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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 GRANTING PLAINTIFF'S MOTION FOR PARTIAL JUDGMENT ON THE  
PLEADINGS AND DENYING DEFENDANTS' COUNTER-MOTION FOR JUDGMENT  
ON THE PLEADINGS**

On August 31, 2021, Plaintiff Stephen Lara (hereinafter "LARA"), by and through his counsel Jordan T. Smith, Esq., of Pisanelli Bice PLLC, filed a *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 (hereinafter collectively "NHP"), by and through its counsel, Aaron D. Ford, Nevada Attorney General, and Nathan Hastings, Senior Deputy Attorney General, and Kathleen Brady, Deputy Attorney General, filed its *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*.

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 a *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 a  
6 *Reply in Support of Motion to Stay Proceedings.*

7           On January 8, 2022, the Court entered its *Order Granting Nevada Highway Patrol*  
8 *Defendants’ Motion to Stay Proceedings Pending the Nevada Supreme Court’s Answer to Accept*  
9 *Certified Questions from the United States District Court* (hereinafter “*Order Granting Stay*”)  
10 wherein the Court stayed the instant matter until a decision was rendered in Mack v. Williams  
11 Nevada Supreme Court Case No. 81513.

12           On February 1, 2022, LARA filed *Plaintiff’s Motion to Lift Stay.* Also, on February 1,  
13 2022, LARA filed his *First Amended Complaint* (hereinafter “*FAC*”). On February 15, 2022,  
14 NHP filed *Defendant’s Opposition to Plaintiff’s Motion to Lift Stay.* On February 22, 2022,  
15 LARA filed a *Reply in Support of Plaintiff’s Motion to Lift Stay.* On April 14, 2022, the Court  
16 entered *Order Denying Plaintiff’s Motion to Lift Stay.*

17           On January 3, 2023, LARA filed *Notice of Decision in Mack v. Williams*—per the *Order*  
18 *Granting Stay*, this notice lifted the stay.

19           On March 29, 2023, NHP filed a *Motion to Dismiss.* On May 12, 2023, *Plaintiff’s*  
20 *Opposition to Defendant’s Motion to Dismiss* was filed. On June 9, 2023, NHP filed their *Reply*  
21 *in Support of NHP’s Motion to Dismiss.* On January 11, 2023, the Court entered its *Order*  
22 *Denying Motion to Dismiss.*

23           On March 27, 2024, LARA filed *Plaintiff’s Motion for Partial Judgment on the*  
24 *Pleadings* (hereinafter “*MPJOP*”). On May 13, 2024, NHP filed *Defendants’ Opposition to*  
25 *Plaintiff’s Motion for Partial Judgment on the Pleadings; and Defendants Counter-Motion for*  
26 *Partial Judgment on the Pleadings* (hereinafter “*Opp. to MPJOP*”). On May 20, 2024, LARA  
27 filed a *Reply in Support of Plaintiff’s Motion for Partial Judgment on the Pleadings* (hereinafter  
28 “*Reply*”).

1           On September 4, 2024, the Court held oral arguments on the *MPJOP* and *Opp. to*  
2 *MPJOP*.

3           In the *MPJOP*, LARA “moves, under NRCP 12(c), for partial judgment on the pleadings  
4 as to liability on the First Claim of his First Amended Complaint.” *MPJOP* at 1. In other words,  
5 LARA argues that it is *ultra vires* for NHP to participate in the federal equitable sharing  
6 program.

7           In support of his main argument, LARA submits that the text and structure of Nevada’s  
8 forfeiture statutes precludes using another mechanism for forfeiture. *Id.* at 11. LARA avers that  
9 “the plain text of Chapter 179 confirms that Nevada law enforcement must use the Nevada  
10 forfeiture system to seize and forfeit property in Nevada.” *Id.* LARA then proceeds to conduct a  
11 comprehensive statutory overview of Chapter 179.<sup>1</sup> *Id.* at 11 – 16.

12           Next, LARA argues that using federal adoption is especially incongruous with Nevada  
13 law because Nevada has chosen to give greater protections to property owners than federal law.  
14 *Id.* at 16. LARA then contends that “[b]y utilizing the federal system, NHP circumvented many  
15 of the rights and safeguards that the Nevada Legislature has prescribed.” *Id.* at 17. LARA  
16 proceeds to submit that “the specific terms of Nevada’s forfeiture statutes must preclude state  
17 law enforcement from proceeding under a forfeiture scheme that undermines those very terms.”  
18 *Id.* LARA then proceeds to provide a table wherein he demonstrates the different standards  
19 applied by Nevada’s forfeiture laws and federal forfeiture laws.<sup>2</sup> *Id.* at 17–19.

20           Moreover, LARA argues that “[t]he statutory history of Nevada’s civil forfeiture system  
21 further confirms that it was not intended to be circumvented by use of federal law.” *Id.* at 20.  
22 LARA avers that “[t]he modern federal civil forfeiture system, including the adoption and  
23 equitable-sharing scheme, was established in 1983.” *Id.* LARA then states that in 1987  
24 “Nevada’s Legislature had enacted the forfeiture system that, as amended, essentially remains in  
25 place today in NRS Chapter 179.” *Id.* at 21. LARA then proceeds to contend that:

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27 <sup>1</sup> For purposes of brevity and judicial economy, the Court will not summarize the particulars of LARA’s overview of  
Chapter 179.

