

Case No.

In the Supreme Court of Nevada

Electronically Filed
Mar 28 2023 11:38 AM
Elizabeth A. Brown
Clerk of Supreme Court

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

SYLVIA FRED & ELVIN FRED,

Petitioners,

v.

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

Respondent,

and

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

Real Party in Interest,

PETITIONER'S APPENDIX – VOLUME 7 OF 8

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

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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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*Pro Bono Counsel for
Claimants Elvin Fred & Sylvia Fred*

FIRST JUDICIAL DISTRICT COURT

CARSON CITY, NEVADA

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

SYLVIA FRED, an individual,
Counterclaimant,
v.

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

Counterdefendant,

ELVIN FRED, an individual,
Counterclaimant,
v.

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

Counterdefendant,

RECORDED & FILED
2022 DEC 23 PM 1:51

AUDREY ROWLATT
BY **K. PETERSON**
DEPUTY

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

**ELVIN FRED AND SYLVIA FRED'S
MOTION TO STRIKE TRI-NET'S
IMPROPER *Ex Parte* MOTION FOR AN
EXTENSION TO RESPOND TO
SYLVIA'S PARTIAL MOTION FOR
SUMMARY JUDGMENT AND
ALTERNATIVELY, ELVIN FRED AND
SYLVIA FRED'S OPPOSITION**

AND

**ELVIN FRED AND SYLVIA FRED'S
MOTION TO STRIKE TRI-NET'S
IMPROPER MOTION TO STAY AND
ALTERNATIVELY ELVIN FRED AND
SYLVIA FRED'S OPPOSITION**

AND

**SYLVIA FRED'S COUNTERMOTION TO
COMPEL PRODUCTION OF
DOCUMENTS**

Claimant/Counterclaimants Elvin Fred ("Elvin") and Sylvia Fred ("Sylvia") move to strike Plaintiff/Counterdefendant's State of Nevada *ex rel.* Investigation Division of the Nevada State Police (Tri-Net Narcotics Task Force) ("Tri-Net") Motion to Extend its Deadline to Oppose Sylvia's Motion for Summary Judgment ("Motion to Extend" or "Mot. to Ext."). Sylvia and Elvin

alternatively oppose an extension until January 9, 2023, and instead asks the Court to provide a more reasonable, 7-day extension from the filing of this opposition to December 30, 2022. Sylvia and Elvin likewise move to strike Tri-Net's procedurally and substantively improper Motion to Stay ("Motion to Stay" or "Mot. to Stay") these proceedings. Alternatively, Sylvia and Elvin oppose Tri-Net's Motion because none of the four factors under NRAP 8(c) weigh in Tri-Net's favor. Finally, Sylvia Countermoves to Compel Production of Tri-Net's deficient discovery responses and asks this Court to instruct Tri-Net to respond by December 30, 2022, without objection or withholding of any privilege as those rights have been waived by Tri-Net's misconduct and failure to timely respond to discovery.

Sylvia and Elvin provide the attached declaration from undersigned counsel in support of its arguments and countermotion as required under FJDCR 3.7(b). Thus, unlike Tri-Net, Sylvia and Elvin satisfy FJCR 3.7(b)'s duty to meet confer and duty to provide a thorough explanation of those efforts prior to filing for relief.

This Motion is based on FJDCR 3.7, NRCP 1, NRCP 12, NRCP 33, NRCP 34, NRCP 37 and NRAP 8(c), the following memorandum of points and authorities, and the attached exhibits, Declaration of John A. Fortin, Esq., the pleadings and papers on file here, and any oral argument requested by the Court and such other matters as the Court may find appropriate.

Dated this 23rd day of December 2022.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For judicial economy and efficiency and because all of these issues are interconnected, Sylvia and Elvin bring an omnibus response to Tri-Net's requests and a countermotion to compel discovery responses. As explained below, Sylvia and Elvin ask this Court to strike Tri-Net's Motion to Stay and Tri-Net's Motion to Extend because both are procedurally and substantively defective. Tri-Net's conduct throughout these proceedings have been to hinder Sylvia and Elvin's ability to adequately respond to Tri-Net's claims—the agency entered a default judgment, evicted the family from the Home for 32 months, all while acknowledging and knowing where to provide service to both Elvin and Sylvia. Since the default judgment was set aside, Tri-Net's dilatory conduct—including these latest motions—have gotten *worse*. Since July 1, 2022, Tri-Net has failed to timely respond to *any* responsive pleading, motion, or discovery request. These Motions are simply more of the same.

Alternatively, Sylvia and Elvin oppose Tri-Net's Motion to Extend the Deadlines and to Stay. Tri-Net's requests asks this Court to provide it a "10 working day" extension. Sylvia and Elvin are unclear what exactly this means as we are engaged in litigation—not banking—but the request to extend Tri-Net's opposition to January 9, 2022, is a 31-day extension, more than twice the normal period of time to respond to a Motion. This is improper and not grounded in law. If the Court will not strike Tri-Net's improper Motion then it should narrow the extension to seven days following Sylvia's opposition and order Tri-Net to file its opposition on December 30, 2022.

As for Tri-Net's request for a blanket stay to these proceedings, a Real Party in Interest cannot rely on NRAP 8(c) to obtain a stay because a Petitioner brought a Petition for a Writ of Mandamus or Writ of Prohibition. Tri-Net does not explain how NRAP 8(c) applies here. Tri-Net does not present this Court with any precedent supporting its request. This is because Tri-Net's request is to effectuate its litigation strategy—delay these proceedings. This Court should not permit such conduct and should deny Tri-Net's request.

Tri-Net incorrectly claimed that the mere filing of a Motion to Stay proceedings "freezes" all deadlines. This is demonstrably wrong. Because Tri-Net failed to timely respond to Sylvia's

1 discovery, Tri-Net's counsel confirmed multiple time it would not respond to Sylvia's discovery
2 requests, Sylvia Countermoves to Compel. Sylvia asks this Court to order Tri-Net to respond to her
3 request by December 30, 2022. Sylvia similarly asks this Court to instruct Tri-Net to refrain from
4 including any objections or claims of privilege or withhold any documents or communications on
5 those grounds because Tri-Net's dilatory conduct waived such objections and privileges.

6 **II. PROCEDURAL AND FACTUAL HISTORY**

7 The factual predicate for these proceedings has been exhaustively detailed by Sylvia in her
8 recent motion. (*See, e.g.*, Sylvia Mot. for Summ. J., Dec. 8, 2022, on file.) The procedural history
9 of Elvin and Sylvia providing accommodation after accommodation and extension after extension
10 to Tri-Net is further detailed by undersigned counsel's declaration and the attached exhibits. (*See*
11 Ex. 1-12.) Indeed, between July 1, 2022, and today, Tri-Net has not filed a *single* responsive
12 pleading, motion, or discovery response in a timely manner as required under the Nevada Rules of
13 Civil Procedure or the First Judicial District Court Rules ("FJDCR"). (*See* Ex. 1, Fortin Decl. ¶¶ 7-
14 56 (detailing all of the deadlines Tri-Net failed to comply with).) It is for this reason that Sylvia and
15 Elvin declined to provide Tri-Net an extension, 24 hours before an opposition was due, and without
16 any explanation when Tri-Net called and requested a stipulation.

17 For example, Tri-Net has been dilatory in responding to pleadings. As Rule 12(a)(3)
18 provides 45 days for Tri-Net to respond, Tri-Net failed to meet this deadline for both Elvin and
19 Sylvia's counterclaims. (*See* Sylvia Verified Answer & Countercl., Jun. 28, 2022, on file; Tri-Net's
20 Answer, Sept. 16, 2022, on file (responding 80 days after Sylvia filed her counterclaims); Elvin Answer
21 & Countercl., Oct. 7, 2022, on file; Tri-Net's Answer, Dec. 2, 2022, on file (responding 56 days after
22 Elvin filed his counterclaims); *see also* Ex. 5 (emails detailing these delays and Elvin and Sylvia's intent
23 to take default).)

24 Tri-Net has likewise been dilatory in responding to discovery. For example, Sylvia served her
25 written discovery on November 15, 2022. (*See* Ex. 6.) As of the filing of this Motion, Tri-Net has still
26 not provided responses or objections to Sylvia's Request for Production of Document's and
27 Interrogatories. (*See* Fortin Decl. ¶ 53 (detailing Mr. Woodbury's request for an extension of time on
28 December 21); *see id.* ¶ 54 ("I asked Mr. Woodbury if Sylvia would obtain the already delinquent

1 responses to her discovery. Mr. Woodbury said no. I further asked for clarification on Tri-Net's
2 position regarding the Motion to Stay and whether he believed that the Motion was sufficient to not
3 provide responses. Mr. Woodbury said yes that was Tri-Net's position."); *see also* Ex. 7 B. Johnson
4 email to J. Fortin, Dec. 19, 2022, 12:54 PM ("It is Tri-Net's position that the motion to stay puts a
5 'freeze' on the pending discovery and other motions until the motion to stay has been decided.").

6 Tri-Net has likewise been dilatory in responding to motions. For example, when Elvin filed
7 his motion to dismiss that precipitated his Petition to the Nevada Supreme Court, it took 42 days for
8 Tri-Net to respond—three times the allotted period under the Rules. (*Compare* Elvin Mot. to
9 Dismiss, Jul. 15, 2022, on file *with* Tri-Net Opp'n, Aug. 26, 2022, on file.).) Now, Tri-Net is already
10 a day late in responding to Sylvia's Motion for Partial Summary Judgment. (*See* Sylvia Partial Mot.
11 for Summ. J., Dec. 8, 2022, on file.) Tri-Net is requesting a "10 working day" extension—which is
12 not even how the Rules count days¹—until January 9, 2022. (*See* Woodbury Decl. ¶ 15.) When the
13 Court actually counts the extension Tri-Net seeks—they ask for 31-days to respond to Sylvia's
14 Motion more than twice the normal 14-day time to respond.²

15 Of course, turnabout has *not* been fair play with Tri-Net. Tri-Net's Motion to Stay is based off
16 Elvin's Petition. (*See* Petition, Case No. 85590, Nov. 2, 2022, on file.) A Petition that had amicus
17 support. (*See* NACJ Mot. for Leave to File Amicus Br., Case No. 85590, Nov. 9, 2022, on file.) But
18 amicus was required to move for leave to file its brief because Tri-Net *refused* to stipulate to the filing
19 of the amicus brief. (*See* Ex. 3, J. Woodbury email to J. Fortin, Nov. 8, 2022, 3:34 PM ("I do not have
20
21

22 ¹ *See* NRCP 6(a)(1) ("When the period is stated in days or a longer unit of time: (A) exclude
23 the day of the event that triggered the period; (B) count *every day, including* intermediate Saturdays,
and legal holidays." (emphasis added)).

24 ² Tri-Net makes a hollow complaint that Sylvia's Motion is "23 pages long, more than double
25 the Court's normal maximum page limit for motions." (Tri-Net Mot. to Extend, at 4:22-23.) When
26 the Parties stipulated to extend all page limits under FJDCR 3.23 (*see* Stip. & Order, Nov. 18, 2022,
27 on file (agreeing to allow 25-page motions)), Tri-Net asked for "the caveat that the circumstances
28 may require different page limits, for example *a final MSJ that is longer than 25 pages.*" (Ex. 4, B.
Johnson email to J. Fortin, Nov. 8, 2022, 12:37 PM (emphasis added).) In other words, the very
situation present here—a motion for summary judgment—was filed under the Parties' agreed upon
(and in fact under) limit of 25 pages. Yet, Tri-Net complains that Sylvia's 23-page Motion has
incurred Tri-Net's need for an extension—despite acknowledging and preserving its own right to file
similar Motions *longer* than 25 pages.

1 authorization from Tri-Net to consent in advance to the filing of an amicus brief by NACJ.”.)
2 Demonstrating the validity and unreasonable denial of Elvin’s request to stipulate, the Nevada Supreme
3 Court granted NACJ’s Motion. *See* Order, Case No. 85590, Nov. 28, 2022, on file (granting NACJ’s
4 Motion). Tri-Net’s entire strategy is to take as much ground as possible and give as little as it can.
5 Hence, Sylvia and Elvin’s Home is completely destroyed because of Tri-Net.

6 Elvin and Sylvia’s denial of Tri-Net’s requested extension, a day before the deadline, and
7 without Tri-Net’s counsel providing any explanation as to why Tri-Net needed an extension, is hardly
8 unreasonable. (*See* Ex. 1, Fortin Decl. ¶ 58 (“Had I been told about *any* of the reasons Mr. Woodbury
9 needed an extension or had I been told *any* of the reasons Mr. Johnson need an extension more than 24
10 hours before the deadline, my response may have been different.”).) This Court should see through the
11 transparent attempt by Tri-Net to delay these proceedings through these motions.

12 **III. LEGAL ARGUMENT**

13 **A. Tri-Net Improperly Moved *Ex Parte* When it Should have Planned Properly and** 14 **Timely Responded to Sylvia’s Motion.**

15 Sylvia, Elvin, and undersigned counsel are truly sorry to hear about Mr. Woodbury’s loss.
16 But Mr. Woodbury’s father-in-law passed away in October—long before Sylvia filed her Motion on
17 December 8. (*See* Woodbury Decl. ¶¶ 10-11.) Indeed, over the last two weeks, Tri-Net and Sylvia’s
18 counsel have held several meet and confers and *none* of the issues raised in Tri-Net’s counsel’s
19 declaration have *ever* been presented to Sylvia and Elvin. (*See* Ex. 1, Fortin Decl. ¶ 58.) Indeed,
20 notably absent from Tri-Net’s counsel’s declaration is any discussion of the efforts, it took to secure
21 the Attorney General’s support—Sylvia of course served a copy of the Motion to the AG—in light
22 of the Carson City District Attorney’s struggles to staff and lead its office accordingly. (*See*
23 *generally* Woodbury Decl.) Nevada Supreme Court precedent is clear, litigation burdens and failure
24 to plan and prepare—a fatal characteristic of Tri-Net’s entire litigation strategy—does not constitute
25 an emergency nor does it constitute irreparable harm necessitating *Ex parte* relief. Striking Tri-Net’s
26 Motion to Extend is proper.

27 FJDCR 3.19(a) requires that for an *ex parte* motion to be permitted, the party must “state
28 facts that (1) an emergency that justifies the court proceeding without notice and an opportunity to

1 be heard.” This of course is a high bar as one of the fundamental tenants of the American legal
2 system is providing notice and opportunity to be heard to an opponent. As the Nevada Supreme
3 Court detailed, “Ex parte motions, that is, motions without notice . . . are frequently permissible in
4 procedural matters, and also in situations and under circumstances of *emergency*, as in the case of
5 an application for an injunction to prevent *irreparable injury* which would result from delay, and
6 where there is no plain, speedy and adequate remedy at law.” *Dangberg Holdings Nevada, LLC v.*
7 *Douglas Cnty.*, 115 Nev. 129, 146 978 P.2d 311, 321 (1999) (cleaned up and emphasis added).

8 “The district court has considerable latitude in managing the parties’ motion practice and
9 enforcing local rules that place parameters on briefing.”³ *See Christian v. Mattel, Inc.*, 286 F.3d
10 1118, 1129 (9th Cir. 2002); *MDB Trucking, LLC v. Versa Prods. Co., Inc.*, 136 Nev. 626, 630 475
11 P.3d 397, 403 (2020) (“[S]eparate and apart from the Rules of Civil Procedure, courts have inherent
12 authority to manage the judicial process so as to achieve the fair, orderly, and expeditious disposition
13 of cases. . . .”). NRCPP 12(f) provides that this Court may “order stricken from any pleading any
14 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”⁴ Although
15 NRCPP 12(f) references “pleadings,” the federal courts have relied upon the analogous FRCP 12(f)
16 to strike documents that are not pleadings. *See, e.g., Ctr. For Biological Diversity v. U.S. Fish &*
17 *Wildlife Service*, 450 F.3d 930, 944 (9th Cir. 2006) (concluding that the district court did not abuse
18 its discretion when it struck extrinsic document because the document was offered for an
19

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

23 ⁴ Requiring strict compliance with the Rules is fair and comports with Tri-Net’s own litigation
24 conduct and the demands it tried to (incorrectly) impose on Sylvia while she litigated pro se. (*See*
25 *Mot. to Strike*, Oct. 18, 2019, on file (moving to strike Sylvia’s Motion based on Tri-Net’s incorrect
26 contention that Sylvia did not properly serve Tri-Net); *see also* *Not. of Withdrawal of Mot. to Strike*,
27 Nov. 1, 2019, on file). Just as the Rules applied to Sylvia as a pro se litigant, Tri-Net as a government
28 entity must likewise strictly comply with the Rules or suffer the consequences of bringing an
improper motion. *See Rodriguez v. Fiesta Palms*, 428 P.3d 255, 258-59 (Nev. 2018) (“[I]n general,
the rules of civil procedure cannot be applied differently merely because a party not learned in the
law is acting pro se. While district courts should assist pro se litigants as much as reasonably
possible, a pro se litigant cannot use his alleged ignorance as a shield to protect him from the
consequences of failing to comply with basic procedural requirements.” (cleaned up)).

1 impermissible purpose); *Hambleton Bros. Lumber Co. v. Balkin Enterp., Inc.*, 397 F.3d 1217, 1226
2 (9th Cir. 2005) (affirming a district court’s decision to strike an errata notice and witness’ declaration
3 where the filing of those papers did not comport with procedural rules).

4 Again, undersigned counsel, Elvin, and Sylvia empathize with Tri-Net’s counsel’s loss—but
5 going to a funeral on the day a Motion is due after waiting until 24 hours before the Motion is due
6 to request an extension, and never informing counsel of any of the reasons it needed an extension—
7 *does not* demonstrate facts sufficient to show irreparable harm. (*See* Ex. 1, Fortin Decl. ¶¶ 53-56
8 (detailing Mr. Woodbury’s meet and confer efforts on December 21, 2022).) This is even more true,
9 considering the broader context of the parties’ engagement over the past two weeks where such
10 stipulation to extend the deadlines could have been requested—much like how Tri-Net incessantly
11 asked to stipulate to stay these proceedings improperly. (*See id.* ¶¶ 30-52.) The only other facts Tri-
12 Net attempts to claim that an emergency exists is providing facts and circumstances that show Tri-
13 Net’s counsel is a lawyer and like most lawyers—is busy. (*See* Woodbury Decl. ¶¶ 4-8.) However,
14 claiming counsel is very busy is likewise not an emergency—but instead is very typical for lawyers
15 engaged in litigation.⁵ *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39
16 (2004) (requiring counsel and litigants to endure the burdens of litigation does not constitute
17 irreparable harm).

18 Case and point that Tri-Net is not properly litigating this matter, Elvin filed a Joinder to
19 Sylvia’s Motion and Sylvia filed a Motion to Consolidate the Tax Proceeding and these proceedings
20 for judicial economy and efficiency purposes. (*See* Elvin Joinder and Mot., Dec. 15, 2022, on file;
21

22
23 ⁵ In the context of excusable neglect when a party misses a deadline, several Federal Circuit
24 Court of Appeals sum up Tri-Net’s argument best. *See, e.g., Dean v. Chicago Transit Auth.*, 118 F.
25 App’x. 993, 996 (7th Cir. 2005) (“[S]olo practitioner . . . [with a] busy schedule, however, does not
26 rise to the level of excusable neglect.”); *Stonkus v. City of Brockton Sch. Dep’t*, 322 F.3d 97, 101 (1st
27 Cir. 2003) (“[The] fact that appellant’s attorney was ‘preoccupied’ with other matters [does] not
28 constitute excusable neglect. . . . Most attorneys are busy most of the time and they must organize
their work so as to be able to meet the time requirements of matters they are handling or suffer the
consequences.”); *McLaughlin v. City of La Grange*, 662 F.2d 1385, 1387 (11th Cir. 1981)
 (“[Appellants] assert as ‘excusable neglect’ only that appellants’ counsel is a solo practitioner and
was engaged in the preparation of other cases. The fact that counsel has a busy practice does not
establish excusable neglect.”). The same logic must apply to whether there is an emergency present
here because Tri-Net’s counsel had to attend other matters.

1 Sylvia Mot. to Consolidate, Dec. 15, 2022, on file.) Tri-Net acknowledged it received both of these
2 filings. (See Tri-Net’s Mot. to Stay at 5.) Under FJDCR 3.8, Tri-Net has 14 days to respond to both
3 of these Motions, or until December 29, 2022. Yet, Tri-Net did not similarly request an extension
4 of the deadlines for those motions—and Sylvia and Elvin will not provide one—in Tri-Net’s *Ex*
5 *Parte* request. Had Tri-Net truly needed an extension for “10 working days” or 31 days it would
6 have moved to extend all of the deadlines, for all of the Motions. Put another way, Tri-Net’s request
7 is just a continuation of its litigation strategy—delay these proceedings.

8 Providing further preponderant proof that Tri-Net’s strategy is one of delay, for the last six
9 months, Tri-Net has not timely responded to a *single* deadline. Tri-Net is made up of the Nevada
10 State Police, the Carson City Sheriff’s Office, and the Douglas County Sheriff’s Office. This in turn
11 results in Tri-Net having the ability to pull from the Nevada Attorney General’s Office, the Carson
12 City District Attorney’s Office, and the Douglas County District Attorney’s Office to complete all
13 of its litigation obligations in a timely manner. Indeed, many of the Motions—including the Motion
14 Tri-Net seeks an extension from—was served on the Attorney general. Sylvia and Elvin on the other
15 hand are being represented pro bono, by one attorney, with some assistance from other attorneys and
16 staff at pro bono counsel’s law firm. (See Statement of Legal Aid for Sylvia Fred, Dec. 10, 2021,
17 on file; Statement of Legal Aid for Elvin Fred, Jun. 27, 2022, on file.) The idea that the unlimited
18 budgets of these two municipalities and the State are irreparably harmed or even *burdened* by this
19 litigation is absurd as compared to the pro bono representation the undersigned counsel is providing.

20 Accordingly, because Tri-Net’s Motion to Extend is improper and brought to further delay
21 these proceedings, Sylvia asks this Court to strike Tri-Net’s Motion to Extend. Alternatively, Tri-
22 Net’s Motion to Extend is overbroad and Sylvia and Elvin request this Court narrows the extension
23 of time from “10 working days” or 31 days from Sylvia filed her Motion—to a seven-day extension
24 from Sylvia and Elvin’s Opposition to December 30, 2022. This length of extension is fair and
25 reasonable and one that Sylvia and Elvin would have provided to Tri-Net had its counsel informed
26 Sylvia and Elvin of the funeral he had to attend.

27 B. This Court Should Likewise Strike Tri-Net’s Improper Motion to Stay.

28 The Nevada Supreme Court has not yet ordered Tri-Net to answer Elvin’s Petition. This

1 Court has a duty “to decide actual controversies by a judgment which can be carried into effect.”
2 *Univ. Sys. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) (cleaned up).
3 Put another way, Tri-Net’s entire premise for a stay is centered on obtaining an advisory opinion
4 from this Court. *See Personhood Nevada v. Bristol*, 126 Nev. 559, 602, 245 P.3d 572, 574 (2010)
5 (stating that the duty of Nevada courts is to resolve actual controversies and to not render advisory
6 opinions). But even if an answer is ordered, the parties complete briefing, and the Nevada Supreme
7 Court eventually decides Elvin’s Petition, that decision will have *zero* effect on Elvin and Sylvia’s
8 Counterclaims. As detailed below, Tri-Net’s Motion is procedurally deficient, it is substantively
9 unsound, and there is no Rule, law, or precedent available to award Tri-Net a stay. At most, staying
10 the civil forfeiture proceedings should occur—but Sylvia and Elvin disagree that that is necessary.

11 As detailed above, NRCP 12(f), provides this Court authority to strike Tri-Net’s request. *See*
12 *Christian*, 286 F.3d at 1129 (explaining “district court has considerable latitude in managing the
13 parties’ motion practice and enforcing local rules that place parameters on briefing”). Tri-Net failed
14 to comply with the local Rules, the agency attempts to rely on a Rule of Appellate Procedure that is
15 meant for Petitioners/Appellants—not Real Parties in Interest/Appellees—and it failed to provide
16 any analogous precedent that supports its request. This is because its request is improper.

17 To be sure, “[t]he power to stay proceedings is incidental to the power inherent in every
18 court to control the disposition of the causes on its docket with economy of time and effort for itself,
19 for counsel, and for litigants. How this can best be done calls for the exercise of judgment which
20 must weigh competing interest and maintain an even balance.” *Maheu v. Eighth Jud. Dist. Ct.*, 89
21 Nev. 214, 217, 510 P.2d 627 (1973) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254-55
22 (1936)). The party requesting a stay bears the burden and “must make out a clear case of hardship
23 or inequity in being required to go forward, if there is even a fair possibility that the stay for which
24 he prays for will work damage to someone else.” *Landis*, 299 U.S. at 255; *Aspen Fin. Services v.*
25 *Eighth Jud. Dist. Ct.*, 128 Nev. 635, 642, 289 P.3d 201, 206 (2012) (“Determining whether to grant
26 such a stay is a fact-intensive, case-by-case determination that requires a delicate balancing of the
27 competing interests in the case.” (cleaned up)). To that end, “[t]here is a strong presumption in favor
28 of discovery, and it is the party who moves for a stay that bears the burden of overcoming this

presumption.” *Aspen*, 128 Nev. at 642, 289 P.3d at 206 (cleaned up).

1. *Tri-Net's Motion is procedurally improper.*

Tri-Net failed to comply with FJDCR 3.7(b). Tri-Net’s Motion is a transparent attempt to avoid having to do what every other litigant must do—engage in discovery, respond to motions, and proceed under the deadlines the Rules impose in order “to secure the just, speedy and inexpensive determination of every action and proceeding.” NRCP 1. As explained above, Tri-Net’s Motion to Extend is simply an extension of and implementation of Tri-Net’s litigation strategy.

The local Rules require that “[b]efore filing *any motion*, except as provided below in this subsection, the party *must* confer with the opposing attorneys or self-represented parties and make a good faith effort . . . to resolve the issues raised in the motion. The first paragraph of *any motion*, except as provided below in this subsection, *must* be a certification that the attorneys or parties filing the motion have complied in good faith with this rule.” FJDCR 3.7(b) (emphasis added); *see also id.* (“This rule does not apply to motions made under NRS 13.050; NRCP 11(c), 12(b)-(d), 41, 50, 53(b)(3), 54(b)(3), 54(d), 56, 59, or under any statute or rule that allows a motion for attorney fees, costs, or both.”); *see Pasillas v. HSBC Bank USA*, 255 P.3d 1281 (Nev. 2011) (“[S]hall is mandatory . . . [a]nd as it is used here, ‘must’ is a synonym of ‘shall.’” (cleaned up)). In other words, failure to comply with the FJDCR 3.7(b) results in a fugitive document that must be struck.

Here, Tri-Net moved to stay these proceedings under NRAP 8(c)—and in fact seeks a protective order that “freezes” all discovery under NRCP 37. NRAP 8(c) and NRCP 37 are not included within the list of Rules that is exempt from the local Rules’ certification requirements. *See* FJDCR 3.7(b). Tri-Net failed to provide this Court with any explanation of the efforts it took with opposing counsel so that the Court could understand the reasons why Sylvia and Elvin disagreed on stipulating to stay these proceedings. (*See generally* Tri-Net Motion to Stay.). Tri-Net chose not to provide a declaration and the communication because that would expose the fata flaws in Tri-Net’s request. (*See* Ex. 1-12.)

Indeed, Tri-Net failed to understand that its Motion to Stay standing alone did not in fact suspend, delay, or alter *any* deadline by its mere filing. *See PlayUp, Inc. v. Mintas*, No. 2:21-CV-02129-GMN-NJK, 2020 WL 8189287, at *3 n.7 (D. Nev. Sept. 29, 2022) (“It is axiomatic that the

1 act of filing a motion to stay does not have any effect on the parties' obligations to proceed; only an
2 order granting such relief imposes a stay."). Tri-Net instead claims, "that the motion to stay puts a
3 'freeze' on the pending discovery and other motions until the motion to stay has been decided."⁶
4 (Ex. 7, B. Johnson email to J. Fortin, Dec. 19, 2022, 12:54 PM.) Hardly. As the Federal District
5 Court in Delaware summed up

6 Defendant's argument assumes that the moment it has filed a motion to stay discovery
7 on the damages issue, it need no longer obey basic discovery rules. Defendant is in
8 effect granting itself a stay of discovery. Simple logic teaches that defendant has put
the presumption on the wrong side: unless and until it is granted a stay, defendant
should be required to conduct discovery as if no motion had been filed at all.

9 *Willemijn Houdstermaatschaapji BV v. Appolo Comp. Inc.*, 707 F. Supp. 1429, 1441 (D. Del. 1989).
10 But Tri-Net's Motion provides none of the context, discussion, or the reasons why Sylvia and Elvin
11 refused to agree to a stay—all in violation of the local Rules. (*See generally* Tri-Net's Mot.)

12 Accordingly, because Tri-Net failed to comply with the Rules of this Court, it is in fact
13 disguising its stay request as a request for blanket protective order. Tri-Net's Motion should be
14 struck.

15 2. *Tri-Net's Motion is fatally flawed substantively.*

16 NRAP 8(c) does not provide Tri-Net authority to obtain a stay because Elvin petitioned the
17 Nevada Supreme Court for relief from this Court's decision. Tri-Net knows this. Sylvia and Elvin
18 explained this to Tri-Net on multiple occasions. (*See* Ex. 1-12.) Yet, Tri-Net improperly moved
19 under NRAP 8(c) anyway for a blanket stay to this litigation.

20 NRAP 8(c) provides

21 In deciding whether to issue a stay or injunction, the Supreme Court or Court of Appeals will

22
23 ⁶ Even if we were in federal court, blanket stays to discovery are disfavored. *Tradebay, LLC*
24 *v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011) ("In evaluating the propriety of an order staying
25 or limiting discovery while a dispositive motion is pending, this court considers the goal of Rule of
26 the Federal Rules of Civil Procedure which directs that the Rules shall 'be construed and
27 administered to secure the just, speedy, and inexpensive determination of every action.'") But Tri-
28 Net *never* moved to dismiss any of Sylvia or Elvin's Counterclaims. Instead, Tri-Net answered, both
Sylvia and Elvin engaged in early case conferences with Tri-Net, and discovery opened for Sylvia
and will open for Elvin on January 4, 2022. (*See, e.g.,* Tri-Net's Answer to Sylvia's Countercl., Sept.
16, 2022, on file; Tri-Net's Answer to Elvin's Countercl., Oct. 7, 2022, on file; Joint Case Conference
Report, Dec. 5, 2022, on file.) Thus, discovery is open and should remain unimpeded. *See* NRCP
1.

generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether *appellant/petitioner* will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether *respondent/real party in interest* will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether *appellant/petitioner* is likely to prevail on the merits in the appeal or writ petition.

(Emphasis added). It is anathema for Tri-Net to seek a blanket stay to these proceedings because the plain language of NRAP 8(c) provides only Elvin—as the Petitioner—the authority to rely on NRAP 8(c) to obtain a stay. *See McKay v. Bd. of Cty. Comm'rs*, 103 Nev.490, 492, 746 P.2d 124, 125 (1987) (“[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done.”). Tri-Net’s request for a stay in fact asks this Court to add words and rearrange several of the words to fit Tri-Net’s needs. *See Emmert Indus. Corp. v. Artisan Assocs. Inc.*, 495 F.3d 982, 987 (9th Cir. 2007) (“[W]here a statute is complete and unambiguous on its face, additional terms should not be read into the statute.”). To be sure, neither Sylvia nor Elvin wants to stay these proceedings. They each seek to vindicate their rights and prove that forfeiture of their Home is improper as well as to remedy Tri-Net’s complete destruction of their Home. They want this relief now—hence why Sylvia propounded discovery and both Sylvia and Elvin have already moved for summary judgment on some of their counterclaims, and Elvin intends to make his initial NRCP 16.1 disclosures and propound discovery requests on January 4, 2023, when discovery opens for Elvin.

