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13 **EIGHTH JUDICIAL DISTRICT COURT**
14 **STATE OF NEVADA**

15 GREATER LAS VEGAS SHORT TERM
16 RENTAL ASSOCIATION, a non-profit
17 Nevada corporation; JACQUELINE FLORES,
18 President and Director,

19 Petitioners,

20 vs.

21 CLARK COUNTY and the BOARD OF
22 CLARK COUNTY COMMISSIONERS, a
23 political subdivision of the State of Nevada;
24 and the STATE OF NEVADA,

Defendants.

Case No. A-22-856311-P
Dept. No. 8

HEARING REQUESTED

**MOTION TO DISMISS
COUNTERCLAIMS PURSUANT TO
NRCP 12(b)**

25 The Greater Las Vegas Short Term Rental Association, a non-profit Nevada corporation,
26 and Jacqueline Flores, President and Director (Rental Association), by and through their legal
27 counsel, Joseph C. Reynolds, Esq., and Alex R. Velto, Esq., of HUTCHISON & STEFFEN,
28 PLLC, hereby move pursuant to Nevada Rule of Civil Procedure (NRCP) 12(b) to dismiss the
29 counterclaims that were filed on October 18, 2022, by Clark County and the Board of Clark
30 County Commissioners (Clark County), against the Rental Association in the above-entitled case.

1 As set forth below, the counterclaims alleged by Clark County do not arise out of the
2 Second Amended Complaint for Declaratory and Injunctive Relief filed by the Rental
3 Association on October 3, 2022. The Rental Association sought declaratory and prospective
4 injunctive relief regarding the passage of a new law by Clark County on June 21, 2022, *i.e.*,
5 Chapter 7.100 within Title 7 of the Clark County Code.

6 Oddly, Clark County responded by asserting counterclaims seeking declaratory and
7 injunctively relief on entirely different provisions contained in Titles 11 and 30 of the Clark
8 County Code and alleged a series of claims against the Rental Association and its President and
9 Director Jacqueline Flores for unrelated conduct. Other than broadly dealing with short-term
10 rental laws and policies in Clark County, the counterclaims asserted by Clark County are entirely
11 unrelated to the Rental Association's complaint and constitutional challenges. They are
12 improperly being raised by Clark County. Clark County's counterclaims also lack a proper
13 factual or legal basis to state a claim for relief. Respectfully, summary dismissal of Clark
14 County's counterclaims is warranted. If this Court denies the Rental Association's motion for
15 dismissal, the Rental Association alternatively requests that Clark County be required to provide
16 a more definite statement supporting its counterclaims pursuant to NRCP 12(e). Nevertheless,
17 Clark County's counterclaims are so factually unsupported, unreasonable, and harassing that an
18 award of attorney fees and costs is appropriate. This motion is supported by the accompanying
19 Memorandum of Points and Authorities, which is incorporated by reference herein.

20 DATED this 8th day of November, 2022.

21 HUTCHISON & STEFFEN, PLLC

22 /s/ Joseph C. Reynolds

23 Joseph C. Reynolds (8630)

Alex R. Velto (14961)

24 *Attorneys for Petitioners*

*Greater Las Vegas Short Term Rental Association
and Jacqueline Flores, President and Director*

1 MEMORANDUM AND POINTS OF AUTHORITY

2 INTRODUCTION

3 Clark County’s counterclaims against Ms. Flores are harassing, distracting, and
4 confusing the important constitutional issues raised by the Rental Association. They do not
5 belong in this action.

6 Where a non-profit organization seeks redress of the viability of newly-enacted laws
7 under the Nevada and United States Constitutions and a government entity—Clark County—
8 responds by asserting counterclaims against an individual citizen for unrelated past conduct
9 involving entirely laws, something in the democratic process is amiss. A government agency in
10 Nevada should be prepared to defend the constitutionality of the laws it enacts on its merits, and
11 not respond by attacking an officer of that organization or unfounded conspiratorial allegations.
12 All citizens should have the right to question its government without the threat of retaliation.
13 Fear of retaliation and selective enforcement of the law is a basis of the Rental Association’s
14 request for injunctive relief against Clark County. The counterclaims asserted by Clark County
15 in response to the Rental Association’s legal action, and President Flores in particular, only
16 validates the concern. The Rental Association respectfully request this Court to summarily
17 dismiss Clark County’s counterclaims.

18 For the reasons discussed below, they each fail under NRCP 12(b).

19 First, all counterclaims by Clark County do not arise out of the “same transaction or
20 occurrence” as the complaint by the Rental Association—they involve different laws, facts, and
21 time frames—and therefore is not compulsory under NRCP 13(a). Moreover, Ms. Flores is a
22 plaintiff *in her official capacity* as the President and Director of the Rental Association. She is
23 not—as an individual—a proper “opposing party” for a permissive counterclaim under NRCP
24 13(b).

