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

STEPHEN LARA,

Plaintiff,

vs.

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

Defendants.

Case No. CV21-01595

Department No.: 4

ORDER DENYING MOTION TO DISMISS

On August 31, 2021, Plaintiff Stephen Lara (“LARA”), by and through his counsel Jordan T. Smith, Esq., of Pisanelli Bice PLLC, filed his *Complaint*. On October 5, 2021, LARA filed his *Verified Application for Association of Counsel Wesley P. Hottot, Esq. and Benjamin A. Field, Esq., Pursuant to SCR 42*. On October 14, 2021, Defendants Department of Public Safety Highway Patrol Division, Col. Anne Carpenter, and Sgt. Glenn Rigdon (collectively “NHP”), by and through their counsel, Aaron D. Ford, Nevada Attorney General, and Nathan Hastings, Senior Deputy Attorney General, and Kathleen Brady, Deputy Attorney General, filed their *Motion to Stay Proceedings Pending the Nevada Supreme Court’s Answers to Accepted Certified Questions From the United States District Court for the District of Nevada*.

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1 On October 25, 2021, the Court entered its *Order Granting Verified Application for*
2 *Association of Counsel Wesley P. Hottot, Esq. and Benjamin A. Field, Esq, Pursuant to SCR 42.*
3 On October 27, 2021, LARA filed his *Response to Nevada Highway Patrol’s Motion to Stay*
4 *Proceedings Pending the Nevada Supreme Court Answers to Accepted Certified Questions from*
5 *the United States District Court to the District of Nevada.* On November 4, 2021, NHP filed their
6 *Reply in Support of Motion to Stay Proceedings.* On January 28, 2022, the Court entered its
7 *Order Granting Nevada Highway Patrol Defendants’ Motion to Stay Proceedings Pending the*
8 *Nevada Supreme Court’s Answer to Accept Certified Questions from the United States District*
9 *Court.*

10 On February 1, 2022, LARA filed his *First Amended Complaint.* (“*FAC*”). On March 29,
11 2023, NHP filed its *Motion to Dismiss.* On May 12, 2023, *Plaintiff’s Opposition to Defendant’s*
12 *Motion to Dismiss* was filed. On June 9, 2023, NHP filed its *Reply in Support of NHP’s Motion*
13 *to Dismiss.*

14 On September 27, 2023, the Court heard oral arguments in the instant matter.

15 On February 19, 2021, LARA was driving on Interstate 80 just outside of Sparks,
16 Nevada. *FAC* at 5. LARA was travelling from Lubbock, Texas to Portola, California to visit his
17 two daughters. *Id.* LARA was driving a rental car because the day before he had discovered that
18 a tire on his own car was broken, so he left his car at a repair shop. *Id.* As LARA was driving, he
19 was pulled over by NHP Trooper Brown for passing a commercial vehicle too closely. *Id.* at 6.

20 NHP Trooper Brown told LARA that he stopped LARA as part of a campaign to educate
21 drivers regarding violations they may not realize they’re committing and that LARA had been
22 driving too close behind the commercial vehicle. *Id.* NHP Trooper Brown then took LARA’s
23 driver’s license and rental agreement and asked LARA to speak with him while he went over the
24 paperwork. *Id.* at 6 – 7. As they were speaking, LARA volunteered that he had a large amount of
25 currency in a backpack in his car. *Id.* at 7. Specifically, LARA volunteered that he had
26 approximately \$100,000. *Id.*

27 LARA gave NHP Trooper Brown consent to search his car. *Id.* LARA told NHP Trooper
28 Brown that the source of his money came from military retirement benefits and income for a

1 hospital job that ended during the COVID-19 pandemic. Id. LARA asserted that the money
2 represented his life savings that he compiled over 20 years. Id. LARA then provided NHP
3 Trooper Brown with receipts for bank withdrawals LARA made over the past three years. Id.

4 Thirty minutes later, NHP Sergeant Rigdon arrived on scene. Id. NHP Sergeant Rigdon
5 placed LARA's money in an open Ziploc bag and threw it on the side of the road near LARA's
6 car. Id. at 8. Trooper Brown then deployed his drug detection canine to the area and advised
7 NHP Sergeant Rigdon of a positive alert. Id.

8 After, the NHP troopers elected to seize LARA's currency and turn the money over to the
9 United States Drug Enforcement Agency ("DEA"), via the Federal Equitable Sharing Program.
10 Id. at 8 – 10.

11 LARA's First Amended Complaint listed the following claims: NHP has No Statutory
12 Authority to Participate in Federal Equitable Sharing ("Claim 1"); Nevada's Due Process Clause
13 Prohibits Seizures Motivated by Financial Self Interest ("Claim 2"); The Seizure of LARA's
14 Money Lacked Probable Cause, violating Article 1, Section 18 of the Nevada Constitution
15 ("Claim 3"); Due Process Requires a Prompt, Post-Seizure Hearing Before a Neutral Magistrate
16 ("Claim 4"); Conversion ("Claim 5"). Id. at 16 – 22.

17 NHP argues that all of LARA's claims fail as a matter of law and are subject to dismissal.
18 *MTD* at 2. NHP further argues that as to any claims for injunctive or declaratory relief, LARA
19 lacks standing, such claims are moot, and such claims are precluded by the doctrine of federal
20 supremacy. Id. NHP further argues that contrary to LARA's claims, NHP has statutory authority
21 to participate in the Federal Equitable Sharing Program. Id. NHP further argues that LARA also
22 fails to state cognizable claims for relief as to his due process claims regarding seizures allegedly
23 motivated by financial self-interest, and as to his due process claim of entitlement to a prompt
24 hearing. Id. NHP asserts that LARA's claims for conversion and lack of probable cause likewise
25 fail as the seizure of LARA's money was supported by probable cause. Id. NHP also asserts that
26 NHP is entitled to immunity from LARA's claims, as provided by Nevada statute. Id.

