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9
10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF NEVADA**

12 In Re JAZI GHOLAMREZA ZANDIAN,
13 Debtor.

BK-N-16-50644-BTB
Chapter 15

Adversary Proceeding: 17-05016-BTB

14 _____/
15 FRED SADRI, AS TRUSTEE FOR THE
16 STAR LIVING TRUST, DATED APRIL
14, 1997; RAY KOROGHLI AND
17 SATHSOWI T. KOROGHLI, AS
MANAGING TRUSTEES FOR
18 KOROGHLI MANAGEMENT TRUST,

CROSS-DEFENDANT JED MARGOLIN'S
REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AGAINST CROSS-
CLAIMANT PATRICK CANET AND
OPPOSITION TO COUNTER MOTION

19 Plaintiffs,

Hearing Date: May 24, 2018
Hearing Time: 10 a.m.

20 v.

21 JED MARGOLIN; JAZI GHOLAM REZA
22 ZANDIAN; and all other parties claiming
an interest in real properties described in
this action,

23 Defendants.

24 _____/
25 PATRICK CANET,

26 Counterclaimant,

27 v.

28 FRED SADRI, INDIVIDUALLY AND AS
TRUSTEE FOR THE STAR LIVING
TRUST; RAY KOROGHLI,

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1 INDIVIDUALLY; RAY KOROGHLI
2 AND SATHSOWI T. KOROGHLI, AS
3 MANAGING TRUSTEES FOR
4 KOROGHLI MANAGEMENT TRUST,

5 Counter-Defendants.

6 PATRICK CANET,

7 Cross-Claimant,

8 v.

9 JED MARGOLIN,

10 Cross-Defendant.

11
12 **I. INTRODUCTION**

13 Mr. Margolin hereby submits this Reply to Canet’s putative “Opposition” and Counter
14 Motion. Canet’s “Opposition” is not really an opposition at all because it does not “oppose”, let
15 alone address, the two main arguments raised in Mr. Margolin’s Motion for Summary Judgment
16 (“MSJ”). In his MSJ, Mr. Margolin argued that Canet’s First Cross Claim to avoid transfer of
17 properties in Washoe County should be denied because the sale (i.e. transfer) of those properties
18 took place on April 3, 2015, well over 90 days before Canet’s Chapter was filed. *See* ECF No.
19 23, pp. 5-6, *citing* 11 U.S.C. § 547(b)(4)(A). Also in his MSJ, Mr. Margolin argued that Canet’s
20 Second Cross Claim for alleged violation of the automatic stay should be denied because Ninth
21 Circuit authority makes clear that recording a deed is a ministerial act that does not violate the
22 automatic stay of 11 U.S.C. § 362. ECF No. 23, p. 6, *citing Tracht Gut, LLC v. County of L.A.*
23 *(In re Tracht Gut, LLC)*, 503 B.R. 804, 811 (9th Cir. BAP 2014). Instead of addressing either of
24 these arguments, Canet improperly argues *for the very first time*, that Mr. Margolin did not
25 comply with the Nevada statutory scheme for recording and executing judgments. As such,
26 Canet’s “Opposition” is really a motion for summary judgment filed after the March 28, 2018
27 deadline for filing dispositive motions that seeks summary judgment on claims that are: (1) not
28 alleged by Canet in his Cross Claims: (2) not alleged in Mr. Margolin’s MSJ; (3) and not

1 identified in Rule 26 initial or supplemental disclosures or responses to discovery, which Canet
2 admittedly did not serve. Canet’s “Opposition” and Counter Motion should be denied out of hand
3 because it violates both Local Rule 7056(e) as well as clear Ninth Circuit authority that holds that
4 a party cannot raise new issues and arguments for the first time on summary judgment. Even if
5 Canet is allowed to engage in “trial by surprise” and raise claims and arguments that are not
6 contained in his Cross Claims or Mr. Margolin’s MSJ – which he should not – they are without
7 merit and should be rejected.

8 II. REPLY ARGUMENTS

9 **A. Canet’s Counter Motion for Summary Judgment Violates Local Rule 7056(e) and 10 Should Not be Considered by this Court Because it is Based on Arguments That 11 Do Not Relate to the Claims Addressed in Mr. Margolin’s Motion For Summary 12 Judgment or Ever Raised Before by Canet**

13 Mr. Margolin’s MSJ seeks dismissal of Canet’s only two Cross Claims against him, in
14 which Canet alleges: (1) that Mr. Margolin’s recording deeds in Washoe County for APN 084-
15 130-07, 079-150-10, 084-040-02, and 079-150-12 amounted to “transfers” to the detriment of
16 alleged creditors in France; and (2), that the Mr. Margolin’s recording of the deed to APN 071-
17 02-000-005 in Clark County violated the automatic stay in this case. *See* ECF No. 15, pp. 9-10.

18 In his MSJ, Mr. Margolin argues that Canet’s First Cross Claim should be dismissed
19 because the alleged “transfers” to the aforementioned properties took place on the Sherriff’s sale
20 of those properties April 3, 2015 (not September 8, 2016), and the transfers could not be avoided
21 under 11 U.S.C. § 547(b)(4)(A) because Canet’s Chapter 15 Petition was filed on May 19, 2016,
22 over 13 months after the April 3, 2015 Sherriff’s sale. *See* SUF 15, 17, 19, 21. Mr. Margolin
23 argued that since the transfers of these Washoe County Properties took place well over 90 days
24 before the Chapter 15 Petition was filed, the “transfers” could not be set aside and Canet’s First
25 Cross Claim should be dismissed.

