaluate NRS 179.1173's text. (PA 143-56.) Considering the plain language of that statutory provision, the text provides clear intent that the Legislature enacted a criminal statute imposing punishment. *See* Nev. 2015 Stat. Ch. 436, § 34.6 at 2502-03 (enacting changes to NRS 179.1173). Indeed, the plain language provides more than sufficient support that the legislative intent is to create a *criminal punishment* without resorting to analysis of the legislative history (in constitutional interpretation no less).

But even if this Court chooses to evaluate the legislative history, that examination only strengthens Elvin's argument that this is a criminal statute. For example, during the debates to amend NRS 179.1173, the following colloquy took place:

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

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

Hearing on S.B. 138 Before the Senate Judiciary Comm., at 32, 78th Leg. (Nev., Mar. 4, 2015) (emphasis added). This makes clear that the Legislature intended to create a criminal proceeding despite being labeled a civil forfeiture. *See Jesseph*, 136 Nev. at 533. Indeed, the 2015 amendments to NRS 179.1173 show the Legislature intended to change Nevada's forfeiture laws to criminally punish Nevadans. Thus, *Ursery*'s first prong is not satisfied. The failure of prong one of *Ursery* is sufficient for this Court to issue the writ of prohibition and/or writ of mandamus and instruct the district court to dismiss the civil forfeiture proceedings with prejudice.

c. Nevada law fails *Ursery's* second prong based on the history and tradition of forfeitures in Nevada.

The second prong of *Ursery* requires an examination of the punitive nature of civil forfeiture proceedings. Under this prong, the *Ursery* Court examined the history of congressional enactments and its precedents at the Founding. *See Ursery*, 518 U.S. at 274-76. In *Levingston*, this Court did not detail the original public meaning of punishment in Nevada—

instead it applied the Fifth Amendment history and precedent supplied by the *Ursery* Court. 114 Nev. at 308. Thus, the analysis (that the district court failed to undertake) under the second *Ursery* prong required an analysis of the history and tradition of forfeitures in Nevada. *Id.* As detailed above, Nevada's history is distinct from that of the federal government. *See supra* Part V.B.2.a-d. Based on this history, a criminal sanction followed by a civil forfeiture of property that directly relies on the criminal sanction is *punishment* under Article 1, Section 8(1) of Nevada's constitution. *See id.*

Accordingly, the district court clearly erred in concluding this Court adopted the *Ursery* test for Nevada's constitution (when it did not) and in its application of *Ursery* to Nevada law because it failed to consider Nevada's history.

In sum, the appropriate test for this Court to apply is *Blockburger* because it is the only test that complies with the Nevada Constitution, this Court's precedent, and the Legislature's original meaning of "punishment" for over 100 years. *Ursery* does not. But regardless of whether this Court applies *Blockburger* or *Ursery*, the result is the same under the unique facts of Elvin's case: Nevada's civil forfeiture laws

violates Elvin's constitutional and liberty rights. The district court clearly erred in disregarding *Blockburger*, applying *Ursery*, and doing so in a manner that falls short of what even *Ursery* requires. The Court should therefore issue a writ of prohibition and/or mandamus and instruct the district court to dismiss this civil forfeiture proceeding with prejudice.

V. CONCLUSION

Based on the arguments above, Elvin asks this Court to exercise its discretion to entertain his writ petition, and issue a writ of prohibition and/or a writ of mandamus instructing the district court to dismiss the civil forfeiture proceeding with prejudice.

Dated this 2nd day of November 2022.

McDONALD CARANO LLP

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

Pro Bono Counsel for Petitioner

NRAP 28(f) ADDENDUM

NRS Provision	Statutory Text
NRS 453.301	The following are subject to forfeiture pursuant to NRS 179.1156 to 179.1205, inclusive: 1. All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of the provisions of NRS 453.011 to 453.552, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct. 2. All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of the provisions of NRS 453.011 to 453.552, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct. 3. All property which is used, or intended for use, as a container for property described in subsections 1 and 2. 4. All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of the provisions of NRS 453.011 to 453.552, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct. 5. All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, concealment, manufacture or protection, for the purpose of sale, possession for sale or receipt of property described in subsection 1 or 2. 6. All drug paraphernalia as defined by NRS 453.554 which are used in violation of NRS 453.560,