If this Court is not convinced by the plain language of NRAP 8(c), the case law⁷ likewise supports the conclusion that a Real Party in Interest/Appellee cannot rely on NRAP 8(c) to stay proceedings. Indeed, Sylvia and Elvin cannot find an analogous case in which a Real Party in Interest/Appellee moved to stay proceedings pending a writ or appeal by a Petitioner/Appellant. This is because *all* of the Nevada Supreme Court’s reported cases evaluating NRAP 8(c) involve a

⁷ *See, e.g., TRP Fund v. PHH Mortgage Corp.*, 138 Nev., Adv. Op. 21, 506 P.3d 1056 (2022) (appellant moving for a stay); *State v. Robles-Nieves*, 129 Nev. 537, 306 P.3d 399 (2013) (appellant moving for a stay); *Aspen Financial Services v. Eighth Jud. Dist. Ct.*, 128 Nev. 635, 289 P.3d 201 (2012) (petitioner moving for a stay); *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005) (appellant moving for a stay); *Mikohn*, 120 Nev. at 89 P.3d at 36 (appellant moving for a stay); *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982 (2000) (petitioner moving for a stay).

1 Petitioner/Appellant seeking relief as the plain language provides.

2 Tri-Net's brazen and improper Motion to Stay does not explain or distinguish its novel
3 request as a Real Party in Interest seeking to stay these proceedings based on Elvin's Petition. (*See*
4 *generally* Tri-Net Mot.) None of the cases Tri-Net cited are analogous to Tri-Net's request. (*See*
5 Tri-Net Mot. at 5-8 (relying on *Maheu*, *Mikohn*, *Robles-Nieves*.) Because Tri-Net failed to
6 adequately argue or support its novel interpretation of the Rules with cogent authority, this Court
7 need not consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d
8 1280, 1288 (2006). Thus, striking Tri-Net's improper Motion to stay is proper. *See MDB Trucking*,
9 136 Nev. at 630 475 P.3d at 403.

10 Quite simply, there is no basis under *any* Rule, Nevada law, or precedent that supports Tri-
11 Net's request for a blanket stay of discovery that "freezes" everything in this matter. (Ex. 7, B.
12 Johnson email to J. Fortin, Dec. 19, 2022, 12:54 PM.) Tri-Net's own statements confirm that this
13 Motion was brought so that Tri-Net can avoid its discovery and litigation obligations, all while
14 implementing its true litigation strategy—delay. Because Tri-Net's motion is procedurally and
15 substantively deficient, Sylvia and Elvin ask this Court strike Tri-Net's Motion.⁸

16 C. Alternatively, Sylvia and Elvin Oppose Tri-Net's Stay Request and Even if this
17 Court Applies the NRAP 8(c) Four-Factor Test—Denial of a Stay is Proper.

18 As explained above, NRAP 8(c) cannot be the basis for obtaining a blanket stay to these
19 proceedings. But even if this Court weighs the four factors—none of these factors weigh in Tri-
20 Net's favor.

21 In certain circumstances, statutory enactments may shift the weight of NRAP 8(c). *See*
22

23 ⁸ Certain precedents enunciated by the Nevada Supreme Court imply that once a party
24 understands that an action has been brought or maintained for an improper purpose, the party must
25 stand on its rights in order to recoup fees and costs under NRS 18.010(2)(b) when it eventually
26 prevails. *See Schulte v. Dagger Properties I, LLC*, Case No. 75857, 2019 WL 5680914, at *1 (Oct.
27 31, 2019, Order Reversing and Remanding); NRAP 36(c). Sylvia and Elvin preserve their right to
28 challenge Tri-Net's maintaining this action through appeal based on standing grounds it knew were
incorrect. However, it has become clear through Tri-Net's litigation conduct by filing these frivolous
and improper Motions that Tri-Net is maintaining this civil forfeiture proceeding to simply harass
the Freds and delay their complete enjoyment of their property. Thus, Sylvia and Elvin put Tri-Net
and this Court on notice of their right to obtain attorney fees and costs under NRS 18.010(2)(b) from
this day forward.

1 *Robles-Nieves*, 129 Nev. at 542, 306 P.3d 403 (“Our stay analysis in the context of an appeal from
2 an order granting a motion to suppress evidence necessarily reflects the interlocutory nature of the
3 appeal and concerns about delay that are implicit in NRS 177.015(2). Accordingly, the first and
4 third factors take on added significance in our stay analysis.”); *Mikohn*, 120 Nev. at 253, 89 P.3d at
5 39 (“Given the interlocutory nature of an appeal seeking to compel arbitration, and the purpose of
6 arbitration, the first stay factor takes on added significance.”). This shift in balance is simple and is
7 driven by the Legislature’s policy choice to provide litigants an opportunity for an interlocutory
8 appeal. There is no Legislative policy shift present with Tri-Net’s request for a stay based on Elvin’s
9 Petition.

10 In fact, the very provisions of Nevada law that Tri-Net is relying on to seek a forfeiture of
11 Sylvia and Elvin’s Home *cuts against* granting any stay. For example, “the district court *shall*
12 proceed as soon as practicable to a trial and determination of the matter. A proceeding for forfeiture
13 is entitled to priority over other civil actions which are not otherwise entitled to priority.” NRS
14 179.1173(1) (emphasis added); *see also Pasillas*, 255 P.3d at 1281 (“[S]hall is mandatory.”). By
15 granting a stay to these proceedings, this Court would in fact frustrate and disregard the Legislature’s
16 policy and command to expeditiously resolve forfeiture proceedings.

17 Thus, while the discretion to grant a stay is inherently within the power of this Court and this
18 Court’s interests necessarily involves “convenience and efficiency” which is “of course deserving
19 of substantial weight,” the Nevada Supreme Court cautioned that “convenience of the courts *is best*
20 *served* when motions to stay proceedings are *discouraged*.” *Aspen*, 128 Nev. at 649, 289 P.3d at
21 210 (cleaned up and emphasis added). This Court should heed the Nevada Supreme Court’s
22 direction and deny Tri-Net’s Motion to Stay.

23 1. *The object of Elvin’s Petition will not be defeated*

24 Under the first prong of NRAP 8(c), courts should “define the object of an appeal” or petition.
25 *Mikohn*, 120 Nev. at 252, 89 P.3d at 38. To recap, Elvin petitioned the Nevada Supreme Court to
26 correct this Court’s erroneous conclusion that Elvin’s double jeopardy rights are not violated by this
27 second, successive proceeding seeking to punish Elvin again for the Crimes he is already
28 incarcerated for. (*See* Petition, Case No. 85590, Nov. 2, 2022, on file.) In other words, Elvin

1 challenges the jurisdiction of this Court to consider forfeiting Elvin and Sylvia's Home. (*See id.* at
2 5-6.) But the object of Elvin's Petition will not be affected by the district court proceedings
3 continuing. Especially if Elvin does not prevail—or the Nevada Supreme Court simply denies
4 discretionary review—nothing will change in these proceedings. This is because Elvin retains his
5 appellate rights to raise his double jeopardy argument following trial. *See Archon Corp. v. Eighth*
6 *Jud. Dist. Ct.*, 133 Nev. 816, 819, 407 P.3d 702, 706 (2017) ("Writ relief is not a substitute for an
7 appeal"). In fact, had Elvin relied on NRAP 8(c) and moved to stay these proceedings—Nevada
8 precedent would not support such a request. *See Hansen*, 116 Nev. at 658, 6 P.3d at 986 (explaining
9 that even when a party challenges a court's jurisdiction, the object of the writ petition "would not
10 amount to a waiver of its challenge" and "the first stay factor does not suggest that a stay is
11 warranted"). Thus, it is thoroughly confusing why Tri-Net should be awarded a stay for Elvin's
12 Petition when Elvin would not be awarded a stay if he asked for one.

13 In Tri-Net's Motion, the agency incorrectly attempts to expand Elvin's as-applied challenge
14 to the constitutionality of NRS 453.301 to a much broader argument not raised—to "determine
15 whether civil forfeiture proceedings are constitutional in Nevada." (Tri-Net's Mot. at 7:21-22.) A
16 cursory review of Elvin's Petition belies this characterization of the object of Elvin's challenge. (*See*
17 *Petition*, Case No. 85590.) Additionally, Tri-Net clearly does not understand the liability and
18 litigation risks it faces by Sylvia and Elvin's counterclaims when it argues "the legality and merits
19 of the forfeiture action must be determined as a threshold matter, because depending on the outcome
20 the counterclaims may become moot."⁹ (*Id.* at 6:25-7:1-2.) Elvin and Sylvia's Counterclaims arise
21 out of and are proximately caused by Tri-Net's misconduct in the forfeiture proceeding—but their
22

23 ⁹ Tri-Net's reliance on NRS 179.1169(1) to claim that "if the forfeiture action is successful,
24 then, by law, 'all right, title, and interest' in the [Home]" vests to Tri-Net and therefore "the forfeiture
25 action must be defeated by the counterclaimants" is a particularly draconian (and incorrect) reading
26 of the law. (Tri-Net Mot. at 6:14-18.) Sylvia has already addressed the unconstitutionality of this
27 provision under the Due Process clause. (*See Sylvia Mot. for Summ. J.* at 13-24, Dec. 8, 2022, on
28 file.) But the idea that NRS 179.1169 negates any claims of trespass, conversion, waste, along with
Sylvia and Elvin's constitutional claims is belied by the text of NRS 179.1165 which limits the ability
to *seize* property without process. Put another way, Tri-Net cannot violate the property and
constitutional rights of individuals pending a forfeiture proceeding simply because it *may* obtain a
forfeiture of property sometime in the future.

Counterclaims are not dependent on and require that they prevail in the forfeiture proceeding. While Sylvia and Elvin should not be required to explain all of their liability theories to demonstrate Tri-Net's misunderstanding—Sylvia and Elvin provide a brief primer to show that mootness is not at issue here. For example, Sylvia and Elvin have viable constitutional claims regardless of the outcome of the forfeiture proceeding. *See, e.g., United States v. Real Prop. Located at Incline Village*, 976 F. Supp. 1327, 1358 (D. Nev. 1997) ("The return-of-rents remedy vindicates the Due Process rights of an owner of real property to pre-seizure notice and hearing and as such is wholly *unconnected with the merits* of the underlying forfeiture action." (emphasis added)); *see also Baker v. City of McKinney, Texas*, ___ F.Supp.3d ___, ___, 2022 WL 2068257, at *12 (E.D. Tex. Apr. 29, 2022) ("Thus, the Court does not find that the total destruction of private property pursuant to the government's exercise of its police power is categorically non-compensable under the Fifth Amendment."). Sylvia and Elvin likewise have viable common law tort claims under NRS Chapter 41 regardless of the outcome of the forfeiture proceedings. *See Bedi v. McMullan*, 160 Cal. App. 3d 272, 275, 206 Cal. Rptr. 578.580 (Cal. Ct. App. 1984) ("A default judgment that has been set aside will not support a writ of execution, and it is well settled a party is liable in tort if he executes a void judgment against the property of another." (cleaned up)).

Tri-Net's claims that Sylvia and Elvin's Counterclaims will be moot are categorically incorrect—much like the Motions Tri-Net filed. In other words, even in the highly unlikely event that Tri-Net can somehow muster sufficient facts and convince a jury that forfeiture of the Home is proper, Sylvia and Elvin's Counterclaims will similarly need to be resolved, and the damages they are owed determined because their claims will not be mooted by Tri-Net forfeiting the Home. Denial of Tri-Net's improper stay request is therefore proper because the object of Elvin's Petition will not be affected by these proceedings continuing.

2. *A stay will inflict significant irreparable harm on Elvin and Sylvia.*

Tri-Net's one-sentence conclusion that because Sylvia and Elvin possess the Home, they will not suffer any harm is indicative of Tri-Net's cavalier attitude towards individual liberty and property rights it has demonstrated time and again throughout these proceedings. The harms Sylvia and Elvin face are real, significant, and proximately caused by Tri-Net.

1 “[I]n certain cases, a party may face actual irreparable harm, and in such cases the likelihood
2 of irreparable harm should be considered in the stay analysis.” *Mikohn*, 120 Nev. at 253, 89 P.3d at
3 39. Well-established Nevada precedent supports Sylvia and Elvin’s irreparable harm argument. *See*
4 *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987) (noting that, with respect to
5 irreparable harm, this is harm for which compensatory damages would be inadequate, such as
6 disputes over property because “real property is unique”).

7 a. *Sylvia and Elvin cannot enjoy their Home.*

8 The United States Supreme Court explained “the seizure of real property deprives an
9 individual of valuable rights of ownership, including the right of sale, the right of occupancy, the
10 right to unrestricted use and enjoyment and the right to receive rents.” *United States v. James Daniel*
11 *Good Real Prop.*, 510 U.S. 43, 50 (1993); *Levingston v. Washoe Cnty.*, 112 Nev. 479, 484, 916 P.2d
12 163, 167 (1996) (“The seizure of real property affects the fundamental interest of our citizenry in
13 maintaining control over their residence and remaining free from government interference.”).

14 Tri-Net is correct that Sylvia and Elvin are in possession of the Home. (*See* Tri-Net Mot. to
15 Stay at 8:10-12.) But the Home is destroyed and completely uninhabitable. (*See* Ex. 15 of Sylvia’s
16 App’x of Mot. for Summ. J., Dec. 8, 2022, on file.) Further, Tri-Net’s lis pendens remains and it
17 clouds title on the Home. Thus, between the destruction of their home and the cloud on their title—
18 Sylvia and Elvin cannot enjoy their home because it remains, to this day, seized by Tri-Net. Indeed,
19 they lack an ability to use the property as collateral to secure funds to fix anything that Tri-Net
20 destroyed. *See* Lisa Knepper et al., *POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE*
21 (3d ed. 2020) (explaining that in many forfeiture cases law enforcement uses the oppressive
22 forfeiture system in a way that forces claimants to “throw[] good money after bad”). To be sure,
23 Sylvia and Elvin are confident that the jury will not award Tri-Net the Home—but with Tri-Net’s
24 endless delays and dilatory conduct, resolution of the forfeiture proceeding might not occur until
25 2024 or even later.

26 Nevada precedent is clear, even the temporary loss of property rights presents irreparable
27 harm. *See Levingston*, 112 Nev. at 485, 916 P.2d at 167 (“In the event a district court refuses to
28 grant a requested forfeiture after months of property deprivation, that determination does not cure

1 the temporary deprivation of the property that could have been prevented by an earlier hearing.”);
2 *Dixon*, 103 Nev. at 416, 742 P.2d at 1030 (“Because real property and its attributes are considered
3 unique and loss of real property generally results in irreparable harm, the district court erred in
4 holding otherwise.”). This Court should therefore conclude Sylvia and Elvin face irreparable harm.

5 b. *Sylvia and Elvin are entitled to the discovery they seek.*

6 “Plaintiffs to civil suits have an obvious interest in proceeding expeditiously.” *Aspen*, 128
7 Nev. at 646, 289 P.3d at 208 (cleaned up). “The delay resulting from a stay may also duly frustrate
8 a plaintiff’s ability to put on an effective case because as time elapses, witnesses become unavailable,
9 memories of conversations and dates fade, and documents can be lost or destroyed.” *Id.* (cleaned
10 up). This is especially true considering some documents are already unattainable. (See Sylvia’s
11 Mot. for Summary J. at 21:8-18 (explaining that documents from Moneygram and Sylvia’s bank
12 have not been retained because the home purchase was so long ago).) The further loss of valuable
13 documents and communications in Tri-Net’s possession through a stay represents real irreparable
14 harm.

15 c. *The public will be harmed by further delaying these proceedings*

16 “[T]he effect of a stay on the public—is perhaps the most important factor in the equation,
17 albeit the one hardest to define. There is a presumption that the public has an interest in prompt
18 resolution of civil cases.” *Aspen*, 128 Nev. at 650, 289 P.3d at 211 (cleaned up). Indeed, and
19 “[c]learly, the public has a significant interest in a system that encourages individuals to come to
20 court for the settlement of their disputes.” *Id.* at 651, 289 P.3d at 211 (cleaned up).

21 Tri-Net never paid the property taxes, the utilities, nor the electric bills while the Agency
22 possessed the Home from July 2019 through March 2022. (See *Fred v. Rasor et al.*, Case No. 21
23 RP 00005 1B May 24, 2021, on file (detailing the tax delinquency proceeding and Tri-Net’s failure
24 to pay the utilities).) The property tax bill Tri-Net owes has now ballooned to \$17,373.82. (See Ex.
25 13, Property Tax Information, Dec. 19, 2022.) With further delays in this litigation, the public—
26 including the Carson City School District—will continue to suffer. (See also Sylvia’s Mot. to
27 Consolidate, Dec. 12, 2022, on file.) In short, Sylvia and Elvin face significant irreparable harm if
28

1 a stay is entered.¹⁰ Denial of Tri-Net's improper motion for a stay is warranted.

2 3. *Tri-Net will not suffer any harm if this Court denies a stay.*

3 Tri-Net raised the same tired and repeatedly denied arguments that proceeding through
4 litigation pending the outcome of a Petition to the Nevada Supreme Court will be burdensome and
5 costly. The Nevada Supreme Court resoundingly rejected such claims of irreparable harm years ago.
6 This Court should too. As such, because Tri-Net cannot present any valid argument that it will be
7 prejudiced, denial of its improper motion to stay is appropriate.

8 As the Supreme Court examined the claims in *Hansen*, the petitioner there "argue[d] that it
9 should not be required to participate 'needlessly' in the expense of length and time-consuming
10 discovery, trial preparation, and trial." 116 Nev. at 658, 6 P.3d at 986-87. The *Hansen* Court
11 rebuffed and explained "[s]uch litigation expenses while potentially substantial, are neither
12 *irreparable* nor *serious*." *Id.* (emphasis added). As the Nevada Supreme Court explained, "mere
13 injuries, however substantial, in terms of money, time and energy necessarily expended in the
14 absence of a stay are not enough to show irreparable harm."¹¹ *Id.* at 658, 6 P.3d at 987 (cleaned up).

15 Tri-Net avers that "[w]ithout knowing the ultimate ruling on the Petition or the parameters
16 of that ultimate ruling, [Tri-Net's] ability to make sound procedural and strategic decisions in regard
17

18
19 ¹⁰ In addition to all of the above reasons why a stay should not be provided to Tri-Net, Sylvia
20 and Elvin seek vindication of their constitutional rights through their counterclaims. (*See* Sylvia
21 Verified Answer & Countercl. Jun. 28, 2022, on file; Elvin Verified Answer & Countercl., Oct. 7,
22 2022, on file.) Because their individual liberty and constitutional rights continue to be violated every
day the forfeiture proceedings continue, those continuing constitutional violations constitute
"irreparable harm" because these violations "may be difficult or impossible to remedy through
money damages." *City of Sparks v. Sparks Mun. Ct.*, 129 Nev. 348, 357, 302 P.3d 1118, 1124 (2013).

23 ¹¹ Tri-Net's delay in bringing its Motion is likewise indicative that it does not face irreparable
24 harm. *See Oakland Trib., Inc. v. Chron. Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) (explaining
25 that a "long delay" before seeking relief "implies a lack of urgency and irreparable harm"). Here,
26 Tri-Net first requested Sylvia and Elvin stay the forfeiture proceedings on November 4, 2022. (Ex.
27 5, B. Johnson email to J. Fortin, Nov. 4, 2022, 10:47 AM ("In light of the filing of the Writ petition
28 with the NV Supreme Court, I wanted to reach out and ask if you would be amenable to stipulation
to stay of the district court case pending the outcome of the Writ?").) The agency then engaged in
an ECC, NRCP 16.1 disclosures, a supplemental ECC, and responded to discovery. It was only after
Sylvia and Elvin refused to provide an unnecessary and unreasonable 30-day extension to discovery
that Tri-Net moved to stay these proceedings. (Ex. 1, Fortin Decl. ¶¶ 23-48.) This extremely long
delay is preponderant proof that there is no irreparable harm and Tri-Net's request is improper.

1 to the litigation is significantly inhibited.” (Tri-Net Mot. to Stay, at 8:14-16.) This does not
2 constitute irreparable harm. *See Mikohn*, 120 Nev. at 253, 89 P.3d at 39 (“We have previously
3 explained that litigation costs, even if potentially substantial, are not irreparable harm.”).

4 Next, Tri-Net claims that “adjudication of [Elvin’s] Petition could have an impact in
5 evaluating, developing, and eventually presenting certain immunity defenses to the counterclaims.”
6 (*Id.* at 8:17-18 (citing NRS 41.032).) Hardly—Tri-Net *does not have* any immunity defenses under
7 NRS 41.032 to develop. Through its carelessness, Tri-Net waived its discretionary act immunity by
8 failing to preserve this affirmative defense in its pleadings to either Sylvia or Elvin’s Counterclaims.
9 (*See* Tri-Net’s Answer to Sylvia’s Countercl., Sept. 16, 2022, on file (failing to claim NRS 41.032
10 provides discretionary act immunity for its conduct); Tri-Net’s Answer to Elvin’s Countercl., Oct.
11 7, 2022, on file (same).) As the Nevada Supreme Court explained, “discretionary immunity is
12 waived unless affirmatively pleaded.” *City of Boulder City v. Boulder Excavating, Inc.*, 124 Nev.
13 749, 754-55, 191 P.3d 1175, 1178 (2008); *see also* NRCP 8(c). Because Tri-Net waived its
14 immunity—it cannot be concerned about developing facts in discovery. *See Old Aztec Mine, Inc. v.*
15 *Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes
16 to the jurisdiction, is deemed to have been waived.”).

17 Accordingly, providing Tri-Net a blanket stay to these proceedings because Tri-Net is
18 overwhelmed by a few discovery requests and a couple of motions would be an extremely thin (and
19 improper) reed for this Court to base a stay request on. Further, Tri-Net need not be concerned about
20 developing any facts regarding discretionary-act immunity because it waived that defense. Thus,
21 denial of Tri-Net’s request is proper because it does not face any harm—let alone irreparable harm.

22 4. *Elvin has a likelihood of success on the merits of his Petition—but that*
23 *likelihood of success does not warrant awarding Tri-Net a stay.*

24 “In some circumstances” the likelihood of success “stay factor is significant.” *Robles-*
25 *Nieves*, 129 Nev. at 546, 306 P.3d at 406. The Nevada Supreme Court explained “the party opposing
26 the stay motion can defeat the motion by making a strong showing” that the motion “if the appellant
27 apparently filed the stay motion for *dilatory purposes*, the court should deny the stay.” *Mikohn*, 120
28 Nev. at 253, 89 P.3d at 40 (emphasis added).

Here, Elvin has a strong likelihood of success on the merits and Tri-Net agreed “the Petition is not frivolous.” (Tri-Net Mot. to Stay at 9:4-5.) Again, Elvin *did not move for a stay*. Even so, because Tri-Net’s Motion was blatantly filed “for dilatory purposes, the court should deny the stay.” *Mikohn*, 120 Nev. at 253, 89 P.3d at 40. Case and point, Tri-Net claims “the final factor under NRAP 8(c) is neutral in regard to the requested stay.” (Tri-Net Mot. at 8:5-6 (citing *Robles-Nieves*, 129 Nev. at 546-47, 306 P.3d at 406). This statement and citation demonstrate that Tri-Net improperly brought this Motion because the word neutral does not appear in the *Robles-Nieves* decision. Under Nevada law, neutrality—especially for the likelihood of success factor—would negate, *not support* the need for a stay. *See, e.g., Hansen*, 116 Nev. at 659, 6 P.3d 982 (“[W]hen moving for a stay pending an appeal or writ proceedings, a movant does not always have to show a probability of success on the merits, the movant *must present a probability of success* on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay.” (cleaned up and emphasis added)). In other words, Tri-Net not only improperly relies on NRAP 8(c) for a stay and protective order—it chose to make up analysis factors out of whole cloth.

Accordingly, Tri-Net’ final factor—likelihood of success does not weigh in its favor. All of the NRAP 8(c) factors weigh against granting a stay. Sylvia and Elvin therefore request this Court deny Tri-Net’s stay request.

C. Sylvia Countermoves to Compel Production and Responses to Discovery Responses and Asks for Attorney Fees and Costs to Be Awarded.

Tri-Net fails to comprehend its discovery obligations. Tri-Net incorrectly believed that filing a motion to stay froze these proceedings. Tri-Net is wrong. Because Tri-Net failed to timely respond to discovery, this Court should grant Sylvia’s Countermotion to Compel responses.

NRCP 37(a)(3)(B) provides that “[a] party seeking discovery may move for an order compelling an answer, designation, production or inspection. This motion may be made if: . . . (iii) a party fails to answer an interrogatory submitted under Rule 33; or (iv) a party fails to produce documents . . . as requested under Rule 34.” “For purposes of this Rule 37(a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or

1 respond." NRCP 37 (a)(4). "The party resisting discovery has the burden to show discovery should
2 not be allowed." *Slack v. Parball Newco, LLC*, Case No.: 2:16-CV-02324-KJD-CWH, 2018 WL
3 1472574, *2 (D. Nev. Mar. 26, 2018) (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th
4 Cir. 1975)).

5 Sylvia propounded her first set of interrogatories, request for the production of documents
6 ("RPD"), and request for admissions ("RFA") on November 15, 2022. (See Ex. 6, J. Fortin email to
7 B. Johnson, et al., Nov. 15, 2022; see also Ex. 7-8 (attaching true and correct copies of Sylvia's RPD
8 and Interrogatory requests).) Sylvia provided a brief extension to provide responses, but following
9 Tri-Net's Motion to Stay, Tri-Net took the position that it did not need to provide responses. (See
10 Ex. 1, Fortin Decl. ¶¶ 31-40; Ex. 7, B. Johnson email to J. Fortin, Dec. 19, 2022, 12:54 PM.) As
11 explained above, a party is not free to implement a discovery stay by simply moving for a stay—it
12 must meet all of its obligations under the Rules because "only an order granting such relief imposes
13 a stay." *PlayUp*, 2020 WL 8189287, at *3 n.7. Tri-Net cannot meet its burden under the law that
14 its refusal to timely respond was justified because Tri-Net does not understand its discovery
15 obligations. See *Slack*, 2018 WL 1472574 at *2. Tri-Net likewise waived any objections it might
16 have had through its failure to timely file discovery responses. See *Richmark Corp. v. Timber*
17 *Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) ("It is well established that a failure to
18 object to discovery requests within the time required constitutes a waiver of any objection."); see
19 also NRCP 33(b)(4) ("The grounds for objecting to an interrogatory must be stated with specificity.
20 Any ground not stated in a timely objection is waived."); NRCP 34(b)(2)(C) ("An objection must
21 state whether any responsive materials are being withheld on the basis of that objection."). Thus,
22 Sylvia's Motion to Compel is proper, the attached declaration satisfies FJDCR 3.7(b), and relief
23 should be granted expeditiously.

24 Accordingly, because Tri-Net is in violation of Rule 37(a)(3)(B), Sylvia asks this Court to
25 grant her Motion to Compel. Sylvia additionally asks this Court to instruct Tri-Net to respond to all
26 of her discovery, without objection, within 7 days of entry of this Court's Order.

27 **IV. CONCLUSION**

28 Sylvia and Elvin ask for all of the requested relief detailed above, denial of Tri-Net's motion

1 to extend the deadlines on its opposition to Sylvia's Motion for Partial Summary Judgment or in the
2 alternative, provide Tri-Net a seven day extension from Sylvia's filing of this Motion. Additionally,
3 Sylvia and Elvin as for denial of Tri-Net's Motion to Stay. Finally, Sylvia Countermoves to Compel
4 discovery responses.

5 Dated this 23rd day of December 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on this 23rd day of December 2022, I caused to be delivered via email, and hand delivery, true and correct copies of the above **ELVIN FRED AND SYLVIA FRED'S MOTION TO STRIKE TRI-NET'S IMPROPER *Ex Parte* MOTION FOR AN EXTENSION TO RESPOND TO SYLVIA'S PARTIAL MOTION FOR SUMMARY JUDGMENT AND ALTERNATIVELY, ELVIN FRED AND SYLVIA FRED'S OPPOSITION AND ELVIN FRED AND SYLVIA FRED'S MOTION TO STRIKE TRI-NET'S IMPROPER MOTION TO STAY AND ALTERNATIVELY ELVIN FRED AND SYLVIA FRED'S OPPOSITION AND SYLVIA FRED'S COUNTERMOTION TO COMPEL PRODUCTION OF DOCUMENTS** to the following:

Carson City District Attorney's Office
885 East Musser Street, Suite 2030
Carson City, Nevada 89701



An employee of McDonald Carano LLP

Exhibit 1

DECLARATION OF JOHN A. FORTIN, ESQ.,

I, John A. Fortin under penalty of perjury, state as follows:

1. I declare that I am an attorney at the law firm McDonald Carano LLP, pro bono counsel of record for Sylvia Fred (“Sylvia”) and Elvin Fred (“Elvin”), Claimants and Counterclaimants in this litigation.

2. I make this declaration in support of Elvin Fred and Sylvia Fred’s Motion to Strike and in the Alternative Opposition to Tri-Net’s Motion to Extend the Deadlines on Tri-Net’s Opposition to Sylvia Fred’s Motion for Partial Summary Judgment, Sylvia Fred and Elvin Fred’s Motion to Strike and in the Alternative Opposition to Tri-Net’s Motion to Stay, and Sylvia Fred’s Countermotion to Compel Discovery Responses (“Motion”).

3. This declaration is made of my own personal knowledge except when stated on information and belief, and as to those matters, I believe them to be true. I am over the age of eighteen years and therefore am competent to testify thereto if called on to do so.

4. Throughout these proceedings, Sylvia and Elvin have provided extensions of time and other accommodations to Tri-Net in an attempt to be reasonable and cordial with opposing counsel. However, it has become apparent to Sylvia and Elvin that Tri-Net has interpreted this kindness for weakness.

5. Based on information and belief, Tri-Net, does not believe that *any* deadline imposed under the Rules actually applies to the Agency. Tri-Net’s recent Motion practice and meet and confer communications with undersigned counsel evinces this conclusion. As such, Sylvia and Elvin move to strike the motions, alternatively opposes the motions, and countermoves to compel responses to discovery that is delinquent, and requests attorney fees and costs for Tri-Net’s improper conduct.

6. As shown below, since July 1, 2022, Tri-Net has failed to meet *every* deadline imposed for pleadings, Motions, and discovery. In other words, Tri-Net believes different deadlines exist for its litigation conduct because it is the government. Proof that Tri-Net cannot comply with the Rules are well-documented both in the filings with the Court, the below recitation of the facts, and all of the attached correspondence.

7. For example, Sylvia filed her Verified Answer and Counterclaims. (*See* Sylvia Verified

1 Answer & Countercl., Jun. 28, 2022, on file.) Sylvia then effectuated service of her Counterclaims on
2 both Tri-Net and the Nevada Attorney General as required under NRS Chapter 41. (*See* Aff. of Service,
3 Jul. 22, 2022, on file.)

4 8. Under NRCP 12(a)(3), Tri-Net, as a government entity had longer than the typical 21
5 days to file a responsive pleading; it had 45 days or until September 5, 2022. It failed to meet that
6 deadline. Tri-Net never asked for an extension of time.

7 9. Therefore, in compliance with the Supreme Court Rules, the Rules of Civil Procedure,
8 and Nevada precedent, I began the process to file a notice of default for Tri-Net's failure to file a
9 responsive pleading. (*See* Ex. 5, J. Fortin email to B. Johnson, Sept. 14, 2022 ("[I]f Tri-Net does not
10 submit and serve a responsive pleading to Sylvia Fred's Counterclaims by close of business on Friday,
11 September 16, 2022, I will interpret Tri-Net's non-response as an intent not to defend. As such, I will
12 promptly file with the Court a notice of intent to take a default for Sylvia Fred's Counterclaims.").)

13 10. Only after I detailed the deadlines and Sylvia's intent to take a default, did Tri-Net file
14 its responsive pleading. (*See* Tri-Net's Answer, Sept. 16, 2022, on file.)

