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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 Plaintiffs,

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 PURSUANT TO
NRCP 12(b): CLARK COUNTY'S FIRST
AMENDED COUNTERCLAIMS**

18 The Greater Las Vegas Short Term Rental Association, a non-profit Nevada corporation,
19 and Jacqueline Flores, President and Director (the Rental Association), by and through their legal
20 counsel, Joseph C. Reynolds, Esq., and Ariel C. Johnson, Esq., of Hutchison & Steffen, PLLC,
21 hereby move pursuant to NRCP 12(b) to dismiss the first amended counterclaims that were filed
22 by Clark County and the Board of Clark County Commissioners (Clark County) on November
23 22, 2022, against the Rental Association in the above-entitled case. The six Counterclaims
24 asserted by Clark County fail to state viable claims for relief and are being improperly asserted

1 by Clark County.

2 As set forth below, the Counterclaims alleged by Clark County do not arise out of the
3 Second Amended Complaint for Declaratory and Injunctive Relief filed by the Rental
4 Association on October 3, 2022. The Rental Association is seeking declaratory and prospective
5 injunctive relief regarding the passage of a new law by Clark County on June 21, 2022, *i.e.*,
6 Chapter 7.100 within Title 7 of the Clark County Code. The Rental Association's claims
7 primarily raise issues of law, public importance, and are ones of first impression in Nevada under
8 the Nevada Constitution and the United States Constitution.

9 Clark County's Counterclaims are comprised of unspecific assertions that lack even the
10 most basic factual support. Unfortunately, they appear as an attempt to disparage the Rental
11 Association and the integrity of its members. In its Counterclaims, Clark County fails to allege
12 or proffer such things as who, what, where, when, and how the acts supporting their
13 Counterclaims occurred. Other Counterclaims raised by Clark County have a peculiar and
14 singular focus on Ms. Flores, who is the President and Director of the Rental Association.
15 Through its Counterclaims, Clark County is attempting to turn the instant litigation—one raising
16 issues of constitutional significance—into a collection effort regarding alleged citations issued
17 against Ms. Flores by Clark County nearly 3 years ago in 2019. Those matters, even if true,
18 involve debts incurred by Ms. Flores in her personal capacity and *prior to the Rental Association*
19 *even being incorporated*. They also involve the interpretation and application of Chapter 30.44
20 within Title 30 of the Clark County Code—an ordinance that has not been placed at issue by the
21 Rental Association's Complaint. Clark County's Counterclaims fail to state proper claims for
22 relief under NRCP 12(b). They are harassing, distracting, and retaliatory.

23 Respectfully, they must be dismissed.

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1 **MEMORANDUM AND POINTS OF AUTHORITY**

2 **INTRODUCTION**

3 Clark County’s Counterclaims against the Rental Association and its President and
4 Director Flores are harassing, distracting, and confuse the important constitutional issues raised
5 by the Rental Association and before this Court. They do not 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 different laws, something in the democratic process is amiss. A government
10 agency in Nevada should be prepared to defend the constitutionality of the laws it enacts on its
11 merits without attacking an officer of that organization or raising unfounded conspiratorial
12 allegations. All citizens should have the right to question its government without the threat of
13 retaliation. Fear of retaliation and selective enforcement of the law is a basis of the Rental
14 Association’s request for injunctive relief against Clark County. The Counterclaims asserted by
15 Clark County in response to the Rental Association’s legal action, and its President and Director
16 Flores in particular, only validate that concern. The Rental Association respectfully request this
17 Court to summarily dismiss all of Clark County’s Counterclaims.

18 **Clark County’s Prior Set of Counterclaims**

19 To place this Motion in its proper context, it is important to recognize that this is a
20 renewed or second Motion to Dismiss pursuant to NRCP 12(b) that is being filed by the Rental
21 Association in response to Counterclaims alleged by Clark County in this litigation. A brief
22 procedural history follows.