26 Also, in his MSJ, Mr. Margolin argues that Canet’s Second Cross Claim should be
27 dismissed because recording the deed to APN 071-02-000-005 in Clark County on October 9,
28 2016 was a ministerial act that does not violate the automatic stay of 11 U.S.C. § 362. ECF No.
23, p. 6, citing *Tracht Gut, LLC v. County of L.A. (In re Tracht Gut, LLC)*, 503 B.R. 804, 811 (9th

1 Cir. BAP 2014).

2 Finally, in his MSJ, Mr. Margolin argued that because Canet failed to serve Rule 26(a)
3 initial disclosures, Rule 26(e) supplemental disclosures, or responses to interrogatories or requests
4 for production, Canet is prohibited from using any information, documents, or witnesses in
5 opposition to Mr. Margolin's Motion, or at any hearing, or at trial pursuant to Fed. R. Civ. P.
6 37(c); Fed. Bnkr. R. 7037. ECF No. 23, pp. 6-10. And therefore, on this alternative basis,
7 Canet's Cross Claims should be dismissed with prejudice.

8 In Canet's purported "Opposition" and Counter Motion for Summary Judgment, Canet
9 does not address or respond to Mr. Margolin's "transfer" and "automatic stay" arguments that are
10 the only bases of Canet's two Cross Claims, and only pays lip service to his inexcusable failure to
11 comply with Rules 26, 33, and 34. Instead of responding to the arguments contained in Mr.
12 Margolin's MSJ, Canet raises brand new, un-plead arguments that Mr. Margolin's recordation of
13 his Default Judgment against Zandian (who still has a warrant out for his arrest) allegedly failed
14 to comply with NRS 17.150, and that the Sheriff's sales proceeded without notice pursuant to
15 21.130, 21.075, 21.076, and therefore, any and all sales of property to Mr. Margolin in Nevada¹
16 were allegedly void, and Mr. Margolin is an unsecured creditor. ECF No. 34, p. 11.

17 None of these claims are raised in Mr. Margolin's MSJ, let alone Canet's Cross Claims,
18 and Canet is prohibited from raising these issues in his Counter Motion pursuant to Local Rule
19 7056(e).

20 Local Rule 7056(e) provides in part:

21 (1) A countermotion for summary judgment *that relates to the same claim or*
22 *partial claim* may be filed against the movant(s) within the time allowed for the
23 opposition to the motion for summary judgment.

24 (2) Any party seeking summary judgment *on a different claim or part of a claim,*
25 or against a non-movant, must notice the motion in accordance with subsection
26 (f)(1) and may not, without the consent of the moving party, the party against who
27 judgment is sought, and the court, set it on the date set in the first motion for

28 ¹ This includes properties located not only in Washoe County and Clark County, but also in Lyon, Churchill, and Elko Counties. ECF No. 34, p. 11. Aside from properties located in Washoe County and Clark County, no other properties were identified in any pleading in this action, and this Court should not consider the newly-identified Lyon, Churchill, and/or Elko County properties.

1 summary judgment....

2 *Id.* (emphasis added).

3 As discussed above, with the exception of Canet’s blatant failure to comply with the Rules
4 of Civil Procedure (discussed *infra*), none of the claims contained in Canet’s Counter Motion
5 relate to the same claims or partial claims asserted in Mr. Margolin’s MSJ – “transfer” and
6 “automatic stay.” As such, Canet’s Counter Motion is prohibited by Local Rule 7056(e)(1).

7 What Canet really seeks is summary adjudication on different claims pursuant to Local
8 Rule 7056(e)(2). Two main reasons exist why Canet cannot bring a Counter Motion (or any
9 summary judgment motion) “on a different claim or part of a claim” at this point.

10 *First*, until filing his Counter Motion, Canet never alleged that there was a failure to
11 comply with NRS 17.150, 21.130, 21.075, and 21.076, or that redemption rights, if any, were not
12 terminated pursuant to the lapse of time, 21.200, and he should not be allowed to make those
13 allegations or request the relief contained in his “Opposition”/Counter Motion at this time. The
14 Ninth Circuit has held that when a plaintiff raises a new theory at summary judgment and where a
15 defendant will be prejudiced, the plaintiff cannot raise a new theory for the first time in
16 opposition to summary judgment. *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1292-93 (9th
17 Cir. 2000). “A complaint guides the parties’ discovery, putting the defendant on notice of the
18 evidence it needs to adduce in order to defend against the plaintiff’s allegations.” *Coleman*, 232
19 F.3d at 1292. In *Coleman*, the plaintiffs stated an ADEA claim of disparate treatment in their
20 complaint sought to add a claim of disparate impact for the first time at summary judgment. *Id.*
21 The Court noted that discovery had closed and adding a new theory of liability would prejudice
22 the defendant because a disparate impact would require entirely different defenses. *Id.* at 1292.
23 The court noted that Plaintiffs did not seek leave to amend the complaint until their reply to the
24 summary judgment motion and good cause had not been shown because they did not make it
25 known during discovery that they intended to pursue a disparate impact theory. *Id.* at 1294-95.

26 Again, the only issues raised by Canet in his Cross Claim are whether the recording
27 certain deeds in Washoe County were “transfers” under the Bankruptcy Code, and whether Mr.
28 Margolin violated the automatic stay when he performed the ministerial act of recording a deed in

1 Clark County. The issues raised in Canet’s Opposition/“Cross Motion” are brand new. Not only
 2 were they never disclosed in Canet’s Cross Claims, but Canet never raised the issues during
 3 discovery, because he admittedly did not serve initial disclosures or any supplement thereto, or
 4 respond to interrogatories or requests for admission. Discovery has long since closed, and Canet
 5 wants to engage in “trial by surprise,” “which is no longer countenanced.” *Reno Air Racing*
 6 *Ass’n v. McCord*, 452 F3d 1126, 1140 (9th Cir. 2006). Therefore, Margolin would be prejudiced
 7 by the assertion of these claims due to the inability to have discovery regarding the same.

8 *Second*, because Canet’s Counter Motion seeks summary judgment *on a different claim or*
 9 *part of a claim*, Canet was required to bring his Motion (assuming for the sake of argument only
 10 that he could bring the motion) under 7056(e)(2), before the deadline for filing dispositive
 11 motions – March 28, 2018. *See* ECF No. 19, p. 3. He failed to do so, and cannot bring his
 12 motion now – way past the date for filing dispositive motions.