28 <sup>2</sup> For purposes of brevity and judicial economy, the Court will not summarize the particulars of LARA’s overview of  
the different standards applied by Nevada’s forfeiture laws and federal forfeiture laws.

1 [T]he Legislature chose not to include any provisions allowing state law  
2 enforcement to circumvent Nevada law, even though it knew that the federal  
3 government offered an alternative via adoptions. In other words, the Legislature  
4 was aware of the federal model, has consistently rejected it in favor of a more  
property-rights- protective system, and has included no provision allowing  
participation in federal adoptions. Id.

5 Next, LARA argues that the implications of NHP’s position are “staggering”. Id. LARA  
6 contends that by NHP’s logic, “it needs no express statutory authority to hand Nevadans’  
7 property over to another government to pursue forfeiture, no matter how inconsistent that  
8 government’s forfeiture scheme is with Nevada’s.” Id. LARA then avers that “[s]uch an  
9 extraordinary position should be rejected out of hand in favor of the common-sense conclusion  
10 that when the Legislature enacted a comprehensive and facially exclusive forfeiture system with  
11 well-defined rights for property owners, it did not intend law enforcement to flout it.” Id. at 22.

12 Lastly, LARA argues that NHP’s purported authority to participate in federal adoptions  
13 are nonexistent. Id. LARA notes that the principal authority NHP uses to justify its  
14 “extraordinary circumvention” is the Interlocal Cooperation Act. Id. As to this, LARA contends  
15 that this law “is not about civil forfeiture at all.” Id. Next, LARA points to Nevada’s forfeiture  
16 statutes. Id. at 23. LARA contends that these “statutes give no authority to participate in federal  
17 adoption.” Id. Then, LARA points to Federal law. Id. at 24. LARA then contends that “[j]ust  
18 because the federal government authorizes a mode of forfeiture does not mean that Nevada  
19 agencies must (or can) participate in it.” Id.

20 In opposition, NHP notes that LARA concedes that Federal Law expressly permits state  
21 and federal law enforcement to cooperate in federal adoption and equitable sharing. *Opp. to*  
22 *MJOP* at 5. NHP contends that although LARA argues that the Legislature has not accepted the  
23 offer of the federal equitable sharing program, LARA “fails to cite to any pertinent authority to  
24 support the implication of this argument – that it is even necessary for the Nevada Legislature to  
25 do so.” Id.

26 Next, NHP argues that LARA’s erroneous position that the Legislature must expressly  
27 accept and/or allow NHP’s participation in federal statutory programs would lead to absurd  
28 results. Id. NHP notes that “[t]he federal government iteratively legislates and provides, or in

1 Lara’s terms, ‘offers’ new benefits and/or programs for state participation.” Id. NHP then  
2 provides the following list of examples: “disaster relief for events like storms or floods”;  
3 “stimulus and recovery funds to implement certain measures and/or mandates, as during and  
4 following the COVID pandemic”; and “grant opportunities for distribution by state agencies,  
5 boards, and commissions to local entities for emergency preparedness, public safety, voter  
6 registration and other community initiatives.” Id. NHP then contends that “[u]nder Lara’s  
7 invented standard, before Nevada could receive any such benefit or participate in any such  
8 program, the Nevada Legislature would have to create a new statute to “accept” the federal  
9 government’s ‘offer.’” Id.

10 Moreover, NHP argues that the Legislature has not expressly precluded, but rather allows  
11 NHP’s participation in federal forfeiture adoption and equitable sharing. Id. at 6. NHP contends  
12 that “NRS 179 comprehensively describes what must occur when and if a forfeiture action is  
13 filed under that chapter, does not prove that the Nevada Legislature has foreclosed the option of  
14 using a separate, valid, and parallel federal statutory forfeiture framework. Lara has cited no  
15 authority standing for such a proposition.” Id. at 7. NHP then contends that “Lara does not  
16 purport to cite any express Nevada statutory prohibition on NHP participating in federal  
17 forfeiture adoption and equitable sharing.” Id. NHP also contends that the Interlocal Cooperating  
18 Act does in fact provide NHP with authority to participate in the federal equitable sharing  
19 program. Id. at 8–9.

20 Additionally, NHP argues that differences between Nevada’s forfeiture statutes and  
21 federal forfeiture statutes, including varying protections, do not establish that only Nevada  
22 forfeiture statutes may be utilized. Id. at 9. NHP submits that “[t]he Nevada legislature can  
23 determine that it will only allow participation in NRS 179 forfeiture. But until or unless it does  
24 so, which would require express legislation precluding participation in federal sharing and  
25 adoption, the differences Lara points out are just that, differences.” Id.

26 Lastly, NHP argues that his Court should grant their countermotion for judgment on the  
27 pleadings. Id.

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1 In reply, LARA argues that NHP does not counter his principal argument that Chapter  
2 179 is mandatory and inconsistent with federal forfeiture. *Reply* at 4. LARA then submits that  
3 Chapter 179’s text makes it clear its mandatory and exclusive. *Id.* Also, LARA submits that  
4 Chapter 179’s comprehensive civil forfeiture scheme is wholly inconsistent with federal civil  
5 forfeiture. *Id.* at 6.

