

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 8 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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01-12-2023	Tri-Net's Supplement to Motion to Stay	8	PA001312-PA001318
12-08-2022	Video Link	5	PA000858

Dated this 27th day of March 2023.

MCDONALD CARANO, LLP

By: /s/ John A. Fortin
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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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Attorneys for Real Party in Interest

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/s/ Kimberly Kirn
Employee of McDONALD CARANO LLP

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*Pro Bono Counsel for
Claimant Sylvia Fred*

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

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

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

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

**SYLVIA FRED'S REPLY IN SUPPORT
OF HER 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**

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

**and
REPLY IN SUPPORT OF MOTION TO
LIFT STAY AND ORDER THE TAX
PROCEEDING DEFENDANTS TO FILE A
RESPONSIVE PLEADING IN 45 DAYS**

I. INTRODUCTION

Tri-Net maintains its tried-and-true litigation strategy with its Opposition—delay everything at all costs to increase the costs of this dispute. Moreover, Tri-Net fundamentally misconstrues the nature of the Civil Forfeiture, Counterclaim, and Tax Proceedings and therefore

fundamentally misrepresents the facts to this Court. These proceedings all share common questions of law and facts—Tri-Net’s gross negligence in its care and upkeep of the real property at 3587 Desatoya Drive, Carson City, 89107 (“Home”). As the jury decides the amount of damages Tri-Net owes both Sylvia and Elvin based on their counterclaims, the property taxes will be part of that damages calculation. Thus, for judicial economy and efficiency, and because there will be no prejudice, confusion, or delay, consolidation of these proceedings is proper. As this Court orders consolidation, it should simultaneously order Tri-Net, the Carson City Treasurer Andrew Rasor (“Rasor”), and the Carson City Board of Supervisors (the “Board”) to provide a responsive pleading to Sylvia’s complaint on January 26, 2023.

II. LEGAL ARGUMENT

A. Consolidation of these Proceedings Will Foster Judicial Economy and Efficiency

NRCP 42(a) provides that “[i]f actions before the court involve a common question of law or fact, the court may (1) join for hearing or trial any or all matters at issue in the actions.” “We reiterate our goal of promoting judicial efficiency in permitting consolidation.” *Nalder v. Eighth Jud. Dist. Ct.*, 136 Nev. 200, 207, 462 P.3d 677, 685 (2020). “[T]his rule ‘may be invoked only to consolidate actions already pending.’” *Id.* (quoting *Pan Am. World Airways, Inc. v. U.S. Dist. Ct.*, 523 F.2d 1073, 1080 (9th Cir. 1975)). “Although the language of Rule 42(a) suggests otherwise, consolidation need not be only for trial. Consolidation of actions in their pretrial stage, under many circumstances, will be a desirable administrative technique and is within the power of the court.” 9A Wright & Miller, *Fed. Prac. & Proc.*, § 2382 (3d ed. 2022).

The critical question for the district court in the final analysis was whether the specific risks of prejudice and possible confusion were overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Arnold v. Eastern Airlines, 681 F.2d 186, 193 (4th Cir. 1982).

1. *Tri-Net misrepresents the facts in its Opposition as it attempts to delay the resolution of these proceedings.*

The Tax Proceedings declaratory relief is in fact interconnected with and dependent on

several of Elvin and Sylvia's Counterclaims. Both Elvin and Sylvia seek damages for waste, negligence, and slander of title based on (among other things) Tri-Net's failure to pay the property taxes. Tri-Net does not accurately represent these facts to the Court in its Opposition. This Court should therefore disregard Tri-Net's Opposition and grant Sylvia's request to consolidate the Forfeiture, Counterclaims, and Tax proceedings.

"Both NRCP 42(a) and its federal counterpart allow for consolidation of actions that involve a common question of law or fact. Under FRCP 42(a), which is identical to NRCP 42(a), federal district courts enjoy broad but not unfettered, discretion in ordering consolidation." *Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 286 163 P.3d 462, 467-68 (2007) (footnote omitted). "[I]t is the court's duty to consider not only the delay that consolidating the cases might cause for the plaintiffs, but also the delay that *not* consolidating the cases would cause for the defendants and for the court." *Hanson v. District of Columbia*, 257 F.R.D. 19, 22 (D.D.C. 2009) (emphasis in original)).

Tri-Net's Civil Forfeiture, Sylvia and Elvin's¹ Counterclaims, and the Sylvia's declaratory relief in the Tax Proceedings all involve common questions of law and fact. Each of these center around Tri-Net's conduct regarding the Home under dispute. Importantly though, the damages Sylvia and Elvin seek in their Counterclaims are dependent upon and relate to the declaratory relief sought in the Tax Proceeding. For example,

[f]rom July 2019 through March 2022, Tri-Net, as the occupier and guardians of the Home pending resolution of Sylvia's appeal, and the propriety of the Home's ownership, was obligated to perform basic property ownership functions like maintaining the property, ensuring the property was not damaged, ensuring the property remained habitable, *paying the property taxes*, and paying the utilities on the Home. Tri-Net failed to perform any of these functions.

(Sylvia Verified Answer & Countercl. Case no. 15 OC 00074 1B, ¶ 31, Jun. 28, 2022, on file

¹ Tri-Net correctly notes that Elvin "is not a party to the Tax Proceeding." (Tri-Net Opp'n, at 5:14, Dec. 27, 2022, on file). Elvin requested and is waiting for the Legal Aid Center for Southern Nevada ("LACSN") to provide him a Statement of Legal Aid ("SOLA") to minimize the costs to him so that Elvin can move to intervene under NRCP 24 in the Tax Proceedings. Elvin anticipates receiving his SOLA in early January 2023 and moving to intervene shortly thereafter. Thus, Tri-Net's claim that Elvin is not a party to the Tax Proceeding should be provided little, if any weight.

(emphasis added); Elvin Verified Answer & Countercl. Case no. 15 OC 00074 1B, ¶ 54, Oct. 10, 2022, on file (providing substantially the same factual allegation).) Indeed, both Elvin and Sylvia’s waste, negligence, and slander of title counterclaims all relate to and seek damages for Tri-Net’s failure to pay the property taxes.² (Sylvia Verified Answer & Countercl., ¶¶ 72-78 (waste counterclaim); *id.* ¶¶ 89-94 (negligence counterclaim); *id.* ¶¶ 95-100 (slander of title counterclaim); *see also* Elvin Verified Answer & Countercl., ¶¶ 106-112 (waste counterclaim); *id.* ¶¶ 128-133 (negligence counterclaim); *id.* ¶¶ 134-139 (slander of title counterclaim). Further proof that these proceedings involve common questions of law and fact, “Sylvia seeks a declaration from this Court determining who was obligated to pay the property taxes on the Subject Property during the pendency of Sylvia’s appeal.” (Sylvia Compl., Case no. 21 RP 00005 1B, ¶ 32, May 24, 2021, on file.) These actions present the very definition of a common questions of law and fact. *See Grausz v. Englander*, 321 F.3d 467, 473 (4th Cir. 2003) (“Generally, we say that claims are part of the same cause of action when they arise out of the same transaction or series of transactions, or the same core of operative facts.” (internal quotation marks omitted))

Thus, Tri-Net’s contention that “[t]he critical point is that the Tax Proceeding cannot be adjudicated until the outcome of the forfeiture is known” is simply Tri-Net (and evidently now Rasor and the Board) implementing its litigation strategy—delay. (Tri-Net Opp’n at 6:17-18.) Again, and despite Sylvia and Elvin recently explaining to Tri-Net its litigation risks, (*see* Sylvia and Elvin Mot. to Strike, Dec. 23, 2022, on file,) the agency clearly did not research the cases cited

² As Sylvia and Elvin explained in their opposition to stay these proceedings “between the destruction of their home and the cloud on their title—Sylvia and Elvin cannot enjoy their home because it remains, to this day, seized by Tri-Net.” (Sylvia and Elvin Mot. to Strike, at 18:17-18, Dec. 23, 2022, on file; *see also id.* at 19:24-26 (“The property tax bill Tri-Net owes has now ballooned to \$17,373.82. With further delays in this litigation, the public—including the Carson City School District—will continue to suffer.” (citation omitted)). Thus, the impact of staying the Forfeiture and Counterclaim Proceeding, denying Sylvia’s consolidation request, and denying Sylvia’s request to lift the Stay will present further irreparable harm to Sylvia and Elvin’s property interests. *See Livingston v. Washoe Cnty.*, 112 Nev. 479, 484, 916 P.2d 163, 167 (1996) (“The seizure of real property affects the fundamental interest of our citizenry in maintaining control over their residence and remaining free from government interference.”); *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987) (noting that, with respect to irreparable harm, this is harm for which compensatory damages would be inadequate, such as disputes over property because “real property is unique”).

1 and still does not understand its liability. To recap, the question of Sylvia and Elvin’s damages
2 does not turn on the propriety of Tri-Net forfeiting the Home—the void default judgment Tri-Net
3 entered into the chain of title, the eviction of Sylvia and Elvin’s family, and the destruction of their
4 Home is the proximate cause of Sylvia and Elvin’s damages. *See Bedi v. McMullan*, 160 Cal. App.
5 3d 272, 275, 206 Cal. Rptr. 578, 589 (Cal. Ct. App. 1984) (“A default judgment that has been set
6 aside will not support a writ of execution, and it is well settled a party is liable in tort if he executes
7 a void judgment against the property of another.” (cleaned up)).

8 In other words, just as Tri-Net incorrectly claimed that the forfeiture should be determined
9 before Sylvia and Elvin’s counterclaims, (*see* Tri-Net Mot. to Stay, Dec. 15, 2022, on file,) the
10 agency likewise incorrectly contends that the Tax Proceeding cannot be adjudicated
11 “contemporaneously with” the Counterclaims.³ (Tri-Net Opp’n at 6:6.) This order of events Tri-
12 Net has argued in its last few Motions and Oppositions—(1) requesting to stay all of these
13 proceedings until Elvin’s Petition is decided followed by (2) resolving the counterclaims followed
14 by, (3) resolving the Tax Proceeding—is the *definition* of dilatory. *See Black’s Law Dictionary*,
15 *Dilatory* (11th ed. 2019) (“Designed or tending to cause delay”). This Court should see through
16 Tri-Net’s litigation strategy and grant Sylvia’s request to consolidate the Forfeiture, the
17 Counterclaims, and the Tax Proceedings so that all of these common questions of law and fact can
18 be resolved in one proceeding.

19 2. *Consolidation will preserve judicial resources and reduce costs*

20 Consolidation of these proceedings will preserve precious judicial resources and reduce
21 costs. As explained above, these matters all revolve around the same common questions of law and
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23
24 ³ Tri-Net claims “[t]here was a point where both parties recognized” that until the status of the
25 propriety of Tri-Net’s forfeiture is known, the tax foreclosure sought by Rasor and the Board cannot
26 occur. (Tri-Net Mot. at 6:19-15 (block quoting the preliminary injunction the parties stipulated to
27 and this Court ordered that enjoined Rasor and the Board from any further foreclosure proceedings).)
28 Sylvia’s position remains unchanged in regards to the foreclosure proceeding and the injunction
currently in place against Rasor and The Board. Tri-Net confuses the stay and the preliminary
injunction, and because of Tri-Net’s confusion she wants to be explicit with this Court. *Nothing*
about Sylvia’s request to consolidate and lift the stay affects the preliminary injunction currently
enjoining Rasor and the Board.

1 fact. *Cf. Jackson v. Berkey*, 2020 WL 1974247, *2 (W.D. Wash. 2020) (denying consolidation
2 because evaluating “separate and distinct evidence” would waste judicial resources).

3 Again—and not addressed at all by Tri-Net in its Opposition—Elvin and Sylvia’s counsel
4 is providing legal services pro bono. (See Statement of Legal Aid for Sylvia Fred, Case No. 15 OC
5 00074 1B, Dec. 10, 2021, on file; Statement of Legal Aid for Elvin Fred, Case No. 15 OC 00074
6 1B, Jun. 27, 2022, on file.) Undersigned counsel recently outlined the issues he faces based on Tri-
7 Net’s litigation strategy of delay. (See Elvin & Sylvia Mot. to Strike, Dec. 23, 2022, on file; *see id.*
8 at Ex. 1, Fortin Decl. ¶ 41 (“I further explained that, because I am providing my services pro bono,
9 I want to proceed to trial as soon as possible and do not want to push any deadlines.”). Thus, from
10 a cost perspective, consolidation is proper and would preserve pro bono resources.

11 To that end, because Rasor, a Defendant in the Tax Proceeding is also a witness and former
12 Tri-Net officer, it makes sense to consolidate all of these proceedings to reduce the costs of
13 litigating these issues. *See EEOC v. G-K-G, Inc.*, 39 F.3d 470, 473 (7th Cir. 1994) (Posner J.) (“The
14 breadth of the district court’s managerial discretion precludes any suggestion that the plaintiff has
15 an absolute right to re-depose already-deposed witnesses or otherwise duplicate the efforts of
16 [other] counsel.”). Thus, Tri-Net’s is wrong again when it claimed that Sylvia’s Motion to
17 Consolidate “fails to explain how the circumstances have changed to now obviate these previously
18 stipulated points.” (Tri-Net Opp’n at 7:10-11.) Sylvia did explain the change in the
19 circumstances—Tri-Net’s own NRCP 16.1 Disclosures provided new facts regarding Rasor, Sylvia
20 included Tri-Net’s disclosures which not Rasor is a witness as an exhibit, and Sylvia explained why
21 consolidating all of these proceedings makes sense. (See Sylvia Mot. to Consolidate.)

22 But since filing its Opposition, further research by Sylvia reveals that all of Tri-Net’s
23 rebuttal claims are incorrect. For example, Tri-Net claims that Rasor and the Board “have nothing
24 whatsoever to do with the Civil Forfeiture and Counterclaim proceeding.” (*Id.* at 7:17-18.) Rasor
25 was in fact involved in the Civil Forfeiture and named as a witness by Tri-Net. (See Sylvia Mot. to
26 Consolidate; *see also id.* at Ex. 1 (listing Rasor as a witness).) The Board also “appointed Andrew
27 Rasor” in May 2021 just as the Tax Proceedings began. *See* <https://www.carson.org/government/departments-g-z/treasurer>. In Rasor’s position as Treasurer, his knowledge of the Forfeiture
28

1 Proceedings through his time at Tri-Net, and Tri-Net's own failure to pay the taxes, presents
2 specific facts that must be explored to understand the slander of title issues. Put another way, the
3 nature of Rasor's appointment, his knowledge of the Home, and his knowledge of Tri-Net's failure
4 to pay the property taxes on Sylvia and Elvin's Home while Rasor was a Tri-Net Officer are all
5 relevant and related to the claims and defenses. *See* NRCP 26(b); *see also Rowland v. Lepire*, 99
6 Nev. 308, 313, 662 P.2d 1332, 1335 (1983) (explaining that to be liable under slander of title a
7 party must "prove malice" and the party must show "the defendant knew that the statement was
8 false or acted in reckless disregard of its truth or falsity").

9 To that end, and as for the viability of additional claims against additional parties, specific
10 provisions of Nevada's Civil Forfeiture Laws preclude Sylvia and Elvin from bringing all of their
11 counterclaims in that proceeding. *See* NRS 179.1171 (1) ("*Except as otherwise provided in NRS*
12 *179.1156 to 179.1205, inclusive, the Nevada Rules of Civil Procedure are applicable to and*
13 *constitute the rules of practice in a proceeding for forfeiture to those sections*" (emphasis added));
14 NRS 179.1171(7) ("No person, other than the plaintiff and any claimant, is a proper party in the
15 proceeding."). In other words, NRCP 18-20 (joinder) are not available to Sylvia and Elvin in the
16 forfeiture proceeding such that each *only* brought the claims they possessed against Tri-Net, but no
17 one else.

18 Thus, once Tri-Net actually responds to Sylvia's discovery requests, Tri-Net's officer in
19 charge is named, Sylvia and Elvin intend to bring additional claims against this individual (and
20 potentially others) under NRS Chapter 41, 42 U.S.C. § 1983, and Nevada's Constitution. *See Mack*
21 *v. Williams*, 138 Nev., Adv. Op. 86, ____ P.3d ____, ____, 2022 WL 17998520, at *12 (2022)
22 ("[W]e do not create a new cause of action. We simply recognize the long-standing legal principle
23 that a right does not, as a practical matter, exist without any remedy for its enforcement."). By
24 consolidating this litigation, lifting the stay, and permitting Sylvia (and Elvin once he has
25 intervened) to bring all of their claims against all of the parties that violated their rights and damaged
26 their Home, in one consolidated proceeding will foster judicial economy and efficiency. This is
27 because of the common questions of fact and law involved in all of these proceedings. Otherwise,
28 Sylvia and Elvin will be required to open a *third* lawsuit to assert their claims against those

1 individuals and entities that violated Sylvia and Elvin's rights—hardly an efficient or economical
2 use of judicial resources.

3 Thus, Sylvia asks this Court to consolidate the Forfeiture, Counterclaims, and Tax
4 Proceeding into one proceeding so that all of these issues may be evaluated during a singular time
5 period of discovery and resolved at one trial which will reduce the significant costs on all of the
6 parties involved—especially the judiciary.

7 3. *The actual conflict between Tri-Net, Rasor, and the Board cannot be the*
8 *source of prejudice due to consolidation.*

9 The Carson City District Attorney ("D.A.") claims that consolidation will put it in an
10 impossible situation in which an actual conflict will exist as it would be forced to represent all three
11 parties—Tri-Net, Rasor, and the Board. This is nonsense. The D.A. *already represents* all three
12 parties in the Tax Proceeding. Consolidation of the Forfeiture, Counterclaim, and Tax Proceedings
13 will not shift or alter the already existing actual conflict the D.A. faces as that office is in violation
14 of Nevada Rules of Professional Conduct ("NRPC") 1.7.⁴ Because the D.A. failed to enunciate
15 any other prejudice (other than the one that office caused) there is no prejudice to any of the parties
16 through consolidation.

17 Courts have found a "pervasive overlap of law and fact" in two cases, even with different
18

19 ⁴ To be sure, Sylvia and Elvin lack standing to move to disqualify the D.A. based on the actual
20 conflict detailed below. *See Liapis v. Second Jud. Dist. Ct.*, 128 Nev. 414, 420, 282, P.3d 733, 737
21 (2012) ("The general rule is that only a former or current client has standing to bring a motion to
22 disqualify counsel on the basis of a conflict of interest."). Even so, Sylvia and Elvin pleaded facts
23 that will likely require testimony by the D.A. at trial. (*See* Sylvia Verified Answer & Countercl. ¶
24 24 ("Tri-Net's failure to properly serve and notify Sylvia in violation of Due Process renders the
25 Amended Default Judgment purporting to forfeit the Home *void ab initio*."); Elvin Verified Answer
26 & Countercl. ¶ 34 ("Tri-Net's failure to perform its proper due diligence as required under NRS
27 179.1171, to ensure Graham continued to represent Elvin and to ensure Elvin intended to defend his
28 interests violated his Due Process rights."). For the advocate-witness conflict, under Nevada law,
disqualification is not necessary at this nascent stage of the proceedings, but if the D.A. is required
to testify at trial, that office will not be permitted to serve as trial counsel for Tri-Net, Rasor, and the
Board. *See DiMartino v. Eighth Jud. Dist. Ct.*, 119 Nev. 119, 122, 66 P.3d 945, 947 (2003) ("Because
the rule is meant to eliminate any confusion and prejudice that could result if an attorney appears
before a jury as an advocate and as a witness, pretrial disqualification generally is not necessary.")
For purposes of this Reply, Sylvia simply points out the problems with the Opposition to ensure the
Court understands the prejudice claimed therein is caused by the D.A.'s own conflict—not from any
consolidation of the Forfeiture, Counterclaim, and Tax Proceedings.

1 parties was sufficient for consolidation. *Sunbelt Rentals, Inc. v. Ghent*, 2018 WL 1182519 (W.D.
2 N.C. 2018); *Pipefitters Local No. 636 Defined Ben. Plan v. Bank of Am. Corp.*, 275 F.R.D. 187,
3 192 (S.D.N.Y. 2011) (“Differences in claims, defendants, or class periods do not render
4 consolidation inappropriate if the cases present sufficiently common questions of fact and law, and
5 the differences do not outweigh the interests of judicial economy served by consolidation.”). Indeed
6 “[c]ases may be consolidated even where, as here, certain defendants are named in only one of the
7 complaints.” *Safran v. Sheriff of Nassau Cnty*, 2012 WL 3027924, *1 (E.D. N.Y. 2012); *Nat’l*
8 *Ass’n of Mortg. Brokers v. Bd. Of Governors of Federal Reserve System*, 770 F. Supp. 2d 283, 286
9 (D.D.C. 2011) (“Identity of the parties is not a prerequisite.”). Even so, “[c]onsiderations of
10 convenience and economy must yield to a paramount concern for a fair and impartial trial.” *Weir-*
11 *Cove Moving & Storage Co. v. Fleet Owners Ins. Fund*, 2019 WL 266422, at *2 (N.D. Ohio 2019).

12 As explained in Sylvia’s Motion and in this Reply, there is substantial overlap between the
13 Forfeiture, Counterclaims, and the Tax Proceedings such that consolidation is proper because none
14 of the three defendants—Tri-Net, Rasor, and the Board will suffer prejudice due to consolidation.
15 The prejudice the D.A. raised is proximately caused by the D.A.’s violation of the Rules.

16 For example, the D.A. explained

17 Consolidation would force the Carson City District Attorney’s Office to represent
18 three distinct clients in a single proceeding. Of course, that may be permitted if the
19 clients agree to that situation and their interests are aligned. However, consolidation
20 enhances the risks the interests of the clients represented by the Carson City District
21 Attorney’s Office will diverge in a way that creates a conflict of interest in its
22 representation. There are, no doubt, a multitude of examples and permutations that
23 would ably establish the point, but here is just one hypothetical possibility. An offer
is extended to resolve both proceedings. From the perspective of the clients
represented by the Carson City District Attorney’s Office, the offer is a generally
favorable resolution of the Tax Proceeding but a generally unfavorable resolution of
the Civil Forfeiture and Counterclaim Proceeding. Two of the parties, the Carson
City Treasurer and Board of Supervisors, wish to accept the offer, but the third, TRI
NET wishes to reject it. Quite clearly a conflict of interest has been created.

24 (Tri-Net Opp’n at 8:1-14.)

25 First, consolidation, no consolidation, the District Attorney “represents three distinct clients
26 in a single proceeding” as Tri-Net, Rasor, and the Board are all parties represented by the D.A. in
27 the Tax Proceeding. (See Sylvia Compl., Case no. 21 RP 00005 1B (naming Tri-Net, Rasor, and
28 the Board as defendants).) Thus, this claimed prejudice is already present and therefore

1 consolidation of the Forfeiture, Counterclaims, and Tax Proceedings cannot be the proximate cause
2 of any prejudice felt by Tri-Net, Rasor, and the Board.

3 Second, clients are *never permitted* to waive actual conflicts of interest in which counsel
4 represents two parties that are adverse to one another. *See* NRPC 1.7(a) (“[A] lawyer shall not
5 represent a client if the representation involves a concurrent conflict of interest. A concurrent
6 conflict of interest exists if: (1) The representation of one client will be directly adverse to another
7 client.”); *see also* NRPC 1.7(b) (providing no exception to an actual conflict when parties are
8 adverse). As the Restatements explains “[w]hen clients are aligned directly against each other in
9 the same litigation, the institutional interest in vigorous development of each client’s position
10 renders the conflict non-consentable.” *Restatement (Third) of the Law Governing Lawyers* § 122
11 cmt. g(iii). “The rule essentially precludes an attorney from taking a position that is adverse to
12 another client’s interests.” *State v. First Jud. Dist. Ct.*, 136 Nev. 315, 317, 466 P.3d 529, 531
13 (2020); *Nevada Yellow Cab Corp. v. Eighth Jud. Dist. Ct.*, 123 Nev. 44, 51, 152 P.3d 737, 741
14 (2007) (“Finally, as most states, including Nevada, have a rule that permits joint representation
15 when no actual conflict is present.” (citing to NRPC 1.7(a)). “The most common remedy” for an
16 actual conflict of interest in a joint representation “is the lawyer’s disqualification from further
17 representation of one or more clients in a matter.” *Restatement (Third) of the Law Governing*
18 *Lawyers* § 128 cmt. a.

19 To be sure and exposed by the D.A.’s hypothetical in the Opposition, there is an actual
20 conflict present in the Tax Proceeding because the Board and Rasor are adverse to Tri-Net. First,
21 the very nature of what the Board and Rasor on the one hand seek in the tax foreclosure process
22 versus what Tri-Net seeks in the forfeiture exposes the adversity. Tri-Net seeks title to the Home
23 to sell it and keep the profits for law enforcement operations. *See* NRS 179.118; NRS 179.1187.
24 Rasor and the Board seek title to the Home to sell it and keep the profits to pay the delinquent taxes
25 Tri-Net failed to pay (and continues to fail to pay today). *See* NRS 361.5648. Moving beyond the
26 baseline adversity of the two positions, the decision to oppose consolidation and seek further delay
27 exposes the problems with the D.A. representing all three parties.

28 It is axiomatic that the Board and Rasor should want a prompt resolution of the Tax

1 Proceeding so that it can obtain the delinquent property taxes and use the funds for public services.
2 Tri-Net on the other hand is seeking to entrench its entire litigation strategy—delay—by refusing
3 to consolidate these proceedings all while the agency is the proximate cause of the delinquent
4 property taxes. The D.A.’s claim that there may be “[a]n offer to resolve both proceedings” is
5 premised on the idea that Tri-Net, Rasor, and the Board are aligned. Tri-Net for whatever reason
6 does not believe it must do what every other property owner must do—pay taxes. Sylvia and Elvin
7 on the hand, with the support of the Department of Justice and Department of the Treasury
8 guidelines for forfeitures, contend they should not be required to pay the property taxes for the
9 entirety of the time Tri-Net imposed a lis pendens on the property. The Board and Rasor of course
10 want the duly assessed taxes to fund public services in Carson City—the very taxes Tri-Net refuses
11 to pay. Thus, there is an actual conflict of interest between Tri-Net on the one hand, and the Board
12 and Rasor on the other and the positions taken in the Opposition exposes this conflict. But and
13 importantly, consolidation or no consolidation, the prejudice that exists is caused by the D.A.—not
14 by consolidation.

15 In sum, there will be no confusion, little or no delay, and no prejudice through consolidation
16 of the Civil Forfeiture, Counterclaim, and Tax Proceeding. Indeed, consolidation will promote
17 judicial efficiency and reduce the costs of these proceedings. Sylvia, therefore, asks this Court to
18 consolidate these proceedings.

19 B. The Tax Proceeding Defendants have Already been Served Therefore Ordering
20 them to File a Responsive Pleading by January 26, 2023 is Proper.

21 “The power to stay proceeding is incidental to the power inherent in every court to control
22 the disposition of the causes on its docket with economy of time and effort for itself, for counsel,
23 and for litigants.” *Maheu v. Eighth Jud. Dist. Ct.*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973
24 (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). “The corollary to this power is the ability
25 to lift a stay previously imposed.” *Boyle v. Cnty of Kern*, Case no. 03-CV-5162-OWW-GSA, 2008
26 WL 220413, at *5 (E.D. Cal. Jan. 25, 2008); *Canady v. Erbe Elektromedizin*, 271 F.Supp.2d 64, 75
27 (D.D.C. 2002) (“The same court that imposes a stay of litigation has the inherent power and
28 discretion to lift the stay.”).

Lifting the stay is proper as this Court consolidates the Forfeiture, Counterclaim, and Tax Proceedings. Tri-Net's claim that "it makes no sense to attempt to litigate these two inherently separate cases at the same time" is unmoored from reality. (Tri-Net Opp'n at 8:20-21.) Tri-Net's argument is likewise not grounded in cogent factual or legal authority and thus should be disregarded. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 (2006). This is because Tri-Net is simply asking this Court to entrench its litigation strategy—delay. This Court should not permit such a strategy but instead, embrace judicial economy and efficiency of resolving all of these proceedings in an expeditious and singular discovery process and trial.

Accordingly, following the consolidation of these actions, Sylvia asks this Court to order Tri-Net, Razor, and the Board to file a responsive pleading by January 26, 2023, and proceed through the discovery and litigation process in the normal course as provided under the Rules.

III. CONCLUSION

For all the reasons detailed above, Sylvia asks this Court to consolidate the Civil Forfeiture and Counterclaim Proceedings with the Tax Proceedings. As this Court consolidates these actions, she likewise requests this Court order the Tax Proceeding Defendants to provide a responsive pleading to Sylvia's complaint on January 26, 2023.

Dated this 3d day of January 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on this 3d day of January 2023, I caused to be delivered via email, and hand delivery, true and correct copies of the above **SYLVIA FRED'S REPLY IN SUPPORT OF HER MOTION UNDER NRCP 42(A) TO CONSOLIDATE THE CIVIL FORFEITURE AND COUNTERCLAIM PROCEEDINGS, CASE NO. 15 OC 00074 1B WITH THE TAX PROCEEDING CASE NO 21 RP 00005 1B FOR JUDICIAL ECONOMY AND EFFICIENCY PURPOSES** to the following:

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885 East Musser Street
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Representing Plaintiff

FIRST JUDICIAL DISTRICT COURT OF NEVADA
CARSON CITY

In re:

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

SYLVIA FRED, an individual,

REC'D & FILED
2020 JAN -9 PM 5:00
WILLIAM SCOTT HOGAN
CLERK
BY K. PETERSON
DEPUTY

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

1 Counterclaimant,

2 v.

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

6 Counterdefendant.

7 ELVIN FRED, an individual,

8 Counterclaimant,

9 v.