15 11. While this took place, Elvin filed his Motion to Dismiss Tri-Net's First Amended
16 Complaint for Forfeiture. (*See* Elvin Fred Mot. to Dismiss, Jul. 15, 2022, on file.) Under FJDCR 3.8,
17 Tri-Net's deadline to oppose was 14 days later—or July 29, 2022. Tri-Net reached out and requested
18 an extension of time. (*See* Ex. 2, B. Johnson email chain to J. Fortin, Jul. 27, 2022.) In an effort to be
19 reasonable and accommodating, Elvin stipulated to a 28-day extension (or until August 19, 2022) for
20 Tri-Net to respond to Elvin's Motion. (*See* Not. of Entry of Ord., Aug. 10, 2022, on file.)

21 12. Because Tri-Net could not complete its opposition within the initial extension, Tri-Net
22 again requested and Elvin (again being reasonable and accommodating) stipulated to an additional 7-
23 day extension to August 26, 2022. (*See* Not. of Entry of Ord., Aug. 16, 2022, on file.) Tri-Net finally
24 provided its opposition—42 days after Elvin filed his Motion to Dismiss and 28 days after the deadline
25 under FJDCR 3.8. (*See* Tri-Net Opp'n, Aug. 26, 2022, on file.)

26 13. Following this Court's denial of Elvin's Motion to Dismiss, Elvin filed his Verified
27 Answer & Counterclaim. (*See* Elvin Answer & Countercl., Oct. 7, 2022, on file.) Elvin provided
28 service to both Tri-Net and the Attorney General under NRS Chapter 41 the same day. (*See* Aff. of

1 Service, Oct. 12, 2022, on file.) Again, under Rule 12(a)(3), Tri-Net had 45 days to file a responsive
2 pleading or until December 5, 2022. Tri-Net failed to meet that deadline. Tri-Net also failed to ever
3 ask for any extension of time.

4 14. Therefore, in compliance with the Supreme Court Rules, the Rules of Civil Procedure,
5 and Nevada precedent, I began the process to file a notice of default for Tri-Net's failure to file a
6 responsive pleading. (*See* Ex. 5, J. Fortin email to B. Johnson, Nov. 30, 2022 ("[I]f Tri-Net does not
7 submit and serve a responsive pleading to Elvin Fred's Counterclaims by close of business on Friday,
8 December 2, 2022, I will interpret Tri-Net's non-response as an intent not to defend. As such, I will
9 promptly file with the Court a notice of intent to take a default for Sylvia Fred's Counterclaims.").)

10 15. Only after I detailed the deadlines and Elvin's intent to take a default, did Tri-Net file
11 its responsive pleading. (*See* Tri-Net's Answer, Dec. 2, 2022, on file.)

12 16. As all of this occurred, Elvin prepared and filed his Petition for a Writ of Mandamus
13 and Writ of Prohibition. (*See* Petition, Case No. 85590, Nov. 2, 2022, on file.) Therein, Elvin
14 challenged this Court's incorrect conclusion that Elvin's double jeopardy rights are not violated by this
15 second, successive proceeding seeking to impose an additional punishment by forfeiting Elvin's Home
16 for crimes he already pleaded guilty to and is currently incarcerated in High Desert Prison. (*See id.*)

17 17. Because Sylvia and Elvin had accommodated numerous requests from Tri-Net, Elvin
18 believed the same courtesy would be afforded to him when he asked for a stipulation. (*See* Ex. 3, J.
19 Fortin email to J. Woodbury, Nov. 3, 2022, 9:42 AM ("The Nevada Attorneys for Criminal Justice
20 ("NACJ") represented by Lisa Rasmussen and Randy Fielder who are cc'd here is preparing an amicus
21 brief. Under NRAP 29(a), NACJ 'may file a brief only by leave of court granted on motion or at the
22 court's request or if accompanied by written consent of all parties.' Is Tri-Net willing to consent to
23 NACJ filing an amicus brief to avoid motion practice? Under NRAP 29 (f), NACJ has to file its brief
24 by November 9, 2022, so please let us know as soon as you can, if Tri-Net consents to NACJ filing an
25 amicus brief.").)

26 18. Tri-Net refused. (*See id.*, J. Woodbury email to J. Fortin, Nov. 8, 2022, 3:34 PM ("I do
27 not have authorization from Tri-Net to consent in advance to the filing of an amicus brief by NACJ.").)

28 19. NACJ, therefore, engaged in motion practice to file its amicus brief. (*See* NACJ Mot.

1 for Leave to File Amicus Br., Case No. 85590, Nov. 9, 2022, on file.) Demonstrating the validity and
2 unreasonable denial of Elvin’s request, the Nevada Supreme Court granted NACJ’s Motion. *See* Order,
3 Case No. 85590, Nov. 28, 2022, on file (granting NACJ’s Motion).

4 20. Around the same time, Mr. Johnson and I spoke and determined that, to decrease the
5 number of filings and stipulations, that the Parties should stipulate to extending the page limits under
6 FJDCR 2.23(b). (*See* Ex. 4, J. Fortin email to B. Johnson, Nov. 3, 2022, 11:08 AM.) Tri-Net explained
7 “The Stipulation is fine with me with the caveat that the circumstances may require different page limits,
8 for example a final MSJ that is longer than 25 pages. I just want to be sure both sides are still agreeable
9 to further stipulations if warranted.” (*Id.* B. Johnson email to J. Fortin, Nov. 8, 2022, 12:37 PM.)

10 21. I stated “Of course, if Tri-Net need more than 25 pages we will be happy to
11 accommodate a stipulation.” (*Id.* J. Fortin email to B. Johnson, Nov. 8, 2022, 1:36 PM.) Thus, the
12 parties entered into, and the Court ordered, that FJDCR 2.23(b) is extended and the Parties are permitted
13 additional pages. (*See* Stip. & Order, Nov. 18, 2022, on file.)

14 22. Additionally, between October and November 2022, and in accordance with the Rules,
15 Mr. Johnson and I engaged in several phone calls and emails regarding the parties’ Joint Case
16 Conference Report (“JCCR”), the parties’ NRCP 16.1 disclosures, and the opening of discovery. (*See*
17 Ex. 5, J. Fortin email chain to B. Johnson from Oct. 18-Nov. 9, 2022.)

18 23. On November 4, 2022, the day in which the Parties’ agreed that discovery would
19 open, Tri-Net made its first request to stipulate to stay these proceedings pending resolution of
20 Elvin’s Writ Petition. (*See id.* B. Johnson email to J. Fortin, Nov. 4, 2022, 10:47 AM (“In light of
21 the filing of the Writ petition with the NV Supreme Court, I wanted to reach out and ask if you
22 would be amenable to stipulation to stay of the district court case pending the outcome of the
23 Writ?”).)

24 24. Sylvia rejected Tri-Net’s request. (*See id.* J. Fortin email to B. Johnson, Nov. 4, 2022,
25 4:41 PM (“Sylvia is not amenable to a stipulation to stay discovery pending the resolution of Elvin’s
26 Petition. The Court’s review of the petition will moot only a small portion of the case and will have
27 no effect on Sylvia’s counterclaims.”).)

28 25. Because of this last-minute request for a stipulation and because Tri-Net had not yet

1 provided any redline changes to the JCCR, Sylvia agreed to extend the deadlines to open discovery.
2 (*See id.* (“Because it is late on Friday when we had planned to open discovery and we have not yet
3 formalized a JCCR, I am willing to open discovery on Wednesday, November 9, 2022. Please
4 provide me edits to the JCCR I submitted for your review by close of business Monday, November
5 7, 2022, so that way I can review and provide edits on Tuesday. I intend to attach my NRCP 16.1
6 disclosures (without the exhibits which we will disclose separately to be filed with the Court on
7 Wednesday.”).)

8 26. Then on November 9, 2022, the day in which Sylvia agreed to extend the deadlines
9 to open discovery and supply NRCP 16.1 Disclosures, Tri-Net decided to grant itself an extension
10 until November 19 to provide its disclosures. (*See id.*, B. Johnson email to J. Fortin, Nov. 9, 2022,
11 3:20 PM (“Here is the signed JCCR. Our initial disclosures are not yet complete but I anticipate
12 disclosure by November 19. I don’t know if you want to change the report to reflect that.”).

13 27. On November 15, 2022, Sylvia served her First Request for Production of Documents
14 (“RPD”), her First Request for Admissions (“RFA”), and her First Request for Interrogatory
15 Responses. (*See* Ex. 6, J. Fortin email to B. Johnson, et al., Nov. 15, 2022; *see also* Ex. 7-8 (attaching
16 true and correct copies of Sylvia’s RPD and Interrogatory requests).)

17 28. Under NRCP 33 and 34 Tri-Net had 30 days or December 15, 2022, to provide
18 responses. Tri-Net has still not provided any responses to Sylvia’s RPDs and Interrogatory requests
19 and Tri-Net has not provided a specific date at which responses, objections, privilege claims will be
20 made. Under the Rules, Tri-Net’s discovery is delinquent and all objections and privilege claims
21 are waived.

22 29. On December 8, 2022, Sylvia filed a Motion for Partial Summary Judgment on one
23 of her Counterclaims. (*See* Sylvia Partial Mot. for Summ. J., Dec. 8, 2022, on file.) Sylvia properly
24 served both Tri-Net and the Nevada Attorney General on the same day. Under FJDCR 3.8, Tri-Net
25 had 14 days to respond, or until December 22, 2022.

26 30. On December 8, 2022, I reached out to Mr. Johnson to schedule a time for a
27 Supplemental JCCR because Tri-Net had finally answered Elvin’s Counterclaims after it provided
28 itself an extension of time to respond. (*See* Ex. 10, J. Fortin email to B. Johnson, Dec. 8, 2022 3:55

PM.) Tri-Net agreed to the early case conference time to discuss the Supplemental JCCR and then asked for yet *another* extension and to stipulate to stay the proceedings *again*:

I also wanted to reach out to you about two things. First, I would like to ask for an extension on the discovery responses for Sylvia Fred's requests. Obviously, some of the information is years old and will likely require searching old emails, etc. So I would like to request a 30 day extension for these responses. Given that we are going to likely alter deadlines after Elvin's JCCR, I don't think this would delay the case. If you are agreeable, I will prepare the requisite stipulation.

Second, I don't think it makes sense to continue litigating the district court case at the same time there is a petition for writ relief pending at the Nevada Supreme Court. It would be an unproductive use of time to conduct discovery when some of the issues may be disposed of by that action. I had previously asked about a stay of the case and you indicated that Sylvia would not agree to it.

Please consider this my attempt under FDJCR 3.7(b) to meet and confer regarding a request to stipulate to a stay of the district court case pending the outcome of the writ petition. If your clients are still not amenable to a stipulation stay, I intend to file a motion to stay the case.

(*Id.* B. Johnson email to J. Fortin, Dec. 9, 2022, 10:31 AM.)

31. Sylvia responded

As for your request to meet and confer under FJDCR 3.7(b). I think we need to discuss both of your requests over the phone, however, I want to provide you some of my thoughts in writing before the call. You did not identify specific Requests for Production of Documents ("RPDs") that you will need more time on. Additionally, your email was vague and does not provide any indication that you need more time to respond to the Request for Admissions ("RFA") or Interrogatories ("Rog") Sylvia propounded. Therefore, I ask that you identify all the specific RPD, RFA, and ROG numbers that you believe will require an extension of time to review these older documents before our call that way I can better understand the scope of your request and what documents and responses we will receive[] on December 15, 2022.

As for your request to stipulate to stay all discovery pending resolution of the Petition. As a threshold matter, the Nevada Supreme Court has not ordered Tri-Net to answer, thus there is nothing pending for Tri-Net to do in that proceeding. Petitions for Writs of Mandamus and Prohibition are purely discretionary and I am not willing to stipulate to a prediction that we do not know what the Court will do. Thus, it is premature to discuss staying the district court proceedings at this time.

Furthermore, the statutory scheme in which Tri-Net is seeking to forfeit my clients' Home is fairly strict and mandatory. NRS 179.1173(1) provides "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 priority." Third, even if the Nevada Supreme Court orders an answer and a reply, staying all of these proceedings (including Sylvia and Elvin's counterclaims) is likely overbroad as many of Sylvia and Elvin's counterclaims will be unaffected by the resolution of those proceedings (regardless of who hypothetically prevails in a proceeding we do not yet know the Supreme Court will review). You have not provided me with any legal support that a broad and blanket stay all of these proceedings that would satisfy the stay factors Nevada courts must

1 apply. During our meet and confer though, I am happy to listen to your concerns.

2 (*Id.* J. Fortin email to B. Johnson, Dec. 9, 2022 12:30 PM.)

3 32. Tri-Net responded

4 As to the discovery extension request, the request for extension would be for all of
5 the discover[y] requests. Tri-Net is composed of different agencies and as a result the
6 information requested may come from different places. Right now it is not clear
7 which agency will need to respond to which request, hence the need for an extension.
8 Obviously if a set of requests can be fi[n]ished sooner, we would disclose it as soon
9 as it was available.

10 I am not interested in going question by question to explain why an extension is
11 required and frankly, I don't believe the rules require that either. If Ms. Fred is not
12 amenable to extending a courtesy, then I think it will save time to say that so we can
13 get a motion on file.

14 As for the stay, I believe that the scope of discovery and future discovery would be
15 impacted by a decision on the petition for writ. It does not make sense from a
16 logistical perspective to litigate this case at multiple levels at the same time all while
17 conducting discovery.

18 (*Id.* B. Johnson email J. Fortin, Dec. 9, 2022, 2:35 PM.)

19 33. Sylvia responded

20 Without a narrower list of the specific discovery responses you need an extension on
21 it is difficult for me to authorize a blanket 30-day extension. As you know, we have
22 been more than accommodating with requests for extensions throughout this litigation
23 and are happy to accommodate reasonable requests. We do not believe that each and
24 every response needs an additional 30 days and that many of them could be answered
25 within 30 days from the date we sent the requests. You clearly disagree with me and
26 if you are unwilling to provide a narrower list of responses requiring an extension
27 than "all of the discovery requests" then you should move in the district court for an
28 extension.

29 I have already detailed the issues with granting a blanket stay to all of these
30 proceedings because Elvin filed a discretionary writ petition that the Nevada Supreme
31 Court has not ordered an answer to. So I disagree with your characterization that we
32 are engaging in multiple levels of litigation. You clearly disagree with our position
33 and if you that you need to move for a stay then you should.

34 (*Id.* J. Fortin email to B. Johnson, Dec. 9, 2022, 4:51 PM.)

35 34. On December 15, 2022, Elvin filed a Joinder to Sylvia's Motion for Partial Summary
36 Judgment and moved under NRCP 56 for Partial Summary Judgment on his Counterclaim. (*See* Elvin
37 Joinder and Mot., Dec. 15, 2022, on file.) Under FJDCR 3.8, Tri-Net has 14 days to respond, or until
38 December 29, 2022. Tri-Net has not spoken to undersigned counsel regarding any request for an
39 extension of time and neither Sylvia nor Elvin will be amenable to providing an extension.

1 35. At the same time, Sylvia Moved in both this litigation and the Tax Proceeding and
2 requested that for judicial economy and efficiency purposes, the two proceedings be consolidated and
3 that the stay in the Tax Proceeding be lifted. (*See* Sylvia Mot. to Consolidate, Dec. 15, 2022, on file.)
4 Because all of the Tax Proceeding Defendants had already stipulated to the acceptance of service, Sylvia
5 asked that responsive pleadings to her Complaint be filed by January 26, 2023—or 45 days from the
6 date Sylvia requested the stay be lifted in accordance with Rule 12(a)(3).

7 36. Under FJDCR 3.8, Tri-Net has 14 days to respond, or until December 29, 2022. Tri-
8 Net has not spoken to undersigned counsel regarding any request for an extension of time and neither
9 Sylvia nor Elvin will be amenable to providing an extension.

10 37. On December 13, 2022, Mr. Johnson and I held Elvin’s ECC telephonically. During
11 the ECC, I explained that Elvin did not see a need in moving any of the deadlines. I further explained
12 that both Elvin and Sylvia wanted to keep their requested trial date of October 2023 so that they could
13 finally resolve this matter expeditiously. Tri-Net agreed to this request and the parties have agreed to
14 the Supplemental JCCR, discovery for Elvin opens January 4, 2022, and the parties will be getting the
15 Supplemental JCCR on file shortly. (*See* Ex. 13, F. Casci email to J. Fortin, Dec. 20, 2022, 3:43 PM.)

16 38. During the same phone call, Mr. Johnson and I discussed both of Tri-Net’s request to
17 an extension of its deadline to respond to Sylvia’s discovery requests and Tri-Net’s request to stay these
18 proceedings. I reiterated Elvin and Sylvia’s position regarding a blanket stay. I explained that I had
19 researched the question of whether a stay could be granted under these circumstances and stated that I
20 do not believe Nevada law would support Tri-Net’s request. Mr. Johnson disagreed with my position.

21 39. I further explained that one of the factors the Court must look at is the prejudice that
22 Elvin and Sylvia would face if a stay is entered. I explained that their Home is completely destroyed
23 because of Tri-Net’s misconduct. I explained that while a lis pendens and the forfeiture proceeding
24 were ongoing, a cloud on Elvin and Sylvia’s title meant that they could not fix the property, they could
25 not pay the taxes on the property, and they could not do anything with the property. I further expressed
26 concern that the tax bill remained outstanding and that further prejudiced the general public as the bill
27 simply continued to increase every day these proceedings were delayed.

28 40. I similarly pointed out to Mr. Johnson that Sylvia had recently filed a Motion for Partial

Summary Judgment and therein Sylvia explained that she had difficulty obtaining records regarding the purchase of the Home because of the length of time that had elapsed since Elvin and Sylvia purchased the property in 2012. I expressed sincere concerns that the government's records in this case would likewise be lost if a stay was entered. Mr. Johnson disagreed with my position. I advised that Tri-Net should file its motion if it wanted to stay these proceedings.

41. As for an extension to the discovery responses, I explained to Mr. Johnson that in the same vein of wanting to move the case along, extensions of time for discovery responses would not be provided. Mr. Johnson explained that he was having difficulty obtaining information from certain entities for the document production. I recounted that we had just agreed to maintain the same discovery deadlines in the Supplemental JCCR and that expert disclosures were due on February 7, 2023. Without responses to this discovery, it would be difficult for Sylvia and Elvin to meet their obligations to produce an expert report on time. I further explained that, because I am providing my services pro bono, I want to proceed to trial as soon as possible and do not want to push any deadlines.

42. I further explained that under the Rules, responses should always be provided within the 30-day time limit. I detailed that Tri-Net could meet that deadline while maintaining its right to supplement any responses as permitted under NRCP 26(e). I explained this was a common practice in discovery in complex litigation as documents and communications tend to come in on a rolling basis. I stated that this was all that Sylvia and Elvin asked for, compliance with the Rules.

43. In a show of good faith, Sylvia agreed "to grant [Tri-Net] an extension on the RFAs until Monday December 19. We will set a call up for 3 PM on December 19 to discuss the RPD and Interrogatory responses so that we can better understand when the production and responses will occur." (Ex. 10, J. Fortin email to B. Johnson, Dec. 13, 2022, 10:38 PM.).

44. On December 15, 2022, Mr. Johnson emailed and asked to speak with me. (*See id.* B. Johnson email to J. Fortin, Dec. 15, 2022.) Despite being in a deposition in another matter, I agreed to speak briefly with Mr. Johnson.

45. Mr. Johnson then asked *again* if Sylvia and Elvin would be willing to stipulate to a stay to these district court proceedings due to Elvin's Petition. I declined. Mr. Johnson then expressed that Tri-Net would be moving that day for a stay. I again expressed concern that Tri-Net could not move

1 for a stay based on my review of the Rules and the case law. Mr. Johnson disagreed with my position
2 and stated that Tri-Net would be filing its Motion that day.

3 46. I asked Mr. Johnson what this meant for Tri-Net's discovery responses that prior to my
4 good faith extension, under the deadlines, were in fact due that afternoon. Mr. Johnson stated that he
5 would honor his prior agreement to provide response to Sylvia's RFA's on Monday but that he did not
6 know when Tri-Net would provide responses to the RPD's and Interrogatories.

7 47. I again expressed to Mr. Johnson that Tri-Net needed to provide responses to the RPD's
8 and Interrogatories within the next week, preferably by Wednesday, December 21, 2022, that way I had
9 sufficient time to engage with experts as the expert discovery deadline was February 7, 2023. I further
10 stated that Sylvia wanted complete and fulsome responses, but would accept rolling submissions of
11 supplemental materials under NRCP 26(e) and that all of Tri-Net's responses need to be provided within
12 the next 30 days as Mr. Johnson had previously promised. Mr. Johnson disagreed, and we ended our
13 phone call.

14 48. Later that afternoon, Tri-Net filed its Motion to Stay these proceedings. (*See* Tri-Net
15 Mot. to Stay, Dec. 15, 2022, on file.) Tri-Net did not move on an order shortening time or in an
16 expedited fashion. Thus, under FJDCR 3.8, Sylvia and Elvin has 14 days to respond, or until
17 December 29, 2022. For economy and efficiency purposes, Sylvia and Elvin respond today.

18 49. On Monday, December 19, 2022, Mr. Johnson emailed me and stated

19 I just wanted to check if we still need[] to have a telephone conference today. We
20 will be serving our responses to RFA's this afternoon. As for the ROG's and RPD's,
21 Tri-Net has requested the additional 30 days and I don't have any more definitive
22 information about when responses may be provided.

23 And then there's the motion for stay that we filed. So in my mind I don't see a need
24 for a call, but let me know if you think there's anything we need to discuss.

25 (Ex. 7, B. Johnson email to J. Fortin, Dec. 19, 2022, 12:12 PM)

26 50. I responded

27 As I understood your position from the Thursday call, you would provide the RFA
28 responses (which you confirmed below) today. I stated that in regards to Rogs and
the RPDs, I wanted Tri-Net to answer what you could this week and then provide
rolling submissions with completion in 30 days. I am a little unclear with the end of
you email, are you taking the position that your Motion to Stay is sufficient to not
provide responses to the RPD and Rogs? Please clarify that point but I do not see a

1 need for a call.

2 (*Id.* J. Fortin email to B. Johnson, Dec. 19, 2022, 12:27 PM.)

3 51. Mr. Johnson responded

4 It [is] Tri-Net's position that the motion to stay puts a "freeze" on the pending
5 discovery and other motions until the motion to stay has been decided. As I
6 mentioned, Tri-Net would not be prepared to submit any responses this week due to
 needing more time to search for responsive documents, witness, and information
 necessary to respond.

7 (*Id.* B. Johnson email to J. Fortin, Dec. 19, 2022, 12:54 PM.)

8 52. I responded "[w]hile I continue to disagree with your position regarding the response to
9 the RPD's and Rog's in conjunction with your request for a Stay, we have exhausted this discussion
10 between our conversations via email and phone calls last week and in the prior weeks." (*Id.* J. Fortin
11 email to B. Johnson, Dec. 19, 2022, 2:02 PM.)

12 53. On December 21, 2022, I received a phone call from my executive assistant that the Mr.
13 Woodbury had called and asked to speak with me. When connected telephonically with Mr. Woodbury,
14 he noted that Tri-Net's opposition to Sylvia's Motion for Partial Summary Judgment was due the next
15 day, on December 22, 2022, and asked if I would agree to a stipulated extension.

16 54. I asked Mr. Woodbury if Sylvia would obtain the already delinquent responses to her
17 discovery. Mr. Woodbury said no. I further asked for clarification on Tri-Net's position regarding the
18 Motion to Stay and whether he believed that the Motion was sufficient to not provide responses. Mr.
19 Woodbury said yes that was Tri-Net's position.

20 55. At no point in time during my phone call with Mr. Woodbury did he provide any of the
21 reasons he elaborated in his declaration that he claims provide good cause for an *Ex Parte* Motion. Mr.
22 Woodbury simply asked for an extension. I declined.

23 56. Later that afternoon, I received an email from Mr. Woodbury's assistant and attached
24 to the email was Tri-Net' improper *Ex Parte* Motion to Extend Deadlines to Sylvia Fred's Motion for
25 Partial Summary Judgment. (*See* Ex. 13, F. Casci to J. Fortin, Dec. 22, 2022, 4:06 PM.)

26 57. As detailed above, Mr. Johnson agreed to the Supplemental JCCR contents shortly
27 before Tri-Net filed its Motion on December 21, 2022. (*See* Ex. 8, B. Johnson email to J. Fortin, Dec.
28 21, 2022, 12:55 PM.) Through the many phone calls and emails with Mr. Johnson and Mr. Woodbury

1 over the past several weeks, neither of them *ever* explained any pending vacations, deaths in the
2 families, or any other situations that would necessitate—and likely would be a valid reason for an
3 extension of time.

4 58. Had I been told about *any* of the reasons Mr. Woodbury needed an extension or had I
5 been told *any* of the reasons Mr. Johnson needed an extension more than 24 hours before the deadline,
6 my response may have been different. I have made myself more than available to both Mr. Woodbury
7 and Mr. Johnson throughout these proceedings—even stepping out of depositions to speak with them—
8 and none of the facts put forth in Mr. Woodbury have *ever* been conveyed to me.

9 59. I declare under the penalty of perjury under the laws of the State of Nevada that the
10 foregoing is true and correct.

11 Dated this 23d day of December 2022.

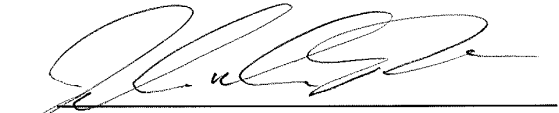
12
13 
14 John A. Fortin, Esq.

Exhibit 2

From: [Benjamin Johnson](#)
To: [John Fortin](#)
Subject: RE: Draft SAO for deadlines
Date: Wednesday, July 27, 2022 3:55:52 PM

I spoke with Jason, if we could get an extension until the 19th, that would be wonderful.

Ben

From: Benjamin Johnson
Sent: Wednesday, July 27, 2022 11:52 AM
To: John Fortin <jfortin@mcdonaldcarano.com>
Subject: RE: Draft SAO for deadlines

Hi John,

Here is a draft stipulation for your review. I think we discussed August 12 for the deadline rather than August 19, is that correct?

If you are agreeable to August 19, that would be preferable for us but August 12 is fine.

Please let me know if you have any comment/revision.

Thanks as always for your courtesy.

Ben

Benjamin R. Johnson
Senior Deputy District Attorney
Carson City District Attorney's Office
885 E. Musser Street, Suite 2030
Carson City, NV 89701
(775) 887-2070
Fax: 887-2129
bjohnson@carson.org



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From: John Fortin <jfortin@mcdonaldcarano.com>

Sent: Wednesday, July 27, 2022 7:01 AM

To: Benjamin Johnson <BJohnson@carson.org>

Subject: Draft SAO for deadlines

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Hey Ben,

I just wanted to follow up and see when you would be sending along the draft SAO regarding the extension of time to be filed for the opposition to Elvin's MTD correct? Thanks.

John Fortin | Attorney



2300 West Sahara Avenue | Suite 1200
Las Vegas, NV 89102

P: 702.873.4100

[vCard](#)

 | [State Law Resources](#)

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PA001077

Exhibit 3

From: [John Fortin](#)
To: [Jason Woodbury](#); [Benjamin Johnson](#)
Cc: [Ryan J. Works](#); [Rory Kay](#); [Jane Susskind](#); [Brian Grubb](#); [Kimberly Kirn](#); [Lisa@Veldlaw.com](#); [Randolph Fiedler](#)
Subject: RE: Acceptance of Electronic Document. FRED VS. DIST. CT. (STATE, DEP'T OF PUB. SAFETY INVESTIGATION DIV.). No. 85590.
Date: Tuesday, November 8, 2022 3:42:00 PM

Thank you Jason.

John Fortin | Attorney



P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Jason Woodbury <JWoodbury@carson.org>
Sent: Tuesday, November 8, 2022 3:34 PM
To: John Fortin <jfortin@mcdonaldcarano.com>; Benjamin Johnson <BJohnson@carson.org>
Cc: Ryan J. Works <rworks@mcdonaldcarano.com>; Rory Kay <rkay@mcdonaldcarano.com>; Jane Susskind <jsusskind@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Lisa@Veldlaw.com; [Randolph Fiedler](mailto:Randolph_Fiedler@fd.org)
Subject: RE: Acceptance of Electronic Document. FRED VS. DIST. CT. (STATE, DEP'T OF PUB. SAFETY INVESTIGATION DIV.). No. 85590.

John,

At this time, I do not have authorization from Tri-Net to consent in advance to the filing of an amicus brief by NACJ.

Thanks,

Jason D. Woodbury
Carson City District Attorney
jwoodbury@carson.org
(775) 887-2070
885 East Musser Street
Suite 2030
Carson City, NV 89701



PA001079

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From: John Fortin <jfortin@mcdonaldcarano.com>

Sent: Tuesday, November 8, 2022 1:38 PM

To: Jason Woodbury <JWoodbury@carson.org>; Benjamin Johnson <BJohnson@carson.org>

Cc: Ryan J. Works <rworks@mcdonaldcarano.com>; Rory Kay <rkay@mcdonaldcarano.com>; Jane Susskind <jsusskind@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Lisa@Veldlaw.com; Randolph Fiedler <Randolph_Fiedler@fd.org>

Subject: RE: Acceptance of Electronic Document. FRED VS. DIST. CT. (STATE, DEP'T OF PUB. SAFETY INVESTIGATION DIV.). No. 85590.

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Jason and Ben,

I wanted to follow up on the request by NACJ and whether Tri-Net is amenable to a stipulation? Please let me know so we can get something drafted. Thank you.

John Fortin | Attorney



P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: John Fortin

Sent: Thursday, November 3, 2022 9:42 AM

To: Jason Woodbury <JWoodbury@carson.org>; Benjamin Johnson <BJohnson@carson.org>

Cc: Ryan J. Works <rworks@mcdonaldcarano.com>; Rory Kay <rkay@mcdonaldcarano.com>; Jane Susskind <jsusskind@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Lisa@Veldlaw.com; Randolph Fiedler <Randolph_Fiedler@fd.org>

Subject: FW: Acceptance of Electronic Document. FRED VS. DIST. CT. (STATE, DEP'T OF PUB. SAFETY INVESTIGATION DIV.). No. 85590.

Jason,

PA001080

We filed a Petition for Writ of Prohibition and Writ of Mandamus, Case No. 85590 yesterday in the Nevada Supreme Court regarding Elvin's double jeopardy arguments. I attached the Petition here. The appendix is too large to send via email. We are having paper copies of both the writ and appendix sent down to your offices either today or tomorrow. We will also be providing Judge Wilson and the Nevada Attorney General a copy of both the Petition and the Appendix.

The Nevada Attorneys for Criminal Justice ("NACJ") represented by Lisa Rasmussen and Randy Fielder who are cc'd here is preparing an amicus brief. Under NRAP 29(a), NACJ "may file a brief only by leave of court granted on motion or at the court's request or if accompanied by written consent of all parties." Is Tri-Net willing to consent to NACJ filing an amicus brief to avoid motion practice? Under NRAP 29(f), NACJ has to file its brief by November 9, 2022, so please let us know as soon as you can if Tri-Net consents to NACJ filing an amicus brief.

Thank you and have a good day.

John Fortin | Attorney



P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: efiling@nvcourts.nv.gov <efiling@nvcourts.nv.gov>

Sent: Wednesday, November 2, 2022 4:25 PM

To: John Fortin <jfortin@mcdonaldcarano.com>

Cc: Kimberly Kirn <kkirn@mcdonaldcarano.com>

Subject: Acceptance of Electronic Document. FRED VS. DIST. CT. (STATE, DEP'T OF PUB. SAFETY INVESTIGATION DIV.). No. 85590.

ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING

Case Title:	FRED VS. DIST. CT. (STATE, DEP'T OF PUB. SAFETY INVESTIGATION DIV.)
Docket Number:	85590
Case Category:	Criminal Appeal
Submitted By:	John A. Fortin

PA001081

Date Submitted: 11-01-2022 06:49:41 PM
Official File Stamp: 11-02-2022 04:24:27 PM
Note from Clerk: (none provided)
Document Category: Appendix to Petition for Writ
Document Title: Petitioner's Appendix (Part 1 of 4)

Filing Status: Accepted and Filed

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Exhibit 4

From: [John Fortin](#)
To: [Benjamin Johnson](#); [Felecia Casci](#)
Cc: [Jason Woodbury](#); [Ryan J. Works](#); [Kimberly Kirn](#); [Brian Grubb](#)
Subject: RE: JCCR and Discovery extension in Fred
Date: Tuesday, November 8, 2022 1:36:00 PM

Hi Ben,

Of course, if Tri-Net needs more than 25 pages we will be happy to accommodate a stipulation. I am also confident that if we need more pages that you would do the same. I appreciate the clarification.

I will get this signed and sent back to you so we can get it on with the Court. I am working through the JCCR now and will let you know if I have any edits.

John Fortin | Attorney



P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>
Sent: Tuesday, November 8, 2022 12:37 PM
To: John Fortin <jfortin@mcdonaldcarano.com>; Felecia Casci <FCasci@carson.org>
Cc: Jason Woodbury <JWoodbury@carson.org>; Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>
Subject: RE: JCCR and Discovery extension in Fred

Hi John,

The Stipulation is fine with me with the caveat that the circumstances may require different page limits, for example a final MSJ that is longer than 25 pages. I just want to be sure both sides are still agreeable to further stipulations if warranted. But that can be done on a case by case basis.

Ben

From: John Fortin <jfortin@mcdonaldcarano.com>
Sent: Thursday, November 3, 2022 11:08 AM
To: Benjamin Johnson <BJohnson@carson.org>; Felecia Casci <FCasci@carson.org>
Cc: Jason Woodbury <JWoodbury@carson.org>; Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>
Subject: RE: JCCR and Discovery extension in Fred

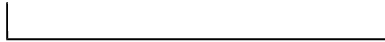
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Ben,

I wanted to follow up on the JCCR and see if you had any redline edits for me to review?

Additionally, we spoke about stipulating to extend the page limits under FJDCR 2.23(b). I prepared an SAO for your review. Please let me know if I can sign, scan, and send to you to get on file with the Court?

John Fortin | Attorney



P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>

Sent: Thursday, October 27, 2022 10:58 AM

To: John Fortin <jfortin@mcdonaldcarano.com>

Cc: Jason Woodbury <JWoodbury@carson.org>

Subject: RE: JCCR and Discovery extension in Fred

Hi John,

That sounds fine to me to push the opening of discovery to next week. I'll take a look at this draft and get any edits/questions back to you asap.

Thanks,

Ben

From: John Fortin <jfortin@mcdonaldcarano.com>

Sent: Wednesday, October 26, 2022 6:06 PM

To: Benjamin Johnson <BJohnson@carson.org>

Subject: RE: JCCR and Discovery extension in Fred

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Hi Ben,

Attached is the JCCR we have drafted. Because I spaced on Friday being Nevada day, I propose we push the opening of discovery to next Friday. This will give each of us time to draft our 16.1, serve them, and attach them to the JCCR for Judge Wilson's review.

PA001085

Of course, we're going to have to do this all over again and push the deadlines again when the answer to Elvin's counterclaims are filed but that should not be a lengthy process.

For the portions where we agree—we drop the Tri-Net view/ Sylvia view and simply state “the Parties agree. . . .”

I really appreciate your understanding with the scheduling of this and do apologize about the delays. Let me know what changes you have in mind or if we need to hop on a call to discuss.

John Fortin | Attorney

P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>

Sent: Tuesday, October 18, 2022 4:25 PM

To: John Fortin <jfortin@mcdonaldcarano.com>

Subject: Re: JCCR and Discovery extension in Fred

Hi John,

That sounds fine to me, I have no problem pushing it out a little further.

Ben

----- Original Message -----

From: John Fortin <jfortin@mcdonaldcarano.com>

Date: Tue, October 18, 2022 4:05 PM -0700

To: Benjamin Johnson <BJohnson@carson.org>

Subject: JCCR and Discovery extension in Fred

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Ben,

My apologies about not reaching out yesterday, I have been slammed in other cases and just saw that I was supposed to send you a draft JCCR by now. Are you okay with us pushing everything a week? I should be able to get you the JCCR by Friday to review and then we can get it on file with the Court early next week and discovery can open on October 28?

John Fortin | Attorney

2300 West Sahara Avenue | Suite 1200
Las Vegas, NV 89102
P: 702.873.4100

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Exhibit 5

From: [John Fortin](#)
To: [Benjamin Johnson](#); [Felecia Casci](#)
Cc: [Jason Woodbury](#); [Ryan J. Works](#); [Kimberly Kirn](#); [Brian Grubb](#); [No Scrub](#)
Subject: RE: JCCR and Discovery extension in Fred
Date: Wednesday, November 9, 2022 3:42:00 PM

Understood. You should have gotten our 16.1's and the JCCR service will be provided shortly.

John Fortin | Attorney



P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>
Sent: Wednesday, November 9, 2022 3:40 PM
To: John Fortin <jfortin@mcdonaldcarano.com>; Felecia Casci <FCasci@carson.org>
Cc: Jason Woodbury <JWoodbury@carson.org>; Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: JCCR and Discovery extension in Fred

Thanks John. I didn't mean to suggest a delay in discovery, rather that I haven't had a chance to put together our initial disclosures yet. I hope to have them done asap, but wanted to let you know it may not be until next week. I appreciate the extension for initial disclosures.

Ben

From: John Fortin <jfortin@mcdonaldcarano.com>
Sent: Wednesday, November 9, 2022 3:34 PM
To: Benjamin Johnson <BJohnson@carson.org>; Felecia Casci <FCasci@carson.org>
Cc: Jason Woodbury <JWoodbury@carson.org>; Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: JCCR and Discovery extension in Fred

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Ben,

PA001089

We already discussed that we are not amenable to staying discovery—because of the writ or otherwise. We will be happy to grant you an extension until November 18 to provide your disclosures. But we are proceeding with the previously agreed-upon date that discovery opens today. I will provide you a follow-on email with our NRCP 16.1 disclosures for your review. I altered the responses on Page 8 to reflect this extension. We will provide you a copy of a fully signed version as we place it in the mail to be entered by the Court.

John Fortin | Attorney

[Redacted Signature]

P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>
Sent: Wednesday, November 9, 2022 3:20 PM
To: John Fortin <jfortin@mcdonaldcarano.com>; Felecia Casci <FCasci@carson.org>
Cc: Jason Woodbury <JWoodbury@carson.org>; Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: JCCR and Discovery extension in Fred

Hi John,

Here is the signed JCCR. Our initial disclosures are not yet complete but I anticipate disclosure by November 18. I don't know if you want to change the report to reflect that?

Ben

From: John Fortin <jfortin@mcdonaldcarano.com>
Sent: Wednesday, November 9, 2022 10:59 AM
To: Benjamin Johnson <BJohnson@carson.org>; Felecia Casci <FCasci@carson.org>
Cc: Jason Woodbury <JWoodbury@carson.org>; Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: JCCR and Discovery extension in Fred

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Ben,

I accepted all changes and left the language on page 2. If you could please sign, scan, and return this to me it would be appreciated. We are finalizing our NRCP 16.1 Disclosures to serve on you and

PA001090

attach to this document. We should have it done in a few hours. Do you have an estimate when your 16.1's will be available to attach?

John Fortin | Attorney

[Redacted]

P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>
Sent: Tuesday, November 8, 2022 6:41 PM
To: John Fortin <jfortin@mcdonaldcarano.com>; Felecia Casci <FCasci@carson.org>
Cc: Jason Woodbury <JWoodbury@carson.org>; Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: JCCR and Discovery extension in Fred

Hi John,

I would like to leave the language on page 2 as I included it. The NV Supreme Court concluded she has standing to assert her defenses to the forfeiture, but she has not demonstrated that she is a good faith purchaser under NRS 179.1169. The Supreme Court ruling did not waive this requirement and therefore I believe it to be an accurate statement of Tri-Net's view of the case. Leaving it in does not effect Sylvia's counterclaim and does not mean that she adopts it for the purpose of the case.

After all, the section is entitled "Tri-Net's view of this action" and that is the view of the case.

The other changes are fine.

Thanks,

Ben

From: John Fortin <jfortin@mcdonaldcarano.com>
Sent: Tuesday, November 8, 2022 4:09 PM
To: Benjamin Johnson <BJohnson@carson.org>; Felecia Casci <FCasci@carson.org>
Cc: Jason Woodbury <JWoodbury@carson.org>; Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: JCCR and Discovery extension in Fred

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Hi Ben,

I made a few edits. On Page 2:13-16—the challenge to Sylvia’s standing is improper. This language does not appear at all in Tri-Net’s First Amended Complaint. Moreover, the Nevada Supreme Court already concluded Sylvia possesses standing to challenge the forfeiture so it is incorrect under the law of the case doctrine. If this information was meant to be included regarding Tri-Net’s affirmative defense to Sylvia’s counterclaims, Tri-Net reserved its rights regarding its claims regarding Sylvia’s standing as I highlighted on page 5:4. So the deletion of that paragraph does not affect Tri-Net’s rights at all in the JCCR.

I made a scrivener’s error on page 8:19-21 and did not exclude from Sylvia’s damages calculations her constitutional claims. I also forgot to include the lack of expert disclosures. You will see those additions in this draft.

If you are amenable to these changes, please let me know and we can get this finalized for everyone’s signature and submission to the Court.

John Fortin | Attorney

P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>

Sent: Monday, November 7, 2022 4:38 PM

To: John Fortin <jfortin@mcdonaldcarano.com>; Felecia Casci <FCasci@carson.org>

Cc: Jason Woodbury <JWoodbury@carson.org>; Ryan J. Works <rworks@mcdonaldcarano.com>;

Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>

Subject: RE: JCCR and Discovery extension in Fred

Hi John,

Here are some proposed edits to the JCCR. I kept it in redline so that you could review the edits.

Please let me know if you have any questions.

Ben

Benjamin R. Johnson
Senior Deputy District Attorney
Carson City District Attorney's Office
885 E. Musser Street, Suite 2030
Carson City, NV 89701
(775) 887-2070

PA001092

Fax: 887-2129

bjohnson@carson.org



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From: John Fortin <jfortin@mcdonaldcarano.com>

Sent: Friday, November 4, 2022 4:41 PM

To: Benjamin Johnson <BJohnson@carson.org>; Felecia Casci <FCasci@carson.org>

Cc: Jason Woodbury <JWoodbury@carson.org>; Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>

Subject: RE: JCCR and Discovery extension in Fred

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Hi Ben,

I have been in a mediation all day, so I apologize for not responding earlier. Sylvia is not amenable to a stipulation to stay discovery pending the resolution of Elvin's Petition. The Court's review of the Petition will moot only a small portion of the case and will have no effect on Sylvia's counterclaims.

Because it is late on Friday when we had planned to open discovery and we have not yet formalized a JCCR, I am willing to open discovery on Wednesday, November 9, 2022. Please provide me edits to the JCCR I submitted for your review by close of business Monday, November 7, 2022, so that way I can review and provide edits on Tuesday. I intend to attach my NRCP 16.1 disclosures (without the exhibits which we will disclose separately) to be filed with the Court on Wednesday.

Please let me know if you have any questions or comments.

PA001093

John Fortin | Attorney

P: 702.873.4100 | E: jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>
Sent: Friday, November 4, 2022 10:47 AM
To: John Fortin <jfortin@mcdonaldcarano.com>; Felecia Casci <FCasci@carson.org>
Cc: Jason Woodbury <JWoodbury@carson.org>; Ryan J. Works <rworks@mcdonaldcarano.com>;
Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>
Subject: RE: JCCR and Discovery extension in Fred

Hi John,

In light of the filing of the Writ petition with the NV Supreme Court, I wanted to reach out and ask if you would be amenable to a stipulation to stay of the district court case pending the outcome of the Writ?

If the Supreme Court rules in Petitioner's favor that would obviously change the case and I thought it made more sense to not expend unnecessary efforts or time on things that may become moot by the Court's ruling.

Happy to hear your thoughts.

Ben

From: John Fortin <jfortin@mcdonaldcarano.com>
Sent: Thursday, November 3, 2022 11:08 AM
To: Benjamin Johnson <BJohnson@carson.org>; Felecia Casci <FCasci@carson.org>
Cc: Jason Woodbury <JWoodbury@carson.org>; Ryan J. Works <rworks@mcdonaldcarano.com>;
Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>
Subject: RE: JCCR and Discovery extension in Fred

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Ben,

I wanted to follow up on the JCCR and see if you had any redline edits for me to review?

Additionally, we spoke about stipulating to extend the page limits under FJDCR 2.23(b). I prepared

PA001094

an SAO for your review. Please let me know if I can sign, scan, and send to you to get on file with the Court?

John Fortin | Attorney

P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>

Sent: Thursday, October 27, 2022 10:58 AM

To: John Fortin <jfortin@mcdonaldcarano.com>

Cc: Jason Woodbury <JWoodbury@carson.org>

Subject: RE: JCCR and Discovery extension in Fred

Hi John,

That sounds fine to me to push the opening of discovery to next week. I'll take a look at this draft and get any edits/questions back to you asap.

Thanks,

Ben

From: John Fortin <jfortin@mcdonaldcarano.com>

Sent: Wednesday, October 26, 2022 6:06 PM

To: Benjamin Johnson <BJohnson@carson.org>

Subject: RE: JCCR and Discovery extension in Fred

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

Hi Ben,

Attached is the JCCR we have drafted. Because I spaced on Friday being Nevada day, I propose we push the opening of discovery to next Friday. This will give each of us time to draft our 16.1, serve them, and attach them to the JCCR for Judge Wilson's review.

Of course, we're going to have to do this all over again and push the deadlines again when the answer to Elvin's counterclaims are filed but that should not be a lengthy process.

For the portions where we agree—we drop the Tri-Net view/ Sylvia view and simply state “the Parties agree. . . .”

I really appreciate your understanding with the scheduling of this and do apologize about the delays. Let me know what changes you have in mind or if we need to hop on a call to discuss.

John Fortin | Attorney

P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>

Sent: Tuesday, October 18, 2022 4:25 PM

To: John Fortin <jfortin@mcdonaldcarano.com>

Subject: Re: JCCR and Discovery extension in Fred

Hi John,

That sounds fine to me, I have no problem pushing it out a little further.

Ben

----- Original Message -----

From: John Fortin <jfortin@mcdonaldcarano.com>

Date: Tue, Octobers 18, 2022 4:05 PM -0700

To: Benjamin Johnson <BJohnson@carson.org>

Subject: JCCR and Discovery extension in Fred

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

Ben,

My apologies about not reaching out yesterday, I have been slammed in other cases and just saw that I was supposed to send you a draft JCCR by now. Are you okay with us pushing everything a week? I should be able to get you the JCCR by Friday to review and then we can get it on file with the Court early next week and discovery can open on October 28?

John Fortin | Attorney

2300 West Sahara Avenue | Suite 1200

Las Vegas, NV 89102

P: 702.873.4100

[vCard](#)

PA001096

 | [State Law Resources](#)

PERSONAL AND CONFIDENTIAL: This message originates from the law firm of McDonald Carano LLP. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, protected by the attorney work product doctrine, subject to the attorney-client privilege, or is otherwise protected against unauthorized use or disclosure. This message and any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you receive this message in error, please advise the sender by immediate reply and delete the original message. Personal messages express only the view of the sender and are not attributable to McDonald Carano LLP.

Exhibit 6

From: [John Fortin](#)
To: [Benjamin Johnson](#); [Jason Woodbury](#); [Felecia Casci](#)
Cc: [Ryan J. Works](#); [Kimberly Kirn](#); [Brian Grubb](#)
Subject: FW: Fred Discovery
Date: Tuesday, November 15, 2022 4:58:00 PM
Attachments: [Sylvia Fred's First Set of Interrogatories to State of Nevada Ex Rel Investigation Division.pdf](#)
[Sylvia Fred's First Request for Admissions to State of Nevada Ex Rel. Investigation Division.pdf](#)
[Sylvia Fred's First Request for Production of Nevada Ex Rel. Investigation Division.pdf](#)
[2021 12 15 - SAO re Email Service fs.pdf](#)

Counsel:

Please find the attached discovery requests from Sylvia Fred. Per the Party's SAO regarding email service which I attach here, we do not intend to serve these via the postal service to reduce the costs of the litigation.

I am still working through the protective order and hope to get that to Tri-Net by Friday, November 18, 2022, that way before any of these responses are due, the stipulated protective will be in place to guard against any sensitive disclosures of confidential information.

Thank you and have a great night.

John Fortin | Attorney



P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com



| [State Law Resources](#)

PERSONAL AND CONFIDENTIAL: This message originates from the law firm of McDonald Carano LLP. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, protected by the attorney work product doctrine, subject to the attorney-client privilege, or is otherwise protected against unauthorized use or disclosure. This message and any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you receive this message in error, please advise the sender by immediate reply and delete the original message. Personal messages express only the view of the sender and are not attributable to McDonald Carano LLP.

PA001099

Exhibit 7

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

*Pro Bono Counsel for
Claimant Sylvia Fred*

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

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

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

SYLVIA FRED, an individual,

Counterclaimant,

v.

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

Counterdefendant,

**SYLVIA FRED'S FIRST SET OF
INTERROGATORIES TO STATE OF
NEVADA EX REL. INVESTIGATION
DIVISION OF THE NEVADA STATE
POLICE**

ELVIN FRED, an individual,

Counterclaimant,

v.

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

CounterTri-Net,

Pursuant to Rules 26 and 33 of the Nevada Rules of Civil Procedure, Claimant Sylvia Fred ("Sylvia") hereby requests that the State of Nevada *ex rel.* Investigation Division of the Nevada State Police (Tri-Net Narcotics Task Force) ("Tri-Net") respond in writing and under oath within thirty (30) days of the date of service, to McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102. These Interrogatories are continuing in nature and Tri-Net must timely

1 supplement the answers to them under NRCP 26(e) whenever a response is in some material respect
2 incomplete or incorrect.

3 **DEFINITIONS**

4 1. The terms “you,” and “yours,” means and refers to State of Nevada ex rel.
5 Investigation Division of The Nevada State Police (Tri-Net Narcotics Task Force) (“Tri-Net”) and
6 includes any officers, directors, partners, agents, employees, accountants, counsel, parent
7 organization(s), subsidiaries, predecessor(s) in interest, and any other persons or entities under his
8 direction or control or under the direction or control of any of the foregoing, or acting on behalf of
9 any of the foregoing, regardless of affiliation or employment.

10 2. “Communicate” means every manner or means of disclosure or transfer or exchange
11 of information whether orally, by document or otherwise, and whether face to face, in a meeting, by
12 telephone or other electronic media, mail, personal delivery or otherwise.

13 3. “Communication” means the transfer of information from a person or entity, place,
14 location, format, or medium to another person or entity, place, location, format, or medium, without
15 regard to the means employed to accomplish such transfer of information, but including without
16 limitation oral, written and electronic information transfers. Each such information transfer, if
17 interrupted or otherwise separated in time, is a separate communication.

18 4. “Data” refers to all written or graphic matter, including all “writings” and
19 “recordings,” as those terms are defined in NRS 52.225, including all electronic and/or computer
20 data, disks with computer input, electronic records on computer hard drives, as well as all
21 “photographs,” as that term is defined in NRS 52.215, however produced or reproduced, of every
22 kind and description, however denominated by Responding Party, in Responding Party’s actual or
23 constructive possession, custody, care or control.

24 5. “Document” is defined to be synonymous in meaning and equal or exceeding in scope
25 to the usage of this term in Nevada Rule of Civil Procedure 34(a). It includes images, words and
26 symbols that are electronically stored and which, if printed on paper, would be the text of a
27 document, as well as metadata contained within particular electronic files. It also means all written
28 or graphic matter of every kind or description however produced or reproduced whether in draft, in

1 final, original or reproduction, signed or unsigned, whether or not now in existence, and regardless
2 of whether approved, sent, received, redrafted or executed, and includes without limiting the
3 generality of its meaning all correspondence, telegrams, notes, e-mail, video or sound recordings of
4 any type of communication(s), conversation(s), meeting(s), or conference(s), minutes of meetings,
5 memoranda, interoffice communications, intra office communications, notations, correspondence,
6 diaries, desk calendars, appointment books, reports, studies, analyses, summaries, results of
7 investigations or tests, reviews, contracts, agreements, working papers, tax returns, statistical
8 records, ledgers, books of account, vouchers, bank checks, bank statements, invoices, receipts,
9 records, business records, photographs, tape or sound recordings, maps, charts, photographs, plats,
10 drawings or other graphic representations, logs, investigators' reports, stenographers' notebooks,
11 manuals, directives, bulletins, computer data, computer records, or data compilations of any type or
12 kind of material similar to any of the foregoing however denominated and to whomever addressed.
13 "Document" shall include but is not limited to any electronically stored data on magnetic or optical
14 storage media as an "active" file (readily readable by one or more computer applications or forensic
15 software); any "deleted" but recoverable electronic files on said media; any electronic file fragments
16 (files that have been deleted and partially overwritten with new data); and slack (data fragments
17 stored randomly from random access memory on a hard drive during the normal operation of a
18 computer [RAM slack] or residual data left on the hard drive after new data has overwritten some
19 but not all of the previously stored data. "Document" shall exclude exact duplicates when originals
20 are available but shall include all copies made different from originals by virtue of any writings,
21 notations, symbols, characters, impressions or any marks thereon.

22 6. The term "ESI" means and refers to information created, manipulated,
23 communicated, stored (on-site and/or off-site), and best utilized in electronic, digital, and/or native
24 form, including, without limitation, the following: data; metadata; e-mail; word-processing
25 documents; spreadsheets; presentation documents; graphics; animations; images; audio, video, and
26 audiovisual recordings; voicemail; text messages; and the like (including attachments to any of the
27 foregoing) stored on databases, networks, computers, computer systems, servers, archives, backup
28 or data recovery systems, flash drives, discs, CDs, diskettes, drives, tapes, cartridges, printers, the

1 internet, personal digital assistants, handheld wireless devices, cellular phones, smart phones,
2 pagers, facsimile machines, telephone systems, voicemail systems, and/or other storage media,
3 requiring the use of computer hardware and software.

4 7. The term "Home" refers to the real property located at 3587 Desatoya Drive, Carson
5 City, Nevada 89701.

6 8. The term "Notice" means and refers to the statutory requirements as the Legislature
7 provided under NRS 179.1171(5) and the Nevada Rules of Civil Procedure.

8 **RULES OF CONSTRUCTION**

9 1. The terms "relate to," "related to," and "relating to" include "refer to," "summarize,"
10 "reflect," "constitute," "contain," "embody," "mention," "show," "comprise," "evidence,"
11 "discuss," "describe," or "pertaining to."

12 2. The word "concerning" means "regarding," "referring to," "relating to,"
13 "containing," "embodying," "mentioning," "evidencing," "constituting," or "describing."

14 3. The use of the masculine gender, as used herein, also means the feminine, or neuter,
15 whichever makes the request more inclusive.

16 4. The words "and" and "or" shall be construed conjunctively or disjunctively,
17 whichever makes the request more inclusive.

18 5. The use of the singular form of any word includes the plural and vice versa.

19 6. The terms "person or entity" and "persons or entities" mean any individual, firm,
20 corporation, joint venture, partnership, association, fund, other organization, or any collection or
21 combination thereof.

22 **INSTRUCTIONS**

23 1. The terms "identify," "identity," or "identification," when used in reference to a
24 natural person, mean to give, to the extent known, the person's full name, present or last known
25 address and telephone number, the present or last known business affiliation, including business
26 address and telephone number, and their prior or current connection, interest or association with any
27 Party to this litigation. Once a person has been identified in accordance with this paragraph, only
28

1 the name of that person need be listed in response to subsequent discovery requesting the
2 identification of that person.

3 2. The terms “identify,” “identity,” or “identification,” when used in reference to an
4 entity that is not a natural person, mean to state the entity’s name and describe its form of business
5 organization (*e.g.*, a Nevada limited liability company), the present or last known address and
6 telephone number of its principal place of business, its resident agent in Nevada, if any, the identity
7 of all persons affiliated with the organization having knowledge or documents concerning this
8 lawsuit, and the entity’s prior or current connection, interest or association with any Party to this
9 litigation, including without limitation any account names and numbers. Once an entity has been
10 identified in accordance with this paragraph, only the name of that entity need be listed in response
11 to subsequent discovery requesting the identification of that entity.

12 3. The terms “identify,” “identity,” or “identification,” when used in reference to a
13 document, mean to state (a) its title and subject matter; (b) its form (*e.g.*, “canceled check,” “payment
14 voucher,” “e-mail message,” “letter,” etc.); (c) its date of preparation; (d) the date appearing thereon,
15 if any; (e) the number of pages comprising the writing; (f) the identity of each person who wrote,
16 dictated or otherwise participated in the preparation or creation of the document; (g) the identity of
17 each person who signed, initialed or otherwise marked the document; (h) the identity of each person
18 to whom the document was addressed; (i) the identity of each person who received the document or
19 reviewed it; (j) the location of the document; and (k) the identity of each person having custody of
20 the document. Documents to be identified shall include both documents in your possession, custody,
21 or control, and all other documents of which you have knowledge. If you at any time had possession
22 or control of a document called for identification under this Set of Interrogatories and if such
23 document has been lost, destroyed, purged, or is not presently in your possession or control, you
24 shall describe the writing, the date of its loss, destruction, purge or separation from possession or
25 control, the circumstances surrounding its loss, destruction, purge or separation from possession or
26 control, and identify each person or entity that may have possession or control of a copy or the
27 original of such document.
28

4. These interrogatories reach all documents that are known and/or believed by you to exist. If you have knowledge of the existence of documents responsive to these interrogatories but contend that they are not within your possession, custody and/or control, please provide the following information:

- a. A description of the documents, including in your description as much detail as possible;
- b. The identity of the person or entity, including his, her or its address, believed by you to have possession or custody of the document or any copies of them at this time; and
- c. A description of the efforts, if any, you have made to obtain possession or custody of the documents.

5. If you contend that any document requested to be identified or produced, or any part thereof, is protected from discovery by the attorney-client privilege, work product doctrine, or some other ground or privilege or immunity, each such document shall be identified with at least the following information:

- a. A description of the nature of the document, *e.g.*, "letter," "memorandum," "report," "miscellaneous note," etc., and the number of pages it comprises;
- b. The date, and if no date appears thereon, the identification shall so state and shall give the date or approximate date such document was prepared;
- c. A brief description of the subject matter;
- d. The location of the document, including the name, address and organizational affiliation of its custodian;
- e. The name and address of each person who signed, initialed or otherwise marked on such document and the organization, if any, with which each such person was then affiliated;
- f. The name and address of each person who asked that the document be prepared and the organization, if any, with which each such person was then affiliated;
- g. The name and address of each person who prepared or participated in the preparation of such document and the organization, if any, with which each such person was then affiliated;
- h. The name and address of each recipient of such document and the organization, if any, with which each such person was then affiliated;
- i. The name and address of all other distributees or persons who have seen the document and the organization, if any, with which each such person was then affiliated;

j. All attorneys involved in the preparation or receipt of such document, if the attorney-client privilege or work product protection is claimed as to such document;

k. A statement of the grounds for refusal to produce such documents.

6. Whenever you are asked to identify or describe an oral communication, or when an answer to an interrogatory refers to one, with respect to the oral communication:

a. Provide the date and place of the communication and whether it was in person or by telephone;

b. Identify all persons who participated in and/or heard any part of it, sufficient to allow for service of process on such individuals;

c. The organization, if any, with which each participant was then connected;

d. Describe the substance of what each person said in the course of it; and

e. Identify all documents related to such communication.

7. If you contend that any oral communication requested to be identified is protected from discovery by the attorney-client privilege, work product doctrine, or some other ground or privilege or immunity, each such communication shall be identified with at least the following:

a. Provide the date and place of the communication and whether it was in person or by telephone;

b. Identify all persons who participated in and/or heard any part of it, sufficient to allow for service of process on such individuals;

c. The organization, if any, with which each participant was then connected;

d. A brief description of the nature/subject matter of the communication;

e. Identify all documents related to such communication; and

f. A statement of the grounds for refusal to disclose the specifics of the communication.

8. These interrogatories shall be deemed to be continuing, and any additional information and/or documents relating in any way to these interrogatories or your original responses that are acquired subsequent to the date of responding to these interrogatories, up to and including the time of trial, shall be furnished to Plaintiff promptly after such information or documents are acquired as supplemental responses to these interrogatories.

9. These interrogatories call for all information (including information contained in documents) known or reasonably available to you, your attorneys, investigators, representatives, agents or others acting on your behalf or under your direction or control, not merely such information as is known of your own personal knowledge. Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the fullest extent possible.

10. If you cannot answer an interrogatory fully after exercising due diligence to secure the information requested, so state and answer the interrogatory to the extent possible, specifying your inability to answer the remainder, the reasons therefor, the steps taken to secure the answers to the unanswered portions, and stating whatever information or knowledge you have concerning the unanswered portions. Please also identify the person you believe to have such knowledge, what you believe to be the correct answer, and the facts upon which you base your answers or beliefs.

11. If you consult any persons or entities or documents in answering these interrogatories, identify in regard to each such interrogatory the persons and/or entities and/or document consulted.

12. Where your answer or a portion thereof is given upon information and belief, other than personal knowledge, please so state and describe and/or identify the sources of such information and belief.

13. All other requirements of Rules 26, 33, and 34 of the Nevada Rules of Civil Procedure are hereby incorporated by reference.

INTERROGATORIES

INTERROGATORY NO. 1:

Please identify Your officer in charge, department head, division officer, and/or any other term you rely upon for the leadership position of the individual that was responsible for the care, upkeep, and oversight of the Home between July 10, 2019, through March 14, 2022.

INTERROGATORY NO. 2:

Please identify and describe each and every material procedure and/or policy both written and unwritten that You relied from July 2019 through March 2022 to ensure the necessary care,

1 upkeep, and preservation of the Home during Your possession of the Home between July 10, 2019,
2 through March 14, 2022.

3 **INTERROGATORY NO. 3:**

4 Please identify and detail the names of each and every Tri-Net officer, agent, or employee
5 involved in the care, upkeep, and preservation of the Home during Your possession of the Home
6 between July 10, 2019, and March 14, 2022.

7 **INTERROGATORY NO. 4:**

8 Please identify the names of each and every Tri-Net officer, agent, or employee involved in
9 the eviction and possession of the Home between July 10, 2019, and December 31, 2019.

10 **INTERROGATORY NO. 5:**

11 Please detail and describe each and every material fact related to Your communications and
12 discussions with counsel regarding Your decision to enter the May 8, 2019, Notice of Entry of
13 Default into the Home's chain of title on July 10, 2019.

14 **INTERROGATORY NO. 6:**

15 Please detail and describe Your collaborative decision-making process for obtaining a civil
16 forfeiture between the Carson City Sheriff's Office, the Nevada State Police, and the Douglas
17 County Sheriff's Office when criminal conduct under NRS 453.301 occurs.

18 **INTERROGATORY NO. 7:**

19 Please detail and describe Your chain of command structure as it relates to the decision-
20 making process between the individual identified in Interrogatory No. 1 and the Carson City
21 Sheriff's Office, the Nevada State Police, and the Douglas County Sheriff's Office regarding this
22 civil forfeiture proceeding for all material decisions.

23 **INTERROGATORY NO. 8:**

24 Please detail and identify every individual and/or individuals employed by You, the Carson
25 City Sheriff's Office, the Nevada State Police, and/or the Douglas County Sheriff's Office that were
26 involved in the decision-making process to seek a seizure and forfeiture of the Home in 2015 until
27 today.

28

INTERROGATORY NO. 9:

Please detail each individual and/or individuals employed by You, the Carson City Sheriff's Office, the Nevada State Police, and/or the Douglas County Sheriff's Office that were involved in the decision-making process to obtain actual possession of the Home and evict the Fred's in 2019.