6 Next, LARA argues that NHP’s purported alternative statutory bases for authority are  
7 wrong and have already been rejected by this Court. *Id.* at 7. LARA then submits that federal  
8 forfeiture policy does not dictate what Nevada’s law is. *Id.* LARA further submits that the  
9 statutory provisions invoked by NHP are irrelevant. *Id.* at 9.

10 The relevant claim for relief here is LARA’s first claim, which is titled the following:  
11 “NHP has No Statutory Authority to Participate in the Federal Equitable Sharing (Declaratory &  
12 Injunctive Relief).” *FAC* at 16. In relevant part, LARA asserts that “NHP’s participation in  
13 federal adoption and equitable sharing is ultra vires because it is not authorized by state law” and  
14 “[n]o provision adopted by Nevada’s Legislature under Chapter 179 or any other provision in  
15 Nevada’s Revised Statutes authorizes law enforcement to simply turn seized property over to  
16 federal law enforcement for adoption and equitable sharing.” *Id.* at 16–17.

17 NRCP 12(c) states the following: “After the pleadings are closed--but early enough not to  
18 delay trial--a party may move for judgment on the pleadings.” “A Rule 12(c) motion is designed  
19 to provide a means of disposing of cases when material facts are not in dispute and a judgment  
20 on the merits can be achieved by focusing on the content of the pleadings.” *Bernard v. Rockhill*  
21 *Dev. Co.*, 103 Nev. 132, 135 (1987). “[A] motion for a judgment on the pleadings has utility  
22 only when all material allegations of fact are admitted in the pleadings and only questions of law  
23 remain.” *Id.* “[A] defendant will not succeed on a motion under Rule 12(c) if there are  
24 allegations in the plaintiff’s pleadings that, if proved, would permit recovery.” *Id.*

25 As a preliminary matter, in the *MPJOP*, LARA provides a factual recitation of the  
26 circumstances underlying the instant matter. In response, NHP argues the following: “This Court  
27 should either disregard these arguments in their entirety because they are irrelevant, or determine  
28 that they preclude Lara from obtaining relief under Rule 12(c).” *Opp. to MPJOP* at 4. Here, the

1 Court need not consider the facts as the *MPJOP* presents a purely legal question. Due to this, the  
2 Court will disregard LARA’s factual recitation in the *MPJOP*.

3 Being an issue of first impression in Nevada, the Court will conduct a comprehensive  
4 overview of case law and relevant statutes throughout the United States regarding the dual  
5 sovereignty inherently present in connection with the federal equitable sharing program.<sup>3</sup>

6 The Supreme Court of Alaska has described the federal equitable sharing program in  
7 detail, as follows:

8 Through informal arrangements, local police departments agree to notify the DEA  
9 when they seize property which may be subject to forfeiture pursuant to federal  
10 narcotics laws. Upon a DEA request, the local police department will transfer the  
11 property to the DEA, which will treat the property as if it had been seized by  
12 federal authorities. That is, the DEA will “adopt” the seizure. The DEA will then  
13 institute federal forfeiture proceedings against the property. Once the forfeiture is  
14 complete, the DEA is authorized to “split the pot” with the cooperating local  
15 police department. Johnson v. Johnson, 849 P.2d 1361, 1363 (Alaska 1993).

16 21 U.S.C. § 881(e) states, in relevant part, the following:

17 Whenever property is civilly or criminally forfeited under this subchapter the  
18 Attorney General may--(A) retain the property for official use or, in the manner  
19 provided with respect to transfers . . . transfer the property to any Federal agency  
20 or to any State or local law enforcement agency which participated directly in the  
21 seizure or forfeiture of the property.”

22 Also, under 21 U.S.C. § 881(3)(a), the US Attorney General (hereinafter “US AG”) must  
23 ensure that the transferred property “has a value that bears a reasonable relationship to the degree  
24 of direct participation of the State or local agency in the law enforcement effort resulting in the  
25 forfeiture.” Also, under 21 U.S.C. § 881(3)(b), the US AG “will serve to encourage further  
26 cooperation between the recipient State or local agency and Federal law enforcement agencies.”

27 Over 60 years ago, the United States Supreme Court elucidated the ground rules to be  
28 applied in cases of concurrent jurisdiction between State and Federal courts in regard to  
forfeiture proceedings. Specifically, the United States Supreme Court found:

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<sup>3</sup> The Court notes that it uses the term “federal equitable sharing program” as an all-encompassing term throughout the entirety of this order. This term encompasses the process of local or state law enforcement agencies seizing property and then turning over that property to federal law enforcement agencies which then institute federal forfeiture proceeding in federal court.