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

13 Counterdefendant.
14


15
16 **PLAINTIFF/COUNTERDEFENDANT'S OPPOSITION TO ELVIN FRED'S MOTION**
17 **FOR PARTIAL SUMMARY JUDGMENT SEEKING A DECLARATION THAT**
18 **NEVADA'S CIVIL FORFEITURE LAWS VIOLATE DUE PROCESS**

19 COMES NOW, Plaintiff, the INVESTIGATION DIVISION OF THE
20 DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net Narcotics
21 Task Force (TRI NET), by and through its counsel of record, JASON D. WOODBURY,
22 Carson City District Attorney, and BENJAMIN R. JOHNSON, Senior Deputy District
23 Attorney, and opposes *Elvin Fred's Motion for Partial Summary Judgment Seeking a*
24 *Declaration that Nevada's Civil Forfeiture Laws Violate Due Process ("Motion")* filed
25 with this Court on December 15, 2022. This *Opposition* is made pursuant to FJDCR
3.8 and is based on the points and authorities set forth below, all pleadings and papers

1 heretofore filed in this case, and the arguments presented at any hearing on the
2 motion.

3 DATED this 9th day of January, 2023.

4
5 CARSON CITY DISTRICT ATTORNEY

6
7 
8 JASON D. WOODBURY
9 District Attorney
10 Nevada Bar No. 6870
11 BENJAMIN R. JOHNSON
12 Senior Deputy District Attorney
13 Nevada Bar No. 10632
14 885 East Musser Street
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17 T: 775.887.2070
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19 E-mail: jwoodbury@carson.org
20 bjohnson@carson.org
21 Representing Plaintiff
22
23
24
25

MEMORANDUM OF POINTS AND AUTHORITIES

I. Statement of Undisputed Facts

A. ELVIN FRED's Acquisition and Use of the Residence to Traffick a Controlled Substance

The subject property in this matter is a residence located at 3587 Desatoya Drive in Carson City ("Desatoya residence"). *First Am. Compl. for Forfeiture* at ¶2 (Mar. 22, 2022). ELVIN FRED acquired sole title and ownership of the Desatoya residence through a Grant Deed recorded on May 4, 2012. Exhibit 1 – Grant Deed. There are no other parties listed on the deed and SYLVIA FRED did not acquire any ownership interest. *Id.*

Between February 13 and March 19, 2015, ELVIN FRED owned and occupied the Desatoya residence. *Id.* at ¶9. During that time, an individual named James Tito was a drug seller in Carson City. *Id.* at ¶¶9-21. ELVIN FRED was Mr. Tito's supplier, using the Desatoya residence to store, conceal, and protect the drugs that Mr. Tito sold and to collect a cut of the proceeds resulting from Mr. Tito's sales. *Id.*

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

On February 19, 2015, Mr. Tito agreed to sell the source nearly an ounce and a half of methamphetamine from ELVIN FRED for \$1,000. *Id.* at ¶12. After agreeing to the transaction, Mr. Tito contacted ELVIN FRED and then went to the Desatoya

1 residence and again went inside for a brief period. *Id.* He and ELVIN FRED emerged
2 from the Desatoya Residence, and Mr. Tito left to meet with the source. *Id.* During
3 that meeting Mr. Tito provided the source with approximately 41.2 grams of
4 methamphetamine. *Id.* These circumstances strongly support the reasonable
5 inference that Mr. Tito acquired the methamphetamine for the February 19 transaction
6 from ELVIN FRED inside the Desatoya residence. *Id.* at ¶13.

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

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

25 ///

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

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

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

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

18 **D. SYLVIA FRED Acquires Title After Forfeiture Proceedings Begin**

19 After forfeiture proceedings had been instituted by TRI NET, ELVIN FRED
20 executed a quitclaim deed transferring sole ownership to SYLVIA FRED. Exhibit 3 –
21 Sylvia Fred Deed. The deed was recorded on April 6, 2015, after the forfeiture
22 proceeding had been filed. *Id.* at 1. The deed transferred all of ELVIN FRED's "right,
23 title, interest, and claim" to the Desatoya Residence to SYLVIA FRED. *Id.* at 2.
24 Although the words "Joint Tenants" appears in parenthesis, the legal effect of the deed
25 was not to create a joint tenancy because ELVIN FRED did not retain any ownership

1 interest pursuant to the express language of the deed. *Id.* SYLVIA FRED also recorded
2 a Declaration of Homestead against the property on April 6, 2015. Exhibit 4.

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

10 II. Legal Argument

11 A. Standard for Summary Judgment

12 Summary judgment is proper and “shall be rendered forthwith” when the
13 pleadings and other evidence on file demonstrate that no genuine issue as to any
14 material fact remains and that the moving party is entitled to a judgment as a matter of
15 law. NRCP 56; *Tucker v. Action Equip. and Scaffold Co.*, 113 Nev. 1349, 1353, 951
16 P.2d 1027, 1029 (1997). When reviewing a motion for summary judgment, the
17 evidence, and any reasonable inferences drawn from it, must be viewed in a light most
18 favorable to the nonmoving party. *Lipps v. Southern Nevada Paving*, 116 Nev. 497,
19 498, 998 P.2d 1183, 1184 (2000) (citing *Butler v. Bogdanovich*, 101 Nev. 449, 451,
20 705 P.2d 662, 663 (1985)). However, the nonmoving party may not defeat a motion
21 for summary judgment by relying “on the gossamer threads of whimsy, speculation and
22 conjecture.” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713–14, 57 P.3d 82,
23 87 (2002) (quoting *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 442
24 (1993)).

25 “When a motion for summary judgment is made and supported as required by

1 NRCP 56, the non-moving party may not rest upon general allegations and
2 conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating
3 the existence of a genuine factual issue.” *Pegasus*, 118 Nev. at 713, 57 P.3d at 87.
4 Summary judgment is appropriate under NRCP 56 when the pleadings and evidence
5 that are properly before the court demonstrate that no genuine issue of material fact
6 exists, and the moving party is entitled to judgment as a matter of law. *Wood v.*
7 *Safeway, Inc.*, 121 Nev. 724, 731, 121, P. 3d 1026, 1031 (2005) (citing *Pegasus*, 118
8 Nev. at 713, 57 P.3d at 87). A factual dispute is genuine when the evidence is such
9 that a rational trier of fact could return a verdict for the nonmoving party. *Id.*

10 **B. The Clear and Convincing Evidence Standard Does Not Violate Due**
11 **Process**

12 The crux of ELVIN FRED’s argument is that NRS 179.1173(4) is
13 unconstitutional because it imposes a “clear and convincing evidence” standard to civil
14 forfeitures instead of requiring proof beyond a reasonable doubt. *Motion* at 9, 12-18.
15 The *Motion* cites cases from the 1800s to support an argument that reasonable doubt
16 is the only constitutional burden of proof for civil forfeitures. (“[T]he federal Due
17 Process Clauses (either the Fifth or Fourteenth Amendments) are offended by
18 anything less than a reasonable doubt burden of proof.”). *Motion* at 12. This is a slightly
19 different version of the argument that ELVIN FRED made in his *Motion* to Dismiss
20 regarding double jeopardy. As explained in TRI NET’s Opposition to the Motion to
21 Dismiss, Nevada’s forfeiture framework is civil and not criminal in nature and does not
22 require application of criminal prosecution standards or rules.

23 The *Motion* is completely devoid of citation to any cases or statutes to support
24 this claim. ELVIN FRED cites two cases from the U.S. Supreme Court from 1835 and
25 1886 respectively. Other than the fact that both these cases involved “forfeitures”, the

1 *Motion* does not explain how these cases are relevant to this litigation or even that they
2 are controlling law. This argument ignores current Supreme Court precedent which has
3 held that civil forfeitures generally do not constitute punishment. See *United States v.*
4 *Ursery*, 518 U.S. 267 (1996). In *Ursery*, the U.S. Supreme Court reversed two separate
5 cases from the Sixth Circuit and Ninth Circuit Court of Appeals that held double
6 jeopardy prohibits the government from prosecuting a defendant for a criminal offense
7 and also forfeiting their property in a separate civil proceeding. *Ursery*, 518 at 271.
8 The U.S. Supreme Court held that those specific civil forfeitures and *civil forfeitures*
9 *generally* “do not constitute ‘punishment’ for the purposes of the Double Jeopardy
10 Clause.” *Id.*

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

19 The Nevada Supreme Court has held that Nevada’s forfeiture statutes are not
20 criminal in nature and that there is no clear proof that the statutory scheme is so
21 punitive in form as to render it invalid. *Levingston v. Washoe Cty.*, 114 Nev. 306, 310-
22 11, 956 P.2d 84, 87 (1998). In *Levingston*, the Nevada Supreme Court adopted the
23 *Ursery* analysis and upheld the forfeiture of a house against a double jeopardy claim.
24 *Id.* The Court acknowledged that Chapter 179 applies the rules of civil procedure to
25 forfeiture actions, identifies the parties as plaintiff and claimant, provides that the

1 proceeding is *in rem* and establishes the burden of proof as preponderance of the
2 evidence, not beyond a reasonable doubt. *Id.* at 310, 956 P.2d at 87. Therefore, it is
3 clear the legislature intended Nevada's forfeiture statutes to be civil, not criminal, *in*
4 *rem* proceedings. *Id.*

5 The *Motion* makes no other argument regarding the constitutionality of NRS
6 179.1173(4) beyond the fact that it imposes a lower burden of proof than criminal
7 cases. The lack of citation to any legal authority to support this argument is glaringly
8 obvious. The *Motion* conflates the role of legislative history in constitutional
9 interpretation of an ambiguous statute with an argument that the burden of proof cannot
10 be changed by the legislature to one lower than it was historically. The Nevada
11 Supreme Court has already held that civil forfeitures operate under civil rules and are
12 not per se punitive. *Levingston v. Washoe Cty.*, 114 Nev. 306, 310-11, 956 P.2d 84,
13 87 (1998). Therefore, ELVIN FRED's Motion fails to demonstrate that he is entitled to
14 summary judgment as a matter of law.

15 **III. Conclusion**

16 For all these reasons, the *Motion* should be denied in its entirety.

17 DATED this 9th day of January, 2023.

18 CARSON CITY DISTRICT ATTORNEY

19
20 

21 BENJAMIN R. JOHNSON
22 Senior Deputy District Attorney
23 Nevada Bar No. 10632
24 Representing Plaintiff
25

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Carson City District Attorney, and that on this 9th day of January, 2023, I served a true and correct copy of the foregoing **PLAINTIFF/COUNTERDEFENDANT'S OPPOSITION TO ELVIN FRED'S MOTION FOR PARTIAL SUMMARY JUDGMENT SEEKING A DECLARATION THAT NEVADA'S CIVIL FORFEITURE LAWS VIOLATE DUE PROCESS** via electronic mail to the following:

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



EXHIBIT 1

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

a) 010-443-11
b) _____
c) _____
d) _____

FOR RECORDERS OPTIONAL USE ONLY
Document #: 421984
Date of Recording: 05/04/2012

2. Type of Property:

a) ☐ Vacant Land b) ☒ Single Fam. Res.
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg f) ☐ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page: _____
Date of Recording: _____
Notes: 60%

3. Total Value/Sales Price of Property

Deed in Lieu of Foreclosure Only (value of property) \$ 69,900.00
Transfer Tax Value: \$ 69,900.00
Real Property Transfer Tax Due \$ 273.10

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100.00 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity Agent
Signature _____ Capacity Grantor

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: FEDERAL HOME LOAN Mortgage Corporation
Address: 17100 GILLETTE AVENUE
City: IRVINE
State: CA Zip: 92614

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Elbin Fred
Address: P.O. Box 443
City: Carson City
State: Nevada Zip: 89302

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: ServiceLink Escrow #: 84184573
Address: 2nd Commerce
City: Primm State: NV Zip: 89302

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

R.O.T.T. # 073.0
 Order No. 2924573
 Escrow No. 21951FD
 Parcel No. 010-443-11

RECORDED AT THE REQUEST OF
 SERVICELINK IRVINE
 05/04/2012 02:49PM
 FILE NO. 421984
 ALAN GLOVER
 CARSON CITY RECORDER
 FEE \$15.00 DEP RMH

AND WHEN RECORDED MAIL TO:
 AND MAIL TAX STATEMENT TO:
 ELBIN FRED
 P.O. Box 443
 Carson City, NV 89702

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S) THAT DOCUMENTARY TRANSFER TAX IS and CITY \$
☒ computed on full value of property conveyed, or
☐ computed on full value less liens or encumbrances remaining at the time of sale.
☐ unincorporated area: ☒ City of Carson City, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
 Federal Home Loan Mortgage Corporation

hereby GRANT(S) to Elbin Fred, A Single man
 the following described real property in the County of Carson City, State of Nevada:

Legal description attached hereto and made a part hereof as Exhibit "A"

Date April 25, 2012

Federal Home Loan Mortgage Corporation
 By: Malcolm & Cisneros, a Law Corporation, as attorney in fact

By: Rande D. Johnson, its Assistant Secretary

STATE OF CALIFORNIA }
 } S.S.
 COUNTY OF Orange }

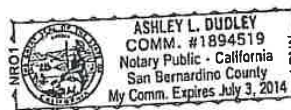
ASHLEY L. DUDLEY

On May 3, 2012, before me,
 a notary public, personally appeared Rande D. Johnson who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Ashley L. Dudley (Seal)



421984

FRED0201
 APEN000071

PA001260

Exhibit "A"

Legal Description

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.

Tax ID: 010-443-11

3857 Desatoya Drive, Carson City, NV 89701

UNOFFICIAL COPY

EXHIBIT 2

Name Search for Name "APN 1044311", Book Type "", Document Types "", Begin Date "1/1/1855", and End Date "1/6/2023" | Total Records "30" | Verified Through Date "01/05/2023 (537602)."

#	Status	Consideration	Search Name	Grantor(s)	Grantee(s)	Record Date	Doc Date	Doc Type	Book Type	Page	Doc #	Reference	Legal	Lot	Images	DocLinks
1	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	APN 1044311	03/08/1993	03/05/1993	DECLARATION OF HOMESTEAD	OR	0000	141063			legalfield_N33	2	
2	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	APN 1044311	04/07/1998	04/06/1998	ABANDONMENT OF HOMESTEAD	OR	0000	215818		RECORDED 3/8/93 DOC 141063	legalfield_N33	1	
3	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	SUPERIOR BANK APN 1044311	04/29/1998	04/24/1998	DEED OF TRUST	OR	0000	216733		\$71,100.00	legalfield_N33	10	
4	V	\$0.00	APN 1044311	SULLIVAN WANDA L SULLIVAN IRVAN E	COUNTRYWIDE HOME LOANS INC APN 1044311	07/11/2000	06/26/2000	DEED OF TRUST	OR	0000	250498		\$80,001.00 WTC	legalfield_N33	10	
5	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	NEW CENTURY MORTGAGE CORP APN 1044311	04/30/2001	04/25/2001	DEED OF TRUST	OR	0000	261101		\$19,000.00 FCT	legalfield_N33	6	
6	V	\$0.00	APN 1044311	NEW CENTURY MORTGAGE CORP SULLIVAN IRVAN E ...	MORTGAGE ELECTRONIC REGISTRATION SYSTEM APN 1044311	10/29/2001	05/04/2001	ASSGMT OF DEED OF TRUST	OR	0000	268502		RECORDED 04/30/2001 DCC #281101	legalfield_	2	
7	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L ...	TRUSTEE CORPS BAC HOME LOANS SERVICING LPF FKA ...	11/30/2009	11/30/2009	NOTICE DEFAULT/TELEC SELL	OR	0000	395768		RECORDED 2/2/2005 DOC #331460 E-REC 1ST AMERICAN DEFAULT	legalfield_	3	
8	V	\$0.00	APN 1044311	MORTGAGE ELECTRONIC REGISTRATION SYSTEM SULLIVAN IRVAN E ...	BAC HOME LOANS SERVICING FKA COUNTRYWIDE HOME LOANS SERVICING ...	01/19/2010	11/24/2009	ASSGMT OF DEED OF TRUST	OR	0000	397046		E-REC FIRST AMERICAN NATIONAL D RECORDED 02/02/2005 DOC.#331460	legalfield_	2	

#	Status	Consideration	Search Name	Grantor(s)	Grantee(s)	Record Date	Doc Date	Doc Type	Book Type	Page	Doc #	Reference	Legal	Lot	Images	DocLinks
9	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	APN 1044311	09/25/2002	09/25/2002	DECLARATION OF HOMESTEAD	OR	0000	284293		3587 DESATOYA DRIVE	legalfield_N33	1	
10	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	FULL SPECTRUM LENDING INC MORTGAGE ELECTRONIC REGISTRATION SYSTEM ...	08/26/2003	08/18/2003	DEED OF TRUST	OR	0000	304474		\$108,000.00 FAT	legalfield_N33	20	
11	V	\$0.00	APN 1044311	MORTGAGE ELECTRONIC REGISTRATION SYSTEM MORTGAGE ELECTRONIC REGISTRATION SYSTEM	MORTGAGE ELECTRONIC REGISTRATION SYSTEM SULLIVAN IRVAN E ...	09/08/2003	09/03/2003	SUB OF TRUST & FULL RECON	OR	0000	305250		RECORDED DOC #261101	legalfield_N33	1	
12	V	\$0.00	APN 1044311	CTC REAL ESTATE SERVICES FKA CTC FORECLOSURE SERVICES INC	SULLIVAN WANDA L SULLIVAN IRVAN E ...	09/15/2003	09/02/2003	RECONVEYANCE	OR	0000	305655		RECORDED 07/11/2000 DOC.#250498	legalfield_	1	
13	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	COUNTRYWIDE HOME LOANS INC MORTGAGE ELECTRONIC REGISTRATION SYSTEM ...	02/02/2005	01/25/2005	DEED OF TRUST	OR	0000	331480		\$124,000.00 FATCO	legalfield_	18	
14	V	\$0.00	APN 1044311	MORTGAGE ELECTRONIC REGISTRATION SYSTEM RECONTRUST CO	RECONTRUST CO SULLIVAN IRVAN E ...	02/11/2005	02/04/2005	SUB OF TRUST & FULL RECON	OR	0000	331879		RECORDED 08/26/2003 DOC.#304474	legalfield_	2	
15	V	\$0.00	APN 1044311	BAC HOME LOANS SERVICING LP FKA COUNTRYWIDE HOME LOANS SERVICING LP ...	MTC FINANCIAL INC DBA TRUSTEE CORPS ...	01/25/2010	11/24/2009	SUBSTITUTION OF TRUSTEE	OR	0000	397222		E-RECORD FIRST AMERICAN NATIONAL D RECORDED 01/25/2005 DOC #331480	legalfield_	2	

#	Status	Consideration	Search Name	Grantor(s)	Grantee(s)	Record Date	Doc Date	Doc Type	Book Type	Page	Doc #	Reference	Legal	Lot	Images	DocLinks
16	V	\$0.00	APN 1044311	SULLIVAN IRVAN E	NEVADA FORECLOSURE MEDIATION PROGRAM APN 1044311	11/16/2011	11/02/2011	MEDIATION DECLINE	OR	0000	417149		E-REC FIRST AMERICAN NATIONAL DEF DOT RECORDED DOC.#331460	legalfield_	1	
17	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	MTG FINANCIAL INC DBA TRUSTEE CORPS ...	11/16/2011	11/10/2011	NOTICE OF TRUSTEES SALE	OR	0000	417150		E-REC FIRST AMERICAN NATIONAL DEF DOT RECORDED 02/02/2005 DOC.#331460	legalfield_	2	
18	V	\$0.00	APN 1044311	BANK OF AMERICA BAC HOME LOANS SERVICING FKA ...	FEDERAL HOME LOAN MORTGAGE CORP APN 1044311	02/15/2012	02/13/2012	ASSGMENT OF DEED OF TRUST	OR	0000	419543		E-REC 1ST AMERICAN DEFAULT DOT RECORDED 2/2/2005 DOC #331460	legalfield_N33	1	
19	V	\$0.00	APN 1044311	MTG FINANCIAL INC DBA TRUSTEE CORPS ...	FEDERAL HOME LOAN MORTGAGE CORP APN 1044311	02/15/2012	02/13/2012	TRUSTEES DEED	OR	0000	419544		E-REC FIRST AMERICAN NATIONAL DEF DOT RECORDED 02/02/2005 DOC.#331460	legalfield_N- 33	4	
20	V	\$0.00	APN 1044311	FEDERAL HOME LOAN MORTGAGE CORP	FRED ELBIN APN 1044311	05/04/2012	04/25/2012	GRANT BARGAIN & SALE DEED	OR	0000	421984		E-REC SERVICELINK IRVIN	legalfield_N33	3	
21	V	\$85,423.00	APN 1044311	FRED ELVIN ACQ FRED ELBIN	FRED ELVIN APN 1044311	08/15/2014	08/15/2014	GRANT BARGAIN & SALE DEED	OR	0000	446623		RECORDED TO CORRECT DOC.#421984	legalfield_	4	
22	V	\$0.00	APN 1044311	FRED ELVIN	CARSON CITY FIRST JUDICIAL DISTRICT COU NEVADA PUBLIC SAFETY DEPT ...	04/01/2015	04/01/2015	LIS PENDENS	OR	0000	452557		SUB L N33 ELK SEC 0 TVN RNG MAP BK MAP PG 1704 MAP FILE NUM 89253	legalfield_N33	5	
23	V	\$0.00	APN 1044311	FRED ELVIN	CV ASSET HOLDING LLC SERIES5 SOFFEL VOLKER ...	04/03/2015	03/31/2015	ABSTRACT OF JUDGMENT	OR	0000	452607		\$606.24 ++	legalfield_	2	

#	Status	Consideration	Search Name	Grantor(s)	Grantee(s)	Record Date	Doc Date	Doc Type	Book Type	Page	Doc #	Reference	Legal	Lot	Images	DocLinks
24	V	\$85,423.00	APN 1044311	FRED ELVIN	FRED SYLVIA APN 1044311	04/06/2015	03/31/2015	QUITCLAIM DEED	OR	0000	452637			legalfield_	4	
25	V	\$0.00	APN 1044311	FRED SYLVIA	APN 1044311	04/06/2015	04/06/2015	DECLARATION OF HOMESTEAD	OR	0000	452645	3587 DESATOYA DR		legalfield_	1	
26	V	\$0.00	APN 1044311	A DAMIANOVA INC ACHENBACH VERNON	APN 314404 APN 826409	06/03/2019	06/03/2019	TRUSTEES CERTIFICATE	OR	0000	495058		SUB L BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM	legalfield_	7	
27	V	\$0.00	APN 1044311	FRED ELVIN APN 1044311	NEVADA INVESTIGATION DIVISION TRI NET NARCOTICS TASK FORCE	07/10/2019	05/08/2019	DEFAULT JUDGMENT	OR	0000	496230		SUB L BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM SUB L N-33 BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM 89253	legalfield_N- 33	10	
28	V	\$0.00	APN 1044311	CARSON CITY TREASURER ANDERSON GLEN E	CARSON CITY TREASURER APN 817313	06/01/2020	06/01/2020	TRUSTEES CERTIFICATE	OR	0000	506621		SUB L BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM	legalfield_	5	
29	V	\$0.00	APN 1044311	FRED SYLVIA TRI NET	FRED SYLVIA APN 1044311	03/14/2022	03/14/2022	DEFAULT JUDGMENT	OR	0000	530647		SUB L BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM SUB STANTON PARK DEVELOPMENT INC L PARCE- N-33 BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM 89253	legalfield_ PARCEL N-33	8	

#	Status	Consideration	Search Name	Grantor(s)	Grantee(s)	Record Date	Doc Date	Doc Type	Book Type	Book	Page	Doc #	Reference	Legal	Lot	Images	DocLinks
30	V	\$0.00	APN 1044311	TRI NET	FRED SYLVIA APN 1044311	04/05/2022	03/09/2022	ORDER	OR		0000	531327		SUB L BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM SUB STANTON PARK DEVELOPMENT INC L N-33 BLK SEC TWN RNG MAP BK MAP PG 1704 MAP FILE NUM 89253	legalfield_N- 33	4	

End of Results

EXHIBIT 3

State of Nevada Declaration of Value

1. Assessor's Parcel Number:

a) 01094311
 b) _____
 c) _____
 d) _____

FOR RECORDER'S OPTIONAL USE ONLY

Document/Instrument # 152637Date of Recording APR 08 2015

Notes: _____

2. Type of Property:

a) ☐ Vacant Land
 c) ☐ Condo/Townhouse
 e) ☐ Apartment Bldg.
 g) ☐ Agricultural
 h) ☐ Other _____

b) ☒ Single Family Residence
 d) ☐ 2-4 Plex
 f) ☐ Commercial/Industrial
 h) ☐ Mobile Home

3. Total Value/Sales Price of Property:

\$ 93,000

Deed in Lieu of Foreclosure Only (value of prop.) \$ _____

Transfer Tax Value: \$ _____

Real Property Transfer Tax Due: \$ 362.70

344.10
 18.60

4. If Exemption Claimed:

a) Transfer Tax Exemption, per NRS 375.090, Section: _____

b) Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided therein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity _____

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION
REQUIRED

Print Name: Elna Fred
 Address: P.O. Box 443
 City: Carson City
 State & Zip: NV 89402

BUYER (GRANTEE) INFORMATION
REQUIRED

Print Name: Sylvia Fred
 Address: P.O. Box 1150
 City: Red Lake
 State & Zip: NV 89401

COMPANY/PERSON REQUESTING RECORDING (Required If Not Seller Or Buyer)

Print Name: _____ Escrow # _____

Address: _____

City: _____ State: _____ Zip: _____

RECORDING REQUESTED BY:

Name: Sylvia Fred

INSTRUMENT PREPARED BY:

Name: Elvin Fred
Address: PO Box 443
Carson City, Nevada 89702

RETURN DEED TO:

Name: Sylvia Fred
Address: PO Box 1150
Red Lake, Minnesota 56671

Title Order # N/A

(Above reserved for official use
only)

SEND TAX STATEMENTS TO:

Name: Sylvia Fred
Address: PO Box 1150
Red Lake, Minnesota 56671

Tax Parcel/APN # 01044311
Escrow # N/A

QUIT CLAIM DEED FOR NEVADA

(Joint Tenants)

STATE OF NEVADA
COUNTY OF CARSON CITY

DATE: 03/31/2015

KNOW ALL MEN BY THESE PRESENTS THAT, for and in consideration of the sum of \$0, the receipt and sufficiency of which is hereby acknowledged, Elvin Fred, ("Grantor") hereby quitclaims to Sylvia Fred, ("Grantee") and Grantee's heirs and assigns forever, all of Grantor's right, title, interest, and claim, and subject to all easements, encumbrances, protective covenants, rights-of-way, mineral rights, and other conditions and restrictions, if any, in or to the following described real estate (the "Property") located at 3587 Desatoya Drive, Carson City, Nevada 89701.

Grantor 1: Elvin Fred
Marital Status: Single
Address: PO Box 443
Carson City, Nevada 89702

RECORDED AT THE
REQUEST OF

Sylvia Fred

2015 APR -6 AM 10:11

FILE NO. 452637

SUSAN HERRIWETHER
CARSON CITY RECORDER

FEES \$16.00

452637

Grantee 1: Sylvia Fred
Marital Status: Single
Address: PO Box 1150
Red Lake, Minnesota 56671

Vesting Information / Property Interest: Sole Owner

Signatures

Grantor signed, sealed, and delivered this Quit Claim Deed to Grantee on
04-01-2015 (date).

Grantor 1 (or authorized agent)

x/ [Signature]
Print Name: Elwin Fred

Notary Public

STATE OF Nevada
COUNTY OF Carson City

On this the 1 day of April, 2015, the foregoing instrument was sworn to and
acknowledged before me by ELWIN LEO FRED, known
or proven to me to be the person(s) whose name(s) is/are subscribed to within the
instrument.

WITNESS my hand and official seal.

Joyce Hoffer
(Print Name)

[Signature] [Affix seal]
(Signature)

NOTARY PUBLIC

My Commission Expires: 7-10-2018



452637

Exhibit "A" Legal Description

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.

Tax ID: 010-443-11

3857 Desatoya Drive, Carson City, NV 89701

UNOFFICIAL COPY

~~446623~~

452637

Page 8 of 10

2924573 - 1

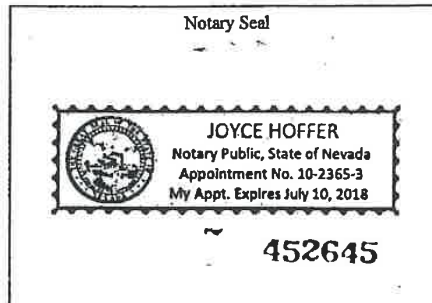
~~421984~~

EXHIBIT 4

RECORDED AT THE
REQUEST OF

Sylvia Fred
2015 APR -6 AM 10:55
FILE NO. **452645**
SUSAN MERRIWETHER
CARSON CITY RECORDER
FEES **4.00** DEP. *FW*

DECLARATION OF HOMESTEAD	
Assessor Parcel Number: <u>01044311</u>	
OR	
Assessor's Manufactured Home ID Number: _____	
Recording Requested by and Mail to:	
Name: <u>Sylvia Fred</u>	
Address: <u>P.O. Box 1150</u>	
City/State/Zip: <u>Red Lake MN 56671</u>	
Check One:	
<input type="checkbox"/> Married (filing jointly)	<input type="checkbox"/> Married (filing individually)
<input type="checkbox"/> Head of Family	<input type="checkbox"/> Widowed
<input checked="" type="checkbox"/> Single Person	<input type="checkbox"/> Multiple Single Persons
<input type="checkbox"/> By Wife (filing for joint benefit of both)	
<input type="checkbox"/> By Husband (filing for joint benefit of both)	
<input type="checkbox"/> Other (describe): _____	
Check One:	
<input checked="" type="checkbox"/> Regular Home Dwelling/Manufactured Home	<input type="checkbox"/> Condominium Unit <input type="checkbox"/> Other
Name on Title of Property	
<u>Sylvia Fred</u>	
do individually or severally certify and declare as follows:	
<u>Sylvia Fred</u>	
is/are now residing on the land, premises (or manufactured home) located in the city/town of <u>Carson City</u> , County of <u>Carson City</u> , State of Nevada, and more particularly described as follows: (set forth legal description and commonly known street address OR manufactured home description)	
<u>3587 Desatoya Dr.</u> <u>Carson City, NV 89701</u>	
I/We claim the land and premises hereinabove described, together with the dwelling house thereon, and its appurtenances, or the described manufactured home as a Homestead.	
In Witness Whereof, I/we have hereunto set my hand/our hands this <u>6</u> day of <u>April</u> , 20 <u>15</u> .	
<u><i>[Signature]</i></u> Signature	_____ Signature
<u>Sylvia Fred</u> Print or type name here	_____ Print or type name here
STATE OF NEVADA, COUNTY OF <u>CARSON CITY</u>	
This instrument was acknowledged before me on <u>4-6-15</u> (date)	
by <u>Sylvia Fred</u> Person(s) appearing before notary	
by _____ Person(s) appearing before notary	
<u><i>[Signature]</i></u> Signature of notarial officer	
CONSULT AN ATTORNEY IF YOU DOUBT THIS FORM'S FITNESS FOR YOUR PURPOSE.	
NOTE: Leave space within 1-inch margin blank on all sides.	