13 Because Canet’s Counter Motion violates Local Rule 7056(e), this Court should deny
 14 Canet’s Counter Motion for Summary Judgment out of hand without consideration of any of any
 15 of the new arguments contained therein.

16 **B. This Court Should Grant Mr. Margolin’s Motion for Summary Judgment on**
 17 **Canet’s Two Cross Claims Because Canet Does Not Address, Let Alone Dispute, Mr.**
 18 **Margolin’s “Transfer” or “Automatic Stay” Arguments**

19 Nowhere in his Opposition does Canet address the transfer or automatic stay arguments
 20 that are the sole basis of Canet’s Cross Claim against Mr. Margolin, and are two of the main
 21 bases of Mr. Margolin’s MSJ. *See* ECF No. 34. Because Canet has failed to respond to these
 22 arguments, Mr. Margolin’s MSJ should be granted and Canet’s two Cross Claims should be
 23 dismissed without prejudice. *Rogalski v. Las Vegas Metro. Police Dep’t*, 2017 WL 3401446, *13
 24 (D. Nev. 2017) (holding that failure to respond to a summary judgment argument in an
 25 opposition, warrants the grant of summary judgment in the moving party’s favor), *citing Cafasso*,
 26 *U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1061 (9th Cir. 2011); *also citing*
 27 *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1029 (9th Cir. 2001); *see also*
 28 *Southern Nevada Shell Dealers Asso. v. Shell Oil Co.*, 725 F. Supp. 1104, 1109 (D. Nev. 1989)

1 (granting summary judgment and holding that because the plaintiff failed to respond to the
2 defendant's motion for summary judgment on plaintiff's tenth claim for relief, the plaintiffs
3 "implicitly conceded" that summary judgment was warranted that on that claim).

4 **C. This Court Should Grant Mr. Margolin's Motion for Summary Judgment Because it**
5 **is Undisputed that Canet Failed to Comply With the Federal Rules of Civil**
6 **Procedure**

7 The only issue addressed by Canet in his "Opposition" and Counter Motion that was
8 raised in Mr. Margolin's MSJ was Canet's admitted failure to comply with the Federal Rules of
9 Civil Procedure. Canet admits that he did not serve initial disclosures pursuant to Rule 26(a) and
10 this Court's Amended Discovery Plan (ECF No. 19, p. 3), did not serve supplemental disclosures
11 pursuant to Rule 26(e), did not serve responses to interrogatories pursuant to Rule 33, and did not
12 serve responses or documents pursuant to Rule 34. ECF No. 35, p. 2. Amazingly, Canet shrugs
13 off his complete non-compliance with the Federal Rules of Civil Procedure and alleges that: (1)
14 Mr. Margolin should have filed a motion to compel: (2) that Canet is allegedly located in France,
15 that the interrogatories are "irrelevant"; and (3), that Canet's "position relies on the absence of
16 documents regarding compliance with the default judgment and execution process." ECF No. 34,
17 p. 12. Canet's arguments are specious, and there is no justification for his failure to comply with
18 the Federal Rules of Civil Procedure and the deadlines set in this case.

19 With regard to his argument that Mr. Margolin should have filed a motion to compel to
20 Canet's compliance with Rules 26, 33, and 34 and the parties' discovery plan, that argument is
21 without merit. Simply put, it is not Mr. Margolin's duty to make sure that Canet complies with
22 the Federal Rules and case management deadlines. Also, as stated in Mr. Margolin's MSJ, Rule
23 37(c)(1) is a "self-executing, automatic" sanction designed to provide a strong inducement for
24 disclosure. Rule 37(c)(1); 8B Charles A. Wright, Arthur R. Miller, Federal Practice and
25 Procedure, § 2289.1 (3d ed. 2017). There is no meet and confer requirement for Rule 37(c)
26 sanctions. *Fulmore v. Home Depot, U.S.A., Inc.*, 423 F. Supp.2d 861, 871-72 (S.D. Ind. 2006)
27 ("The Advisory Committee Notes to both the 1993 and 2000 Amendments to Rule 37 make clear
28 that Rule 37(c) operates independent of any motion required by Rule 37(a). Rule 37(c) simply

1 does not require conferral”). Rule 37(c)(1) states that “[i]f a party fails to provide information or
2 identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information
3 or witness to supply evidence on a motion, at a hearing, or at a trial.” Because Canet has
4 admittedly failed to comply with Rule 26(a) or (e) (*see* ECF No. 35, p. 5, ¶ 26), he cannot present
5 any evidence or witnesses to support his Cross Claims at trial or in his “Opposition”/Counter
6 Motion. *Id.* That is automatic. Furthermore, in light of Canet’s failure to even attempt to comply
7 with the Rules and this court’s case management plan, Canet’s Opposition and Counter Motion
8 should be denied with prejudice. Rule 37(c)(1)(C).

9 With regard to Canet’s argument that he did not serve initial disclosures or discovery
10 responses or comply with the Amended Discovery Plan (ECF No. 19) because Canet is in France
11 and the interrogatories are allegedly “irrelevant,” those arguments are meritless. Even if the
12 representation that Canet is located in France is accepted, that fact does not relieve him from
13 complying with the Federal Rules of Civil Procedure and this Court’s Amended Discovery Plan.
14 Canet essentially asks this Court to hold that a resident of a foreign country may maintain an
15 action in Federal Court, but is not required to comply with the Federal Rules of Civil Procedure
16 or court schedules or orders. That is ridiculous. So is Canet’s claim that he does not have to
17 respond to interrogatories because he subjectively believes, without responding or objecting, that
18 the interrogatories are “irrelevant.” ECF No. 34, p. 12. Even if Canet believed that discovery
19 requests were “irrelevant” – which they are not – all objections have been waived since Canet
20 failed to respond. *Wan v. Pulte Mortgage*, 2013 WL 6692744, * 1 (D. Nev. 2013), citing *Davis v.*
21 *Fendler*, 650 F.2d 1154, 1160 (9th Cir. 1981); 8A Charles A. Wright, Arthur R. Miller, Federal
22 Practice and Procedure (“Wright and Miller”), § 2173 (3d ed. 2017), citing *Safeco Ins. Co. v.*
23 *Rawstrom*, 183 F.R.D. 668, 670 (C.D. Cal. 1998)(citations omitted); *Pulsecard, Inc. v. Discovery*
24 *Card Services, Inc.*, 168 F.R.D. 295, 303 (D. Kan. 1996); *Perry v. Golub*, 74 F.R.D. 360, 363
25 (N.D. Ala. 1976); 8B Wright and Miller, § 2213 (3d ed. 2017); *see generally Burlington Northern*
26 *& Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005).