1 Where the judgment sought is strictly in personam, for the recovery of money or  
2 for an injunction compelling or restraining action by the defendant, both a state  
3 court and a federal court having concurrent jurisdiction may proceed with the  
4 litigation, at least until judgment is obtained in one court which may be set up as  
5 res adjudicata in the other.... But, if the two suits are in rem or quasi in rem,  
6 requiring that the court or its officer have possession or control of the property  
7 which is the subject of the suit in order to proceed with the cause and to grant the  
8 relief sought, the jurisdiction of one court must of necessity yield to that of the  
9 other. To avoid unseemly and disastrous conflicts in the administration of our  
10 dual judicial system ... and to protect the judicial processes of the court first  
11 assuming jurisdiction ... the principle, applicable to both federal and state courts,  
12 is established that the court first assuming jurisdiction over the property may  
13 maintain and exercise that jurisdiction to the exclusion of the other. Penn General  
14 Casualty Co. v. Pennsylvania, 294 U.S. 189, 195 (1935).

9 With this holding, the United States Supreme Court made clear that upon the seizure of an item,  
10 forfeiture proceedings may be employed in either state or federal court. Neither court loses  
11 jurisdiction until forfeiture proceedings are started in the other.

12 The dual sovereignty at play is further illuminated by what is known as “the relation back  
13 doctrine.” 21 U.S.C. § 881(h), which codifies the relation back doctrine, states the following:  
14 “All right, title, and interest in property described in subsection (a) shall vest in the United States  
15 upon commission of the act giving rise to forfeiture under this section.” In other words, under the  
16 relation back doctrine, “property rights are divested immediately at the moment such property is  
17 used in a manner or context prescribed by section 881, and not at some future time.” Eggleston v.  
18 State of Colo., 873 F.2d 242, 246 (10th Cir. 1989).

19 This general principal has been reaffirmed by Courts throughout the nation. United States  
20 v. Certain Real Prop. Known as Lot B Governor's Rd., Milton, N.H., 755 F. Supp. 487, 490  
21 (D.N.H. 1990) (finding that “[u]nder the doctrine of ‘adoptive forfeiture’, the federal writ of  
22 arrest of the motorcycle dates back to the date the motorcycle was initially seized by state law  
23 enforcement authorities.”); United States v. \$119,000 in U.S. Currency, 793 F. Supp. 246, 249  
24 (D. Haw. 1992) (stating that “under the ‘adoptive forfeiture’ doctrine, the United States' adoption  
25 of the State's seizure of Kim's cash has the same effect as if the government had originally seized  
26 the currency.”); United States v. \$67,040.00, in U.S. Currency, 2015 WL 1418039, at \*7  
27 (W.D.N.C. Mar. 27, 2015) (finding that “[b]ecause the DEA adopted the seizure of the defendant  
28 property by the state troopers, the forfeiture that resulted in permanent deprivation of the money



1 was the instant federal forfeiture.”); City of Montgomery v. Vaughn, 138 So. 3d 996, 1002 (Ala.  
2 Civ. App. 2013) (finding that “under the doctrine of adoptive forfeiture, the date of the seizure  
3 dates back to the date the ... currency was initially seized by the Montgomery Police Department;  
4 it is as if federal authorities originally executed the seizure.”).

5         Given all this, there is no question that federal law enforcement agencies have full  
6 authority to adopt seizures from state law enforcement agencies and then start forfeiture  
7 proceedings in federal court—divesting state courts from jurisdiction over the seized item. There  
8 is also no question that federal law enforcement agencies have full authority to then transfer the  
9 proceeds recovered from the forfeiture proceedings back to the state law enforcement agency  
10 that originally seized the property. But this does not necessarily mean that state law enforcement  
11 agencies may participate in this process. State law enforcement agencies must be able to point to  
12 independent authority permitting them to participate in this process.

13         With this in mind, the Court will summarize specific statutes in other states that  
14 specifically detail if that state’s law enforcement agency may participate in the federal equitable  
15 sharing program. The Court will then summarize decisions coming from other state appellate  
16 courts detailing the authority of their respective law enforcement agencies to participate in the  
17 federal equitable sharing program.

18         In Ohio, a law enforcement agency is not precluded “from seeking forfeiture under  
19 federal law”; however, a law enforcement agency cannot “directly or indirectly transfer or refer  
20 any property seized by” the law enforcement agency “to any federal law enforcement authority”  
21 for forfeiture “under federal law unless the value of the seized property exceeds one hundred  
22 thousand dollars, excluding the potential value of the sale of contraband, or the property is being  
23 transferred or referred for federal criminal forfeiture proceedings.” Ohio Rev. Code Ann. §  
24 2981.14.

25         In Alaska, “a law enforcement agency may. . . . with the approval of the court, transfer  
26 the property to another state or federal law enforcement agency for forfeiture proceedings by that  
27 agency.” Alaska Stat. Ann. § 12.36.020.

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1 In Arkansas, “[n]o state or local law enforcement agency may transfer any property  
2 seized by the state or local agency to any federal entity for forfeiture under federal law unless the  
3 circuit court having jurisdiction over the property enters an order. . . . authorizing the property to  
4 be transferred.” Ark. Code Ann. § 5-64-505.

5 In Alabama, “[a] prosecuting authority or seizing agency may not transfer or offer for  
6 adoption” property seized by state or local law enforcement “unless the property includes United  
7 States currency that exceeds ten thousand dollars (\$10,000).” Ala. Code § 20-2-93.

8 New Mexico only allows participation in the federal equitable sharing program when the  
9 seized property is valued at over \$50,000, the underlying crime is interstate in nature, and the  
10 underlying crime is in violation of federal law. N.M. Stat. Ann. § 31-27-11.