23 On October 18, 2022, Clark County answered the Rental Association’s complaint. Yet,
24 upon doing so, it also raised the following seven Counterclaims against the Rental Association:

1 Counterclaim No. 1 (Clark County sought a **declaratory judgment** from this Court on an
2 interpretation of Title 30, Chapter 30.44 of the Clark County Code (which was not being
3 challenged by the Rental Association in this case)); Counterclaim No. 2 (Clark County sought
4 the **repayment of alleged unpaid taxes by Ms. Flores** in her personal capacity from a citation
5 allegedly issued in 2019); Counterclaim No. 3 (Clark County alleged that unnamed members of
6 the Rental Association created an unlawful **nuisance** at an unidentified location, at an
7 unidentified time, by unidentified individuals, and in an unidentified manner); Counterclaim No.
8 4 (Clark County sought the **payment of allegedly unpaid administrative fines and penalties**
9 **by Ms. Flores** in her personal capacity from a citation allegedly issued in 2019); Counterclaim
10 No. 5 (Clark County alleged that unidentified individuals engaged in a **civil conspiracy by**
11 **aiding and abetting** other unidentified individuals to commit unspecified unlawful acts at an
12 unknown location and in an unspecified manner); Counterclaim No. 6 (Clark County alleged that
13 unidentified individuals engaged in a criminal enterprise involving fraud and deceit and violated
14 Nevada’s **civil RICO** laws); and Counterclaim No. 7 (Clark County sought an injunction from
15 this Court enjoining the Rental Association from allegedly violating the law). Clark County’s
16 Counterclaims had a peculiar, harassing, and punitive focus on the Rental Association’s
17 President and Director Flores.

18 On November 8, 2022, the Rental Association filed an NRCP 12(b) Motion to Dismiss
19 the seven Counterclaims asserted by Clark County.

20 In response to the Rental Association’s motion, on November 22, 2022, Clark County
21 filed a First Amended set of six Counterclaims. Clark County abandoned and/or withdrew
22 Counterclaim No. 1 (seeking a declaratory judgment) and Counterclaim No. 7 (seeking
23 injunctive relief) that it originally raised. It split Counterclaim No. 5 into two separate claims:
24 one alleging civil conspiracy and the other alleging aiding and abetting.

1 counterclaim under NRCP 13(b). **Fourth**, Counterclaim No. 1, which seeks the repayment of
2 alleged unpaid taxes by Ms. Flores, is currently barred because Clark County failed to abide by
3 its own administrative remedies. **Fifth**, Counterclaim No. 2, which broadly alleges nuisance,
4 again, fails to articulate any facts, such as the date, location, and manner or any reasonable or
5 factual basis to give rise to a cognizable claim in nuisance. **Sixth**, Counterclaim No. 3, which
6 alleges Ms. Flores has failed to pay a lien or tax, fails because it is outside of the proscribed
7 regulatory remedies. **Seventh**, Counterclaim No. 4, which alleges civil conspiracy, should be
8 dismissed because no second party or person is identified or alleged to have conspired with the
9 Rental Association and/or its officers. This claim fails as a matter of law under the Intracorporate
10 Conspiracy Doctrine. **Eighth**, Counterclaim No. 5, which alleges aiding and abetting, fails to
11 allege any specific facts or acts, such as who, what, when, where, and how the conduct
12 purportedly occurred. **Finally**, Counterclaim No. 6, which alleges a civil RICO claim, was not
13 pleaded with any particularity whatsoever as required under Nevada law.

14 **I. COUNTERCLAIMS ARE BARRED BY STATUTE OF LIMITATIONS**

15 It is well-settled law that the failure of a party to comply with or timely raise a claim
16 within the proscribed statute of limitations is a bar to commencement of the action. *See Holcolmb*
17 *Condominium Homeowners Association v. Stewart Venture*, 129 Nev. 181, 186, 300 P.3d 124,
18 128 (2013) (“A court [may] dismiss a complaint for failure to state a claim upon which relief can
19 be granted [when an] action is barred by the statute of limitations.”) (quoting *Bemis v. Estate of*
20 *Bemis*, 114 Nev. 1021, 1024, 967 P.2d 437, 439 (1998)). Moreover, government entities, such as
21 Clark County, must adhere to proscribed statute of limitations like other parties. *See NRS*
22 *11.255(1)* (providing that “[t]he provisions of this chapter . . . shall apply to actions brought in
23 the name of the State . . . in the same manner as to actions by private individuals”).