1 Second, counterclaim no. 1 by Clark County seeks an advisory opinion from this Court
2 as to the validity of laws that *are not* being challenged by the Rental Association in this action.
3 Third, counterclaim no. 2 by Clark County seeking the repayment of alleged unpaid taxes by Ms.
4 Flores is currently barred because the County has failed to abide by its own administrative
5 remedies. Fourth, counterclaim no. 3 by Clark County alleging nuisance against Ms. Flores
6 should be dismissed because the County failed to articulate any facts, such as the date, location,
7 and manner or any reasonable or factual basis to give rise to a cognizable claim in nuisance.
8 Fifth, counterclaim no. 4 by Clark County fails as a matter of law because it is outside of the of
9 the proscribed regulatory remedy for an unpaid lien or tax. Sixth, counterclaim no. 5 by Clark
10 County for civil conspiracy/aiding and abetting should be dismissed because no second party or
11 person is alleged that the Rental Association and/or its officers allegedly conspired with and it
12 is precluded by the intracorporate conspiracy doctrine. Seventh, counterclaim no. 6 by Clark
13 County alleging a civil RICO claim should be dismissed because it is not pleaded with any
14 particularity whatsoever as required under Nevada law. Finally, counterclaim no. 7 by Clark
15 County is nonsensical because it seeks an injunction against the Rental Association to not violate
16 a law that Clark County has the legal authority to enforce, and no actual or actual factual
17 controversy exists.

18 Accordingly, the Rental Association respectfully submits that Clark County's
19 counterclaims individually and cumulatively fail and must be dismissed.

20 STANDARD OF REVIEW

21 NRCP 12(b)(5) provides that a claim must be dismissed when it fails to state a claim upon
22 which relief may be granted. In other words, a claim must be dismissed when it appears beyond
23 a doubt no set of facts that, if accepted by the trier of fact, would entitle a plaintiff to relief. *See*
24 *Simpson v. Mars Inc.*, 113 Nev. 188, 929 P.2d 966 (1997).

1 While pleadings are to be liberally construed, with every fair inference drawn in favor of
2 the non-moving part, *see id.*, dismissal under NRCP 12(b)(5) is proper “where allegations in the
3 counterclaims, taken at face value, and construed favorable in the counterclaimant’s behalf, fail
4 to state a cognizable claim for relief.” *Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 886 P.2d 454
5 (1994). Moreover, pleadings cannot be conclusory and must be “sufficiently definite to give fair
6 notice of the nature and basis or grounds of the claim and a general indication of the type of
7 litigation involved.” *Taylor v. State of Nevada*, 73 Nev. 151, 152-53, 311 P.2d 733, 734 (1957).

8 Here, the counterclaims alleged by Clark County fail this standard.

9 ARGUMENT

10 **I. Clark County’s Counterclaims Are Not Properly Joined Pursuant To NRCP 13.**

11 All of the counterclaims alleged by Clark County against President and Director Flores
12 should be dismissed because they do not comply with NRCP 13. Under NRCP 13(a) and (b),
13 compulsory and permissive counterclaims may be brought against an opposing party. To qualify
14 as a compulsory counterclaim under NRCP 13(a), the claim must arise out of the same
15 “transactions or occurrences.” To qualify as permissive counterclaim under NRCP 13(b), the
16 claim must be alleged against an “opposing party.”

17 None of Clark County’s claims against the Rental Association or Ms. Flores can be
18 considered valid compulsory or permissive claims. Rather, the only connection the
19 counterclaims lodged by Clark County have to the complaint by the Rental Association is that
20 they both involve short term rental laws and policies in Clark County. Clark County’s
21 counterclaims have nothing to do with the merits or allegations in the Rental Association’s
22 Second Amended Complaint. As such, Clark County’s attempt to join claims that do not arise
23 out of or meaningfully relate to the underlying complaint is improper.

24 ///

1 A. The counterclaims do not arise out of the same “transaction or occurrence.”

2 NRC13(a) provides that a counterclaim in an action is compulsory if the claim “arises
3 out of the transaction or occurrence that is the subject matter of the opposing party’s claim” and
4 does not require adding another party.

5 Here, the counterclaims alleged by Clark County are not compulsory under NRC13(a)
6 because they do not arise out of the same “transaction or occurrence.” The same transaction or
7 occurrence requires the claims be based on “matters [that] grow out of the same thing.” *Com. Of*
8 *Kentucky ex rel. Martin v. Morris Wholesale Liquor Distribution Co.*, 29 F. Supp. 310 (1939).

9 The only commonality between the counterclaims asserted by Clark County and those of the
10 Rental Association is that they involve short term rentals in Clark County. They involve entirely
11 different law: the Rental Association’s complaint involves the constitutionality of a newly-
12 enacted provisions within Chapter 7 of the Clark County Code whereas Clark County’s
13 counterclaims involve previously-existing provisions of Chapters 11 and 30 of the Clark County
14 Code. The Rental Association’s complaint challenges the constitutionality of a new law and
15 licenses to be issued on or about March 2023 and does not seek monetary whereas Clark
16 County’s counterclaim involves conduct that alleged occurred in 2019 and seeks monetary
17 damages from a specific person—President and Director Flores.