27 LARA asserts that the NHP troopers had no reason to suspect criminal activity from
28 LARA during the traffic stop, but they decided to do so because they were incentivized by the

1 Federal Equitable Sharing Program. *Opposition* at 2. LARA asserts that the federal government
2 operates a program called “equitable sharing”, which allows state and local law enforcement to
3 seize property and have the property adopted by a federal agency to forfeit. *Id.* LARA asserts
4 that the federal government then assumes all costs of the forfeiture and kicks back 80% of the
5 proceeds to the seizing agency. *Id.* LARA asserts that the Federal Equitable Sharing Program
6 circumvents Nevada law, which provides greater protections to property owners than federal law
7 and places restrictions on the use of forfeited funds to mitigate the incentive to police for profit.
8 *Id.* LARA argues that while NHP asks the Court to resolve LARA’s fact-bound and weighty
9 constitutional claims at the pleading state, LARA amply pleaded facts to support all his claims of
10 purported constitutional violations. *Id.* at 3.

11 Pursuant to NRCP 12(b)(5), “[a] complaint will not be dismissed for failure to state a
12 claim ‘unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if
13 accepted by the trier of fact, would entitle him to relief.’” Breliant v. Preferred Equities Corp.,
14 109 Nev. 842, 858 (1993) (citations omitted). All factual allegations of the complaint must be
15 accepted as true. Capital Mortgage Holding v. Hahn, 101 Nev. 314, 315 (1985). In deciding a
16 Motion to Dismiss pursuant to NRCP 12(b)(5), the Court “must construe the pleading liberally
17 and draw every fair intendment in favor of the [non-moving party].” Vacation Village, Inc. v.
18 Hitachi America, Ltd., 110 Nev. 481,484 (1994). However, a court does not need to assume the
19 truth of legal conclusions merely because they are cast in the form of factual allegations. Beebe
20 v. Litton Loan Servicing LP, 2011 WL 4344031 *1 (D. Nev. 2011). The test to determine
21 whether the allegations in the complaint are sufficient to assert a claim is “whether the
22 allegations give fair notice of the nature and basis of a legally sufficient claim and the relief
23 requested.” Ravera v. City of Reno, 100 Nev. 68, 70 (1984).

24 When ruling on a motion to dismiss, if a district court considers evidence outside of the
25 pleadings, it must normally convert the 12(b) motion into a Rule 56 motion for summary
26 judgment and give the nonmoving party a chance to respond. NRCP 12(b). However, the Court
27 may consider certain materials—documents attached to the complaint, documents incorporated
28 by reference in the complaint, or matters of judicial notice—without converting the motion to

1 dismiss into a motion for summary judgment. US v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003);
2 see also Breliant, 109 Nev. at 847.

3 NHP argues that LARA lacks standing to seek injunctive or declaratory relief. *MTD* at 7.
4 NHP argues LARA does not have standing to prospectively challenge whether: (1) NHP has
5 statutory authority to participate in the Federal Equitable Sharing Program (Claim 1), (2)
6 Nevada’s Due Process Clause prohibits seizures motivated by financial self-interest (Claim 2), or
7 (3) Due Process requires a prompt, post-seizure hearing before a neutral magistrate (Claim 4). Id.

8 NHP argues that LARA does not have standing to challenge Claim 1, because the NHP
9 did not participate in the Federal Equitable Sharing Program as the DEA decided not to charge
10 LARA with a crime or seek civil forfeiture, meaning there is no “live” controversy. Id. at 8 – 9.
11 NHP further argues that the seizure and retention of LARA’s money occurred in the past and
12 LARA cannot sufficiently show a likelihood that he will be injured in the future. Id. at 9. NHP
13 asserts that LARA cannot make a showing that he is realistically threatened by a repetition of his
14 experience and that LARA has not alleged widespread and systemic unconstitutional stops. Id.

15 Additionally, NHP argues that this case does not present a live controversy for Claims 1,
16 2, or 4 because the DEA ultimately returned the money to LARA. Id. Due to the return of
17 LARA’s money, the State asserts that LARA does not meet the “irreducible constitutional
18 minimum” for standing because LARA does not have a current or ongoing “injury in fact” that is
19 not merely conjectural or hypothetical, and which is “likely” as opposed to merely speculative.
20 Id.

21 LARA replies that his case presents an actual justiciable controversy because he is
22 seeking damages (in addition to other relief) for the legal injuries he suffered, which means he
23 also has a significant personal interest in the litigation. *Opposition* at 10. LARA asserts that he
24 has a right to enforce his claims, both through the tort of conversion and through the
25 constitutional right of action recently recognized in Mack v. Williams. Id.

26 LARA also argue that because of NHP’s unlawful actions, LARA was left without his
27 life savings for 230 days, was unreasonably detained on the side of a highway for 90 minutes,
28 was deprived of the ability to purchase a home while his money was held, has suffered anxiety

1 and depression as a result of this ordeal, and had to endure the time and trouble of waging legal
2 battles in both state and federal courts. Id. at 11. LARA argues because of all this, he is a real
3 party in interest seeking damages to compensate him for his injuries. Id.

4 LARA states that Claim 1, Claim 2, Claim 3, and Claim 4 all independently allege that
5 NHP's seizure was not "in discharge of. . . authority created by law", meaning the seizure was
6 unlawful and therefore subject to a conversion claim. Id. at 12. LARA asserts that if any of these
7 claims are valid, it would defeat NHP's defense that its act of dominion over LARA's life
8 savings for the better part of a year was lawful and that LARA would be entitled to recover for
9 his injuries through the tort of conversion. Id.