27 Finally, Canet’s argument that his failure to respond to discovery is inconsequential
28 because his “position relies on the absence of documents regarding compliance with the default

1 judgment and execution process,” is without merit. Canet’s only two Cross Claims are for
 2 alleged improper “transfer” and alleged violation of the automatic stay. ECF No. 15. He is
 3 required to support those claims with evidence, which he has not. Since Canet has admittedly
 4 failed to comply with Rules 26(a) and (e), he cannot produce such evidence now. Rule 37(c)(1).
 5 As a result, Mr. Margolin’s MSJ must be granted.

6 **D. Even if This Court Considers the Brand New Arguments Advanced by Canet in his**
 7 **Counter Motion – Which it Should Not – Canet’s Arguments Should be Rejected**
 8 **and Canet’s Counter Motion Denied**

9 As set forth above, Mr. Margolin’s MSJ should be granted and Canet’s Counter Motion
 10 should not be considered. However, in the event that this Court is inclined to entertain Canet’s
 11 unpled allegations – which it should not – those allegations should be rejected.

12 **1. Mr. Margolin Properly Secured the properties by Filing a copy of the**
 13 **Judgment**

14 Mr. Margolin undisputedly recorded the default judgment against Zandian, thereby
 15 creating a lien securing those properties on the dates recorded. NRS 17.150(2) (a “copy of any
 16 judgment ... may be recorded in the office of the county recorder in any county, and when so
 17 recorded it becomes a lien upon all the real property of the judgment debtor not exempt from the
 18 execution in that county.”). *See* May 2, 2018 Declaration of Arthur A. Zorio (“Zorio Decl.”), ¶
 19 2, Exhibit A. . This point is established and any argument to the contrary is without merit.

20 **2. An Affidavit Is Not Required to Secure Real Property**

21 NRS 17.150(2) makes clear that the lien comes into existence and therefore secures the
 22 real property upon the recordation of the judgment. NRS 17.150(2) states that a “transcript of the
 23 original docket or an abstract or copy of any judgment or decree of a district court of the State of
 24 Nevada or the District Court or court of the United States in and for the District of Nevada, the
 25 enforcement of which has not been stayed on appeal, certified by the clerk of the court where the
 26 judgment or decree was rendered, may be recorded in the office of the county recorder in any
 27 county, *and when so recorded it becomes a lien upon all the real property of the judgment*
 28 *debtor not exempt from the execution in that county*, owned by the judgment debtor at the time
 or which the judgment debtor may afterward acquire, until the lien expires.” (Emphasis added).

1 This conclusion is supported by case law interpreting NRS 17.150(2). *See Leven v. Frey*,
 2 123 Nev. 399, 403, 168 P.3d 712, 715 (2007) (“NRS 17.150(2) creates a lien on a debtor’s real
 3 property in a particular county when a judgment is recorded in that county.”).

4 “It is the duty of [a] court, when possible, to interpret provisions within a common
 5 statutory scheme to avoid unreasonable or absurd results, thereby giving effect to the
 6 Legislature’s intent.” *S. Nevada Homebuilders Ass’n v. Clark Cty*, 121 Nev. 446, 449, 117 P.2d
 7 171, 173 (2005). Interpreting NRS 17.150(4) to be a requirement for the existence of a lien
 8 would render the above-emphasized language of NRS 17.150(2) without meaning. The lien is
 9 automatically perfected pursuant to the plain language of NRS 17.150(2) by merely recording the
 10 judgment.

11 NRS 17.150(4) simply does not state that the affidavit is required to secure a lien upon the
 12 property. All that is required is to record a copy of the judgment, which Mr. Margolin did.
 13 Therefore, Mr. Margolin properly perfected judgment liens upon the properties.

14 Even if the sales of the 1/3 interest in the properties to Mr. Margolin are – wrongly – set
 15 aside, Margolin still has a valid lien against the properties, perfected pre-petition by recording the
 16 judgment. Therefore, Margolin is a secured creditor as to those properties in the bankruptcy.

17 **3. A Defect in the Sheriff’s Notices Does not Void the Sale – Zandian’s Exclusive**
 18 **Remedy is to Pursue the Washoe County Sheriff for Damages, if Any**

19 The exclusive remedy for one claiming to have been prejudiced and to have suffered
 20 damage due to the Sheriff’s failure to provide proper notice, or of the Sheriff having sold property
 21 without proper notice, is to pursue the Sheriff for damages pursuant to NRS 21.140(1). Section
 22 NRS 21.140(1) provides that: “An officer selling without the notice prescribed by NRS 21.075,
 23 21.076, and 21.130 forfeits \$500 to the aggrieved party, in addition to the party’s actual
 24 damages”. This section is nearly identical to the current Idaho Code Section 11-303 which
 25 provides: “An officer selling without the notice prescribed by the last section forfeits \$500 to the
 26 aggrieved party, in addition to his actual damages....” (emphasis added). *Compare* NRS
 27 21.140(1) (“An officer selling without the notice prescribed by NRS 21.075, 21.076 and 21.130
 28 forfeits \$500 to the aggrieved party, in addition to the party’s actual damages....” (emphasis

1 added).