	453.562 or 453.566 or a law of any other jurisdiction which prohibits the same or similar conduct, or of an injunction issued pursuant to NRS 453.558. 7. All imitation controlled substances which have been manufactured, distributed or dispensed in violation of the provisions of NRS 453.332 or 453.3611 to 453.3648, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct. 8. All real property and mobile homes used or intended to be used by any owner or tenant of the property or mobile home to facilitate a violation of the provisions of NRS 453.011 to 453.552, inclusive, except NRS 453.336, or used or intended to be used to facilitate a violation of a law of any other jurisdiction which prohibits the same or similar conduct as prohibited in NRS 453.011 to 453.552, inclusive, except NRS 453.336. As used in this subsection, "tenant" means any person entitled, under a written or oral rental agreement, to occupy real property or a mobile home to the exclusion of others. 9. Everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of the provisions of NRS 453.011 to 453.552, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct, all proceeds traceable to such an exchange, and all other property used or intended to be used to facilitate a violation of the provisions of NRS 453.011 to 453.552, inclusive, except NRS 453.336, or used or intended to be used to facilitate a violation of a law of any other jurisdiction which prohibits the same or similar conduct as prohibited in NRS 453.011 to 453.552, inclusive, except NRS 453.336. If an amount of cash which exceeds $300 is found in the possession of a person who is arrested for a

	violation of NRS 453.337 or 453.338, then there is a rebuttable presumption that the cash is traceable to an exchange for a controlled substance and is subject to forfeiture pursuant to this subsection. 10. All firearms, as defined by NRS 202.253, which are in the actual or constructive possession of a person who possesses or is consuming, manufacturing, transporting, selling or under the influence of any controlled substance in violation of the provisions of NRS 453.011 to 453.552, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct. 11. All computer hardware, equipment, accessories, software and programs that are in the actual or constructive possession of a person who owns, operates, controls, profits from or is employed or paid by an illegal Internet pharmacy and who violates the provisions of NRS 453.3611 to 453.3648, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct.
NRS 179.1156	Except as otherwise provided in NRS 179.1211 to 179.1235, inclusive, and 207.350 to 207.520, inclusive, the provisions of NRS 179.1156 to 179.121, inclusive, govern the seizure, forfeiture and disposition of all property and proceeds subject to forfeiture.
NRS 179.1157	As used in NRS 179.1156 to 179.1205, inclusive, unless the context otherwise requires, the words and terms defined in NRS 179.1158 to 179.11635, inclusive, have the meanings ascribed to them in those sections.
NRS 179.1158	"Claimant" means any person who claims to have: 1. Any right, title or interest of record in the property or proceeds subject to forfeiture; 2. Any community property 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.
NRS 179.1161	"Proceeds" means any property, or that part of an item of property, derived directly or indirectly from the commission or attempted commission of a crime.
NRS 179.1162	"Property" includes any: 1. Real property or interest in real property. 2. Fixture or improvement to real property. 3. Personal property, whether tangible or intangible, or interest in personal property. 4. Conveyance, including any aircraft, vehicle or vessel. 5. Money, security or negotiable instrument. 6. Proceeds.
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 a reasonable person to conclude that the property was derived from unlawful activity or would be used for an unlawful purpose.
NRS 179.1164	1. Except as otherwise provided in subsection 2, the following property is subject to seizure and forfeiture in a proceeding for forfeiture: (a) Any proceeds attributable to the commission or attempted commission of any felony. (b) Any property or proceeds otherwise subject to forfeiture pursuant to NRS 179.121, 200.760, 202.257, 370.419, 453.301 or 501.3857. 2. Property may not, to the extent of the interest of any claimant, be declared forfeited by reason of an act or omission shown to have been committed or omitted without the knowledge, consent or willful blindness of the claimant. 3. Unless the owner of real property or a mobile home:

	(a) Has given the tenant notice to surrender the premises pursuant to NRS 40.254 within 90 days after the owner receives notice of a conviction pursuant to subsection 2 of NRS 453.305; or (b) Shows the court that the owner had good cause not to evict the tenant summarily pursuant to NRS 40.254, the owner of real property or a mobile home used or intended for use by a tenant to facilitate any violation of the provisions of NRS 453.011 to 453.552, inclusive, except NRS 453.336, is disputably presumed to have known of and consented to that use if the notices required by NRS 453.305 have been given in connection with another such violation relating to the property or mobile home. The holder of a lien or encumbrance on the property or mobile home is disputably presumed to have acquired an interest in the property for fair value and without knowledge or consent to such use, regardless of when the act giving rise to the forfeiture occurred.
NRS 179.1165	1. Except as provided in subsection 2, property that is subject to forfeiture may only be seized by a law enforcement agency upon process issued by a magistrate having jurisdiction over the property. 2. A seizure of property may be made by a law enforcement agency without process if: (a) The seizure is incident to: (1) An arrest; (2) A search pursuant to a search warrant; or (3) An inspection pursuant to a warrant for an administrative inspection; (b) The property is the subject of a final judgment in a proceeding for forfeiture; (c) The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

	(d) The law enforcement agency has probable cause to believe that the property is subject to forfeiture.
NRS 179.1169	1. All right, title and interest in property subject to forfeiture vests in the plaintiff: (a) In the case of property used or intended for use to facilitate the commission or attempted commission of any felony, when the property is so used or intended for such use. (b) In the case of property otherwise subject to forfeiture, when the event giving rise to the forfeiture occurs. (c) In the case of proceeds, when they become proceeds. 2. 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.
NRS 179.1171	1. Except as otherwise provided in NRS 179.1156 to 179.1205, inclusive, the Nevada Rules of Civil Procedure are applicable to and constitute the rules of practice in a proceeding for forfeiture pursuant to those sections.