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1 LARA asserts that Mack's reasoning extends to all individual rights safeguarded by
2 Nevada's Declaration of Rights.¹ Id. at 13. LARA asserts that it would be passing strange if the
3 Constitution provided remedies for violations of search-and-seizure rights but then denied the
4 same remedies for equally fundamental rights like due process. Id. LARA further asserts that
5 Mack's logic compels the conclusion that the Due Process Clause is enforceable through
6 damages just as much as the right against unreasonable seizures is. Id. at 13. LARA argues that
7 the Court does not need to decide what relief will ultimately prove appropriate at this stage of the
8 instant matter, but LARA has a valid basis for prospective relief. Id. at 16 – 17.²

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17 ¹ LARA asserts:

18 First Claim: If NHP was acting ultra vires when it seized Lara's life savings for purposes
19 of a federal adoption, then it unreasonably seized his property in violation of Article I,
20 Section 18, and also deprived him of property without following a lawful process in
21 violation of Article I, Section 8.

22 Second Claim: A seizure of property with an impermissible financial motive violates the
23 Due Process Clause. . . . The same impermissible financial motive also led to a violation of Article
24 I, Section 18 by providing "a direct financial incentive" to seize Lara's money "without probable
25 cause."

26 Third Claim: Seizing Lara's life savings without probable cause was an unreasonable,
27 warrantless seizure in violation of Article I, Section 18. . . . That unreasonable seizure was
28 motivated by an impermissible profit motive and therefore also ran afoul of the Due Process
Clause.

Fourth Claim: Seizing Lara's life savings without a prompt post-seizure hearing, and
then handing it over to the DEA where it languished for more the 200 days without any
hearing before a neutral magistrate, violated the Due Process Clause. . . . The seizure also became
unreasonable after it continued for so long without a hearing before a neutral magistrate to contest
probable cause, violating Article I, Section 18. *Opposition* at 15 – 16.

² Additionally, LARA states that to the extent that NHP's objection is that Claim 1 and Claim 2 did not separately list a request for monetary relief, that can be cured by amendment. However, LARA claims that he made several indications that he is seeking retrospective money damages for all his claims. Additionally, LARA states that in his Prayer for Relief he expressly sought "compensatory damages" for all the "above described violations of the Nevada Constitution and Nevada law". *Opposition* at 15, fn. 4. The Court agrees with LARA and finds that LARA sufficiently requested monetary relief for Claim 1 and Claim 2.

1 “Nevada has a long history of requiring an actual justiciable controversy as a predicate to
2 judicial relief. Moreover, litigated matters must present an existing controversy, not merely the
3 prospect of a future problem.” Doe v. Bryan, 102 Nev. 523, 525 (1986). “[A] controversy must
4 be present through all stages of the proceeding”. Personhood Nevada v. Bristol, 126 Nev. 599,
5 602 (2010). “To have standing to challenge an unconstitutional act, a plaintiff generally must
6 suffer a personal injury traceable to that act and not merely a general interest that is common to
7 all members of the public.” Nevada Pol’y Rsch. Inst., Inc. v. Cannizzaro, 507 P.3d 1203, 1207
8 (Nev. 2022) (internal quotations omitted).

9 In Nevada “a private right of action against state actors for retrospective monetary relief
10 exists to enforce search-and-seizure rights under Article 1, Section 18 of the Nevada
11 Constitution.” Mack v. Williams, 522 P.3d 434, 451 (Nev. 2022).³ The Court reasoned that the
12 prohibitory provisions of the Nevada Constitution are self-executing, meaning no further
13 legislation is required to put them in force. Id. For self-executing provisions of the Nevada
14 Constitution, the Court established a 3-part analysis to determine whether a damages remedy
15 flows from the conclusion that a private right of action exists. Id. at 444 – 45. The first part of the
16 analysis focuses on “‘the language and history of the constitutional provision’ at issue to
17 ascertain whether ‘an affirmative intent either to authorize or to withhold a damages action to
18 remedy a violation’ exists”. Id. at 444 (quoting Katzberg v. Regents of Univ. of California, 29
19 Cal. 4th 300, 317 (2002)). The primary focus of the second part of the analysis is “whether the
20 proposed remedy is consistent with the purpose of and necessary to enforce the provision, the
21 analysis necessarily depends on existing alternative remedies”. Id. at 448. The third part of the
22 analysis focuses on whether “any special factors counsel [] hesitation in recognizing a damages
23 action.” Id. at 445 (quoting Katzberg, 29 Cal. 4th at 329).

24 Article 1, Section 8, Clause 2 of the Nevada Constitution states, “no person shall be
25 deprived of life, liberty, or property, without due process of law.”

26 ³ In Mack, the certification questions presented to the Court by the US District asked whether there is a private right
27 of action under the Nevada Constitution, Article 1, Section 8. Mack v. Williams, 522 P.3d 434, 440 (Nev. 2022) The
28 Court refused to address this question as the “the certification order yields little information about the nature of the
procedural due-process claim” and “... the viability of the claim necessarily entails further proceedings before this
court regarding whether a cognizable liberty interest . . .”. Id. at 440 – 41.

1 First, the Court will analyze whether Article 1, Section 8, Clause 2 of the Nevada
2 Constitution either establishes or precludes a private right of action for monetary relief for
3 violations of its guarantees. The language of Article 1, Section 8, Clause 2 of the Nevada
4 Constitution does not explicitly authorize a right of action for money damages; however, it does
5 not explicitly preclude a right of action for money damages, either. As described in Mack, the
6 absence of language in a provision of the Nevada Constitution does not limit the judiciary's
7 ability to recognize a private damages action available through the pertinent provision. Id. at 446.
8 Given that Article 1, Section 8, Clause 2 of the Nevada Constitution contains no affirmative
9 indication of intent, the Court will proceed to analyze step two of the Mack framework.

10 The Court highlighted that “[a] state actor's legal obligation under a state constitution
11 ‘extends far beyond that of his or her fellow citizens’ under tort law; accordingly, a state actor is
12 ‘not only ... required to respect the rights of other citizens’ but also ‘sworn to *protect and defend*
13 *those rights.*” Id. at 448 (quoting Binette v. Sabo, 244 Conn. 23, 43 (1998)). Further, “. . . .
14 equitable relief rarely, if ever, suffices to remedy a past wrong. . . .” Id.