24 Here, Clark County’s Counterclaims are all predicated on the date of February 1, 2019,

1 whereby Clark County asserts that it issued citations against Ms. Flores in case no. CE18-13807
2 involving her 8493 Moondance Cellars Court property in Las Vegas for civil penalties involving
3 alleged violations of the Clark County Code or activities that occurred on or prior to that date.
4 *See* Clark County’s First Amended Counterclaims (November 22, 2022), at 5. No other dates or
5 time frames regarding actions by Ms. Flores or the Rental Association are specified anywhere by
6 Clark County, especially with respect to Counterclaims directed toward Ms. Flores.¹ Rather,
7 Clark County asserts that the February 1, 2019, date is ‘common’ to all claims. *See id.* at 3.
8 Clark County did not initially file its Counterclaims in this case until October 18, 2022, and,
9 therefore, its Counterclaims are barred by the applicable statute(s) of limitations.

10 **A. Counterclaims barred by 2-year statute of limitations**

11 Under Nevada law, actions upon a statute for “a penalty or forfeiture” must be brought
12 within 2 years of their occurrence. *See* NRS 11.190(4)(b). Clark County’s Counterclaim No. 3—
13 failure of Ms. Flores to allegedly pay administrative penalties resulting from the February 1, 2019,
14 citations in case no. CE18-13807—is statutorily barred and untimely. It must be dismissed.

15 **B. Counterclaims barred by 3-year statute of limitations**

16 Under Nevada law, “actions upon a liability created by statute” must be brought within 3
17 years of their occurrence. *See* NRS 11.190(3)(a). The Nevada Supreme Court has held that a
18 civil claim based on nuisance is subject to a 3-year statute of limitations, *see Kaplan v. County of*
19 *Washoe*, Docket No. 78832, 2020 WL 2843446 *2 (Order of Affirmance, May 29, 2020), and a
20 civil claim based on fraud is subject to a 3-year statute of limitations. *See Torrealba v. Kesmetis*,
21 124 Nev. 95, 104-05, 178 P.3d 716, 723 (2008). The felony crime of obtaining money by false
22 pretenses is also subject to a 3-year statute of limitations. *See* NRS 171.085(4). Clark County’s
23

24 ¹ The date of February 13, 2020, also listed in Clark County’s Counterclaims was the date that
Clark County recorded the lien on related to the previously-issued CE 18-13807 citations.

1 Counterclaim No. 1—alleged failure of Ms. Flores to pay taxes resulting from the February 1,
2 2019, citations in case no. CE18-13807—is statutorily barred and untimely. Similarly,
3 Counterclaim No. 2—a claim for nuisance—is also barred and untimely. Counterclaims Nos. 4-
4 6 are also barred and untimely to the extent they are predicated upon assertions of civil fraud or
5 obtaining money by false pretenses. To have been timely raised, Clark County would have
6 needed to file a civil complaint on or before February 1, 2022. It did not. Accordingly, and
7 notwithstanding any other reason, the Rental Association respectfully submits that its
8 Counterclaims must be dismissed on this basis alone.

9 **II. COUNTERCLAIMS ARE NOT PROPERLY JOINED UNDER NRCP 13**

10 In addition to the statute of limitations argument above, Clark County’s Counterclaims
11 should be dismissed because they do not comply with NRCP 13. Under NRCP 13(a) and (b),
12 compulsory and permissive counterclaims may be brought against an opposing party. To qualify
13 as a compulsory counterclaim under NRCP 13(a), the claim must arise out of the same
14 “transactions or occurrences.” To qualify as a permissive counterclaim under NRCP 13(b), the
15 claim must be alleged against an “opposing party.”

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

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1 **A. Counterclaims do not arise out of the same “transaction or occurrence”**

2 NRCP 13(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 NRCP 13(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 the claims raised
10 by the Rental Association is that they involve short term rentals in Clark County.