	2. A proceeding for forfeiture is commenced by filing a complaint for forfeiture. If the property has been seized without process, the plaintiff shall file the complaint for forfeiture within 120 days after the property is seized. The property is subject to an action to claim its delivery only if the plaintiff does not file the complaint for forfeiture within 60 days after the property is seized. If the complaint for forfeiture is filed following the commencement of an action claiming delivery, the complaint must be treated as a counterclaim. 3. If a law enforcement agency seizes property, the property must not be forfeited unless: (a) The agency files a complaint for forfeiture in the district court for the county in which the property is located; or (b) A stipulated agreement between the parties regarding the property is reached. 4. A proceeding for forfeiture is in rem. The complaint for forfeiture must be filed in the district court for the county in which the property which is the subject of the proceeding is located. 5. The plaintiff shall cause service of the summons and complaint to be made upon each claimant whose identity is known to the plaintiff or who can be identified through the exercise of reasonable diligence. If real property or any interest in real property is affected by the proceeding, the plaintiff shall file notice of the proceeding in the manner provided in NRS 14.010. 6. Each claimant served with the summons and complaint who desires to contest the forfeiture shall, within 20 days after the service, serve and file a verified answer to the complaint. The claimant shall admit or deny the averments of the complaint and shall, in short and plain terms, describe the interest which the claimant asserts in the property. Concurrently with the answer, the claimant shall

	serve answers or objections to any written interrogatories served with the summons and complaint. 7. No person, other than the plaintiff and any claimant, is a proper party in the proceeding.
NRS 179.1173	1. Except as otherwise provided in subsection 2, the district court shall proceed as soon as practicable to a trial and determination of the matter. A proceeding for forfeiture is entitled to priority over other civil actions which are not otherwise entitled to priority. 2. At a proceeding for forfeiture, the court shall issue an order staying the proceeding that remains in effect while the criminal action which is the basis of the proceeding is pending trial. The court shall lift the stay after the trial is completed. If the claimant is acquitted during the trial, the property of the claimant must be returned to the claimant within 7 business days after the acquittal. 3. If property has been seized and the criminal charges against the owner of such property are denied or dismissed, all such property must be returned to the owner within 7 business days after the criminal charges are denied or dismissed. 4. The plaintiff in a proceeding for forfeiture must establish proof by clear and convincing evidence that the property is subject to forfeiture. 5. In a proceeding for forfeiture, the rule of law that forfeitures are not favored does not apply. 6. The plaintiff is not required to plead or prove that a claimant has been charged with or convicted of any criminal offense. If proof of such a conviction is made, and it is shown that the judgment of conviction has become final, the proof is, as against any claimant, conclusive evidence of all facts necessary to sustain the conviction. 7. The plaintiff has an absolute privilege to refuse to disclose the identity of any person, other than a

	witness, who has furnished to a law enforcement officer information purporting to reveal the commission of a crime. The privilege may be claimed by an appropriate representative of the plaintiff. 8. If the court determines that the property is not subject to forfeiture, the court shall order the property and any interest accrued pursuant to subsection 2 of NRS 179.1175 returned to the claimant found to be entitled to the property within 7 business days after the order is issued. If the court determines that the property is subject to forfeiture, the court shall so decree. The property, including any interest accrued pursuant to subsection 2 of NRS 179.1175, must be forfeited to the plaintiff, subject to the right of any claimant who establishes a protected interest. Any such claimant must, upon the sale or retention of the property, be compensated for the claimant's interest in the manner provided in NRS 179.118. 9. A claimant who agrees to enter a plea of guilty, guilty but mentally ill or nolo contendere to criminal charges relating to the seized property or reaches a stipulated agreement with the plaintiff may agree to the forfeiture of any property as part of the plea or agreement. 10. If the court accepts a plea or stipulated agreement pursuant to subsection 9, the court shall order forfeiture of the property that the claimant agreed to forfeit pursuant to the plea or agreement.
NRS 179.1175	1. Except as otherwise provided in subsection 2, after property has been seized the agency which seized the property may: (a) Place the property under seal; (b) Remove the property to a place designated by the agency for the storage of that type of property; or (c) Remove the property to an appropriate place for disposition in a manner authorized by the court.