INTERROGATORY NO. 10:

Please detail and describe all efforts You undertook in 2015 prior to filing Your April 1, 2015 Complaint for Forfeiture, to identify the source of funds and names of individuals who purchased the Home in 2012 including but not limited to every banking institution related to the purchase, the prior real property owners of the Home, and/or the real estate agents involved in the 2012 sale.

INTERROGATORY NO. 11:

Please detail and describe all efforts You undertook to ensure no unauthorized individual and/or individuals trespassed and/or squatted in the Home between July 10, 2019, and March 14, 2022.

INTERROGATORY NO. 12:

Please detail and describe all material facts You possess to support your Fourth Affirmative Defense that "Sylvia failed to undertake any reasonable action to mitigate any and all potential or alleged damages."

INTERROGATORY NO. 13:

Please detail and describe all material facts You possess to support Your Sixth Affirmative Defense that "TRI-NET's acts of omissions were not the proximate cause of Sylvia's damages, if any."

INTERROGATORY NO. 14:

Please detail and describe all material facts You possess to support Your Seventh Affirmative Defense that "Sylvia's damages, if any, were caused by superseding or intervening causes."

INTERROGATORY NO. 15:

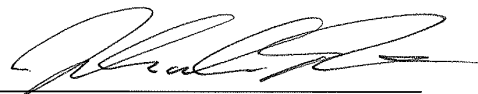
Please detail and describe all material facts You possess to support Your Tenth Affirmative Defense that "TRI NET acted reasonably and in good faith at all time material hereto."

INTERROGATORY NO. 16:

Please detail and describe all material facts You possess to support Your Eleventh Affirmative Defense that “The damages, if any, suffered by Sylvia, are the result of the actions, conduct or inaction of third parties not under control of TRI NET, and therefore TRI Net has no liability for such actions, conduct or inaction.”

Dated this 15th day of November, 2022.

McDONALD CARANO LLP

By: 

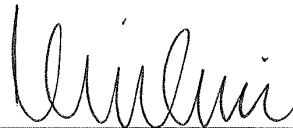
Ryan J. Works, Esq. (NSBN 9224)
John A. Fortin, Esq. (NSBN 15221)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
rworks@mcdonaldcarano.com
jfortin@mcdonaldcarano.com

*Pro Bono Counsel for
Claimant Sylvia Fred*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on this 15th day of November 2022, I caused to be delivered via email true and correct copies of the above **SYLVIA FRED'S FIRST SET OF INTERROGATORIES TO STATE OF NEVADA EX REL. INVESTIGATION DIVISION OF THE NEVADA STATE POLICE** to the following:

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



An employee of McDonald Carano LLP

Exhibit 8

1 Ryan J. Works, Esq. (NSBN 9224)
 2 John A. Fortin, Esq. (NSBN 15221)
 3 McDONALD CARANO LLP
 4 2300 West Sahara Avenue, Suite 1200
 5 Las Vegas, Nevada 89102
 6 Telephone: (702) 873-4100
 7 rworks@mcdonaldcarano.com
 8 jfortin@mcdonaldcarano.com

9 *Pro Bono Counsel for*
 10 *Claimant Sylvia Fred*

FIRST JUDICIAL DISTRICT COURT
CARSON CITY, NEVADA

11 In Re:
 12 3587 Desatoya Drive, Carson City, Nevada
 13 89701, Carson City, Assessor's Parcel
 14 Number: 010-443-11.

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

15 SYLVIA FRED, an individual,
 16 Counterclaimant,
 17 v.
 18 STATE OF NEVADA ex rel.
 19 INVESTIGATION DIVISION OF THE
 20 NEVADA STATE POLICE (TRI-NET
 21 NARCOTICS TASK FORCE),
 22 CounterTri-Net,

**SYLVIA FRED'S FIRST REQUEST FOR
 PRODUCTION OF DOCUMENTS TO
 STATE OF NEVADA EX REL.
 INVESTIGATION DIVISION OF THE
 NEVADA STATE POLICE**

23 ELVIN FRED, an individual,
 24 Counterclaimant,
 25 v.
 26 STATE OF NEVADA ex rel.
 27 INVESTIGATION DIVISION OF THE
 28 NEVADA STATE POLICE (TRI-NET
 NARCOTICS TASK FORCE),
 CounterTri-Net,

29 Pursuant to Rules 26 and 34 of the Nevada Rules of Civil Procedure, Claimant Sylvia Fred
 30 ("Sylvia"), by and through counsel, hereby serves the following First Set of Requests for Production
 31 of Documents ("Document Requests") to the State of Nevada *ex rel.* Investigation Division of the
 32 Nevada State Police (Tri-Net Narcotics Task Force) ("Tri-Net"), and asks that Tri-Net respond in
 33 writing within thirty (30) days of the date of service, to McDonald Carano LLP, 2300 West Sahara

1 Avenue, Suite 1200, Las Vegas, Nevada 89102. These Document Requests are continuing in nature
2 and Tri-Net must timely supplement the answers to them under Federal Rule 26(e) whenever a
3 response is in some material respect incomplete or incorrect.

4 **DEFINITIONS**

5 1. The terms “Tri-Net,” “You” or “Your” means and refers to the State of Nevada *ex*
6 *rel.* Investigation Division of the Nevada State Police (Tri-Net Narcotics Task Force) (“Tri-Net”),
7 and includes any partners including the Carson City Sheriff’s Office, the Douglas County Sheriff’s
8 Office, and the Nevada State Police but not limited to, agents, employees, counsel, trustees,
9 affiliates, successors and any other persons or entities under his control or direction, or acting on its
10 behalf, regardless of affiliation or employment, individually or collectively, whichever makes the
11 request more inclusive.

12 2. The term “Claimant” means and refers to the statutory definition as defined by the
13 Legislature under NRS 179.1158.

14 3. “Communication” means the transfer of information from a person or entity, place,
15 location, format, or medium to another person or entity, place, location, format, or medium, without
16 regard to the means employed to accomplish such transfer of information, but including without
17 limitation oral, written and electronic information transfers; each such information transfer, if
18 interrupted or otherwise separated in time, is a separate communication.

19 4. “Document” is defined to be synonymous in meaning and equal or exceeding in scope
20 the usage of this term in NRCP 34(a). It includes images, words and symbols that are electronically
21 stored and which, if printed on paper, would be the text of a document. It also means all written or
22 graphic matter of every kind or description however produced or reproduced whether in draft, in
23 final, original or reproduction, signed or unsigned, whether or not now in existence, and regardless
24 of whether approved, sent, received, redrafted or executed, and includes without limiting the
25 generality of its meaning all correspondence, telegrams, notes, e-mail, video sound recordings of
26 any type of communication(s), conversation(s), meeting(s), or conference(s), minutes of meetings,
27 memoranda, interoffice communications, intra office communications, notations, correspondence,
28 diaries, desk calendars, appointment books, reports, studies, analyses, summaries, results of

1 investigations or tests, reviews, contracts, agreements, working papers, tax returns, statistical
2 records, ledgers, books of account, vouchers, bank checks, bank statements, invoices, receipts,
3 records, business records, photographs, tape or sound recordings, maps, charts, photographs, plats,
4 drawings or other graphic representations, logs, investigators' reports, stenographers' notebooks,
5 manuals, directives, bulletins, computer data, computer records, or data compilations of any type or
6 kind of material similar to any of the foregoing however denominated and to whomever addressed.
7 "Document" shall exclude exact duplicates when originals are available, but shall include all copies
8 made different from originals by virtue of any writings, notations, symbols, characters, impressions
9 or any marks thereon.

10 5. The term "Notice" means and refers to the statutory requirements as the Legislature
11 provided under NRS 179.1171(5) and the Nevada Rules of Civil Procedure.

12 6. The terms "relate to," "related to," "relating to," "relative to," and "in relation to,"
13 include without limitation "refer to," "summarize," "reflect," "constitute," "concern," "contain,"
14 "embody," "mention," "show," "comprise," "evidence," "discuss," "describe," or "pertaining to."

15 7. The term "concerning" means and includes without limitation "regarding,"
16 "pertaining to," "reflecting," "referring to," "relating to," "containing," "embodying," "mentioning,"
17 "evidencing," "constituting," or "describing."

18 8. The terms "person or entity" and "persons or entities" mean any individual, firm,
19 corporation, joint venture, partnership, association, fund, other organization, or any collection or
20 combination thereof.

21 9. The terms "and" and "or" mean "and/or" and shall be construed conjunctively as
22 necessary to bring within the scope of these requests all information which might otherwise be
23 construed to be outside the scope of these requests.

24 10. The term "Willful blindness" means and refers to the statutory definition provided
25 under NRS 179.11635.

INSTRUCTIONS

1. These Document Requests seek all requested Documents that are in Tri-Net's possession, custody, and/or control, including without limitation, any records, depositories, or archives.

2. Copies of requested documents that differ from other copies of the document by reason of alterations, margin notes, comments, attached materials, or otherwise shall be considered separate documents and shall be produced separately.

3. Documents that are physically attached to, segregated and/or separated from other documents, whether by inclusion in binders, files, sub-files, or by use of dividers, tabs, or any other method, shall be left so attached, segregated, and/or separated when produced, and shall be retained in the order in which they are maintained, in the file where they are found.

4. If you contend that any document requested to be produced, or any part thereof, is protected from discovery by the attorney-client privilege, work product doctrine, or some other ground or privilege or immunity, as required under Rule 26(b)(5) of the Nevada Rules of Civil Procedure, produce a log that identifies each document withheld and provides at a minimum the following information:

- a. the place, date, and manner of preparation or other recording of the document;
- b. the title and subject matter of the document;
- c. the identity and position of the author, the addressee, and all recipients of the document; and
- d. a statement of (i) the nature of the legal privilege claimed or other reason for withholding the document and (ii) the factual basis for that claim of privilege or other reason for withholding, including the facts establishing any claim of privilege, the facts showing that the privilege has not been waived, the status of the person claiming the privilege, and a statement as to whether the contents of the document are limited to legal advice or contain other subject matter.

5. For each document from which portions were withheld pursuant to instruction 4, identify and produce all other portions of the document not so withheld.

6. Scope of Answers. In answering these Document Requests, you are requested to furnish all information available to you, however obtained, including hearsay, information known by you or in your possession or appearing in your records, information in the possession of your

1 attorneys, your investigators, and all persons acting on your behalf, and not merely the information
2 known of your own personal knowledge.

3 7. Qualification of Answers. If your answer is in any way qualified, please state the
4 exact nature and extent of the qualification.

5 8. If additional information or documents become known to Tri-Net regarding any of
6 these Document Requests following the initial response and submission to Claimant,
7 supplementation of the response with such information is required.

8 9. For each document produced, identify the specific document request number or
9 numbers to which the document is responsive.

10 10. Claimant reserves the right to submit additional Document Requests to supplement
11 this Set.

12 11. If you object to any Request in part, you shall respond fully to the extent not objected
13 to, and set forth specifically the grounds upon which the objection is based.

14 12. If you cannot answer a Request fully after exercising due diligence to secure the
15 documents requested, so state and respond to the extent possible, specifying your inability to respond
16 to the remainder, the reasons therefore, the steps taken to secure the documents that were not
17 produced, and stating whatever information or knowledge you have concerning the missing
18 documents. Please also identify the person you believe to have possession of the missing documents,
19 and the facts upon which you base your response.

20 **RULES OF CONSTRUCTION**

21 1. The terms "relate to," "related to," "relating to," "relative to," and "in relation to,"
22 include without limitation "refer to," "summarize," "reflect," "constitute," "concern," "contain,"
23 "embody," "mention," "show," "comprise," "evidence," "discuss," "describe," or "pertaining to."

24 2. The term "concerning" means and includes without limitation "regarding,"
25 "pertaining to," "reflecting," "referring to," "relating to," "containing," "embodying," "mentioning,"
26 "evidencing," "constituting," or "describing."

27 3. The term "Home" refers to the real property located at 3587 Desatoya Drive, Carson
28 City, Nevada 89701.

1 4. The use of the masculine gender, as used herein, also means the feminine, or neuter,
2 whichever makes a discovery interrogatory more inclusive.

3 5. The words “and” and “or” shall be construed conjunctively or disjunctively,
4 whichever makes a discovery interrogatory more inclusive.

5 6. The use of the singular form of any word includes the plural and vice versa. The terms
6 “person or entity” and “persons or entities” mean any individual, firm, corporation, joint venture,
7 partnership, association, fund, other organization, or any collection or combination thereof.

8 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

9 **REQUEST FOR PRODUCTION NO. 1:**

10 Please produce and/or identify all Documents and Communications You relied upon in
11 responding to Sylvia Fred’s First Request for Interrogatories.

12 **REQUEST FOR PRODUCTION NO. 2:**

13 Please produce and/or identify all Documents and Communications You relied upon in
14 responding to Sylvia Fred’s First Request for Answers.

15 **REQUEST FOR PRODUCTION NO. 3:**

16 Please produce each and every material Document and Communication regarding Your
17 efforts to find, locate, and/or effectuate proper Notice on every Claimant to this Civil Forfeiture
18 Proceeding between April 1, 2015, and March 22, 2022, including but not limited to your efforts
19 during Elvin Fred’s arraignment on June 29, 2015, Elvin Fred’s sentencing on August 24, 2015,
20 and/or Elvin Fred’s evidentiary hearing on January 20, 2017.

21 **REQUEST FOR PRODUCTION NO. 4:**

22 Please produce each and every material Document and Communication regarding Your
23 determination that Sylvia Fred should receive Notice of Your April 28, 2015, Notice of Entry of
24 Order.

25 **REQUEST FOR PRODUCTION NO. 5:**

26 Please produce each and every material Document and Communication regarding Your
27 determination that Sylvia Fred should not receive Notice of Your April 1, 2015, Complaint for
28 Forfeiture.

REQUEST FOR PRODUCTION NO. 6:

Please produce each and every material Document and Communication regarding Your determination that Sylvia Fred should not receive Notice of Your May 4, 2018, Motion to Lift the Stay.

REQUEST FOR PRODUCTION NO. 7:

Please produce each and every material Document and Communication regarding Your determination that Sylvia Fred should not receive Notice of Your July 26, 2018, Notice of Intent to Take Default.

REQUEST FOR PRODUCTION NO. 8:

Please produce each and every material Document and Communication regarding Your determination that Sylvia Fred should not receive Notice of Your December 21, 2018, Application for Clerk's Entry of Default.

REQUEST FOR PRODUCTION NO. 9:

Please produce each and every material Document and Communication regarding Your determination that Sylvia Fred should not receive Notice of Your January 4, 2019, Default Judgment.

REQUEST FOR PRODUCTION NO. 10:

Please produce each and every material Document and Communication regarding Your determination that Sylvia Fred should not receive Notice of Your May 7, 2019, Motion to Amend Default Judgment.

REQUEST FOR PRODUCTION NO. 11:

Please produce each and every material Document and Communication regarding Your determination that Sylvia should not receive Notice of Your May 9, 2019, Notice of Entry of Amended Default Judgment.

REQUEST FOR PRODUCTION NO. 12:

Please produce each and every material Document and Communication regarding Your investigation and discussion with the Carson City Tax Collector regarding the names, identities, and addresses of the individuals who paid property taxes on the Home from May 4, 2012, until March 22, 2022.

REQUEST FOR PRODUCTION NO. 13:

Please produce each and every material Document and Communication regarding Your investigation and discussion with Carson City Utilities regarding the names, identities, and addresses of the individuals who paid the utilities on the Home from May 2012 until March 22, 2022.

REQUEST FOR PRODUCTION NO. 14:

Please produce each and every material Document and Communication regarding Your investigation and discussion with Carol Toohey to determine the ownership interests of the Home between February 1, 2015 until March 22, 2022.

REQUEST FOR PRODUCTION NO. 15:

Please produce each and every material Document and Communication regarding Your investigation and determination of the ownership of the Home as required under NRS 179.1171(5).

REQUEST FOR PRODUCTION NO. 16:

Please produce each and every procedure, policy, and/or manual either formal or informal regarding the care and upkeep of including but not limited to the payment of taxes, payment of utilities, ensuring the property is not inhabited by squatters and/or trespassers for real property involved seized and/or forfeited under NRS 453.301 while litigation remains pending.

REQUEST FOR PRODUCTION NO. 17:

Please produce each and every record, log, and/or notes formal or informal taken by You during each and every inspection, check-in, or visit to the Home between July 10, 2019 through March 14, 2022.

REQUEST FOR PRODUCTION NO. 18:

Please produce each and every material Document and Communication related to *Elvin Fred v. Carson City, et al.*, Case No. 3:11-CV-0065-HDM-VPC including but not limited to any settlement documents and/or payments.

REQUEST FOR PRODUCTION NO. 19:

Please produce each and every material Document and Communication You possess demonstrating Sylvia's Willful blindness related to Elvin's criminal conduct.

REQUEST FOR PRODUCTION NO. 20:

Please produce each and every bodycam footage from Your officers documenting their inspection, verification, and assessments of the property at 3587 Desatoya Drive, Carson City, Nevada, 89701 between July 10, 2019, through March 14, 2022.

REQUEST FOR PRODUCTION NO. 21:

Please produce the inventory You took of the personal property located inside and/or outside of 3587 Desatoya Drive, Carson City, Nevada 89701 when you took possession of the property in 2019.

REQUEST FOR PRODUCTION NO. 22:

Please produce the inventory You took of the personal property located inside and/or outside of 3587 Desatoya Drive, Carson City, Nevada 89701 when you took relinquished possession of the property on March 14, 2022.

REQUEST FOR PRODUCTION NO. 23:

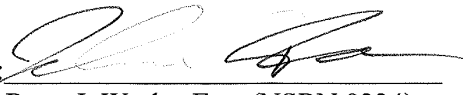
Please produce each and every material Document and Communication related to Your eviction and possession of the property at 3587 Desatoya Drive, Carson City, Nevada 89701 in 2019.

REQUEST FOR PRODUCTION NO. 24:

Please produce each and every material Document and Communication related to any aspect of Tri-Net's civil asset forfeiture program.

Dated this 15th day of November, 2022.

McDONALD CARANO LLP

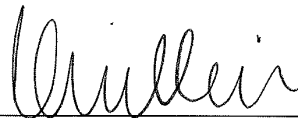
By: 
Ryan J. Works, Esq. (NSBN 9224)
John A. Fortin, Esq. (NSBN 15221)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
rworks@mcdonalddcarano.com
jfortin@mcdonalddcarano.com

*Pro Bono Counsel for
Claimant Sylvia Fred*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on this 15th day of November 2022, I caused to be delivered via email true and correct copies of the above **SYLVIA FRED'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO STATE OF NEVADA EX REL. INVESTIGATION DIVISION OF THE NEVADA STATE POLICE** to the following:

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



An employee of McDonald Carano LLP

Exhibit 9

From: [John Fortin](#)
To: [Benjamin Johnson](#); [Jason Woodbury](#); [J. Daniel Yu](#); [Felecia Casci](#)
Cc: [Ryan J. Works](#); [Kimberly Kirn](#)
Subject: RE: Responsive Pleading to Sylvia Fred Counterclaims
Date: Wednesday, November 30, 2022 2:42:00 PM
Attachments: [2022 10 12 - Affidavit of Service for Elvin Answer & Counterclaim FS.pdf](#)

Ben,

We provided service of Elvin Fred's counterclaims on October 7, 2022, and filed an affidavit of service with the Court on October 12, 2022. I never received any challenge to our method of service on the Attorney General's office.

Rule 12(a)(2) provides:

"Unless another time is specified by Rule 12(a)(3) or a statute, the following parties must serve an answer to a complaint, counterclaim, or crossclaim **within 45 days** after service on the party or if required service on the Attorney General, **whichever date is later.**" (Emphasis added).

Rule 12(a)(3) does not apply because, as far as I understand Tri-Net's Motion practice, it has not filed anything in response to Elvin Fred's Counterclaims, let alone a 12(b) motion. Moreover, I am not aware of any statutory provision – other than the requirement to serve the Attorney General – that alters the time period for a responsive pleading to Elvin's counterclaims. If I am mistaken on either, please provide me with a copy of Tri-Net's filing and/or the statute Tri-Net is relying on.

For deadline purposes, if Tri-Net relied on October 12, 2022, the date we provided our affidavit of service, a responsive pleading was due on November 27, 2022. As I read the Rules, the correct date for the time period to run for a response began on October 7, 2022, requiring a responsive pleading on November 21, 2022. Thus, regardless of the date Tri-Net relied on, a responsive pleading to Elvin Fred's Counterclaims is delinquent.

Based on the Rules of Civil Procedure and the Supreme Court Rules, if Tri-Net does not submit and serve a responsive pleading to Elvin Fred's Counterclaims by close of business on Friday, December 2, 2022, I will interpret Tri-Net's non-response as an intent not to defend. As such, I will promptly file with the Court a notice of intent to take a default for Elvin Fred's Counterclaims.

Please advise me on Tri-Net's intent to defend as soon as you can. Thank you.

John Fortin | Attorney



P: 702.873.4100 | **E:** jfortin@mcdonalddcarano.com

From: Benjamin Johnson <BJohnson@carson.org>

Sent: Wednesday, September 14, 2022 12:12 PM

PA001125

To: John Fortin <jfortin@mcdonaldcarano.com>; Jason Woodbury <JWoodbury@carson.org>; J. Daniel Yu <JDYu@carson.org>; Felecia Casci <FCasci@carson.org>

Cc: Ryan J. Works <rworks@mcdonaldcarano.com>; Jane Susskind <jsusskind@mcdonaldcarano.com>; Karyna Armstrong <karmstrong@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>

Subject: Re: Responsive Pleading to Sylvia Fred Counterclaims

Thank you John. That was an oversight on my part.

We will get a response on file asap.

I appreciate your courtesy.

Ben

----- Original Message -----

From: John Fortin <jfortin@mcdonaldcarano.com>

Date: Wed, September 14, 2022 11:28 AM -0700

To: Jason Woodbury <JWoodbury@carson.org>, "J. Daniel Yu" <JDYu@carson.org>, Benjamin Johnson <BJohnson@carson.org>, Felecia Casci <FCasci@carson.org>

CC: "Ryan J. Works" <rworks@mcdonaldcarano.com>, Jane Susskind <jsusskind@mcdonaldcarano.com>, Karyna Armstrong <karmstrong@mcdonaldcarano.com>, Kimberly Kirn <kkirn@mcdonaldcarano.com>

Subject: Responsive Pleading to Sylvia Fred Counterclaims

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

Counsel:

I am inquiring to determine Tri-Net's intent to defend Sylvia Fred's Counterclaims. We provided service via email to Tri-Net as permitted under our SAO we entered in December 2021. Because of the counterclaims we brought, we were required NRS Chapter 41 to effectuate service on the Attorney General's office and effectuated service on July 18, 2022. We likewise submitted our affidavit of service to the court on July 22, 2022. I never received any challenge to our method of service on the Attorney General's office.

Rule 12(a)(2) provides:

"Unless another time is specified by Rule 12(a)(3) or a statute, the following parties must serve an answer to a complaint, counterclaim, or crossclaim **within 45 days** after service on the party or if required service on the Attorney General, **whichever date is later.**" (Emphasis added).

Rule 12(a)(3) does not apply because, as far as I understand Tri-Net's Motion practice, it has not filed

anything in response to Sylvia Fred's Counterclaims, let alone a 12(b) motion. Moreover, I am not aware of any statutory provision – other than requirement to serve the Attorney General – that alters the time period for a responsive pleading to Sylvia's counterclaims. If I am mistaken on either, please provide me with a copy of Tri-Net's filing and/or the statute Tri-Net is relying on.

For deadline purposes, if Tri-Net relied on July 22, 2022, the date we provided our affidavit of service, a responsive pleading was due on September 5, 2022. As I read the Rules, the correct date for the time period to run for a response began on July 18, 2022, requiring a responsive pleading on September 1, 2022. Thus, regardless of the date Tri-Net relied on, a responsive pleading to Sylvia Fred's Counterclaims is delinquent.

Based on this and the Supreme Court Rules, if Tri-Net does not submit and serve a responsive pleading to Sylvia Fred's Counterclaims by close of business on Friday, September 16, 2022, I will interpret Tri-Net's non-response as an intent not to defend. As such, I will promptly file with the Court a notice of intent to take a default for Sylvia Fred's Counterclaims.

Please advise me on Tri-Net's intent to defend as soon as you can. Thank you.

John Fortin | Attorney



P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com



| [State Law Resources](#)

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Exhibit 10

From: [Benjamin Johnson](#)
To: [John Fortin](#)
Subject: RE: Supplemental JCCR for Elvin Fred v. State of Nevada ex rel.; Case No. 15 OC 00074 1B
Date: Thursday, December 15, 2022 10:10:22 AM

John,

Do you have time for a quick phone call sometime today?

Ben

From: John Fortin <jfortin@mcdonaldcarano.com>
Sent: Tuesday, December 13, 2022 10:38 AM
To: Benjamin Johnson <BJohnson@carson.org>; Jason Woodbury <JWoodbury@carson.org>; Felecia Casci <FCasci@carson.org>
Cc: Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>
Subject: RE: Supplemental JCCR for Elvin Fred v. State of Nevada ex rel.; Case No. 15 OC 00074 1B

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

Ben,

Thank you for speaking with me today. As we discussed, we are willing to grant you an extension on the RFAs until Monday December 19. We will set a call up for 3 PM on December 19 to discuss the RPD and Interrogatory responses so that we can better understand when the production and responses will occur. As for the stay to the proceedings, both of our positions remain the same.

For the JCCR, we will get you a supplemental JCCR draft on December 19 with a discovery opening date of January 4th for Elvin. As we discussed, we do not see a need to change any of the deadlines currently set in the first JCCR.

We will send out a calendar invite for our call on Monday at 3 PM.

John Fortin | Attorney



P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: John Fortin
Sent: Friday, December 9, 2022 4:51 PM
To: Benjamin Johnson <BJohnson@carson.org>; Jason Woodbury <JWoodbury@carson.org>; Felecia

PA001129

Casci <FCasci@carson.org>

Cc: Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>

Subject: RE: Supplemental JCCR for Elvin Fred v. State of Nevada ex rel.; Case No. 15 OC 00074 1B

Ben,

We will send a calendar invite for Tuesday's call regarding a JCCR.

Without a narrower list of the specific discovery responses you need an extension on it is difficult for me to authorize a blanket 30-day extension. As you know, we have been more than accommodating with requests for extensions throughout this litigation and are happy to accommodate reasonable requests. We do not believe that each and every response needs an additional 30 days and that many of them could be answered within 30 days from the date we sent the requests. You clearly disagree with me and if you are unwilling to provide a narrower list of responses requiring an extension than "all of the discovery requests" then you should Move in the district court for an extension.

I have already detailed the issues with granting a blanket stay to all of these proceedings because Elvin filed a discretionary writ petition that the Nevada Supreme Court has not ordered an answer to. So I disagree with your characterization that we are engaging in multiple levels of litigation. You clearly disagree with our position and if you feel that you need to move for a stay then you should.

John Fortin | Attorney

P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>

Sent: Friday, December 9, 2022 2:35 PM

To: John Fortin <jfortin@mcdonaldcarano.com>; Jason Woodbury <JWoodbury@carson.org>; Felecia Casci <FCasci@carson.org>

Cc: Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>

Subject: RE: Supplemental JCCR for Elvin Fred v. State of Nevada ex rel.; Case No. 15 OC 00074 1B

Hi John,

Tuesday at 9:45 will work for the JCCR call.

As to the discovery extension request, the request for extension would be for all of the discovery requests. Tri-Net is composed of different agencies and as a result the information requested may come from different places. Right now it is not clear which agency will need to respond to which

PA001130

request, hence the need for an extension. Obviously if a set of requests can be finished sooner, we would disclose it as soon as it was available.

I am not interested in going question by question to explain why an extension is required and frankly, I don't believe the rules require that either. If Ms. Fred is not amenable to extending a courtesy, then I think it will save time to say that so we can get a motion on file.

As for the stay, I believe that the scope of discovery and future discovery would be impacted by a decision on the petition for writ. It does not make sense from a logistical perspective to litigate this case at multiple levels at the same time all while conducting discovery.

Thanks,

Ben

----- Original Message -----

From: John Fortin <jfortin@mcdonaldcarano.com>

Date: Fri, December 09, 2022 12:30 PM -0800

To: Benjamin Johnson <BJohnson@carson.org>, Jason Woodbury <JWoodbury@carson.org>, Felecia Casci <FCasci@carson.org>

CC: "Ryan J. Works" <rworks@mcdonaldcarano.com>, Kimberly Kirn <kkirn@mcdonaldcarano.com>, Brian Grubb <bgrubb@mcdonaldcarano.com>

Subject: RE: Supplemental JCCR for Elvin Fred v. State of Nevada ex rel.; Case No. 15 OC 00074 1B

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

Hi Ben,

I appreciate your quick response. Can we schedule the supplemental JCCR for Tuesday morning at 9:45? The Supplement JCCR is fairly straightforward and should not take us long at all to complete because most of the work has already been done.

As for your request to meet and confer under FJDCR 3.7(b). I think we need to discuss both of your requests over the phone, however, I want to provide you some of my thoughts in writing before the call. You did not identify specific Requests for

Production of Documents (“RPDs”) that you will need more time on. Additionally, your email was vague and does not provide any indication that you need more time to respond to the Request for Admissions (“RFA”) or Interrogatories (“Rog”) Sylvia propounded. Therefore, I ask that you identify all the specific RPD, RFA, and Rog numbers that you believe will require an extension of time to review these older documents before our call that way I can better understand the scope of your request and what documents and responses we will received on December 15, 2022.

As for your request to stipulate to stay all discovery pending resolution of the Petition. As a threshold matter, the Nevada Supreme Court has not ordered Tri-Net to answer, thus there is nothing pending for Tri-Net to do in that proceeding. Petitions for Writs of Mandamus and Prohibition are purely discretionary and I am not willing to stipulate to a prediction that we do not know what the Court will do. Thus, it is premature to discuss staying the district court proceedings at this time. Furthermore, the statutory scheme in which Tri-Net is seeking to forfeit my clients’ Home is fairly strict and mandatory. NRS 179.1173(1) provides “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.” Third, even if the Nevada Supreme Court orders an answer and a reply, staying all of these proceedings (including Sylvia and Elvin’s counterclaims) is likely overbroad as many of Sylvia and Elvin’s counterclaims will be unaffected by the resolution of those proceedings (regardless of who hypothetically prevails in a proceeding we do not yet know the Supreme Court will review). You have not provided me with any legal support that a broad and blanket stay to all of these proceedings would satisfy the stay factors Nevada courts must apply. During our meet and confer though, I am happy to listen to your concerns.

Please let me know that Tuesday at 9:45 works for both the JCCR and the meet and confer and we will transmit a calendar invite. Thanks, and have a great day.

John Fortin | Attorney

P: 702.873.4100 | E: jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>

PA001132

Sent: Friday, December 9, 2022 10:31 AM

To: John Fortin <jfortin@mcdonaldcarano.com>; Jason Woodbury <JWoodbury@carson.org>;
Felecia Casci <FCasci@carson.org>

Cc: Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>;
Brian Grubb <bgrubb@mcdonaldcarano.com>

Subject: RE: Supplemental JCCR for Elvin Fred v. State of Nevada ex rel.; Case No. 15 OC 00074 1B

Hi John,

I'm available Tuesday or Weds morning after 9:30am.

I also wanted to reach out to you about two things. First, I would like to ask for an extension on the discovery responses for Sylvia Fred's requests. Obviously some of the information is years old and will likely require searching through old emails, etc. So I would like to request a 30 day extension for these responses. Given that we are going to likely alter deadlines after Elvin's JCCR, I don't think this would delay the case. If you are agreeable, I will prepare the requisite stipulation.

Second, I don't think it makes sense to continue litigating the district court case at the same time there is a petition for writ relief pending at the Nevada Supreme Court. It would be an unproductive use of time to conduct discovery when some of the issues may be disposed of by that action. I had previously asked about a stay of the case and you indicated that Sylvia would not agree to it.

Please consider this my attempt under FDJCR 3.7(b) to meet and confer regarding a request to stipulate to a stay of the district court case pending the outcome of the writ petition. If your clients are still not amenable to a stipulation to stay, I intend to file a motion to stay the case.