Oct. 2009

RECORDED & FILED

2020 JAN -9 PM 5:00

WILLIAMSCOTT, BOB
CLERK

BY K. PETERSON

1 CARSON CITY DISTRICT ATTORNEY
JASON D. WOODBURY
2 District Attorney
Nevada Bar No. 6870
3 BENJAMIN R. JOHNSON
4 Senior Deputy District Attorney
Nevada Bar No. 10632
5 885 East Musser Street
Suite 2030
6 Carson City, Nevada 89701
T: 775.887.2070
7 F: 775.887.2129
8 E-mail: jwoodbury@carson.org
bjohnson@carson.org
9 Representing Plaintiff

10
11
12 FIRST JUDICIAL DISTRICT COURT OF NEVADA
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

SYLVIA FRED, an individual,

1 Counterclaimant,
2
3 v.
4 STATE OF NEVADA ex rel.
5 INVESTIGATION DIVISION OF THE
6 NEVADA STATE POLICE (TRI NET
7 NARCOTICS TASK FORCE),
8
9 Counterdefendant.

10 ELVIN FRED, an individual,
11
12 Counterclaimant,

13 v.
14 STATE OF NEVADA ex rel.
15 INVESTIGATION DIVISION OF THE
16 NEVADA STATE POLICE (TRI NET
17 NARCOTICS TASK FORCE),
18
19 Counterdefendant.

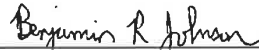
20 **PLAINTIFF/COUNTERDEFENDANT'S OPPOSITION TO SYLVIA FRED'S**
21 **MOTION FOR PARTIAL SUMMARY JUDGMENT SEEKING A DECLARATION**
22 **THAT NEVADA'S CIVIL FORFEITURE LAWS VIOLATE DUE PROCESS**

23 COMES NOW, Plaintiff, the INVESTIGATION DIVISION OF THE
24 DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF NEVADA (TRI NET
25 Narcotics Task Force (TRI NET), by and through its counsel of record, JASON D.
WOODBURY, Carson City District Attorney, and BENJAMIN R. JOHNSON, Senior
Deputy District Attorney, and opposes *Sylvia Fred's Motion for Partial Summary
Judgment Seeking a Declaration that Nevada's Civil Forfeiture Laws Violate Due
Process ("Motion")* filed with this Court on December 8, 2022. This *Opposition* is made
pursuant to FJDCR 3.8 and is based on the points and authorities set forth below, all

1 pleadings and papers heretofore filed in this case, and the arguments presented at any
2 hearing on the motion.

3 DATED this 9th day of January, 2023.

4
5 CARSON CITY DISTRICT ATTORNEY

6 

7 JASON D. WOODBURY

8 District Attorney

9 Nevada Bar No. 6870

10 BENJAMIN R. JOHNSON

11 Senior Deputy District Attorney

12 Nevada Bar No. 10632

13 885 East Musser Street

14 Suite 2030

15 Carson City, Nevada 89701

16 T: 775.887.2070

17 F: 775.887.2129

18 E-mail: jwoodbury@carson.org

19 bjohnson@carson.org

20 Representing Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. Statement of Undisputed Facts

A. ELVIN FRED's Acquisition and Use of the Residence to Traffick a Controlled Substance

The subject property in this matter is a residence located at 3587 Desatoya Drive in Carson City ("Desatoya residence"). *First Am. Compl. for Forfeiture* at ¶12 (Mar. 22, 2022). ELVIN FRED acquired sole title and ownership of the Desatoya residence through a Grant Deed recorded on May 4, 2012. Exhibit 1 – Grant Deed. There are no other parties listed on the deed and SYLVIA FRED did not acquire any ownership interest. *Id.*

Between February 13 and March 19, 2015, ELVIN FRED owned and occupied the Desatoya residence. *Id.* at ¶9. During that time, an individual named James Tito was a drug seller in Carson City. *Id.* at ¶¶9-21. ELVIN FRED was Mr. Tito's supplier, using the Desatoya residence to store, conceal, and protect the drugs that Mr. Tito sold and to collect a cut of the proceeds resulting from Mr. Tito's sales. *Id.*

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

On February 19, 2015, Mr. Tito agreed to sell the source nearly an ounce and a half of methamphetamine from ELVIN FRED for \$1,000. *Id.* at ¶12. After agreeing to the transaction, Mr. Tito contacted ELVIN FRED and then went to the Desatoya

1 residence and again went inside for a brief period. *Id.* He and ELVIN FRED emerged
2 from the Desatoya Residence, and Mr. Tito left to meet with the source. *Id.* During
3 that meeting Mr. Tito provided the source with approximately 41.2 grams of
4 methamphetamine. *Id.* These circumstances strongly support the reasonable
5 inference that Mr. Tito acquired the methamphetamine for the February 19 transaction
6 from ELVIN FRED inside the Desatoya residence. *Id.* at ¶13.

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

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

25 ///

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

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

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

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

18 **D. SYLVIA FRED Acquires Title After Forfeiture Proceedings Begin**

19 After the Desatoya Residence had been seized by TRI NET, ELVIN FRED
20 executed a quitclaim deed transferring sole ownership to SYLVIA FRED. Exhibit 3 –
21 Sylvia Fred Deed. The deed was recorded on April 6, 2015, after the forfeiture
22 proceeding had been filed. *Id.* at 1. The deed transferred all of ELVIN FRED's "right,
23 title, interest, and claim" to the Desatoya Residence to SYLVIA FRED. *Id.* at 2.
24 Although the words "Joint Tenants" appears in parenthesis, the legal effect of the deed
25 was not to create a joint tenancy because ELVIN FRED did not retain any ownership

1 interest pursuant to the express language of the deed. *Id.* SYLVIA FRED also recorded
2 a Declaration of Homestead against the property on April 6, 2015. Exhibit 4.

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

10 II. Legal Argument

11 A. Standard for Summary Judgment

12 Summary judgment is proper and “shall be rendered forthwith” when the
13 pleadings and other evidence on file demonstrate that no genuine issue as to any
14 material fact remains and that the moving party is entitled to a judgment as a matter of
15 law. NRCP 56; *Tucker v. Action Equip. and Scaffold Co.*, 113 Nev. 1349, 1353, 951
16 P.2d 1027, 1029 (1997). When reviewing a motion for summary judgment, the
17 evidence, and any reasonable inferences drawn from it, must be viewed in a light most
18 favorable to the nonmoving party. *Lipps v. Southern Nevada Paving*, 116 Nev. 497,
19 498, 998 P.2d 1183, 1184 (2000) (citing *Butler v. Bogdanovich*, 101 Nev. 449, 451,
20 705 P.2d 662, 663 (1985)). However, the nonmoving party may not defeat a motion
21 for summary judgment by relying “on the gossamer threads of whimsy, speculation and
22 conjecture.” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713–14, 57 P.3d 82,
23 87 (2002) (quoting *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 442
24 (1993)).

25 “When a motion for summary judgment is made and supported as required by

1 NRCP 56, the non-moving party may not rest upon general allegations and
2 conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating
3 the existence of a genuine factual issue.” *Pegasus*, 118 Nev. at 713, 57 P.3d at 87.
4 Summary judgment is appropriate under NRCP 56 when the pleadings and evidence
5 that are properly before the court demonstrate that no genuine issue of material fact
6 exists, and the moving party is entitled to judgment as a matter of law. *Wood v.*
7 *Safeway, Inc.*, 121 Nev. 724, 731, 121, P. 3d 1026, 1031 (2005) (citing *Pegasus*, 118
8 Nev. at 713, 57 P.3d at 87). A factual dispute is genuine when the evidence is such
9 that a rational trier of fact could return a verdict for the nonmoving party. *Id.*

10 **B. Summary Judgment is Premature because Genuine Issues of Material**
11 **Fact Remain Regarding Sylvia Fred’s Alleged Ownership Interest in the**
12 **Desatoya Residence**

13 One of the core issues in this case is whether SYLVIA FRED is a good faith
14 purchaser of value who acquired an interest in the Desatoya residence without notice
15 of the forfeiture proceeding. NRS 179.1169. If SYLVIA FRED is not a good faith
16 purchaser, then the transfer of title from ELVIN to SYLVIA FRED is void and her
17 counterclaims are moot. SYLVIA FRED’s *Motion* takes it for granted that she is an
18 “innocent property owner.” The *Motion* argues that the FREDs were joint tenants of the
19 Desatoya residence even though SYLVIA FRED allegedly provided less than 18% of
20 the total purchase price and deliberately did not take record title of the home and
21 refused to be listed on the deed. See *Motion* at 4:18-23. The *Motion* concludes that
22 April 6 Deed transferring ownership from ELVIN to SYLVIA FRED “simply
23 memorialized and confirmed Sylvia and Elvin’s prior intent to have Sylvia as a joint
24 tenant owner with Elvin.” *Motion* at 5:9-11. This argument is unpersuasive and factually
25 and legally unsupported for several reasons.

1 According to NRS 179.1169, all right, title and interest to property subject to
2 forfeiture vests in the plaintiff (TRI NET) at the time the property is used or intended to
3 be used to facilitate the commission of a felony. Pursuant to this statute, title to the
4 Desatoya residence vested in TRI NET as early as February 13, 2015, when ELVIN
5 FRED engaged in the first sale of methamphetamine from the Desatoya residence.
6 *First Am. Compl. for Forfeiture* at ¶¶9-21. SYLVIA FRED has the burden of proof, by a
7 preponderance of the evidence, that she acquired an “interest of record”, gave fair
8 value and that the interest was acquired without notice of the forfeiture proceeding.
9 NRS 179.1169(2).

10 SYLVIA FRED clearly cannot meet this burden because the irrefutable evidence
11 demonstrates that SYLVIA FRED did not acquire legal ownership or an “interest of
12 record” (i.e., appearing in the chain of title) until April 6, 2015. Exhibit 2 and 3. This is
13 approximately 52 days after ELVIN FRED’s first methamphetamine sale to Mr. Tito and
14 5 days after TRI NET filed the *Complaint*. A notice of *lis pendens* regarding the
15 forfeiture action was recorded against the Desatoya residence on April 1, 2015.
16 Therefore, at a minimum, SYLVIA FRED had constructive notice of the forfeiture action
17 and cannot claim status as an innocent owner because she did not acquire her interest
18 without notice of the proceeding.

19 SYLVIA FRED argues that the April 6, 2015 quitclaim deed “did not transfer the
20 property’s ownership from Elvin to Sylvia – the deed simply memorialized and
21 confirmed Sylvia and Elvin’s prior intent to have Sylvia as a joint tenant owner with
22 Elvin since each provided funds for the 2012 purchase.” *Motion* at 5:8-11. The *Motion*
23 cites no legal authority for the proposition that a property owner can retroactively
24 change or “correct” a deed from sole ownership to a joint tenancy through subsequent
25

1 deed recording. That SYLVIA FRED allegedly loaned \$10,000 to ELVIN FRED for the
2 purchase price does not give her joint tenancy to the Desatoya Residence.

3 A joint tenancy in real property “may be created by . . . transfer from a sole
4 owner to himself or herself and others . . . when expressly declared in the transfer to
5 be a joint tenancy” NRS 111.065(1). The April 6 deed does not include language
6 that ELVIN FRED transferred interest to himself and SYLVIA FRED as joint tenants or
7 in joint tenancy. Instead, the language plainly states that ELVIN FRED granted his
8 entire interest to SYLVIA FRED and her heirs. Exhibit 3. SYLVIA FRED is the only
9 person listed as a grantee on the deed. *Id.* Even if ELVIN and SYLVIA FRED
10 subjectively agreed to a joint tenancy, an oral agreement is void under the statute of
11 frauds. “The existence or nonexistence of a joint ownership must be ascertained from
12 the instruments in question. If it does not affirmatively appear there, then such an
13 intention could not be supplied by pleading it in a reply to the answer, as suggested by
14 appellant.” *Newitt v. Dawe*, 61 Nev. 472, 472, 133 P.2d 918, 918 (1943). The April 6
15 deed does not contain language creating a joint tenancy or any joint ownership.
16 Although the deed says “(Joint Tenants)”, the transfer language expressly grants
17 SYLVIA FRED sole ownership and does not include express language of creation of a
18 joint tenancy.

19 This argument that the deed transferred sole interest to SYLVIA FRED and did
20 not create a joint tenancy is by the fact that SYLVIA FRED recorded a homestead
21 exemption on the residence on April 6, 2015. Exhibit 4. The homestead exemption
22 states that Sylvia Fred is the only name on the title of property and certifies that she is
23 residing on the premises. Exhibit 4. A homestead exemption may only be declared by
24 married persons, a single person or tenants in common. NRS 115.020; NRS 115.030.
25 The statute does not provide for homestead exemptions for joint tenants. This

1 demonstrates that the April 6 deed legally transferred sole ownership to SYLVIA FRED,
2 which enabled her to claim a homestead exemption.

3 The *Motion* attempts to minimize the impact of SYLVIA FRED's affirmative
4 decision NOT to acquire title to the Desatoya residence when she allegedly loaned
5 ELVIN FRED \$12,000 towards the purchase price. *Motion* at 4:20-23 ("This was done
6 because Sylvia simply wanted to take care of her family but did not want to become
7 entangled with Carson City any further based on her experiences with the government
8 there as a young child."). Regardless of their subjective understanding or intent, the
9 legal impact of their decision was that ELVIN FRED was the sole owner of the property
10 and sole owner of record of the Desatoya residence when he used the home to
11 facilitate the trafficking of methamphetamine.

12 To be clear, this is not a situation where a party is claiming a clerical or
13 typographical error on a DEED that caused SYLVIA FRED's name to be left off the title
14 or some other typographical error that needed correction. SYLVIA and ELVIN made a
15 knowing, affirmative and conscious decision that ELVIN would be the sole legal owner
16 of the Desatoya residence. The *Motion* cites no legal support for the proposition that a
17 person can retroactively "correct" property ownership records to change title from sole
18 ownership to a joint tenancy. Allowing such a change would prejudice subsequent
19 purchasers in the chain of title or anyone relying on the title history if an owner was
20 allowed to retroactively change ownership status in order to reflect their subjective
21 intent. There is no legal authority to support such an argument.

22 For these reasons, SYLVIA FRED is not an innocent property owner and the
23 transfer of ownership that occurred through the April 6 deed precludes her
24 counterclaims against TRI NET. Therefore, SYLVIA FRED is not entitled to summary
25 judgment because she is not an innocent purchaser for value pursuant to NRS

1 179.1169.

2 **C. Discovery Is Needed to Demonstrate SYLVIA FRED is Not an Innocent**
3 **Purchaser for Value**

4 At the very least, more discovery is needed on this issue before a motion for
5 summary judgment can be decided. NRCP 56(d); Exhibit 5 – Declaration of Benjamin
6 Johnson. Discovery in this case began on December 5, 2022 when the Joint Case
7 Conference Report was filed and is not scheduled to close until May 8, 2023. TRI NET
8 has not had the opportunity to propound any discovery requests or conduct a
9 deposition of either ELVIN or SYLVIA FRED to obtain more information regarding the
10 circumstances of the purchase of the Desatoya residence and the recording of the April
11 6, 2015 deed. Discovery is necessary to obtain evidence and testimony that would
12 allow TRI NET to refute SYLVIA FRED's allegation that she is an innocent purchaser
13 for value. Pursuant to NRCP 56(d) the Court should deny the *Motion* and allow the
14 parties to conduct discovery and create a record.

15 **D. Nevada's Forfeiture Statute is Not Unconstitutional**

16 The *Motion* argues that Nevada's forfeiture laws are unconstitutional as a
17 violation of due process. The arguments are not persuasive because they confuse the
18 burden of proof and procedure in criminal proceedings with a civil forfeiture action.
19 *Motion* at 8-21. At this stage in the proceedings, SYLVIA FRED has not produced *any*
20 evidence, much less established by a preponderance that she meets the criteria of a
21 good faith purchaser under NRS 179.1169. Therefore, her *Motion* in this regard is, at
22 a minimum, not ripe. However, in order to avoid conceding the arguments made in the
23 *Motion*, TRI NET will address the due process claims.

24 "A review of whether NRS 179.1165[] violates the Due Process Clause requires
25 an inquiry into the interest affected by the seizure of real property, the risk of erroneous

1 seizure, and the government's interest in seizing real property without a hearing.”
2 *Levingston v. Washoe Cty. by & Through the Sheriff of Washoe Cty.*, 112 Nev. 479,
3 484, 916 P.2d 163, 167 (1996). In *Levingston*, the Nevada Supreme Court held that
4 an ex parte seizure of a home violated the due process clause. *Id.* In that case, the
5 Washoe County Sheriff's Department seized a home prior to the filing of a forfeiture
6 complaint arguing that the home presented a danger to the community due to illegal
7 activity occurring at the home. 112 Nev. at 485, 916 P.2d at 167. The Court concluded
8 that there were no exigent circumstances present to justify seizure of the home without
9 notice or a hearing.

10 In this case, TRI NET instituted forfeiture proceedings on April 1, 2015. There
11 was no seizure of the Desatoya residence before filing the Complaint. TRI NET did
12 not attempt to seize the property until after an amended default judgment had been
13 entered on May 8, 2019. In August 2019, TRI NET obtained a lockout order for the
14 Desatoya residence based on the default judgment. Therefore, this case is easily
15 distinguishable from *Levingston* which held that seizure violated due process because
16 it was done before a forfeiture proceeding had started.

17 The *Motion* urges this Court to view Nevada's forfeiture statutes as punitive in
18 order to provide SYLVIA FRED protections that are afforded to criminal defendants,
19 such as a presumption of innocence. *Motion* at 10-12. This argument ignores the fact
20 that the Nevada Supreme Court expressly found that Nevada's forfeiture statutes are
21 not criminal in nature and that there is no clear proof that the statutory scheme is so
22 punitive in form as to render it invalid. *Levingston v. Washoe Cty.*, 114 Nev. 306, 310-
23 11, 956 P.2d 84, 87 (1998). The Court acknowledged that Chapter 179 applies the
24 rules of civil procedure to forfeiture actions, identifies the parties as plaintiff and
25 claimant, provides that the proceeding is *in rem* and establishes the burden of proof as

1 preponderance of the evidence, not beyond a reasonable doubt. *Id.* at 310, 956 P.2d
2 at 87. Therefore, it is clear the legislature intended Nevada's forfeiture statutes to be
3 civil, not criminal, *in rem* proceedings. *Id.*

4 SYLVIA FRED incorrectly argues that she should be entitled to a presumption
5 of innocence and a speedy trial. However, the citations provided in the *Motion* clearly
6 reference criminal procedure and criminal prosecutions where these rights are afforded
7 by the Sixth Amendment. The *Motion* is devoid of citation to any statute or case law
8 that states these same rights are guaranteed to claimants in a civil forfeiture
9 proceeding. In *Levingston*, the Nevada Supreme Court made clear that Nevada's
10 forfeiture scheme are civil proceedings and not criminal. The *Motion* cites to no other
11 authority that would cause this Court to deviate from the holding in *Levingston*.

12 SYLVIA FRED argues that she is entitled to a presumption of innocence and
13 that presumption is violated by having the burden of proof in establishing that she is
14 an innocent purchaser for value under NRS 179.1169(2). *Motion* at 14. Again, all of
15 the cases cited to support this argument are from criminal prosecutions and do not
16 apply because SYLVIA FRED is not a criminal defendant. Good faith purchaser status
17 is an affirmative defense that can be raised by someone who acquires title after the
18 property vests in the plaintiff in a forfeiture action. NRS 179.1169(2).

19 This is no different than any other affirmative defense that is available to a
20 litigant in a civil action. It is well established law that the party asserting an affirmative
21 defense bears the burden of proof. *Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*,
22 130 Nev. 949, 955, 338 P.3d 1250, 1254 (2014); *Schwartz v. Schwartz*, 95 Nev. 202,
23 206 n.2, 591 P.2d 1137, 1140 n.2 (1979) (stating that a defendant bears the burden of
24 proving each element of an affirmative defense). The *Motion* attempts to confuse the
25 issue and shift the burden to TRI NET by citing to case law involving criminal

1 defendants. This is contrary to established law and the *Motion* fails to cite any legal
2 authority that would allow the Court to place the burden of an affirmative defense on
3 TRI NET.

4 Similarly, the *Motion* confuses the right to a speedy trial in a criminal case in an
5 attempt to argue that SYLVIA FRED's due process has been violated because of the
6 length of time that has passed since the forfeiture was first filed. *Motion* at 21. Once
7 again, however, this argument is not persuasive because SYLVIA FRED's Sixth
8 Amendment rights are not implicated in this civil proceeding.

9 Because there are genuine issues of material fact regarding SYLVIA FRED's
10 status as a good faith purchaser and the need to conduct discovery, the Court must
11 deny the partial motion for summary judgment. The Court should reject the *Motion's*
12 attempt to confuse the legal issues and the application of constitutional protections for
13 criminal defendants with the burden of proof for claimants in a civil forfeiture action.

14 **III. Conclusion**

15 For all these reasons, the *Motion* should be denied in its entirety.

16 DATED this 9th day of January, 2023.

17 CARSON CITY DISTRICT ATTORNEY

18
19 

20 BENJAMIN R. JOHNSON
21 Senior Deputy District Attorney
22 Nevada Bar No. 10632
23 Representing Plaintiff
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 9th day of January, 2023, I served a true and correct copy of the foregoing **PLAINTIFF/COUNTERDEFENDANT'S OPPOSITION TO SYLVIA FRED'S MOTION FOR PARTIAL SUMMARY JUDGMENT SEEKING A DECLARATION THAT NEVADA'S CIVIL FORFEITURE LAWS VIOLATE DUE PROCESS** via electronic mail to the following:

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



EXHIBIT 1

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

a) 010-443-11
b) _____
c) _____
d) _____

FOR RECORDERS OPTIONAL USE ONLY
Document #: 421984
Date of Recording: 05/04/2012

2. Type of Property:

a) ☐ Vacant Land b) ☒ Single Fam. Res.
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg f) ☐ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page: _____
Date of Recording: _____
Notes: 60%

3. Total Value/Sales Price of Property

\$ 69,900.00

Deed in Lieu of Foreclosure Only (value of property) _____

Transfer Tax Value: _____

\$ 69,900.00

Real Property Transfer Tax Due

\$ 273.10

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100.00 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____

Capacity Agent

Signature _____

Capacity Grantor

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: FEDERAL HOME LOAN Mortgage Corporation
Address: 17100 GILLETTE AVENUE
City: IRVINE
State: CA Zip: 92614

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Elbin Fred
Address: P.O. Box 443
City: Carson City
State: Nevada Zip: 89702

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: ServiceLink
Address: 2nd Commerce
City: IRVINE

Escrow #: 894573
State: CA Zip: 92602

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

R.O.T.T. # 073. D
 Order No. 2924573
 Escrow No. 21951FD
 Parcel No. 010-443-11

RECORDED AT THE REQUEST OF
 SERVICELINK IRVINE
 05/04/2012 02:49PM
 FILE NO. 421984
 ALAN GLOVER
 CARSON CITY RECORDER
 FEE \$15.00 DEP RMH

AND WHEN RECORDED MAIL TO:
 AND MAIL TAX STATEMENT TO:
 ELBIN FRED
 P.O. Box 443
 Carson City, NV 89702

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S) THAT DOCUMENTARY TRANSFER TAX IS and CITY \$
☒ computed on full value of property conveyed, or
☐ computed on full value less liens or encumbrances remaining at the time of sale.
☐ unincorporated area: ☒ City of Carson City, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
 Federal Home Loan Mortgage Corporation

hereby GRANT(S) to Elbin Fred, A Single Man

the following described real property in the County of Carson City, State of Nevada:

Legal description attached hereto and made a part hereof as Exhibit "A"

Date April 25, 2012

Federal Home Loan Mortgage Corporation
 By: Malcolm & Cisneros, a Law Corporation, as attorney in fact

By: Rande D. Johnsen, Its Assistant Secretary

STATE OF CALIFORNIA

} S.S.

COUNTY OF Orange

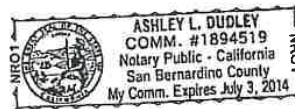
ASHLEY L. DUDLEY

On May 3, 2012, before me, _____
 a notary public, personally appeared Rande D. Johnsen who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Ashley L. Dudley (Seal)



421984

FRED0201
 APEN000071

PA001293

Exhibit "A"

Legal Description

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.

Tax ID: 010-443-11

3857 Desatoya Drive, Carson City, NV 89701

UNOFFICIAL COPY

EXHIBIT 2

Name Search for Name "APN 1044311", Book Type "", Document Types "", Begin Date "1/1/1855", and End Date "1/6/2023" | Total Records "30" | Verified Through Date "01/05/2023 (537602)."