2 In *Nixon v. Triber*, 595 P.2d 1093, 1096 (Idaho 1979) the Idaho Supreme Court reversed
 3 the district court's order setting aside sale for failure to provide statutory notice, holding the sale
 4 is valid and exclusive remedy is to pursue the Sheriff for damages. The *Nixon* court canvassed
 5 authorities from states having statutes with language substantially similar to Idaho Code section
 6 11-303 which Idaho adopted from California. *Id.* at 1095 As far back as 1856, the California
 7 Supreme Court construed a statute nearly identical to Idaho Code 11-303 and NRS 21.140(1).
 8 *Smith v. Randall*, 6 Cal. 47, 50, 1856 Cal. LEXIS 19, * (Cal. 1856) (the relevant California statute
 9 at the time stated: "an officer selling without the required notice shall forfeit five hundred dollars
 10 to the aggrieved party in addition to his actual damages"). The California Supreme Court held:

11 It has been often decided that the provisions of statutes similar to ours, with
 12 respect to levy and notice of sale under execution, are merely directory, and the failure of
 13 the officers to comply with the requirements of the law, in this respect, would not vitiate
 14 such sale, but the party aggrieved by his neglect is left to his remedy by an action against
 15 the officer. 6 Mun. 111, 3 Bibb, 216. This rule is founded in justice and sound policy.

16 Very few of those who become purchasers of land at sheriff's sales, have an
 17 opportunity of knowing whether or not the law, with respect to notice, has been strictly
 18 complied with, or whether the defendants in execution have personal property at the time
 19 of the levy, and if every mistake or neglect of duty, on the part of a sheriff, would operate
 20 to invalidate such sale, great injury would result, both to debtor and creditor, for no
 21 prudent man would give a fair price for property, if he was liable to be divested of his title
 22 by reason of the laches of the officer. Is there anything in our statutes in conflict with the
 23 view above taken?

24 The intention of the Legislature, where it can be ascertained, must govern in the
 25 construction of a statute. This intention should not be taken from a particular section, but
 26 from the whole statute. Section 221 of the 'Act to regulate proceedings in civil cases,'
 27 provides that the sheriff shall, before a sale of real estate under execution, give notice of
 28 the time and place of sale, for twenty days. If the officer neglects to give such notice the
 following section provides, not that the sale shall be void, but 'an officer selling without
 the required notice shall forfeit five hundred dollars to the aggrieved party in addition to
 his actual damages.' Section 222.

The statute having thus provided an adequate remedy, by an action against the
 officer, the party aggrieved can have no other *expressio unis exclusio est alterius*.

Smith, 6 Cal. at 50, 1856 Cal. LEXIS 19, *7-8 (quoted in *Nixon*, 595 P.2d at 1095-96); *Fink v.*
Roe, 70 Cal. 296, 11 P. 820 (Cal. 1886) (failure to give proper notice does not invalidate the sale);
Hamilton v., Carpenter, 126 P.2d 395 (Cal. Ct. App. 1942); *cf. Kaye v. United Mortgage Co.*, 86
 Nev. 183, 184 (1970) ("Nevada statutory provisions governing redemption are identical in all

1 material respects to California Code provisions, we are persuaded ... to follow California case
 2 authority.”). Likewise here, Nevada will follow California and Idaho in interpretation of NRS
 3 21.140(1).

4 The *Nixon* court concluded that, consistent with all of the other jurisdictions to address the
 5 issue, Idaho Code 11-303 (NRS 21.140(1)) “provides the exclusive remedy for failure to comply
 6 with the notice provisions of I.C. § 11-302.[²] Our holding is in conformity with decisions from
 7 other jurisdictions which have interpreted identical or similar statutes.” *Nixon* 595 P.2d at 1096;
 8 *see also Smith v. Randall*, 6 Cal. at 50 (“The statute having thus provided an adequate remedy, by
 9 an action against the officer, the party aggrieved can have no other *expressio unis exclusio est*
 10 *alterius*”); *Simson v. Eckstein*, 22 Cal. 580 (1863); *Shores v. Scott River Water Company*, 17 Cal.
 11 626 (1861); *Harvey v. Fisk*, 9 Cal. 93 (1858); *Batini v. Ivancich*, 105 Cal. App. 391, 393-94, 287
 12 P. 523, 524 (Cal. Ct. App. 1930) (statutes such as NRS 21.310 are merely directory, and the
 13 failure of the Sheriff to comply with the requirements of the law, in this respect, would not vitiate
 14 the sale of real property).

15 NRS 21.075, 21.076, and 21.130 establish the obligation of the Sheriff to provide the
 16 notices stated therein. NRS 21.075(1) expressly so provides (“only if the sheriff serves ...

17
 18 ² Idaho Code 11-302 provides as follows:

19 Before the sale of the property on execution, notice thereof must be given as follows:

- 20 1. In case of perishable property, by posting a written notice of the time and place of sale in three (3) public
 21 places of the precinct or city where the sale is to take place, for such time as may be reasonable, considering
 the character and condition of the property.
- 22 2. In case of other personal property, by posting a similar notice in three (3) public places in the precinct or
 23 city where the sale is to take place for not less than five (5) nor more than ten (10) days before the time set
 for the sale, or by publishing a copy thereof at least one (1) week, and not more than two (2) weeks, in a
 newspaper published in the county, if there be one.
- 24 3. In case of real property, by posting a similar notice particularly describing the property, for twenty (20)
 25 days, in three (3) public places in the precinct or city where the property is situated, and also where the
 property is to be sold, and by publishing a copy thereof once a week for the same period before the time set
 26 for the sale, in a newspaper published in the county, if there be one. When the judgment under which the
 property is to be sold is made payable in a specified kind of money or currency, the several notices required
 27 by this section must state the kind of money or currency in which bids may be made at such sale, which
 must be the same as that specified in the judgment.