11 Several factors are relevant to the analysis. First, the Rental Association’s claims and
12 Clark County’s Counterclaims involve entirely different sets of law. The Rental Association’s
13 claims involve the constitutionality of a newly enacted provisions within Chapter 7 of the Clark
14 County Code; whereas, Clark County’s counterclaims involve previously-existing provisions of
15 Chapters 11 and 30 of the Clark County Code. Second, the Rental Association’s claims seek
16 declaratory and injunctive equitable relief from this Court—the Rental Association is not seeking
17 damages. However, Clark County’s Counterclaims is seeking monetary judgments from a
18 specific individual—Ms. Flores. Finally, the Rental Association’s claims are based upon current
19 and prospective harm; whereas, Clark County’s Counterclaims are backward-facing and are based
20 upon alleged conduct that occurred on or before February 1, 2019.

21 Indeed, Clark County’s Counterclaims involve alleged prior citations, prior conduct, and
22 prior liabilities under an entirely different regulatory scheme than the subject of the Rental
23 Association’s claims. Nowhere in the Rental Association’s complaint are any alleged taxes or
24 liens or citations levied against President and Director Flores by Clark County raised or placed in

1 issue. Accordingly, Clark County’s Counterclaims do not arise out of the same transaction and
2 occurrence and are therefore not properly joined under NRCP 13(a). They must be dismissed
3 from this action.

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

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

10 The United States Court of Appeals for the Ninth Circuit has recognized that “[i]t is well-
11 established that when a party sues in his representative capacity, he is not subject to
12 counterclaims against him in his individual capacity.”² *In re Adbox, Inc.*, 488 F.3d 836, 840 (9th
13 Cir.2007); *see also Pioche Mines Consol., Inc. v. Fidelity–Philadelphia Trust Co.*, 206 F.2d 336,
14 337 (9th Cir. 1953), *cert. denied*, 346 U.S. 899 (1953) (recognizing the “rule that a counterclaim
15 against a trustee in his individual capacity, where he has sued as a fiduciary only, is not
16 permissible inasmuch as it is not a counterclaim against an ‘opposing party,’ as contemplated
17 by Rule 13”); 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and*
18 *Procedure* § 1404 (2d ed.1990); *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 543 n. 6
19 (1986) (stating that “[a]cts performed by the same person in two different capacities are generally
20 treated as the transactions of two different legal personages”) (internal quotation marks omitted)).

21
22 ²NRCP 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 Here, Ms. Flores Is named in the Rental Association’s Second Amended Complaint in
2 her official and representative capacity as the “President and Director” of the Greater Las Vegas
3 Short Term Rental Association. She is not a ‘plaintiff’ in her individual capacity. As such, Ms.
4 Flores is not properly an “opposing party” under NRCP 13(b) because she has not acted in a non-
5 representative or individual capacity that would allow for permissive joinder of counterclaims
6 against her by Clark County.

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

18 Importantly, Clark County acknowledges that “all causes of action brought against her
19 [Ms. Flores] herein are for actions she made in her personal capacity.” *See* Clark County’s First
20 Amended Counterclaims (November 22, 2022), at 5. Equally important is that the Rental
21 Association was not incorporated in Nevada and formally established until December 2, 2020,³
22
23

24 ³ The Rental Association is a non-profit organization recognized by the Nevada Secretary of State
in Entity No. E10777032020-0.

1 which was well after the February 1, 2019, citations in case no. CE18-13807 that Clark County
2 lodged against Ms. Flores had occurred.

3 While Ms. Flores is certainly an individual and a homeowner, her status in this litigation
4 is as the President and Director (and a representative of member) of the Rental Association.
5 Clark County should not be permitted to use this forum to personally attack her. This is a case
6 about the constitution and permissible bounds of Clark County's newly enacted short term rental
7 law set forth in Title 7 of the Clark County Code. Clark County's attempts to inject this matter
8 with Counterclaims that are directed to a specific individual based upon prior alleged conduct
9 should be rejected. Clark County's Counterclaims cumulatively fail and must be dismissed.