#	Status	Consideration	Search Name	Grantor(s)	Grantee(s)	Record Date	Doc Date	Doc Type	Book Type	Page	Doc #	Reference	Legal	Lot	Images	DocLinks
1	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	APN 1044311	03/08/1993	03/05/1993	DECLARATION OF HOMESTEAD	OR	0000	141063			legalfield_N33	2	
2	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	APN 1044311	04/07/1998	04/06/1998	ABANDONMENT OF HOMESTEAD	OR	0000	215818		RECORDED 3/8/93 DOC 141063	legalfield_N33	1	
3	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	SUPERIOR BANK APN 1044311	04/29/1998	04/24/1998	DEED OF TRUST	OR	0000	216733		\$71,100.00	legalfield_N33	10	
4	V	\$0.00	APN 1044311	SULLIVAN WANDA L SULLIVAN IRVAN E	COUNTRYWIDE HOME LOANS INC APN 1044311	07/11/2000	06/26/2000	DEED OF TRUST	OR	0000	250498		\$80,001.00 WTC	legalfield_N33	10	
5	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	NEW CENTURY MORTGAGE CORP APN 1044311	04/30/2001	04/25/2001	DEED OF TRUST	OR	0000	261101		\$19,000.00 FCT	legalfield_N33	6	
6	V	\$0.00	APN 1044311	NEW CENTURY MORTGAGE CORP SULLIVAN IRVAN E	MORTGAGE ELECTRONIC REGISTRATION SYSTEM APN 1044311	10/29/2001	05/04/2001	ASSGMNT OF DEED OF TRUST	OR	0000	268502		RECORDED 04/30/2001 DOC #261101	legalfield_	2	
7	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	TRUSTEE CORPS BAC HOME LOANS SERVICING LPF FKA	11/30/2009	11/30/2009	NOTICE DEFAULT/ELEC SELL	OR	0000	395768		RECORDED 2/2/2005 DOC #331460 E-REC 1ST AMERICAN DEFAULT	legalfield_	3	
8	V	\$0.00	APN 1044311	MORTGAGE ELECTRONIC REGISTRATION SYSTEM SULLIVAN IRVAN E	BAC HOME LOANS SERVICING FKA COUNTRYWIDE HOME LOANS SERVICING	01/19/2010	11/24/2009	ASSGMNT OF DEED OF TRUST	OR	0000	397046		E-REC FIRST AMERICAN NATIONAL D RECORDED 02/02/2005 DOC.#331460	legalfield_	2	

#	Status	Consideration	Search Name	Grantor(s)	Grantee(s)	Record Date	Doc Date	Doc Type	Book Type	Book	Page	Doc #	Reference	Legal	Lot	Images	DocLinks
9	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	APN 1044311	09/25/2002	09/25/2002	DECLARATION OF HOMESTEAD	OR	0000	284293	3587	DESATOYA DRIVE	legalfield_N33	1		
10	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	FULL SPECTRUM LENDING INC MORTGAGE ELECTRONIC REGISTRATION SYSTEM	08/26/2003	08/18/2003	DEED OF TRUST	OR	0000	304474	\$108,000.00 FAT		legalfield_N33	20		
11	V	\$0.00	APN 1044311	MORTGAGE ELECTRONIC REGISTRATION SYSTEM MORTGAGE ELECTRONIC REGISTRATION SYSTEM	MORTGAGE ELECTRONIC REGISTRATION SYSTEM SULLIVAN IRVAN E	09/08/2003	09/03/2003	SUB OF TRUST & FULL RECON	OR	0000	305250	RECORDED DOC #261101		legalfield_N33	1		
12	V	\$0.00	APN 1044311	CTC REAL ESTATE SERVICES FKA CTC FORECLOSURE SERVICES INC	SULLIVAN WANDA L SULLIVAN IRVAN E	09/15/2003	09/02/2003	RECONVEYANCE	OR	0000	305655	RECORDED 07/11/2000 DOC.#250498		legalfield_	1		
13	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDA L	COUNTRYWIDE HOME LOANS INC MORTGAGE ELECTRONIC REGISTRATION SYSTEM	02/02/2005	01/25/2005	DEED OF TRUST	OR	0000	331460	\$124,000.00 FATCO		legalfield_	18		
14	V	\$0.00	APN 1044311	MORTGAGE ELECTRONIC REGISTRATION SYSTEM RECONTRUST CO	RECONTRUST CO SULLIVAN IRVAN E	02/11/2005	02/04/2005	SUB OF TRUST & FULL RECON	OR	0000	331879	RECORDED 08/26/2003 DOC.#304474		legalfield_	2		
15	V	\$0.00	APN 1044311	BAC HOME LOANS SERVICING LP FKA COUNTRYWIDE HOME LOANS SERVICING LP	MTC FINANCIAL INC DBA TRUSTEE CORPS	01/25/2010	11/24/2009	SUBSTITUTION OF TRUSTEE	OR	0000	397222	E-RECORD FIRST AMERICAN NATIONAL D RECORDED 01/25/2005 DOC #331460		legalfield_	2		

#	Status	Consideration	Search Name	Grantor(s)	Grantee(s)	Record Date	Doc Date	Doc Type	Book Type	Book	Page	Doc #	Reference	Legal	Lot	Images	DocLinks
16	V	\$0.00	APN 1044311	SULLIVAN IRVAN E	NEVADA FORECLOSURE MEDIATION PROGRAM APN 1044311	11/16/2011	11/02/2011	MEDIATION DECLINE	OR	0000	417149		E-REC FIRST AMERICAN NATIONAL DEF DOT RECORDED DOC.#331460	legalfield_	1		
17	V	\$0.00	APN 1044311	SULLIVAN IRVAN E SULLIVAN WANDAL	MTC FINANCIAL INC DBA TRUSTEE CORPS	11/16/2011	11/10/2011	NOTICE OF TRUSTEES SALE	OR	0000	417150		E-REC FIRST AMERICAN NATIONAL DEF DOT RECORDED 02/02/2005 DOC.#331460	legalfield_	2		
18	V	\$0.00	APN 1044311	BANK OF AMERICA BAC HOME LOANS SERVICING FKA	FEDERAL HOME LOAN MORTGAGE CORP APN 1044311	02/15/2012	02/13/2012	ASSGMENT OF DEED OF TRUST	OR	0000	419543		E-REC 1ST AMERICAN DEFAULT DOT RECORDED 2/2/2005 DOC #331460	legalfield_N33	1		
19	V	\$0.00	APN 1044311	MTC FINANCIAL INC DBA TRUSTEE CORPS	FEDERAL HOME LOAN MORTGAGE CORP APN 1044311	02/15/2012	02/13/2012	TRUSTEE'S DEED	OR	0000	419544		E-REC FIRST AMERICAN NATIONAL DEF DOT RECORDED 02/02/2005 DOC.#331460	legalfield_N-33	4		
20	V	\$0.00	APN 1044311	FEDERAL HOME LOAN MORTGAGE CORP	FRED ELBIN APN 1044311	05/04/2012	04/25/2012	GRANT BARGAIN & SALE DEED	OR	0000	421984		E-REC SERVICE LINK IRVIN	legalfield_N33	3		
21	V	\$85,423.00	APN 1044311	FRED ELVIN ACQ FRED ELBIN	FRED ELVIN APN 1044311	08/15/2014	08/15/2014	GRANT BARGAIN & SALE DEED	OR	0000	446523		RECORDED TO CORRECT DOC.#421984	legalfield_	4		
22	V	\$0.00	APN 1044311	FRED ELVIN	CARSON CITY FIRST JUDICIAL DISTRICT COU NEVADA PUBLIC SAFETY DEPT	04/01/2015	04/01/2015	LIS PENDENS	OR	0000	452557		SUB L N33 BLK SEC 0 TWN RNG MAP BK MAP PG 1704 MAP FILE NUM 89253	legalfield_N33	5		
23	V	\$0.00	APN 1044311	FRED ELVIN	CV ASSET HOLDING LLC SERIES5 SOFFEL VOLKER	04/03/2015	03/31/2015	ABSTRACT OF JUDGMENT	OR	0000	452607		\$606.24 ++	legalfield_	2		

#	Status	Consideration	Search Name	Grantor(s)	Grantee(s)	Record Date	Doc Date	Doc Type	Book Type	Book	Page	Doc #	Reference	Legal	Lot	Images	DocLinks
24	V	\$85,423.00	APN 1044311	FRED ELVIN	FRED SYLVIA APN 1044311	04/06/2015	03/31/2015	QUITCLAIM DEED	OR	0000	452637				legalfield_	4	
25	V	\$0.00	APN 1044311	FRED SYLVIA	APN 1044311	04/06/2015	04/06/2015	DECLARATION OF HOMESTEAD	OR	0000	452645		3587 DESATOYA DR		legalfield_	1	
26	V	\$0.00	APN 1044311	A DAMIANOVA INC ACHENBACH VERNON ...	APN 314404 APN 826409	06/03/2019	06/03/2019	TRUSTEES CERTIFICATE	OR	0000	495058		SUB L BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM		legalfield_	7	
27	V	\$0.00	APN 1044311	FRED ELVIN APN 1044311	NEVADA INVESTIGATION DIVISION TRI NET NARCOTICS TASK FORCE ...	07/10/2019	05/08/2019	DEFAULT JUDGMENT	OR	0000	496230		SUB L BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM SUB L N-33 BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM 89253		legalfield_ N- 33	10	
28	V	\$0.00	APN 1044311	CARSON CITY TREASURER ANDERSON GLEN E ...	CARSON CITY TREASURER APN 817313 ...	06/01/2020	06/01/2020	TRUSTEES CERTIFICATE	OR	0000	506621		SUB L BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM		legalfield_	5	
29	V	\$0.00	APN 1044311	FRED SYLVIA TRI NET	FRED SYLVIA APN 1044311	03/14/2022	03/14/2022	DEFAULT JUDGMENT	OR	0000	530647		SUB L BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM SUB STANTON PARK DEVELOPMENT INC L PARCEL N-33 BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM 89253		legalfield_ 8 PARCEL N-33	8	

#	Status	Consideration	Search Name	Grantor(s)	Grantee(s)	Record Date	Doc Date	Doc Type	Book Type	Book	Page	Doc #	Reference	Legal	Lot	Images	DocLinks
30	V	\$0.00	APN 1044311	TRINET	FRED SYLVIA APN 1044311	04/05/2022	03/09/2022	ORDER	OR		0000	531327		SUB L BLK SEC TWN RNG MAP BK MAP PG MAP FILE NUM SUB STANTON PARK DEVELOPMENT INC L N-33 BLK SEC TWN RNG MAP BK MAP PG 1704 MAP FILE NUM 89253	legalfield_N- 33	4	

End of Results

EXHIBIT 3

State of Nevada Declaration of Value

1. Assessor's Parcel Number:

a) 01044311
 b) _____
 c) _____
 d) _____

FOR RECORDER'S OPTIONAL USE ONLY

Document/Instrument # 452637Date of Recording APR 06 2015

Notes: _____

2. Type of Property:

a) ☐ Vacant Land
 c) ☐ Condo/Townhouse
 e) ☐ Apartment Bldg.
 g) ☐ Agricultural
 e) ☐ Other _____
 b) ☒ Single Family Residence
 d) ☐ 2-4 Plex
 f) ☐ Commercial/Industrial
 h) ☐ Mobile Home

3. Total Value/Sales Price of Property: \$ 93,000

Deed in Lieu of Foreclosure Only (value of prop.) \$ _____

Transfer Tax Value: \$ _____

Real Property Transfer Tax Due: \$ 362.70

4. If Exemption Claimed:

a) Transfer Tax Exemption, per NRS 375.090, Section: _____

b) Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided therein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity _____

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION

REQUIRED

Print Name: Elin Fred
 Address: P.O. Box 443
 City: Carson City
 State & Zip: NV 89402

BUYER (GRANTEE) INFORMATION

REQUIRED

Print Name: Sylvia Fred
 Address: P.O. Box 1150
 City: Red Lake
 State & Zip: MT 59671

COMPANY/PERSON REQUESTING RECORDING (Required If Not Seller Or Buyer)

Print Name: _____ Escrow # _____

Address: _____

City: _____ State: _____ Zip: _____

RECORDED AT THE
REQUEST OF

Sylvia Fred

2015 APR -6 AM 10:11

FILE NO. 452637

SUSAN HERRIWETHER
CARSON CITY RECORDER

FEES 16.00

RECORDING REQUESTED BY:

Name: Sylvia Fred

INSTRUMENT PREPARED BY:

Name: Elvin Fred
Address: PO Box 443
Carson City, Nevada 89702(Above reserved for official use
only)

RETURN DEED TO:

Name: Sylvia Fred
Address: PO Box 1150
Red Lake, Minnesota 56671

SEND TAX STATEMENTS TO:

Name: Sylvia Fred
Address: PO Box 1150
Red Lake, Minnesota 56671

Title Order # N/A

Tax Parcel/APN # 01044311
Escrow # N/A

QUIT CLAIM DEED FOR NEVADA

(Joint Tenants)

STATE OF NEVADA
COUNTY OF CARSON CITY

DATE: 03/31/2015

KNOW ALL MEN BY THESE PRESENTS THAT, for and in consideration of the sum of \$0, the receipt and sufficiency of which is hereby acknowledged, Elvin Fred, ("Grantor") hereby quitclaims to Sylvia Fred, ("Grantee") and Grantee's heirs and assigns forever, all of Grantor's right, title, interest, and claim, and subject to all easements, encumbrances, protective covenants, rights-of-way, mineral rights, and other conditions and restrictions, if any, in or to the following described real estate (the "Property") located at 3587 Desaloya Drive, Carson City, Nevada 89701.

Grantor 1: Elvin Fred
Marital Status: Single
Address: PO Box 443
Carson City, Nevada 89702

452637

FRED0213
APEN000074

PA001303

Grantee 1: Sylvia Fred
Marital Status: Single
Address: PO Box 1150
Red Lake, Minnesota 56671

Vesting Information / Property Interest: Sole Owner

Signatures

Grantor signed, sealed, and delivered this Quit Claim Deed to Grantee on
04-01-2015 (date).

Grantor 1 (or authorized agent)

x/ [Signature]
Print Name: Elvin Fred

Notary Public

STATE OF Nevada
COUNTY OF Carson City

On this the 1 day of April, 2015, the foregoing instrument was sworn to and
acknowledged before me by ELVIN LEO FRED, known
or proven to me to be the person(s) whose name(s) is/are subscribed to within the
instrument.

WITNESS my hand and official seal.

Joyce Hoffer
(Print Name)

[Signature] [Affix seal]
(Signature)

NOTARY PUBLIC

My Commission Expires: 7-10-2018



452637

Exhibit "A"

Legal Description

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.

Tax ID: 010-443-11

3857 Desatoya Drive, Carson City, NV 89701

UNOFFICIAL COPY

~~446623~~

452637

2924573 - 1

~~421984~~

Page 8 of 10

EXHIBIT 4

RECORDED AT THE
REQUEST OF

Sylvia Fred

2015 APR -6 AM 10:55

FILE NO. 452645

SUSAN MERRIWETHER
CARSON CITY RECORDER

FEES \$ 4.00 DEP FR

DECLARATION OF HOMESTEAD

Assessor Parcel Number: 01044311

OR

Assessor's Manufactured Home ID Number: _____

Recording Requested by and Mail to:

Name: Sylvia Fred

Address: P.O. Box 1150

City/State/Zip: Red Lake MN 56671

Check One:

☐ Married (filing jointly) ☐ Married (filing individually)

☐ Head of Family

☐ Widowed

☒ Single Person

☐ Multiple Single Persons

☐ By Wife (filing for joint benefit of both)

☐ By Husband (filing for joint benefit of both)

☐ Other (describe): _____

Check One:

☒ Regular Home Dwelling/Manufactured Home ☐ Condominium Unit ☐ Other

Name on Title of Property

Sylvia Fred

do individually or severally certify and declare as follows:

Sylvia Fred

is/are now residing on the land, premises (or manufactured home) located in the city/town of Carson City,
County of Carson City, State of Nevada, and more particularly described as follows:

(set forth legal description and commonly known street address OR manufactured home description)

3587 Desatoya Dr.
Carson City, NV 89701

I/We claim the land and premises hereinabove described, together with the dwelling house thereon, and its appurtenances, or
the described manufactured home as a Homestead.

In Witness Whereof, I/we have hereunto set my hand/our hands this 6 day of April, 2015.

[Signature]
Signature

Sylvia Fred
Print or type name here

Signature

Print or type name here

STATE OF NEVADA, COUNTY OF CARSON City

This instrument was acknowledged before me on 4-6-15

(date)

by Sylvia Fred

Person(s) appearing before notary

by [Signature]
Person(s) appearing before notary

Joyce Hoffer
Signature of notary officer

CONSULT AN ATTORNEY IF YOU DOUBT THIS FORM'S
FITNESS FOR YOUR PURPOSE.

NOTE: Leave space within 1-inch margin blank on all sides.

Notary Seal



452645

Oct. 2009

EXHIBIT 5

1 CARSON CITY DISTRICT ATTORNEY
2 JASON D. WOODBURY

3 District Attorney
4 Nevada 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 FIRST JUDICIAL DISTRICT COURT OF NEVADA
17 CARSON CITY

18 In re:

19 3587 Desatoya Drive, Carson City,
20 Nevada 89701, more particularly
21 described as all that certain parcel of land
22 situate in the City of Carson City, County
23 of Carson City and State of Nevada, being
24 known and designated as follows: Parcel
25 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

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
7 NARCOTICS TASK FORCE),
8 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
14 NARCOTICS TASK FORCE),
15 Counterdefendant.

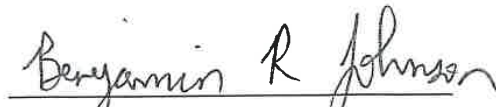
16 **DECLARATION OF BENJAMIN R. JOHNSON IN SUPPORT OF**
17 **PLAINTIFF/COUNTERDEFENDANT'S OPPOSITION TO SYLVIA FRED'S MOTION**
18 **FOR PARTIAL SUMMARY JUDGMENT SEEKING A DECLARATION THAT**
19 **NEVADA'S CIVIL FORFEITURE LAWS VIOLATE DUE PROCESS**

- 19 1. I, BENJAMIN R. JOHNSON, am a Senior Deputy District and have been
20 employed in that capacity since July 2018.
- 21 2. I, together with District Attorney, Jason Woodbury, are the attorneys in the
22 Carson City District Attorney's Office who are assigned to the above-
23 captioned case.
- 24 3. Discovery opened in this case with the filing of the Joint Case Conference
25 Report on December 5, 2022.

4. Due to the necessity of responding to other voluminous filings by Defendants/Counterclaimants, Plaintiff has not been able to propound any discovery on SYLVIA FRED regarding her claimed status as an innocent owner.
5. The discovery period does not close until May 8, 2023. With the Christmas and New Year holidays, there has not been sufficient time to conduct discovery to refute Sylvia's claims.
6. TRI NET intends to conduct discovery in this case including but not limited to propounding interrogatories, requests for admission and requests for production of documents. Based on the response to these requests, TRI NET may also seek to depose SYLVIA and/or ELVIN FRED.
7. Other than public records in the chain of title, TRI NET has not had sufficient evidence to properly rebut the claims made in SYLVIA's partial motion for summary judgment and there are genuine issues of material fact that require additional discovery.

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

DATED this 9th day of January, 2023.


BENJAMIN R. JOHNSON

1 CARSON CITY DISTRICT ATTORNEY
2 JASON D. WOODBURY

3 District Attorney

4 Nevada 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 FIRST JUDICIAL DISTRICT COURT OF NEVADA
17 CARSON CITY

18 In re:

19 3587 Desatoya Drive, Carson City,
20 Nevada 89701, more particularly
21 described as all that certain parcel of land
22 situate in the City of Carson City, County
23 of Carson City and State of Nevada, being
24 known and designated as follows: Parcel
25 N-33 as shown on Parcel Map No. 1704
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in the office of the Recorder of Carson
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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
7 NARCOTICS TASK FORCE),
8 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
14 NARCOTICS TASK FORCE),
15 Counterdefendant.

16 **PLAINTIFF/COUNTERDEFENDANT'S SUPPLEMENT TO MOTION TO STAY**

17 COMES NOW, Plaintiff/Counterdefendant, the INVESTIGATION DIVISION OF
18 THE DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net
19 Narcotics Task Force (TRI NET)), by and through its counsel of record, JASON D.
20 WOODBURY, Carson City District Attorney, and BENJAMIN R. JOHNSON, Senior
21 Deputy District Attorney, and submits this *Supplement* to TRI NET's *Motion to Stay*
22 filed on December 15, 2022.


23 This *Supplement* is necessary due to an intervening Order by the Nevada
24 Supreme Court directing TRI NET to respond to ELVIN FRED's *Petition for Writ of*
25

1 *Prohibition and Writ of Mandamus*. See Exhibit 1 – *Order Directing Answer*, dated
2 January 12, 2023. The response will be followed by a reply brief and possibly oral
3 arguments.

4 Therefore, the urgency and necessity for the requested stay of this litigation has
5 increased now that the Supreme Court has ordered briefing on the *Petition for Writ*.
6 The purpose of this filing is to bring the *Order Directing Answer* to the Court's attention
7 and to supplement the Motion to Stay.

8 DATED this 12th day of January, 2023.

9
10 CARSON CITY DISTRICT ATTORNEY

11
12 
13 JASON D. WOODBURY
14 District Attorney
15 Benjamin R. Johnson
16 Senior Deputy District Attorney
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: bjohnson@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 12th day of January, 2023, I served a true and correct copy of the
foregoing **PLAINTIFF/COUNTERDEFENDANT'S SUPPLEMENT TO MOTION TO
STAY** via electronic mail to the following:

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



EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELVIN LEE FRED,

Petitioner,

vs.

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

Respondents,

and

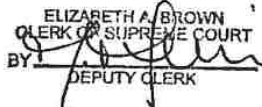
INVESTIGATION DIVISION OF THE
DEPARTMENT OF PUBLIC SAFETY
OF THE STATE OF NEVADA, (TRI-
NET NARCOTICS TASK FORCE)

Real Party in Interest.

No. 85590

FILED

JAN 12 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DIRECTING ANSWER

This original petition for a writ of prohibition and mandamus challenges a district court order denying a motion to dismiss in a forfeiture action. Having reviewed the petition, it appears that an answer may assist this court in resolving this matter. Therefore, real party in interest, on behalf of respondents, shall have 28 days from the date of this order to file and serve an answer, including authorities, against issuance of the requested writ. NRAP 21(b)(1). Petitioner shall have 14 days from service of the answer to file and serve any reply.

It is so ORDERED.



C.J.

cc: McDonald Carano LLP/Reno
McDonald Carano LLP/Las Vegas
Attorney General/Carson City
Carson City District Attorney
The Law Office of Kristina Wildeveld & Associates
Federal Public Defender/Las Vegas

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@mcdonalddcarano.com
jfortin@mcdonalddcarano.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 OC 00074 1B
Dept. No.: 2

ELVIN 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'S OBJECTION TO TRI-
NET'S UNTIMELY OPPOSITION TO HIS
MOTION FOR PARTIAL SUMMARY
JUDGMENT SEEKING A
DECLARATION THAT NEVADA'S CIVIL
FORFEITURE LAWS VIOLATE DUE
PROCESS**

I. LEGAL ARGUMENT

Tri-Net continues its march through the Rules and its failure to comply with any deadline by submitting its Opposition (due on December 28, 2022) to Elvin's Motion for Summary Judgment simultaneously with its Opposition to Sylvia's Motion for Summary Judgment (due on January 9, 2022). Elvin already filed a notice of non-opposition, submitted a proposed order, and filed a request to submit on January 3, 2023. This Court only provided Tri-Net an extension to respond to Sylvia's Motion—Tri-Net carelessly forgot it needed to also respond to Elvin's when it improperly moved *Ex Parte* for an extension of time. Thus, this Court only provided Tri-Net an extension to Sylvia's Motion—because that is all Tri-Net asked for. (*See* Order Granting Tri-Net's Improper *Ex Parte* Motion to Extend, Jan. 4, 2023, on file).

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CLERK OF COURT
BY K. PETERSON
DEPUTY

FJDCR 3.8 is clear, “[u]nless otherwise ordered by the court, an opposing party will have 14 days after service of the motion to file a memorandum of points and authorities in opposition to the motion. The failure of an opposing party to timely file a memorandum of points and authorities shall constitute a consent to the granting of the motion.” Tri-Net failed to timely oppose Elvin’s Motion such that its arguments are a legal nullity as it already consented to this Court granting Elvin’s motion. *See Ozawa v. Vision Airlines*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (explaining when a party “does not dispute” a moving party’s argument, the party in opposition “concede[s] the point.”); *Bates v. Chronister*, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984) (treating the failure to respond to an argument as a confession of error); *Colton v. Murphy*, 71 Nev. 71, 72 279 P.2d 1036, 1036 (1955) (concluding that when respondents’ arguments are not addressed in a reply brief “such lack of challenge . . . constitutes a clear confession by the other party “that there is merit in the respondent’s position.”). Thus, this Court should strike this Opposition and enter Elvin’ Order submitted simultaneously with this Objection.

In the event this Court even opens Tri-Net’s tardy Opposition it need not delve too far into its contents because Tri-Net does not understand how constitutional rights and Legislative powers work. It also does not understand how Courts look for the original meaning of the Constitution. *See Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. 484, 490, 327 P.3d 518, 522 (2014) (“[R]ecent precedents have established that [Nevada Courts must] consider first and foremost the original public understanding of constitutional provisions, not some abstract purpose underlying them.”). Tri-Net simply does not believe “cases from the 1800s” can support a legal argument in 2023. (Tri-Net Opp’n, at 8:15, Jan. 9, 2023, on file.)

Indeed, by refusing to read precedent cited by both Elvin and supported by Justice Thomas of the United States Supreme Court in an analogous forfeiture proceeding—Tri-Net is then capable of claiming that Elvin “conflates the role of legislative history in constitutional interpretation of an ambiguous statute with an argument that ***the burden of proof cannot be changed by the legislature to one lower than it was historically.*** (*Id.* at 10:8-10 (emphasis added).) In other words, Tri-Net’s opposition contends that even if the United States Supreme Court and the Nevada Supreme Court imposed the constitutional burden of proof for a forfeiture at a reasonable doubt standard long

1 before Nevada’s Legislature enacted the State’s civil forfeiture laws—the Legislature is free to alter
2 it because it possesses that authority. This position is breathtakingly incorrect and belied by
3 precedent going back to Chief Justice John Marshall. *See Thomas*, 130 Nev. at 489, 327 P.3d at
4 522 (“[T]he principle of constitutional supremacy prevents the Nevada Legislature from creating
5 exceptions to the rights and privileges protected by Nevada’s Constitution.”). Indeed, “[i]f the
6 Legislature could change the Constitution by ordinary enactment, “no longer would the
7 Constitution be ‘superior paramount law, unchangeable by ordinary means.’ It would be ‘on a level
8 with ordinary legislative acts, and, like other acts, . . . alterable when the legislature shall please to
9 alter it.’” *Thomas*, 130 Nev. at 489, 327 P.3d at 522 (quoting *City of Boerne v. Flores*, 521 U.S.
10 507, 529 (1997)). Thus, even if this Court considered Tri-Net’s arguments (and it should not) it
11 would constitute an abuse of discretion to agree with Tri-Net’s position because the Legislature is
12 not free to alter the rights guaranteed under the Constitution.

13 **II. CONCLUSION**

14 For all the reasons detailed above, Elvin asks this Court to grant him partial summary
15 judgment and declare that Nevada’s Civil Forfeiture Laws violate the United States and Nevada
16 Constitution’s Due Process clauses.

17 Dated this 17th day of January 2023.

18 McDONALD CARANO LLP

19 By: 

20 Ryan J. Works, Esq. (NSBN 9224)
21 John A. Fortin, Esq. (NSBN 15221)
22 2300 West Sahara Avenue, Suite 1200
23 Las Vegas, Nevada 89102
24 rworks@mcdonaldcarano.com
25 jfortin@mcdonaldcarano.com

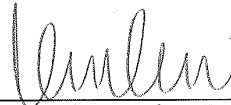
26 *Pro Bono Counsel for*
27 *Claimant Elvin Fred*
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on this 17th day of January 2023, I caused to be delivered via email, and hand delivery, true and correct copies of the above **ELVIN FRED'S OBJECTION TO TRI-NET'S UNTIMELY OPPOSITION TO HIS MOTION FOR PARTIAL SUMMARY JUDGMENT SEEKING A DECLARATION THAT NEVADA'S CIVIL FORFEITURE LAWS VIOLATE DUE PROCESS** 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

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



An employee of McDonald Carano LLP

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

*Pro Bono Counsel for
Claimants 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,

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

**SYLVIA FRED'S REPLY IN SUPPORT
OF HER COUNTERMOTION TO
COMPEL**

I. LEGAL ARGUMENT

A. Tri-Net Must Comply With the Rules and Provide Discovery Responses.

Tri-Net fails to cite any Rule or precedent to demonstrate why it did not comply with NRCP 33 or NRCP 34 nor demonstrate why its non-compliance was not in bad faith. Indeed, in seven

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2023 JAN 19 AM 10:37
CLERK OF DISTRICT COURT
K. PETERSON
BY _____ DEPUTY

1 pages of briefing, Tri-Net says very little other than its litigation team is busy, displays that it does
2 not understand basic discovery practices or Rules, and that it believes that Rules and deadlines
3 actually apply to the Agency.

4 NRCP 37(a)(3)(B) provides that "[a] party seeking discovery may move for an order
5 compelling an answer, designation, production or inspection. This motion may be made if: . . . (iii)
6 a party fails to answer an interrogatory submitted under Rule 33; or (iv) a party fails to produce
7 documents . . . as requested under Rule 34." "For purposes of this Rule 37(a), an evasive or
8 incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or
9 respond." NRCP 37 (a)(4). "The party resisting discovery has the burden to show discovery should
10 not be allowed." *Slack v. Parball Newco, LLC*, Case No.: 2:16-CV-02324-KJD-CWH, 2018 WL
11 1472574, *2 (D. Nev. Mar. 26, 2018) (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th
12 Cir. 1975)). Tri-Net did not meet its burden.

13 Tri-Net complains that "due to the volume and nature of the requests" it cannot timely
14 respond to Discovery. (Tri-Net Opp'n, at 5:17, Jan. 6, 2023, on file.) Sylvia propounded 16
15 interrogatories and 24 requests for production of documents asking such questions as "identify your
16 officer in charge," (Request No. 1) "identify the names of each and every Tri-Net officer, agent, or
17 employee involved in the eviction and possession of the Home," (Request No. 4) as well as "detail
18 and describe Your collaborative decision making process for obtaining a civil forfeiture between the
19 Carson City Sheriff's Office, the Nevada State Police, and the Douglas County Sheriff's Office when
20 criminal conduct under NRS 453.301 occurs" (Request no. 6). Not exactly the most difficult
21 requests for a government agency that has been engaged in litigation with Sylvia and Elvin for the
22 last 8 years.

23 As the Court well knows, sixteen interrogatories is less than *half* of the available
24 interrogatories provided under the Rules. *See* NRCP 33(a)(1) ("Unless otherwise stipulated or
25 ordered by the court, a party may serve on any other party no more than 40 written interrogatories,
26 including all discrete subparts."). Thus, while it might require attention to detail, requesting
27 information from Tri-Net, it might also include actual discussion with Tri-Net's officer in charge
28 and policymaker, as well as actually devoting some time—as opposed to spending "almost *no time*

1 to further address” Sylvia’s discovery requests. (Tri-Net’s Opp’n at 6:16.) Sylvia’s 24 requests for
2 documents are hardly likely to produce some voluminous record. Indeed, while the pages might
3 number a few thousand if Tri-Net actually possesses any policies—Sylvia and Elvin hardly believe
4 that even a document review software will be necessary to review the materials Tri-Net actually
5 provides—if it ever provides answers.

6 To be sure, this matter is not a shareholder derivative lawsuit, breach fiduciary action, or any
7 of the other typical complex corporate litigation that the undersigned counsel handles routinely for
8 such a statement by Tri-Net that this action is “complex” to carry *any* weight about the burdens of
9 discovery. Actual “complex” litigation (a term of art) involves potentially hundreds of discovery
10 requests, including subpoenas submitted to holding companies, corporate parents, subsidiaries,
11 individual board members and many many others in which there is the potential for hundreds of
12 thousands of documents to actually be at issue and reviewed—that is a *complex* case. This is case
13 is not. *Cf. Towers Co v. Trinidad and Tobago*, 903 F.Supp. 515, 531 (S.D.N.Y. 1995) (“This was a
14 complex case with literally thousands of pages of documents.”); *Dondi Prop. Corp. v. Commerce*
15 *Savings and Loan Ass’n*, 121 F.R.D. 284, 289 (N.D. Tex. 1988) (“The case at hand present complex
16 legal and factual theories involving hundreds of thousands of documents.”). Thus, complaining that
17 discovery is hard is not an excuse to not comply with the Rules—if they actually apply to Tri-Net.

18 Tri-Net’s next claim that Sylvia “insisted on receiving piecemeal responses to the written
19 discovery requests” exposes the fact that Tri-Net simply does not understand how civil litigation and
20 the discovery process works. (Tri-Net Opp’n at 6:9-10.) Because Sylvia should not be required to
21 teach Tri-Net how to actually engage in civil litigation and discovery by demonstrating it is incorrect,
22 she merely provides the high points.