18 Indeed, the counterclaims pleaded by Clark County involve alleged prior citations, tax
19 liabilities, and liens under an entirely different regulatory scheme that is the subject of the Rental
20 Association’s complaint. Nowhere in the Rental Association’s complaint are any alleged taxes
21 or liens or citations levied against President and Director Flores by Clark County raised or placed
22 in issue. Clark County’s counterclaims do not arise out of the same transaction and occurrence
23 and are not properly joined under NRC13(a). They must be dismissed for this reason alone.

24 ///

1 B. President and Director Flores is a party in her representative capacity only.

2 Even if a counterclaim is not compulsory, it may still be permissible under NRCP 13(b)
3 if it is raised against a proper “opposing party.” Yet, the counterclaims raised by Clark County
4 fail because they are directly asserted against Ms. Flores in her person and individual capacity;
5 whereas, Ms. Flores is clearly only a party to the litigation in her representative capacity as the
6 President and Director of the Rental Association, not solely as a private citizen.

7 The United States Court of Appeals for the Ninth Circuit has recognized that “[i]t is well-
8 established that when a party sues in his representative capacity, he is not subject to
9 counterclaims against him in his individual capacity.”¹ *In re Adbox, Inc.*, 488 F.3d 836, 840 (9th
10 Cir.2007); *see also Pioche Mines Consol., Inc. v. Fidelity–Philadelphia Trust Co.*, 206 F.2d 336,
11 337 (9th Cir. 1953), *cert. denied*, 346 U.S. 899 (1953) (recognizing the “rule that a counterclaim
12 against a trustee in his individual capacity, where he has sued as a fiduciary only, is not
13 permissible inasmuch as it is not a counterclaim against an ‘opposing party,’ as contemplated
14 by Rule 13”); 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and
15 Procedure § 1404 (2d ed.1990); *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 543 n. 6
16 (1986) (stating that “[a]cts performed by the same person in two different capacities are generally
17 treated as the transactions of two different legal personages”) (internal quotation marks omitted)).

18 Here, Ms. Flores is named in the Second Amended Complaint in her official and
19 representative capacity as the “President and Director” of the Greater Las Vegas Short Term
20 Rental Association solely. She is not a ‘plaintiff’ in her individual capacity. As such, Ms. Flores

22 ¹NRCP 13, NRCP 18 and NRCP 20 are the relevant NRCP rules. This Court should look to the
23 federal parallels in discerning their application. *See CitiMortgage, Inc. v. Country Gardens*
24 *Owners’ Ass’n*, 2013 WL 6409951, n.1 (2013) (“[W]here the Nevada Rules of Civil Procedure
parallel the Federal Rules of Civil Procedure, rulings of federal courts interpreting and applying
the federal rules are persuasive authority for this Court in applying the Nevada Rules.”).

1 is not properly an “opposing party” under NRCP 13(b) because she has not acted in a non-
2 representative or individual capacity that would allow for permissive joinder of counterclaims
3 against her by Clark County.

4 Clark County invocation of personal counterclaims and attacks against Ms. Flores,
5 including her alleged compliance citation history, her property and residential addresses, and
6 taxes or liens that may or may not be incurred against her or her property into a lawsuit brought
7 by a non-profit organization challenging the constitutionality of the law is chilling. But for Ms.
8 Flores’ status as the named President and Director of the Rental Association, she would not have
9 completed an affidavit or been named in the Second Amended Complaint. It must be asked: But
10 for Ms. Flores being named in the Second Amended Complaint, would Clark County be pursuing
11 counterclaims against her. The reasonable answer is ‘no.’ If it had intended to do so, Clark
12 County could have commenced litigation against Ms. Flores at any time since 2019. It did not.
13 Instead, Clark County has lodged a series of allegations personally against Ms. Flores that have
14 no factual or legal relationship to the underlying cause of action raised by the Rental Association.

15 Ms. Flores is not a party to this lawsuit in her individual capacity. While she is certainly
16 an individual and a homeowner, her status is as the President and Director (and a representative
17 member) of the Rental Association. Clark County should not be permitted to use this forum to
18 attack her. This is a case about the constitution and permissible bounds of Clark County’s newly
19 enacted short term rental law set forth in Title 7 of the Clark County Code. Clark County’s
20 attempts to inject this matter with counterclaims that are personal to a specific individual based
21 upon prior alleged conduct should be rejected. Clark County’s counterclaims (counterclaims
22 nos. 1-7) cumulatively fail for this reason and must be dismissed.

23 Yet, the counterclaims also fail and must be dismissed when each is reviewed and
24 analyzed separately. An analysis of each claim follows.