10 **III. ANALYSIS OF SPECIFIC COUNTERCLAIMS NECESSITATE DISMISSAL**

11 Clark County's Counterclaims also fail and must be dismissed when each is reviewed
12 and analyzed separately. An analysis of each claim follows.

13 **A. Counterclaim No. 1 (Failure to Pay Taxes): Clark County Has Failed to**
14 **Exhaust Its Own Administrative Remedies**

15 In Counterclaim No. 1, Clark County has failed to exhaust its own administrative
16 remedies and therefore cannot proceed with a civil claim against Ms. Flores or the Rental
17 Association for allegedly unpaid taxes on her property. It must be dismissed on this basis.

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

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1 Specifically, Section 4.08.060 of Title 4 of the Clark County Code sets forth
2 administrative notice requirements and time frames that Clark County must provide an operator
3 prior to commencing a legal action to collect unpaid transient lodging taxes. For example,
4 pursuant to Section 4.08.060(a), an operator is entitled to an initial fifteen (15) days to pay the
5 tax. Pursuant to Section 4.08.060(b), if the tax remains unpaid after thirty (30) days, the Director
6 of the Clark County Business License Department may direct that the operator’s license be
7 suspended. Pursuant to Section 4.08.060(d), if the tax remains unpaid after sixty (60) days, the
8 operator’s license may be revoked. Only upon completion of these administrative steps may the
9 Director pursuant to Section 4.080.060(g) “transmit notice” of the tax delinquency to the Clark
10 County District Attorney’s Office “to collect all sums due . . . by appropriate legal action.”

11 Here, Clark County has not alleged any facts in Counterclaim No. 1 that it has taken any
12 of the required administrative steps under Section 4.08.060 for providing notice to Ms. Flores,
13 providing her an opportunity to cure, or receiving a notice of delinquency or specific request
14 from the Director to commence a legal action against Ms. Flores. Rather, Clark County merely
15 makes the summary assertion that Ms. Flores failed to pay the requisite tax and that “no
16 administrative procedures govern the collection” *See* Clark County’s First Amended
17 Counterclaims (November 22, 2022), at 7. Clark County’s Counterclaim is therefore
18 insufficiently pleaded. As pleaded, Clark County lacks authority to proceed with a civil claim
19 for collection of money against Ms. Flores because it has not complied with its own
20 administrative process required before initiating an action.

21 Rather, Ms. Flores appears to be unfairly and selectively targeted by Clark County in this
22 Counterclaim, as well as others, in response to and retaliation for participating in a constitutional
23 challenge to its new short term rental ordinance set forth in Title 7 of the Clark County Code.
24 Clark County’s Counterclaim No. 1 is administratively flawed. It must be dismissed.

1 **B. Counterclaim No. 2 (Nuisance): Clark County Has Failed To Allege A**
2 **Proper Factual Basis For A Nuisance Claim**

3 In Counterclaim No. 2, Clark County alleges a claim of nuisance but utterly fails to
4 provide any specific factual allegations or basis whatsoever to support the claim. Clark County
5 fails to allege such basis facts such as who, where, when, or how any alleged nuisance occurred
6 or was committed by the Rental Association or Ms. Flores. At a minimum, NRCP 8 requires
7 that a counterclaim set forth a “short and plain statement” that the pleader “is entitled to relief.”
8 To be sufficient, a claim must be pleaded with “more than labels and conclusions” and “a
9 formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp v.*
10 *Twombly*, 550 U.S. 544, 555 (2007). Mere recitation of the elements is insufficient to support a
11 properly-pleaded claim. *See Sanchez v. Wal-Mart Stores*, 125 Nev. 818, 823, 221 P.3d 1276,
12 1280 (2009). Rather, Clark County disparagingly alleges that the Rental Association exposed
13 members of the public to such things as “the risk of shootings, fires, carbon monoxide poisonings,
14 the spread of disease.” *See Clark County’s First Amended Counterclaims* (November 22, 2022),
15 at 8. This Counterclaim should not survive scrutiny. Accordingly, Clark County’s Counterclaim
16 No. 2 fails to adequately state a claim for which relief can be granted. It must also be dismissed.