	2. If an agency seizes currency, unless otherwise ordered by the court, the agency shall deposit the currency in an interest-bearing account maintained for the purpose of holding currency seized by the agency. 3. When a court declares property to be forfeited, the plaintiff may: (a) Retain it for official use; (b) Sell any of it which is neither required by law to be destroyed nor harmful to the public; or (c) Remove it for disposition in accordance with the applicable provisions of NRS.
NRS 179.118	1. The proceeds from any sale or retention of property declared to be forfeited and any interest accrued pursuant to subsection 2 of NRS 179.1175 must be applied, first, to the satisfaction of any protected interest established by a claimant in the proceeding, then to the proper expenses of the proceeding for forfeiture and resulting sale, including the expense of effecting the seizure, the expense of maintaining custody, the expense of advertising and the costs of the suit. 2. Any balance remaining after the distribution required by subsection 1 must be deposited as follows: (a) Except as otherwise provided in this subsection, if the plaintiff seized the property, in the special account established pursuant to NRS 179.1187 by the governing body that controls the plaintiff. (b) Except as otherwise provided in this subsection, if the plaintiff is a metropolitan police department, in the special account established by the Metropolitan Police Committee on Fiscal Affairs pursuant to NRS 179.1187. (c) Except as otherwise provided in this subsection, if more than one agency was substantially involved in the seizure, in an equitable manner to

	be directed by the court hearing the proceeding for forfeiture. (d) If the property was seized pursuant to NRS 200.760, in the State Treasury for credit to the Fund for the Compensation of Victims of Crime to be used for the counseling and the medical treatment of victims of crimes committed in violation of NRS 200.366, 200.710 to 200.730, inclusive, or 201.230. (e) If the property was seized as the result of a violation of NRS 202.300, in the general fund of the county in which the complaint for forfeiture was filed, to be used to support programs of counseling of persons ordered by the court to attend counseling pursuant to NRS 62E.290. (f) If the property was forfeited pursuant to NRS 201.351, with the county treasurer to be distributed in accordance with the provisions of subsection 4 of NRS 201.351.
NRS 179.1185	If a vehicle or other conveyance is forfeited of a kind which is subject to the provisions of title 43 of NRS governing certificates of title, the agency charged by law with responsibility for issuing certificates of title for conveyances of the kind shall issue a certificate of title to: 1. The governing body or the agency to whom the title was awarded by the court if the conveyance is retained for official use; or 2. The purchaser if the conveyance is sold by the governing body or the plaintiff.
NRS 179.1187	1. The governing body controlling each law enforcement agency that receives proceeds from the sale of forfeited property shall establish with the State Treasurer, county treasurer, city treasurer or town treasurer, as custodian, a special account, known as the "_____ Forfeiture Account." The account is a separate and continuing account and no money in it reverts to the State General Fund

	or the general fund of the county, city or town at any time. For the purposes of this section, the governing body controlling a metropolitan police department is the Metropolitan Police Committee on Fiscal Affairs. 2. The money in the account may be used for any lawful purpose deemed appropriate by the chief administrative officer of the law enforcement agency, except that: (a) The money must not be used to pay the ordinary operating expenses of the agency. (b) Money derived from the forfeiture of any property described in NRS 453.301 must be used to enforce the provisions of chapter 453 of NRS. (c) Money derived from the forfeiture of any property described in NRS 501.3857 must be used to enforce the provisions of title 45 of NRS. (d) Seventy percent of the amount of money in excess of $100,000 remaining in the account at the end of each fiscal year, as determined based upon the accounting standards of the governing body controlling the law enforcement agency that are in place on March 1, 2001, must be distributed to the school district in the judicial district. If the judicial district serves more than one county, the money must be distributed to the school district in the county from which the property was seized. 3. Notwithstanding the provisions of paragraphs (a) and (b) of subsection 2, money in the account derived from the forfeiture of any property described in NRS 453.301 may be used to pay for the operating expenses of a joint task force on narcotics otherwise funded by a federal, state or private grant or donation. As used in this subsection, "joint task force on narcotics" means a task force on narcotics operated by the Department of Public Safety in conjunction with other local or federal law enforcement agencies.

	4. A school district that receives money pursuant to paragraph (d) of subsection 2 shall deposit such money into a separate account. The interest and income earned on the money in the account, after deducting any applicable charges, must be credited to the account. The money in the account must be used to purchase books and computer hardware and software for the use of the students in that school district. 5. The chief administrative officer of a law enforcement agency that distributes money to a school district pursuant to paragraph (d) of subsection 2 shall submit a report to the Director of the Legislative Counsel Bureau before January 1 of each odd-numbered year. The report must contain the amount of money distributed to each school district pursuant to paragraph (d) of subsection 2 in the preceding biennium.
NRS 179.119	1. Any law enforcement agency that receives forfeited property or the proceeds of a sale of such property pursuant to the provisions contained in NRS 179.1156 to 179.1205, inclusive, shall: (a) File a quarterly report of the approximate value of the property and the amount of the proceeds with the entity that controls the budget of the agency; and (b) Provide the entity that controls the budget of the agency with a quarterly accounting of the receipt and use of the proceeds. 2. Revenue from forfeitures must not be considered in the preparation of the budget of a law enforcement agency except as money to match money from the Federal Government.
NRS 179.1205	1. On an annual basis, each law enforcement agency shall report the following information about each individual seizure and forfeiture completed by the law enforcement agency under state forfeiture law:

	(a) Data on seizures and forfeitures, including, without limitation, the: (1) Date that currency, vehicles, houses or other types of property were seized; (2) Type of property seized, including, the year, make and model, as applicable; (3) Type of crime associated with the seizure of the property; (4) Market value of the property seized; (5) Disposition of the property following the seizure; and (6) Date of the disposition of the property. (b) Data on the use of proceeds, including, without limitation, the: (1) Payment of all outstanding liens on the forfeited property; (2) Payment of reasonable expenses, except personnel costs, of the seizure, storage and maintenance of custody of any forfeited property; and (3) Distribution of proceeds pursuant to NRS 179.118, 179.1187, 179.1233 and 207.500. (c) Any other information required by the Office of the Attorney General. 2. The Office of the Attorney General shall develop standard forms, processes and deadlines for the entry of electronic data for the annual submission of the report required by subsection 1. 3. Each law enforcement agency shall file with the Office of the Attorney General the report required by subsection 1. A null report must be filed by a law enforcement agency that did not engage in a seizure or forfeiture during the reporting period. The Office of the Attorney General shall compile the submissions and issue an aggregate report of all forfeitures in this State. 4. On or before April 1 of each year, the Office of the Attorney General shall make available:

	(a) On its Internet website, the reports submitted by law enforcement agencies and the aggregate report. (b) Upon request, printed copies of the reports submitted by law enforcement agencies and the aggregate report. 5. The Office of the Attorney General shall include in the aggregate report information on any law enforcement agencies not in compliance with this section.
NRS 179.121	1. All personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes is subject to forfeiture: (a) The commission of or attempted commission of the crime of murder, robbery, kidnapping, burglary, invasion of the home, grand larceny or theft if it is punishable as a felony; (b) The commission of or attempted commission of any felony with the intent to commit, cause, aid, further or conceal an act of terrorism; (c) A violation of NRS 202.445 or 202.446; (d) The commission of any crime by a criminal gang, as defined in NRS 213.1263; or (e) A violation of NRS 200.463 to 200.468, inclusive, 201.300, 201.320, 201.395, 202.265, 202.287, 205.473 to 205.513, inclusive, 205.610 to 205.810, inclusive, 370.380, 370.382, 370.395, 370.405, 465.070 to 465.086, inclusive, 630.400, 630A.600, 631.400, 632.285, 632.291, 632.315, 633.741, 634.227, 634A.230, 635.167, 636.145, 637.090, 637B.290, 639.100, 639.2813, 640.169, 640A.230, 644A.900 or 654.200. 2. Except as otherwise provided for conveyances forfeitable pursuant to NRS 453.301 or 501.3857, all conveyances, including aircraft, vehicles or vessels, which are used or intended for use during the

commission of a felony or a violation of NRS 202.287, 202.300 or 465.070 to 465.086, inclusive, are subject to forfeiture except that:

(a) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to the felony or violation;

(b) A conveyance is not subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge, consent or willful blindness;

(c) A conveyance is not subject to forfeiture for a violation of NRS 202.300 if the firearm used in the violation of that section was not loaded at the time of the violation; and

(d) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the felony. If a conveyance is forfeited, the appropriate law enforcement agency may pay the existing balance and retain the conveyance for official use.

3. For the purposes of this section, a firearm is loaded if:

(a) There is a cartridge in the chamber of the firearm;

(b) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver; or

(c) There is a cartridge in the magazine and the magazine is in the firearm or there is a cartridge in the chamber, if the firearm is a semiautomatic firearm.

4. As used in this section, "act of terrorism" has the meaning ascribed to it in NRS 202.4415.

CERTIFICATE OF COMPLIANCE

I certify that this Petition complies with the formatting, and type-style requirements of NRAP 32(a)(4)-(6) because it was prepared with a proportionally spaced typeface in 14-point, double-spaced, Century Schoolbook font.

2. I certify that this Petition complies with type-volume limitations of NRAP 21(d) because it contains 6,934 words which is less than the 7,000 word limit.

3. I certify that I have read this Petition, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedures, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

Dated this 2nd day of November 2022.

McDONALD CARANO LLP

By: */s/ John A. Fortin*

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

Pro Bono Counsel for Petitioner

NRAP 21(a)(5) Verification and Affidavit

HN A. FORTIN, swears, declares, and states as follows:

I am an attorney duly licensed to practice before all courts of the State of Nevada. I make this affidavit pursuant to NRAP 21(a)(5); NRS 34.170; NRS 34.030, and NRS 34.330. I am pro bono counsel of record in *In re Desatoya Dr.*, Case No 15 OC 0074 1B for Elvin Fred.