Thank you,

Ben

Benjamin R. Johnson
Senior Deputy District Attorney
Carson City District Attorney's Office
885 E. Musser Street, Suite 2030
Carson City, NV 89701
(775) 887-2070
Fax: 887-2129
bjohnson@carson.org



This message, together with any attachment(s), is intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privilege or the confidentiality of the message and any attachment(s), and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail and delete the message and any attachment(s) from your computer and network. Thank you.

From: John Fortin <jfortin@mcdonaldcarano.com>

Sent: Thursday, December 8, 2022 3:35 PM

To: Benjamin Johnson <BJohnson@carson.org>; Jason Woodbury <JWoodbury@carson.org>; Felecia Casci <FCasci@carson.org>

Cc: Ryan J. Works <rworks@mcdonaldcarano.com>; Kimberly Kirn <kkirn@mcdonaldcarano.com>; Brian Grubb <bgrubb@mcdonaldcarano.com>

Subject: Supplemental JCCR for Elvin Fred v. State of Nevada ex rel.; Case No. 15 OC 00074 1B

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Ben,

We received the file-stamped copy of the JCCR today which I attach for your records. What does your schedule look like early next week (Monday-Wednesday morning) for a supplemental JCCR for Elvin's Counterclaims? Unfortunately, Wednesday afternoon, Thursday, and Friday are booked for me with depo prep and depositions for me. If you are not available on any of those days let me know and we can schedule something for either Monday or Tuesday of the following week. I would like to get the supplemental JCCR completed, on file, and discovery open for Elvin before the holidays.

Please let me know what works best for you.

John Fortin | Attorney

PA001134

P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

Exhibit 11

From: [Felecia Casci](#)
To: [John Fortin](#); [Benjamin Johnson](#); [Jason Woodbury](#)
Cc: [Brian Grubb](#); [Kimberly Kirn](#)
Subject: RE: First Supplemental JCCR
Date: Wednesday, December 21, 2022 3:43:47 PM
Attachments: [First Supplement to Joint Case Conference Report.pdf](#)

Good Afternoon,

Please see the attached. The original is being placed in the mail this afternoon.

Thanks,

Felecia Casci

Senior Legal Assistant
District Attorney's Office
Civil and Juvenile Division
775.887.2072
775.887.2129 fax
fcasci@carson.org



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From: John Fortin <jfortin@mcdonaldcarano.com>
Sent: Wednesday, December 21, 2022 3:11 PM
To: Benjamin Johnson <BJohnson@carson.org>; Jason Woodbury <JWoodbury@carson.org>
Cc: Brian Grubb <bgrubb@mcdonaldcarano.com>; Felecia Casci <FCasci@carson.org>; Kimberly Kirn <kkirn@mcdonaldcarano.com>
Subject: RE: First Supplemental JCCR

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Thank you for catching those pronoun issues.

You are correct that the only changes were those in bold. Attached is the corrected version. Please sign and send back to us and we will get this on file with the Court.

John Fortin | Attorney



P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>

Sent: Wednesday, December 21, 2022 12:55 PM

To: John Fortin <jfortin@mcdonaldcarano.com>; Jason Woodbury <JWoodbury@carson.org>

Cc: Brian Grubb <bgrubb@mcdonaldcarano.com>; Felecia Casci <FCasci@carson.org>; Kimberly Kirn <kkirn@mcdonaldcarano.com>

Subject: RE: First Supplemental JCCR

John,

On page 10, section 3 and page 12, section 3 the pronouns for Elvin should be updated I believe from she to he.

I only reviewed the bolded areas as it is my understanding those are the only new parts. Everything else looks ok.

Ben

From: John Fortin <jfortin@mcdonaldcarano.com>

Sent: Wednesday, December 21, 2022 9:50 AM

To: Jason Woodbury <JWoodbury@carson.org>; Benjamin Johnson <BJohnson@carson.org>

Cc: Brian Grubb <bgrubb@mcdonaldcarano.com>; Felecia Casci <FCasci@carson.org>; Kimberly Kirn <kkirn@mcdonaldcarano.com>

Subject: FW: First Supplemental JCCR

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Jason,

I sent the proposed First Supplement to the JCCR yesterday to Ben and got his out of his office.

Please review and let me know what changes you want to make so we can get this on file.

John Fortin | Attorney

[Redacted Signature]

P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: John Fortin

Sent: Tuesday, December 20, 2022 2:45 PM

To: 'bjohnson@carson.org' <BJohnson@carson.org>

Cc: Brian Grubb <bgrubb@mcdonaldcarano.com>; Felecia Casci <FCasci@carson.org>

Subject: First Supplemental JCCR

Ben,

Please find the attached First Supplemental JCCR for Tri-Net's review. Please let me know if you are amenable to this and we can get this signed and on file with the Court.

John Fortin | Attorney

[Redacted Signature]

2300 West Sahara Avenue | Suite 1200

Las Vegas, NV 89102

P: 702.873.4100

[vCard](#)

[Redacted Signature] | [State Law Resources](#)

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Exhibit 12

From: [John Fortin](#)
To: [Benjamin Johnson](#)
Cc: [Jason Woodbury](#)
Subject: RE: Fred - Telephone Conference
Date: Monday, December 19, 2022 2:02:00 PM

Ben,

I am in receipt of your RFA's. Thank you for providing those responses. I will review and see if we need to discuss any of your objections or responses.

While I continue to disagree with your position regarding the responses to the RPD's and Rog's in conjunction with your request for a Stay, we have exhausted this discussion between our conversations via email and phone calls last week and in the prior weeks. Thank you for explaining your position and there is no need for another call.

If we do not speak before the holidays, I hope both you and Jason, your families, and all of your staff all have a wonderful holiday. If something comes up I will be sure to reach out to you.

John Fortin | Attorney



P: 702.873.4100 | **E:** jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>
Sent: Monday, December 19, 2022 12:54 PM
To: John Fortin <jfortin@mcdonaldcarano.com>
Cc: Jason Woodbury <JWoodbury@carson.org>
Subject: RE: Fred - Telephone Conference

Thanks for the quick response.

It Tri-Net's position that the motion to stay puts a "freeze" on the pending discovery and other motions until the motion to stay has been decided. As I mentioned, Tri-Net would not be prepared to submit any responses this week due to needing more time to search for responsive documents, witnesses, and information necessary to respond.

Ben

From: John Fortin <jfortin@mcdonaldcarano.com>
Sent: Monday, December 19, 2022 12:27 PM
To: Benjamin Johnson <BJohnson@carson.org>
Cc: Jason Woodbury <JWoodbury@carson.org>
Subject: RE: Fred - Telephone Conference

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Ben,

As I understood your position from the Thursday call, you would provide the RFA responses (which you confirmed below) today. I stated that in regards Rogs and the RPDs, I wanted Tri-Net to answer what you could this week and then provide rolling submissions with completion in 30 days. I am a little unclear with the end of your email, are you taking the position that your Motion to Stay is sufficient to not provide responses to the RPD and Rogs? Please clarify that point but I do not see a need for a call.

John Fortin | Attorney

[Redacted Signature]

P: 702.873.4100 | E: jfortin@mcdonaldcarano.com

From: Benjamin Johnson <BJohnson@carson.org>

Sent: Monday, December 19, 2022 12:12 PM

To: John Fortin <jfortin@mcdonaldcarano.com>

Cc: Jason Woodbury <JWoodbury@carson.org>

Subject: Fred - Telephone Conference

Hi John,

I just wanted to check if we still needed to have a telephone conference today. We will be serving our responses to RFA's this afternoon. As for the ROGs and RPDs, Tri-NET has requested the additional 30 days and I don't have any more definitive information about when responses may be provided.

And then there's the motion for stay that we filed. So in my mind I don't see the need for a call, but let me know if you think there's anything we need to discuss.

Ben

Benjamin R. Johnson
Senior Deputy District Attorney
Carson City District Attorney's Office
885 E. Musser Street, Suite 2030
Carson City, NV 89701
(775) 887-2070
Fax: 887-2129
bjohnson@carson.org

PA001142



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Exhibit 13

From: [Felecia Casci](#)
To: [John Fortin](#); [Brian Grubb](#); [Ryan J. Works](#); [Kimberly Kirn](#)
Cc: [Jason Woodbury](#); [Benjamin Johnson](#)
Subject: Case No. 15 OC 00074 1B - In Re: 3587 Desatoya Drive
Date: Wednesday, December 21, 2022 4:06:41 PM
Attachments: [Ex Parte Motion to Extend Deadline to File Opposition to Sylvia Fred's Motion for Partial Summary Judgment Seeking Declaration that Nevada's Civil Forfeiture Laws Violate Due Process.pdf](#)
[Proposed Order.pdf](#)

Good Afternoon,

Please see the attached.

Thanks,

Felecia Casci

Senior Legal Assistant
District Attorney's Office
Civil and Juvenile Division
775.887.2072
775.887.2129 fax
fcasci@carson.org



This message, together with any attachment(s), is intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privilege or the confidentiality of the message and any attachment(s), and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by email at fcasci@carson.org and delete the message and any attachment(s) from your computer and network. Thank you.

Exhibit 14

Carson City Property Inquiry

Property Information

Parcel ID	010-443-11	Parcel	0.1500
Tax Year	2023	Acreage	
Land Use	RES	Assessed	57,302
Group		Value	
Land Use	200 - Single Family	Tax Rate	0.0000
	Residence	Total Tax	\$0.00
Zoning	SF6	Fiscal Year	
Tax District	024	(2023 - 2024)	
Site Address	3587 DESATOYA DR	Total Unpaid	\$17,373.82
Neighborhood	Book 10, Stanton Park	All Years	

Pay Taxes

Public Notes	ROOFED PORCH, LIVING RM, DINING RM
---------------------	------------------------------------

- Sketches & Photos

Converted Sketch



Assessments				
Taxable Value	Land	Building	Per. Property	Totals
Residential	70,000	93,721	0	163,721
Com / Ind.	0	0	0	0
Agricultural	0	0	0	0
Exempt	0	0	0	0
Pers. Exempt				0
Total	70,000	93,721	0	163,721
Assessed Value	Land	Building	Per. Property	Totals
Residential	24,500	32,802	0	57,302
Com / Ind.	0	0	0	0
Agricultural	0	0	0	0
Exempt	0	0	0	0
Pers. Exempt				0
Total	24,500	32,802	0	57,302
	New Land	New Const.	New P.P.	
Residential	0	0	0	
Com / Ind.	0	0	0	
Agricultural	0	0	0	
Exempt	0	0	0	
Totals	0	0	0	

Assessor Descriptions						
Year	Assessor Descriptions	Subdivision	Section	Township	Range	Block & Lot
Current Year 2023						
2023	PARCEL N33 MAP #1704		15	15N	20E	

No Personal Exemptions

No Billing Information

Payment History				
	Fiscal Year	Total Due	Total Paid	Amount Unpaid
+	(2022 - 2023)	\$2,443.77	\$0.00	\$2,443.77
+	(2021 - 2022)	\$2,635.46	\$0.00	\$2,635.46
+	(2020 - 2021)	\$4,765.14	\$0.00	\$4,765.14
+	(2019 - 2020)	\$3,810.86	\$0.00	\$3,810.86
+	(2018 - 2019)	\$3,718.59	\$0.00	\$3,718.59
Show 5 More (22)				

Related Names

CURRENT Mail To FOR 2023 (2023 - 2024)

Name FRED, SYLVIA
Mailing PO BOX 1150
Address RED LAKE, MN, 56671-0000
Status Current
Account

CURRENT OWNER FOR 2023 (2023 - 2024)

Name FRED, SYLVIA
Mailing
Address
Status Current
Account

Structure 1 of 2

Structure 2 of 2

Sales History

DISCLAIMER: SOME DOCUMENTS MAY NOT BE SHOWN

Year	Document #	Document Type	Sale Date	Sold By	Sold To	Price
2022	531327	JUDGMENT AND DECREE	4/5/2022			\$0
2012	421984	GRANT DEED	5/4/2012	FEDERAL HOME LOAN MORTGAGE CORP	ELBIN FRED	\$69,900
1990	097815		3/23/1990		IRVAN E & WANDA L SULLIVAN	\$69,950

No Genealogy Information

No Taxing Entity Information

1 CARSON CITY DISTRICT ATTORNEY
JASON D. WOODBURY

2 District Attorney

Bar No. 6870

3 BENJAMIN R. JOHNSON

Senior Deputy District Attorney

4 Nevada Bar No. 10632

5 885 East Musser Street

Suite 2030

6 Carson City, Nevada 89701

T: 775.887.2070

7 F: 775.887.2129

E-mail: jwoodbury@carson.org

bjohnson@carson.org

9 Representing Plaintiff

10
11 FIRST JUDICIAL DISTRICT COURT OF NEVADA
12 CARSON CITY
13
14

15 In re:

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

Case No.: 15 OC 00074 1B

Dept. No.: 2

1 SYLVIA FRED, an individual,

2 Counterclaimant,

3 v.

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

7 Counterdefendant.

8 ELVIN FRED, an individual,

9 Counterclaimant,

10 v.

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

14 Counterdefendant.

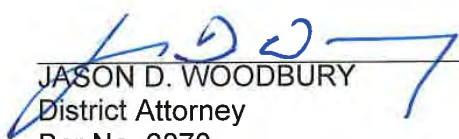
15
16 **PLAINTIFF/COUNTERDEFENDANT'S OPPOSITION TO SYLVIA FRED'S**
17 **MOTION UNDER NRCP 42(a) TO CONSOLIDATE THE CIVIL FORFEITURE**
18 **PROCEEDINGS CASE NO. 15 OC 0074 1B WITH THE TAX PROCEEDINGS**
19 **CASE NO. 21 RP 00005 1B FOR JUDICIAL ECONOMY AND EFFICIENCY**
20 **PURPOSES and MOTION TO LIFT STAY AND ORDER THE TAX PROCEEDING**
21 **DEFENDANTS TO FILE A RESPONSIVE PLEADING IN 45 DAYS**

22 COMES NOW, Plaintiff/Counterdefendant, the INVESTIGATION DIVISION OF
23 THE DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net
24 Narcotics Task Force (TRI NET)), by and through its counsel of record, JASON D.
25 WOODBURY, Carson City District Attorney, and opposes *Sylvia Fred's Motion under*
NRCP 42(a) to Consolidate the Civil Forfeiture Proceedings Case No. 15 OC 0074 1B
with the Tax Proceedings Case No. 21 RP 00005 1B for Judicial Economy and

1 *Efficiency Purposes and Motion to Lift Stay and Order the Tax proceeding Defendants*
2 *to File a Responsive Pleading in 45 Days ("Motion")* filed with this Court on December
3 12, 2022. This *Opposition* is made pursuant to FJDCR 3.8 and is based on NRCP
4 42(a), the following points and authorities, all papers and pleadings on file herein, and
5 any evidence and argument presented at any hearing on the *Motion*.

6 DATED this 27th day of December, 2022.

7
8 CARSON CITY DISTRICT ATTORNEY

9
10 
11 JASON D. WOODBURY
12 District Attorney
13 Bar No. 6870
14 885 East Musser Street
15 Suite 2030
16 Carson City, Nevada 89701
17 T: 775.887.2070
18 F: 775.887.2129
19 E-mail: jwoodbury@carson.org
20 Representing Plaintiff/Counterdefendant
21
22
23
24
25

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The two cases which the *Motion* seeks to consolidate involve different parties, different facts, and different questions of law. There is no persuasive reason to consolidate these matters, and, in fact, introduction of an entirely new and unrelated category of issues into this case would unnecessarily complicate this matter while adding no benefit of expediency or efficiency.

Additionally, the request to lift the stay in the Tax Proceeding is premature. The issue in that case is allocation of the responsibility for taxes on the residence that is the subject of the forfeiture action. Allocation of tax responsibility cannot be adjudicated until the forfeiture action determines who owned the residence at issue and when. As such, the Tax Proceeding stay should remain in effect.

II. Discussion of Consolidation

A. Nature of the Cases Proposed for Consolidation

The two cases proposed for consolidation are case number 15 OC 00074 1B and 21 RP 00005 1B, which the *Motion* refers to as the "Civil Forfeiture and Counterclaim Proceeding" and the "Tax Proceeding", respectively.

1. Civil Forfeiture and Counterclaim Proceeding

The Civil Forfeiture and Counterclaim Proceeding was initiated as an action by TRI NET against a residence in Carson City seeking forfeiture of the residence as a result of its involvement in significant drug activity. *See generally, First Am. Compl. for Forfeiture* at ¶¶9-23 (Mar. 22, 2022). SYLVIA FRED and ELVIN FRED claim an interest in the residence at issue and have been named as purported claimants. *Id.* at ¶¶4-6. Both SYLVIA FRED and ELVIN FRED have asserted counterclaims against TRI NET, which consist of facial challenges to Nevada's civil forfeiture process,

1 claimed illegalities of the forfeiture process in this matter, and alleged damage to the
2 residence at issue. Delinquent property taxes owed or possibly owned by SYLVIA
3 FRED to Carson City have nothing to do with the Civil Forfeiture and Counterclaim
4 Proceeding.

5 **2. Tax Proceeding**

6 The Tax Proceeding was initiated by SYLVIA FRED and requests: (1) "a
7 declaration from this Court determining who was obligated to pay the property taxes
8 on the Subject Property during the pendency of Sylvia's appeal" in the Civil Forfeiture
9 and Counterclaim Proceeding; *Complaint or, in the Alternative, Pet'n for a Writ of*
10 *Prohibition Against the Carson City Treasurer and Carson City Bd. of Supervisors*
11 *Delinquent Tax Proceedings* at ¶38; and (2) "a writ of prohibition to arrest the Carson
12 City Treasurer and Carson City's statutory delinquent tax foreclosure proceeding while
13 Sylvia's appeal is pending," *Id.* at 9:15-16.

14 ELVIN FRED is not a party to the Tax Proceeding. More importantly, the Carson
15 City Treasurer and Board of Supervisors, which are parties to the Tax Proceeding, are
16 not parties to the Civil Forfeiture and Counterclaim Proceeding. The circumstances of
17 the civil forfeiture in this case, the constitutionality of forfeiture proceedings in Nevada,
18 and the allocation of responsibility for the condition of the residence which is the subject
19 of the forfeiture proceedings have nothing to do with the Tax Proceeding.

20 **B. Legal Standards for Consolidation**

21 As there is no legal mandate for consolidation of the cases at issue, this Court
22 is vested with significant discretion in evaluating whether consolidation is appropriate.
23 *Marcuse v. Del Webb Cmty's., Inc.* 123 Nev. 278, 286, 163 P.3d 462, 467 (2007); *Ward*
24 *v. Sheeline Banking & Trust Co.*, 54 Nev. 442, 452, 22 P.2d 358, 361 (1933). "In fact,
25 there are no precise guidelines that a court must adopt in consolidating cases, and as

1 such, courts have generally adopted a case-by-case method in determining whether
2 to consolidate cases.” 1 Nevada Civ. Practice Manual §21.02 (*citing In re Bendectin*
3 *Litigation*, 857 F.2d 290, 307-08 (6th Cir. 1988) (*citing In re Innotron Diagnostics*, 800
4 F.2d 1077, 1084 (Fed. Cir. 1986))).

5 C. Analysis

6 These matters cannot be consolidated because the issues involved in each
7 case cannot be litigated contemporaneously with one another. The object of the Tax
8 Proceeding is to adjudicate the allocation of responsibility for taxes due on the
9 residence at issue. This question necessarily depends upon whether forfeiture is
10 granted or denied. If forfeiture is granted, “all right, title, and interest” vested with TRI
11 NET during ELVIN FRED’s criminal conduct in the residence. NRS 179.1169(1). This
12 outcome prompts an outcome in the Tax Proceeding that corresponds with the timing
13 of that transfer of vested interest and allocates tax responsibility accordingly. Similarly,
14 if the forfeiture is denied, the allocation of responsibility for taxes on the residence
15 depends upon the specific nature of the denial, including when, if ever, TRI NET
16 assumed lawful possession of the residence and the duration of that lawful possession.
17 The critical point is that the Tax Proceeding cannot be adjudicated until the outcome
18 of the forfeiture is known. Until that outcome is known, there is nothing to litigate in the
19 Tax Proceeding. There was a point where both parties recognized this inevitable
20 condition. In asking the Court to stay the Tax Proceeding, the parties stipulated:

21 [T]he purpose of this stipulation and agreement is to preserve the status
22 quo and each stipulate and agree to enter into a preliminary injunction in
23 this matter until *Fred v. Tri-Net*, Case No. 80194, (“the Appeal”) currently
24 pending before the Nevada Supreme Court are *resolved to finality and*
25 *ownership of the real property* located at 3587 Desatoya Drive Carson
City, Nevada 89701, Parcel No. 010-443-11 (the “Property”) *is*
established.

1 *Stipulation and Or. Regarding Pl.'s Mot. for Temp. Restraining Or. and Prelim. Inj.* at
2 2:15-20 (Case No. 21 RP 00005 1B) (June 3, 2021) (emphasis added); *see also id.* at
3 2:21 – 3:7 (stipulating to court order suspending tax foreclosure proceedings “until the
4 Appeal has reached finality, any remand to the district court by the Supreme Court has
5 been fully resolved (if the Supreme Court so orders) and there is no longer any case
6 or controversy remaining between Petitioner/Plaintiff and Defendant/Real Party in
7 Interest in that matter such that ownership of the Property is established.” (emphasis
8 added)).

9
10 The *Motion* fails to explain how the circumstances have changed to now obviate
11 these previously stipulated points. In fact, the circumstances have not changed. The
12 tax issues cannot be decided until the forfeiture issues have been decided, and it has
13 been determined who legally owned the residence at issue and when. As such,
14 consolidation will not expedite the pending matters or make the proceedings any more
15 efficient.

16 In fact, the ill-advised request for consolidation will have the opposite effect. As
17 explained above, the Carson City Treasurer and Board of Supervisors have nothing
18 whatsoever to do with the Civil Forfeiture and Counterclaim Proceeding. And yet,
19 consolidation would compel their involvement in the discovery process and litigation of
20 issues that have nothing to do with their office or any of their actions in the Tax
21 Proceeding.

22 Additionally, consolidation has a significant potential to create an entirely
23 avoidable conflict of interest in the legal representation of the parties. The Carson City
24 District Attorney's Office presently represents TRI NET in the Civil Forfeiture and
25 Counterclaim Proceeding. In the Tax Proceeding, it represents the Carson City

1 Treasurer, Board of Supervisors, and TRI NET. Consolidation would force the Carson
2 City District Attorney's Office to represent three distinct clients in a single proceeding.
3 Of course, that may be permitted if the clients agree to that situation and their interests
4 are aligned. However, consolidation enhances the risk the interests of the clients
5 represented by the Carson City District Attorney's Office will diverge in a way that
6 creates a conflict of interest in its representation. There are, no doubt, a multitude of
7 examples and permutations that would ably establish the point, but here is just one
8 hypothetical possibility. An offer is extended to resolve both proceedings. From the
9 perspective of the clients represented by the Carson City District Attorney's Office, the
10 offer is a generally favorable resolution of the Tax Proceeding but a generally
11 unfavorable resolution of the Civil Forfeiture and Counterclaim Proceeding. Two of the
12 parties, the Carson City Treasurer and Board of Supervisors, wish to accept the offer,
13 but the third, TRI NET, wishes to reject it. Quite clearly a conflict of interest has been
14 created. Unnecessarily so.

15 For these reasons, the *Motion's* request to consolidate these two matters should
16 be rejected by this Court.

17 III. Discussion of Stay

18 Lifting the stay of the Tax Proceeding is premature. As explained above,
19 allocation of responsibility for taxes due on the residence at issue, necessarily depends
20 upon the outcome of the forfeiture action. Due to this circumstance, it makes no sense
21 to attempt to litigate these two inherently separate cases at the same time. Doing so
22 convolutes both matters unnecessarily and with no corresponding benefit or efficiency.
23 For this reason, the *Motion's* request to lift the stay should be denied as premature.

24 \\\

25 \\\

1 IV. Conclusion

2 For the reasons set forth herein, *Sylvia Fred's Motion under NRCP 42(a) to*
3 *Consolidate the Civil Forfeiture Proceedings Case No. 15 OC 0074 1B with the Tax*
4 *Proceedings Case No. 21 RP 00005 1B for Judicial Economy and Efficiency Purposes*
5 *and Motion to Lift Stay and Order the Tax proceeding Defendants to File a Responsive*
6 *Pleading in 45 Days* should be denied. The Tax Proceeding should not be
7 consolidated with the Civil Forfeiture and Counterclaim Proceeding. Additionally, the
8 Tax Proceeding should remain stayed pending adjudication of the Civil Forfeiture and
9 Counterclaim Proceeding.

10 DATED this 27th day of December, 2022.

11 CARSON CITY DISTRICT ATTORNEY

12
13 
14 JASON D. WOODBURY

15 District Attorney

16 Bar No. 6870

17 885 East Musser Street

18 Suite 2030

19 Carson City, Nevada 89701

20 T: 775.887.2070

21 F: 775.887.2129

22 E-mail: jwoodbury@carson.org

23 Representing Plaintiff/Counterdefendant
24
25

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 27th day of December, 2022, I served a true and correct copy of the foregoing **PLAINTIFF/COUNTERDEFENDANT'S OPPOSITION TO SYLVIA FRED'S MOTION UNDER NRCP 42(a) TO CONSOLIDATE THE CIVIL FORFEITURE PROCEEDINGS CASE NO. 15 OC 0074 1B WITH THE TAX PROCEEDINGS CASE NO. 21 RP 00005 1B FOR JUDICIAL ECONOMY AND EFFICIENCY PURPOSES and MOTION TO LIFT STAY AND ORDER THE TAX PROCEEDING DEFENDANTS TO FILE A RESPONSIVE PLEADING IN 45 DAYS** together with a proposed **ORDER DENYING SYLVIA FRED'S MOTION UNDER NRCP 42(a) TO CONSOLIDATE THE CIVIL FORFEITURE PROCEEDINGS CASE NO. 15 OC 0074 1B WITH THE TAX PROCEEDINGS CASE NO. 21 RP 00005 1B FOR JUDICIAL ECONOMY AND EFFICIENCY PURPOSES and MOTION TO LIFT STAY AND ORDER THE TAX PROCEEDING DEFENDANTS TO FILE A RESPONSIVE PLEADING IN 45 DAYS** via electronic mail to the following:

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



1 CARSON CITY DISTRICT ATTORNEY
2 JASON D. WOODBURY

3 District Attorney

4 Bar No. 6870

5 BENJAMIN R. JOHNSON

6 Senior Deputy District Attorney

7 Nevada Bar No. 10632

8 885 East Musser Street

9 Suite 2030

10 Carson City, Nevada 89701

11 T: 775.887.2070

12 F: 775.887.2129

13 E-mail: jwoodbury@carson.org

14 bjohnson@carson.org

15 Representing Plaintiff

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

18 In re:

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

Case No. 15 OC 00074 1B

Dept. No. 2

NOTICE OF ENTRY OF ORDER


TO: ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that on January 3, 2023, the above-captioned Court entered an 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). A copy of said Order is attached hereto.

DATED this 4th day of January, 2023.

JASON D. WOODBURY
District Attorney

By:


BENJAMIN R. JOHNSON, #10632
Senior Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 4th day of January, 2023, I served a true and correct copy of the foregoing

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

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



EXHIBIT 1

2023 JAN -3 PM 1:00

WILLIAM SUSTADEN
CLERK

BY DEPUTY

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.

1 ELVIN FRED, an individual,

2 Counterclaimant,

3 v.

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

8 Counterdefendant.

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

14 This matter comes before the Court on the *Plaintiff/Counterdefendant's Ex Parte*
15 *Motion to Extend Deadline to File Opposition to Sylvia Fred's Motion for Partial*
16 *Summary Judgment Seeking a Declaration that Nevada's Civil Forfeiture Laws Violate*
17 *Due Process ("Motion")* filed December 21, 2022.

18 Based on the circumstances set forth in the *Motion* and good cause appearing
19 therefor, the *Motion* is HEREBY GRANTED. The deadline for
20 Plaintiff/Counterdefendant, the INVESTIGATION DIVISION OF THE DEPARTMENT
21 OF PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force (TRI
22 NET), to file an opposition to *Sylvia Fred's Motion for Partial Summary Judgment*

23 \\\

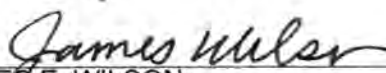
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1 *Seeking a Declaration that Nevada's Civil Forfeiture Laws Violate Due Process* is
2 extended to January 9, 2023.

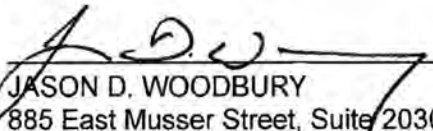
3 IT IS SO ORDERED.

4 DATED this 3 day of January, 20 23.

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7 JAMES E. WILSON
District Judge

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Submitted December 21, 2022 by:


JASON D. WOODBURY
885 East Musser Street, Suite 2030
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jwoodbury@carson.org

1 CARSON CITY DISTRICT ATTORNEY
2 JASON D. WOODBURY
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4 Bar No. 6870
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15 Representing Plaintiff

11 FIRST JUDICIAL DISTRICT COURT OF NEVADA
12 CARSON CITY
13

14 In re:

15 3587 Desatoya Drive, Carson City,
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17 described as all that certain parcel of land
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1 SYLVIA FRED, an individual,

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4 STATE OF NEVADA ex rel.
5 INVESTIGATION DIVISION OF THE
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NARCOTICS TASK FORCE),

7 Counterdefendant.

8 ELVIN FRED, an individual,

9 Counterclaimant,

10 v.

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

14 Counterdefendant.

15
16 **PLAINTIFF/COUNTERDEFENDANT'S OPPOSITION TO SYLVIA FRED'S**
17 **COUNTERMOTION TO COMPEL PRODUCTION OF DOCUMENTS**

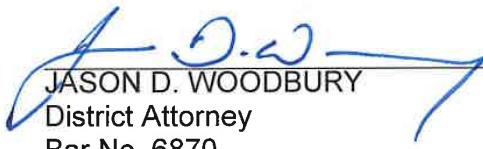
18 COMES NOW, Plaintiff/Counterdefendant, the INVESTIGATION DIVISION OF
19 THE DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net
20 Narcotics Task Force (TRI NET)), by and through its counsel of record, JASON D.
21 WOODBURY, Carson City District Attorney, and opposes *Sylvia Fred's Countermotion*
22 *to Compel Production of Documents ("Motion to Compel")* filed with this Court on
23 December 23, 2022. This *Opposition* is made pursuant to FJDCR 3.8 and is based on

24 \\\

1 the following points and authorities, all papers and pleadings on file herein, and any
2 evidence and argument presented at any hearing on the *Motion to Compel*.

3 DATED this 6th day of January, 2023.

4 CARSON CITY DISTRICT ATTORNEY

6
7 
8 JASON D. WOODBURY

9 District Attorney
10 Bar No. 6870
11 885 East Musser Street
12 Suite 2030
13 Carson City, Nevada 89701
14 T: 775.887.2070
15 F: 775.887.2129
16 E-mail: jwoodbury@carson.org
17 Representing Plaintiff/Counterdefendant
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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The *Motion to Compel* was presented as a portion of SYLVIA and ELVIN FRED's "omnibus" response to two motions previously filed by TRI NET. One of those motions has been resolved by the Court's *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)* issued on January 3, 2023. As that issue has been resolved, it is unnecessary to provide any further response to the arguments presented in the "omnibus" response. The second issue, which is addressed in the contemporaneously filed *Plaintiff/Counterdefendant's Response to Elvin Fred and Sylvia Fred's Motion to Strike Tri-Net's Improper Motion to Stay and Alternatively Elvin Fred and Sylvia Fred's Opposition*, was initially raised in TRI NET'S *Motion for Stay* filed December 15, 2022. The remaining issue, which is addressed in this *Opposition*, was initially raised in *Sylvia Fred's Countermotion to Compel Production of Documents* filed December 23, 2022.