23 Sylvia *did not* ask for piecemeal responses—she asked for good-faith responses based on the
24 information in Tri-Net’s possession at the time it responded in accordance with the Rules. But and
25 as explained several times during the meet and confers with Tri-Net, NRCP 26(e) provides “[a] party
26 who has made a disclosure . . . or responded to a request for discovery with a disclosure response—
27 is under a duty to timely supplement or correct the disclosure or response to include information
28 thereafter acquired if the party learns that in some material respect information disclosed is

1 incomplete or incorrect and if the additional or corrective information has not otherwise been made
2 known to the other parties during the discovery process or in writing.” What this means—and what
3 Sylvia told Tri-Net—was, that at the time its discovery responses were due, it should lodge any
4 objections (it did not), it should preserve any privilege claims (it did not), and it should provide a
5 good faith response to each discovery response. Then, as Tri-Net continued to search for documents
6 and witnesses—as mandated by NRCP 26(e)—and as Tri-Net “acquired” additional information, it
7 should supplement its. This is standard discovery practice in any case in Nevada or federal court.
8 Instead, Tri-Net simply refused to comply with *any* of the discovery Rules.¹

9 Finally, Tri-Net incorrectly claims that there are no “deadlines which are imminent and
10 would have to be modified as a result of a reasonable extension. It has no consequential impact in
11 regard to this case.” (Tri-Net Opp’n at 7:16-18.) Tri-Net is wrong. The First Supplement Joint
12 Case Conference Report details that the Parties have agreed to a deadline to amend their pleadings
13 as well as to submit expert reports on February 7, 2023. (See Supp. JCCR, Jan. 9, 2023, on file.)
14 February 7, 2023, is the same day that Tri-Net requested in its improper request to extend the
15 deadlines to supply discovery answers. It would be impossible to know if Sylvia and Elvin have
16 additional claims based on these responses, draft an amended pleading, and submit it to the Court
17 on the same day. It likewise is impossible to retain an expert without any documents for the expert
18 to review.

19 But even setting aside the fact that Tri-Net does not comply with any deadline anyway, Sylvia
20 and Elvin’s Home lie in ruins—because of Tri-Net’s misconduct. To remind the Court of the state
21 of their Home, see below.

22 ///

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24
25 ¹ Sylvia likewise takes issue with Tri-Net’s claim that it “is perfectly willing to assemble and
26 provide any discovery.” (Tri-Net Opp’n at 6:23-24.) In any case, a litigant *shall* provide discovery
27 responses that are not objectionable. Because Tri-Net utterly failed to satisfy its discovery
28 obligations, Tri-Net waived any objection to providing Sylvia responses, so it *shall* respond and
provide the discovery under the Rules. See *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d
1468, 1473 (9th Cir. 1992) (“It is well established that a failure to object to discovery requests within
the time required constitutes a waiver of any objection.”).



The consequential impact of further delays to resolving this litigation is that Sylvia and Elvin *cannot* enjoy their Home. Tri-Net's disregard of the facts on the ground and the state of Sylvia and

1 Elvin's Home necessitates this Court's intervention to compel a response to discovery.

2 B. This Court Should Strike Tri-Net's Improper Request for a Discovery Extension.

3 Because no Motion could be complete without a new violation of the Rules, Tri-Net violates
4 FJDCR 3.17(c)(7) and FJDCR 3.7 in its Opposition. This Court should strike this request in
5 accordance with the Rules. *See* FJDCR 1.12(8) (providing authority to "[s]trike in whole or in part
6 any portion of any pleading or paper").

7 The Rules permit by "motion or stipulation" litigants to request to "extend a deadline," but
8 such a request "*must* be filed as soon as possible and before the expiration of the subject deadline."
9 FJDCR 3.17(a); *see also* FJDCR 3.17(b) (requiring certain requirements for the title and caption for
10 requests for extensions); FJDCR 3.17(c) (1)-(6) (detailing the required contents). In order to move
11 for an extension "the moving party" must "[c]ertify" that "has made a good faith effort to
12 communicate with all parties regarding the requested extension and the results of those efforts."
13 FJDCR 3.17(c)(7). "Before filing any motion, except as provided below in this subsection, the party
14 must confer with the opposing attorney . . . and make a good faith effort . . . to resolve the issue
15 raised in the motion." FJDCR 3.7(b).

16 None of these requirements can be met for this Court to grant Tri-Net's "request" to extend
17 the deadlines for its already delinquent discovery responses "30 days" from its Opposition or to
18 February 7, 2023. (Tri-Net Opp'n at 6:20.) Therefore, Sylvia asks this Court to strike this Request.
19 *See* FJDCR 1.12(8).

20 **II. CONCLUSION**

21 Sylvia and Elvin ask for all of the requested relief detailed above.

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Dated this 13th day of January 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on this 13th day of January 2023, I caused to be delivered via mail, and hand delivery, true and correct copies of the above **SYLVIA FRED'S REPLY IN SUPPORT OF HER COUNTERMOTION TO COMPEL** to the following:

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**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 REPLY IN SUPPORT
OF HER MOTION FOR PARTIAL
SUMMARY JUDGMENT SEEKING A
DECLARATION THAT NEVADA'S CIVIL
FORFEITURE LAWS VIOLATE DUE
PROCESS**

I. INTRODUCTION

Sylvia's Due Process rights have been assaulted by Tri-Net as that agency deployed NRS 179.1156 to NRS 179.1205 ("Nevada's Civil Forfeiture Laws") over the last 7 years to forfeit the real property located at 3587 Desatoya Drive, Carson City Nevada, 89701 ("Home"). Tri-Net utterly fails to rebut the *constitutional* questions posed by Sylvia in her Motion. Instead, the Agency tries to rebut a *statutory* question by falling back on and foisting the substance of the very statute Sylvia claims is unconstitutional as the reason why Sylvia has sufficient defenses *statutorily* and has not met her burden to show Sylvia's *constitutional* rights are violated. This is not how *any* of this works. *See Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. 484, 489, 327 P.3d 518, 522 (2014) ("[T]he principle of constitutional supremacy prevents the Nevada Legislature from creating exceptions to

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1 the rights and privileges protected by Nevada's Constitution.”). Indeed, Sylvia brought forth several
2 grounds under the Due Process Clauses of the United States and Nevada's Constitution in which
3 relief should be provided for violations of Sylvia's rights including: (1) presumption of innocence,
4 (2) inalienable right to protect her property from arbitrary government action, (3) right a to prompt
5 hearing, and (4) right to a speedy trial. Fatally for its defense, Tri-Net only attempted to rebut
6 Sylvia's presumption of innocence and her speedy trial right claims.¹ The 15-page opposition makes
7 *zero* mention of Sylvia's inalienable rights argument and her right to a prompt hearing such that
8 these arguments are waived, and granting summary judgment is proper.²

9 In an odd (and incorrect) turn, Tri-Net takes aim at the propriety of all of Sylvia's
10 counterclaims by twisting itself in knots with real property concepts well beyond Tri-Net's
11 knowledge and understanding. To be sure, Tri-Net's lack of understanding of these basic concepts
12 likewise exposes its extremely flawed litigation position. Tri-Net fails to engage with the text of the
13 statutory scheme properly and through a correct application of the facts to the law—it is clear that
14 even if NRS 179.1169 is constitutional (which it is not), Sylvia easily clears any hurdle the statute
15 poses. .

16 **II. LEGAL ARGUMENT**

17 Tri-Net does not dispute the standard for summary judgment, this Court's analysis in
18 constitutional interpretation, nor does Tri-Net challenge the three-part Due Process test. (*See*
19 *generally* Tri-Net Opp'n, Jan. 9, 2023, on file.) Just to briefly recap the analysis “[u]nder the
20 *Mathews* balancing test, a court evaluates (A) the private interest affected; (B) the risk of erroneous
21 deprivation of that interest through the procedures used; and (C) the governmental interest at stake.”
22 *Nelson v. Colorado*, 581 U.S. ___, ___, 137 S.Ct. 1249, 1255 (2017).

24 ¹ As this Court well knows, Tri-Net was afforded more than enough time to read Sylvia's
25 Motion carefully, consider her arguments, and appropriately respond because it received 32 days to
26 oppose Sylvia's Motion as opposed to the normal 14 days. (*See* Order Granting Tri-Net's Improper
Ex Parte Motion to Extend Deadlines, Jan. 4, 2022, on file.) Thus, Tri-Net should be afforded *zero*
27 leniency for its woefully deficient opposition.

28 ² The arguments Tri-Net do make are hollow, haphazard, and not at all persuasive to counter
the weight of Sylvia's detailed motion for summary judgment.

A. Summary Judgment is Proper as Sylvia's Due Process Rights Have Been Violated.

1. *Tri-Net Waived Several Challenges to Sylvia's Arguments*

"Certain wrongs affect more than a single right" like Sylvia's arguments here and Courts "are not in the habit of identifying as a preliminary matter the claim's 'dominant' character. Rather we examine each constitutional provision in turn." *Soldal v. Cook Cnty.*, 506 U.S. 56, 70 (1992); *see also United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 50 (1993) ("The proper question is not which Amendment controls, but whether either Amendment is violated." (cleaned up)). In other words, to prevail on summary judgment Sylvia is only required to show that *one of her fundamental rights* is violated. Tri-Net's carelessness takes care of this issue for Sylvia.

When a party "does not dispute" a moving party's argument, the party in opposition "concede[s] the point." *Ozawa v. Vision Airlines*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009); *Bates v. Chronister*, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984) (treating the failure to respond to an argument as a confession of error); *Colton v. Murphy*, 71 Nev. 71, 72 279 P.2d 1036, 1036 (1955) (concluding that when respondents' arguments are not addressed in a reply brief "such lack of challenge . . . constitutes a clear confession by the other party "that there is merit in the respondent's position."); *see also* FJDCR 3.8 (explaining that failure to oppose arguments "shall constitute a consent to granting the motion").

Tri-Net's opposition failed to evaluate either Sylvia's inalienable property rights or her prompt hearing rights arguments. (*See generally* Tri-Net Opp'n, Jan. 9, 2023, on file.) The entirety of Tri-Net's opposition focused on whether Sylvia satisfied NRS 179.1169 and the Agency's claim that Sylvia's presumption of innocence and speedy trial rights were not implicated by Nevada's Civil Forfeiture Laws. (*See id.*) Thus, Tri-Net waived and abandoned any challenge to 2 of Sylvia's 4 arguments and any defense Tri-Net may have had for Sylvia's claims. *See Hamer v. Neighborhood Housing Serv.*, 583 U.S. ___, ___, n. 1, 138 S.Ct. 13, 17 n.1 (2017) ("[W]aiver is the intentional relinquishment or abandonment of a known right." (internal quotation marks omitted); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of the court, is deemed to have been waived."). Accordingly, summary judgment is proper because Tri-Net conceded that Nevada's Civil Forfeiture Laws violate

1 Sylvia's right to a prompt hearing and her inalienable property rights.

2 2. *Sylvia's constitutional rights have been violated.*

3 Even though Tri-Net did not waive its arguments against Sylvia's right to be presumed
4 innocent and her speedy trial right, the Agency's argument that Sylvia lacks Sixth Amendment
5 protections is unmoored from Sylvia's actual arguments and reality. (Tri-Net Opp'n at 12-14.)
6 Specifically, Tri-Net's fatal assertion that Sylvia's motion "is devoid of citation to any statute or
7 case law that states these same rights are guaranteed to claimants in a civil forfeiture proceeding"
8 means Tri-Net failed to read Sylvia's Motion. (Tri-Net Opp'n 14:6-9.)

9 As Tri-Net knows, just about everything about Nevada's Civil Forfeiture Laws is an issue of
10 first impression because of the oppressive nature of civil forfeiture proceedings. But just as this
11 Court does every day, Sylvia looked to similar facts and circumstances and analogized her facts to
12 those cases to argue a logical conclusion on this issue of first impression. Thus, Tri-Net's failure to
13 read the United States Supreme Court's *Nelson v. Colorado* decision is fatal to its claim that she
14 does not have Sixth Amendment protections because *Nelson* only involved a procedural due process
15 question. 137 S.Ct. at 1255. Appellants there had been acquitted of crimes but the State of Colorado
16 refused to provide a refund of the restitution, fees, and costs imposed on appellants between the
17 original guilty sentences and the acquittal. *See id.* But a simple keyword search of the decision (or
18 more careful review) demonstrates that the Court did not analyze that decision through the Sixth
19 Amendment—it evaluated it under the Fourteenth Amendment. (*See id.*) Couple this decision and
20 the Court's recent incorporation of the Eighth Amendment's excessive fines clause to the States, *see*
21 *Timbs v. Indiana*, 586 U.S. ___, 139 S.Ct. 682 (2019), determining whether a fine (the civil forfeiture
22 of property) can be imposed on an innocent party implicates the Due Process clauses presumption
23 of innocence protections. Thus, Tri-Net's decision to not actually read the cases Sylvia cited to and
24 grounded her presumption of innocence arguments on is fatal to Tri-Net's opposition. Indeed, as
25 Tri-Net noted "the nonmoving party may not defeat a motion for summary judgment by relying 'on
26 the gossamer threads of whimsy, speculation, and conjecture.' *Pegasus v. Reno Newspapers, Inc.*,
27 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002)." (Tri-Net's Opp'n at 7:20-23.) Therefore, summary
28 judgment is proper because Tri-Net failed to put forth anything more than speculation in response

to Sylvia's argument.³

As for Sylvia's speedy trial argument, Tri-Net continues to make the same analytical mistakes it made when it tried to rebut Elvin's double jeopardy arguments—it fails to carefully read *Levingston*, 114 Nev. 306, 307-09, 956 P.2d 84, 85-87 (1998). The Nevada Supreme Court only evaluated that matter under the Fifth Amendment and the United States Constitution, the Court did not evaluate Nevada's constitution. *See id.* Thus, Tri-Net's statement that "the Nevada Supreme Court expressly found that Nevada's forfeiture statutes are not criminal in nature" vastly overstates the holding of that case. (Tri-Net Opp'n at 13:20-21.) Moreover, NRS 179.1173(9)-(10) (requiring a criminal conviction and permitting forfeitures of property through plea deals) were not included in the scheme until 2015—almost 20 years after *Levingston* was decided. Tri-Net's only other counter to Sylvia's *constitutional* argument, is Tri-Net's claim that the *statutory* protections of NRS 179.1169 (the very statute she is challenging) is sufficient to protect her constitutional rights. (Tri-Net Opp'n at 13-14.) The Legislature is not free to displace constitutional protections by simply affording an affirmative defense to a party that must be proven at trial. *Thomas*, 130 Nev. at 489, 327 P.3d at 522 ("If the Legislature could change the Constitution by ordinary enactment, 'no longer would the Constitution be 'superior paramount law, unchangeable by ordinary means.' It would be

³ Because Tri-Net routinely confuses basic legal concepts, Sylvia is explicit here. This Motion presents a purely legal question—does NRS 179.1169 violate Sylvia's procedural due process rights (presumption of innocence, inalienable rights, prompt hearing, and speedy trial) because the statute imposes the burden of proof on Sylvia and not the government? Thus, Tri-Net's NRCP 56(f) request is incorrect and even if it were proper, it should be denied. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 669, 262 P.3d 705, 714 (2011) ("A motion for a continuance under NRCP 56(f) is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact." (cleaned up)). Tri-Net failed to provide any rationale other than to investigate what it has had 8 years to do. For instance, NRS 179.1171(5) mandates that the Tri-Net "exercise reasonable diligence" in determining all claimants prior to initiating forfeiture actions. As this Court well knows, Tri-Net utterly failed at this duty from 2015 through 2022 when it obtained a void default judgment which the Supreme Court directed this Court to set aside. But even if that were not enough, discovery has been open since November and Tri-Net has not propounded a *single discovery request* on Sylvia such that Tri-Net has not been diligent. *See Francis*, 127 Nev. at 669, 262 P.3d at 714 ("Furthermore, if the movant has previously failed diligently to pursue discovery, it is not an abuse of discretion for the district court to deny the motion." (cleaned up)). Indeed, Tri-Net's own failure to oppose Elvin's Joinder and Motion means that it conceded all of the facts it claims it needs additional discovery on. *See Ozawa*, 125 Nev. at 563, 216 P.3d at 793 (When a party "does not dispute" a moving party's argument, the party in opposition "concede[s] the point.")). Denial of Tri-Net's NRCP 56(f) request is proper.

‘on a level with ordinary legislative acts, and, like other acts, . . . alterable when the legislature shall please to alter it.’” (quoting *City of Boerne v. Flores*, 521 U.S. 507, 529 (1997)). Thus, Tri-Net’s rebuttal to Sylvia’s speedy trial claims is likewise built on the gossamer threads of whimsy speculation—not legal analysis and support. Thus, Sylvia should be granted partial summary judgment because Nevada’s Civil Forfeiture Laws violates Sylvia’s Due Process rights.

B. Sylvia Easily Satisfies NRS 179.1169(2)’s Requirements.⁴

Tri-Net does not understand how property law works nor does it understand how to perform statutory interpretation. To avoid any claims of waiver or abandonment of Tri-Net’s extraneous arguments that Sylvia’s Counterclaims are invalid, she rebuts, once and for all, Tri-Net’s claim that she is not a proper party in this proceeding through its incessant reliance on NRS 179.1169. Tri-Net’s failure to use precise terms and apply the facts to the law is fatal to its reliance on this provision.

“The leading rule of statutory construction is to ascertain the intent of the legislature in enacting the statute.” *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 650, 730 P.2d 438, 443 (1986). “To determine legislative intent, [the Nevada Supreme Court] first consider[s] and give[s] effect to the statute’s plain meaning because that is the best indicator of the Legislature’s intent.” *Dezzani v. Kern & Assoc., Ltd.*, 134 Nev. 61, 64, 412 P.3d 56, 59 (2018); *see also* NRS 179.1157 (“Unless the context otherwise requires, the words and terms” in Nevada’s Civil Forfeiture Laws “have the meaning ascribed to them in those sections”). “[I]t is the duty of this court, when possible, to interpret provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of those statutes and to avoid unreasonable or absurd results, thereby giving effect to the Legislature’s intent.” *Torrealba v. Kesmetis*, 124 Nev. 95, 101, 178 P.3d 716, 721 (2008) (internal quotation marks omitted).

Tri-Net’s Opposition conflates Sylvia’s “interest,” her “interest of record,” “title,” and the “notice” she had under the statute’s plain terms as Tri-Net tries to negate Sylvia’s innocent property owner protections. The Agency relies on the 2015 Quitclaim deed, and other unauthenticated,

⁴ Nothing about this section concedes or abandons Sylvia’s claim that NRS 179.1169 violates her constitutional rights.

1 nondisclosed, and inadmissible documents as it claims Sylvia cannot satisfy NRS 179.1169(2)
2 requirements.⁵ (*See* Tri-Net Opp'n at 8-15.) Tri-Net's arguments are confusing, and incorrect on
3 several points of law and fact because the Agency conflates terms, facts, and does not understand
4 property law. (*See id.*) Sylvia, therefore, untangles the knots Tri-Net tied.

5 First, the statute. NRS 179.1169 (1)(a) transfers "[a]ll right, title and interest in property
6 subject to forfeiture" when the "property used or intended to for use to facilitate the commission or
7 attempted commission of any felony, when the property is so used or intended for such use." NRS
8 179.1169(2) provides:

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

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

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

16 *Id.* (emphasis added).⁶ In other words, at the time of the criminal act, all right, title, and interest
17 vests from *all* claimants to the government and if a claimant transfers the property after vesting, only
18 a good faith purchaser for value will evade a voiding of the transfer if it can demonstrate (1) it
19

20 ⁵ Sylvia objects to Tri-Net's inclusion of its Exhibit 2 and Exhibit 4 in its opposition as these
21 documents have not been disclosed in discovery by Tri-Net in violation of NRCP 16.1. *See Pizarro-*
22 *Ortega v. Cervantes-Lopez*, 133 Nev. 261, 265, 396 P.3d 783, 787 (2017) ("Under NRCP 37(c)(1),
23 a party is prohibited from using as evidence at trial any witness or information not so disclosed
24 unless the party can show there was substantial justification for the failure to disclose or unless such
25 failure is harmless." (emphasis added)). Tri-Net provides no justification for failing to disclose this
26 information prior to its reliance on these documents in its opposition to Summary Judgment. *See*
27 *Wood v. Safeway*, 121 Nev. 724, 731 (2005) (explaining that a party must provide admissible
evidence in opposition to Summary Judgment for it to be considered by a court). Moreover, Exhibit
2 (whatever this document is) is unauthenticated hearsay within hearsay and no exception applies.
28 *See Frias v. Valle*, 101 Nev. 219, 221, 698 P.2d 875, 876 (1985) (requiring a proper foundation be
laid prior to the introduction of evidence); NRS 51.035 (hearsay). These rogue documents, therefore,
cannot be put forth in the record to refute any of Sylvia's arguments.

⁶ The Legislature enacted NRS 179.1169 in 1987, it has never been amended and was added
as a "fraudulent transfer" provision. *See* 1987 Nev. Stat., ch. 571, § 10, at 1381; Hearing on S.B.
270 Before the Senate Judiciary Comm., 64th Leg. at 11-12 (Nev. March 31, 1987).

1 possesses an **interest of record**, after (2) giving fair value for the *interest*, and (3) the good faith
2 purchaser acquired the *interest* prior to vesting under NRS 179.1169(1). Sylvia and Elvin again
3 reiterate this statute does not apply to them based on the 2015 Quitclaim deed.

4 The terms “interest of record” and “interest” are not defined in the statute. *See* NRS
5 179.1156-NRS 179.121. Because of this omission, we must evaluate the statute and its context to
6 determine if “interest” and “interest of record” are intended to mean two different things. This is
7 important because it helps guide Sylvia’s burden (if NRS 179.1169 is somehow constitutional and
8 she must actually make this showing at trial) because “when the Legislature has employed a term or
9 phrase in one place excluded it in another, it should not be implied where excluded.” *Coast Hotels*
10 *& Casinos, Inc. v. Nev. State Labor Comm’n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001). To be
11 sure, a plain meaning analysis leads to the simple conclusion that, yes, “interest” and “interest of
12 record” are different things, but looking around the rest of the statute confirms this conclusion.

13 For example, NRS 179.1158 defines claimant as “any person who claims to have: (1) Any
14 right, title, or **interest of record** in the property; or (2) Any community property *interest* in the
15 property or proceeds; or (3) Had possession of the property or proceeds at the time of the seizure
16 thereof by the plaintiff.” NRS 179.1163 details that a “‘**protected interest**’ means the enforceable
17 *interest* of a claimant in property which *interest* is shown not to be subject to the forfeiture.” NRS
18 179.1164(2) provides “[p]roperty may not, to the extent of the *interest* of any claimant, be declared
19 forfeited. . . .” NRS 179.1173(8) states that property “must be forfeited to the plaintiff, subject to
20 the right of any claimant who establishes a **protected interest**.” Finally, NRS 179.118 details the
21 “proceeds from any sale” must be provided “first, to the satisfaction of any **protected interest**
22 established by a claimant in the proceeding.” Put all of this together and Sylvia does not need to
23 prove she is an *owner* under the statute, she is only required to demonstrate she has a **protected**
24 **interest** in the Home. However, as a term of art, Sylvia claims to be an “innocent property owner.”⁷

25
26
27 ⁷ “[W]e use the phrase ‘innocent owner’ as a term of art denoting a person who has an
28 ownership *interest* in property threatened with civil forfeiture but who neither participated in nor
permitted nor suffered the alleged illegal use of the property, and persons who claim that status. Our
use of the term is not intended to suggest that . . . person initially charged with a . . . crime are not
presumed innocent until proven guilty in a criminal proceeding or are presumptively unlikely to

1 Tri-Net claims Sylvia “cannot meet this burden because the irrefutable evidence
2 demonstrates that” Sylvia “did not acquire legal *ownership* or an ‘*interest of record*’ (i.e., appearing
3 in the chain of title) until April 6, 2015,” which “is approximately 52 days after” Elvin’s first criminal
4 act “and 5 days after Tri-Net filed the Complaint.” (Tri-Net Opp’n at 9:10-14 (emphasis added).)
5 Tri-Net further claims that Sylvia was on “*notice* of the forfeiture action and cannot claim status as
6 an innocent owner because she did not acquire her *interest* without *notice* of the proceeding.” (*Id.*
7 at 9:17-18 (emphasis added).) Tri-Net confuses all of the terms and requirements of NRS
8 179.1169(2) and conflates them to come to the conclusion it wants—Sylvia is not a proper party to
9 this litigation. Hardly. Sylvia, therefore, provides analysis of the entire statute and facts to hopefully
10 silence Tri-Net from its incoherent and asymmetrical litigation position. *See Dezzani*, 134 Nev. at
11 59-65, 412 P.3d at 60 (concluding that courts must interpret statutes “as a symmetrical and coherent
12 regulatory scheme” (cleaned up)); *see also Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809
13 (1989) (“It is a fundamental canon of statutory construction that the words of a statute must be read
14 in their context and with a view to their place in the overall statutory scheme.”).

15 **1. Sylvia acquired her interest in 2012—long before any criminal conduct.**

16 Working in reverse order, under NRS 179.1169(2)(c), Sylvia acquired her *interest* in 2012
17 when Sylvia and Elvin purchased the Home together, before Elvin’s criminal conduct. The
18 unrefuted evidence Sylvia presented demonstrated the purchase price of the Home and the source of
19 funds for the purchase in 2012. (*See, e.g., Ex. 6, Decl. of C. Toohey* ¶ 8 (“As the intake notes detail,
20 Elvin represented that he had been renting a trailer off of Highway 50, and that he had \$60,000 in
21 funds to purchase a home. The full purchase price of the home was \$71,099.92. I know that Elvin
22 obtained the additional funds from someone else and purchased the Home without any need for a
23 mortgage.”); *Ex. 7 Sylvia’s Cashier’s Checks* (withdrawing \$10,000 on April 9 and April 17, 2012),
24 *Ex. 11* (Elvin signing the counteroffer on April 11, 2012); *Ex. 20 E. Fred Decl.* ¶ 9 (“Based on
25 information and belief, between April and May 2012, Sylvia transferred over \$12,000 to me so that
26

27
28 prevail in a civil forfeiture proceeding.” *Krimstock v. Kelly*, 306 F.3d 40, 47 n.8 (2d Cir. 2002)
(Sotomayor, J.) (emphasis added).

1 I could purchase the Home.”); Ex. 21 S. Fred Decl. ¶¶ 5-11 (detailing Sylvia’s transfer of savings to
2 Elvin.) By orders of magnitude, Sylvia provided preponderant proof that she acquired her *interest*
3 in the Home in 2012 prior to the criminal acts and Tri-Net presented *zero* facts in opposition to claim
4 the additional funds Elvin received from Carson City for its violations of his civil rights came from
5 another source. Thus, Sylvia satisfies NRS 179.1169(2)(c).

6 **2. Sylvia gave fair value for her interest in 2012.**

7 Sylvia provided fair value to obtain her *interest*—she provided Elvin over \$12,000 of her
8 savings. Sylvia has likewise continued to act as protect her *interest* in the Home by paying the
9 property taxes, utility bills, and defending her *interest* in this litigation. (See Ex. 14, APEN93-94
10 (demonstrating Sylvia paid the property taxes for years on the Home); Ex. 17 (utilities bills with
11 Sylvia’s name on them).) Considering the circumstances of both Elvin and Sylvia—recipients of
12 Legal Aid Center of Southern Nevada pro bono service—Sylvia’s contribution to consummate the
13 sale are significant and there is no question it is fair. As for the value, in almost any other transaction
14 courts do not examine this factor deeply. See *Nyberg v. Kirby*, 65 Nev. 42, 51, 188 P.2d 1006, 1010
15 (1948) (“The law will not enter into an inquiry as to [consideration’s] adequacy.”); *Fair v. Howard*,
16 6 Nev. 304, 308 (1871) (“The question is not whether the consideration is adequate, but whether it
17 is *valuable*.” (emphasis added)). Because, and as explained below, Tri-Net does not understand
18 basic property law concepts, the Agency attempts to place percentages on Sylvia’s *interest* in the
19 Home to somehow downplay her righteous inclusion in this litigation. (See Tri-Net Opp’n at 8:17-
20 20 (claiming that because Sylvia provided “less than 18% of the total purchase price” means Sylvia
21 could not be a joint tenant).) Of course, Sylvia could have provided a mere peppercorn and as long
22 the peppercorn constituted fair value, it would satisfy NRS 179.1169(2)(b) for her *interest* in the
23 Home. See *RLS Assoc., LLC v. United Bank of Kuwait PLC*, 380 F.3d 704, 709 (2d Cir. 2004) (“So
24 long as a contract provides some consideration, it may be minimal—even a peppercorn. Courts do
25 not inquire into the value or adequacy of the consideration.” (cleaned up)). Thus, Sylvia satisfies
26 NRS 179.1169(2)(b).

27 **3. Sylvia has several Interests of Record.**

28 As explained above, interest of record is undefined in this statute. Additionally, the Nevada

1 Supreme Court has never interpreted this provision—other than dismissing Tri-Net’s improper
2 arguments it raised over Sylvia’s status for the first time at oral arguments. *See In re 3587 Desatoya*
3 *Dr.*, Case No. 80194, 2021 WL 4847506, at *2 n.1 (Oct. 15, 2021, Order of Reversal and Remand).
4 Thus, this is an issue of first impression. Despite Tri-Net’s difficulties reading the statute and
5 applying property law to the facts, determining that Sylvia satisfies this provision will not be very
6 difficult.

7 We can look at the statutory provisions and recognize that Tri-Net’s definition of “an ‘interest
8 of record’ (i.e., appearing in the chain of title)” is wrong. (Tri-Net Opp’n at 9:11-12.) This is
9 because the Legislature distinguished between the terms “title” and “**interest of record**” in the
10 definition of a claimant. *See* NRS 179.1158 (1) (“Any right, title or interest of record . . .”); *see*
11 *also Coast Hotels*, 117 Nev. at 841, 34 P.3d at 550 (“[W]hen the Legislature has employed a term
12 or phrase in one place excluded it in another, it should not be implied where excluded.”). Thus,
13 **interests of record** likely include title documents, but title documents are not exclusively an **interest**
14 **of record**.