2. As detailed above, Petitioner maintains that writ review is warranted on the legal grounds that Nevada's civil forfeiture laws as applied to him are unconstitutional under Article 1, Section 8(1).

3. The documents contained in the concurrently filed Appendix are true and correct copies of the salient district court record to the best of my knowledge.

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

Dated this 2d day of November 2022

JOHN A. FORTIN

State of Nevada)
)SS.
County of Clark)

SUBSCRIBED and SWORN to before me
this 2nd day of November 2022
by Marianne A. Carter.

Marianne A. Carter

MARIANNE A. CARTER
Notary Public, State of Nevada
No. 04-91362-1
My Appt. Exp. Sept. 3, 2024

NOTARY PUBLIC in and for said
COUNTY and STATE

CERTIFICATE OF SERVICE

REBY CERTIFY that I am an employee of McDonald Carano

ı that on this 2nd day of November 2022, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing properly addressed to the following:

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

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Ben R. Johnson, Esq.
Carson City District Attorney
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Attorneys for Real Party in Interest

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Nevada Attorney General
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Carson City, Nevada 89701

/s/ Kimberly Kirn
Employee of McDonald Carano LLP

4871-1133-0873, v. 15

EXHIBIT 2

EXHIBIT 2

CARSON CITY DISTRICT ATTORNEY
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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

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.

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

DECLARATION OF JASON WOODBURY IN SUPPORT OF PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR STAY

1. I, JASON WOODBURY, am the Carson City District Attorney and have been employed in that capacity since January, 2015;
2. The Carson City District Attorney's office represents the above-referenced counterdefendant in the above-captioned case;
3. The Carson City District Attorney's office was served with the following discovery requests by SYLVIA FRED, one of the above-referenced counterdefendants: *Sylvia Fred's First Request for Admissions to State of*

Nevada ex rel. Investigation Division of the Nevada State Police, dated November 15, 2022; *Sylvia Fred's First Request for Production of Documents to State of Nevada ex rel. Investigation Division of the Nevada State Police*, dated November 15 2022; and *Sylvia Fred's First Set of Interrogatories to State of Nevada ex rel. Investigation Division of the Nevada State Police*, dated November 15, 2022;

4. Carson City Senior Deputy District Attorney Benjamin Johnson has been advised by counsel for SYLVIA FRED and ELVIN FRED that he intends to propound additional discovery requests on behalf of ELVIN FRED soon;

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

DATED this 15th day of December, 2022.

JASON D. WOODBURY

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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

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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PLAINTIFF/COUNTERDEFENDANT'S *EX PARTE* MOTION TO EXTEND DEADLINE TO FILE OPPOSITION TO SYLVIA FRED'S MOTION FOR PARTIAL SUMMARY JUDGMENT SEEKING A DECLARATION THAT NEVADA'S CIVIL FORFEITURE LAWS VIOLATE DUE PROCESS (FIRST REQUEST)

COMES NOW, Plaintiff/Counterdefendant, 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 moves this Honorable Court for an order extending the deadline to file an opposition to *Sylvia Fred's Motion for Partial Summary Judgment Seeking a Declaration that Nevada' Civil Forfeiture Laws Violate*

Due Process ("*Fred's Motion*") from December 22, 2022 to January 9, 2023. This *Motion* is made pursuant to FJDCR 3.17 and 3.19 and is based on the following points and authorities, all papers and pleadings on file herein, and any evidence and argument presented at any hearing on the *Motion*.

DATED this 21st day of December, 2022.

CARSON CITY DISTRICT ATTORNEY

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Showing of Need for *Ex Parte* Motion

NRCP 3.19(a) requires that the circumstances justifying an *ex parte* motion and the efforts to notify opposing counsel be articulated in the first paragraph of any *ex parte* motion. This *Motion* is presented on an *ex parte* basis due to the fact that it addresses a deadline which expires on December 22, 2022. As such, if the issue was allowed to be presented through a normal briefing schedule, the object of the *Motion*, which is to extend the December 22 deadline, would necessarily be defeated before the matter could be submitted to the Court. During a telephone conversation in the morning of December 21, 2022 opposing counsel was advised by undersigned counsel that this motion was forthcoming. *Declaration of Jason D. Woodbury in Support of Plaintiff/Counterdefendant's Ex Parte Motion to Extend Deadline to File Opposition to Sylvia Fred's Motion for Partial Summary Judgment Seeking a Declaration that Nevada' Civil Forfeiture Laws Violate Due Process* at ¶16 (attached hereto and marked as Exhibit 1) [hereinafter "*Woodbury Dec.*"]. Additionally, opposing counsel will be served with a file-stamped copy of this *Motion* as soon as possible after its filing. *Woodbury Dec.* at ¶19.