15 Here, a damages remedy is warranted under this factor. Without a damages remedy, no
16 mechanism exists to deter or prevent violations of inherent individual rights in situations like
17 those allegedly experienced by LARA. While LARA has potential monetary relief available to
18 him via the tort of conversion, “state tort law ultimately protects and serves different interests
19 than such constitutional guarantees.” Id. at 448.

20 Next, the Court will consider the following factors: “deference to legislative judgment,
21 avoidance of adverse policy consequences, considerations of government fiscal policy, practical
22 issues of proof, and the competence of courts to assess particular types of damages.” Id. at 449
23 (quoting Katzberg, 29 Cal. at 317).

24 First, “no legislative judgments regarding a damages action for constitutional violations
25 exist to which to accord deference.” Id.

26 Second, as to policy consequences, the lack of a damages remedy for a violation of an
27 individual's Due Process rights under the Nevada Constitution renders “adverse policy
28 consequences insofar as it renders illusory the guarantees of the Nevada Constitution in

1 situations like the present.” Id. Also, a private right of action for money damages here would not
2 serve as a new limitation on governmental conduct, as the state of Nevada has well developed
3 jurisprudence regarding Due Process.⁴

4 Third, a private right of action for money damages “does implicate legislative fiscal
5 policy because. . . the Legislature has already decided to presumptively waive the State's
6 sovereign immunity . . . [i]n doing so, the Legislature has consented to damages liability, except
7 as specifically enumerated in the statutory-waiver scheme.”⁵ Id.

8 Fourth and Fifth, “a damages action for retrospective harm presents no practical issues of
9 proof beyond what the judiciary handles every day. Nevada courts routinely and competently
10 assess personal-injury type damages, including inherently subjective damages.” Id. at 450.

11 As such, the Court finds that Article 1, Section 8, Clause 2 contains an inherent right of
12 private action. The Court further finds that this inherent right of private action provides LARA
13 with standing in the instant matter. LARA’s allegations are that due to the purportedly
14 unconstitutional actions taken by NHP, he suffered a myriad of damages. LARA’s alleged injury
15 is directly traceable to NHP’s purportedly unconstitutional actions. Therefore, LARA has
16 standing to pursue Claims 1, 2, 3,⁶ and 4.⁷

17 “Conversion is a distinct act of dominion wrongfully exerted over personal property in
18 denial of, or inconsistent with, title or rights therein or in derogation, exclusion or defiance of
19 such rights”. Edwards v. Emperor's Garden Rest., 122 Nev. 317, 328 (2006). “[A]n act, to be a
20 conversion, must be essentially tortious; a conversion imports an unlawful act, or an act which
21 cannot be justified or excused in law’.” Ferreira v. P.C.H. Inc., 105 Nev. 305, 308 (1989)
22 (quoting Wantz v. Redfield, 74 Nev. 196, 198 (1958)).

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25 ⁴ See e.g. Hernandez v. Bennett-Haron, 128 Nev. 580 (2012); Matter of L.L.S., 137 Nev. 241 (2021).

26 ⁵ See Echeverria v. State, 137 Nev. 486, 490 (2021).

27 ⁶ The Court notes that LARA pleads Claim 3 through Article 1, Section 18 of the Nevada Constitution. As
28 highlighted in Mack, a private right of action exists through Article 1, Section 18 of the Nevada Constitution.
Therefore, LARA has standing to assert this claim.

⁷ The Court need not to determine whether LARA is eligible for declaratory relief or injunctive relief at the current
juncture. As the factual recorded for the instant matter is revealed through discovery, the Court will be in a better
position to determine whether declaratory relief or injunctive relief is appropriate.

1 If LARA is able to prove any of his other claims, then LARA will likely be able to prove
2 his conversion claim as NHP will have exerted “dominion wrongfully” over LARA’s “personal
3 property” and that act will not have been “excused in law”. LARA’s conversion claim provides
4 him with an additional source of standing in the instant litigation.⁸

5 NHP asserts that in acting to seize the property on the DEA’s behalf, the NHP Troopers
6 were not acting in their capacity as state agents, they were acting as federal officers; therefore,
7 the forfeiture occurred pursuant to federal law. *MTD* at 10.⁹ NHP asserts that state constitutional
8 law cannot impinge on federal policy and law concerning forfeitures. *Id.* at 11. NHP argues that
9 the Supremacy Clause applies to the instant matter and the federal law prevails. *Id.*

10 LARA argues that NHP points to no federal law that purports to compel Nevada officials
11 to participate in equitable sharing because there is no such law. *Opposition* at 36. LARA asserts
12 that the Federal Constitution would not allow such laws because of the Federal Constitution’s
13 Anti-Commandeering Principle. *Id.* LARA argues that it is ultimately Nevada’s choice what its
14 officials will do, and they are bound by Nevada’s Constitution and statutes. *Id.* LARA further
15 argues that Nevada requiring its own officers to respect their citizens’ rights does not interfere
16 with any federal law, and certainly not in a “clear and manifest” manner. *Id.* at 37. LARA also
17 argue that the question of federal law has no bearing on whether this Court, under Nevada law,
18 may hold Nevada officials accountable to the Nevada Constitution and statutes. *Id.*

19 “Under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, state laws which are contrary
20 to, or which interfere with, the laws of Congress are invalid.” *Davidson v. Velsicol Chem. Corp.*,
21 108 Nev. 591, 593 (1992). “We start with the assumption that the historic police powers of the
22 States were not to be superseded by [a] Federal Act unless that was the clear and manifest
23 purpose of Congress”. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009)(internal quotations omitted).

24 ⁸ NHP also argued that LARA’s claims were moot. However, due to the fact LARA may be able to recover relief for
25 possible constitutional injuries he suffered and through the tort of conversion, LARA’s claims are not moot and
provide for a “live controversy”.