1 **II. Counterclaim No. 1 (Declaratory Relief): Clark County Seeks An Impermissible**
2 **Advisory Opinion Over A Matter That Is Not In Dispute**

3 In counterclaim no. 1, Clark County requests that this Court issue declaratory relief over
4 an issue that is not in controversy in this case, *i.e.*, the interpretation and enforcement of Titles
5 11 and 30 of the Clark County Code. Those code provisions have not been placed in dispute.
6 As such, what Clark County requests is for this Court to issue an advisory opinion about an
7 unrelated Clark County Ordinance. This is improper.

8 As a general rule, a court is not to render advisory opinions and should seek to only
9 “resolve actual controversies.” *Personhood Nevada v. Bristol*, 126 Nev. 599, 601, 245 P.3d 572,
10 574 (2010); *see Applebaum v. Applebaum*, 97 Nev. 11, 12, 621 P.2d 1110 (1981) (recognizing
11 that “[d]ecisions may be rendered only where actual controversies exist”). Here, and unlike the
12 claims for declaratory relief being brought by the Rental Association in its Second Amended
13 Complaint, nobody in this litigation is challenging the constitutionality of Titles 11 and 30 of the
14 Clark County Code. It is not at issue. Without providing any facts, Clark County in counterclaim
15 no. 1 simply asserts that the basis for seeking declaratory relief is upon a generic statement upon
16 “inform[ation] and belie[f]” that it is necessary. Essentially, Clark County is seeking declaratory
17 relief on the constitutional viability of Titles 11 and 30 of the Clark County Code because it
18 simply desires to do so. This is insufficient and improper under the fundamental requirements
19 of justiciability. This is also in stark contrast to the Rental Association’s constitutional challenge
20 to an entirely different provision, *i.e.*, Title 7 of the Clark County Code. Clark County,
21 essentially, asks this Court to affirm to validity of its existing regulatory scheme. Again,
22 however, Clark County requests that this be done in the context of a lawsuit that does not
23 challenge its validity.

24 ///

1 It is foreseeable that such a lawsuit may be raised by some individual or organization at
2 some point in the future; but it is not being done so here. None of the Rental Association’s
3 claims challenge its validity. Why Clark County has sought to inject that question into this
4 litigation is inexplicable. It is also impermissible. *See Ohio Forestry Ass’n, Inc. v. Sierra Club*,
5 523 U.S. 726, 732-33 (1998) (recognizing that “abstract disagreements over administrative
6 policies” are exactly the type of controversies “that the ripeness doctrine seeks to avoid”)
7 (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967) (overruled on other
8 grounds)); *see also City of North Las Vegas v. Cluff*, 85 Nev. 200, 201 (1969) (where the Nevada
9 Supreme Court has stated that it does not “have constitutional permission to render advisory
10 opinions”) (citing Nev. Const. art. 6, § 4)). Accordingly, and at a minimum, Clark County’s
11 counterclaim no. 1 for declaratory relief is neither in dispute nor ripe for adjudication.

12 **III. Counterclaim No. 2 (Failure to Pay Taxes): Clark County Has Failed To Exhaust**
13 **Its Own Administrative Remedies And Code Provisions**

14 In counterclaim no. 2, Clark County has failed to exhaust its own administrative remedies
15 and therefore cannot proceed with a civil claim against Ms. Flores or the Rental Association for
16 allegedly unpaid taxes on her property. It must be dismissed on this basis.

17 The Nevada Supreme Court has held that the “[f]ailure to exhaust all available
18 administrative remedies before proceeding in district court renders the matter unripe for district
19 court review.” *See Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007)
20 (citing *City of Henderson v. Kilgore*, 122 Nev. 331, 336 n. 10, 131 P.3d 11, 15 n. 10 (2006)).
21 Here, the Clark County Code sets forth administrative requirements that Clark County is required
22 to follow before commencing an action to collect allegedly unpaid transient lodging taxes.
23 Specifically, Section 4.08.060 of Title 4 of the Clark County Code sets forth administrative
24 notice requirements and time frames provides that Clark County must provide an operator prior

1 to commencing a legal action to collect unpaid transient lodging taxes. For example, pursuant
2 to Section 4.08.060(a), an operator is entitled to an initial fifteen (15) days to pay the tax.
3 Thereafter, pursuant to Section 4.08.060(b), if the tax remains unpaid after thirty (30) days, the
4 Director of the Clark County Business License Department may direct that the operator’s license
5 be suspended. Pursuant to Section 4.08.060(d), if the tax remains unpaid after sixty (60) days,
6 the operator’s license may be revoked. Only upon completion of these administrative steps may
7 the Director pursuant to Section 4.08.060(g) “transmit notice” of the tax delinquency to the
8 Clark County District Attorney’s Office “to collect all sums due . . . by appropriate legal action.”