II. Discussion

On December 8, 2022, *Fred's Motion* was filed with this Court in the above-captioned case. Under FJDCR 3.8, the deadline to oppose *Fred's Motion* is December 22, 2022.

The points and authorities included in *Fred's Motion* is 23 pages long, more than double the Court's normal maximum page limit for motions. FJDCR 3.23 ("Unless otherwise ordered by the court, the moving party's initial points and authorities ... will not exceed 10 pages.") 22 exhibits, consisting of 110 pages, were filed in support of

Fred's Motion. The factual background to *Fred's Motion* spans 10 years. The points and authorities cite to nearly 50 legal authorities. Under the best of circumstances and even disregarding other time sensitive workload in the Carson City District Attorney's office, the normal 14-day deadline for response does not afford undersigned counsel a reasonable opportunity to respond to a motion of this nature. As such, the requested extension would clearly be warranted even in the absence of any additional special circumstances which make compliance with the normal opposition deadline impossible.

In addition, in fact, there are special circumstances at issue. There are two attorneys assigned to this matter, undersigned counsel and Senior Deputy District Attorney Benjamin Johnson. *Woodbury Dec.* at ¶2. Prior to Saturday, December 17, Mr. Johnson had arranged to take annual leave from December 23, 2022 through January 2, 2023. *Woodbury Dec.* at ¶3. On Saturday, December 17, Mr. Johnson became aware of unforeseen personal circumstances which required him to modify his leave request and commence leave on December 20, 2022. *Woodbury Dec.* at ¶4.

On Thursday, December 15, undersigned counsel became aware of an agenda item that had been added to the Nevada Board of Pardons agenda for its December 20 meeting. *Woodbury Dec.* at ¶5. The agenda item had been added in the evening of December 14, and undersigned counsel had no advance notice of its possible inclusion. *Woodbury Dec.* at ¶6. The added agenda item was the subject of emergency proceedings before this Court in case number 22 EW 00047. *Woodbury Dec.* at ¶7. Undersigned counsel was involved in the preparation and execution of that litigation which required the dedication of significant amounts time from Thursday, December 15 through Tuesday, December 20, including the intervening weekend.

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Woodbury Dec. at ¶8. Undersigned counsel had anticipated that this time could be used toward the preparation of an opposition to *Fred's Motion*. *Woodbury Dec.* at ¶9.

Finally, undersigned counsel will be attending funeral services for his father-in-law on December 22 at 11:00 a.m. *Woodbury Dec.* at ¶11. The services are being held at the Northern Nevada Veterans Memorial Cemetery in Fernley, Nevada, which will require undersigned counsel to travel from Carson City to Fernley and back again on December 22. *Woodbury Dec.* at ¶11.

In addition to the volume of work necessary to respond to *Fred's Motion*, these special circumstances further justify the request for extension presented in this *Motion*. This *Motion* is the first request for extension of a deadline presented to this Court in regard to *Fred's Motion*. *Woodbury Dec.* at ¶12.

Having reviewed *Fred's Motion* and a portion of the cited authorities, undersigned counsel believes that an opposition to *Fred's Motion* will require at least 30 additional hours to complete. *Woodbury Dec.* at ¶13. Accounting for intervening holidays and other time-sensitive workload that will require attention, undersigned counsel believes that an opposition can be completed by January 9, 2023. *Woodbury Dec.* at ¶14. It is respectfully submitted that the additional time requested, 10 working days from the current deadline, is reasonable considering the volume of *Fred's Motion* and associated material. *Woodbury Dec.* at ¶15. This request for extension is made in good faith and not for purposes of delay. *Woodbury Dec.* at ¶20.

III. Good Faith Effort to Communicate Request for Extension

As required by FJDCR 3.17(7), undersigned counsel has made a good faith effort to communicate with counsel for ELVIN FRED and SYLVIA FRED regarding the requested extension. *Woodbury Dec.* at ¶16. Counsel for ELVIN FRED and SYLVIA

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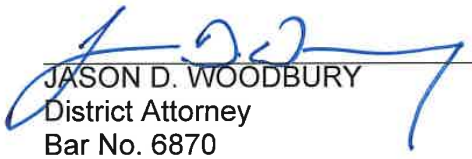
FRED rejected the request, which prompts the filing of this *Motion*. *Woodbury Dec.* at ¶17.

IV. Conclusion

For the reasons set forth herein, this *Motion* should be granted and the deadline to file an opposition to *Sylvia Fred's Motion for Partial Summary Judgment Seeking a Declaration that Nevada' Civil Forfeiture Laws Violate Due Process* should be extended to January 9, 2023.

DATED this 21st day of December, 2022.