11 Maryland only allows for the transfer of seized property to a federal law enforcement  
12 agency in the following four circumstances: (1) “a criminal case related to the seizure is  
13 prosecuted in the federal court system under federal law”; (2) “the owner of the property  
14 consents to the forfeiture”; (3) “the property is cash of at least \$50,000”; or (4) “the seizing  
15 authority transfers the property to a federal authority under a federal seizure warrant issued to  
16 take custody of assets originally seized under State law.” Md. Code Ann., Crim. Proc. § 12-212.

17 Nebraska only allows for the transfer of money or property to a law enforcement  
18 authority in the following three circumstance: (1) “The money or property seized exceeds  
19 twenty-five thousand dollars in currency or value”; (2) “The money or property is physically  
20 seized by a federal agent who is employed by the federal government”; or (3) “The person from  
21 whom the money or property was seized is the subject of a federal prosecution or the facts and  
22 circumstances surrounding the money or property seized are the subject of a federal  
23 prosecution.” Neb. Rev. Stat. Ann. § 28-1603

24 In Missouri, state and local law enforcement agencies are precluded from transferring  
25 property to a federal agency “until the prosecuting attorney and the circuit judge of the county in  
26 which the property was seized first review the seizure and approve the transfer to a federal  
27 agency.” Mo. Ann. Stat. § 513.647(1).

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1 In Arizona, “[t]he seizing agency” is not allowed “to transfer or refer seized property to a  
2 federal agency for the purpose of forfeiture if the property was seized pursuant to an  
3 investigation that either: 1. Did not involve a federal agency. 2. Involves a violation of a state  
4 law and no violation of a federal law is alleged.” Ariz. Rev. Stat. Ann. § 13-4306.

5 In Pennsylvania, “[s]tate law enforcement authorities shall not refer seized property to a  
6 Federal agency seeking the adoption by the Federal agency of the seized property. Nothing under  
7 this chapter shall prohibit the Federal Government or any of its agencies from seeking Federal  
8 forfeiture of the same property under any Federal forfeiture law.” 42 Pa. Stat. and Cons. Stat.  
9 Ann. § 5807.1.

10 The legislatures of the above-mentioned states have provided their respective state and  
11 local law enforcement agencies with authority to either allow these agencies to participate in the  
12 federal equitable sharing program—usually with certain caveats—or completely preclude them  
13 from doing so. Unlike the legislatures of these states, Nevada’s Legislature has yet to explicitly  
14 discuss if law enforcement agencies within the state are allowed to or are precluded from  
15 participating in the federal equitable sharing program.

16 In DeSantis v. State, the Court of Appeals of Maryland considered the state’s argument  
17 “that the State Police had authority to circumvent § 297(e) entirely when it opted to pursue  
18 federal adoption and allow the DEA to forfeit the money under federal law.” 384 Md. 656, 663  
19 (2005). The DeSantis Court disagreed with this argument. Id. Specifically, the DeSantis Court  
20 highlighted that the state police were “not free to circumvent State law altogether” because  
21 “[w]hen the State Police seized the cash in petitioner’s car, it was operating under State, not  
22 federal, law.” Id. The DeSantis Court then highlighted that “when the State Police took custody  
23 of the property, it did so pursuant to State law, without any federal involvement whatsoever.” Id.  
24 Importantly, the Desantis Court also highlighted “that state authorities cannot avoid their own  
25 state laws when they transfer the property to federal officials.”<sup>4</sup> Id. at 664.

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28 <sup>4</sup> As a point of clarification, the Court cited to Md. Code Ann., Crim. Proc. § 12-212 above. This statute was enacted  
in 2016, and the decision in DeSantis, decided in 2005, predates the enactment of this statute.

1           Moreover, in Harris v. Mayfield Hts., the Court of Appeals of Ohio noted that although it  
2 was settled that “a federal agency could lawfully seek forfeiture of assets seized from Harris”  
3 there was still a question as to “whether the city could lawfully seize the cash taken from Harris  
4 and hand it over to a federal agency for an adoptive forfeiture.” 991 N.E.2d 1179, 1184 (Ohio Ct.  
5 App. 2013). In answering this question, the Harris Court determined that “[o]nce the police  
6 seized the cash from Harris, they could turn it over to the federal government for an adoptive  
7 forfeiture.” Id. at 1185. Specifically, the Court reasoned that “[t] process is expressly authorized  
8 by” Ohio Rev. Code Ann. 2981.14(A).

9           Also, In Albin v. Bakas, the New Mexico Court of Appeals considered “whether state  
10 police officers who seize cash under” state authority “are required to comply with the  
11 requirements” of New Mexico’s Forfeiture Act “or whether they may instead transfer the cash to  
12 the federal government to bring a forfeiture action under federal law, then receive from the  
13 federal government a portion of the proceeds”. 160 P.3d 923, 925 (N.M. App. 2007). The Albin  
14 Court held that “when property is seized by state police officers for forfeiture, compliance with  
15 [New Mexico’s Forfeiture Act] is required even if the state intends to transfer the property to the  
16 federal government to pursue a federal forfeiture action pursuant to an ‘adoptive seizure.’”<sup>5</sup> Id. at  
17 932.

