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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 LINDSEY LICARI, an individual,

11 Plaintiff,

Case No.: A-20-820980-C

Dept. No.: 32

12 vs.

13 NIKKI SIKALIS BOTT, an individual;
NATIONAL TITLE CO., a Nevada corporation;
14 LINDA NAW, an individual, ERA BROKERS; a
Nevada Corporation; VALLEY WEST
15 MORTGAGE, a Nevada Corporation, DREW
LEVY, an individual, BOBBY ANTEE, an
16 individual, ONE REALTY GROUP; a Nevada
Corporation; MELISSA PARKER; an individual;
17 MELANIE TREANOR, an individual;
GREATER LAS VEGAS ASSOCIATION OF
18 REALTORS; a Nevada Corporation; NEVADA
REAL ESTATE DIVISION BUSINESS AND
19 INDUSTRY; a Nevada Corporation; LINDA
STRATTON, an individual; INGRID
20 TRUJILLO, an individual; DARYL
MCCLOSKEY; an individual; VATCHE
21 SAJIDIAN; an individual; CLARK COUNTY
RECORDERS OFFICE, a-Nevada Corporation;
22 NEVADA SECRETARY OF STATE OFFICE; a
Nevada Corporation; LAS VEGAS
23 METROPOLITAN POLICE DEPARTMENT; a
Nevada Corporation JENNINGS AND FULTON
24 LTD, a Nevada Corporation, SHUMWAY VAN
LTD; a Nevada Corporation; DOES I through X;
25 and ROE CORPORATIONS I through X,
inclusive,

26 Defendants.
27
28

**DEFENDANT LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR COURT
APPOINTED PRO BONO COUNSEL,
PLAINTIFF'S MOTION FOR
PROTECTION ORDER AGAINST ALL
DEFENDANTS AND PLAINTIFF'S
MOTION TO CONSOLIDATE**

Date of Hearing: January 5, 2021

Time of Hearing: 1:30 PM

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1 **DEFENDANT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S**
2 **OPPOSITION TO PLAINTIFF'S MOTION FOR COURT APPOINTED PRO BONO**
3 **COUNSEL, PLAINTIFF'S MOTION FOR PROTECTION ORDER AGAINST ALL**
4 **DEFENDANTS AND PLAINTIFF'S MOTION TO CONSOLIDATE**

5 Defendant Las Vegas Metropolitan Police Department (hereinafter "LVMPD"), by and
6 through their attorneys of record, the law firm of Marquis Aurbach Coffing, hereby submit their
7 Opposition to Plaintiff's Motion for Court Appointed Pro Bono Counsel, Plaintiff's Motion for
8 Protection Order Against All Defendants and Plaintiff's Motion to Consolidate. This Opposition
9 is made and based upon all papers, pleadings, and records on file herein, the attached
10 Memorandum of Points and Authorities, and any oral argument allowed at a hearing on this
11 matter.

12 Dated this 16th day of November, 2020.

13 MARQUIS AURBACH COFFING

14 By: /s/ Jackie V. Nichols
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23 **MEMORANDUM OF POINTS & AUTHORITIES**

24 **I. INTRODUCTION**

25 In a recently filed reply, Plaintiff simultaneously filed three substantive motions: (1) Motion for Appointment of Counsel; (2) Motion for a Protective Order; and (3) Motion to Consolidate. This is a civil action pertaining to alleged mortgage fraud. First, Plaintiff has no right to counsel under the Sixth Amendment. Nevertheless, the Supreme Court has held that in rare instances, a party to a civil matter may be entitled to counsel. On such occasions, the party must demonstrate that he or she is without means of employing an attorney. Here, Plaintiff has admitted that she has made several attempts to hire counsel but no one will take her case. This is

1 not a sufficient basis to appoint counsel and Plaintiff’s request must be denied. Second, Plaintiff
2 has sought a protective order against all Defendants. However, Plaintiff’s motion fails to
3 articulate the legal basis for such motion and should be denied outright. Third, Plaintiff’s request
4 to consolidate other civil matters must be denied because this is not the first commenced case.
5 Accordingly, LVMPD asks the Court to deny Plaintiff’s motions.

6 **II. LEGAL ARGUMENT**

7 **A. LVMPD’S OPPOSITION TO PLAINTIFF’S MOTION FOR**
8 **APPOINTMENT OF COUNSEL.**

9 Appointment of counsel is rarely required in civil cases and “the trial court is the proper
10 evaluator of the need for counsel on a case-by-case basis.” *See Rodriguez v. Eighth Judicial Dist.*
11 *Court*, 120 Nev. 798, 813, 102 P.3d 41, 51 (2004). In *Rodriguez*, the Supreme Court first ruled
12 that the Sixth Amendment right to counsel does not apply in civil cases. *Id.* at 805. There,
13 appellant sought appointment of counsel in a civil contempt proceeding. *Id.* Nevertheless, the
14 Court concluded that determining that the proceeding was civil is not dispositive of the issue. *Id.*
15 The Court recognized that in instances where a party is indigent, counsel may be appointed. *Id.*