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 21st day of December, 2022, I served a true and correct copy of the foregoing **PLAINTIFF/COUNTERDEFENDANT'S *EX PARTE* MOTION TO EXTEND DEADLINE TO FILE OPPOSITION TO SYLVIA FRED'S MOTION FOR PARTIAL SUMMARY JUDGMENT SEEKING A DECLARATION THAT NEVADA'S CIVIL FORFEITURE LAWS VIOLATE DUE PROCESS (FIRST REQUEST)** together with a proposed **ORDER GRANTING PLAINTIFF/COUNTERDEFENDANT'S *EX PARTE* MOTION TO EXTEND DEADLINE TO FILE OPPOSITION TO SYLVIA FRED'S MOTION FOR PARTIAL SUMMARY JUDGMENT SEEKING A DECLARATION THAT NEVADA'S CIVIL FORFEITURE LAWS VIOLATE DUE PROCESS (FIRST REQUEST)** via electronic mail to the following:

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

In re:
3587 Desatoya Drive, Carson City, Nevada 89701

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

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

Plaintiff/Counterdefendant's Ex Parte Motion to Extend Deadline to File Opposition to Sylvia Fred's Motion for Partial Summary Judgment Seeking a Declaration that Nevada's Civil Forfeiture Laws Violate Due Process

Exhibit Index

Exhibit No.	Description	Pages
1	*Declaration of Jason D. Woodbury in Support of Plaintiff/Counterdefendant's Ex Parte Motion to Extend Deadline to File Opposition to Sylvia Fred's Motion for Partial Summary Judgment Seeking a Declaration that Nevada's Civil Forfeiture Laws Violate Due Process*	1 - 4

EXHIBIT 1

EXHIBIT 1

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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.

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SYLVIA FRED, an individual,

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Counterdefendant.

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DECLARATION OF JASON D. WOODBURY IN SUPPORT OF PLAINTIFF/COUNTERDEFENDANT'S *EX PARTE* MOTION TO EXTEND DEADLINE TO FILE OPPOSITION TO SYLVIA FRED'S MOTION FOR PARTIAL SUMMARY JUDGMENT SEEKING A DECLARATION THAT NEVADA'S CIVIL FORFEITURE LAWS VIOLATE DUE PROCESS (FIRST REQUEST)

1. I, JASON WOODBURY, am the Carson City District Attorney and have been employed in that capacity since January, 2015;
2. I, together with Senior Deputy District Attorney, Benjamin Johnson, are the attorneys in the Carson City District Attorney's Office who are assigned to the above-captioned case;

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3. Prior to Saturday, December 17, Mr. Johnson had arranged to take annual leave from December 23, 2022 through January 2, 2023;
4. On Saturday, December 17, Mr. Johnson became aware of unforeseen personal circumstances which required him to modify his leave request and commence leave on December 20, 2022;
5. On Thursday, December 15, I became aware of an agenda item that had been added to the Nevada Board of Pardons agenda for its December 20 meeting;
6. The agenda item had been added in the evening of December 14, and I had no advance notice of its possible inclusion;
7. The added agenda item was the subject of emergency proceedings before this Court in case number 22 EW 00047;
8. I was involved in the preparation and execution of that litigation which required the dedication of significant amounts time from Thursday, December 15 through Tuesday, December 20, including the intervening weekend;
9. I had anticipated that this time could be used toward the preparation of an opposition to *Fred's Motion*;
10. My father-in-law recently passed away on October 22, 2022;
11. I intend to attend his funeral services are scheduled for 11:00 a.m. on December 22 at the Northern Nevada Veterans Memorial Cemetery in Fernley, Nevada, which will require undersigned counsel to travel from Carson City to Fernley and back again on December 22;
12. This *Motion* in support of which this *Declaration* is made is the first request for extension of a deadline presented to this Court in regard to *Fred's Motion*;

13. Having reviewed *Fred's Motion* and a portion of the cited authorities, I believe that an opposition to *Fred's Motion* will require at least 30 additional hours to complete;

14. Accounting for intervening holidays and other time-sensitive workload that will require attention, undersigned counsel believes that an opposition can be completed by January 9, 2023;

15. It is respectfully submitted that the additional time requested, 10 working days from the current deadline, is reasonable considering the volume of *Fred's Motion* and associated material;

16. In the morning of December 21, 2022, I spoke with John Fortin, Esq. by telephone concerning this matter, and communicated to him my request for an extension of the December 22 deadline;

17. Mr. Fortin rejected my request to agree to an extension of the December 22 deadline;

18. I advised Mr. Fortin during the December 21 telephone call that I would be filing a motion with the Court to extend the December 22 deadline;

19. I will ensure Mr. Fortin is provided with a copy of the *Motion* by e-mail as soon as possible after it is filed; and

20. This request for extension is made in good faith and not for purposes of delay;

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

DATED this 21st day of December, 2022.

JASON D. WOODBURY

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