17 **C. Counterclaim No. 3 (Unpaid Fines): Clark County Lacks Authority To**
18 **Commence A Civil Action In District Court For Unpaid Fines**

19 In Counterclaim No. 3, Clark County alleges a cause of action for money damages and
20 the collection of unpaid fines. Once again, Clark County fails to properly plead any facts that
21 support this claim against the Rental Association or Ms. Flores. Even if it did, Clark County
22 lacks authority to commence an independent civil action in district court to collect unpaid fines.

23 The remedy for a short-term rental operator’s failure to pay fines assessed pursuant to
24 Title 11 of the Clark County Code is limited by Section 11.14.120, which provides:

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

6 (Emphasis added). By Clark County’s own code provisions, its remedies are limited to either “a
7 special assessment lien against the real property” *or* referring the matter for “collection,”
8 including a small claims court action. While Clark County cites to Section 11.14.030(b), which
9 it maintains grants it authority to assert its Counterclaim in this action, that provision limits Clark
10 County’s remedies to those governing county taxes and Clark County does not cite to those
11 provisions in its Counterclaims. Clark County has alleged that it has already recorded liens
12 against property owned by Ms. Flores. Thus, it has already availed itself of its own proscribed
13 remedy in Section 11.14.120. Clark County is prohibited from both recording a lien and
14 commencing a collection action. Counterclaim No. 3 must be dismissed.

15 **D. Counterclaim No. 4 (Civil Conspiracy): Civil Conspiracy Fails As A Matter**
16 **Of Law**

17 In Counterclaim No. 4, Clark County alleges that the Rental Association and Ms. Flores
18 conspired to violate the law by operating short term rental properties. Yet again, Clark County
19 fails to allege any specific facts to support its counterclaim. It also fails under established law—
20 a person cannot conspire in their representative capacity with their principal corporate entity.

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

1 Nevada law, agents, officers, and employees cannot conspire with their own corporate principal
2 or entity when they are acting in an official or representative capacity of the entity and not as
3 persons acting for their individual advantage. *See Collins v. Union Fed. Sav. & Loan Ass'n*, 99
4 Nev. 284, 303, 662 P.2d 610, 622 (1983); *see also, Whitfield v. Trade Show Servs. Ltd.*, 2:10-cv-
5 0095 (D. Nev. March 1, 2012) (“[A] corporation and its agents cannot conspire amongst
6 themselves because they are one entity under the law and the acts of the agents are the acts of
7 the corporation.”). This limitation is often referred to as the Intracorporate Conspiracy Doctrine.
8 It prevents a finding of liability for conspiracy between employer and employee, or entity and
9 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 **E. Counterclaim No. 5 (Aiding and Abetting): Clark County Fails to Properly**
18 **Plead Sufficient Facts**

19 In Counterclaim No. 5, Clark County alleges that “Counterdefendants,” *i.e.*, presumably
20 members of the Rental Association, assisted or encouraged each other to violate the law. Yet,
21 once again, Clark County sets forth no factual allegations regarding who, what, where, when, or
22 how the assistance or encouragement unlawfully occurred. Equally concerning is that Clark
23 County broadly alleges that engaging in such acts as “providing helpful information” or
24 “teaching” or “conducting trainings” is unlawful conduct. Rather, under Nevada law, to establish

1 the crime of aiding and abetting, the “specific acts” supporting the claim and the means by how
2 they were aided and abetted must be alleged. *See Barren v. State*, 99 Nev. 661, 668, 669 P.2d
3 725, 729 (1983). Moreover, in the civil context, aiding and abetting requires the aider and abettor
4 to “knowingly and substantially” assist another in the commission of a fraudulent act. *See Dow*
5 *Chem. Co. v. Mahlum*, 114 Nev. 1468, 1490, 970 P.2d 98, 113 (1998), *abrogated on other*
6 *grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001).