TRI NET does not agree with the proposition that an "omnibus response" to these pending issues furthers "judicial economy and efficiency." *Motion to Compel* at 3:3-5. In fact, the vehicle of an "omnibus response" amounts to little more than a transparent attempt to conflate clearly independent procedural issues and inject disparaging vitriol into purely legal questions. As such, distinct responses to the arguments addressed in the "omnibus" response are provided.

II. Factual and Procedural Background

For the reasons stated above, and tempting though it may be, this *Opposition* will not undertake a point by point rebuttal to the "PROCEDURAL AND FACTUAL

1 **HISTORY**” articulated in the “omnibus” response. *Motion to Compel* at 4:6 – 6:11. To
2 be clear, however, TRI NET takes issue with many of the representations offered
3 therein, which range from the irrelevant to the disingenuous. Certainly, if the Court
4 considers the characterization of communication between opposing attorneys and the
5 resurrection of insignificant spats long-resolved important, a comprehensive response
6 can be provided. Far more likely, however, the Court considers such material
7 unhelpful, so this *Opposition* turns to more salient information.

8 On November 15, 2022, SYLVIA FRED served upon TRI NET three sets of
9 written discovery requests, which included requests for admission; request for
10 production of documents; and interrogatories. *Declaration of Jason Woodbury in*
11 *Support of Opposition to Sylvia Fred’s Countermotion to Compel Production of*
12 *Documents* at ¶3 (Jan. 6, 2023) (attached hereto and marked as Exhibit 1) [hereinafter
13 “*Woodbury Dec.*”]; see also *Exs. 7-8 of Motion to Compel*. On December 19, 2022,
14 TRI NET provided responses to SYLVIA FRED’s requests for admission. *Woodbury*
15 *Dec.* at ¶4. Preparation of responses to the remaining discovery requests propounded
16 in SYLVIA FRED’s interrogatories and requests for production of documents have not
17 been completed, due to the volume and nature of the requests. *Woodbury Dec.* at ¶5.
18 In addition to the volume and nature of the requested written discovery, compiling and
19 preparing responses is particularly complex due to the composition of TRI NET as a
20 multi-agency task force with frequently rotating members employed by several different
21 agencies. *Woodbury Dec.* at ¶6. Additionally, upon information and belief, at least two
22 individuals with knowledge who may have information pertinent to the discovery
23 requests are retired from law enforcement. *Woodbury Dec.* at ¶7. SYLVIA FRED’s
24 requests for written discovery have been provided to TRI NET, and upon information
25

1 and belief, documents and information are being compiled to prepare responses.
2 *Woodbury Dec.* at ¶8.

3 It became evident on or about December 9, 2022 that TRI NET would require
4 additional time beyond the 30 days allowed by the Nevada Rules of Civil Procedure in
5 order to respond to SYLVIA FRED's written discovery requests. *Woodbury Dec.* at ¶9.
6 Counsel for SYLVIA FRED was specifically advised of the reasons for the requested
7 extension, specifically the composition of TRI NET as a multi-agency task force.
8 *Woodbury Dec.* at ¶10. As a condition of agreeing to extend the time for responses,
9 counsel for SYLVIA FRED insisted on receiving piecemeal responses to the written
10 discovery requests, which is not feasible under the circumstances. *Woodbury Dec.* at
11 ¶11.

12 Due to the intervening holidays which followed TRI NET's receipt of the written
13 discovery requests, previously scheduled time out of the office for the assigned
14 attorneys in the Carson City District Attorney's office, the ongoing motion practice in
15 this case, and urgent, time-sensitive workload in other matters, the Carson City District
16 Attorney's office has been able to devote almost no time to further address responses
17 to the written discovery requests except for the above-referenced responses to
18 SYLVIA FRED's request for admissions. *Woodbury Dec.* at ¶12.

19 TRI NET estimates it can compile the information necessary to respond to the
20 requests and prepare responses to the requests within 30 days of the filing of this
21 *Opposition.* *Woodbury Dec.* at ¶13.

22 III. Discussion

23 TRI NET is perfectly willing to assemble and provide any discovery to which
24 SYLVIA FRED may be entitled. TRI NET's good faith in this regard is aptly
25 demonstrated by the fact that it did provide a response to SYLVIA FRED's written

1 requests for admission. However, it is simply the fact that the circumstances in this
2 case do not reasonably allow for a response to the remaining written discovery within
3 the 30 day time frame allowed by the Nevada Rules of Civil Procedure. The remaining
4 requests are extensive. Some of them concern information from several years ago.
5 Information and documentation which will allow for appropriate responses must be
6 gathered from multiple individuals in multiple agencies. There is nothing "dilatory"
7 about TRI NET's request for a reasonable extension of time to respond to the requests
8 under these circumstances. It is only a recognition of the practical reality of responding
9 to the requests.

10 Further, demanding piecemeal discovery responses as a condition to agreeing
11 to expand the time is an unreasonable condition. It is next to impossible to imagine
12 how that would work logistically, and it is certain that such a process would significantly
13 complicate and disrupt the preparation of responses.

14 Most importantly, TRI NET's reasonable need for an extension of time to
15 prepare the responses at issue has no consequence for SYLVIA FRED. A relatively
16 brief extension does not threaten any trial date or discovery deadline. There are no
17 hearings or motion deadlines which are imminent and would have to be modified as a
18 result of a reasonable extension. It has no consequential impact in regard to this case.

19 Because the need for an extension of the deadline to respond to SYLVIA
20 FRED's remaining written discovery requests is well-founded, and because a
21 reasonable extension would not impact any deadline or scheduled proceeding in the
22 case, the *Motion to Compel* should be rejected.

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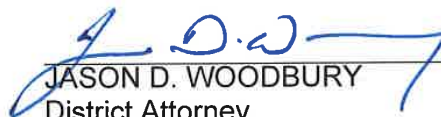
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IV. Conclusion

For the reasons set forth herein, *Sylvia Fred's Countermotion to Compel Production of Documents* should be denied.

- DATED this 6th day of January, 2023.

CARSON CITY DISTRICT ATTORNEY



JASON D. WOODBURY

District Attorney

Bar No. 6870

885 East Musser Street

Suite 2030

Carson City, Nevada 89701

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E-mail: jwoodbury@carson.org

Representing Plaintiff/Counterdefendant

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 6th day of January, 2023, I served a true and correct copy of the foregoing **PLAINTIFF/COUNTERDEFENDANT'S OPPOSITION TO SYLVIA FRED'S COUNTERMOTION TO COMPEL PRODUCTION OF DOCUMENTS** via electronic mail to the following:

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

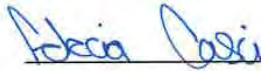


EXHIBIT 1

EXHIBIT 1

1 CARSON CITY DISTRICT ATTORNEY
2 JASON D. WOODBURY
3 District Attorney
4 Bar No. 6870
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15 Representing Plaintiff/Counterdefendant

11 FIRST JUDICIAL DISTRICT COURT OF NEVADA
12 CARSON CITY

14 In re:

15 3587 Desatoya Drive, Carson City,
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Number: 010-443-11.

Case No.: 15 OC 00074 1B

Dept. No.: 2

1 SYLVIA FRED, an individual,
2 Counterclaimant,
3 v.
4 STATE OF NEVADA ex rel.
5 INVESTIGATION DIVISION OF THE
6 NEVADA STATE POLICE (TRI-NET
NARCOTICS TASK FORCE),
7 Counterdefendant.

8 ELVIN FRED, an individual,
9 Counterclaimant,
10 v.
11 STATE OF NEVADA ex rel.
12 INVESTIGATION DIVISION OF THE
13 NEVADA STATE POLICE (TRI-NET
NARCOTICS TASK FORCE),
14 Counterdefendant.

15
16 **DECLARATION OF JASON WOODBURY IN SUPPORT OF**
17 **PLAINTIFF/COUNTERDEFENDANT'S OPPOSITION TO SYLVIA FRED'S**
18 **COUNTERMOTION TO COMPEL PRODUCTION OF DOCUMENTS**

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

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

- 7 4. On December 19, 2022, TRI NET provided responses to SYLVIA FRED's
8 requests for admission;
- 9 5. Preparation of responses to the remaining discovery requests propounded
10 in SYLVIA FRED's interrogatories and requests for production of documents
11 have not been completed, due to the volume and nature of the requests;
- 12 6. In addition to the volume and nature of the requested written discovery,
13 compiling and preparing responses is particularly complex due to the
14 composition of TRI NET as a multi-agency task force with frequently rotating
15 members from several different agencies;
- 16 7. Additionally, upon information and belief, at least two individuals with
17 knowledge who may have information pertinent to the discovery requests
18 are retired from law enforcement;
- 19 8. SYLVIA FRED's requests for written discovery have been provided to TRI
20 NET, and upon information and belief, documents and information are being
21 compiled to prepare responses;
- 22 9. It became evident on or about December 9, 2022 that TRI NET would require
23 additional time beyond the 30 days allowed by the Nevada Rules of Civil
24 Procedure in order to respond to SYLVIA FRED's written discovery
25 requests;

1 10. Counsel for SYLVIA FRED was specifically advised of the reasons for the
2 requested extension, specifically the composition of TRI NET as a multi-
3 agency task force;

4 11. As a condition of agreeing to extend the time for responses, counsel for
5 SYLVIA FRED insisted on receiving piecemeal responses to the written
6 discovery requests, which is not feasible under the circumstances;

7 12. Due to the intervening holidays which followed TRI NET's receipt of the
8 written discovery requests, previously scheduled time out of the office for the
9 assigned attorneys in the Carson City District Attorney's office, the ongoing
10 motion practice in this case, and urgent, time-sensitive workload in other
11 matters, the Carson City District Attorney's office has been able to devote
12 almost no time to further address responses to the written discovery
13 requests except for the above-referenced responses to SYLVIA FRED's
14 request for admissions;

15 13. TRI NET estimates it can compile the information necessary to respond to
16 the requests and prepare responses to the requests within 30 days of the
17 filing of the *Opposition* in support of which this *Declaration* is filed; and

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

19 DATED this 6th day of January, 2023.
20
21

22 
23 JASON D. WOODBURY
24
25

1 CARSON CITY DISTRICT ATTORNEY
2 JASON D. WOODBURY

3 District Attorney

4 Nevada Bar No. 6870

5 BENJAMIN R. JOHNSON

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15 Representing Plaintiff

16 FIRST JUDICIAL DISTRICT COURT OF NEVADA
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9 ELVIN FRED, an individual,
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13 INVESTIGATION DIVISION OF THE
14 NEVADA STATE POLICE (TRI-NET
15 NARCOTICS TASK FORCE),
16 Counterdefendant.

17 **PLAINTIFF/COUNTERDEFENDANT'S RESPONSE TO ELVIN FRED AND**
18 **SYLVIA FRED'S MOTION TO STRIKE TRI-NET'S IMPROPER MOTION TO STAY**
19 **AND ALTERNATIVELY ELVIN FRED AND SYLVIA FRED'S OPPOSITION**

20 COMES NOW, Plaintiff/Counterdefendant, the INVESTIGATION DIVISION OF
21 THE DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net
22 Narcotics Task Force (TRI NET)), by and through its counsel of record, JASON D.
23 WOODBURY, Carson City District Attorney, and opposes *Elvin Fred and Sylvia Fred's*
24 *Motion to Strike Tri-Net's Improper Motion to Stay and Alternatively Elvin Fred and*
25 *Sylvia Fred's Opposition* ("Fred's Response") filed with this Court on December 23,
2022. This *Opposition* is made pursuant to FJDCR 3.8 and is based on the following

1 points and authorities, all papers and pleadings on file herein, and any evidence and
2 argument presented at any hearing on the *Motion*.

3 DATED this 6th day of January, 2023.

4 CARSON CITY DISTRICT ATTORNEY

5
6
7 
JASON D. WOODBURY

8 District Attorney

9 Bar No. 6870

10 885 East Musser Street

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15 E-mail: jwoodbury@carson.org

16 Representing Plaintiff/Counterdefendant
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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

There are presently two procedural issues pending before this Court.¹ The first issue, which is addressed in this *Opposition*, was initially raised in TRI NET'S *Motion for Stay* filed December 15, 2022. *Plaintiff/Counterdefendant's Mot. for Stay* (Dec. 15, 2022) [hereinafter "*Motion for Stay*"]. The second issue, which is addressed in TRI-NET's *Opposition to Sylvia Fred's Countermotion to Compel Production of Documents* filed contemporaneously herewith, was initially raised in *Sylvia Fred's Countermotion to Compel Production of Documents* filed December 23, 2022.

TRI NET does not agree with the proposition that an "omnibus response" to these pending issues furthers "judicial economy and efficiency." *Fred's Response* at 3:3-5. In fact, the vehicle of an "omnibus response" amounts to little more than a transparent attempt to conflate clearly independent procedural issues and inject disparaging vitriol into purely legal questions. As such, distinct responses to the arguments addressed in *Fred's Response* are provided.

II. Factual and Procedural Background

For the reasons stated above, and tempting though it may be, this *Opposition* will not undertake a point by point rebuttal to the "**PROCEDURAL AND FACTUAL HISTORY**" articulated in *Fred's Response*. *Fred's Response* at 4:6 – 6:11. To be clear, however, TRI NET takes issue with many of the representations offered therein, which range from the irrelevant to the disingenuous. Certainly, if the Court considers the characterization of communication between opposing attorneys and the

¹ A third procedural issue was recently resolved by the Court's *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)* issued on January 3, 2023. As that issue has been resolved, it is unnecessary to provide any further response.

1 resurrection of insignificant spats long-resolved important, a comprehensive response
2 can be provided. Far more likely, however, the Court considers such material
3 unhelpful, so this *Opposition* turns to more salient information.

4 In regard to the requested stay of proceedings in this Court, there are three
5 undisputed facts which actually matter. First, the action that is currently pending with
6 this Court involves a claim that certain property should be forfeited. *First Am. Compl.*
7 *for Forfeiture* (Mar. 22, 2022). Second, ELVIN FRED has petitioned the Nevada
8 Supreme Court for a writ of prohibition and writ of mandamus, the object of which is to
9 bar the forfeiture action in this case. *See Exhibit 1 to Plaintiff/Counterdefendant's Mot.*
10 *for Stay* (Dec. 15, 2022) [hereinafter "*Petition*"]. Third, the disposition of the *Petition*
11 has a significant impact on the proceedings in the case pending with this Court. If the
12 *Petition* is successful, the forfeiture action is barred, and certain counterclaims
13 asserted by ELVIN FRED and SYLVIA FRED are moot. If, on the other hand, the
14 *Petition* is unsuccessful, the forfeiture action may proceed and must be adjudicated
15 before the counterclaims. This is so because if the forfeiture action is successful in
16 this Court, ELVIN FRED and SYLVIA FRED were divested "all right, title, and interest"
17 in the property that is subject to forfeiture before any of the counterclaims ripened.
18 NRS 179.1169(1); *see also Motion for Stay* at 5:18 – 7:6.

19 III. Discussion

20 A. Motion to Strike

21 *Fred's Response* argues the *Motion to Stay* should be stricken because: (1) it
22 does not include certification under FJDCR 3.7 that the movant made an effort to confer
23 with opposing counsel in advance in regard to the subject of the motion²; (2) it is a
24

25 ² In fact, *Fred's Response* goes much further, asserting FJDCR 3.7 also required TRI-NET to provide
an explanation of "the reasons why Sylvia and Elvin [Fred] refused to agree to a stay...." *Fred's*

1 “disguised” request for a “protective order” to “freeze discovery”; *Fred's Response* at
2 9:27 – 12:14; and (3) TRI NET is categorically prohibited from requesting a stay
3 because it is not an appellant or petitioner in the proceedings before the Nevada
4 Supreme Court.

5 Factually, the first point is correct. The *Motion for Stay* does not include the
6 representations required by FJDCR 3.7. But conspicuously absent from *Fred's*
7 *Response* is any argument that the communication required by FJDCR 3.7 did not
8 occur. In fact, the required communication did occur, not once, but twice, and *Fred's*
9 *Response* admits it. *Exhibit 1 to Fred's Response* at ¶¶23-24 (“On, November 4, 2022
10 ... Tri-Net made its first request to stipulate to stay these proceedings pending
11 resolution of Elvin’s Writ Petition.... Sylvia rejected Tri-Net’s request....”); ¶30 (“I had
12 previously asked about a stay of the case and you indicated that Sylvia would not agree
13 to it. Please consider this my attempt under FJDCR 3.7(b) to meet and confer
14 regarding a request to stipulate to a stay of the district court case pending the outcome
15 of the writ petition. If your clients are still not amenable to a stipulation [to] stay, I intend
16 to file a motion to stay the case.”) (e-mail from B. Johnson to J. Fortin, Dec. 9, 2022);
17 ¶¶31-33 (subsequent e-mail exchanges culminating in the communication from
18 counsel that, “if you [] need to move for a stay then you should.”)

19 The self-evident purpose of FJDCR 3.7 is to require counsel to confer in
20 advance of filing any motions that are not excluded by the rule. That obviously
21 occurred as required. FJDCR 3.7 does not require that a motion which omits written
22 certification of the required communication be stricken, and such would be an overly-
23 technical remedy for this circumstance where there is no dispute that the required

24 _____
25 *Response* at 12:10-11. Clearly, this is well beyond the scope of the rule, not to mention common
sense.

1 communication occurred. The request to strike the *Motion to Stay* on this basis
2 elevates form over substance and should be rejected.³

3 Next, *Fred's Response* imputes a bad faith motivation to the *Motion to Stay* and
4 asserts the Court should strike it on that basis. It is denied, of course, that the *Motion*
5 *to Stay* was presented in bad faith. This *Opposition* and the *Motion to Stay* explain in
6 detail the legal basis for the request. It is simply counterproductive and inefficient to
7 proceed in this matter when a question is pending with the Nevada Supreme Court that
8 will substantially affect the procedural posture of the case pending before this Court.
9 And the adverse and unnecessary consequences of proceeding in advance of that
10 question being answered fall not just upon TRI NET, they fall upon this Court as well.
11 For just one example, there is pending with this Court the voluminous *Sylvia Fred's*
12 *Motion for Partial Summary Judgment Seeking a Declaration that Nevada's Civil*
13 *Forfeiture Laws Violate Due Process*. If the *Petition* with the Nevada Supreme Court
14 is successful, this Court's review and analysis of the merits of that *Motion* are moot
15 and significant judicial resources will have been wasted. The *Motion for Stay* is brought
16 in a good faith effort to allow the procedural posture of the forfeiture claim to be
17 determined before the litigation in this Court proceeds. In turn, the viability of that
18 forfeiture claim impacts whether and when the asserted counterclaims ripen. As such,
19 the request to strike the *Motion to Stay* on the basis that it has been presented in bad
20 faith should be rejected.

21 Finally, *Fred's Response* claims that the *Motion to Stay* is categorically barred
22 because TRI NET is not the party that initiated the *Petition* with the Nevada Supreme
23 Court. To be sure, requests for a stay are *normally* made by the party that initiates

24 _____
25 ³ That stated, the inadvertent omission of the written certification required by FJDCR 3.7 was a
mistake that will not be repeated in future motions.

1 appellate proceedings. But *Fred's Response* exaggerates the meaning of that
2 practical reality, misinterpreting it as a categorical rule that no other party may request
3 a stay. This is clearly incorrect for two reasons. First, there is no dispute that this
4 Court has inherent authority, independent of NRAP 8, to impose a stay in pending
5 proceedings. *Fred's Response* at 10:17-22. As such, even if this Court agrees with
6 the interpretation of NRAP 8 asserted in *Fred's Response*, TRI-NET is still an
7 appropriate party to request a stay in accordance with that inherent authority. Further,
8 the misinterpretation in *Fred's Response* is refuted by the actual language of NRAP 8
9 which expressly authorizes a "party" to bring a request to stay proceedings. NRAP
10 8(a)(1). While NRAP 8(c) suggests that the injury to the appellant/petitioner should be
11 evaluated in the context of a denial of the stay while the injury to respondent/real party
12 in interest should be evaluated in the context of granting the stay, these are expressly
13 identified as general considerations. NRAP 8(c) ("In deciding whether to issue a stay,
14 the Supreme Court or Court of Appeals will *generally consider*" those factors (emphasis
15 added)). This is merely a recognition of the typical circumstance in which the party
16 initiating appellate proceedings will be the party requesting the stay. That recognition
17 cannot be stretched into the categorical rule *Fred's Response* urges. For these
18 reasons, the *Motion to Stay* was properly presented and should not be stricken.

19 **B. NRAP 8(c) Factors**

20 **1. Object of the *Petition***

21 As explained in the *Motion for Stay*, the outcome of the *Petition* is significant
22 because it will determine whether the forfeiture action in this case may proceed or is
23 barred. *Motion for Stay* at 5:17 – 8:8. In turn, this impacts whether or not the forfeiture
24 action must be decided as a threshold matter to the adjudication of the counterclaims
25 in this case. *Id.*

1 *Fred's Response* disputes this, arguing the counterclaims are justiciable even if
2 the forfeiture action is viable and ultimately prevails. That position flies in the face of
3 NRS 179.1169, but even if it was correct, a stay is still necessary. The disputed impact
4 of NRS 179.1169 only matters if the forfeiture action is viable. As such, that issue
5 cannot be addressed until the viability of the forfeiture action is known. And, of course,
6 that will not be known until there is a disposition of the *Petition* pending with the Nevada
7 Supreme Court.

8 **2. Injury to SYLVIA and ELVIN FRED**

9 *Fred's Response* claims they will suffer irreparable harm if the requested stay
10 is imposed. The first particular allegation of irreparable harm is that they cannot enjoy
11 their home. This allegation is disputed, but even if true, there is no explanation of how
12 a stay in this matter either causes or exacerbates the harm. A stay has no impact on
13 the condition of the home. A stay has no impact on the status of the property's title.
14 Only the ultimate adjudication of this matter will remediate the alleged harm, if any. In
15 effect, *Fred's Response* asks this Court to assume they will prevail on those
16 counterclaims which concern the condition and title of the home, and then
17 tautologically reason that a stay is injurious because it may slightly delay their assumed
18 victory. But this is not the proper framework to analyze the issue. The appropriate
19 question is what injury would a *stay*, in and of itself, impose upon SYLVIA and ELVIN
20 FRED. The clear answer is none.

21 Even less persuasive is the claim that SYLVIA and ELVIN FRED are entitled to
22 the discovery they seek. Relying upon an even more speculative assumption, *Fred's*
23 *Response* worries that "valuable documents and communications in Tri-Net's
24 possession" will be lost if a stay is imposed. There is no legitimate or logical basis for
25

1 such an assumption. SYLVIA and ELVIN FRED will receive the discovery to which
2 they are legally entitled. A stay would have no impact whatsoever on that.

3 **3. Injury to Public**

4 *Fred's Response* next claims the public would be harmed by a stay, but the
5 claim quickly withers upon examination. The claim is based on an allegation that
6 property taxes and utility bills were not paid while TRI NET was in possession of the
7 home. However, TRI NET is no longer in possession of the home. SYLVIA FRED is.
8 So the claim seems to be that SYLVIA FRED does not intend to pay property taxes or
9 utility bills and, somehow, TRI NET is responsible for that decision. Moreover, as
10 pertinent here, there is no relationship between the question of whether a stay should
11 be imposed and the question of whether SYLVIA FRED intends to pay taxes and utility
12 bills. Clearly, a stay would not cause or exacerbate any injury to the public.

13 **4. Injury to Tri-Net**

14 TRI NET is entitled to know the procedural posture of the proceedings pending
15 with this Court because that information is critical to strategic and logistical decisions
16 in regard to its prosecution of the forfeiture action and the defense of the asserted
17 counterclaims. *Fred's Response* asserts no such decisions are implicated because
18 the defense of discretionary immunity has been waived. That contention is disputed
19 by TRI NET and is not before the Court. But even setting the question aside, it cannot
20 be denied that the pending *Petition* inhibits the ability to fully and fairly litigate this
21 action. For example, NRCP 42(b) allows this Court to bifurcate "separate issues,
22 claims, crossclaims, counterclaims, or third-party claims." If the forfeiture action is not
23 barred by the *Petition*, such an action may be the appropriate vehicle to treat the
24 forfeiture action as the threshold matter it is in regard to the counterclaims. However,
25 with the pending *Petition*, presenting such a request to this Court is premature. This

1 is but a single example of dozens of practical, logistical, and strategic decisions that
2 are inhibited so long as the *Petition* is pending. For this reason, denial of the stay
3 threatens direct and irreparable harm to TRI NET in these proceedings.

4 **5. Likelihood of Success on the Merits**

5 *Fred's Response* claims the *Petition* is likely to succeed on the merits, but
6 curiously attempts to distort that position into a reason to deny the stay. *Fred's*
7 *Response* at 22:16-17 ("All of the NRAP 8(c) factors weigh against granting a stay.")
8 This is patently incorrect. If, as *Fred's Response* anticipates, the *Petition* is successful,
9 the need to litigate the merits of the forfeiture action would be obviated. Among many
10 other pending and anticipated impacts, *Sylvia Fred's Motion for Partial Summary*
11 *Judgment Seeking a Declaration that Nevada's Civil Forfeiture Laws Violate Due*
12 *Process*, would be moot. As such, the position that the *Petition* is likely to succeed on
13 the merits is inconsistent with the position that the requested stay should be denied.

14 *Fred's Response* also misstates that TRI NET's position on this issue is
15 dispositive. The *Motion for Stay* does indeed assess this factor as "neutral" in regard
16 to whether or not a stay should be imposed. But nothing in Nevada law suggests that
17 all of the NRAP 8(c) factors must weigh in favor of a stay for the stay to be granted.
18 Quite the contrary. As noted in the *Motion for Stay*, no single factor under NRAP 8(c)
19 is dispositive or necessarily more important than another factor. *Mikohn Gaming Corp.*
20 *v. McCrea*, 120 Nev. 248, 252, 89 P.3d 36, 38 (Nev. 2004). In fact, "if one or two
21 factors are especially strong, they may counterbalance other weak factors." *Id.* As
22 such, *Fred's Response* vastly overstates the import of TRI NET's assessment of this
23 factor as "neutral." It simply means that the *Petition* may succeed or it may fail.
24 Regardless, though, the outcome will provide direction as to how this litigation will
25 proceed.

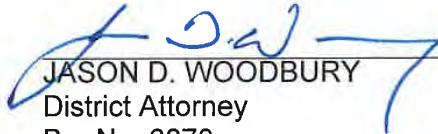
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IV. Conclusion

For the reasons set forth herein, *ELVIN Fred and sylvia Fred's Motion to Strike Tri-Net's Improper Motion to Stay* should be denied, and *Plaintiff/Counterdefendant's Motion for Stay* should be granted.

DATED this 6th day of January, 2023.

CARSON CITY DISTRICT ATTORNEY



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Representing Plaintiff/Counterdefendant

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 6th day of January, 2023, I served a true and correct copy of the foregoing **PLAINTIFF/COUNTERDEFENDANT'S RESPONSE TO ELVIN FRED AND SYLVIA FRED'S MOTION TO STRIKE TRI-NET'S IMPROPER MOTION TO STAY AND ALTERNATIVELY ELVIN FRED AND SYLVIA FRED'S OPPOSITION** via electronic mail to the following:

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

FIRST JUDICIAL DISTRICT COURT

CARSON CITY, NEVADA

In Re:

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

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

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,

FIRST SUPPLEMENT TO JOINT CASE CONFERENCE REPORT

DISPUTE RESOLUTION
CONFERENCE REQUIRED:

YES ___ NO X

REC'D & FILED
2015 JAN -9 PM 2:24
WILLIAM SCOTT HODG
G. COOPER CLERK
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SETTLEMENT CONFERENCE
 REQUESTED:

YES _____ NO X

Pursuant to NRCP 16.1(c)(1)(A), the parties, acting through their respective counsel, conducted a telephonic early case conference under NRCP 16.1 on September 23, 2022, and hereby file this joint case conference report in the above-reference matter. John Fortin of McDonald Carano LLP appeared on behalf of Sylvia Fred, ("Sylvia"). Benjamin R. Johnson of the Carson City District Attorney's Office appeared on behalf of the State of Nevada ex rel. Investigation Division of The Nevada State Police (Tri-Net Narcotics Task Force) ("Tri-Net" and together with Sylvia, the "Parties"). **On December 13, 2022, the above-mentioned counsel appeared on behalf of Tri-Net and Claimant/Counterclaimant Elvin Fred ("Elvin") and held a supplemental early case conference under NRCP 16.1 The Parties hereby supplement their Joint Case Conference Report with the information listed in bold.**

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

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

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

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

1. Forfeiture of Property as provided under NRS 453.301.

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

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

On June 28, 2022, Sylvia Fred filed her Verified Answer and Counterclaims. Sylvia's

1 view of this action is that she is an innocent property owner and therefore forfeiture of the Fred
2 Family Home is improper. Due to the void default judgment that led to the eviction of Sylvia and
3 physical occupation of the Home by Tri-Net, Sylvia raises several constitutional challenges under
4 the United States and Nevada Constitutions including violations of Sylvia's right to Due Process,
5 that Tri-Net committed an unconstitutional Taking, and that Tri-Net violated Sylvia's Privileges
6 and Immunities. Sylvia additionally claims Tri-Net tortiously damaged her by its negligence,
7 trespass, conversion, waste, and slander of title to the Home.

8 Accordingly, in response to the State of Nevada's claim, Sylvia asserts the following
9 Affirmative Defenses:

- 10 1. Plaintiffs FAC fails to state a claim upon which relief can be granted.
- 11 2. Plaintiffs FAC is time barred under NRS 179.1171 (2) because a valid complaint
12 for forfeiture was not filed within 120 days after the property was seized without providing
13 process to Sylvia and is therefore barred by the applicable statute of limitations.
- 14 3. Plaintiffs FAC is barred by the doctrines of laches, estoppel, acquiescence, and/or
15 unclean hands.
- 16 4. Plaintiff's FAC is barred because Sylvia's joint tenant interest in the Home is not
17 subject to forfeiture under NRS 179.1163, NRS 179.1164(2), NRS 179.1173(8), and NRS
18 179.118(1) as Sylvia is an innocent property owner with a protected interest in the Home that is
19 not subject to forfeiture.
- 20 5. Plaintiffs FAC is barred because it violates Article 1, Section 1 of the Nevada
21 Constitution's Inalienable Rights protections because instrumentality forfeitures are per se
22 unconstitutional.
- 23 6. Plaintiffs FAC is banned because it violates Article 1, Section 1 of the Nevada
24 Constitution's Inalienable Rights protections because Sylvia is an innocent property owner and
25 her joint tenancy right to the Home is "Protect[ed]" and completely immune from forfeiture under
26 the constitution.
- 27 7. Plaintiffs FAC is barred under the United States v. James Daniel Good Real
28 Property, 510 U.S. 43, 54 (1993), precedent because Tri-Net illegally forfeited Sylvia's Home

1 without any notice or an opportunity to be heard.

2 8. Plaintiff's FAC is barred because NRS 179.118 and NRS 179.1187 violate Article
3 4, Section 19 of the Nevada Constitution's bar on the Executive Branch exercising discretion on
4 the receipt and disbursal of finances.

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

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

12 Sylvia asserted the following Counterclaims:

13 1. Violation of the United States and Nevada Constitution's Due Process Clauses.

14 2. Violation of the United States' and Nevada Constitution's Takings Clauses.

15 3. Trespass.

16 4. Conversion.

17 5. Waste.

18 6. Declaration that Instrumentality Forfeitures are Unconstitutional and/or that a
19 Complete Innocent Property Immunity Exists under Article 1, Section 1).

20 7. Negligence.

21 8. Slander of Title.

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

23 1. Sylvia's suit fails to state a claim upon which relief may be granted in any of the
24 alleged claims for relief.

25 2. Sylvia's claims are barred by the equitable doctrines of waiver, laches and
26 estoppel.

27 3. Sylvia's claims are barred, in whole or in part, under the doctrine of unclean hands.
28

1 4. Sylvia failed to undertake any reasonable action to mitigate any and all potential
2 or alleged damages.