26 ⁹ “In cases where a federal agency adopts the seizure of currency by local officials, ‘by reason of the adoption
27 principle, the cash is deemed to have been seized by the [federal] government and, thus, subject to federal
jurisdiction as of ... the date of seizure.’ *United States v. Alston*, 717 F.Supp. 378, 380 (M.D.N.C.1989) (emphasis
28 added). In Haywood's case therefore, the effective date of the seizure of the currency by United States Customs, by
operation of the adoption principle, was December 29, 2000.”
N. Carolina ex rel. Haywood v. Barrington, 256 F. Supp. 2d 452, 457 (M.D.N.C. 2003)

1 NHP cites to one federal case in a non-binding jurisdiction suggesting that state law
2 enforcement officers that seize property and then turn it over to a federal agency in the Federal
3 Equitable Sharing Program are acting under federal law. Even if the Court was to accept this line
4 of reasoning, it does not absolve the NHP from possibly violating LARA's constitutional rights
5 under the Nevada Constitution. State agencies acting under federal law do not have blanket
6 immunity to violate the Nevada Constitution and the limitations it places on Nevada's public
7 employees.

8 Additionally, the preemption doctrine does not preclude LARA from asserting his claims.
9 The Federal Equitable Sharing Program merely gives state law enforcement officials the option
10 to participate in it. Nevada law enforcement officials could decide to stop participating in the
11 Federal Equitable Sharing Program at any time. Finding for LARA, in the instant matter, would
12 not interfere with the laws of Congress. Nevada would be able to enact new legislation, or offer
13 new directives to law enforcement agencies, that could allow Nevada's law enforcement
14 agencies to participate in the Federal Equitable Sharing Program without violating the Nevada
15 Constitution.

16 Overall, the Supremacy Clause does not bar any of LARA's claims.

17 NHP argues that LARA's claim that NHP has no statutory authority to participate in the
18 Federal Equitable Sharing Program fails as a matter of law. *MTD* at 12. NHP argues that they
19 have statutory authority to participate in the Federal Equitable Sharing Program. *Id.* NHP argues
20 that based on existing state and federal law, NHP was well within its authority to work with the
21 DEA to assist it in combating drug trafficking across state lines. *Id.* NHP argues that while NRS
22 Chapter 179 lays out the procedure for property forfeited for state law violations, property can
23 still be seized in Nevada for federal law violations. *Id.* NHP cites to the Interlocal Cooperation
24 Act¹⁰ as state statutory authority that allows Nevada law enforcement agencies to participate in
25 the Federal Equitable Sharing Program. *Id.* at 13. NHP also cites to 18 U.S.C.A section 981 as a
26 federal source that specifically provides for federal agencies equitable sharing with state
27 partners. *Id.* NHP asserts that based on the various inconsistencies in LARA's story and the

28 ¹⁰ NRS 277.080 – NRS 270.180.

1 totality of the circumstances, it was up to the DEA to further investigate and potentially
2 prosecute LARA. Id. at 14.

3 LARA argues that NHP acted *ultra vires* by seizing money for an adoption through the
4 Federal Equitable Sharing Program. *Opposition* at 19. LARA argues that nothing in Chapter 179,
5 nor any other provision in Nevada law, authorizes state law enforcement to opt out of his
6 statutory civil-forfeiture scheme by instead turning the property over to federal law enforcement
7 for adoption. Id. LARA also asserts that several aspects of Nevada law are inconsistent with
8 federal civil-forfeiture law by providing property owners greater protections and by restricting
9 potentially perverse incentives for law enforcement.¹¹ Id. at 19 – 21. LARA argues that NHP
10 cannot elect to ignore all the detailed requirements for civil forfeiture adopted by the Nevada
11 legislature by choosing the path of federal adoption. Id. at 22.

12 LARA further argues that the Interlocal Cooperation Act is a law not about civil
13 forfeiture, but rather about allowing municipalities to pool resources to achieve greater
14 efficiency, such as through shared administration of public services like sanitation or land-use
15 planning or providing parks. Id.

16 NRS 179.1171(3) states the following: “[i]f a law enforcement agency seizes property,
17 the property must not be forfeited unless: (a) The agency files a complaint for forfeiture in the
18 district court for the county in which the property is located; or (b) A stipulated agreement
19 between the parties regarding the property is reached.” NRS 179.1175(2) state the following:
20 “[i]f an agency seizes currency, unless otherwise ordered by the court, the agency shall deposit
21 the currency in an interest-bearing account maintained for the purpose of holding currency seized
22 by the agency.”

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26 ¹¹ For example, NRS 179.1173(2) requires that property be immediately returned to a person if he is acquitted of the
27 criminal allegations that gave rise to seizure, whereas federal law has no such requirement. NRS 179.1173(4)
28 requires that the government prove by clear and convincing evidence that property is forfeitable, whereas 18 U.S.C.
(83)(c)(1) requires a preponderance of evidence.

1 NRS 277.090 describes the purpose of the Interlocal Cooperation Act as:

2 to permit local governments to make the most efficient use of their powers
3 by enabling them to cooperate with other local governments on a basis of mutual
4 advantage and thereby to provide services and facilities in a manner and pursuant
5 to forms of governmental organization which will best accord with geographic,
6 economic, population and other factors influencing the needs and development of
7 local communities.

6 NRS 277.110 states:

7 [a]ny power, privilege or authority exercised or capable of exercise by a public
8 agency of this State, including, but not limited to, law enforcement, may be
9 exercised jointly with any other public agency of this State, and jointly with any
10 public agency of any other state or of the United States to the extent that the laws
11 of such other state or of the United States permit such joint exercise.

10 Under 18 U.S.C.A §981(a)(1)(C), real or personal property which constitutes or is
11 derived from proceeds traceable to a laundry list of offenses is subject to forfeiture.

12 18 U.S.C.A. § 981(e)(2), in pertinent part, states the following:

13 the Attorney General, the Secretary of the Treasury, or the Postal Service, as the
14 case may be, is authorized to retain property forfeited pursuant to this section, or
15 to transfer such property on such terms and conditions as he may determine. . . .
16 (2) to any State or local law enforcement agency which participated directly in
17 any of the acts which led to the seizure or forfeiture of the property.