18           With this context in mind, the Court now turns to Nevada’s forfeiture scheme. Notably,  
19 unlike the above-mentioned state statutes, Chapter 179 of the NRS does not contain statutory  
20 language that expressly discusses the ability of state or local law enforcement agencies to hand  
21 over seized property to the federal government. But Chapter 179 does place strict requirements  
22 on state and local law enforcement in Nevada for pursuing the forfeiture of seized property—  
23 discussed in detail below. With this in mind, it is the Court determination that there is no  
24 statutory authority for NHP to participate in the federal equitable sharing program. Unlike other  
25 forfeiture statutes in other states, nothing in Chapter 179 expressly allows NHP to hand over  
26 seized property to federal law enforcement agencies. This Court, unlike the above-mentioned

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28 <sup>5</sup> As a point of clarification, this Court cited to N.M. Stat. Ann. § 31-27-11 above. This statute was enacted in 2015,  
and the decision Albin, decided in 2007, predates the enactment of this statute.

1 state appellate courts that found their respective state law enforcement agencies could participate  
2 in the federal equitable sharing program, cannot point to a state statute justifying NHP's  
3 participation in the federal equitable sharing program. Without the appropriate statutory  
4 authority, NHP is unable to participate in the federal equitable sharing program to the detriment  
5 of the state forfeiture statutes.

6 A look at specific provisions of Chapter 179 of the NRS illuminates the requirements set  
7 forth upon state and local law enforcement agencies in Nevada pursuing forfeitures of seized  
8 assets in Nevada.

9 NRS 179.1156, which explicates the scope of Nevada's forfeiture statutes, states the  
10 following: "Except as otherwise provided in NRS 179.1211 to 179.1235, inclusive,  
11 and 207.350 to 207.520, inclusive, the provisions of NRS 179.1156 to 179.121, inclusive, govern  
12 the seizure, forfeiture and disposition of all property and proceeds subject to forfeiture."

13 Per NRS 179.1171(1), "[a] proceeding for forfeiture is commenced by filing a complaint  
14 for forfeiture. If the property has been seized without process, the plaintiff shall file the  
15 complaint for forfeiture within 120 days after the property is seized."

16 Per NRS 179.1171(3), "[i]f a law enforcement agency seizes property", the property may  
17 only be forfeited in the following two situations: (a) "The agency files a complaint for forfeiture  
18 in the district court for the county in which the property is located", or (b) "A stipulated  
19 agreement between the parties regarding the property is reached."

20 As to currency specifically, per NRS 179.1175(2) states the following: "[i]f an agency  
21 seizes currency, unless otherwise ordered by the court, the agency shall deposit the currency in  
22 an interest-bearing account maintained for the purpose of holding currency seized by the  
23 agency."

24 When NHP participates in the federal equitable sharing program, it circumvents the  
25 statutory requirements set upon it in Chapter 179 of the NRS. For example, when NHP  
26 participates in the federal equitable sharing program, it effectively circumvents the requirements  
27 of NRS 179.1171(3), as the seized property may be forfeited without following the dictates of  
28 the statute. And when NHP participate in the federal equitable sharing program, it effectively

1 circumvents the requirements of NRS 179.1175(2), as the currency may very well not be placed  
2 in an interest-bearing account—despite not receiving the requisite court order.

3 Moreover, it is important to consider NRS Chapter 179 in the context of the relation-back  
4 doctrine. As discussed above, while it is undisputed that federal law enforcement agencies have  
5 full authority to adopt property that was seized by NHP and treat that said property as if they  
6 seized it, this does not mean that NHP may hand over the seized property to the federal law  
7 enforcement agencies. As noted by the DeSantis Court, “state authorities cannot avoid their own  
8 state laws when they transfer the property to federal officials.” 384 Md. at 663. Chapter 179 of  
9 the NRS is the sole directive offered by Nevada’s Legislature in how local or state law  
10 enforcement agencies may proceed with forfeiture of a seized item. Nothing in this chapter can  
11 be read as allowing NHP to participate in the federal equitable sharing program. Therefore, when  
12 NHP participates in the federal equitable sharing program, it, in effect, eschews Nevada law—as  
13 NHP does not follow the sole process of forfeiture laid out by the Nevada Legislature.

14 Further, the Nevada Legislature has expressly allowed Nevada’s participation in national  
15 cooperative federalism programs. For example, Chapter 422 of the NRS details Nevada’s  
16 participation in the federal government’s Medicaid program. Specifically, NRS 422.061 states  
17 that one of “[t]he purposes of the [Division of Health Care Financing and Policy of the  
18 Department]” is to “[t]o review Medicaid, the Children’s Health Insurance Program and other  
19 health programs of this State to determine the maximum amount of money that is available from  
20 the Federal Government for such programs.” Also, NRS 422.063 requires the Director of the  
21 Department to “adopt each state plan required by the Federal Government, either directly or as a  
22 condition to the receipt of federal money, for the administration of any public assistance or other  
23 program for which the [Division of Health Care Financing and Policy of the Department] is  
24 responsible.”