28 *Accord* NRS 21.130.

1 notice”). NRS 21.076 expressly so provides (“The notice required by NRS 21.075 must be
 2 served by the sheriff.”). NRS 21.130(1) also provides that “notice of the sale, in addition to the
 3 notice required pursuant to NRS 21.075 and 21.076, must be given” by the Sheriff. Finally, NRS
 4 21.140(1) clearly, and unmistakably, provides the exclusive remedy if the Sheriff sells the real
 5 property without the notices required by NRS 21.075, 21.076 and 21.130, to wit: “An officer
 6 selling without the notice prescribed by NRS 21.075, 21.076 and 21.130 forfeits \$500 to the
 7 aggrieved party, in addition to the party’s actual damages.” (emphasis added). Certainly, the way
 8 the Sheriff knows whether the required notices are given is by virtue of the Sheriff executing its
 9 responsibility to provide those notices.

10 Therefore, if a party is aggrieved by the Sheriff’s neglect (if any) properly to serve
 11 notices, or that the sale proceeded without the statutory notices, his or her exclusive remedy is
 12 against the Sheriff, pursuant to NRS 21.140(1). *Nixon*, 595 P.2d at 1096; *Smith*, 6 Cal. at 50.

13 **4. Zandian Received Actual Notice of the Sales**

14 Again, failure in notice does not void the sales, but rather the exclusive remedy is against
 15 the Sheriff. Nonetheless, it is undisputed that Zandian had actual notice of the Writ of Execution
 16 and notice of sales. In *Turner v. Dweco Servs.*, 87 Nev. 14, 16, 479 P.2d 462, 464 (1971) (a
 17 foreclosure pursuant to a trustee’s sale, not a Sheriff’s sale), the Nevada Supreme Court held that
 18 when notice was served upon counsel for the debtor, the purpose of the statute was satisfied
 19 because actual notice of the debtor’s counsel belied any prejudice or lack of knowledge of the
 20 commencement of the foreclosure proceedings. In the case at bar, a copy of the notices of
 21 execution and sale were sent to Zandian’s then counsel of record by the Sheriffs of Washoe
 22 County and Clark County. *See* Zorio Decl., ¶¶ 3-7, Exhibits B-F, confirming service of the Writs
 23 of Execution, Notices of Execution and Declarations of Service on Zandian on 2/20/2015 for
 24 Washoe County APN’s: 084-040-04, 084-130-07, 079-150-12, 079-150-10; and, for Clark
 25 County, *see* ¶¶ 8-12, Exhibits G-K.³

26 ³ In *Siler v. Siler*, 277 S.W. 886, 887 (Tenn. 1925), the court it was held that recitals in a “Sheriff’s deed in
 27 respect of his own acts is prima-facie evidence of the facts recited.” *Id.*, quoting *Swainson v. Scott*, 76 S.W. 909,
 28 909-10 (Tenn. 2903). In this case, the Sheriffs’ deeds are sufficient to prove the Sheriff performed its obligations by
 the recitals that notice was given. Canet has completely failed to come forward with any evidence to dispute this
 prima facie evidence to support the claims he has raised for the first time in his present opposition/cross-motion.

1 Counsel for Zandian (the putative debtor in the instant Chapter 15 proceeding, and
 2 criminal at large) was actively involved in representing Zandian in his efforts to avoid the sale of
 3 the properties. *See e.g.* Opposition to Motion for Writ of Execution, filed April 21, 2014 by Reza
 4 Zandian, attached to the declaration of Arthur A. Zorio (“Zorio Decl.”) as Exhibit L. Zandian
 5 remained represented by counsel, even responding to the First Judicial District Court’s order to
 6 pay \$96,287.07 by June 9, 2014 by filing a statement that he is unable to pay the debts he has
 7 been ordered to pay. *See* Zorio Decl. at Ex. M (*Notice of Inability to Pay*, Filed on June 9, 2014).
 8 Zandian was represented by counsel at the time he was ordered to appear for a judgment debtor’s
 9 examination. *See* Zorio Decl. at Ex. N (*Order Granting Plaintiffs’ Motion for Debtor*
 10 *Examination and to Produce Documents*, entered on November 6, 2015). On January 7, 2016,
 11 the First Judicial District Court granted Mr. Zandian’s counsel leave to withdraw, stating:
 12 “[Zandian] has substantially failed to fulfill his obligations to Kaempfer Crowell regarding its
 13 services, that Kaempfer Crowell’s representation has also been rendered unreasonably difficult as
 14 a result of [Zandian’s] failure to meet his obligations to counsel, and that [Zandian] insists upon
 15 taking action that the lawyer considers repugnant or with which the lawyer has fundamental
 16 disagreement.” *Id.* at 2/2-/6.

17 Therefore, Zandian was in communication with his counsel both before and after the sale
 18 of the property, having had actual notice of the sale and the writs of execution by virtue of his
 19 counsel having been provided notice of the same.

20 Other jurisdictions, apparently without statutes identical to NRS 21.140(1), have
 21 concluded that actual notice of sale is dispositive even when the formal requirements of notice
 22 have not been met. *See e.g. G.E. Capital Mortg. Services, Inc. v. Marilao*, 800 A.2d 150, 155
 23 (N.J. App. Div. 2002) *citing First Mutual Corp. v. Samojuden*, 518 A.2d 525, 528 (N.J. App. Div.
 24 1986). In this case, even if NRS 12.140(1) did not provide the exclusive remedy to Canet, the
 25 debtor was aware of the sales, the Notice of Sale having been received by his attorney.

26 5. NRS 21.130

27
 28 Statement of Undisputed Material Facts ¶¶ 16, 18, 20, 22, 24 & ECF No. 25 at Exs. B, C, D, E; and Zorio Decl., Exs. O-P (Clark County Sheriff’s Deeds).