15 Instead, **interest of record** should be interpreted broadly and *any* document that shows the
16 person has a viable interest in the Home should meet the standard. Again this would read the statute
17 harmoniously because a claimant is “*any* person who claims to have (1) *any* right, title, or interest
18 of record” in the property. NRS 179.1158. *See United States v. Gonzales*, 520 U.S. 1, 4 (1997)
19 (“Read naturally, the word ‘any’ has an expansive meaning, that is, ‘one of some indiscriminately
20 of whatever kind.’” (quoting Webster’s Third New Int’l Dictionary 97 (1976)). This is a fair reading
21 because in many instances some parties with an ***interest*** may not be on the title, but their interest
22 might be found in a will, trust, or even a quitclaim deed. *See* Restatement (Third) of Property—
23 Wills and Other Donative Transfers § 25.1 (2000) (“The [future] owner’s right to possession or
24 enjoyment is postponed until sometime in the future and may be contingent or vested.”).
25 Accordingly, the term “**interest of record**” should be read broadly to ensure that this Court’s
26 interpretation is in harmony with all of the other provisions of the statute “and to avoid unreasonable
27 or absurd results, thereby giving effect to the Legislature’s intent.” *Torrealba*, 124 Nev. at 101, 178
28 P.3d at 721.

1 As for whether Sylvia possesses a document demonstrating an **interest of record** of her
2 ***interest***—the 2015 Quitclaim deed is preponderant proof. But there are plenty of other documents
3 including the Carson City Treasurer’s April 2021 letter which states she is an “owner” (Ex. 14,
4 APEN88 (emphasis added)), the tax records stating she is an “owner” (*id.* at APEN95), as well as
5 Elvin and Sylvia’s declarations confirming Sylvia’s ***interest*** in the Home, (*see* Ex. 20-21.) All of
6 these documents meet the broad definition of an **interest of record**. But the deed itself is important
7 to understand why Tri-Net’s *entire* litigation theory is incorrect that in 2015, Elvin and Sylvia
8 engaged in some type of *transfer of property*—instead Elvin and Sylvia merely *added* her to title to
9 memorialize her ***interest***. Tri-Net’s failure to understand what a quitclaim deed actually transfers
10 belies this claim—as well as Tri-Net’s citation to woefully out-of-date precedents. (*See* Tri-Net
11 Opp’n at 10:14 (quoting *Newitt v. Dawe*, 61 Nev. 472, 472, 133 P.2d 918, 918 (1943)).

12 a. **Tri-Net does not understand the minor differences**
13 **between a joint tenancy and a joint tenancy in common.**

14 “At common law, creation of a joint tenancy required four unities: interest, time, title, and
15 possession.” *Smolen v. Smolen*, 114 Nev. 342, 344-45, 956 P.2d 128, 130-31 (1988). “The common
16 law characterized each joint tenant as *possessing the entire estate, rather than a fractional share.*”
17 *United States v. Craft*, 535 U.S. 274, 280 (2002) (emphasis added). “The main difference between
18 a joint tenancy and a tenancy in common is that a joint tenant has a right of automatic inheritance
19 known as survivorship. Upon the death of one joint tenant, the tenant’s share in the property does
20 not pass through will or the rules of intestate succession; rather the remaining tenant or tenants
21 automatically inherit it.” *Id.* Importantly, Nevada “has long recognized the attributes of the common
22 law joint tenancy” but it long ago “*abandoned* complete adherence to the requirement of the manner
23 of acquisition.” *Smolen*, 114 Nev. at 344-45, 956 P.2d at 130-31 (emphasis added).

24 Put another way, Tri-Net’s attempt to impose some “magic words” and strict conformity to
25 the 1940s version of Nevada property law as it claims the 2015 quitclaim deed “does not contain
26 language creating a joint tenancy” is incorrect as a matter of Nevada law. (Tri-Net Opp’n at 10:15).
27 The law does not require magic words in a deed just an express declaration. *See* NRS 11.065(1)
28 (“Joint tenancy in real property may be created . . . when *expressly declared* . . .” (emphasis

1 added)). Tri-Net admits this express declaration exists in the document when it concedes “the deed
2 says ‘(Joint Tenants).’” (Tri-Net Opp’n at 10:16.) Thus, a Joint Tenancy exists and both Sylvia and
3 Elvin possess the entire estate.⁸ See NRS 11.065(1); see also *Craft*, 535 U.S. at 280 (“[J]oint tenants
4 have one and the same interest . . . held by one and the same undivided possession.”). Put another
5 way, and as Sylvia and Elvin have reiterated, they did not transfer the property from Elvin to
6 Sylvia—they memorialized Sylvia’s *interest*, and added Sylvia to the title because of her 2012
7 contributions to the purchase of the Home.

8 **2. A Quitclaim deed only conveys an *interest* in property.**

9 But what Tri-Net’s analysis fails to include in its Opposition is any type of discussion of the
10 deed and what a Quitclaim Deed in fact conveys—and more importantly for whether a “transfer of
11 property” occurred triggering NRS 179.1169—what a Quitclaim Deed does *not* convey. This failure
12 to properly research quitclaim deeds is fatal to Tri-Net’s arguments.

13 “A warranty deed to land conveys property; a quitclaim deed conveys the *grantor’s rights* in
14 that property, if any. We have long recognized the validity of quitclaim deeds, even if it turns out
15 that they convey nothing.” *Geodyne Energy Income Production Partnership I-E v. Newton Corp.*,
16 161 S.W.3d 482, 486 (Tex. 2005) (emphasis added); see also 26A C.J.S. *Deeds* § 14 *Quitclaim deed*
17 (2021) (“A quitclaim deed is one which purports to convey, and is understood to convey, nothing
18 more than the *interest* or estate in the property described of which the grantor is seized or possessed,
19

20
21 ⁸ Tri-Net spends an exorbitant amount of energy on Sylvia’s Homestead Declaration as some
22 type of proof that she is the sole owner. (Tri-Net Opp’n at 12-15.) As detailed *supra* n. 5, the
23 inclusion of this document is impermissible. Briefly, there are significant legal errors in Tri-Net’s
24 analysis—including the claim that “the statute does not provide for homestead exemptions for joint
25 tenants.” (Tri-Net Opp’n at 10:25.) This statement further reveals that Tri-Net does not understand
26 property law because the only difference between a Joint Tenant and a Joint Tenant in Common is
27 the right of survivorship which is provided to a Joint Tenancy. See *Craft*, 535 U.S. at 280. Indeed,
28 “[i]n order for one tenant to alienate his or her individual interest in the tenancy, the estate must be
severed—that is, converted to a tenancy in common with each tenant possessing an equal fractional
share.” *Id.* To confirm Tri-Net’s utter failure to actually research legal concepts before so brazenly
claiming Nevada does not allow a Joint Tenant to rely on a homestead, the Nevada Supreme Court
already held “a tenant in common or a joint tenant may acquire a homestead in the undivided
premises.” *Mullikan v. Jones*, 71 Nev. 14, 22, 278 P.2d 876, 880 (1955); see also *In re Hsia*, 183
B.R. 201, 204 (N.D. Cal. 1995) (“It has been held that each tenant of an undivided interest is entitled
to select a homestead on jointly held property.”).

1 if any, at the time, *rather than the property itself*." (emphasis added)). "In essence, a quitclaim deed
2 says, I give to you whatever *interest* I own; but I don't promise that I own *interest* at all." *United*
3 *States v. Orr*, 336 F.Supp.3d 732, 755 (W.D. Tex. 2018) (internal quotation marks omitted). Thus,
4 Tri-Net's statement "the April 6 deed legally transferred sole ownership to Sylvia Fred" is incorrect
5 as a matter of law. (Tri-Net Opp'n at 10:25.) Elvin added Sylvia as a Joint Tenant and the Quitclaim
6 deed at most *transferred his interest* but he could not *transfer his ownership* with the quitclaim
7 deed. Cf. NRS 179.1169(2) (requiring a "transfer of property" to trigger the provision). By relying
8 on a quitclaim deed, Sylvia and Elvin put the government on notice of her interest in the Home, and
9 the Tri-Net utterly failed to comply with its legal obligations under Nevada law.

10 Similar to Tri-Net's repeated violations of the Rules, repeated failure to adhere to deadlines,
11 and its complete failure to understand how constitutional law works—Tri-Net likewise does not
12 understand property law operates when it claims that a "person cannot retroactively 'correct'
13 property ownership records to change title from sole ownership to a joint tenancy." (Tri-Net Opp'n
14 at 11:16-18.) Sylvia has never argued anything of the sort. She stated "the deed merely *corrected*
15 the property records and *memorialized* Sylvia's status as a joint tenant because she provided funds
16 for the purchase in 2012." (Sylvia Mot. at 9 at n.5.) This is an accurate statement supported by both
17 law and facts—unlike any of Tri-Net's arguments.⁹

18 **4. Sylvia was not on notice of the forfeiture proceedings in 2012.**

19 In its last gasp to relitigate its utter failure to provide Sylvia notice prior to Tri-Net's
20 destruction of her Home, it tries to remove Sylvia's innocent property owner protections by
21 misreading several of the statute's terms. (See Tri-Net Opp'n at 9:18-19 ("Sylvia had constructive
22
23

24 ⁹ The Legislature's intent in including NRS 179.1169 is a laudable goal to avoid fraudulent
25 transfers of property. But the implementation of this goal is unconstitutional. Moreover, this policy
26 goal is not implicated or affected by the Court striking down the constitutionality of NRS 179.1169.
27 First, Sylvia has performed *zero* acts indicating this was a fraudulent transfer—she paid the property
28 taxes, utilities, and housed her family in the Home for several years following the 2015 Quitclaim
deed. Thus, there are no facts to support such a claim. Second, even if this provision were struck
down, it would not eliminate Tri-Net—or any other law enforcement entities—ability to bring a
fraudulent transfer claim to negate a transfer. See NRS Chapter 112 (Nevada's adoption of the
Uniform Fraudulent Transfer Act). Again, Sylvia and Elvin did not fraudulently transfer anything.

1 notice of the forfeiture action and cannot claim status as an innocent owner because she did not
2 acquire her *interest* without notice of the proceeding.”.) Like everything else, Tri-Net is wrong.

3 NRS 179.1169(2) provides “[i]f the purchaser acquires the *interest* after the seizure of the
4 property by the plaintiff, it is conclusively presumed that the *interest* has been acquired with notice
5 of the proceeding.” Again, Sylvia acquired her *interest* in the Home in 2012, she memorialized her
6 *interest* through her interest of record recorded in 2015. But more importantly, Tri-Net claims that
7 it “did not attempt to seize the property until after an amended default judgment had been entered on
8 May 8, 2019. In August 2019, Tri-Net obtained a lockout order for the [Home] based on the [void]
9 default judgment.” (Tri-Net Opp’n at 13:11-14.) Thus, and as Tri-Net concedes, it did not seize the
10 property until 2019 thus Sylvia’s innocent property owner interest holder status cannot be
11 extinguished.¹⁰

12 In sum, because Sylvia is a good faith purchaser for value, Sylvia and Elvin created the 2015
13 Quitclaim Deed (the interest of record), because Sylvia provided Elvin over \$12,000 (the fair value
14 for her *interest*), to purchase the Home in 2012 (acquiring her *interest* before the forfeiture
15 proceedings began or the facts and circumstances of the forfeiture proceedings). While the nature
16 of the Quitclaim deed creating a Joint Tenancy negates the idea there was a *transfer* of property
17 ownership (Sylvia was added to title) Sylvia easily satisfies NRS 179.1169(2) in the event the statute
18 survives constitutional review which it should not.

19 ///

20 ///

21 ///

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23
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25
26
27 ¹⁰ Nothing about this discussion extinguishes, waives, or abandons Sylvia and Elvin’s claim
28 that because the Home was seized by the *lis pendens* on April 1, 2015, that Tri-Net owes all of the
property taxes on the Home beginning on April 1, 2015 and continues to today.

1 **III. CONCLUSION**

2 Sylvia asks this Court to grant her partial summary judgment because Nevada's Civil
3 Forfeiture laws violate her Due Process rights.

4 Dated this 17th day of January 2023.

5 McDONALD CARANO LLP

6
7 By: 

8 Ryan J. Works, Esq. (NSBN 9224)
9 John A. Fortin, Esq. (NSBN 15221)
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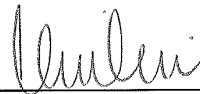
10
11 *Pro Bono Counsel for*
12 *Claimant Sylvia Fred*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on this 17th day of January 2023, I caused to be delivered via email, and hand delivery, true and correct copies of the above **SYLVIA FRED'S REPLY IN SUPPORT OF HER MOTION FOR PARTIAL SUMMARY JUDGMENT SEEKING A DECLARATION THAT NEVADA'S CIVIL FORFEITURE LAWS VIOLATE DUE PROCESS** 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

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



An employee of McDonald Carano LLP

1 CARSON CITY DISTRICT ATTORNEY
2 JASON D. WOODBURY

3 District Attorney
4 Nevada Bar No. 6870
5 BENJAMIN R. JOHNSON
6 Senior Deputy District Attorney
7 Nevada Bar No. 10632
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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 FIRST JUDICIAL DISTRICT COURT OF NEVADA
17 CARSON CITY

18 In re:

19 3587 Desatoya Drive, Carson City,
20 Nevada 89701, more particularly
21 described as all that certain parcel of land
22 situate in the City of Carson City, County
23 of Carson City and State of Nevada, being
24 known and designated as follows: Parcel
25 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

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 RESPONSE TO ELVIN FRED'S**
17 **OBJECTION TO TRI-NET'S UNTIMELY OPPOSITION TO MOTION FOR**
18 **SUMMARY JUDGMENT**

19 COMES NOW, Plaintiff/Counterdefendant, the INVESTIGATION DIVISION OF
20 THE DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF NEVADA (Tri-Net
21 Narcotics Task Force (TRI NET)), by and through its counsel of record, JASON D.
22 WOODBURY, Carson City District Attorney, and BENJAMIN R. JOHNSON, Senior
23 Deputy District Attorney, and submits this Response to Elvin Fred's Objection to Tri-
24 Net's Untimely Opposition to Motion for Summary Judgment.

25 Despite ELVIN FRED's histrionics, TRI NET did not "carelessly [forget] it

1 needed to also respond to Elvin's [motion] when it improperly moved Ex Parte for an
2 extension of time." *Objection* at 1:24-26. Rather, the haphazard use of omnibus
3 pleadings by Defendants/Counterclaimants did not make it clear that ELVIN FRED was
4 filing a separate partial motion for summary judgment. Indeed, the brief was styled as
5 a "Joinder" to SYLVIA FRED's partial motion for summary judgment and a significant
6 portion of the brief is spent reciting the same statement of facts as SYLVIA FRED's
7 motion and then requests joinder to SYLVIA FRED's motion. Therefore, when TRI NET
8 moved for an extension of time to respond to SYLVIA FRED's motion, it was
9 necessarily understood to include an extension to respond to ELVIN FRED's joinder.

10 This is not the first time that Defendants/Counterclaimant's slapdash use of an
11 "omnibus" brief has led to confusion and accusations that TRI NET is ignoring the rules.
12 The same confusion occurred with other omnibus pleadings from
13 Defendants/Counterclaimants such as the Motion to Strike/Opposition/Counter-motion
14 to Compel filed on December 23, 2022. Because the brief contained two separate
15 "motions", TRI NET naturally filed an opposition on January 6, 2023. Yet
16 Defendants/Counterclaimants then cry foul and argue that TRI NET is intentionally
17 violating the rules by "smuggling" an untimely reply into the Response. It was the
18 FRED's choice to style their pleading in such a way that required a response and they
19 cannot later claim abuse when a response is in fact submitted.

20 Obviously, this chaotic litigation practice has only led to confusion in the record
21 and has not reduced resources or lead to more efficient motion practice. TRI NET has
22 never acted in bad faith or intentionally violated any of the local rules or Nevada Rules
23 of Civil Procedure.

24 ///

25 ///

1 For these reasons, the Court should consider the Opposition to Elvin Fred's
2 Joinder submitted by TRI NET.

3 DATED this 23rd day of January, 2023.

4 CARSON CITY DISTRICT ATTORNEY

5
6
7 
JASON D. WOODBURY

District Attorney

Benjamin R. Johnson

Senior Deputy District Attorney

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E-mail: bjohnson@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 23rd day of January, 2023, I served a true and correct copy of the foregoing **PLAINTIFF/COUNTERDEFENDANT'S RESPONSE TO ELVIN FRED'S OBJECTION TO TRI-NET'S UNTIMELY OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** via electronic mail to the following:

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



CARSON CITY DISTRICT ATTORNEY
JASON D. WOODBURY

District Attorney

Bar No. 6870

BENJAMIN R. JOHNSON

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bjohnson@carson.org

Representing Plaintiff

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

In re:

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

Case No. 15 OC 00074 1B

Dept. No. 2

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that on January 26, 2023, the above-captioned Court entered
an Order Granting Plaintiff/Counterdefendant's Motion for Stay. A copy of said Order is
attached hereto.

DATED this 27th 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 27th 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

REC'D & FILED

2023 JAN 26 AM 10:54

WILLIAM SCOTT HOEN
CLERK

BY **B. SHADRON**
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
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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 MOTION FOR STAY**

10 This matter comes before the Court on *Plaintiff/Counterdefendant's Motion for*
11 *Stay ("Motion")* filed December 15, 2022. A response to the *Motion* was included with
12 the *Elvin Fred and Sylvia Fred's Motion to Strike Tri-Net's Improper Ex Parte Motion*
13 *for an Extension to Respond to Sylvia's Partial Motion for Summary Judgment and*
14 *Alternatively, Elvin Fred and Sylvia Fred's Opposition and Elvin Fred and Sylvia Fred's*
15 *Motion to Strike Tri-Net's Improper Motion to Stay and Alternatively Elvin Fred and*
16 *Sylvia Fred's Opposition and Sylvia Fred's Countermotion to Compel Production of*
17 *Documents* filed December 23, 2022. *Plaintiff/Counterdefendant's Response to Elvin*
18 *Fred and Sylvia Fred's Motion to Strike Tri-Net's Improper Motion to Stay and*
19 *Alternatively Elvin Fred and Sylvia Fred's Opposition* was filed January 6, 2023. On
20 January 12, 2023, *Plaintiff/Counterdefendant's Supplement to Motion to Stay* was filed.
21 Finally, the *Elvin Fred and Sylvia Fred's Reply in Support of their Motion to Strike Tri-*
22 *Net's Motion to Stay* was filed on January 17, 2023.

1 This Court, having reviewed all the pleadings on this issue and being fully
2 advised on the premises concerning the issue before it, HEREBY GRANTS the *Motion*.

3 I. DISCUSSION

4 On November 2, 2022, ELVIN FRED filed a *Petition for Writ of Prohibition and*
5 *Writ of Mandamus* (“*Petition*”) with the Nevada Supreme Court. The *Petition* concerns
6 the legal viability of the forfeiture action in this case, and its ultimate adjudication is
7 likely to determine whether that action may proceed or whether it is barred as a matter
8 of law. As such, the outcome of the *Petition* is important for both the parties and this
9 Court to know, as it has a substantial effect on the proceedings in the case pending
10 with this Court. On January 12, 2023, the Nevada Supreme Court ordered an answer
11 in the case, to be filed by February 9, 2023.

12 The Nevada Supreme Court has recognized,

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

16 *Maheu v. Eighth Jud. Dist. Court*, 89 Nev. 214, 217, 510 P.2d 627, 628 (quoting *Landis*
17 *v. North American Co.*, 299 U.S. 248, 254-55 (1936)). Generally, a stay is appropriate
18 when there is a pending matter in another court which could impact the proceedings
19 which are requested to be stayed. See *Mikohn Gaming Corp. v. McCrea*, 120 Nev.
20 248, 89 P.3d 36 (Nev. 2004). This is the circumstance in this case.

21 In addition, NRAP 8(c) specifically authorized a district court to determine
22 whether a stay is appropriate and provides four factors for courts to consider in
23 evaluating a request for a stay. Those factors are (1) whether the object of the
24 petition will be defeated if the stay or injunction is denied; (2) whether the petitioner
25

1 will suffer irreparable or serious injury if the stay is denied; (3) whether the
2 respondent or real party in interest will suffer irreparable or serious injury if the stay or
3 injunction is granted; and (4) whether the petitioner is likely to prevail on the merits of
4 the petition. NRAP 8(c). No one factor is dispositive or necessarily more important
5 than another, and a particularly compelling circumstance regarding a single factor
6 may support a request for stay. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248,
7 252, 89 P.3d 36, 38 (Nev. 2004) ("We have not indicated that any one factor carries
8 more weight than the others, [and] if one or two factors are especially strong, they
9 may counterbalance other weak factors.")

10 Denying the stay would allow this litigation to simultaneously proceed on two
11 parallel tracks, one in this Court and one in the Nevada Supreme Court. On its face,
12 such a scenario is inconsistent with and disruptive to the orderly and efficient
13 adjudication of the issues presented in this case. Insofar as the object of the *Petition*
14 is to frame and potentially circumscribe the issues which are to be addressed in the
15 proceedings before this Court, denying a stay would frustrate the object of the
16 proceedings in the Nevada Supreme Court. As such, the first factor weighs in favor of
17 granting the requested stay.

18 Turning to the potential injury to the parties, this Court holds that this factor also
19 weighs in favor of granting a stay. The property which is the subject of the forfeiture
20 action is in the possession of SYLVIA FRED, and granting a stay will not affect the
21 status of that possession. Furthermore, the procedural posture of the forfeiture action
22 is important for the Plaintiff/Counterdefendant, TRI NET, to know in order to fairly
23 protect its interests in these proceedings.


24 As to the final NRAP 8(c) factor, this Court deems that factor to be neutral in the
25 stay analysis, weighing neither in favor nor against granting a stay.

1 On balance, the NRAP 8(c) factors weigh in favor of granting the *Motion* and
2 imposing a stay on the proceedings in this Court, pending final adjudication of the
3 issues presented in the *Petition* by the Nevada Supreme Court.

4 II. ORDER

5 For the reasons set forth herein, *Plaintiff/Counterdefendant's Motion for Stay* is
6 GRANTED. Further proceedings in this case are HEREBY STAYED pending further
7 order of this Court.

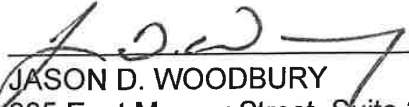
8 DATED this 26 day of January, 2023.

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11 JAMES E. WILSON
12 District Judge
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1 Submitted January 20, 2023 by:

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WILLIAM SCOTT HESS
CLERK

BY DEPUTY

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

-oOo-

CASE NO. 15 OC 00074 1B

DEPT. 2

IN RE:

**3587 DESATOYA DRIVE, CARSON CITY,
NEVADA 89701, CARSON CITY,
ASSESSOR'S PARCEL NUMBER 010-
443-11,**

SYLVIA FRED, AN INDIVIDUAL,

**COUNTERCLAIMANT,
VS.**

**STATE OF NEVADA EX REL.,
INVESTIGATION DIVISION OF THE
NEVADA STATE POLICE (TRI-NET
NARCOTICS TASK FORCE),**

COUNTERDEFENDANT.

EVIN FRED, AN INDIVIDUAL

COUNTERCLAIMANT,

VS.

**STATE OF NEVADA EX REL.,
INVESTIGATION DIVISION OF THE
NEVADA STATE POLICE (TRI-NET
NARCOTICS TASK FORCE),**

COUNTERDEFENDANT.

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the envelope sealed and then deposited in the Court's central mailing basket in the court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for mailing.

Billie Shadron
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11 *Pro Bono Counsel for*
12 *Claimants Elvin Fred & Sylvia Fred*

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

15 In Re:
16 3587 Desatoya Drive, Carson City, Nevada
17 89701, Carson City, Assessor's Parcel
18 Number: 010-443-11.

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

19 SYLVIA FRED, an individual,
20 Counterclaimant,
21 v.
22 STATE OF NEVADA ex rel.
23 INVESTIGATION DIVISION OF THE
24 NEVADA STATE POLICE (TRI-NET
25 NARCOTICS TASK FORCE),
26 Counterdefendant,

**ELVIN FRED AND SYLVIA FRED'S
MOTION FOR LEAVE OF THIS COURT
UNDER FJDCR 3.13**

AND

**ELVIN FRED AND SYLVIA FRED'S
MOTION UNDER NRCP 59(e) TO
RECONSIDER THE DISTRICT COURT'S
GRANT OF A STAY IN THE
FORFEITURE AND COUNTERCLAIM
PROCEEDING**

19 ELVIN FRED, an individual,
20 Counterclaimant,
21 v.
22 STATE OF NEVADA ex rel.
23 INVESTIGATION DIVISION OF THE
24 NEVADA STATE POLICE (TRI-NET
25 NARCOTICS TASK FORCE),
26 Counterdefendant,

AND

**SYLVIA FRED'S MOTION UNDER NRCP
59(e) TO RECONSIDER THE DISTRICT
COURT'S DENIAL OF CONSOLIDATION
AND LIFTING OF STAY IN THE TAX
PROCEEDING**

AND

**REQUEST FOR ORAL ARGUMENT
UNDER FJDCR 3.12**

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WILLIAM SCOTT HUGHES
CLERK

BY ~~S. BARAJ~~ DEPUTY

Under First Judicial District Court Rule (“FJDCR”) 3.13, Claimants/Counterclaimants Sylvia Fred (“Sylvia”) and Elvin Fred (“Elvin”) asks for leave of this Court to reconsider three decisions entered by the district court just before it recused itself from this matter.¹ Elvin and Sylvia move under NRCP 59(e) requesting that this Court reconsider the district court’s orders as each commit significant and manifest errors of law and fact such that if these decisions stand, a manifest injustice will be inflicted on Sylvia and Elvin. Their Home lies in ruins and every day these matters languish, their inability to enjoy their Home inflicts further harm on them. Sylvia and Elvin similarly request that this Court order oral arguments, that way they can be heard on these pressing questions and explain why relief should be granted. *See* FJDCR 3.12[.]

This Motion is based on the following memorandum of points and authorities, the 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 7th day of February 2023.

McDONALD CARANO LLP

By:


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

¹ Judge Wilson (“district court”) granted a stay in Case No. 15 OC 00074 1B (“Forfeiture and Counterclaim Proceedings”) and denied consolidation of Case No. 21 RP 00005 1B (“Tax Proceedings”) with the Forfeiture and Counterclaim Proceeding while it simultaneously denied lifting the stay in the Tax Proceeding. Shortly after these decisions, the district court recused in the Forfeiture and Counterclaim Proceeding—but has not recused in the Tax Proceeding. (*See* Order, February 1, 2023, on file.). As explained to State of Nevada *ex. rel* Investigation Division of the Nevada State Police (Tri-Net Narcotics Task Force) (“Tri-Net”) the facts and witnesses will be the same in the Tax Proceeding. (Ex. 1, Fortin Decl. ¶ 11.) Even if the district court recuses in the Tax Proceeding, because the Forfeiture and Counterclaims began in 2015, and is the oldest pending matter this Court possesses jurisdiction to consolidate the Forfeiture and Counterclaim Proceeding with the Tax Proceeding as the Tax Proceeding began in 2021.

MEMORANDUM OF POINTS AND AUTHORITIES²

I. INTRODUCTION

This Forfeiture and Counterclaim Proceeding enters its eighth year in April. The district court stayed those proceedings concluding that “[o]n balance, the NRAP 8(c) factors weigh in favor of granting the Motion and imposing a stay on the proceedings in this Court, pending final adjudication of the issues presented in the Petition by the Nevada Supreme Court.” (Order Case No. 15 OC 00074 1B, at 5:1-3, Jan. 26, 2023, on file (“Stay Order”).) On the same day, the district court denied Sylvia’s request to consolidate the Forfeiture and Counterclaim Proceedings with the Tax Proceedings because the district court found “[t]he two cases” present “different parties, different facts, and different questions of law.” (Order Case No. 21 RP 00005 1B at 3:5-6 (“Consolidation Order”).) Similarly, the district court determined lifting “the stay in the Tax Proceeding is premature.” (*Id.* at 3:10.) The district court then recused itself from the Forfeiture and Counterclaim Proceeding. (*See* Order, Feb. 1, 2023, on file (“Recusal Order”).)

The Stay and Consolidation Orders misunderstand material facts to which the district court misapplied several points of law that directly control the dispositive issue—the promotion of judicial economy and efficiency in resolving these matters with interrelated facts and law expeditiously. Because Sylvia and Elvin’s request for leave and motion to reconsider these decisions is timely, *see* NRCP 59(e), this Court should order Tri-Net to respond, *see* FJDCR 3.13(b), and order oral arguments, *see* FJDCR 3.12(a). Once this Court considers all the facts and law, it should lift the stays, consolidate these matters, and set a trial date so that the Parties and this Court may “secure the just, speedy, and inexpensive determination of” these proceedings. NRCP 1.

II. FACTS NECESSARY TO UNDERSTAND THE RECONSIDERATION REQUESTS

A. Tri-Net Begins the Forfeiture Proceedings in Case No. 15 OC 0074 1B

In March 2015, Elvin was arrested and charged with violating the Uniform Controlled

² The Parties stipulated to and the Court ordered that FJDCR 3.23(b) would be modified such that “all future Motion practice in this matter” will permit “a moving party’s initial points and authorities, and the opposing points and authorities, will not exceed 25 pages. Points and authorities in reply will not exceed 15 pages.” (Stip. and Ord., Nov. 18, 2022, on file.)