9 Here, Clark County has not alleged any facts in counterclaim no. 3 that it has taken any
10 of the required administrative steps under Section 4.08.060 for providing notice to Ms. Flores,
11 providing her an opportunity to cure, or receiving a notice of delinquency or specific request
12 from the Director to commence a legal action against Ms. Flores. The only factual allegation
13 specific to Ms. Flores in Clark County’s counterclaim no. 2 is the following:

14 The properties owned and operated as short-term rentals by
15 JAQUELINE FLORES are within 35 miles of the Las Vegas
Convention Center.

16 See Clark County’s Counterclaims at Page 15, Paragraph 41 (October 18, 2022). While there
17 are general allegations in the counterclaims, none of the general allegations speak to transient
18 lodging tax. Clark County makes no allegation that a transient lodging tax has ever been imposed
19 on Ms. Flores. Clark County makes no allegation that Ms. Flores failed to pay the tax within
20 fifteen (15) days of its imposition. And there is no assertion by Clark County that it properly
21 followed the administrative steps required to collect on delinquent taxes. Clark County’s
22 counterclaim is insufficiently pleaded. Clark County lacks authority to proceed with a civil claim
23 for collection of money against Ms. Flores because it has not complied with its own
24 administrative process required before initiating an action.

1 Rather, Ms. Flores appears to be unfairly and selectively pursued by Clark County in its
2 counterclaim as a response to and retaliation for participating in a constitutional challenge to its
3 new short term rental ordinance set forth in Title 7 of the Clark County Code. This is wrong, and
4 Clark County’s counterclaim no. 2 is insufficiently pleaded and administratively flawed. It must
5 be dismissed.

6 **IV. Counterclaim No. 3 (Nuisance): Clark County Has Failed To Allege A Factual Basis**
7 **For A Nuisance Claim**

8 In counterclaim no. 3, Clark County alleges a claim of nuisance but utterly fails to provide
9 any factual allegations or basis whatsoever to support the claim. Clark County fails to allege
10 such basis facts such as who, where, when or how any alleged nuisance occurred or was
11 committed by the Rental Association or Ms. Flores. At a minimum, NRCP 8 requires that a
12 counterclaim set forth a “short and plain statement” that the pleader “is entitled to relief.” To be
13 sufficient, a claim must be pleaded with “more than labels and conclusions” and “a formulaic
14 recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp v. Twombly*, 550
15 U.S. 544, 555 (2007). Mere recitations of the elements is insufficient to support a properly-
16 pleaded claim. *See Sanchez v. Wal-Mart Stores*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009).
17 Accordingly, Clark County’s counterclaim no. 3 fails to adequately state a claim for which relief
18 can be granted. It must also be dismissed.

19 **V. Counterclaim No. 4 (Unpaid Fines): Clark County Lacks Authority To Commence**
20 **A Civil Action In District Court For Unpaid Fines**

21 In counterclaim no. 4, Clark County alleges a cause of action for money damages and the
22 collection of unpaid fines. Once again, Clark County fails to properly plead any facts that
23 support this claim against the Rental Association or Ms. Flores. Even if it did, Clark County
24 lacks authority to commence an independent civil action in district court to collect unpaid fines.

1 The remedy for a short-term rental operator’s failure to pay fines assessed pursuant to
2 Title 11 of the Clark County Code is expressly limited by Section 11. 14.120, which provides:

3 Failure to pay the assessed administrative fine within fifteen days,
4 provided it has not been successfully challenged by a timely appeal
5 or cancelled upon initial review, shall result that this obligation
6 ***shall constitute a special assessment lien against the real property***
7 on which the violation occurred if the responsible person is an
8 owner of the property, or a beneficiary of the owner in trust.
9 ***Alternatively, the matter may be referred for collection,*** which
10 includes but is not limited to the filing of a small claims court action.

11 (Emphasis added). By Clark County’s own code provisions, its remedies are limited to either “a
12 special assessment lien against the real property” *or* referring the matter for “collection,”
13 including a small claims court action. Nowhere in the code is authority conferred to Clark County
14 to initiate an independent legal action in district court for the collection of a money. Additionally,
15 Clark County has alleged that it has already recorded liens against property owned by Ms. Flores.
16 Thus, it has already availed itself of its own proscribed remedy, Clark County is prohibited from
17 *both* recording a lien and commencing a collection action. Counterclaim no. 4 must be dismissed.

18 **VI. Counterclaim No. 5 (Civil Conspiracy/Aiding and Abetting): Civil Conspiracy**
19 **Could Not Occur As A Matter Of Law**

20 In counterclaim no. 5, Clark County alleges that the Rental Association and Ms. Flores
21 conspired to violate the law by operating short term rental properties. Yet again, Clark County
22 fails to allege any facts whatsoever to support their claim. It also fails under established law—
23 a person cannot conspire in their representative capacity with their principal corporate entity.