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

4 6. TRI NET's acts or omissions were not the proximate cause of Sylvia's damages,
5 if any.

6 7. Sylvia's damages, if any, were caused by superseding or intervening causes.

7 8. NRS Chapter 41 limits the damages that may be collectible against a political
8 subdivision of the State of Nevada.

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

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

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

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

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

21 **Elvin asserted the following Counterclaims:**

22 1. **Violation of the United States and Nevada Constitution's Due Process**
23 **Clauses.**

24 2. **Violation of the United States' and Nevada Constitution's Takings Clauses.**

25 3. **Trespass.**

26 4. **Conversion of the Home's Personal Property.**

27 5. **Conversion of Elvin's Vehicle.**

28 6. **Waste.**

1 7. Declaration that Nevada's Constitutional Separation of Powers and
2 Budgetary Restrictions are violated.

3 8. Declaration that Tri-Net Violated NRS 179.1205.

4 9. Negligence.

5 10. Slander of Title.

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

7 14. Elvin's suit fails to state a claim upon which relief may be granted in any of
8 the alleged claims for relief.

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

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

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

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

16 19. TRI NET's acts or omissions were not the proximate cause of Sylvia's
17 damages, if any.

18 20. Elvin's damages, if any, were caused by superseding or intervening causes.

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

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

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

25 24. Elvin's claims are barred for lack of standing.

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

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

6
7 **B. Brief Statement Regarding Settlement**

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

12 2. Sylvia's view: **Sylvia provided a settlement offer to Tri-Net but the Agency**
13 **has not yet provided an answer.** Sylvia does not believe a court-mandated mediation would be
14 useful at this time but reserves the right to ask for one in the future.

15 3. Elvin Fred's view: **Elvin provided a settlement offer to Tri-Net but the**
16 **Agency has not yet been provided an answer.** Elvin does not believe a court-mandated
17 mediation would be useful at this time but reserves the right to ask for one in the future.

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

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

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

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

27 3. Elvin's view: **Elvin agrees with Tri-Net's view of initial disclosures**
28

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

1. Tri-Net's view: Tri-Net provided its initial disclosures to Sylvia's Counterclaims on November 18, 2022 after Sylvia provided Tri-Net a courtesy extension. During the ECC with Elvin, Tri-Net stated it would likely rely on the same disclosures for Elvin's Counterclaims on January 4, 2023, when discovery for Elvin opens.
2. Sylvia's view: Sylvia provided her Initial NRCP 16.1 Disclosures on November 9, 2022, and she provided her First Supplemental Disclosures on December 8, 2022, and she provided her Second Supplemental Disclosures on December 12, 2022.
3. Elvin Fred's view: Elvin intends to provide his Initial NRCP 16.1 Disclosures on January 4, 2023, when discovery opens.

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

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

iii. Electronically stored information:

1. Tri-Net's view: To minimize the risk of related discovery disputes and to bring meaningful predictability and efficiency to the discovery process, the parties should exchange a list of key custodians, including those to which preservation notices have been sent. An ESI protocol that provides for the production of

documents in native format that captures metadata and includes electronic load files provided with a production set of documents and images used to load that production into a receiving party's document review platform and correlate its data within that platform.

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

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

iv. **Privileged materials:**

1. Tri-Net's view: Under NRS 179.1173(7), Tri-Net "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." Additionally, Tri-Net serves the local communities of Douglas County and the Consolidated Municipality of Carson City and seeks to eradicate illegal narcotics. The names and positions of its

officers are sensitive and must be protected from public disclosure.

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

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

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

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

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

3. Elvin Fred's view: Elvin Fred does not seek any changes at this time; however, Elvin reserves his respective rights to seek additional depositions under NRCP 30 and increase the length of time to take those depositions. Elvin reserves his right to increase the number of interrogatories under NRCP 33.

vi. **Other orders:**

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

deposition, if necessary.

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

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

vii. Estimated Time for Trial:

See Section M, below.

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

1. Tri-Net's view: See Exhibit 3
2. Sylvia's view: See Exhibit 1
3. Elvin Fred's view: See Exhibit 2.

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

1. Tri-Net's view: See Exhibit 3
2. Sylvia's view: See Exhibit 1
3. Elvin Fred's view: See Exhibit 2.

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

Not applicable.

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

1. Tri-Net's view: Tri-Net does not believe that Sylvia is entitled to any alleged damages.
2. Sylvia's view: Sylvia seeks damages described in the Complaint. Those damages are approximated to be at least \$800,000 based on the statutory cap provided under NRS 41.035 not including the constitutional damages she is seeking. Expert disclosures have not been made and Sylvia will supplement her disclosures as required under NRCP 16.1.

1 Sylvia also seeks attorneys' fees, costs, and interest. Sylvia reserves her right to amend
2 or supplement this damage calculation.

3 **3. Elvin Fred's view:** Elvin seeks damages described in the Complaint. Those
4 damages are approximated to be at least \$800,000 based on the statutory cap
5 provided under NRS 41.035 not including the constitutional damages he is seeking.
6 Expert disclosures have not been made and Elvin will supplement his disclosures as
7 required under NRCP 16.1. Elvin also seeks attorneys' fees, costs, and interest. Elvin
8 reserves his right to amend or supplement this damage calculation.

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

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

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

13 3. **Elvin's view:** Elvin is not currently aware of any relevant insurance
14 agreements.

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

16 No expert disclosures have been made at this time.

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

18 1. Tri-Net's view: Though Tri-Net has no issues to raise at this time, the Parties
19 should exchange a list of key custodians, to minimize the risk of related discovery disputes
20 and to bring meaningful predictability and efficiency to the discovery process.

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

24 3. **Elvin Fred's view:** Though Elvin Fred has no issues to raise at this time, the
25 Parties should exchange a list of key custodians, to minimize the risk of related
26 discovery disputes and to bring meaningful predictability and efficiency to the
27 discovery process

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

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

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

3. Elvin Fred's view: Elvin Fred will stipulate to the entry of a protective order to protect the confidentiality of information disclosed in discovery.

K. Discovery and Motion Dates

Dates agreed by the Parties:

1. Close of fact discovery: **180 days from entry of the original Joint Case Conference Report: May 8, 2023**

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

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

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

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

Given the nature of Tri-Net's Motion to Stay filed on December 14, 2022, the Parties reserve their rights to extend this schedule.

L. Estimated Time for Trial

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

2. Sylvia's view: 11-14 days

3. Elvin Fred's view: 11-14 days

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

1. Tri-Net's view:


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

3. Elvin Fred's view: Elvin made a jury demand

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January 4 2023
DATED: ~~December~~, 2022

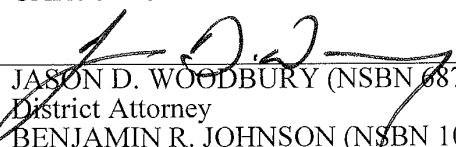
McDONALD CARANO LLP


Ryan J. Works, Esq., (NSBN 9224)
John A. Fortin, Esq., (NSBN 15221)
2300 West Sahara Ave, Suite 1200
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Telephone: 702.873.4100
rworks@mcdonaldcarano.com

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

DATED: December *21st*, 2022

CARSON CITY DISTRICT ATTORNEY


JASON D. WOODBURY (NSBN 6870)
District Attorney
BENJAMIN R. JOHNSON (NSBN 10632)
Senior Deputy District Attorney
885 East Musser Street
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T: 775.887.2070
F: 775.887.2129
E-mail: jwoodbury@carson.org
bjohnson@carson.org

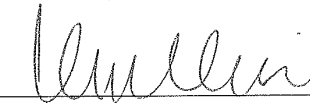
*Counsel for State of Nevada ex rel.
Investigation Division of The Nevada State
Police (Tri-Net Narcotics Task Force)*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDONALD CARANO LLP and that,
on this 4th day of ^{January 3} ~~December~~ 2022, I caused to be delivered via email true and correct copies of
the above **FIRST SUPPLEMENT TO JOINT CASE CONFERENCE REPORT** to the
following:

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

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



An employee of McDonald Carano LLP

4865-8334-2661, v. 1

EXHIBIT 1

EXHIBIT 1

1 Ryan J. Works, Esq., (NSBN 9224)
2 John A. Fortin, Esq., (NSBN 15221)
3 McDONALD CARANO LLP
4 2300 West Sahara Ave, Suite 1200
5 Las Vegas, Nevada 89102
6 Telephone: (702) 873.4100
7 rworks@mcdonalddcarano.com
8 jfortin@mcdonalddcarano.com

9 *Pro Bono Counsel for*
10 *Claimant Sylvia Fred*

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

13 In Re:
14 3587 Desatoya Drive, Carson City, Nevada 89701,
15 Carson City, Assessor's Parcel Number: 010-443-
16 11.

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

17 SYLVIA FRED, an individual,
18 Counterclaimant,
19 v.
20 STATE OF NEVADA ex rel. INVESTIGATION
21 DIVISION OF THE NEVADA STATE POLICE
22 (TRI-NET NARCOTICS TASK FORCE),
23 Counterdefendant.
24 ELVIN FRED, an individual,
25 Counterclaimant,
26 v.
27 STATE OF NEVADA ex rel. INVESTIGATION
28 DIVISION OF THE NEVADA STATE POLICE
(TRI-NET NARCOTICS TASK FORCE),
Counterdefendant.

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

23 Pursuant to NRCP 16.1, Counterclaimant Sylvia Fred ("Sylvia"), by and through her
24 counsel of record, the law firm of McDonald Carano LLP, supplements her initial disclosures with
25 the information listed in **bold**.

I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION.

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

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

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

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

3. Coley McCann
c/o
Carson City District Attorney's Office
555 Wright Way
Carson City, NV 89711
Telephone: 775-887-2072

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

1 4. A NRCP 30(b)(6) representative of the Nevada Department of Public Safety,
2 Investigation Division, Tri-Net Narcotics Task Force
3 c/o
4 Carson City District Attorney's Office
5 555 Wright Way
6 Carson City, NV 89711
7 Telephone: 775-887-2072

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

12 5. A NRCP 30(b)(6) representative of the Carson City Sheriff's Office
13 c/o
14 Carson City District Attorney's Office
15 555 Wright Way
16 Carson City, NV 89711
17 Telephone: 775-887-2072

18 This witness is expected to have knowledge regarding the facts and circumstances
19 surrounding this litigation, including but not limited to the facts and circumstances regarding Tri-
20 Net's eviction of the Fred Family from the Home and Tri-Net's possession of the property from
21 2019 through 2022.

22 6. A NRCP 30(b)(6) representative of the Douglas County Sheriff's Office
23 c/o
24 Carson City District Attorney's Office
25 555 Wright Way
26 Carson City, NV 89711
27 Telephone: 775-887-2072

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

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

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

Sylvia reserves the right to amend, supplement, and/or add to this list of witnesses any

1 other persons and/or entities who may have information relevant to the issues of this case,
2 including without limitation expert, impeachment, and/or rebuttal witnesses.

3 **II. DOCUMENTS.**

- 4 1. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0001-
5 FRED0020.
- 6 2. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0021-
7 FRED0051.
- 8 3. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0052-
9 FRED0081.
- 10 4. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0082-
11 FRED0106.
- 12 5. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0107-
13 FRED0166.
- 14 6. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0167-
15 FRED00197.
- 16 7. 2012 04 09 and 2012 04 17 Cashier's Checks Documents, Bates-Labeled FRED0198-
17 FRED0199.
- 18 8. 2012 05 03 Grant Deed Recorded Documents, Bates-Labeled FRED0200-FRED0202.
- 19 9. 2014 08 15 Grant Deed Recorded Documents, Bates-Labeled FRED0203-FRED0206.
- 20 10. 2015 04 01 Lis Pendens Recorded Documents, Bates-Labeled FRED0207-
21 FRED0211.
- 22 11. 2015 03 31 Quitclaim Deed Recorded Documents, Bates-Labeled FRED0212-
23 FRED0215.
- 24 12. 2019 07 10 Amended Default Judgment Recorded Documents, Bates-Labeled
25 FRED0216-FRED0225.
- 26 13. 2021 11 24 Moneygram email Documents, Bates-Labeled FRED0226-FRED0227.
- 27 14. 2021 12 01 Baldwin State Bank Letter Documents, Bates-Labeled FRED0228.
- 28 15. 2022 02 24 Carol Toohey Declaration Documents, Bates-Labeled FRED0229-

FRED0231.

16. 2022 03 14 – Video of 3587 Desatoya Drive Documents, Bates-Labeled FRED0232.

17. 2022 11 08 – Sylvia Fred Declaration Documents, Bates-Labeled FRED0233.

18. 2019 07 18 – Sylvia Fred Email with C. McCann Documents, Bates-Labeled
FRED0234-FRED0236.

19. 2019 08 02 – Sylvia Fred Email with C. McCann Documents, Bates-Labeled
FRED0237-FRED 0238.

20. 2019 08 06 – Lockout Order Documents, Bates-Labeled FRED0239.

21. 2019 08 09 – Sylvia Fred Email with C. McCann Documents, Bates-Labeled
FRED0240.

22. 2019 10 09 – Sylvia Fred Email with C. McCann Documents, Bates-Labeled
FRED0241-FRED0245.

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

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

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

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

<https://www.dropbox.com/scl/fo/ltcalivz0b9b95bxgee7/h?dl=0&rlkey=do4d495vrvejva359cq8rylo4>

26. Complaint, *Fred v. County of Carson City, et al.*, in the United States District Court, District of Nevada, Case No. 3:11-cv-00064-HDM-VPC, Bates-Labeled FRED0248-FRED0258.

27. Docket Report, *Fred v. County of Carson City, et al.*, in the United States District Court, District of Nevada, Case No. 3:11-cv-00064-HDM-VPC, Bates-Labeled FRED0259-FRED0264.

28. Answer, *Fred v. County of Carson City, et al.*, in the United States District Court, District of Nevada, Case No. 3:11-cv-00064-HDM-VPC, Bates-Labeled FRED0265-

1 FRED0273.

2 29. Stipulation and Order for Dismissal with Prejudice, *Fred v. County of Carson City, et*
3 *al.*, in the United States District Court, District of Nevada, Case No. 3:11-cv-00064-
4 HDM-VPC, Bates-Labeled FRED0274-FRED0275.

5 30. Stipulation and Order for Dismissal with Prejudice as to the Carson Nugget, Inc., *Fred*
6 *v. County of Carson City, et al.*, in the United States District Court, District of Nevada,
7 Case No. 3:11-cv-00064-HDM-VPC, Bates-Labeled FRED0276-FRED0277.

8 31. Complaint, *Sylvia Fred v. Andrew Rasor, et al.*, in the First Judicial District Court,
9 Carson City, Nevada, Case No. 21 RP 00005 1B, FRED0278-FRED0297.

10 32. Motion for Temporary Restraining Order and Preliminary Injunction, *Sylvia Fred v.*
11 *Andrew Rasor, et al.*, in the First Judicial District Court, Carson City, Nevada, Case
12 No. 21 RP 00005 1B, FRED0298-FRED0363.

13 33. Stipulation and Order Regarding Plaintiff's Motion for Temporary Restraining Order
14 and Preliminary Injunction, *Sylvia Fred v. Andrew Rasor, et al.*, in the First Judicial
15 District Court, Carson City, Nevada, Case No. 21 RP 00005 1B, FRED0364-
16 FRED0367.

17 34. Property Tax details re Parcel ID 010-443-11, Bates-Labeled FRED0368-FRED0376.

18 35. Photos of 3587 Desatoya Drive taken on August 12, 2019, Bates-Labeled FRED0377-
19 FRED0404.

20 36. Video of 3587 Desatoya Drive taken on August 12, 2019, Documents, Bates-Labeled
21 FRED0405.

22 Entries 26-36, above, are being disclosed via the following link which will be active for
23 180 days from December 6, 2022. Please contact this office if you'd prefer a CD or USB drive to
24 be mailed to your office.

25 <https://www.dropbox.com/scl/fo/xrnj6kolvaecub27dj0zp/h?dl=0&rlkey=xpwh9rybkhnzcs2obhq1o6r8z>

26 **37. Declaration of Lisa Fred, Bates-Labeled FRED0406.**

27 38. Sylvia reserves the right to supplement this production.

28 39. Sylvia reserves the right to use all documents and/or other evidence identified by any

1 party in connection with this matter.

2 40. Sylvia reserves the right to use all documents and/or other evidence identified in the
3 court of discovery in this matter.

4 **III. COMPUTATION OF DAMAGES.**

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

11 **IV. INSURANCE AGREEMENTS.**

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

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

16 DATED this 12th day of December 2022.

17 **McDONALD CARANO LLP**

18 By: 

19 Ryan J. Works, Esq., (NSBN 9224)
20 John A. Fortin, Esq., (NSBN 15221)
21 2300 West Sahara Ave, Suite 1200
22 Las Vegas, Nevada 89102
23 rworks@mcdonaldcarano.com
24 jfortin@mcdonaldcarano.com

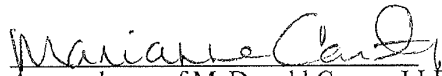
25 *Pro Bono Counsel for*
26 *Claimant Elvin Fred*
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDONALD CARANO LLP and that on this 12th day of December 2022, I caused to be delivered via email true and correct copies of the above **COUNTERCLAIMANT SYLVIA FRED'S FIRST SUPPLEMENT TO INITIAL DISCLOSURES PURSUANT TO NRCP 16.1** to the following:

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

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


An employee of McDonald Carano LLP

4884-7413-5107, v. 1

EXHIBIT 2

EXHIBIT 2

Ryan J. Works, Esq., (NSBN 9224)
John A. Fortin, Esq., (NSBN 15221)
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Las Vegas, Nevada 89102
Telephone: (702) 873.4100
rworks@mcdonaldcarano.com
jfortin@mcdonaldcarano.com

*Pro Bono Counsel for
Claimant Elvin Fred*

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

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

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

SYLVIA FRED, an individual,
Counterclaimant,
v.

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

29 This witness is expected to have knowledge regarding the facts and circumstances
30 surrounding this litigation, including but not limited to the facts and circumstances regarding Tri-
31 Net's eviction of the Fred Family from the Home and Tri-Net's possession of the property from
32 2019 through 2022.

1 5. A NRCP 30(b)(6) representative of the Carson City Sheriff's Office
2 c/o
3 Carson City District Attorney's Office
4 555 Wright Way
5 Carson City, NV 89711
6 Telephone: 775-887-2072

7 This witness is expected to have knowledge regarding the facts and circumstances
8 surrounding this litigation, including but not limited to the facts and circumstances regarding Tri-
9 Net's eviction of the Fred Family from the Home and Tri-Net's possession of the property from
10 2019 through 2022.

11 6. A NRCP 30(b)(6) representative of the Douglas County Sheriff's Office
12 c/o
13 Carson City District Attorney's Office
14 555 Wright Way
15 Carson City, NV 89711
16 Telephone: 775-887-2072

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

21 Elvin reserves the right to call any witnesses identified by any party in this matter.

22 Elvin reserves the right to call any persons and/or entities identified in the course of
23 discovery in this matter.

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

27 **II. DOCUMENTS.**

- 28 1. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0001-
FRED0020.
2. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0021-
FRED0051.
3. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0052-

- 1 FRED0081.
- 2 4. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0082-
- 3 FRED0106.
- 4 5. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0107-
- 5 FRED0166.
- 6 6. 2012 Real Estate Sales Business Record Documents, Bates-Labeled FRED0167-
- 7 FRED00197.
- 8 7. 2012 04 09 and 2012 04 17 Cashier's Checks Documents, Bates-Labeled FRED0198-
- 9 FRED0199.
- 10 8. 2012 05 03 Grant Deed Recorded Documents, Bates-Labeled FRED0200-FRED0202.
- 11 9. 2014 08 15 Grant Deed Recorded Documents, Bates-Labeled FRED0203-FRED0206.
- 12 10. 2015 04 01 Lis Pendens Recorded Documents, Bates-Labeled FRED0207-
- 13 FRED0211.
- 14 11. 2015 03 31 Quitclaim Deed Recorded Documents, Bates-Labeled FRED0212-
- 15 FRED0215.
- 16 12. 2019 07 10 Amended Default Judgment Recorded Documents, Bates-Labeled
- 17 FRED0216-FRED0225.
- 18 13. 2021 11 24 Moneygram email Documents, Bates-Labeled FRED0226-FRED0227.
- 19 14. 2021 12 01 Baldwin State Bank Letter Documents, Bates-Labeled FRED0228.
- 20 15. 2022 02 24 Carol Toohey Declaration Documents, Bates-Labeled FRED0229-
- 21 FRED0231.
- 22 16. 2022 03 14 – Video of 3587 Desatoya Drive Documents, Bates-Labeled FRED0232.
- 23 17. 2022 11 08 – Sylvia Fred Declaration Documents, Bates-Labeled FRED0233.
- 24 18. 2019 07 18 – Sylvia Fred Email with C. McCann Documents, Bates-Labeled
- 25 FRED0234-FRED0236.
- 26 19. 2019 08 02 – Sylvia Fred Email with C. McCann Documents, Bates-Labeled
- 27 FRED0237-FRED 0238.
- 28 20. 2019 08 06 – Lockout Order Documents, Bates-Labeled FRED0239.

- 1 21. 2019 08 09 – Sylvia Fred Email with C. McCann Documents, Bates-Labeled
- 2 FRED0240.
- 3 22. 2019 10 09 – Sylvia Fred Email with C. McCann Documents, Bates-Labeled
- 4 FRED0241-FRED0245.
- 5 23. 2021 07 21 –3587 Desatoya Drive Sewer Bill Documents, Bates-Labeled FRED0246.
- 6 24. 2022 03 22 – 3587 Desatoya Drive Public Works Bill Documents, Bates-Labeled
- 7 FRED0247.
- 8 25. Complaint, *Fred v. County of Carson City, et al.*, in the United States District Court,
- 9 District of Nevada, Case No. 3:11-cv-00064-HDM-VPC, Bates-Labeled FRED0248-
- 10 FRED0258.
- 11 26. Docket Report, *Fred v. County of Carson City, et al.*, in the United States District
- 12 Court, District of Nevada, Case No. 3:11-cv-00064-HDM-VPC, Bates-Labeled
- 13 FRED0259-FRED0264.
- 14 27. Answer, *Fred v. County of Carson City, et al.*, in the United States District Court,
- 15 District of Nevada, Case No. 3:11-cv-00064-HDM-VPC, Bates-Labeled FRED0265-
- 16 FRED0273.
- 17 28. Stipulation and Order for Dismissal with Prejudice, *Fred v. County of Carson City, et*
- 18 *al.*, in the United States District Court, District of Nevada, Case No. 3:11-cv-00064-
- 19 HDM-VPC, Bates-Labeled FRED0274-FRED0275.
- 20 29. Stipulation and Order for Dismissal with Prejudice as to the Carson Nugget, Inc., *Fred*
- 21 *v. County of Carson City, et al.*, in the United States District Court, District of Nevada,
- 22 Case No. 3:11-cv-00064-HDM-VPC, Bates-Labeled FRED0276-FRED0277.
- 23 30. Complaint, *Sylvia Fred v. Andrew Rasor, et al.*, in the First Judicial District Court,
- 24 Carson City, Nevada, Case No. 21 RP 00005 1B, FRED0278-FRED0297.
- 25 31. Motion for Temporary Restraining Order and Preliminary Injunction, *Sylvia Fred v.*
- 26 *Andrew Rasor, et al.*, in the First Judicial District Court, Carson City, Nevada, Case
- 27 No. 21 RP 00005 1B, FRED0298-FRED0363.
- 28 32. Stipulation and Order Regarding Plaintiff's Motion for Temporary Restraining Order

and Preliminary Injunction, *Sylvia Fred v. Andrew Rasor, et al.*, in the First Judicial District Court, Carson City, Nevada, Case No. 21 RP 00005 1B, FRED0364-FRED0367.

33. Property Tax details re Parcel ID 010-443-11, Bates-Labeled FRED0368-FRED0376.

34. Photos of 3587 Desatoya Drive taken on August 12, 2019, Bates-Labeled FRED0377-FRED0404.

35. Video of 3587 Desatoya Drive taken on August 12, 2019, Documents, Bates-Labeled FRED0405.

36. Declaration of Lisa Fred, Bates-Labeled FRED0406.

37. Privilege / Redaction Log dated January 4, 2023

Entries 1-37, above, are being disclosed via the following link which will be active for 180 days from December 6, 2022. Please contact this office if you'd prefer a CD or USB drive to be mailed to your office.

<https://www.dropbox.com/scl/fo/ylp8tsj1t3lrjakoofykw/h?dl=0&rlkey=v5y0btakkuodzd86ay8de9ip1>

Elvin reserves the right to supplement this production.

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

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

III. COMPUTATION OF DAMAGES.

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

IV. INSURANCE AGREEMENTS.

Elvin is not aware at this time of any insurance agreements that may be liable to satisfy

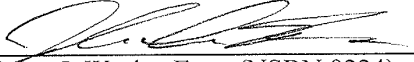
1 part or all of a judgment.

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

4 DATED this 4th day of January 2022.

5 McDONALD CARANO LLP

6 By:


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

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

CERTIFICATE OF SERVICE

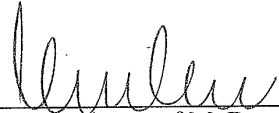
I HEREBY CERTIFY that I am an employee of McDONALD CARANO LLP and that on this 4th day of January 2023, I caused to be delivered via email true and correct copies of the above

COUNTERCLAIMANT ELVIN FRED'S INITIAL DISCLOSURES PURSUANT TO

NRCP 16.1 to the following:

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

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


An employee of McDonald Carano LLP

4884-7413-5107, v. 1

EXHIBIT 3

EXHIBIT 3

1 CARSON CITY DISTRICT ATTORNEY
JASON D. WOODBURY

2 District Attorney

3 Nevada Bar No. 6870

BENJAMIN R. JOHNSON

4 Senior Deputy District Attorney

5 Nevada Bar No. 10632

885 East Musser Street

Suite 2030

6 Carson City, Nevada 89701

T: 775.887.2070

F: 775.887.2129

E-mail: jwoodbury@carson.org

bjohnson@carson.org

9 Representing Plaintiff

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

13 In re:

14 3587 Desatoya Drive, Carson City, Nevada
15 89701, more particularly described as all
16 that certain parcel of land situate in the City
17 of Carson City, County of Carson City and
18 State of Nevada, being known and
19 designated as follows: Parcel N-33 as
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

20
21 **PLAINTIFF'S NRCP 16.1 INITIAL DISCLOSURES**

22 Plaintiff, the INVESTIGATION DIVISION OF THE DEPARTMENT OF PUBLIC
23 SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics Task Force (TRI NET)), by and
24 through its counsel of record, JASON D. WOODBURY, Carson City District Attorney, and
25 BENJAMIN R. JOHNSON, Senior Deputy District Attorney, hereby provides the initial
26 disclosures pursuant to NRCP 16.1(a)(1) as follows:

27 ///

28 ///

1 **I. LIST OF INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION**

- 2
3 1. Mitch Pier
4 c/o Carson City District Attorney's Office
5 885 E. Musser Street, Suite 2030
6 Carson City, NV 89701
7 (775) 887-2072

8 Mitch Pier will testify to all facts and circumstances of an investigation which led to the
9 arrest of ELVIN LEE FRED on or about March 19, 2015, and evidence discovered at
10 3587 Desatoya Drive, Carson City, Nevada during the execution of a search warrant on
11 March 19, 2015.

- 12 2. Danton Vidovich
13 c/o Carson City District Attorney's Office
14 885 E. Musser Street, Suite 2030
15 Carson City, NV 89701
16 (775) 887-2072

17 Danton Vidovich will testify to all facts and circumstances of an investigation which led
18 to the arrest of ELVIN LEE FRED on or about March 19, 2015, and evidence
19 discovered at 3587 Desatoya Drive, Carson City, Nevada during the execution of a
20 search warrant on March 19, 2015.

- 21 3. Buck Stetler
22 c/o Carson City District Attorney's Office
23 885 E. Musser Street, Suite 2030
24 Carson City, NV 89701
25 (775) 887-2072

26 Buck Stetler will testify to all facts and circumstances of an investigation which led to
27 the arrest of ELVIN LEE FRED on or about March 19, 2015, and evidence discovered
28 at 3587 Desatoya Drive, Carson City, Nevada during the execution of a search warrant
on March 19, 2015.

- 1 4. Brian Hubkey
2 c/o Carson City District Attorney's Office
3 885 E. Musser Street, Suite 2030
4 Carson City, NV 89701
5 (775) 887-2072

6 Brian Hubkey will testify to all facts and circumstances of an investigation which led to
7 the arrest of ELVIN LEE FRED on or about March 19, 2015, and evidence discovered
8 at 3587 Desatoya Drive, Carson City, Nevada during the execution of a search warrant
9 on March 19, 2015.

1 5. Dave McNeely
2 c/o Carson City District Attorney's Office
3 885 E. Musser Street, Suite 2030
4 Carson City, NV 89701
5 (775) 887-2072

6 Dave McNeely will testify to all facts and circumstances of an investigation which led to
7 the arrest of ELVIN LEE FRED on or about March 19, 2015, and evidence discovered
8 at 3587 Desatoya Drive, Carson City, Nevada during the execution of a search warrant
9 on March 19, 2015.

10 6. Andrew Rasor
11 c/o Carson City District Attorney's Office
12 885 E. Musser Street, Suite 2030
13 Carson City, NV 89701
14 (775) 887-2072

15 Andrew Rasor will testify to all facts and circumstances of an investigation which led to
16 the arrest of ELVIN LEE FRED on or about March 19, 2015, and evidence discovered
17 at 3587 Desatoya Drive, Carson City, Nevada during the execution of a search warrant
18 on March 19, 2015.

19 7. Coley McCann
20 c/o Carson City District Attorney's Office
21 885 E. Musser Street, Suite 2030
22 Carson City, NV 89701
23 (775) 887-2072

24 Coley McCann will testify to all facts and circumstances of an investigation which led to
25 the arrest of ELVIN LEE FRED on or about March 19, 2015, and evidence discovered
26 at 3587 Desatoya Drive, Carson City, Nevada during the execution of a search warrant
27 on March 19, 2015.

28 8. Diane Machen
WASHOE COUNTY SHERIFF'S OFFICE
Forensic Science Division
911 Parr Boulevard
Reno, Nevada 89512

DIANE MACHEN will testify in regard to her examination, analysis, and identification of
material discovered at 3587 Desatoya Drive, Carson City, including, without limitation,
zip-lock plastic bags containing approximately 140 grams of methamphetamine.

9. Sylvia Fred
c/o McDonald Carano LLP

Sylvia Fred is a claimant and Counterclaimant in this action and has knowledge
regarding the facts alleged in her counterclaim and alleged damages.

10. Elvin Fred
c/o McDonald Carano LLP

Elvin Fred is a claimant and Counterclaimant in this action and has knowledge regarding the facts alleged in her counterclaim and alleged damages.

Carson City reserves the right to supplement the list of witnesses throughout the discovery process, to call upon any witness(es) identified by Plaintiffs, or any other party, and to call upon any witness(es) for the purposes of rebuttal and impeachment.

II. LIST OF DOCUMENTS

1. Plaintiff 0001-0322 – documents related to the investigation and execution of a search warrant in the underlying criminal case against Elvin Fred.


Carson City reserves the right to supplement the list of documents throughout the discovery process, to introduce any document(s) identified by Plaintiffs, or any other party, and to call introduce any document(s) for the purposes of rebuttal and impeachment.

III. COMPUTATION OF DAMAGES

Plaintiff is seeking forfeiture of the Desatoya property. Plaintiff is not seeking monetary damages with the exception of any attorneys' fees and costs which may be allowable under the law.

DATED this 18th day of November, 2022.

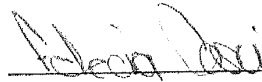
JASON D. WOODBURY
District Attorney

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

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 18th day of November, 2022, I served a true and correct copy of the foregoing **PLAINTIFF'S NRCP 16.1 INITIAL DISCLOSURES** via electronic mail to the following:

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

_____