1 Substances Act and later pleaded guilty. *See Fred (Elvin) v. State*, Case No. 72521 (Ord. of
2 Affirmance, Mar. 14, 2018) (detailing the facts of the criminal proceedings). Tri-Net began the
3 forfeiture proceedings on the real property at 3587 Desatoya Drive Carson City, Nevada 89701
4 (“Home”) and simultaneously filed and recorded a *lis pendens*. (*See* Compl., Apr. 1, 2015, on file;
5 Notice of Lis Pendens, Apr. 1, 2015, on file.) After clouding title to the Home, Tri-Net then served
6 Elvin with a summons and a copy of the complaint. (*See* Summons, Apr. 3, 2015, on file.) As
7 mandated by NRS 179.1173(2), Tri-Net and Elvin entered into a stipulation and the district court
8 ordered a stay to the proceedings pending resolution of Elvin’s criminal proceedings. (*See* Not. of
9 Entry of Ord., Apr. 29, 2015, on file.) Tri-Net mailed Sylvia notice of the stay in Minnesota. (*See*
10 *id.*) At oral arguments in October 2021, before the Nevada Supreme Court, Tri-Net admitted that in
11 April 2015, it understood that Sylvia was making a claim as a property
12 owner. (*See* [https://nvcourts.gov/Supreme/Arguments/Recordings/80194_In_Re_3587_Destoya_D](https://nvcourts.gov/Supreme/Arguments/Recordings/80194_In_Re_3587_Destoya_Dr_Carson_City,_Nev_89701/)
13 [r_Carson_City,_Nev_89701/](https://nvcourts.gov/Supreme/Arguments/Recordings/80194_In_Re_3587_Destoya_Dr_Carson_City,_Nev_89701/). (hereinafter “Oral Arguments”).)

14 Several years later, Elvin’s criminal proceedings reached finality. *See Fred*, Case No. 72521.
15 Soon after, Tri-Net moved to lift the stay—without providing notice to either Elvin or Sylvia. (*See*
16 Sylvia’s Verified Answer & Countercl., ¶ 19, Jun. 28, 2022, on file (“Even though Tri-Net knew
17 Sylvia was an interested claimant as defined by NRS 179.1158 and provided her notice of the stay
18 in the first place, Tri-Net did not provide Sylvia with any notice (including serving her the complaint
19 or the summons as required by Nevada law) that the forfeiture proceedings had resumed.”); Elvin
20 Answer & Countercl., ¶¶ 27, 30, Oct. 7, 2022, on file (“Thus, even though Elvin was easily accessible
21 to Tri-Net to determine whether Graham still represented Elvin, Tri-Net continued to *only* send its
22 notices, motions, and other pleadings to Graham.” “Elvin never received any notification that Tri-
23 Net resumed the forfeiture proceeding or that Tri-Net sought a default judgment on the Home.”).
24 Tri-Net eventually obtained a default judgment in the forfeiture proceeding. (*See* Am. Default J.,
25 May 10, 2019, on file.)

26 B. Sylvia Intervenes, Challenges the Default Judgment, and the District Court Denies
27 Sylvia Relief.

28 After Tri-Net trespassed on the Freds’ property and attached a 5-day at-will eviction notice

Sylvia challenged the eviction with Tri-Net officers. (*See* Sylvia’s Mot. for Partial Summ. J., Dec. 8, 2022, on file; *see also id.* at App’x at Ex. 20-21, S. Fred email communications with Tri-Net.) Tri-Net evicted the family on August 12, 2019, and shortly thereafter, Sylvia moved in the district court to set aside the default judgment. (*See* Mot. to Vacate Default J., Oct. 4, 2019, on file.) Without any opposition by Tri-Net, the district court denied Sylvia’s Motion. (*See* Order, Nov. 8, 2019, on file.) Sylvia timely appealed. *See In re: 3587 Desatoya Drive*, Case No. 80194. Following undersigned counsel’s association as pro bono counsel, Sylvia and Tri-Net proceeded on appeal by fully briefing the arguments related to the void default judgment and Tri-Net’s claim that Sylvia lacked standing to challenge the default judgment. (*See* Compl. ¶ 15, Case No. 21 RP 0005 1B, May 19, 2021, on file (“On January 22, 2021, Sylvia filed her opening brief, Tri-Net filed its answering brief on March 8, 2021, and on April 7, 2021, Sylvia filed her reply brief.”). Days after completing briefing the appeal, the Carson City Tax Collector and *ex officio* Tax Receiver, Andrew Rasor, (“Rasor”) and the Carson City Board of Supervisors (“Board”), began tax foreclosure proceedings on the Home.

C. Tri-Net Failed to Pay the Property Taxes and Carson City, Commenced Delinquent Tax Foreclosure Proceedings and Sylvia Brought Case No. 21 RP 00005 1B to Enjoin the Tax Foreclosure Process.

On April 12, 2021, Sylvia received a letter in the mail from the Carson City Treasurer which stated:

In accordance with NRS 361.5648, 36.565, and 361.585, unless the following delinquent taxes on your property in the name of **SYLVIA FRED**, owner(s), are **paid in full on or before the 7th Monday in June, 2021**, a Deed will be issued to Carson City.

...
The above-mentioned parcel [Parcel Number: 010-442-11 Address 3587 Desatoya Dr.] will be subject to the public sale process upon approval from the Carson City Board of Supervisors.

(*See* Compl. ¶ 16, Case No. 21 RP 0005 1B; *id.* at Ex. 1, Carson City Treasurer’s Letter, dated Apr. 7, 2021 (emphasis in original).) Put more simply, Tri-Net failed to pay the property taxes for the entire time it possessed the Home after it obtained the amended default judgment.

Thus, in order to protect her property rights, Sylvia brought suit (the Tax Proceeding) against the Rasor, the Board, and Tri-Net. (*See id.*) She brought declaratory relief and, in the alternative, a

writ of prohibition. (*See id.*) As she began this other litigation, Sylvia moved on an order shortening time for a temporary restraining order and preliminary injunction. (*See* Mot. for Prelim. Injunction on OST, Case No. 21 RP 00005 1B, May 19, 2021, on file.) Soon after, all of the Parties stipulated, and the district court enjoined the delinquent tax foreclosure proceedings. (*See* Order, Jun. 3, 2021, on file.) Specifically,

1) Defendants/Respondents/Real Party in Interest stipulate and agree to acceptance of service of the Complaint or in the alternative the Writ of Prohibition and the Motion;

2) to pause and arrest any and all delinquent tax foreclosure proceedings on the property, . . .

3) to stay all filings, discovery, and deadlines including all answers or oppositions, and early case-conference requirements under NRCP 16.1 in this matter until the Appeal reaches finality;

4) appear and check in with the Court in one hundred and twenty (120) days for a status conference or at the court's convenience from entry of this Order to inform the Court on the status and need to continue this order and its effects or to proceed with this litigation;

(*Id.*) Despite this clear indication—and stipulation to stay the Tax Proceedings—that Sylvia is an owner of the Home, at the oral arguments before the Nevada Supreme Court on October 12, 2021, Tri-Net claimed Sylvia was not an owner of the Home. *See* Oral Arguments.

D. Sylvia Prevails Before the Nevada Supreme Court, Remand Occurs, and Following Tri-Net Filing its Amended Complaint, both Sylvia and Elvin Counterclaim.

Three days after listening to oral arguments, the Nevada Supreme Court concluded that Sylvia possessed standing, that Tri-Net's default judgment was void, and remanded with instructions to the district court to vacate Tri-Net's default judgment. *See In re: 3587 Desatoya Drive*, Case No. 80194, 2021 WL 4847506 (Order of Reversal and Remand, Oct. 15, 2021). The district court then vacated the default judgment and instructed Tri-Net to return possession of the Home to Sylvia. (*See* Not. of Entry of Ord. J., Mar. 14, 2022, on file.) When the Freds obtained possession of the Home and reentered to assess the damage, Tri-Net's utter failure to maintain the property revealed catastrophic damage as it is now completely uninhabitable. (*See* Sylvia's Mot. for Partial Summ. J., Dec. 8, 2022, on file; *see also id.* at App'x Ex. 17 (showing a video of the black mold on the walls, ceiling fans, and in the bathrooms).)

Undeterred by its destruction of the Home, Tri-Net amended its pleadings, named Sylvia as a party, and (finally) served Sylvia a copy of the summons and its amended complaint so that it could continue trying to forfeit Sylvia and Elvin's Home. (*See* Pl.'s FAC, Mar. 22, 2002, on file; Affidavit of Service of FAC, Mar. 24, 2022, on file.) Sylvia then moved to dismiss Tri-Net's complaint on multiple grounds and after full briefing, the district court denied Sylvia's motion. (*See, e.g.,* Sylvia Mot. to Dismiss, May 3, 2022, on file; Tri-Net Opp'n, May 20, 2022, on file; Sylvia Reply, May 31, 2022, on file; Order, Jun. 9, 2022, on file.) Sylvia then answered and counterclaimed and Tri-Net answered. (*See* Sylvia Verified Answer & Countercl., Jun. 28, 2022, on file; Tri-Net Answer, Sept. 16, 2022, on file.)

As this occurred, Elvin moved to dismiss the civil forfeiture complaint on constitutional grounds and after full briefing, the district court denied Elvin's Motion. (*See, e.g.,* Elvin Mot. to Dismiss, Jul. 15, 2021, on file; Tri-Net Opp'n to Mot. to Dismiss, Aug. 26, 2022, on file; Elvin Reply, Sept. 2, 2022, on file; Order, Sept. 21, 2022, on file.) Elvin then answered, counterclaimed, and Tri-Net answered. (*See* Elvin Verified Answer & Countercl., Oct. 7, 2022, on file; Tri-Net Answer, Dec. 2, 2022, on file.) Elvin likewise filed for Mandamus and Prohibition relief in the Nevada Supreme Court claiming the district court lacked jurisdiction under Nevada's Double Jeopardy Clause to impose a second, and successive punishment on him in this civil forfeiture proceeding. *See* Pet. for Writ, Case No. 85590, Nov. 2, 2022.

The Parties then began discovery and engaged in Motion practice in the ordinary course. (*See* JCCR, Nov. 8, 2022, on file (discovery for Sylvia opened on November 9, 2022); Supplemental JCCR, Jan. 9, 2023, on file (discovery opened for Elvin on January 4, 2023).) Once the Forfeiture and Counterclaim proceeding discovery opened, Sylvia moved to consolidate and further move the Tax Proceeding along by lifting the stay. (*See* Mot. to Consolidate, Dec. 12, 2022, on file.) Tri-Net then shifted its dilatory conduct from merely missing deadlines to obstructing the entire discovery process of both proceedings.³

³ For a detailed description of all of Tri-Net's dilatory conduct. (*See* Sylvia & Elvin Mot. to Strike, Dec. 23, 2022, on file; *see also id.* at Ex. 1, J. Fortin Decl. (detailing that from July 1, 2022, to today, Tri-Net has not timely filed pleadings, motions, and discovery).)

E. Sylvia Asks the District Court to Consolidate the Forfeiture and Counterclaim Proceeding with the Tax Proceeding.

Both Sylvia and Elvin’s counterclaims seek monetary relief for Tri-Net’s failure to pay property taxes. (See Sylvia Verified Answer & Countercl. ¶ 31 (“From June 2019 through March 2022, Tri-Net as the occupier and guardians of the Home pending resolution of Sylvia’s appeal, and the propriety of the Home’s ownership, was obligated to perform basic property ownership function like maintaining the property, ensuring the property was not damaged, ensuring the property remained habitable, paying the property taxes, and paying the utilities on the Home. Tri-Net failed to perform any of these functions.”); Elvin Verified Answer & Countercl. ¶ 54 (providing substantially similar allegations).) Indeed, Sylvia and Elvin’s waste, negligence, and slander of title counterclaims all relate to and seek damages for Tri-Net’s failure to pay the property taxes. (Sylvia Verified Answer & Countercl. ¶¶ 72-78 (waste counterclaim); *id.* ¶¶ 89-94 (negligence counterclaim); *id.* ¶¶ 95-100 (slander of title counterclaim); Elvin Verified Answer & Countercl. ¶¶ 106-112 (waste counterclaim); *id.* ¶¶ 128-33 (negligence counterclaim); *id.* ¶¶ 134-39 (slander of title counterclaim).) In the Tax Proceeding “Sylvia seeks a declaration from this Court determining who was obligated to pay the property taxes on the Subject Property during the pendency of Sylvia’s appeal.” (Sylvia Compl., Case No. 21 RP 00005 1B, ¶ 32.)

As a result, Sylvia moved to consolidate the Forfeiture and Counterclaim Proceedings with the Tax Proceedings, and asked the district court to lift the stay in the Tax Proceedings and order the Defendants to answer and proceed with discovery. After full briefing by the Parties, the district court denied Sylvia’s Motion.⁴ (See Sylvia’s Mot. to Consolidate, Dec. 15, 2022, on file; Tri-Net Opp’n, Dec. 27, 2022, on file; Sylvia Reply ISO to Consolidate, Jan. 9, 2022 on file; Order, Jan. 26, 2023 (“Consolidation Order”).)

⁴ As detailed in Sylvia’s Reply in support of Consolidation, “Elvin requested and is waiting for the Legal Aid Center of Southern Nevada to provide him a Statement of Legal Aid (“SOLA”) to minimize the costs to him so that Elvin can move to intervene under NRCP 24 in the Tax Proceedings.” (Sylvia Reply ISO Consolidate at 3 n.1.) Since that filing, Elvin obtained his SOLA and intends to intervene whenever the stay is lifted in the Tax Proceeding.

F. Unprepared to Engage in Civil Litigation, Tri-Net Moves to Stay the Forfeiture and Counterclaim Proceedings Based on Elvin’s Writ Petition.

As Sylvia sought to promote judicial economy and efficiency by consolidating these related matters so that a singular resolution of all these proceedings could occur, Tri-Net sought to delay resolution of *everything* at all costs. Indeed, Tri-Net moved to stay the Forfeiture and Counterclaim Proceeding claiming that NRAP 8(c) provides a real party in interest authority to obtain a stay based on a petitioner’s writ request to the Nevada Supreme Court. (*See* Tri-Net’s Mot. to Stay, Dec. 15, 2022, on file.) Hardly.

Sylvia and Elvin moved to strike and in the alternative opposed Tri-Net’s Motion to Stay and after full briefing, the district court granted Tri-Net a blanket stay to these proceedings pending resolution of Elvin’s Petition for a Writ of Prohibition and Mandamus. (*See* Sylvia and Elvin Mot. to Strike and Opp’n, Dec. 23, 2022; Tri-Net’s Response to Mot. to Strike, Jan. 6, 2023, on file; Sylvia and Elvin Reply ISO Mot. to Strike, Jan. 13, 2023, on file.)⁵ The district court granted Tri-Net’s request and stayed all these proceedings. (*See* Order (“Stay Order”).) The district court then recused itself from presiding over the Forfeiture and Counterclaim Proceeding but has not recused from the Tax Proceeding. (Order) On February 3, 2023, Sylvia and Elvin asked Tri-Net to stipulate to narrow the scope of the stay to only the forfeiture proceeding—Tri-Net refused. (*See* Ex. 1, J. Fortin Decl.) Sylvia and Elvin, therefore, request leave of this Court under FJDCR 3.12 and move under NRCP 59(e) so that this Court may reconsider and correct these manifest errors of law and fact the district court made in its Stay and Consolidation Orders.

III. LEGAL ARGUMENT

A. Sylvia and Elvin Request Leave of Court so that this Court may Reconsider the District Court’s Stay and Consolidation Orders.

FJDCR 3.13(a) provides

Leave required. Issues once heard and disposed of will not be renewed in the same

⁵ As detailed by Sylvia and Elvin in their Reply in support of their Motion to Strike, Tri-Net violated FJDCR 3.9 when it “smuggle[d] its untimely Reply to its Motion to Stay” within Tri-Net’s Response. (Reply at 2:18-19.)

1 cause except by leave of court granted upon motion. The court may reconsider a
2 decision if the court overlooked or misunderstood a material fact, or overlooked,
misunderstood, or misapplied law that directly controls a dispositive issue.

3 As demonstrated below, the district court's Stay Order overlooked material facts and
4 misapplied law that directly controls whether a stay should be entered in the Forfeiture and
5 Counterclaim proceeding. (*See* Stay Order.) NRAP 8(c) does not support awarding a stay to Tri-
6 Net when Elvin would not have been permitted to stay these proceedings. Additionally, the district
7 court's Consolidation Order is flawed on several grounds because it wholly overlooks Sylvia's (and
8 Elvin's) counterclaims coupled with the declaratory relief Sylvia seeks in the Tax Proceeding. (*See*
9 Consolidation Order.) It is inescapable that the same facts and the same law applies to both
10 proceedings—Sylvia and Elvin seek damages (the taxes) on the Home beginning on April 1, 2015,
11 through today because Tri-Net clouded title to their Home through the lis pendens. The two
12 proceedings simply ask for the taxes to paid—for the period of 2015-2018 to Sylvia and from 2019
13 to the present to Rasor and the Board—to different entities because of Tri-Net's decision to enter a
14 lis pendens and try and forfeit the Home. Indeed, just last week, the Nevada Supreme Court
15 reaffirmed that clouding title through a lis pendens can cause "substantial hardship to the property
16 owner." *Tahican, LLC v. Eighth Jud. Dist. Ct.*, 139 Nev., Adv. Op. 2, ___ P.3d ___, (Slip Op. at 8)
17 (*Denying Petition*, Feb. 2, 2023). Put another way, every day these proceedings continue to languish
18 with no forward momentum to resolution *increases* the monetary damages owed to Sylvia and Rasor
19 and the Board.

20 The district court's misapplication of material facts and dispositive law is sufficient for this
21 Court to grant leave to Sylvia and Elvin, consider the below Motions to Reconsider, *see* NRCP 59,
22 order Tri-Net to respond, *see* FJDCR 3.13(b), and order oral arguments so that Sylvia and Elvin can
23 be heard on their requests, *see* FJDCR 3.12.

24 B. This Court Should Reconsider the Erroneous Stay Order

25 This Court possesses inherent authority to reconsider a prior order. *See Trail v. Faretto*, 91
26 Nev. 401, 403, 536 P.3d 1026, 1027 (1975) ("[A] court may, for sufficient cause shown, amend,
27 correct, resettle, modify, or vacate, as the case may be, an order previously made and entered on the
28 motion in the progress of the cause or proceeding."). The Court also possesses explicit authority to

reconsider a prior order under FJDCR 3.13 and NRCP 59. Among the “basic grounds” for reconsideration are “correct[ing] manifest errors of law or fact,” and the need “to prevent injustice.” *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010) (internal quotation marks omitted). When alleging a manifest error of law, the moving party must show that the court committed clear error or that the decision was manifestly unjust. *See School Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

The district court relied on two grounds to grant a stay: (1) NRAP 8(c), and (2) its inherent authority “to control the disposition of the causes on its docket.” *Maheu v. Eighth Jud. Dist. Ct.*, 89 Nev. 214, 217, 510 P.3d 627, 628 (1972) (quoting *Landis v. North Am. Co.*, 229 U.S. 248, 254-55 (1936)). The district court committed clear error in applying the law to the facts such that maintaining the stay will be manifestly unjust.

1. The district court committed manifests error of law and fact as it stayed the forfeiture and counterclaim proceedings under NRAP 8(c).

The district court incorrectly granted a stay under NRAP 8(c) to a real party in interest—in violation of the plain language of the Rule. NRAP 8(c) provides:

In deciding whether to issue a stay or injunction, the Supreme Court or Court of Appeals will 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 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 the district court to rely on this Rule to impose 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 this Rule to request a stay. *See McKay v. Bd of Cnty. 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.”). The district court’s order in facts adds words and rearranges several of them to conclude a stay may be granted under NRAP 8(c)—this is clear error. *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.”). There is no published opinion that Tri-Net

1 cited to nor that Elvin and Sylvia can find that has ever been presented in this procedural posture
2 where the Nevada Supreme Court agreed to stay discovery into counterclaims unrelated to a petition
3 that an appellee or a real party in interest brought.⁶ This is because only an appellant/petitioner may
4 rely on this Rule.

5 In short, Elvin did not move for a stay, he does not want a stay, and as shown below, had
6 Elvin moved to stay these proceedings, Elvin's request would have been *denied*. Thus, any reliance
7 on NRAP 8(c) to award Tri-Net a stay because of Elvin's Petition is clear error.

8 **a. The object of Elvin's Petition will not be defeated absent a stay.**

9 Under NRAP 8(c), the district court needed to "define the object of an appeal" or petition.
10 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252, 89 P.3d 36, 38 (2004). The district court
11 found "the object of the Petition is to frame and potentially circumscribe the issues which are to be
12 addressed in the proceedings before this Court, denying a stay would frustrate the object of the
13 proceedings in the Nevada Supreme Court. As such, the first factor weighs in favor of granting the
14 requested stay." (Order at 4:13-17.) This is clearly erroneous.

15 The object of Elvin's Petition is to challenge the jurisdiction of this Court to forfeit Elvin and
16 Sylvia's Home because the Petition claims that this second, and successive civil forfeiture
17 proceeding seeks to punish Elvin again, for a crime he already pleaded guilty to, and is currently
18 incarcerated for in violation of Nevada's Double Jeopardy Clause. *See* Petition, Case No. 85590. If
19 the Nevada Supreme Court does not agree with Elvin's Petition—it will have zero effect on the
20 Forfeiture and Counterclaim Proceeding and it will not affect the Tax Proceeding. If the Nevada
21 Supreme Court agrees with Elvin's Petition—only the Forfeiture Proceeding will be affected. This
22 is because the Forfeiture Proceeding will be over as double jeopardy will bar Tri-Net from forfeiting
23

24 ⁶ *See, e.g., TRP Fund v. PHH Mortg. Corp.*, 138 Nev., Adv. Op. 21, 506 P.3d 1056 (2022)
25 (appellant moving for a stay); *Archon Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 819, 407 P.3d
26 702, 706 (2017) (petitioner moving for a stay); *State v. Robles-Nieves*, 129 Nev. 537, 306 P.3d 399
27 (2013) (appellant moving for a stay); *Aspen Fin. Services v. Eighth Jud. Dist. Ct.*, 128 Nev. 635, 289
28 P.3d 201 (petitioner moving for a stay); *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005)
(appellant moving for a stay); *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 89 P.3d 36 (2004)
(appellant moving for a stay); *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982 (2000)
(petitioner moving for a stay).

the Home. To be sure, the effect on the Counterclaims will harm Tri-Net as it will likely be liable to Elvin for monetary damages for violating Elvin’s constitutional rights.⁷

But dispositive to the clear error the district court made, had Elvin moved for a stay under NRAP 8(c), it would have been denied.⁸ This is because “[w]rit relief is not a substitute for an appeal.” *Archon Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 819, 407 P.3d 702, 706 (2017). Because the object of Elvin’s Petition challenges this Court’s jurisdiction to punish him again, his appellate rights have been preserved such that Nevada precedent would not support granting Elvin a stay. *See Hansen*, 116 Nev. at 658, 6 P.3d at 986 (explaining that even when a party challenges a court’s jurisdiction, the object of the writ petition “would not amount to a waiver of its challenge” and “the first stay factor does not suggest that a stay is warranted”). The district court never explained this point of law on why this factor supports *granting* a stay to Tri-Net—when Elvin’s request for a stay would have been *denied*. (*See generally* Stay Order.) Thus, the district court committed clear error under the first prong of NRAP 8(c).

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

“[I]n certain cases, a party may face actual irreparable harm, and in such cases the likelihood of irreparable harm should be considered in the stay analysis.” *Mikohn*, 120 Nev. at 253, 89 P.3d at

⁷ The recent decision by the Nevada Supreme Court in *Mack v. Williams*, in fact would likely create damages liabilities for Tri-Net’s violation of Elvin’s Double Jeopardy violations. 136 Nev., Adv. Op. 86, ___ P.3d ___, 2022 WL 17998520, at *1 (Dec. 29, 2022) (concluding that a private right of action for monetary relief under Nevada’s constitution for violating Article 1, Section 18 is permissible, while outlining a three-part test to determine whether a right of action exists for other provisions under Article 1 of Nevada’s Constitution).

⁸ In some cases, statutory enactments by the Legislature shift the weight of NRAP 8(c). *See Robles-Nieves*, 129 Nev. at 542, 306 P.3d at 403 (explaining that an order granting a suppression motion shifts the analysis for the first and third factors and supports granting a stay); *Mikohn*, 120 Nev. at 253, 89 P.3d at 39 (“Given the interlocutory nature of an appeal seeking to compel arbitration, and the purpose of arbitration, the first stay factor takes on added significance.”). This shift is not present and in fact, the statutory scheme Tri-Net seeks to forfeit the Home cuts the exact opposite direction—expeditious resolution is required under the law. *See* NRS 179.1173(1) (“[T]he 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.” (emphasis added)). The district court clearly erred when its Stay Order never mentions or analyzes this provision to explain why a stay is warranted here despite the Legislature’s mandate to proceed expeditiously to resolve any forfeiture proceeding.

39. Well-established precedent supports that Sylvia and Elvin will be irreparably harmed by further delays as the *sine qua none* of all these proceedings involve the real property they own. *See Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987) (noting that, with respect to irreparable harm, this is harm for which compensatory damages would be inadequate, such as disputes over property because “real property is unique”); *see also Tahican*, 139 Nev., Adv. Op. 2 (slip op. at 8). The district court found “[t]he property which is the subject of the forfeiture action is in the possession of SYLVIA FRED, and granting a stay will not affect the status of that possession.” (Order at 4:19-21.) This finding is clearly erroneous as a matter of law and as a matter of fact.

The district court is correct that Sylvia and Elvin are in possession of the Home following the 32 months of unlawful possession by Tri-Net after the Agency obtained a void default judgment in violation of Sylvia and Elvin’s constitutional rights. (*See id.*) While this possession is important, it hardly provides Sylvia and Elvin much relief as the Home is completely destroyed. For example, below is a photo of the ceiling fan in the Home on March 14, 2022—when Tri-Net gave the Home back to the Freds.



Indeed, couple the destruction of the home with Tri-Net maintaining the forfeiture action and the lis pendens clouding title to the Home—Sylvia and Elvin cannot enjoy their Home because it remains, to this day, seized by Tri-Net. *See United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 50 (1993) (“[T]he seizure of real property deprives an individual of valuable rights of ownership, including the right of sale, the right of occupancy, the right to unrestricted use and enjoyment and

the right to receive rents.”); *Levingston v. Washoe Cnty.*, 112 Nev. 479, 484, 916 P.2d 163, 167 (1996) (“The seizure of real property affects the fundamental interest of our citizenry in maintaining control over their residence and remaining free from government interference.”). The Nevada Supreme Court already recognized that even in the event of a temporary loss of property rights through the seizure of property through an improper forfeiture will also constitute irreparable harm. *See Levingston*, 112 Nev. at 485, 916 P.2d at 167 (“In the event a district court refuses to grant a requested forfeiture after months of property deprivation, that determination does not cure the temporary deprivation of the property that could have been prevented by an earlier hearing.”); *Dixon*, 103 Nev. at 416, 742 P.2d at 1030 (“[L]oss of real property general results in irreparable harm.”). The district court’s one-sentence explanation that because Sylvia and Elvin possess the Home (a Home they never should have lost possession of in the first place had Tri-Net actually spent the money on stamps to mail Sylvia and Elvin its motions and default judgments) failed to engage in any of this legal analysis and therefore constitutes clear error.

Worse, the district court failed to analyze the other three arguments Sylvia and Elvin raised—committing further clear error—that (1) the discovery they seek in the forfeiture action to prove their significant damages might be lost, (2) that the public will be harmed by further delaying these proceedings, and (3) that Sylvia and Elvin’s constitutional rights continue to be violated every day this proceeding goes on longer than necessary.

First, “[t]he delay resulting from a stay may also unduly frustrate a plaintiff’s ability to put on an effective case because as time elapses, witnesses become unavailable, memories of conversations and dates fade, and documents can be lost or damaged.” *Aspen* 128 Nev. at 646, 289 P.3d at 208 (cleaned up). Tri-Net’s responses to Sylvia Requests for Documents was due on December 15—Tri-Net has not provided *any* documents as of the filing of this Motion.⁹ (*See* Motion

⁹ As explained in Sylvia and Elvin’s Motion to Strike and Reply in Support of its Motion to Strike, Tri-Net failed to comply with *any* of the Rules as it filed its Motions, Oppositions, and Reply. Tri-Net has likewise failed to comply with the discovery rules, which already caused a Motion to Compel which remains unresolved. While Tri-Net recently responded to Sylvia’s Interrogatory Responses—they are unsigned by any representative of Tri-Net such that it violated the Rules and are unauthenticated. *See* NRCp 33(b)(5) (“The person who makes the answer *must* sign them. . . .” (emphasis added)). Thus, by permitting Tri-Net to maintain its dilatory conduct through a blanket

1 to Strike, Dec. 23, 2022, on file (detailing the countermotion to compel production of documents).)

2 Second, as for public harm, this “is perhaps the most important factor in the equation, albeit
3 the on hardest to define. There is a presumption that the public has an interest in prompt resolution
4 of civil cases. *Aspen*, 128 Nev. at 650, 289 P.3d at 211 (cleaned up). This is because “the public
5 has a significant interest in a system that encourages individuals to come to court for the settlement
6 of their disputes.” *Id.* at 651, 289 P.3d at 211 (cleaned up). Tri-Net never paid the property taxes,
7 the electric bills, nor any utilities while the Agency possessed the Home. (*See* Sylvia Verified
8 Answer & Countercl. ¶ 31; Elvin Verified Answer & Countercl. ¶ 54.) With further delays in this
9 litigation by a stay, the public—including the Carson City School District—will continue to suffer
10 because the tax bill remains unpaid pending the resolution of these proceedings.

11 Finally, the Nevada Supreme Court has been clear, that when a party’s constitutional rights
12 have been violated, such violations constitute “irreparable harm” because remedying a constitutional
13 violation “may be difficult or impossible to remedy through money damages.” *City of Sparks v.*
14 *Sparks Mun. Ct.*, 129 Nev. 348, 357, 302 P.3d 1118, 1124 (2013). The district court’s failure to
15 analyze any of these arguments in the Stay Order constitutes clear legal error. As a result, this Court
16 should reconsider and dissolve the Stay Order because the second prong under NRAP 8(c) does not
17 support granting of stay for the reasons provided by the district court.