24 A civil conspiracy “consists of a combination of *two or more persons* who, by some
concerted action, intend to accomplish an unlawful objective for the purpose of harming another,
and damage results from the act or acts.” *Consol. Generator-Nevada, Inc. v. Cummins Engine*
Co., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (emphasis added).

1 Under Nevada law, agents, officers, and employees cannot conspire with their own
2 corporate principal or entity when they are acting in an official or representative capacity of the
3 entity and not as persons acting for their individual advantage. *See Collins v. Union Fed. Sav.*
4 *& Loan Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983); *see also, Whitfield v. Trade Show*
5 *Servs. Ltd.*, 2:10-cv-0095 (D. Nev. March 1, 2012) (“[A] corporation and its agents cannot
6 conspire amongst themselves because they are one entity under the law and the acts of the agents
7 are the acts of the corporation.”). This limitation is known as the “Intracorporate Conspiracy
8 Doctrine,” which prevents a finding of liability for conspiracy between employer and employee,
9 or entity and principal, without showing the employees acted for individual advantage.

10 Here, Clark County’s fails to allege that Ms. Flores has acted for her own advantage or
11 that she acted in conspiracy with any individual or entity outside of the Rental Association.
12 Again, Ms. Flores is the President and Director of the Rental Association and is registered as its
13 corporate officer in the organization’s filing with the Nevada Secretary of State. Neither Ms.
14 Flores nor the Rental Association can conspire with or amongst themselves. Clark County’s
15 counterclaim embraces a tenuous legal fiction and absurdity that is contrary to the law. It must
16 be dismissed.

17 **VII. Counterclaim No. 6 (Civil RICO): Clark County Failed To Properly Plead RICO**

18 In counterclaim no. 6, Clark County alleges that the Rental Association and Ms. Flores
19 violated Nevada’s civil RICO laws by somehow obtaining possession of money or property
20 through multiple transactions involving fraud or deceit in the course of an enterprise or
21 occupation. Yet, Clark County’s bizarre and conclusory counterclaim is neither cognizable nor
22 properly pleaded under Nevada law.

23 The Nevada Supreme Court holds that civil RICO claims must be pled with specificity.
24 *See Hale v. Burkhardt*, 104 Nev. 632, 637, 764 P.2d 866, 869 (1988). Due to their serious nature,

1 the Nevada Supreme Court requires that civil RICO actions be pled “with sufficient specificity.”
2 *Id.* at 638, 764 P.2d at 869. This specific pleading requirement exists because a civil RICO
3 claim is not only premised on an accusation of criminal conduct toward the opposing party,
4 which the Nevada Supreme Court has recognized carries the real potential “for considerable
5 social stigma,” but an opposing party “is also confronted with the possibility of an adverse treble
6 damages judgment.” *Id.* Consequently, a party alleging a civil RICO claim must plead it with
7 “the same degree of specificity is called for as in a criminal indictment or information.” *Id.* As
8 such, “[a] civil RICO pleading must, in that portion of the pleading which describes the criminal
9 acts that the defendant is charged to have committed, contain a sufficiently ‘plain, concise and
10 definite’ statement of the essential facts such that it would provide a person of ordinary
11 understanding with notice of the charges.” *Id.* at 638, 764 P.2d at 870; *see also Siragusa v.*
12 *Brown*, 114 Nev. 1384, 1397, 971 P.2d 801, 809 (1998). To make such an adequate pleading,
13 the civil RICO claim must “provide information as to ‘when, where [and] how’ the underlying
14 criminal acts occurred.” *Cummings v. Charter Hosp. of Las Vegas, Inc.*, 111 Nev. 639, 646, 896
15 P.2d 1137, 1141 (1995).

16 Here, no ordinary reasonable person can ascertain what Clark County is alleging as the
17 factual and legal basis for the civil RICO claim beyond a mere recitation of legal conclusions.
18 Clark County has not, for example, provided any facts as to who, where, when or how a criminal
19 act was committed by anyone. Clark County’s bald assertions in this serious claim fail and
20 underscore a recklessness by which the claim by it is being made. The Rental Association is a
21 non-profit organization incorporated under Nevada law. It has officers who are registered
22 lobbyists before the Nevada Legislature. It educates. It advocates for changes to Nevada law
23 and the adoption of reasonable short term rental policies.