1 Again, failure in notice does not void the sales, but rather the exclusive remedy is against
2 the Sheriff. In *Siler v. Siler*, 277 S.W. 886, 887 (Tenn. 1925), the court held that recitals in a
3 “Sheriff’s deed in respect of his own acts is *prima-facie* evidence of the facts recited.” *Id.*,
4 quoting *Swainson v. Scott*, 76 S.W. 909, 909-10 (Tenn. 2903). In this case, the Sheriffs’ deeds
5 are sufficient to prove the Sheriff performed its obligations by the recitals that notice was given.
6 Canet has completely failed to come forward with any evidence to dispute this prima facie
7 evidence to support the claims he has raised for the first time in his present opposition/cross-
8 motion. Statement of Undisputed Material Facts ¶¶ 16, 18, 20, 22, 24 & ECF No. 25 at Exs. B,
9 C, D, E; and Zorio Decl., Exs. O-P (Clark County Sheriff’s Deeds).

10 Furthermore, the records provided, and certified by, the Washoe County Sheriff present a
11 rebuttable presumption that notices were properly given. See Zorio Decl., ¶¶ 3-7, Exhibits B-F.
12 Likewise the records provided by the Clark County Sheriff present a rebuttalbe presumption that
13 notices were properly given. See Zorio Decl., ¶¶ 8-12, Exhibits G-K; Statement of Undisputed
14 Material Facts ¶¶ 16, 18, 20, 22, 24 & ECF No. 25 at Exs. B, C, D, E; and Zorio Decl., Exs. O-P
15 (Clark County Sheriff’s Deeds).

16 Accompanying the Declaration of the Custodian of Records for the Washoe County
17 Sheriff is proof of the regularly conducted activity involving conducting a sheriff sale of real
18 property, including (1) returned receipts of registered mail for mailing notice of sale to counsel
19 for Mr. Zandian of each property; and (2) posting of sales at three public places in the township or
20 city where the properties are situated.. Also attached are the Reno Gazette-Journal’s affidavit of
21 proofs of publication for each notice of sale. . See Zorio Decl., ¶ 7, Exhibit F.

22 The Notices of Sale were apparently not recorded in the office of the County Recorder in
23 Washoe County. However, that does not render the sale of the properties void or voidable by Mr.
24 Zandian or Mr. Canet. NRS 21.140(1); *Nixon*, 595 P.2d at 1096; see *supra* Part II.D.3.

25 There is no valid reason to set aside the sales. Regardless if all four (4) notices described
26 in NRS 21.130(c)(1-4) were accomplished, merely providing notice to the debtor’s counsel and
27 publishing the notice of sale satisfies the purpose to inform the debtor and possible third party
28 purchasers of the sale. *Turner v. Dweco Servs.*, 87 Nev. 14, 479 P.2d 462, ___ (1971) (sale under

1 deed of trust, not execution); *compare* NRS 21.130(c) with NRS 107.080(4).

2 No party involved in the present proceedings can credibly claim they were prejudiced by
3 the notice of sale not having been recorded in Washoe County prior to the sale.

4 **6. NRS 21.075-.076**

5 Again, failure in notice does not void the sales, but rather the exclusive remedy is against
6 the Sheriff. Section 21.075, Nevada Revised Statutes, provides that it is the Sheriff's duty
7 properly to serve the judgment debtor with a notice of the writ of execution pursuant to NRS
8 21.076 and a copy of the writ. NRS 21.075(1). Section 21.076(1) also states it is the duty of the
9 Sheriff to ensure the proper manner of service. NRS 21.076(1). The Declarations of Service
10 signed by Steve Wood at the Washoe County Sheriff's office state under penalty of perjury that
11 he served the writs of execution via post and mail. *See* Zorio Decl., ¶ 7, Exhibit F. Likewise the
12 records of Clark County satisfy the Sheriff's obligation to serve the writs of execution. *See* Zorio
13 Decl., ¶¶ 8-12, Exhibits G-K.⁴

14 Even if there was an error in providing notices pursuant to Chapter 21, Nevada Revised
15 Statutes, such error is not cause to invalidate or set aside the sales. Rather, the party claiming
16 prejudice, and if prejudice can be proved, has an exclusive remedy to pursue the Sheriff. NRS
17 21.140(1); *Nixon*, 595 P.2d at 1096. Statutes such as NRS 21.075 are merely directory, and the
18 failure of the Sheriff to comply with the requirements of the law, in this respect, would not vitiate
19 the sale of real property. *Batini v. Ivancich*, 105 Cal. App. 391, 393-94, 287 P. 523, 524 (Cal. Ct.
20 App. 1930).

21 **7. Zandian's Right to Redeem the Property has Been Waived**

22 Again, failure in notice does not void the sales, but rather the exclusive remedy is against
23 the Sheriff. Because the sale of the property is not void or voidable, and Zandian had actual
24 notice of the sales, even informing a court he does not intend to pay his debts, Zandian has

25 ⁴ In *Siler v. Siler*, 277 S.W. 886, 887 (Tenn. 1925), the court it was held that recitals in a "Sheriff's deed in respect of
26 his own acts is prima-facie evidence of the facts recited." *Id.*, quoting *Swainson v. Scott*, 76 S.W. 909, 909-10
27 (Tenn. 2903). In this case, the Sheriffs' deeds are sufficient to prove the Sheriff performed its obligations by the
28 recitals that notice was given. Canet has completely failed to come forward with any evidence to dispute this prima
facie evidence to support the claims he has raised for the first time in his present opposition/cross-motion. Statement
of Undisputed Material Facts ¶¶ 16, 18, 20, 22, 24 & ECF No. 25 at Exs. B, C, D, E; and Zorio Decl., Exs. O-P
(Clark County Sheriff's Deeds).

1 waived his right, if any, to redeem the property.