16 Determining whether a particular party meets the standard for indigency is a fact-
17 intensive inquiry. *Id.* (citing *State v. Vincent*, 883 P.2d 278, 283 (Utah 1994)). The initial burden
18 of establishing indigency rests with the requester, who must demonstrate not that he is entirely
19 destitute and without funds, but that payments for counsel would place an undue hardship on his
20 ability to provide the basic necessities of life for himself and his family. *Id.* at 805-06. While
21 NRS 171.188(3) is of criminal nature, it nonetheless provides the Court with guidance in
22 determining whether a party is indigent. *Id.* In such instances, the judge must consider the
23 application and may, after making further inquiry as necessary, appoint counsel if he or she “(a)
24 [f]inds that the defendant is without means of employing an attorney; and (b) [o]therwise
25 determines that representation is required.” *Id.* (quoting NRS 171.188(3)).

26 In the context of civil litigation, the general rule is that courts look to a party’s current
27 financial status, including the party’s income, property, and other resources, to determine that
28 party's present ability or, more importantly, inability to prosecute or defend an action. *Id.* When

1 considering an indigency application, a trial judge must consider a party's complete financial
2 picture, balancing income and assets against debts and liabilities, taking into account the cost of
3 a party's basic needs and living expenses. *Id.* Particularly relevant to this inquiry are (1) the
4 party's employment status and income, including income from government sources such as social
5 security and unemployment benefits, (2) the ownership of any unencumbered assets, including
6 real or personal property and monies on deposit, and finally, (3) the party's total indebtedness
7 and any financial assistance received from family or close friends. *Id.* at 806-07.

8 Here, Plaintiff failed to meet her burden in demonstrating that she is indigent and
9 necessitates counsel. This is not a matter in which the plaintiff is without means of employing an
10 attorney. Rather, the motion clearly indicates that:

11 Ms. Licari has reached out to several law firms in which they all refuse to get
12 involved, which has forced Ms. Licari to litigate on her own . . .

13 *See* Motion. Thus, Plaintiff is not indigent. The fact of the matter is that Plaintiff does not have
14 a legal case and is unable to retain an attorney on the sole basis. Accordingly, the Court must
15 deny Plaintiff's motion for appointment of counsel.

16 **B. LVMPD'S OPPOSITION TO PLAINTIFF'S MOTION FOR A
PROTECTIVE ORDER.**

17 The Eighth Judicial District Court Rules require every motion to be accompanied by a
18 memorandum of points and authorities. EDCR 2.20(c). Here, Plaintiff seeks a protective order
19 from all defendants. Despite this general designation, nothing in Plaintiff's request applies to
20 LVMPD. Additionally, Plaintiff failed to outline the legal basis for her protective order. For
21 instance, a court may enter a temporary protective order under NRS 200.591 on the basis of
22 harassment or stalking. On the other hand, a court may enter a protective order in relation to
23 discovery in a civil case. NRCP 37. Because Plaintiff has not specified the legal basis for her
24 protective order, it must be denied as to LVMPD.

25 **C. LVMPD'S OPPOSITION TO PLAINTIFF'S MOTION TO
CONSOLIDATE.**

26 Under NRCP 42(a), if actions before the Court involve a common question of law or fact,
27 the court may consolidate the actions. Like under its identical federal counterpart, a district court
28

1 enjoys “broad, but not unfettered, discretion in ordering consolidation.” *Marcuse v. Del Webb*
2 *Cmtys., Inc.*, 123 Nev. 278, 286, 163 P.3d 462, 468 (2007). Plaintiff seeks to consolidate the
3 instant cases with A-20-820446-C; A-20-820963-C; and A-20-821757-J. The first two cases
4 came before the instant case. Under EDCR 2.50, a motion for consolidation of two or more
5 cases must be heard by the judge assigned to the **first commenced case**. Therefore, Plaintiff’s
6 motion is improper and must be denied as it must be made in case A-20-820446-C.

7 **III. CONCLUSION**

8 Based on the foregoing, LVMPD respectfully requests the Court denies Plaintiff’s
9 Motion for Court Appointed Pro Bono Counsel, Plaintiff’s Motion for Protection Order Against
10 All Defendants and Plaintiff’s Motion to Consolidate.

11 Dated this 16th day of November, 2020.

MARQUIS AURBACH COFFING

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT LAS VEGAS METROPOLITAN POLICE DEPARTMENT’S OPPOSITION TO PLAINTIFF’S MOTION FOR COURT APPOINTED PRO BONO COUNSEL, PLAINTIFF’S MOTION FOR PROTECTION ORDER AGAINST ALL DEFENDANTS AND PLAINTIFF’S MOTION TO CONSOLIDATE** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 16th day of November, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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