16 Regarding seizure of property and forfeiture of property, Nevada law places strict
17 requirements on law enforcement agencies. When a law enforcement agency seizes currency,
18 “the agency **shall** deposit the currency in an interest-bearing account maintained for the purpose
19 of holding currency seized by the agency.” NRS 179.1175(2)(**emphasis added**).¹² The plain
20 language of NRS 179.1175(2) is clear, a law enforcement agency, itself, is required to place the
21 seized currency in an interest-bearing account.

22 Additionally, NRS 179.1173(3) lays out the procedural requirements for property to be
23 forfeited. The language of NRS 179.1173(3) is clear, before an individual’s property is forfeited,
24 a Nevada law enforcement agency must comply with the requirements of NRS 179.1173(3).
25 NRS 179.1173(3) states, in pertinent part, the property **must** not be forfeited unless. . .
26 .”(**emphasis added**). When the seized property is adopted by a federal agency through the

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28 ¹² “The word ‘shall’ is generally regarded as mandatory.” Markowitz v. Saxon Special Servicing, 129 Nev. 660, 665 (2013).

1 Federal Equitable Sharing Program, the seized property is subject to be potentially forfeited
2 without the federal agency abiding by the procedural requirements of NRS 179.1173(3).
3 Effectively, this could potentially allow Nevada’s law enforcement agencies to circumvent the
4 procedural requirements of NRS 179.1173(3).

5 In the instant matter, when NHP seized the cash in LARA’s car NHP was operating under
6 Nevada, not federal, law because NHP seized the property pursuant to the statutory authority
7 granted to it under NRS Chapter 179. As highlighted above, Nevada law invokes statutory
8 requirements on how NHP is to deal with the seized property. When NHP decided to turn the
9 seized money over to the DEA, it is possible that they circumvented these statutory requirements.

10 Further NRS 277.110 states, in pertinent part “[a]ny power, privilege or authority
11 exercised or capable of exercise by a public agency of this State.” The language of NRS 277.110
12 is clear, for a law enforcement agency to be able to utilize NRS 277.110, the law enforcement
13 agency must have an underlying state statute to authorize their actions. Here, LARA could
14 potentially show that no underlying state statute granted NHP authority to utilize NRS 277.110
15 in the instant matter.

16 Additionally, 18 U.S.C.A §981 does not definitively allow state law enforcement
17 agencies to circumvent state law when participating in the Federal Equitable Sharing Program.
18 LARA could prove in the litigation that a state law enforcement agency can only participate in
19 the Federal Equitable Sharing Program, pursuant to 18 U.S.C.A §981, when there is underlying
20 state authority for the state agency to do so.

21 In light of the foregoing considerations, Claim 1 sufficiently pleads a claim for relief.

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1 NHP asserts that LARA’s claim that Nevada’s Due Process Clause prohibits seizures
2 motivated by financial self-interest, fails to state a cognizable claim. *MTD* at 14. NHP argues that
3 NHP and its federal partners were performing an enforcement function that could have led to
4 prosecutorial actions by their agents; therefore, no aspect of this role in the seizure and forfeiture
5 process is akin to judicial or quasi-judicial function. *MTD* at 16. NHP asserts that LARA’s
6 position essentially states that NHP can never choose to utilize the federal process because the
7 federal process allows NHP to retain more money from forfeitures. *Id.* NHP asserts that this
8 position is inconsistent with the entire concept of federalism and is not based in any requisite
9 legal principle. *Id.*

10 LARA asserts that NHP’s seizure of LARA’s money was suffused with financial
11 motivation. *Opposition* at 23. LARA asserts that these financial incentives run head-long into
12 due process principles. *Id.* LARA asserts that numerous federal cases have found a due-process
13 violation on similar facts or determined that the question requires a full factual record to
14 resolve.¹³ *Id.* at 23 – 25. LARA additionally asserts that NHP officers do in fact exercise quasi-
15 judicial power because they may choose to pursue forfeiture under Nevada Law or via a federal
16 adoption. *Id.* at 26. Additionally, LARA argues that Nevada’s Constitution may provide
17 heightened due-process protections against financially motivated law enforcement. *Id.*

18 In Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980), the United States Supreme Court
19 stated:

20 [t]he Due Process Clause entitles a person to an impartial and disinterested
21 tribunal in both civil and criminal cases. This requirement of neutrality in
22 adjudicative proceedings safeguards the two central concerns of procedural due
23 process, the prevention of unjustified or mistaken deprivations and the promotion
of participation and dialogue by affected individuals in the decision-making
process.

24 “A scheme injecting a personal interest, financial or otherwise, into the enforcement
25 process may bring irrelevant or impermissible factors into the prosecutorial decision and in some
26 contexts raise serious constitutional questions”. *Id.* at 249–50. Several factors should be

27 ¹³ See e.g., Harjo v. City of Albuquerque, 307 F. Supp. 3d 1163 (D.N.M.); Flora v. Sw. Iowa Narcotics Enf’t Task
28 Force, 292 F. Supp. 3d 875 (S.D. Iowa 2018); Sourovelis v. City of Philadelphia, 103 F. Supp. 3d 694 (E.D. Pa.
2015).

1 considered when deciding if a law, procedure, or program unconstitutionally biases an official:
2 “(i) whether the amount of penalties or prosecutions affects an official's salary; (ii) the official's
3 authority over allocating the penalty funds; (iii) the percentage of the budget that the fees and
4 penalties constitute; and (iv) whether surplus funds are allocated to the program or to other
5 programs”. Harjo v. City of Albuquerque, 326 F. Supp. 3d 1145, 1184 (D.N.M. 2018).¹⁴

6 A comprehensive factual record is necessary for the Court to ascertain whether NHP
7 harbors improper financial incentives that drive their asset seizure practices and involvement in
8 the Federal Equitable Sharing Program. Through a comprehensive factual record, LARA could
9 potentially prove that the funds forfeited via the Federal Equitable Sharing Program affect NHP
10 officials’ salaries, NHP officials’ exert authority over allocating funds forfeited via the Federal
11 Equitable Sharing Program , the percentage of NHP’s budget that funds forfeited via the Federal
12 Equitable Sharing Program make up is substantial; and that surplus funds are allocated to NHP’s
13 or other government agencies’ programs.