2 **8. Canet's Claims of Inadmissibility Are Without Merit**

3 "It is a fundamental rule that objections to the admissibility of evidence must be made . . .
4 and must be specific, and that general objections such as those advanced here that the evidence is
5 'incompetent, irrelevant and immaterial and not the best evidence, and no proper foundation laid,'
6 are insufficient." *Duncan v. United States*, 68 F.2d 136, 140 (9th Cir. 1933) (emphasis added).
7 Canet's general statements that the McMillen and Francis Declarations . . . do not include
8 admissible evidence," Doc. 35 at 5/16-/23, are not sufficient to lodge an evidentiary objection to
9 the evidence, and therefore Canet has waived any objection to the evidence offered by Margolin.
10 *Duncan*, 68 F.2d at 140.

11 Furthermore, the Washoe County Sheriff's office has provided an affidavit of its
12 custodian of records, certifying the records of regularly conducted activities for the sale of real
13 property on execution. *See Zorio Decl.*, Exhibit F. Fed. R. Evid. 803(6). Likewise the Clark
14 County Sheriff's office has provided affidavits of activities. *See Zorio Decl.*, Exhibits G-K. Fed.
15 R. Evid. 803(6). Furthermore, the individuals from the Sheriff's offices may testify at trial about
16 the notices that office sent and when. *See Fraser v. Goodale*, 342 F.3d 1032, 1036-1037 (9th Cir.
17 2003) ("At the summary judgment stage, we do not focus on the admissibility of the evidence's
18 form. We instead focus on the admissibility of its contents"), *cert. den.* 541 U.S. 937 (2004); *J.F.*
19 *Feeser, Inc. v. Serv-A-Portion, Inc.*, 909 F.2d 1524, 1542 (3d Cir. 1990) (hearsay evidence
20 produced in an affidavit may be considered on summary judgment if the declarant could later
21 present the evidence through direct testimony); *Williams v. Borough of W. Chester*, 891 F.2d 458,
22 465 n.12 (3d Cir. 1989) ("hearsay evidence produced in an affidavit opposing summary judgment
23 may be considered if the out-of-court declarant could later present that evidence through direct
24 testimony, i.e. in a form that would be admissible at trial.") (internal quotation marks omitted).

25 Therefore, the evidence relied upon by Margolin is admissible for his motion for summary
26 judgment, and opposition to the *putative* cross-motion.

1 **E. Adversary Plaintiffs’ Purported Partial Joinder to Canet’s Opposition and**
 2 **Counter Motion is Procedurally Improper and Should Also be Rejected For the**
 3 **Same Reasons Why Canet’s Opposition and Counter Motion Should Be Rejected**

4 Adversary Plaintiffs seek to join Canet’s Opposition and Counter Motion as it pertains to
 5 Canet’s NRS 17.150(4) argument, but also ask this Court to declare that Adversary Plaintiffs
 6 “own two-thirds interest in the subject properties [APN 079-150-10, 084-040-02, and 084-130-
 7 07] free and clear of any judgment lien claimed by Mr. Margolin.” *See* ECF No. 37. Adversary
 8 Plaintiffs’ proposed “Joinder” must be denied for the following reasons.

9 *First*, because Canet’s Counter Motion must be denied for the reasons stated above,
 10 Adversary Plaintiffs’ “Joinder” should be denied as well. *See supra*.

11 *Second*, Local Rule 7056 does not allow for a “joinder”, but instead requires the
 12 following:

13 (a) Motions. Each motion for summary judgment must be accompanied by a
 14 separately filed “Statement of Undisputed Facts” which must specify each of the
 15 material facts relied upon in support of the motion, and which cites to the
 16 particular portions of any pleading, affidavit, declaration, deposition, interrogatory
 17 answer, admission or other document relied upon to establish that fact. The
 18 moving party must file as an exhibit to the statement all of the evidentiary
 19 documents that are cited in the moving papers.

20 Adversary Plaintiffs have not filed a separate motion with a Statement of Undisputed
 21 Facts, or any exhibits containing evidentiary documents in accordance with Local Rule 7056(a).
 22 As such, Adversary Plaintiffs’ “joinder” is improper and should be denied. This is especially true
 23 since Adversary Plaintiffs (in Canet-like fashion) raise an issue not addressed in Mr. Margolin’s
 24 MSJ or Canet’s Opposition/Counter Motion. *See* ECF 37, p. 4. Specifically, Adversary Plaintiffs
 25 ask that this Court declare that they each own a two thirds interest in APN 079-150-10, 084-040-
 26 02, and 084-130-07 free and clear of any judgment lien claimed by Mr. Margolin. *Id.* This issue
 27 is not raised anywhere in Mr. Margolin’s MSJ or Canet’s Opposition or Counter Motion and
 28 should not be considered by this Court. Adversary Plaintiffs’ Joinder should be denied.

29 **III. CONCLUSION**

30 For all of the foregoing reasons, summary judgment should be granted in Mr. Margolin’s
 31 favor and Canet’s Cross Claims should be dismissed with prejudice. Furthermore, Canet’s

1 Counter Motion should be denied with prejudice as should Adversary Plaintiffs' "Joinder."

2 DATED: This 2nd day of May, 2018.

3
4 BROWNSTEIN HYATT FARBER SCHRECK, LLP

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and on this 2nd day of May, 2018, I served the document entitled **CROSS-DEFENDANT JED MARGOLIN’S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AGAINST CROSS-CLAIMANT PATRICK CANET AND OPPOSITION TO COUNTER MOTION** on the parties listed below via the following:

VIA FIRST CLASS U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Reno, Nevada, addressed as follows:

Dana Jonathon Nitz, Esq.
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Wright, Finlay & Zak, LLP
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BY PERSONAL SERVICE: by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

VIA COURIER: by delivering a copy of the document to a courier service for over-night delivery to the foregoing parties.

VIA ELECTRONIC SERVICE: by electronically filing the document with the Clerk of the Court using the ECF system which served the foregoing parties electronically.

/s/ Nancy R. Lindsley
Employee of Brownstein Hyatt Farber
Schreck, LLP

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