25 Chapter 414 of the NRS details Nevada’s participation in the federal government’s  
26 emergency management programs. Under NRS 414.020(2), the Nevada Legislature made clear  
27 that “the purpose of this chapter and the policy of the State that all functions of emergency  
28 management in this state be coordinated to the maximum extent with the comparable functions

1 of the Federal Government, including its various departments and agencies.” Also, NRS 414.060  
2 specifically allows “the Governor” to “cooperate with the Federal Government.”<sup>6</sup>

3 Unlike Chapter 422 and Chapter 414 of the NRS, Chapter 179 of the NRS does not  
4 expressly allow for cooperation between the federal and state governments when it comes to  
5 forfeiture. When a chapter of the NRS “sets forth a comprehensive system,” the Court “refuse[s]  
6 to disturb the delicate balance . . . by implying provisions not expressly included in the  
7 legislative scheme.” Weaver v. State Indus. Ins. Sys., 104 Nev. 305, 305–06 (1988). Chapters  
8 422, 414, and 179, amongst other examples, set forth comprehensive systems on various  
9 governmental agencies. Chapters 422 and 414 expressly allow for cooperation between the  
10 federal and state governments. Chapter 179 does not. Nevada’s Legislature has set forth a  
11 comprehensive system regarding the actions state law enforcement agencies must take in regard  
12 to forfeiture of seized property. No part of this comprehensive system expressly allows Nevada’s  
13 state law enforcement agencies to participate in the federal equitable sharing program. Without  
14 implying provisions into Chapter 179, this Court is unable to find any underlying state statutory  
15 authority that serves as the basis for allowing NHP to participate in the federal equitable sharing  
16 program.

17 It is a longstanding bedrock policy that “[f]orfeitures are not favored at law, and statutes  
18 imposing them must be strictly construed.” Matter of Harris, 104 Nev. 246, 247 (1988).<sup>7</sup>  
19 Considering this, a review of the forfeiture schemes of Nevada law and federal law demonstrate  
20 that Nevada has more stringent requirements governing their forfeiture proceedings. Nevada’s  
21 forfeiture scheme requires that a law enforcement agency “establish proof by clear and  
22 convincing evidence that the property is subject to forfeiture.” NRS 179.1173. However, under  
23 the federal forfeiture scheme, “the burden of proof is on the Government to establish, by a  
24 preponderance of the evidence, that the property is subject to forfeiture.” 18 U.S.C. 983(c)(1).

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26 <sup>6</sup> This is not a comprehensive list of examples. Nevada law is replete with further examples.

27 <sup>7</sup> This bedrock policy is widely accepted across federal and state courts across the United States. See United States  
28 v. \$191,910.00 in U.S. Currency, 16 F.3d 1051, 1069 (9th Cir. 1994); see also Courson v. Maryland Cas. Co., 475  
F.2d 1030, 1033 (8th Cir. 1973); People v. One Pontiac 8 Sedan, Engine No. 8-73976, 22 Cal. App. 2d 503, 505  
(1937); In re 1969 Chevrolet Camaro Bearing '75 Massachusetts License Tag No. 372-766 VIN No.  
124379N511693, 334 So. 2d 82, 82 (Fla. Dist. Ct. App. 1976).

1 Further, NRS 179.1171(3) mandates that forfeiture “must” proceed before a district court, unless  
2 property owner stipulates to an agreement regarding the property. Conversely, under federal law,  
3 a seizing agency may initiate “nonjudicial” forfeiture to adjudicate the forfeiture itself  
4 administratively. 18 U.S.C. 983(a)(1). Moreover, under NRS 179.1164(2), property cannot be  
5 forfeited unless the government proves the “knowledge, consent or willful blindness” of the  
6 property owner in crime underlying forfeiture. In contrast, under federal law, the property owner  
7 has “the burden of proving that the claimant is an innocent owner by a preponderance of the  
8 evidence.” 18 U.S.C. 983(d)(1).

9 As discussed in detail above, Nevada’s Legislature has not explicitly permitted NHP to  
10 utilize the federal process for forfeiture—which has less rigorous standards for forfeiture.  
11 Without such a dictate, allowing NHP to utilize the federal equitable sharing program can only  
12 occur if the Court liberally construes Nevada’s forfeiture statutes. Such a liberal construction of  
13 Nevada’s forfeiture statutes would make it easier for NHP to successfully forfeit seized property.  
14 But this would run directly counter to the above-mentioned bedrock policy. Given this, without a  
15 clear dictate from the Nevada Legislature, NHP cannot undermine this bedrock policy and  
16 effectively circumvent Nevada’s civil asset forfeiture statutes by electing to participate in the  
17 federal equitable sharing program.

18 Next, the Court turns its attention to the Interlocal Cooperation Act.<sup>8</sup>

19 In considering the Interlocal Cooperation Act, the Court notes that it must “interpret  
20 provisions within a common statutory scheme harmoniously with one another in accordance with  
21 the general purpose of [the] statutes.” S. Nevada Homebuilders Ass'n v. Clark Cnty., 121 Nev.  
22 446, 449 (2005) (internal quotation marks). With this in mind, the Court will summarize the  
23 pertinent provisions of the Interlocal Cooperation Act below.

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28 <sup>8</sup> NRS 277.080 states the following: “NRS 277.080 to 277.180, inclusive, may be cited as the Interlocal Cooperation Act.”