14 In light of the foregoing considerations, Claim 2 sufficiently pleads a claim for relief.

15 NHP argues that LARA’s third claim fails because the underlying seizure of funds was
16 supported by probable cause. *MTD* at 17. NHP asserts probable cause existed for the following
17 reasons: LARA appeared nervous in his interaction with NHP, LARA had a short turn-around
18 trip vehicle rental to a source drug area, the car had a lived-in appearance, LARA misstated to
19 NHP troopers how long it had been since he visited the drug source area, a drug detection canine
20 was deployed around the exterior of the vehicle which resulted in a positive alert to the odor of
21 drugs coming from the vehicle, a large amount of newer \$100 bills were located in the vehicle,
22 LARA was not able to state with a reasonable degree of accuracy the amount of cash he had on
23 him, the drug detection canine was deployed to the currency itself which resulted in a positive
24 alert, and while LARA stated that he had been saving the currency for 20 years, the NHP
25 troopers observed that the currency included only newer bills. *Id.* at 17 – 19.

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27 ¹⁴ While LARA brings this case under the Due Process Clause of the Nevada Constitution, “the similarities between
28 the due process clauses contained in the United States and Nevada Constitutions. . . . permit us to look to federal
precedent for guidance.” Hernandez v. Bennett-Haron, 128 Nev. 580, 587 (2012) (internal citations omitted).

1 LARA argues that no probable cause existed to seize his money. *Opposition* at 27. LARA
2 asserts that when he was pulled over, nothing was wrong. *Id.* LARA asserts that carrying cash is
3 not a crime and that he had extensive documentation showing three years of legitimate bank
4 receipts for the money. *Id.* at 28. LARA argues that the NHP troopers' post-seizure behavior also
5 indicates that there was no legitimate reason to believe that the money was the proceeds of
6 criminal activity. *Id.* LARA points to the fact that NHP did not ticket or arrest LARA, charge
7 him with a crime, or investigate him. *Id.*

8 “‘Probable cause’ requires that law enforcement officials have trustworthy facts and
9 circumstances which would cause a person of reasonable caution to believe that it is more likely
10 than not that the specific items to be searched for are: seizable and will be found in the place to
11 be searched.” *Keese v. State*, 110 Nev. 997, 1002 (1994). “Each case stands upon its own facts,
12 and the presence or absence of any one fact is not dispositive; indeed probable cause is not an
13 exacting standard”. *United States v. Currency, U.S. \$42,500.00*, 283 F.3d 977, 980 (9th Cir.
14 2002).

15 The Court notes that inherent factual issues still exist as to whether NHP had probable
16 cause. LARA and NHP provide two very different versions of the facts that occurred prior to the
17 seizure in the instant matter. Additionally, LARA asserts that he plans on pursuing discovery
18 regarding the particular K-9 unit's history of reliability and to develop a record about the
19 scientific reliability of the dog.¹⁵ A comprehensive factual record is needed to determine whether
20 probable causes existed during the NHP's seizure of LARA's money. Therefore, the Court finds
21 that Claim 3 adequately pleads a claim for relief.

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¹⁵ *Opposition* at 29 – 30.

1 NHP argues that LARA’s fourth claim for relief, that Due Process requires a prompt
2 post-seizure hearing before a neutral magistrate, fails to state a cognizable claim. *MTD* at 19.
3 NHP argues that Nevada’s forfeiture procedures and governing authorities do not provide for or
4 include the prompt, post seizure hearing he urges the Court to enforce. *Id.* NHP argues that
5 LARA is effectively asking to Court to legislate his desired hearing into existence from the
6 bench. *Id.*

7 NHP further asserts that any potential claim regarding a post-seizure hearing cannot be
8 properly brought against NHP. *Id.* at 20. NHP argues that, pursuant to 18 U.S.C.A section 981,
9 the United States Attorney General was deemed to have custody of the property after the seizure
10 of the funds. *Id.* NHP argues that they no longer had possession, NHP was not an entity with
11 legal control of the funds at issue and NHP did not possess the ability to provide a hearing in this
12 matter. *Id.*

13 Additionally, NHP argues that it is already settled law that the procedures provided by
14 the federal forfeiture scheme provide the safeguards required for due process. *Id.* NHP points to
15 the United States Supreme Court Decision Matthews v. Eldridge, that explains when evaluating
16 “the specific dictates of due process,” courts consider three factors: (1) “the private interest that
17 will be affected by the official action” (2) “the risk of an erroneous deprivation of such interest
18 through the procedures used, and the probative value, if any, of additional or substitute
19 procedural safeguards,” and (3) “the Government’s interest, including the function involved and
20 the fiscal and administrative burdens that the additional or substitute procedural requirement
21 would entail.” 424 U.S. 319, 321 (1976). *Id.*

22 LARA argues that all 3 factors of the Matthews test weigh firmly in his favor. *Opposition*
23 at 31. LARA additionally cites federal cases that he claims recognize the vital private interests
24 involved and the importance of an early opportunity to contest probable cause the government’s
25 basis for forfeiture in civil forfeiture cases.¹⁶ *Id.* at 32 – 33. LARA additionally asserts that at the
26 very least, this is a claim ill-suited to be resolved at the pleading stage. *Id.* at 33.

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28 ¹⁶ See Krimstock v. Kelly, 306 F.3d 40, 67 – 68 (2d Cir. 2002); United States v. Holy Land Found. for Relief & Dev., 493 F.3d 469, 475 (5th Cir. 2007) (en banc).

1 The Court notes that it is not yet settled whether Article 1, Section 8 of the Nevada
2 Constitution requires a prompt post-seizure hearing before a neutral magistrate. The one federal
3 case that NHP cites that speaks directly on whether post-seizure hearings are required for
4 currency seizures comes from a nonbinding Federal District Court.¹⁷ Additionally, the Federal
5 District Court also relies on a DC municipal code as part of its analysis.¹⁸ This federal case is of
6 minimal persuasive value to the Court.