1 For Clark County to respond to a good faith civil complaint raising claims under the
2 Nevada and United States Constitutions to newly enacted legislation by asserting a conclusory
3 civil RICO counterclaim is specious and irresponsible. Indeed, Clark County’s couching of the
4 factual basis for its claims “upon information and belief” is an independent reason to dismiss it.
5 This basis for apparent knowledge fails to satisfy the heightened pleading standard and support
6 a conclusion the Counterclaims are not pleaded with specificity. Specific details may not be
7 pleaded on “information and belief.” See *Uni*Quality, Inc. v. Infotronx, Inc.*, 974 F.2d 918, 923-
8 24 (7th Cir. 1992); *In re Worlds of Wonder Securities Litigation*, 694 F.Supp. 1427, 1432-33
9 (N.D.Cal.1988) (holding that pleadings based upon an assertion of “information and belief” do
10 not satisfy particularity requirements unless there are additional facts upon which the belief is
11 founded); see also *Furman v. Cirrito*, 828 F.2d 898, 900 (2d Cir. 1987) (stating that pleading
12 fraud on “information and belief” is viewed with a “jaundiced eye”). While this Court must
13 presume the truth of the factual allegations, it is not required to “necessarily assume the truth of
14 legal conclusions merely because they are cast in the form of a factual allegation in [the]
15 Complaint.” *McMillan v. Dep’t of Interior*, 907 F.Supp. 322, 327 (D.Nev. 1995). The Ninth
16 Circuit in the case of *Comwest, Inc. v. Am. Operator Servs., Inc.*, 765 F.Supp. 1467, 1470-71
17 (C.D. Cal. 1991) addressed the impropriety of fraud assertions being lodged on “information and
18 belief.” In *Comwest*, the Ninth Circuit concluded without question that the plaintiff’s “fraud
19 claim is fundamentally defective because all of plaintiff’s fraud allegations are based ‘upon
20 information and belief.’” *Id.*

21 Clark County has failed to allege how or when either the Rental Association or Ms. Flores
22 engaged in any type of racketeering whatsoever or the kind of fraud or deceit is alleged to have
23 occurred. Its counterclaim is both dangerous and deficient. No facts are alleged to support
24 Clark County’s bare and conclusory allegations. It must be dismissed.

1 **VIII. Counterclaim No. 7 (Injunction): Clark County’s Injunction Request Seeks An**
2 **Advisory Opinion And Is Not Cognizable Under The Law**

3 In counterclaim no. 7, Clark County request that this Court enter an order enjoining both
4 the Rental Association and Ms. Flores from violating Nevada law. This request is not cognizable.
5 Every person and entity in Nevada is required to follow and obey the law. As drafters of the law,
6 Clark County has the authority to enforce it. Obtaining an injunction to compel or prohibit
7 persons or entities from doing something they are already required to do or not to do is misguided.
8 This is all-the-more-true here because Clark County fails to specify exactly what “applicable
9 law” it is referring to or seeking to enjoin through its counterclaim.

10 To the extent Clark County is referring to Titles 11 and 30 of the Clark County Code, no
11 issue in fact or controversy or dispute has been raised by either the Rental Association or Ms.
12 Flores in this case regarding those provisions—they are not being challenged. If Clark County
13 has cause to believe that a short-term rental law is being violated by anyone, then it already has
14 authority to enforce it. Without a bona fide dispute, Clark County is once again seeking an
15 advisory opinion from this Court on the lawfulness of its own code. *See Personhood Nevada v.*
16 *Bristol*, 126 Nev. 599, 601, 245 P.3d 572, 574 (2010); *Applebaum v. Applebaum*, 97 Nev. 11,
17 12, 621 P.2d 1110 (1981) (recognizing that “[d]ecisions may be rendered only where actual
18 controversies exist”). Its axiomatic that Clark County cannot be an aggrieved party to itself and
19 dispute the validity of its own code provisions. Accordingly, Clark County’s counterclaim fails
20 to state a basis upon which relief can be granted. It must be dismissed.

21 **IX. Clark County Must Provide More Definite Statements Pursuant To NRCP 12(e)**

22 If this Court permits any of the counterclaims raised by Clark County to survive dismissal,
23 the Rental Association moves that Clark County be required to provide a more definite statement
24 for them.

1 NRCP 12(e) permits Defendants to move for a more definite statement where a party's
2 counterclaims are "vague or ambiguous." Here, and for the reasons discussed above,
3 counterclaims nos. 2, 3, 5 and 6 lack specificity or any meaningful facts that, even taken as true,
4 could support Clark County's allegations. For example, counterclaim no. 2—the unpaid taxes
5 claim—fails to allege that Clark County has complied with its own noticing and administrative
6 remedies. Counterclaim no 3—the nuisance claim—sets forth only a broad recitation of the
7 elements. It does not identify who, what, where, when, or how any alleged nuisance occurred
8 by the Rental Association or Ms. Flores that resulted in an intentional interference with anyone's
9 quiet enjoyment of property. *See* NRS 40.140. Similarly, counterclaim no. 5—the civil
10 conspiracy claim—does not allege or provide any factual basis for support, such as who the
11 purported co-conspirators were or what was conspired to or how the conspiracy occurred.
12 Finally, counterclaim no. 6—the civil RICO claim—utterly lacks any factual specificity to
13 support the underlying criminal violation let alone who, what, where, when, or how it occurred.