7 Here, Clark County fails to allege any ‘specific acts’ supporting its aiding and abetting
8 counterclaim. It further fails to allege that any such acts were committed with knowledge.
9 Moreover, even taken as true, the act of ‘providing helpful information’ or ‘teaching’ is protected
10 speech under the First Amendment to the United States Constitution. Without more specificity,
11 Clark County’s Counterclaim No. 5 fails and must be dismissed.

12 **F. Counterclaim No. 6 (Civil RICO): Clark County Fails To Properly Plead**
13 **Sufficient Facts**

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

19 The Nevada Supreme Court holds that civil RICO claims must be pled with specificity.
20 *See Hale v. Burkhardt*, 104 Nev. 632, 637, 764 P.2d 866, 869 (1988). Due to their serious nature,
21 the Nevada Supreme Court requires that civil RICO actions be pled “with sufficient specificity.”
22 *Id.* at 638, 764 P.2d at 869. This specific pleading requirement exists because a civil RICO
23 claim is not only premised on an accusation of criminal conduct toward the opposing party,
24 which the Nevada Supreme Court has recognized carries the real potential “for considerable

1 social stigma,” but an opposing party “is also confronted with the possibility of an adverse treble
2 damages judgment.” *Id.* Consequently, a party alleging a civil RICO claim must plead it with
3 “the same degree of specificity is called for as in a criminal indictment or information.” *Id.* As
4 such, “[a] civil RICO pleading must, in that portion of the pleading which describes the criminal
5 acts that the defendant is charged to have committed, contain a sufficiently ‘plain, concise and
6 definite’ statement of the essential facts such that it would provide a person of ordinary
7 understanding with notice of the charges.” *Id.* at 638, 764 P.2d at 870; *see also Siragusa v.*
8 *Brown*, 114 Nev. 1384, 1397, 971 P.2d 801, 809 (1998). To make such an adequate pleading,
9 the civil RICO claim must “provide information as to ‘when, where [and] how’ the underlying
10 criminal acts occurred.” *Cummings v. Charter Hosp. of Las Vegas, Inc.*, 111 Nev. 639, 646, 896
11 P.2d 1137, 1141 (1995).

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

20 For Clark County to respond to a good faith civil complaint raising claims under the
21 Nevada and United States Constitutions to newly enacted legislation by asserting a conclusory
22 civil RICO counterclaim is specious and irresponsible. Indeed, Clark County’s couching of the
23 factual basis for its claims “upon information and belief” is an independent reason to dismiss it.
24 This basis for apparent knowledge fails to satisfy the heightened pleading standard and support

1 a conclusion the Counterclaims are not pleaded with specificity. Specific details may not be
2 pleaded on “information and belief.” See *Uni*Quality, Inc. v. Infotronx, Inc.*, 974 F.2d 918, 923-
3 24 (7th Cir. 1992); *In re Worlds of Wonder Securities Litigation*, 694 F.Supp. 1427, 1432-33
4 (N.D.Cal.1988) (holding that pleadings based upon an assertion of “information and belief” do
5 not satisfy particularity requirements unless there are additional facts upon which the belief is
6 founded); see also *Furman v. Cirrito*, 828 F.2d 898, 900 (2d Cir. 1987) (stating that pleading
7 fraud on “information and belief” is viewed with a “jaundiced eye”). While this Court must
8 presume the truth of the factual allegations, it is not required to “necessarily assume the truth of
9 legal conclusions merely because they are cast in the form of a factual allegation in [the]
10 Complaint.” *McMillan v. Dep’t of Interior*, 907 F.Supp. 322, 327 (D.Nev. 1995). The Ninth
11 Circuit in the case of *Comwest, Inc. v. Am. Operator Servs., Inc.*, 765 F.Supp. 1467, 1470-71
12 (C.D. Cal. 1991) addressed the impropriety of fraud assertions being lodged on “information and
13 belief.” In *Comwest*, the Ninth Circuit concluded without question that the plaintiff’s “fraud
14 claim is fundamentally defective because all of plaintiff’s fraud allegations are based ‘upon
15 information and belief.’” *Id.*

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

20 **IV. MORE DEFINITE STATEMENT PURSUANT TO NRCP 12(E)**

21 If this Court permits the Counterclaims raised by Clark County to survive dismissal, the
22 Rental Association alternatively moves that Clark County be required to provide a more definite
23 statement for them. NRCP 12(e) permits Defendants to move for a more definite statement
24 where a party’s counterclaims are “vague or ambiguous.”