1 NRS 277.110(1), in relevant part, expressly states the following:

2 Any power, privilege or authority **exercised or capable** of exercise by a public  
3 agency of this State. . . . may be exercised jointly with. . . . any public agency of .  
4 . . . the United States to the extent that the laws of such other state or of the United  
5 States permit such joint exercise. Any agency of this State when acting jointly  
6 with any other public agency may exercise all the powers, privileges and authority  
7 conferred by NRS 277.080 to 277.180, inclusive, upon a public agency.<sup>9</sup>  
8 **(emphasis added).**

6 NRS 277.130(1) states the following:

7 No agreement made pursuant to NRS 277.080 to 277.170, inclusive, **relieves any**  
8 **public agency of any obligation or responsibility imposed upon it by law**  
9 except that to the extent of actual and timely performance by a joint board or  
10 other legal or administrative entity created by the agreement, such performance  
11 may be offered in satisfaction of the obligation or responsibility. **(emphasis**  
12 **added).**

11 Per NRS 277.110(1), a Nevada public agency is allowed to enter into an interlocal  
12 agreement with a foreign agency; but the interlocal agreement is limited to powers, privileges, or  
13 authorities the Nevada public agency is already exercising, or is capable of exercising. While this  
14 language is abstruse, NRS 277.130(1) provides helpful context to it. Per NRS 277.030(1), a  
15 Nevada public agency is not allowed to run afoul of the obligation or responsibilities imposed  
16 upon it by law just because it has entered into an interlocal agreement with a foreign agency.<sup>10</sup> A  
17 Nevada public agency is not allowed to simply circumvent the dictates imposed upon it by the  
18 NRS when it is acting within the confines of an interlocal agreement. Accordingly, construing  
19 these two statutes together, a Nevada public agency can only participate in an interlocal  
20 agreement if it possesses an independent statutory basis to do so.

21 NHP cannot rely on the Interlocal Cooperation Act to justify its participation in the  
22 federal equitable sharing program. As explained above, when NHP participates in the federal  
23 equitable sharing program, it violates the dictates of Chapter 179 of the NRS. NHP does not

24 \_\_\_\_\_  
25 <sup>9</sup> NRS 277.100(1) states, in relevant part, the following: “‘Public agency’ means: (a) Any political subdivision of  
26 this State, including without limitation counties, incorporated cities and towns, including Carson City,  
27 unincorporated towns, school districts and other districts.”

28 <sup>10</sup> NRS 277.130(1) contains an exception to the general rule. However, this exception merely provides that if a joint  
board or other legal or administrative entity is created in order to facilitate the interlocal agreement, that entity may  
fulfill the obligations and responsibilities imposed upon the agencies in lieu of the agencies themselves fulfilling  
them. This language cannot be read so broadly as allowing the agencies that entered into the interlocal agreement to  
completely neglect the obligations and responsibilities imposed upon them by law.

1 maintain the “power, privilege or authority exercised or capable of exercise” to participate in the  
2 federal equitable sharing program. NRS 277.110(1).

3 The Court finds that it is *ultra vires* for Nevada to participate in the federal equitable  
4 sharing program. While federal law clearly provides Nevada the option to participate in the  
5 federal equitable sharing program, Nevada’s Legislature has yet to accept this offer. Without  
6 such an acceptance, NHP is unable to participate in this program—as doing so effectively  
7 requires NHP to eschew Nevada’s delineated forfeiture scheme. NHP is required to utilize the  
8 appropriate means, Nevada’s forfeiture scheme, to reach its desired ends.

9 Based on the foregoing and good cause appearing,

10 **IT IS HEREBY ORDERED** that *Plaintiff’s Motion for Partial Judgment on the*  
11 *Pleadings* is **GRANTED**.

12 **IT IS HEREBY FURTHER ORDERED** that *Defendants’ Counter-Motion for Partial*  
13 *Judgment on the Pleadings* is **DENIED**.

14 **IT IS HEREBY FURTHER ORDERED** that the Department of Public Safety Highway  
15 Patrol Division is hereby enjoined from participating in the federal equitable sharing program  
16 until and unless they achieve full compliance with Nevada's statutory requirements.

17 DATED this 10 day of January, 2025.

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20 \_\_\_\_\_  
DISTRICT JUDGE

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV21-01595

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 10 day of January 2025, I  
5 electronically filed the **ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL**  
6 **JUDGMENT ON THE PLEADINGS AND DENYING DEFENDANTS' COUNTER-**  
7 **MOTION FOR JUDGMENT ON THE PLDEADINGS** with the Clerk of the Court by using  
8 the ECF system.

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

11 **Personal delivery to the following: [NONE]**

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


14 ADAM D. HONEY, ESQ. for ANNE CARPENTER, GLENN RIGDON, STATE OF  
NEVADA, DEPT. OF PUBLIC SAFETY, HIGHWAY PATROL DIV.

15 JORDAN T. SMITH, ESQ. for STEPHEN LARA

16 BRIAN A. MORRIS, ESQ. for STEPHEN LARA

17 BENJAMIN A. FIELD, ESQ. for STEPHEN LARA

18 **Deposited in the Washoe County mailing system for postage and mailing with the United**  
19 **States Postal Service in Reno, Nevada:**

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Audrey A. Austin  
24  
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