14 While the Rental Association respectfully submits that dismissal is warranted on each of
15 Clark County's counterclaims, a more definite statement is at a minimum certainly necessary.
16 *See Mays v. Eighth Judicial Dist. Court of State of Nev. In and For County of Clark*, 105 Nev.
17 60, 63, 768 P.2d 877, 879 (1989) (recognizing that "if the defendants feel that certain allegations
18 in the complaint are not sufficiently focused to permit a definite answer, [they] may move for a
19 more definite statement under NRCP 12(e)"); *Northern Nevada Ass'n of Injured Workers v.*
20 *Nevada State Indus. Ins. System*, 107 Nev. 108, 116, 807 P.2d 728, 733 (1991) (stating that "if
21 respondents are truly perplexed by any aspect of appellants' amended complaint, they may obtain
22 further specificity by filing a motion for a more definite statement under NRCP 12(e)").
23 Additionally, Clark County's novel legal allegations in their counterclaims, if permitted to stand,
24 render it nearly impossible for the Rental Association to meaningfully answer without more facts.

1 The lack of factual and legal support for the counterclaims raised by Clark County against
2 a non-profit organization, *i.e.*, the Rental Association, and a Nevada citizen, who is the President
3 and Director of that organization, *i.e.*, Ms. Flores, for exercising their rights to seek legal review
4 of a newly enacted law by Clark County is troubling. That Clark County chose to expend its
5 resources attacking the complainants who are raising a good faith challenge under the Nevada
6 and United States Constitutions to a newly enacted law, as opposed to simply defending that law
7 on the merits, is intended to chill the exercise of our country’s most basic democratic rights of
8 free speech and access to the courts.

9 **X. Request for Attorney Fees And Costs**

10 Clark County’s counterclaims are factually and legally deficient to such an extent that the Rental
11 Association respectfully requests that it be awarded by this Court attorney fees and costs to be
12 paid by Clark County for having to respond to them. Specifically, NRS 7.085(1) provides that
13 of attorney fees may be awarded where an action, including counterclaims, are filed or
14 maintained in a civil action that are “not well-grounded in fact” or are “not warranted by existing
15 law” or are unreasonable or vexatious. For the reasons discussed above, Clark County’s
16 counterclaims against the Rental Association, and Ms. Flores in particular, fall squarely within
17 the ambit of NRS 7.085. There is no legal basis for many of the counterclaims and others are
18 pleaded with such factual deficiency that it reasonable to conclude that they serve no purpose
19 but to harass and intimidate the Rental Association and Ms. Flores in particular. Respectfully,
20 an award of attorney fees and costs is appropriate.

21 **CONCLUSION**

22 Clark County has responded to a good faith legal challenge on an important issue of law
23 by a Nevada non-profit organization and its citizen President and Director, *i.e.*, the Rental
24 Association and Ms. Flores, by offensively asserting counterclaims that raise serious, and

1 disparaging, allegations unsupported by facts and/or law against them. This is not only improper
2 as a matter of public policy, it is prohibited by well-settled pleading standards and NRCP 12(b),
3 which requires that counterclaims set forth a legal and factual basis upon which relief can be
4 granted. Clark County’s counterclaims fail to meet these basic pleading standards. Accordingly,
5 the Rental Association respectfully requests that they be dismissed and attorney fees and costs
6 be awarded.

7 DATED this 8th day of November, 2022.

8 HUTCHISON & STEFFEN, PLLC

9 /s/ Joseph C. Reynolds

10 Joseph C. Reynolds (8630)

11 Alex R. Velto (14961)

12 *Attorneys for Petitioners*

13 *Greater Las Vegas Short Term Rental Association*
14 *and Jacqueline Flores, President and Director*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 8th day of November, 2022, I caused the above and foregoing document, entitled **MOTION TO DISMISS COUNTERCLAIMS PURSUANT TO NRCP 12(b)** to be served as follows:

- by placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- to be sent electronically via the Court’s electronic service system; the date and time of this electronic service is in place of the date and in place of deposit in the mail; and/or
- to be served through Formal Service of Process (Proof of Service to follow)

to the parties or attorney(s) listed below at the address and/or facsimile number indicated below:

James B. Gibson, Chair Board of Clark County Commissioners 500 S. Grand Central Pkwy 6 th Floor Las Vegas, NV 89155 DistrictG@clarkcountynv.gov	Yolanda T. King, County Manager Clark County 500 S. Grand Central Parkway 6 th Floor Las Vegas, NV 89155
Aaron D. Ford, Attorney General Office of the Nevada Attorney General 100 N. Carson St Carson City, NV 89701	Jeffrey Rogan, Deputy District Attorney Timothy Allen, Deputy District Attorney Civil Division, Clark County District Attorney Jeffrey.Rogan@clarkcountyda.com Timothy.Allen@clarkcountyda.com

/s/ Madelyn Carnate-Peralta
An Employee of Hutchison & Steffen, PLLC