7 In the instant matter, NHP does not dispute that LARA meets the first prong of the
8 *Mathews* analysis. Allowing the instant matter to proceed to discovery will allow NHP to provide
9 evidence of any countervailing interests or burdens and why these interests and burdens
10 outweigh the interests of LARA. LARA will also be provided with an opportunity to dispute why
11 his interests outweigh the countervailing interests or burdens of the government. Therefore, the
12 Court finds Claim 4 adequately pleads a claim for relief.¹⁹

13 NHP argues that their actions of seizing money and turning it over to the DEA for further
14 investigation and potential forfeiture are protected by discretionary act immunity. *Reply* at 21.
15 NHP asserts that LARA’s tort claims are precluded by discretionary act immunity. *Id.* NHP
16 argues that their decision to make a seizure deserves discretionary immunity because the
17 decision to make a seizure is inherently discretionary; is based on social, economic, and political
18 policies; and is part of a policy consideration that requires analysis of various public safety
19 concerns.²⁰ *Id.*

20 LARA argues that NHP did not have an element of legitimate judgement or choice
21 because officials have no lawful discretion to violate constitutional guarantees. *Opposition* at 38.
22 LARA further argues that even if NHP were acting within its lawful discretion, it would fail the
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24 ¹⁷ *Brown v. D.C.*, 115 F. Supp. 3d 56, 67 (D.D.C. 2015) (“Application of the *Mathews* factors leads the Court to
conclude that due process does not require a preliminary hearing after currency seizures.”).

25 ¹⁸ *Id.* (“the risk of erroneous deprivation, while still present, was lessened by the presumption under the previous
26 version of the District of Columbia law that any money found in close proximity to forfeitable narcotics was also
subject to forfeiture. D.C.Code § 48–905.02(a)(7)(B) (2012)”).

27 ¹⁹ NHP additionally argues that LARA’s conversion claim should be dismissed. However, as summarized in the
standing section, if LARA can succeed on any of his other claims, then he will be able to succeed on a conversion
claim.

28 ²⁰ NHP clarifies that their discretionary act immunity defense is only asserted as to LARA’s conversion claims.

1 second requirement of discretionary-function immunity because low-level roadside seizure are
2 not judgements that the discretionary-function immunity was designed to shield. Id. at 39.

3 NRS 41.031 state, “[t]he State of Nevada hereby waives its immunity from liability and
4 action and hereby consents to have its liability determined in accordance with the same rules of
5 law as are applied to civil actions against natural persons and corporations Nevada has adopted
6 the federal approach to discretionary function immunity.” However, NRS 41.032 states, in
7 pertinent part, that:

8 no action may be brought under NRS 41.031. . . . [b]ased upon the exercise or
9 performance or the failure to exercise or perform a discretionary function or duty
10 on the part of the State or any of its agencies or political subdivisions or of any
officer, employee or immune contractor of any of these, whether or not the
discretion involved is abused.

11 Nevada has clarified that to fall within the scope of discretionary-act immunity, a decision must:

12 (1) involve an element of individual judgment or choice and (2) be based on
13 considerations of social, economic, or political policy. In this, we clarify that
14 decisions at all levels of government, including frequent or routine decisions, may
be protected by discretionary-act immunity, if the decisions require analysis of
government policy concerns.²¹

15 “NRS 41.032 does not protect a government employee for intentional torts or bad-faith
16 misconduct, as such misconduct, ‘by definition, [cannot] be within the actor's discretion.’”
17 Franchise Tax Bd. of State of California v. Hyatt, 133 Nev. 826, 842 (2017)(quoting Falline v.
18 GNLV Corp., 107 Nev. 1004, 1009 (1991)), rev'd and remanded sub nom on other grounds.
19 Franchise Tax Bd. of California v. Hyatt, 139 S. Ct. 1485 (2019).

20 *Black's Law Dictionary* defines an “intentional tort” as “a tort committed by someone
21 acting with general or specific intent.”

22 The Court finds that a comprehensive factual record, obtained through discovery, is
23 necessary in order to determine whether discretionary function immunity protects NHP from
24 liability. The Court notes that “[o]fficers' decisions ‘as to how to accomplish a particular seizure
25 or search [are] generally considered ... discretionary determination[s] under Nevada law, and
26 officers are therefore immune from suit as to state law claims arising therefrom in most cases.’”
27 Sandoval v. Las Vegas Metro. Police Dep't, 756 F.3d 1154, 1168 (9th Cir. 2014) (quoting Davis

28 ²¹ Martinez v. Maruszczak, 123 Nev. 433, 446–47 (2007).

1 v. City of Las Vegas, 478 F.3d 1048, 1059 (9th Cir.2007)). However, through discovery, LARA
2 could show that the NHP officer possessed a general or specific intent when they seized LARA's
3 money, or that they seized his money in bad-faith.²²

4 At the current juncture of the instant matter, the Court finds that discretionary function
5 immunity does not bar LARA's tort claim for conversion.

6 Based on the foregoing and good cause appearing,

7 **IT IS HEREBY ORDERED** that NHP's Motion to Dismiss is **DENIED**.

8 DATED this 11 day of January, 2024.

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DISTRICT JUDGE

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28 ²² The Court notes that discretionary function immunity only serves as a bar to LARA's tort claims. The only tort claim alleged by LARA is conversion.

CERTIFICATE OF SERVICE

CASE NO. CV21-01595

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 11 day of January 2024, I electronically filed the **ORDER DENYING MOTION TO DISMISS** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Personal delivery to the following: [NONE]

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

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KATHLEEN BRADY, ESQ. for STATE OF NEVADA, DEPT. OF PUBLIC SAFETY, HIGHWAY PATROL DIV., ANNE CARPENTER, GLENN RIGDON

JORDAN SMITH, ESQ. for STEPHEN LARA

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