18 **c Tri-Net will not be harmed at all by lifting the stay.**

19 In *Hansen*, the petitioner “argue[d] that it should not be required to participate ‘needlessly’
20 in the expense of lengthy and time-consuming discovery, trial preparation, and trial” as it claimed
21 irreparable harm. 116 Nev. at 658, 6 P.3d at 986-87. The *Hansen* Court rebuffed and clarified
22 “[s]uch litigation expenses while potentially substantial, are neither *irreparable* nor *serious*.” *Id.*
23 (emphasis added). “[M]ere injuries, however substantial, in terms of money, time and energy
24 necessarily expended in the absence of a stay *are not enough* to show irreparable harm.” *Id.* at 658,
25 6 P.3d at 987 (cleaned up and emphasis added).

26
27
28 stay will continue to inflict a manifest injustice on Sylvia and Elvin through Tri-Net’s consistent
violation of the Rules.

1 Rather than review this precedent and recognizing that Tri-Net faces no harm at all—let alone
2 irreparable harm—through engaging in discovery, the district court found “the procedural posture
3 of the forfeiture action is *important*” for Tri-Net “to know in order to fairly protect its interests in
4 these proceedings.” (Stay Order at 4:21-23 (emphasis added).) The Order provides no citations to
5 any law or precedent that the “importance” of a party’s “interests” in a proceeding constitutes
6 irreparable harm to obtain a stay. (*See id.*) Sylvia and Elvin have been unable to find *any* precedent
7 in Nevada or federal court supporting such a claim to grant a stay. This is because the district court
8 adopted Tri-Net’s incorrect arguments that “adjudication of [Elvin’s] Petition could have an impact
9 in evaluating, developing, and eventually presenting certain immunity defenses to the
10 counterclaims.” (Tri-Net Mot. to Stay at 8:17-18 (citing NRS 41.032).) Tri-Net of course waived
11 its immunity defenses—which the district court’s Stay Order does not discuss—when it failed to
12 preserve this affirmative defense in its pleadings. (*See* Mot. to Strike at 21 (citing to both of Tri-
13 Net’s pleadings in which neither affirmatively pleaded NRS 41.032 as a defense); *see also City of*
14 *Boulder City v. Boulder Excavating, Inc.*, 124 Nev. 749, 754-55, 191 P.3d 1175, 1178 (2008)
15 (“[D]iscretionary immunity is waived unless affirmatively pleaded.”).

16 Indeed, on February 3, 2023, when undersigned counsel sought to avoid further motion
17 practice and requested that the stay be narrowed—Tri-Net demurred. (Ex. 1, Fortin Decl. ¶¶ 4-10.)
18 Tri-Net—incorrectly—stated that because Elvin chose to Petition the Supreme Court, he should have
19 to deal with the consequences of that choice because Nevada courts do not permit litigation to occur
20 on two levels. (*See id.*) *Aspen* of course belies this claim by Tri-Net. In any case, the district court’s
21 cryptic and unsupported conclusion under prong three of NRAP 8(c) is clearly erroneous and
22 reconsideration of the Stay Order and lifting the stay is appropriate.

23 **d. Neutrality is not an appropriate factor under NRAP 8(c) or any**
24 **other precedent to award a stay.**

25 To be sure, Elvin has a strong likelihood of success on the merits on his Petition and Tri-Net
26 agreed “the Petition is not frivolous.” (Tri-Net Mot. to Stay, at 9:4-5.) Again, Elvin did not move
27 to stay these proceedings, Elvin does not want a stay—he wants to engage in discovery so he can
28 understand the extensive damages Tri-Net inflicted on him and his family. Moreover, Tri-Net’s

Motion was filed “for dilatory purposes” regarding its discovery obligations such that a stay should have never been awarded.¹⁰ *Mikohn*, 120 Nev. at 253, 89 P.3d at 40. But, rather than review Sylvia and Elvin’s filings, the district court “deem[ed the final NRAP 8(c)] factor to be *neutral* in the stay analysis, weighing neither in favor nor against granting a stay.” (Order at 4:24-24 (emphasis added).) Again, this analysis lacks citation to law or precedent for support.

This is because the district court again adopted wholesale Tri-Net’s incorrect claims that “[t]he final factor under NRAP 8(c) is neutral in regard to the requested stay.” (Tri-Net Mot. to Stay at 8:5-6 (citing *Robles-Nieves*, 129 Nev. at 546-47, 306 P.3d at 406).) This statement and citation is incorrect as the word “neutral” or “neutrality” does not appear at all in *Robles-Nieves*. Had Elvin brought a motion to stay, neutrality—especially for the likelihood of success factor of NRAP 8(c)—would *negate*, not support the award of a stay to these proceedings. *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, if Elvin could not obtain a stay with a neutral factor of likelihood of success on the merits—why should Tri-Net obtain a stay?

In sum, neither the plain language of NRAP 8(c) permits a real party in interest to obtain a stay nor do any of the factors weigh in factor of entering a stay. Thus, Sylvia and Elvin ask this Court to reconsider the district court’s Stay Order and lift the stay because it committed clear errors of law and fact throughout its analysis. This Court should reconsider and lift the stay.

¹⁰ During the several meet and confers Sylvia and Elvin held with Tri-Net, it became clear that the purpose of Tri-Net’s stay request was because it is overwhelmed with basic discovery and motion practice. (*See, e.g., Mot. to Strike* at 14; *id.* at Ex. 7 (“It [is] 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.”); *Reply to Mot. to Strike*; *id.* at Ex. 4 ¶ 9 (“[Tri-Net] proposed that the parties enter into a different, and completely opposite stipulation. [Tri-Net] proposed and stated that the only stay Tri-Net would enter into is a stay to the counterclaim proceedings, while maintaining Tri-Net’s ability to continue in the forfeiture proceedings. He claimed that this is because if Elvin prevails in his Petition, Sylvia and Elvin’s counterclaims would be mooted.”); *id.* at Ex. 5.)

2. ***The district court committed manifest errors of law and fact by granting a stay under its inherent authority.***

Along with staying these proceedings under NRAP 8(c), the district court appeared to rely on its inherent authority—but this is entirely unclear by the district court’s ambiguous order. (*See* Stay Order at 3:12-21 (“Generally, a stay is appropriate when there is a pending matter in another court which could impact the proceedings which are requested to be stayed. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 89 P.3d 36 (Nev. 2004). This is a circumstance in this case.”).) These two sentences are the extent of the district court’s inherent authority analysis. For several reasons, this rationale is unsupported by the law and facts.

“Determining whether to grant such a stay is a fact-intensive, case-by-case determination that requires a delicate balancing of the competing interest in the case” such that the “inquiry is highly nuanced and has given rise to a complex area of jurisprudence.” *Aspen*, 128 Nev. at 642, 289 P.3d at 206 (emphasis added). Indeed, “[t]here is a strong presumption in favor of discovery, and it is the party who moves for a stay that bears the burden of overcoming this presumption.” *Id.* The core of Nevada’s stay jurisprudence—especially for a case that has languished for eight years—is to consider convenience which “[c]onvenience of the courts is best served when motions to stay proceedings are discouraged.” *Id.* at 649, 289 P.3d at 210 (cleaned up). Indeed, “a policy of freely granting stays *solely* because a litigant is defending simultaneous multiple suits would threaten to become a constant source of delay and an interference with judicial administration.” *Id.* (cleaned up and emphasis added). The district court clearly erred as a matter of law when its two-sentence analysis of its inherent authority lacked any nuance or fact-specific analysis.

But the facts presented by Sylvia and Elvin were overlooked by the district court as well. First, on January 12, 2023, the day the Nevada Supreme Court ordered Tri-Net to answer Elvin’s writ petition, Sylvia and Elvin met and conferred with Tri-Net to reduce motion practice with the district court regarding a stay. *See supra* n. 10 (recounting the meet and confer efforts). Sylvia and Elvin asked if Tri-Net was amenable to staying the civil forfeiture proceeding—the only portion of the litigation that the Petition could affect. (*See id.*) Rather than agree to that sensible solution, Tri-Net in fact wanted Sylvia and Elvin to agree to stay *only* the counterclaims but keep litigating the

forfeiture proceeding—the very proceeding whose “object” would be defeated by a favorable decision by the Supreme Court. (*See id.*) This demonstrates that Tri-Net’s stay request was brought in bad faith with an intent to avoid its discovery obligations.

Second, on February 3, 2023, Sylvia and Elvin again met and conferred with Tri-Net in order to move the litigation along and obtain the necessary discovery Sylvia and Elvin need in order to understand the extensive damages Tri-Net inflicted on them.¹¹ (*See* Ex. 1, Fortin J. Decl. ¶¶ 4-10.) Sylvia and Elvin again asked if Tri-Net would stipulate to limit the stay to just the forfeiture proceeding so that Sylvia and Elvin could amend their pleadings, the parties could engage in discovery and each could exchange expert and rebuttal expert reports. (*See id.*) Tri-Net rebuffed and stated that it was Elvin’s choice to file a Petition and because litigation on two levels was improper the stay should be maintained. (*See id.*) Despite Sylvia and Elvin’s explanation that certain documents and information was needed from Tri-Net to facilitate any type of resolution to all of these matters—Tri-Net refused to narrow the scope of the stay forcing Sylvia and Elvin to file this Motion.¹² (*See id.*)

To permit the stay to remain in effect because Tri-Net does not wish to engage in discovery would inflict a manifest injustice on Sylvia and Elvin. *See Aspen* 128 Nev. at 646, 289 P.3d at 208 (“The delay resulting from a stay may also unduly frustrate a plaintiff’s ability to put on an effective case. . . .” (cleaned up)). This matter has floundered in the district court for 8 years—it should not require several more years to resolve the significant damages Tri-Net inflicted on Sylvia and Elvin. Thus, reconsidering the district court’s Stay Order is proper and the stay should be lifted.

C. This Court Should Reconsider the Clearly Erroneous Order Denying Consolidation of the Forfeiture and Counterclaim Proceeding and the Tax Proceeding.

The district court clearly erred as a matter of law and fact when it denied Sylvia’s request to

¹¹ To the extent this meet and confer is considered “new evidence” it would likewise support reconsideration under NRCP 59(e). *See AA Primo Builders*, 126 Nev. at 582, 245 P.3d at 1193.

¹² Because Tri-Net refused to shift position on the scope of the stay there was no reason to engage with Tri-Net on consolidation. (*See* Ex. 1, Fortin Decl. ¶ 10.)

consolidate the Tax Proceeding with the Forfeiture and Counterclaim Proceeding because each involve the same questions of law and facts—the core inquiry under NRCP 42(a). *See Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 286, 163 P.3d 462, 467-68 (2007) (“Both NRCP 42(a) and its federal counterpart allow for consolidation of actions that involve a common question of law and fact.”). On top of whether these matters involve a common question of law and fact

The critical question for the district court in the final analysis was whether the specific risks of prejudice and possible confusion were overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Arnold v. Eastern Airlines, 681 F.2d 186, 193 (4th Cir. 1982). The district court clearly erred when it failed to adequately consider any of these consolidation factors.

1. The Tax Proceeding and the Forfeiture and Counterclaim Proceeding should be resolved simultaneously.

The district court’s order—sparse on *any* legal authority—failed to properly apply the law to facts to correctly decide the consolidation question.¹³

For example, the district court reasoned “[t]he object of the Tax Proceeding is to adjudicate the allocation of responsibility for taxes due on the residence at issue.” (Consolidation Order at 5:9-11.) This is incorrect. The purpose of Sylvia filing the Tax Proceeding was to obtain immediate relief from the Tax Foreclosure Proceeding that Rasor and the Board initiated because of Tri-Net’s actual and constructive possession of the Home from July 2019 through March 2022 as the Agency paid no property taxes. (*See* Compl., Case No. 21 RP 0005 1B, May 19, 2021, on file; Mot. for TRO & Preliminary Injunction, Case No. 21 RP 00005 1B, May 19, 2021, on file.) Indeed, even the district court’s order entering the preliminary injunction confirmed that the object of that litigation was “to pause and arrest any and all delinquent tax foreclosure proceedings on the property.” (Order, Jun. 3, 2021, on file.) As a matter of common-sense Sylvia could not seek relief in the Forfeiture

¹³ For all the reasons detailed above regarding the stay to the Forfeiture and Counterclaim Proceeding apply here and should be considered as to why the Tax Proceeding stay should be lifted.

1 Proceeding in May 2021 as the question of her standing was pending before the Nevada Supreme
2 Court—the only way to protect her property interests was to begin another case.

3 But the district court further erred when it engaged in legal analysis that contradicts logic
4 when it claimed that “[i]f forfeiture is granted” then the taxes will be due by Tri-Net and

5 that corresponds with the timing of that transfer of vested interest and allocates tax
6 responsibility accordingly. Similarly, if the forfeiture is denied, the allocation of
7 responsibility for taxes on the residence depends upon the specific nature of the
8 denial, including when, if ever, TRI NET assumed lawful possession of the residence
9 and the duration of that lawful possession. The critical point is that the Tax
10 Proceeding cannot be adjudicated until the outcome of the forfeiture is known.

11 (Consolidation Order at 5:12-21.) This is incorrect and does not reflect the relief Sylvia and Elvin
12 seek in the Forfeiture and Counterclaim Proceeding.

13 On the one hand, Sylvia and Elvin have both pleaded facts in the Forfeiture and Counterclaim
14 Proceeding that require determination of the taxes *for the entirety* of that proceeding— from the
15 moment Tri-Net clouded title until the lis pendens is removed. (*See* Sylvia Verified Answer &
16 Countercl. ¶ 31; *id.* ¶¶ 72-78 (waste counterclaim); *id.* ¶¶ 89-94 (negligence counterclaim); *id.* ¶¶
17 95-100 (slander of title counterclaim); *see also* Elvin Verified Answer & Countercl. ¶ 54; *id.* ¶¶ 106-
18 112 (waste counterclaim); *id.* ¶¶ 128-33 (negligence counterclaim); *id.* ¶¶ 134-39 (slander of title
19 counterclaim).) But this tax allocation runs from March 2015 through today—as Tri-Net is
20 continuing to seek a forfeiture of the Home. Because Tri-Net has no policy for paying the property
21 taxes, this Court should look to the federal government’s policies. For example, under both
22 Department of Justice and Department of Treasury guidelines, the government is required to pay
23 property taxes not the property owner. (*See* Mot. for TRO & Preliminary Injunction, Case No. 21
24 RP 00005 1B, May 24, 2021; *see id.* at Ex. 9-10 (citing to the DOJ and DOT asset forfeiture
25 guidelines which mandates those agencies will pay the property taxes).)

26 In the Tax Proceeding though, “Sylvia seeks a declaration from this Court determining who
27 was obligated to pay the property taxes on the Subject Property during the pendency of Sylvia’s
28 appeal.” (Sylvia Compl., Case No. 21 RP 00005 1B, ¶ 32.) Again, federal government policy will
guide this decision and it is Tri-Net that owes the property taxes. In other words, the Tax Proceedings
focus is on the imminent loss of the Home to Rasor and the Board because of Tri-Net’s failure to

1 pay the property taxes beginning in 2019—because Sylvia paid the taxes from 2015 through 2018.

2 Both of these proceedings present common questions of law and fact—Tri-Net’s obligation
3 to pay property taxes either to Sylvia or to Rasor and the Board. *See Grausz v. Englander*, 321 F.3d
4 467, 473 (4th Cir. 2003) (“Generally, we say that claims are part of the same cause of action when
5 they arise out of the same transaction or series of transactions, or the same core of operative facts.”
6 (internal quotation marks omitted)).

7 **2. The Tax Proceeding does not require resolution of the Forfeiture**
8 **Proceeding.**

9 The district court’s errors compound as it found “[t]he critical point is that the Tax
10 Proceeding cannot be adjudicated until the outcome of the forfeiture proceeding is known. Until
11 that outcome is known, there is nothing to litigate in the Tax Proceeding.” (Consolidation Order at
12 5:19-21.) This is incorrect for the reasons detailed above. It is further incorrect because the several
13 torts and constitutional violations Tri-Net inflicted on Sylvia and Elvin is the proximate cause of
14 Sylvia and Elvin’s damages. *See Bedi v. McMullan*, 160 Cal. App. 3d 272, 275, 206 Cal. Rptr. 578,
15 589 (Cal. Ct. App. 1984) (“A default judgment that been set aside will not support a writ of
16 execution, and it is well settled a party is liable in tort if he executes a void judgment against the
17 property of another.” (cleaned up)). Thus, the property taxes that led to the need for Sylvia filing
18 this suit coupled with the tort damages should be answered simultaneously—not one after another.
19 *See Hanson v. District of Columbia*, 257 F.R.D. 19, 22 (D.D.C. 2009) (“[I]t is the court’s duty to
20 consider not only the delay that consolidating the case might cause for the plaintiffs, but also the
21 delay that *not* consolidating the cases would cause for the defendants and for the court.” (emphasis
22 in original)). The district court clearly erred concluding otherwise.

23 **3. Sylvia explained that the circumstances changed because Rasor is as a**
24 **former Tri-Net Officer and is listed as one of Tri-Net’s witnesses in its**
25 **NRCP 16.1 disclosures.**

26 The district court’s errors continue where it claims “[t]here was a point where parties
27 recognized this inevitable condition” and goes on to block quote a large piece of the Stipulation and
28 Order from 2021. (Consolidation Order at 5:21-25-6:1-5.) The problem with the block quote is that
it is not from the stay, but the quote is from the preliminary injunction (that Sylvia did not ask the

district court to lift). (*See id.* at 6:1-2 (“[T]he purpose of this stipulation and agreement is to *preserve the status quo* and each stipulate and agree to *enter into a preliminary injunction*. . . .” (emphasis added))). This is clearly erroneous as a matter of law.

The district court further found “[t]he Motion fails to explain how the circumstances have changed to now obviate these previously stipulated points.” (*Id.* at 6:14-15.) This is clearly erroneous as the fact that Sylvia and Elvin’s Home is utterly destroyed and they seek significant damages through their counterclaims is exhaustively detailed. To this end, Sylvia likewise explained that the witness list provided by Tri-Net changed the circumstance because Rasor, a Defendant in the Tax Proceeding is also listed as a witness and former Tri-Net Officer in Tri-Net’s NRCP 16.1 Disclosures. (*See* Sylvia Mot. to Consolidate at 9, Dec. 12, 2022.) The district court thus clearly erred when it reasoned “the Carson City Treasurer and Board of Supervisors have *nothing whatsoever* to do with the Civil Forfeiture and Counterclaim Proceeding.”¹⁴ (*Id.* at 6:20-21 (emphasis added).) They both are intimately involved in both cases.

There is also a procedural issue that bar Sylvia and Elvin from simply bringing all of their Counterclaims in the Forfeiture action. *See* NRS 179.1171(7) (“No person, other than the plaintiff and any claimant, is a proper party in the proceeding.”). This statute essentially negates Rules 18-20 and the joinder of third-parties—namely the Tri-Net Investigation Division (former) Chief Patrick Conmay and (current) Chief Ryan Miller, the Carson City Sheriff, and the Douglas County Sheriff which constitutes Tri-Net’s executive board who oversaw, initiated the forfeiture, the void default judgment, and destruction of the Home.¹⁵ To hold these officers accountable, following

¹⁴ Indeed, and as explained below, the Carson City Sheriff is liable for the constitutional violations committed against Sylvia and Elvin and therefore the Carson City Board of Supervisors is similarly involved in the Forfeiture and Counterclaim proceeding because it oversees the Carson City Sheriff’s Office.

¹⁵ These governmental actors violated both Elvin and Sylvia’s federal and state constitutional rights and are liable for significant damages—to include monetary, special, and punitive damages along with attorney fees and costs. *See* 42 U.S.C. § 1983 (providing a cause of action for violating federal constitutional rights); *see Mack v. Williams*, 138 Nev., Adv. Op. 86, ___, P.3d ___, ___, 2022 WL 17998520, at *12 (2022) (recognizing that Nevadans possess a right of action to seek monetary damages for violating Nevada’s constitutional protections guaranteed under Article 1); *see also* 42 U.S.C. § 1988 (providing for attorney fees and costs for prevailing plaintiffs).

consolidation, Sylvia and (after intervening) Elvin, would like to amend their pleadings in the Tax Proceedings and bring all the claims they have. This way all of the issues related to this government misconduct can be resolved at a single trial. Of course, this would also solidify the interrelated facts and law. *See* NRCP 42(a).

By consolidating this litigation, lifting the stay,¹⁶ and permitting Sylvia (and Elvin once he has intervened) to bring all of their claims against all of the parties that violated their rights and damaged their Home, in one consolidated proceeding will foster judicial economy and efficiency. *See Nalder v. Eighth Jud. Dist. Ct.*, 136 Nev. 200, 207, 462 P.3d 677, 685 (2020) (“We reiterate our goal of promoting judicial efficiency in permitting consolidation.”). Otherwise, Sylvia and Elvin will need to open a third case to bring these claims against these government actors to remedy all of the harm they have suffered—the exact opposite of economy and efficiency.

4. The actual conflict of interest the Carson City District Attorney has found itself in should not negate consolidation.

The district court clearly erred when it concluded that consolidation would lead to a conflict between the Carson City District Attorney (“D.A.”) and Tri-Net, Rasor, and the Board. (*See* Consolidation Order at 7:5-10 (“Consolidation would force the [D.A.] to represent three distinct clients in a single proceeding. Of course, that may be permitted if the clients agree to that situation and their interests are aligned. However, consolidation enhances the risks the interests of the clients represented by the [D.A.] will diverge in a way that creates a conflict of interest in its representation.”).) This is a manifest error of law and fact.

Whether this Court consolidates the Forfeiture and Counterclaim Proceeding and the Tax Proceeding or it does not—the D.A. represents all three defendants (Tri-Net, Rasor, and the Board) in one proceeding in the Tax Proceeding. Thus, the prejudice and ethical lapse of the D.A. is already

¹⁶ Sylvia does not belabor the point that lifting the stay in both the Forfeiture and Counterclaim Proceeding and the Tax Proceeding is necessary and would be economical and efficient. *See Maheu v. Eighth Jud. Dist. Ct.*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973) (“The power to stay proceeding is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel and for litigants.”); *Boyle v. Cnty. of Kern*, No. 03-CV-5162-OWW-GSA, 2008 WL 220413, at *5 (E.D. Cal. Jan. 25, 2008) (“The corollary to this power is the ability to lift a stay previously imposed.”).

present and cannot negate the need to consolidate these matters. Clients are never permitted to waive an actual conflict of interest when two parties are adverse to one another. *See* Nevada Rule of Professional Conduct (“NRPC”) 1.7(a) (“A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) The representation of one client will be directly adverse to another client.”); *State v. First Jud. Dist. Ct.*, 136 Nev. 315, 317, 466 P.3d 529, 531 (2020) (“The rule essentially precludes an attorney from taking a position that is adverse to another client’s interests.”).

At a basic level, the Board and Rasor are adverse to Tri-Net as Tri-Net owes the taxes on the Home and it refuses to pay the Board and Rasor. But even moving past this, Tri-Net seeks to forfeit the Home, sell the Home, and keep all of the profits for itself. *See* NRS 179.118; NRS 179.1187. Rasor and the Board meanwhile seek title to the Home to sell it and keep the profits to pay the delinquent taxes Tri-Net failed to pay. *See* NRS 361.5648. This conflict exists no matter if there is consolidation or not. Thus, the D.A.’s failure to meet its ethical obligations cannot be a conflict and prejudice imputed to Sylvia through her consolidation request.

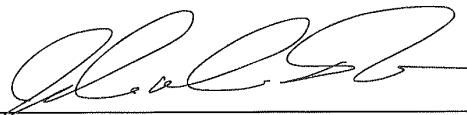
Thus, consolidating the Forfeiture and Counterclaim Proceeding with the Tax Proceeding is proper.

IV. CONCLUSION

Sylvia and Elvin ask for all of the requested relief detailed above.

Dated this 7th day of February 2023.

McDONALD CARANO LLP

By: 

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on this 7th day of February 2023, I caused to be delivered via email, and hand delivery, true and correct copies of the above **ELVIN FRED AND SYLVIA FRED'S MOTION FOR LEAVE OF THIS COURT UNDER FJDCR 3.13 AND ELVIN FRED AND SYLVIA FRED'S MOTION UNDER NRCP 59(e) TO RECONSIDER THE DISTRICT COURT'S STAY IN THE FORFEITURE AND COUNTERCLAIM PROCEEDING AND SYLVIA FRED'S MOTION UNDER NRCP 59(e) TO RECONSIDER THE DISTRICT COURT'S DENIAL OF CONSOLIDATION AND LIFTING OF STAY IN THE TAX PROCEEDING AND REQUEST FOR ORAL ARGUMENT UNDER FJDCR 3.12** to the following:

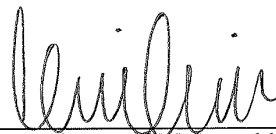
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Investigation Division of the Department of Public Safety
State of Nevada
(Tri-Net Narcotics Task Force)
555 Wright Way
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Andrew Rasor
Carson City Treasurer and Ex-Officio Tax Receiver
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Carson City, Nevada 89701

Carson City Board of Supervisors
City Hall
201 North Carson Street | Suite 2
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An employee of McDonald Carano LLP

EXHIBIT 1

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 Reply in Support of Elvin Fred and Sylvia Fred's Motion for Leave of this Court under FJDCR 3.13 and Elvin Fred and Sylvia Fred's Motion under NRCP 59(e) to Reconsider the District Court's Stay in the Forfeiture and Counterclaim Proceeding and Sylvia Fred's Motion under NRCP 59(e) to Reconsider the District Court's Denial of Consolidation and Lifting of the Stay in the Tax Proceeding and Request for Oral Argument under FJDCR 3.12 ("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. On February 3, 2023, I engaged in a telephonic meet and confer with Tri-Net's counsel, Ben Johnson, Senior Deputy District Attorney, Carson City District Attorney's Office.

5. I asked Mr. Johnson if Tri-Net was amenable to narrowing the stay and stipulating to only stay the forfeiture proceeding. I explained that by lifting the stay in the counterclaim proceeding, it would facilitate the exchange of discovery and eventually the disclosure of expert and rebuttal expert reports. This would of course assist both sides in properly gauging its litigation risks and potential damages.

6. I further explained that without the discovery Sylvia and Elvin sought, understanding the potential claims and damages each has will be nearly impossible and that without this information it could delay the resolution of the matter.

7. Mr. Johnson disagreed to stipulating to stay. He explained that Elvin chose to Petition the Nevada Supreme Court to seek relief and he should have to deal with the consequences of that decision because Nevada does not allow litigation to occur at two levels.

8. I again reiterated the desire to work towards resolution of this matter and without

1 information, Sylvia and Elvin will not be able to effectively gauge their damages appropriately.

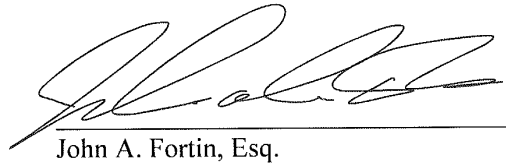
2 9. Mr. Johnson again demurred and declined to agree to stipulate to lifting the stay to the
3 counterclaim proceeding.

4 10. Because Mr. Johnson did not agree to lifting the stay, I did not engage with Mr. Johnson
5 on consolidating the Forfeiture and Counterclaim Proceeding with the Tax Proceeding.

6 11. During the call, we both discussed the recent recusal of Judge Wilson. I expressed my
7 confusion on why Judge Wilson had not likewise recused from the Tax Proceeding as the same
8 witnesses would be involved in that proceeding. Mr. Johnson stated that he had not thought of that but
9 agreed that if the same witnesses would be involved, Judge Wilson likely should recuse from that
10 matter.

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

13 Dated this 7th day of February 2023.

14 
15 _____
16 John A. Fortin, Esq.

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*Pro Bono Counsel for
Claimant Sylvia Fred*

FIRST JUDICIAL DISTRICT COURT

CARSON CITY, NEVADA

In Re:

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

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,

RECD & FILED

2023 MAR -3 PM 4: 04

WILLIAM SCOTT HOEN
K. PETERSON

BY _____ DEPUTY.

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

**NOTICE OF WITHDRAWAL OF ELVIN
FRED AND SYLVIA FRED'S MOTION
FOR LEAVE OF THIS COURT UNDER
FJDCR 3.13**

AND

**NOTICE OF WITHDRAWAL OF ELVIN
FRED AND SYLVIA FRED'S REQUEST
TO SUBMIT**

Claimant/Counterclaimant Sylvia Fred ("Sylvia") and Elvin Fred ("Elvin") hereby submits
their Notice of Withdrawal of their Motion for Leave of this Court under FJDCR 3.13 filed on
February 9, 2023 asking this Court to reconsider the Stay Order and the denial of consolidation of

1 these proceedings put in place on January 26, 2023. Sylvia and Elvin further withdraw their
2 Request to Submit the Motion for Leave under FJDCR 3.13 filed on February 9, 2023.

3 Dated this 3d day of March 2023.

4 McDONALD CARANO LLP

5 By: 

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10 rworks@mcdonaldcarano.com
11 jfortin@mcdonaldcarano.com
12 *Pro Bono Counsel for*
13 *Claimant Sylvia Fred*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that, on this 3d day of March 2023, I caused to be delivered via email, and hand delivery, true and correct copies of the above **NOTICE OF WITHDRAWAL OF ELVIN FRED AND SYLVIA FRED'S MOTION FOR LEAVE OF THIS COURT UNDER FJDCR 3.13 AND NOTICE OF WITHDRAWAL OF ELVIN FRED AND SYLVIA FRED'S REQUEST TO SUBMIT** to the following:

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Benjamin Johnson
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Counsel for all Parties in Case No. 15 OC 00074 1B and Case No. 21 RP 00005 1B

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