1 Here, and for the reasons discussed above, Clark County’s Counterclaims lack specificity
2 or any meaningful facts that, even taken as true, could support Clark County’s allegations. Its
3 Counterclaims lack the requisite factual specificity to support the underlying criminal violation
4 let alone who, what, where, when, or how they purportedly occurred.

5 While the Rental Association respectfully submits that dismissal is warranted on each of
6 Clark County’s counterclaims, a more definite statement is at a minimum certainly necessary.
7 *See Mays v. Eighth Judicial Dist. Court of State of Nev. In and For County of Clark*, 105 Nev.
8 60, 63, 768 P.2d 877, 879 (1989) (recognizing that “if the defendants feel that certain allegations
9 in the complaint are not sufficiently focused to permit a definite answer, [they] may move for a
10 more definite statement under NRCP 12(e)”); *Northern Nevada Ass'n of Injured Workers v.*
11 *Nevada State Indus. Ins. System*, 107 Nev. 108, 116, 807 P.2d 728, 733 (1991) (stating that “if
12 respondents are truly perplexed by any aspect of appellants' amended complaint, they may obtain
13 further specificity by filing a motion for a more definite statement under NRCP 12(e)”). Indeed,
14 Clark County’s novel legal allegations in their Counterclaims, if permitted to stand, render it
15 nearly impossible for the Rental Association to meaningfully answer without more facts.

16 **V. REQUEST FOR ATTORNEY FEES AND COSTS**

17 Clark County’s Counterclaims are factually and legally deficient to such an extent that
18 the Rental Association respectfully requests that it be awarded by this Court attorney fees and
19 costs to be paid by Clark County for having to respond to them. More specifically, NRS 7.085(1)
20 provides that of attorney fees may be awarded where an action, including counterclaims, are
21 filed or maintained in a civil action that are “not well-grounded in fact” or are “not warranted by
22 existing law” or are unreasonable or vexatious.

23 For the reasons discussed above, Clark County’s Counterclaims against the Rental
24 Association, and Ms. Flores in particular, fall squarely within the ambit of NRS 7.085. There is

1 no legal basis for many of the Counterclaims. Others are pleaded with such factual deficiency
2 that it reasonable to conclude that they serve no purpose but to harass and intimidate the Rental
3 Association and Ms. Flores in particular.

4 Respectfully, an award of attorney fees and costs is appropriate.

5 **CONCLUSION**

6 Clark County has responded to a good faith legal challenge on an important issue of law
7 by a Nevada non-profit organization by offensively asserting Counterclaims that raise serious,
8 and disparaging, allegations unsupported by sufficient facts and/or law against them. This is
9 improper as a matter of public policy. It is also prohibited by well-settled pleading standards
10 and NRCPC 12(b), which requires that counterclaims set forth a legal and factual basis upon which
11 relief can be granted. This is Clark County's second attempt to assert viable Counterclaims
12 against the Rental Association. Once again, Clark County's Counterclaims fail to satisfy basic
13 pleading standards. Accordingly, the Rental Association respectfully requests that its motion to
14 dismiss be granted and it be attorney fees and costs.

15 DATED this 6th day of December, 2022.

16 HUTCHISON & STEFFEN, PLLC

17 /s/ Joseph C. Reynolds

18 Joseph C. Reynolds (8630)

18 Ariel C. Johnson (13357)

19 *Attorneys for Petitioners*

20 *Greater Las Vegas Short Term Rental Association*
21 *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 6th day of December, 2022, I caused the above and foregoing document, entitled MOTION TO DISMISS PURSUANT TO NRCP 12(b): CLARK COUNTY’S FIRST AMENDED COUNTERCLAIMS 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	Steve B. Wolfson, District Attorney Office of the Clark County District Attorney steven.wolfson@clarkcountyda.com (courtesy copy)
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